IN THE HIGH COURT OF SINDH AT KARACHI

Date of hearing 01. 11. 2006.

Date of Judgment 11. 2006.

Plaintiffs: Mrs. ALBA D'SA and others through Mr. Abdul Rehman, Advocate.

Defendants Nos.1 & 2: Ms. Naheed Pabani and Ali Allarakia through Mr. Mansoor-ul-Arfin, Advocate.

Defendants Nos.3 to 9: Called absent. .

Intervenor: SHEHRI CBE through Mr. Abdul Rehman,Advocate.

O R D E R

On CMA NO. 7350 of 2006

MUNIB AHMED KHAN, J.- **CMA NO. 7350 of 2006 has been filed under order 1 rule 10 CPC by SHEHRI: CBE for becoming a party in the suit on the ground that it is a NGO and is active in protecting natural and built environment, misuse of land and watching the construction, so it may not be raised contrary to the Building Laws and Development Scheme. It has further been submitted that Intervenor has great deal of knowledge in respect to working of KBCA and is aware about the lacunas and problems in its working and that it has represented public interest litigation in so many cases and have assisted the court and its efforts have been appreciated by the Courts and sometime court itself has called upon the Intervenor to assist the court. The Intervenor has also referred certain suits numbers and orders passed therein and has also referred some cases to show that it has remained and considered helpful to the cause of promoting Building Laws in justifiable manner and has assisted the court in this respect. The Intervenor has specifically referred the following suits and dates of orders:**

531 of 1999	*10.12.1999*	*Annexure 3 a*
1079 of 2000	*15.09.2000*	*Annexure 3 b*
1645 of 1998	*05.12.2000*	*Annexure 3 c*
327 of 1999	*05.12.2000*	*Annexure 3 c*
118 of 1999	*05.12.2000*	*Annexure 3 c*
1655 of 1999	*26.5.2000*	*Annexure 3 d*
1545 of 1998	*30.08.1999*	*Annexure 3 e*
341 of 1996	*26.09.1996*	*Annexure 3 f*
869 of 1997	*12.03.1999*	*Annexure 3 g*

Copies of the orders in those suits have also been annexed, besides, Mr. Abdul Rehman, learned counsel for Intervenor has also referred the cases of Karachi Play House v. City District Government, 2006 CLC 578, Ardeshir Kawasji v. KBCA 1999 SCMR 2883. After referring these authorities, as well as copies of the orders, referred in the application, the learned counsel has submitted that Intervenor will be necessary party to assist this court to reach a decision and since public interest is involved, therefore, it may be made a party.

On the other hand, Mr Mansoor-ul- Arfin, learned counsel for the defendants Nos.1 and 2 has submitted that Intervenor is

self-praising body and that it has no special/expert knowledge and had it been the situation, then Intervenor may take advisory position to assist Defendant No.4 instead of including itself in civil suits where it has no interest. He has further submitted that if such type of applications from NGOs are entertained then there will be no end for such type of applications by other NGO which may be popped up for various reasons. It has further been submitted that nothing has been stated in the application or in its annexed affidavit to show as to what right or interest it has in the suit and how it is a necessary party and that write-up and posture of NGO has not been represented properly as it is not indispensable for a suit. It has further been submitted that the court itself, if deems necessary, can call for assistance any person but to become a party in a suit is to be judged within the criteria laid down under section 9 and under order 1 rule 10 CPC and that the factual position, specially in suits differ from file to file. It has further been submitted that application has been filed with mala fide intention at the behest of the plaintiff, as one and the same learned counsel is representing both and in such a situation, the same learned counsel can equally assist this court even if he remains for the plaintiff. To support his arguments on the point of necessary party, as well as right of a party to become a party in probono publico status, he has referred, Islamic Republic of Pakistan v. Abdul Wali Khan, PLD 1975 SC 463, Sanaullah Khan v. Lahore Municipal Corporation, 1979 CLC 891, Riaz Ahmed v. Dr. Umtul Hameed Koser, 1996 CLC 678, Fateh Raj v. Suraj Roop, AIR 1969 Rajistan 252, Sanpatbai v. Madhu Singh, 1960 MP 64.

To decide the above controversy, it is to be seen as to whether Intervenor fulfills criteria laid down under order 1 rule 10, specially, when application has been made in the suit, as well as section 9 PPC as to what right or interest of any party is involved. Learned counsel for the intervenor has referred and even mentioned in its application certain suits numbers and has also placed copies of orders thereof, therefore, these are to be discussed separately.

In Suit No. 531 of 1999, this court has passed order whereby application under order 1 rule 10 of the Intervenor has been allowed. The basis for the grant of application as appears from the order is reproduced as under:

> *"It has been stressed that there is cut line on Nicol Road (Aiwan-e-Tijarat) which has been suppressed by the Defendant and which find support from chronology of the event attached to the application as Annexure".*

From the above observation in that order, it appears that the Court has considered some factual position, which were suppressed but in the instant case, the application and affidavit of Intervenor is silent in this respect. In another order passed in Suit No. 1079 of 2000 following observation has been made:

> *"Gentleman, who appeared for NGO has given a detailed affidavit wherein, in depth violation of the various rules of KBCA has been shown. They also shown the violation of KBCA rules by some builders in connection with several other buildings".*

In other suit No. 1645 of 1998 (327/99 and 118/99) it has been recorded by the court as follows:

> *"It has further been argued that builder in collusion with the KBCA has unlawfully and illegally managed conversion of residential plot situated in PECHS into commercial plot/area, on the clear violation of Karachi Town Planning Regulation".*

In other suit No. 1655 of 1999 and 1545 of 1999, application of Intervenor has been granted with consent. In suit No. 341 of 1996, the application of the intervenor was granted on the ground that Intervenor has filed CP No. 699 of 1994 in respect of the same plot and construction thereon, while in Suit No. 869 of 1997, the Hon'ble Judge has recorded violation by the builders which was pointed out by the Intervenor and that the learned Judge has observed:

> *"When need be arose then court itself can call any person or body to assist it".*

Another order in CP No.D-1970 of 1998 has been filed. In the said order court itself issued notice to SHERI to appear and explain their views.

The orders, referred above by the Intervenor in its application, are relevant when violations have been pointed out in the Intervening application or application has been allowed by consent or the court itself has opted to issue a notice.

The reported authorities referred to by Mr. Abdul Rehman, learned counsel for Intervenor i.e. 2006 CLC 578 is in respect to High Court Appeal. The order in the said appeal has also pointed out that there were pendency of other litigation in respect to some property which was pointed out by the learned counsel for Intervenor. In 1999 SCMR 2283 referred to by the learned counsel for Intervenor is in respect of Constitution Petition, the learned counsel has specifically referred para 12 of judgment which is reproduced as under:

> *"12. In our view, the appellants have the right to use the Park with all amenities as was envisaged under the approved K.D.A. Scheme No.5. The use of the Park involves enjoyment of life which is covered by the word life employed in Article 9 of the Constitution as interpreted by this Court in the above-quoted extract from the judgment in the case of Ms. Shehla Zia and others v. WAPDA (supra). The appellants, therefore, have the right to ensure that the official respondents do not grant approval of a plan in respect of the Plot which may be violative of the provision of the Order and the Regulations and which may impinge on their right of enjoyment of life".*

The Hon'ble Supreme Court in the above authority has discussed the concept of locus standi in relation to the Constitution Petition and in para 13 of the said judgment, it is observed:

> *"13. We may also refer to the following judgments of this Court in which the concept of locus standi has been dilated upon in relation to a Constitution petition and, inter alia, it has been held that for maintaining a proceeding in writ jurisdiction, it is not necessary that a writ petitioner should have a right in the strict juristic sense, but it is enough if he discloses that he had a personal interst in the performance of the legal duty, which if not performed or performed in a manner not permitted by law, would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise-*

After going through the above authorities, it appears that a person having interest or knowledge in respect to factual position involved and that too normally in probono publico capacity in constitutional matter can appear as Intervenor.

On the other hand, the authorities referred to by Mr. Mansoorul Arfin is on the point as to what is the criteria for joining an outsider as a party to a suit. AIR 1969 Rajistan 252 is on the point that a party cannot become Intervenor to overlook as to whether the matter has properly been defended or not. It has been observed in the said authority that:

> *"No one can open doors and windows on Khalsa land as of right. Khalsa land means the land belonging to the State. The State has the same rights over its land as any private owner. The applicants have thus failed to show that they have any legal interest in the subject-matter of the suit. In other words, they have not shown that if the plaintiff of the suit is granted the relief claimed by him the legal rights of the applicants will be directly affected. It appears that the applicants want to be impleaded in the suit merely with the object of enabling them to see that it is properly defended. As was held in Amon v. Raphael Tuck and Sons Ltd., 1956-1 All ER 273 the applicants cannot be impleaded as defendants for such a purpose".*

In PLD 1975 SC 463, it has been observed as follows:

> *"Now a proper party is a party whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all question involved in the proceedings. The terms "questions involved" include all matters, material to a proper decision of the case but the object of making such persons parties is to prevent multiplicity of proceedings. The person must, therefore, be a person whose interest is likely to be affected even though no relief is claimed against him. This does not, therefore, extend to persons who have no interest, which is likely to be affected by the proceedings nor does it embrace persons only generally interested in common with others nor can persons be added as parties so as to set up a new cause of action which does not concern the original parties".*

In 1979 CLC 891, the Lahore High Court has observed as follows:

> *"Under order I, rule 10 a person who only acts as one probono publico or wants to be added as a party only as a matter of prestige, is neither a necessary nor a proper party. Similarly, a person who wants to introduce a new cause of action in the suit is not also a necessary or a proper party".*

In 1996 CLC 678, this court in High Court Appeal has held as follows:

> *"The learned single Judge disallowed the request of the appellant to be joined on the short ground of the appellant being neither a necessary nor a proper party. In that the learned Single Judge appears to have been right because neither the appellant "ought to have been joined" on the ground that in his absence no effective decree could have been passed, as a necessary party, nor the appellant's presence was requisite to effectively and completely adjudicate upon and settle all points involved in the suit, as a proper party".*

Keeping in view above authorities, it will also be necessary to quote order 1 rule 10 CPC under which the application has been made:

> **"***10. Suit in name of wrong plaintiff.--- Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.*
>
> *Court may strike out or add parties.—(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely, to*

adjudicate upon and settle all the questions involved in the suit, be added.

(3) . . . .

(4) . . . .

(5) . . . .

From the Plaint, it is being observed that the plaintiff has alleged that the approved plan issued by Controlling Authority to the Defendant No.1 is ultra vires, the Town Planning Act 1915 as well as to Sindh Building Control Ordinance, 1979 as well as to the Town Planning Regulation, therefore, KBCA cannot be allowed to commit violation. The Defendant has denied that the construction is in violation of law including Karachi Building Town & Planning Regulations while Town Planning Act 1915 is not applicable. It has further been submitted that the building, ground plus three is in accordance with approved building plan and no right of the plaintiff is affected as the residence of the plaintiff is not adjacent to the plot on which building is being constructed nor the construction of the building will increase stress on infra structure of the amenity provided for, nor it will affect the parking etc. The KBCA has also filed written Statement and counter affidavit and has stated that there are some violation but they are regularizable under the KBCA Regulation.

From the perusal of the application, made by the intervenor, it appears that no additional factual position has been pointed out nor it has been stated that some relevant factual position has been concealed by the plaintiff. The application is full of self boasting praises and nothing. The knowledge of the intervenor can be helpful to the court if need be arisen and in such situation, it can be required as a witness by the plaintiff or the Court itself can call any person from the intervenor to assist it. Keeping in view that the KBCA is full fledged organization, entrusted with the duties to overlook construction in whole of Karachi, except Cantonment area, with hundreds of officials, technically expert in their job. The KBCA has also power under its law as well as regulations to approve the building plan and to regularize violations, which are regularizable and in presence of that authority, there may be needs for its improvement but it cannot be permitted that in every suit filed by or against the KBCA, some one should be permitted to enter in the pleadings as an expert to provide guideline to KBCA or lead the court in a way that judgment / order on the required issues be obtained. It has been observed that in the KBCA matter any mashoom growth of self motivated concern have started intervening and sometime the proceedings are dropped abruptly and the court has to issue notices to the petitioner; what is the reason for abrupt lack of interest by the interest organization can be guessed. Anyhow, if in each and every case, the NGO is taken as intervenor then it will cause substantial increase in the litigation and this cannot be permitted by adopting a principle that intervenor is to be taken leniently and made party to the case. No doubt, that the knowledge on the part of SHEHRI CBE and its performance during the past, has been appreciated and it can be utilized at any time when the court needs its assistance in a particular case. If as a routine NGO is made a party then this will open the gate for other so called NGOs, which cannot match expertise of the intervenor.

The issue in the suit is in respect to the plaintiffs and Defendants and the prayer made in the suit covers each and every aspects, while learned counsel representing the intervenor is also the counsel for the plaintiff, therefore, all the material issues, which have been raised can be decided in accordance with KBCA Laws and Regulations, which is already available and court can assess the status of the building through inspection and effective order can be passed. The intervenor might have represented in the cases where KBCA is a party but in most of the case, pointed out by it, are not suits while in some suits, it has been added with

the consent of contesting parties. Here in the matter in hand, since all factual positions have been given and the matter is purely in respect to the Defendants and plaintiffs who must be claiming right or title in accordance with section 9 of Code of Civil Procedure, hence in these circumstances the intervenor is not a necessary party in terms of order 1 rule 10 CPC and even in its absence as a party, the contentions between the parties can be decided effectively and properly. The very purpose of order 1 rule 10 CPC is that to avoid multiplication of litigation by way of filing of new suit or by filing of application under order 12(2) CPC by a necessary party so the interest of that party may be decided in a single suit by taking it as additional party and a question in respect to it as well as other parties to suit be decided effectually. The authorities cited by the learned counsel for Intervenor do not fit in the peculiar circumstances of the facts of the case.

In these circumstances, I do not find any merit in the application, which is accordingly dismissed.

J U D G E

SAMIE