

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1309 of 2020

Faique Ali Jatoi & another v. Province of Sindh & others

Before:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **18-11-2021**

Date of Decision: **23-12-2021**

Mr. Sheeraz Fazal, Advocate for the Petitioners.

Mr. Niazuddin N. Memon, Advocate for Respondent No.4.

Mr. Khuda Bux Chohan, Advocate for Respondent No.7.

Mr. Muhammad Ali Napar, Advocate for Respondents No.8 & 9.

Mr. Hadi Bux Bhatt, Advocate for Respondent No.8.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner seeks the following relief(s):

- a. *That this Honourable Court may be pleased to declare that act of the private respondents No: 8 and 9, in league with the official respondents, constructing a multi-story high rise commercial building in a thickly populated residential area on a purely residential property, is illegal to the norms of the concerned Town Planning and Sindh Building Control Authority laws and rules.*
- b. *That, this Honourable Court may be pleased to direct the official respondents to stop the illegal construction forthwith, and take action against the private respondents No: 8 and 9, so also action may be taken against the delinquent officials.*
- c. *That, this Honourable Court may be pleased to pass an order, thereby restraining the private and official respondents to stop the illegal construction is being carried out at the property in question.*
- d. *That this Honourable Court may be pleased to direct the official respondents to produce before this Honourable Court, the No Objection Certificate (N.O.C), if any, issued the private respondent No: 8 and 9. Further this Honourable court may be pleased to direct the official respondents to produce record and approved site plan of plot bearing city survey No: A-771/1 and 771/2, near Tanga Stand old Sukkur.*
- e. *That this Honourable court may be pleased to grant any other equitable relief which has not been specifically prayed for, which this Honourable Court deems fit and proper in the circumstances of the above case.*
- f. *To award the cost of the petition.*

2. Learned Counsel for the Petitioners has contended that the project in question is being raised in violation of the Sindh Building Control Authority Ordinance, 1979 ("Ordinance") read with Karachi Building and Town Planning Regulations, 2002, ("Building Regulations") which are also applicable to Sukkur Region; that a high-rise building is being raised in a highly populated area; that the plot in question is a residential plot and commercial construction is being raised; that requisite no objection certificates from various departments are yet to be obtained; that no public notice was issued for change of land use, and therefore, the construction in question should be permanently restrained and be demolished as well.

3. Learned Counsel for Respondent No.8 / Builder has controverted the objections raised by the Petitioners' Counsel on the ground that the area is purely a commercial area and various commercial buildings and shops are already in existence; that the property in question is commercial as per lease documents; that no high-rise building is being raised as it is only ground plus five floors; that even otherwise the ban for high-rise construction has been lifted vide order dated 31-03-2021 after permission from the Hon'ble Supreme Court to this effect; that the roads leading to the project and surrounding the same are wide enough to cater to the commercial activity, which is already continuing; that the Petitioners have filed this Petition to blackmail and harass the Builder, as apparently, they wanted some shop in the project without payment, and therefore, the Petition is liable to be dismissed with cost.

4. Counsel for Sindh Building Control Authority (SBCA) has argued that after scrutiny of the case, the building plan has been approved; whereas, no high-rise building has been permitted, hence, the project is being constructed in accordance with law and Petition does not merit any consideration.

5. Counsel for Sukkur Municipal Corporation (SMC) submits that insofar as no objection certificate for water connection is concerned, the Builder has not yet obtained the same nor has applied for.

6. We have heard all the learned Counsel and perused the record. The precise case set up on behalf of the petitioner appears to be that the building in question is being constructed without proper approval; that a high rise building is being raised which is not permissible; that requisite no objection

certificates from respective Agencies have not been obtained; that if the construction is permitted it will create problem as well as nuisance which the present available facilities and infrastructure cannot cater; that the entire area is residential; hence the respondent / Builders be restrained permanently from raising any such construction.

7. As to the first and main objection on which the entire thrust of the petitioners' counsel was that the building being constructed is a high rise building, the same appears to be misconceived as well as fanciful. Admittedly as per approved plan which has gone undisputed, the building consists of ground plus five floors; hence in no manner it could be termed as a high rise building. Regulation 2-61 of the Building Regulations define a high rise building as building with height of 75ft (22.86m) and above from crown of the road having multiple units for human habitation. We have not been assisted by the petitioners as to how the project in question falls within this restriction. Nonetheless, it is an admitted fact, that the ban, if any, on construction of high-rise buildings stands lifted vide order dated 31.3.2021, which has gone unrebutted. Lastly, apparently a building having five floors cannot be called a high rise building so as to restrain construction in a commercial area. Therefore, this objection, which in fact was the main thrust of the arguments raised on behalf of the petitioners is hereby repelled.

8. As to the alleged construction being raised without approval of the building plan is concerned, after notice, the Sindh Building Control Authority ("SBCA") has confirmed in its comments that the building plan is duly approved, whereas, the building in question is not a high rise building as alleged, as permission has been given for construction of only five floors. It is also a matter of record that in the approved building plan the Foot Print¹, Floor Area Ratio² and the permissible construction in square feet has been specified, which also is one of the determining factors as to how many floors can be permitted in such construction. All this has gone unchallenged on behalf of the petitioner. In that case this objection also appears to be misconceived and unjustified.

¹ Regulation 2.55 means the portion of a plot of land covered, at any level, by a building or part thereof other than basement and ramp upward / downward for parking.

² Regulation 2.54 means the total floor area of a building with regard to area of the plot, allowable under these Regulations.

9. As to the objection that a commercial project has been launched in a residential area/ plot, again this objection is also not supported by the record placed before us. The private respondents have furnished property documents including lease and sale deeds (not controverted by way of any further rejoinder affidavit) which depicts that the property in question is residential-cum-commercial and not purely residential. Moreover, even otherwise construction of a building having commercial shops on the ground floor and residential apartments over and above it, is also not a commercial project under the Building Regulations. Regulation 2-31 defines Commercial Building³, whereas Commercial use is defined in Regulation 11-2.2.6, and it clearly reflects that the project in question is not purely commercial; rather a residential cum commercial having residential flats; hence, would fall in Regulation 2-109⁴.

10. The judgment of the Hon'ble Supreme Court in the case reported as ***Jawad Mir Muhammadi and others Vs. Haroon Mirza and others (PLD 2007 SC 472)*** gives a complete answer to the contention raised on behalf of the Petitioner. The Hon'ble Supreme Court has dealt with regard to the objection raised on behalf of the petitioner, that such impugned construction, if allowed to be carried out, would cause extra burden on the utilities as well as traffic congestion including the right of easement. It would be advantageous to refer to the relevant findings of the Hon'ble Supreme Court in this regard, which reads as under:-

25. As regards the deprivation of the rights to light, fresh air and clean environment, it is noted that infringement of such rights can be established only by producing satisfactory evidence and not merely on the statement in the pleadings of the affected party. There is no material on record to prove the allegation of the appellants relating to deprivation or, violation of the above easementary rights by construction of the alleged illegal floors. It is their unfounded apprehension based on subjective and abstract consideration. The hardships inconvenience, or discomfort likely to result by the building in question must be more than "mere delicacy of fastidiousness and more than producing sensitive personal discomfort or annoyance. Such annoyance or discomfort or inconvenience must be such which the law considers as substantial or material". The appellants have failed to prove infringement of their rights of privacy, light, fresh air and pollution free environment as there is no material to substantiate their infringement.

26. So far as the question of adverse affect due to extra burden on the utilities is concerned it is suffice to say that the respondent No.3/concerned Authorities are duty bound to provide adequate relief by providing necessary infrastructure for increasing water supply, electricity, gas and laying down sewerage lines of bigger dimensions to meet the demand of extra burden and they can be activated to perform their duties. This appears to be appropriate and viable solution rather than

³ 2.32 means building constructed for commercial use as defined in sub-clause 11-2.2.6

⁴ Means building constructed for residential purposes, e.g. bungalow, town house, flats and such other buildings.

if demolition of alleged unauthorized/illegal floor which have been regularized in accordance with law.

11. There is another objection that no objection certificates have not been obtained from various utility and service providing agencies. Again except one, all requisite permissions have either been obtained; or are under the process of being obtained. There is only one civic agency i.e. Sukkur Municipal Corporation which has raised objection in respect of water connection and to that it may be observed that such condition and obtaining permission as well as no objection certificate is mandatory and no building can be constructed without such permission / NOC. In response learned Counsel representing the builders has not been able controvert this objection and therefore to this extent the petitioner's objection appears to be justified and sustainable.

12. Besides this we do not see any other objection or impediment in permitting construction of the project in question, and merely on the allegation and apprehension of the petitioners as above, we cannot restrain the Builder from raising construction for the reason as SBCA has already approved the plan which appears to be in accordance with the Regulations, whereas, the property in question is of commercial nature and is also situated in the very heart of the city, where various other buildings have already been constructed, and therefore, the prayer sought in this petition cannot be granted. Notwithstanding this, the approved plan of SBCA is also restrictive and conditional and any violation of the same can always result in its cancellation.

13. In view of such position the petition appears to be misconceived and is hereby dismissed. However, the Builder / Respondent No.7 is directed to first obtain no objection certificate / permission from Sukkur Municipal Corporation regarding water connection, and once the same is granted, only then further construction be raised in accordance with the approved building plan. With these observations the **petition stands dismissed**.

Dated: 23.12.2021

J U D G E

J U D G E