

# IN THE HIGH COURT OF SINDH AT KARACHI

## Suit No.1911 of 2010

[Muhammad Zulfiqar through LRs v. Pakistan Railway Employees Cooperative Society and another]

Date of hearing : 05.11.2021  
Date of decision : 05.11.2021  
Plaintiff : Through Mr. Ghulam Mohiuddin,  
Advocate  
Defendants : *Nemo*

### JUDGMENT

**Zulfiqar Ahmad Khan, J:-** This suit was filed on 14.12.2010 for declaration and permanent injunction with the following prayers:-

1. For declaration that boundary wall constructed/erected by the Plaintiff on the suit property is consequent of obtaining No Objection Certificate from Pakistan Railway Employees Co-operative Housing Society and in presence of such no objection the Notice issued by the Defendant No.2 is illegal and without any substance.
2. For permanent injunction restraining the Defendant No.1 from threatening the Plaintiff and his family members regarding demolishing of boundary wall and trespassing the suit property.
3. For declaration that the Plaintiff has lawfully erected the boundary wall in terms of NOC issued by the Defendant No.1 and in accordance with the approved plan.
4. For restraining the Defendant Nos.1 and 3 not to demolish boundary wall constructed over the suit property till final disposal of this suit.
5. Costs of the Suit.
6. For any other/additional relief (s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Relevant facts as averred in the plaint are that the plaintiff had applied for "No Objection Certificate" for erection of a boundary wall on his plot of land bearing No.A-200, Block-C, admeasuring 240 square yards, situated at Pakistan Railway Employees Co-operative Housing

Society, Project No.2, Gulistan-e-Jamal, Deh Okewari, Karachi, (“subject property”) which was granted to him by defendant No.1 vide letter dated 07.09.2010. Accordingly, he built a wall around his plot, which was already surrounded from three sides by neighbours’ walls. However defendant No.3, allegedly in collusion with private defendant No.2 issued notice dated 26.10.2010 to the plaintiff alleging that the boundary wall erected on the subject property was without approval of its office (“the impugned notice”).

3. Upon notice of the instant suit, defendant No.2 (Amanullah Cheema) filed his written statement on 29.03.2011. However, he was deleted from the array of the defendants vide this Court’s order dated 05.10.2015 on the application of the plaintiff, leaving Pakistan Railway Employees Cooperative Housing Society Ltd., Karachi as defendant No.1 and Cantonment Board Faisal Karachi as defendant No.2.

4. Cantonment Board Faisal Karachi also filed its written statement on 22.04.2011 and took a legal objection that the instant suit was barred by section 273 of the Cantonments Act, 1924 (“1924 Act”) and that the plaintiff has no cause of action and legal right to file the present suit against it. It was also asserted that the building control portfolio lies with the defendant No.3 (*now defendant No.2*) and the plaintiff’s construction of the boundary wall was without any sanction from its office.

5. Defendant No.1 (Pakistan Railway Employees Cooperative Housing Society Ltd Karachi) also filed its written statement on 03.12.2011 and took a position that the instant suit is not maintainable as no cause of action has been accrued against it.

6. On 23.04.2015, following issues were framed by this Court:-

1. Whether notice issued to defendant No.3 with regard to construction of boundary wall over subject matter property is

illegal, without jurisdiction, and such construction raised by plaintiff is legal and after obtaining approval from the concerned authorities?

2. Whether plaintiff is entitled to the relief claimed?
3. What should decree be?

7. On 23.09.2016, Mr. Kabiruddin Ahmed, Advocate was appointed as Commissioner to record evidence of the parties, who consequently recorded evidence of the plaintiff, but none came forward from defendants' side, hence he forwarded the matter to the Court vide his report dated 26.09.2017. Whereafter on 04.12.2017, MIT-II of this Court was directed to obtain evidence file from daughter of the Commissioner (as the learned Commissioner passed away), who did so and on 11.01.2018, with the mutual consent of the counsel, Ms. Naheed, Advocate was appointed as Commissioner for recording evidence of remaining witness(es) of the defendants' side. She submitted her report on 10.12.2018 stating therein that despite undertaking given by the counsel for the defendants, none appeared before her. Then, on 18.12.2018 this Court directed the Commissioner to issue one more notice to the counsel for the defendants for filing of affidavit-in-evidence of their witness(es) and in case the same is not filed, she was set at liberty to close their side. Thereafter, on 22.08.2019 learned Commissioner submitted her final report on 21.08.2019 stating that defendant No.2 (Cantonment Board Faisal Karachi) had recorded evidence however none appeared from defendant No.1.

8. Attorney of the plaintiff namely Imran Saddiq S/o Muhammad Zulfiqar led his evidence and produced his affidavit-in-evidence as Exh.PW-1/1. He also produced special power of attorney dated 03.12.2010 as Exh.PW-1/2, photocopy of sale deed dated 20.08.2010 as Exh.PW-1/3 alongwith site plan as Exh.PW-1/3-A, permission/letter bearing No.PRECHS/413/2/187/400/284/240 dated 07-09-2010 issued by

the Administrator of the defendant No.1 as Exh.PW-1/4 and *impugned* Notice bearing No.CBF-9/Notice/4764 dated 30.10.2011 as Exh.PW-1/5. He was then cross examined by the counsel for defendant No.1.

9. On the other hand, after consuming numerous opportunities, finally an authorized officer of defendant No.2 (Cantonment Board Faisal Karachi) namely Umer Farooq Mughal examined himself and produced his affidavit-in-evidence as Exh.DW-1/1. He also produced authority letter as Exh.DW-1/2 and photocopy of written statement as Exh.DW-1/3. He was cross examined by the counsel for the plaintiff, whereas, none appeared from defendant No.1 despite various opportunities. Accordingly, she closed side of the said defendant on 17.08.2019 while exercising powers under order dated 18.12.2018.

10. Thereafter, vide this Court's order dated 11.10.2019, the matter was ordered to fixed for arguments, for which, except for one date i.e. 31.08.2020, none appeared on behalf of the defendants.

11. Learned counsel for the plaintiffs submits that the issue No.1 was *in fact* issue in law, however evidence has been laid down by the respective parties. He admitted that the plaintiff closed open side of his plot by raising a boundary wall in accordance with law and the impugned notice sent by the Executive Officer, Faisal Cantonment with the observations that "*You have constructed boundary wall on the subject plot without approval of this office*" is illegal.

12. Learned counsel for the plaintiff submits that said Notice was issued under section 185 of the Cantonment Act, 1924 (as evident from the title of the Notice). Learned counsel next states that while the defendant No.2 (Cantonment Board) is a municipal authority, seized with power to regularize construction of a building, however, raising of

boundary wall is not an act that requires approval from the said defendant.

13. Heard the arguments and perused the record.

14. It appears that the defendant No.2 has asserted that it has the competency to regularize the construction of the boundary wall, which could not have been erected without permission of the said defendant. Perusal of section 185 of the Cantonment Act, 1924 stipulates that admittedly the defendant No.2 is empowered to regularize buildings and to stop erection or re-erection thereof, and to demolish, if such erection or re-erection is offensive of section 184 of the Act and it can also be seen that 184 is a penal section that imposes penalty if one raises illegal construction, however per learned counsel, the word “building”, as used in section 185 is defined by section 2(iv) as under:-

“2. **Definitions:-** In this Act, unless there is anything repugnant in the subject or context,-

.....

(iv) “building” means a house, outhouse, stable, latrine, shed, hut or other roofed structure whether of masonry, brick, wood, mud, metal or other material, and any part thereof, and includes a well and a wall (other than a boundary wall not exceeding eight feet in height and not abutting on a street) but does not include a tent or other portable and temporary shelter”. (Emphasis supplied)

15. Perusal of the said definition clearly shows that a “building” is held to mean a house, outhouse, latrine, shed, hut or other roof structure whether of masonry, brick and includes a well and wall other than the boundary wall not exceeding eight feet in height and not abutting on a street. The judicial wisdom contained in the said provision loudly speaks that erection of a boundary wall around a plot having not more than eight feet height, and not abutting on the street, does not amount to a building requiring approval from the Cantonment Board.

16. In the circumstances, this being pure a question of law, where perusal of section 185 read with section 2(iv) of the Cantonment Act, 1924 leave no doubt in my mind that raising of boundary wall of less than eight 8 feet in height as long as it does not abutt a street, does not require approval by the defendant No.2. Resultantly Issue Nos.1 and 2 are answered in affirmative.

17. Suit is accordingly decreed as prayed but no order as to cost.

**Judge**

Karachi,  
Dated: 05.11. 2021

B-K Soomro