

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P. No. D- 2773 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
28.01.2019	

Petitioner Rafiq Ahmed is present in person

Mr. Tahir Nisar Rajput, advocate for for respondent No.4

Mr. Zaheeruddin Sehto, for SBCA.

Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

The captioned Petition was heard on 26.06.2018 and following order was passed:-

“Pursuant to our direction, Deputy Director SBCA Hyderabad is in attendance, whereas, statement has been filed on behalf of respondent No.1 to 3. Counsel for SBCA submits that there are violations in construction raised by the respondents. Accordingly, SBCA is directed to act strictly in accordance with law and shall not permit any construction which is in violation of Building Plan and shall initiate demolish proceedings accordingly”

2. On 04.12.2018 petitioner, Rafique Ahmed Advocate filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (M.A. No.538/2019) for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

3. Mr. Rafique Ahmed Advocate, who is appearing in person has argued that despite clear directions in the above said Order, the contemnors have not complied with the same; that there are violations in construction raised by the respondent No.4. Petitioner has pointed out various violations of the Town Planning Regulations, 2018

committed by respondent No.4 which cannot be condoned under the law. He lastly prayed for taking strict action against the alleged contemnors.

4. Tahir Nisar Rajput, learned counsel for respondent No. 4 has filed an application (CMA 13080 of 2018) under Section 151 CPC with a prayer to recall the order dated 26.06.2018 passed by this Court on the ground that she is owner of Plot No.4 (a) Block-D, Unit No.6, Latifabad, Hyderabad and the petitioner who is her neighbor and is raising multistoried (3 storied) construction over his plot without approval of the competent authority i.e. Sindh Building Control Authority; that she has made several representations to the concerned authorities regarding the illegal construction put up by petitioner and has sent several reminders, drawing the attention of the SBCA, to the illegal constructions being put up in breach of the revised plan and the permission granted by the authorities, as well as the statutory provisions of the SBCA regulations-2018. It is further contended that this is a clear case where the respondent-SBCA is not taking appropriate legal action in the matter against the petitioner. It is argued that she has brought the issue of illegal construction to the knowledge of the concerned authorities, but the authorities are not fulfilling their statutory obligations, and appear to be hand in glove with petitioner, therefore, she is constrained to approach this Court; that she raised hue and cry by making various applications to the competent authority to restrain the petitioner not to raise illegal construction over his plot; that the respondent No.4 has paid Rs.1000,75/- as scrutiny fee for regularization of the portion which was constructed by her without approval of the competent authority; that till the portion of her property is regularized by Sindh Building Control Authority, the order passed by this Court may not be acted upon as her application is pending before SBCA; that Regulation 3-2.20 of 2018 which provides for regularization of works carried out in violation of regulations-2018, therefore Respondent-SBCA are bound under the law to condone the illegal construction or regularize the same accordingly. Learned counsel in support of his contention, has relied upon the documents attached with the

listed application. Be that as it may, it is for the respondent-SBCA to look into the matter and take decision if there is any violation in construction as agitated by the Respondent No.4.

5. The Respondent-SBCA has controverted the allegations leveled by the respondent No.4 in the listed application (CMA No.13080/2018); that the Respondent No.4 has not left 10 feet open to sky space and violated the approved Building Plan. In this regard necessary notices has already been served upon the Respondent No.4 as she is bound to follow the approved building plan; that further action for demolition/sealing of unauthorized construction is under process in accordance with SBCO 1979/82 and KB&TPR-2002 as amended up-to-date; that in compliance with the order dated 26.6.2018 passed by this Court, Deputy Commissioner, Hyderabad, SSP Hyderabad and SHO PS B-Section police station were requested vide letter dated 5.7.2018 to provide assistance during the execution of demolition of unauthorized construction raised in violation of the approved building plan dated 12.7.2018; that on the day of demolition action, the staff of this authority reached to the concerned police station and requested for providing assistance and no assistance was provided to them to comply with the direction passed by this Court in the aforesaid matter; that respondents tried their level best to comply with the direction of this Court but no fruitful result has come out from the concerned law enforcement agencies, therefore, the direction could not be complied with in time. In this regard they have relied upon their statement dated 30.8.2018 filed in the instant petition. Be that as it may, we are only concerned with the compliance of order dated 26.6.2018 passed by this Court whereby it is observed that if there is any violation in construction raised by the private Respondents, Sindh Building Control Authority is competent to act strictly in accordance with law and shall not permit any construction which is in violation of the approved building plan and shall also initiate demolition proceedings accordingly.

6. We have heard the learned counsel for the parties on the listed applications and perused the material available on the record.

7. We may observe here that an illegal construction of building materially affects the right to or enjoyment of the property by persons residing in the residential area. The SBCA owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorized construction. The scheme is for the benefit of the residents of the locality. The rights of the residents in the area are invaded by an illegal construction of building. It has to be remembered that a scheme in a residential area means planned organization in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the SBCA the courts will quash orders passed by SBCA in such cases.

8. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the Order dated 26.06.2018 passed by this Court.

9. We have also scrutinized the compliance report submitted on behalf of the alleged contemnor; prima-facie the explanation offered by the Respondents vide statement dated 30.8.2019 is not tenable under the law. The Petitioner has pointed out malice on the part of alleged contemnors warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution, who failed and neglected to comply the Order dated 26.06.2018 passed by this Court.

10. In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 26.06.2018 passed by this Court in the present matter has been made in its letter and spirit. Therefore, at this juncture, prima-facie, Petitioner has made out a case for initiating contempt proceedings against the alleged contemnor. Therefore, the office is directed to issue show cause notice under section 17 (1) of the Contempt of Court Ordinance 2003 read with

Article 204 of the Constitution, as to why contempt proceedings should not be initiated against them for willful defiance of the order dated order dated 26.06.2018 passed by this Court. The listed application bearing (M.A. No.538/2019) is adjourned to be taken up after two weeks. Consequently the application CMA No.13080 of 2018 filed by the Respondent No.4 is dismissed.

JUDGE

JUDGE

Karar_hussaini/PS*