

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 1999 of 2019 : Muhammad Jawed & Others vs.
KMCHS & Others

For the Plaintiff : Mr. S. Ahsan Imam Rizvi, Advocate

For the Defendant No. 1 : Ms. Amber Lakhani, Advocate

For the Defendant No. 2 : Mr. Dhani Bux, Advocate

Date of hearing : 13.07.2020

Date of announcement : 16.07.2020

ORDER

Agha Faisal, J. The controversy before this Court stems from a notice in respect of illegal construction dated 15.11.2019 (“Impugned Notice”) served by the defendant no. 1 in respect of the suit property, Plot 21/222 Block 7&8 KMCHS Karachi (“Property”). CMA 15787 of 2019 has been preferred by the plaintiffs seeking suspension of the Impugned Notice and CMA 621 of 2020 was filed by the defendant no. 1 praying for vacating of the *ad interim* orders dated 25.11.2019.

2. Facts pertinent to the present determination are that the plaintiffs, three in number, claim to be the lawful and bona fide owners¹ of the Property and obtained permission for construction thereon², whereby they were permitted to construct basement, ground floor and a further first floor thereupon. Instead of one basement, construction upon the Property was stated to include three basements, hence, the Impugned Notice.

Ad interim orders were rendered on the first date of hearing whereby site inspection was ordered and additionally the defendant no. 1 was restrained from interfering in the *lawful construction* at the Property. The aforesaid order specifically explicated that the restraint imposed was to be considered in the light of the site inspection report.

In compliance with the directives of this Court, site inspection was carried out by the Nazir and his report³ denoted that the approval was for basement, ground floor and first floor in the residential category. The report relied upon and annexed a report dated 15.12.2019, issued by the Sindh Building Control Authority (“SBCA”) upon directions of the Nazir, wherein it was stipulated that construction on site includes three levels of basements. Per Orders⁴, a fresh inspection was carried out by the Nazir and his report⁵ categorically stated that the construction included three basement levels. A fresh SBCA Report⁶ was relied upon to specify that violation of the Building Plan was demonstrated from the construction undertaken at the Property.

¹ Paragraph 1 of the memorandum of plaint.

² Proposed building plan dated 14.03.2019 (“Building Plan”) issued by the Sindh Building Control Authority, defendant no. 2 herein.

³ Nazir’s Report dated 07.12.2019 in compliance of Order dated 25.11.2019.

⁴ Issued by this Court on 27.01.2020.

⁵ Nazir’s Report dated 12.02.2020 in compliance of Order dated 27.11.2020.

⁶ Sindh Building Control Authority report dated 07.02.2020.

3. Mr. Syed Ahsan Imam Rizvi Advocate set forth the case for the plaintiffs and submitted that the inconsistency of the construction on site with the Building Plan was capable of being regularized. He argued that other dwellings in the vicinity had been given permission for more than one basement and further that the earlier dwelling upon the Property contained two basements. The learned counsel defended the existence of three basements on the premise that the same was essential in view of the peculiar contours and dimensions of the Property.

4. Ms. Amber Lakhani Advocate articulated, on behalf of the defendant no. 1, that the record clearly demonstrated that the construction upon the Property was in violation of the Building Plan. Learned counsel adverted to photographs on record⁷, showing the provision for eight gas meters, and submitted that the Property was being converted to a flat site despite the Building Plan clearly stating that "*Units / Flats are not allowed*"⁸. It was concluded that there is no cavil to the authority of the defendant no. 1 to issue the Impugned Notice and the assertions raised therein stand corroborated by the independent record before this Court.

5. Mr. Dhani Bux Advocate⁹ at the very onset drew the Court's surveillance to the Orders of the honorable Supreme Court¹⁰ wherein unsanctioned utilization of land has been deprecated in no uncertain terms. It was stressed that the permission for construction accorded by SBCA is clear and unambiguous, however, the construction upon the Property is in manifest violation thereof. Learned counsel drew attention to the Order of this Court dated 24.02.2020 wherein SBCA's stand is unequivocally recorded; stipulating that three basements have been built upon the Property, in violation of the Building Plan, for which no permission has ever been sought.

6. This Court has heard the respective arguments and deems it prudent to confine¹¹ the ambit hereof to the parameters defined by this Court while delivering the initial *ad interim* orders. The *ad interim* Order dated 25.11.2019 records the plaintiffs' contention that construction is being raised strictly in accordance with the Building Plan and then stipulates that "*... Defendant No. 1 is restrained from interfering in the lawful construction at the above subject property. However, restraining order passed today could be considered in the light of the site inspection report*".

7. The site inspection reports¹² have categorically noted that while the permission was for one basement, the construction raised includes three basements. Learned counsel for the plaintiffs has admitted the existence of three basements and the violation of the Building Plan, however, has contended that such infraction is capable of being

⁷ Annexed with CMA No. 4946 of 2020.

⁸ At this juncture learned counsel for the plaintiffs categorically stated that no flats were either under construction and / or contemplation upon the Property.

⁹ Representing the defendant no. 2, Sindh Building Control Authority.

¹⁰ Per *Gulzar Ahmed CJ.* in *Abdul Karim vs. Nasir Salim Baig & Others* reported as 2020 SCMR 111.

¹¹ *Ismail Industries Limited vs. Mondelez International & Others* reported as 2019 MLD 1029; *Shahnawaz Jalil vs. Rani & Company* reported as 2019 CLD 1338.

¹² Nazir's Reports dated 07.12.2019 and 12.02.2020 respectively; SBCA Reports dated 15.12.2019 and 07.02.2020 respectively.

regularized. It is imperative to record at this juncture that no permission (or even an application in such regard) for regularization has been placed on the record and the Order dated 24.02.2020 specifically records the statement of the learned counsel of SBCA stating that no permission in such regard has ever been sought. It would thus appear that the initial contention of the plaintiffs' counsel¹³, that construction was being raised in conformity with the Building Plan, is negated by the respective site inspection reports. In addition thereto the plaintiffs' counsel has specifically admitted violation of the Building Plan¹⁴ and sought to justify the same.

8. In summary it is observed that no cavil has been articulated to assail the competence in respect of issuance of the Impugned Notice; the violation of the Building Plan¹⁵ is manifest from the site inspection reports and also admitted by the plaintiffs' counsel; no permission for regularization of the infringement appears to have been received¹⁶ or sought presently; no infirmity has been pointed out in the Impugned Notice, hence, no case has been made out for the suspension thereof.

9. In view of the reasoning and rationale herein contained, CMA 15787 of 2019 is hereby dismissed. As a corollary thereof, the constituent of the *ad interim* order dated 25.11.2019 placing a restraint upon the defendant/s no longer holds the field, hence, CMA 621 of 2020 is disposed of accordingly.

J U D G E

¹³ As recorded vide the Order dated 25.11.2019.

¹⁴ During the course of the hearing dated 13.07.2020.

¹⁵ *Farooq Hameed & Others vs. LDA & Others* reported as 2008 SCMR 493.

¹⁶ *Abdul Razak vs. KBCA & Others* reported as PLD 1994 Supreme Court 512; *Zubaida A. Sattar & Others vs. KBCA & Others* reported as 1999 SCMR 243.