

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.4634 of 2019

Muhammad Idrees & another Petitioners

Vs.

Government of Sindh & two others Respondents.

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Muhammad Faisal Kamal Alam

Date of hearing : 21.09.2021.

For the Petitioner : Mr. Ahmed Ali Hussain, Advocate. .

For the Respondent No.1 : Mr. Meeran Muhammad Shah, Additional Advocate General (AAG)

For the Respondent No.2 : Mr. Sartaj Malgani, Advocate. .

For the Respondent No.3 : Mr. Muhammad Fahim Zia, Advocate. .

J U D G M E N T

IRFAN SAADAT KHAN, J. The instant petition has been filed on the ground that the respondent No.3, owner of Property No.R-690, Block-9, Dastagir Society, Federal “B” Area, Karachi, has raised illegal construction, without there being proper approved building plan and permission from the concerned department for raising construction. Notices thereafter were issued to the respondents who have filed their comments and compliance reports in respect of the various orders passed by this court while hearing the instant matter.

2. Mr. Ahmed Ali Hussain, Advocate, has appeared on behalf of the petitioner and stated that the respondent No.3 only has the permission of construction of ground plus one floor only, whereas he

has constructed ground plus two floors, without completing the legal and codal formalities and without obtaining approved building plan and NOC from the concerned departments. He stated that a number of applications / complaints were filed with the government departments, but when no heed was paid thereafter the instant petition has been filed. He further stated that though some purported compliance has been made by the official respondents, but that could only be termed as a cosmetic compliance, and hence a contempt application, one application for halt of construction and another application for inspection were also moved by him. According to the learned counsel reports filed by the Nazir and the official respondents in the instant matter are in his favour, hence the respondent No.3 may be permanently restrained from raising any illegal construction, and whatever illegal construction has been raised by the said respondent may be ordered to be demolished.

3. Mr. Sartaj Malgani, Advocate, has appeared on behalf of the respondent No.2 /SBCA and stated that the directions and instructions, issued by this Court from time to time, have duly been complied with. According to him, the entire second floor constructed by the respondent No.3 has been demolished and only the debris are now lying at the site; hence, he requested that since the purpose of filing the instant petition has been served, the same may therefore be disposed of.

4. AAG, appearing on behalf of the respondent No.1, has adopted the arguments of Mr. Malgani.

5. Mr. Fahim Zia, Advocate, has appeared on behalf of the respondent No.3 and stated that it has now been confirmed by the official respondents that whatever illegal construction was raised by the said respondent has been demolished. He invited our attention to the photographs available on record to show that the orders and the directions issued by this court have duly been complied with. He further assured that the respondent No.3 would not make any construction on the subject property without there being a proper approved building plan and NOC from the concerned departments.

6. Mr. Ahmed Ali Hussain, learned counsel for the petitioner, on the other hand, in his rebuttal, reiterated his above submissions that the compliance made by the SBCA is only cosmetic in nature and in future the respondent No.3 would again make illegal construction on his property.

7. We have heard all the learned counsel at some length and have also perused the record.

8. The record reveals that the entire second floor of the above referred property has been demolished. The record further reveals that only debris are now lying at the site. We are cognizant of the fact that the house owned by the respondent No.3 comprises of 120 square yard only and it is very difficult for the government officials to demolish a constructed property situated in a densely populated area as the same could cause damage to the properties and lives of the neighbors. In our view, the purpose of filing of the petition has been

served, as according to the compliance reports furnished by the SBCA authorities whatever illegal construction has been raised by the respondent No.3 has been taken care of. We, therefore, under the facts and circumstances dispose of this petition by restraining the respondent No.3 from raising any illegal construction, which is beyond the approved plan and without taking NOC from the concerned authorities. We also direct the SBCA authorities to make sure that in future no illegal construction is being raised by the respondent No.3 and in case of any illegal construction, the SBCA authorities would be at liberty to take appropriate legal action against the said respondent in accordance with law.

9. However, before parting with the order, we would like to observe that it has now become a rampant practice of the SBCA authorities to keep mum while any construction is being carried out on any building, and the department only comes into action when a matter is brought to the knowledge of a court and some directions are issued by the court in this regard. Here a question would arise as to when any illegal construction is being raised by some evil doers why no action is being taken by the concerned Directors, Deputy Directors and Inspectors of the SBCA authorities. In our view, the answer to this question is quite obvious; until and unless there are some extraneous considerations which keep these concerned Directors, Deputy Directors and Inspectors away from the illegal constructions being raised by those evil doers pertaining to their area. It is beyond imagination that any building or project could be completed without its proper surveillance, inspection, etc. This clearly denotes that the

concerned Directors, Deputy Directors and Inspectors are hand in gloves with those persons who are engaged in making illegal construction, otherwise, in our view, had there been a proper vigilance and surveillance by these officials, there would not have been a question of raising any illegal construction whatsoever. Hence, the Director General (DG), SBCA, is directed to take appropriate legal action against those officials in whose area any building /project is constructed without there being proper approved building plan which is not in accordance with law and the rules and regulations. We are sanguine, if two or three officials of the department are taken to task or appropriate disciplinary action, which may include the suspension and termination in accordance with law, is carried out and exemplary punishments are awarded to those officials, matters regarding illegal construction, etc. in an area of particular Directors, Deputy Directors and Inspectors could be controlled. In our view, it is the responsibility and duty of the DG to secure the goodwill of his department by taking prompt and timely actions. Let a copy of this order be sent to the Chief Secretary, Home Secretary and DG, SBCA, for information and compliance.

10. The instant petition, along with all the listed and pending applications, stands disposed of in the above manner.

JUDGE

JUDGE

Karachi:

Dated: .09.2021.