

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**  
**Mr. Justice Zafar Ahmed Rajput**

C.P. No. D-470 of 2018  
Moulana Shahzado Dreho  
Versus  
Province of Sindh & others

Date of Hearing: 21.05.2019

Petitioner: In person

Respondents No.1&2: Through Mr. Ahmed Ali Shahani, AAG.

Respondent No.3: Through Mr. Niazuddin N. Memon Advocate.

Respondent No.4: Through Mr. Khuda Bux Chohan Advocate.

Respondent No.5: Through Mr. Salahuddin Ahmed Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- This petition challenges the construction raised on Plot bearing CS No.C-400, previously known as Kundan Das Beef Market, owned by local administration Sukkur.

Brief history of the case is that in August and September, 2007 Taluka Municipal Administration Sukkur, being predecessor of respondent No.4, invited Expression of Interest, through various newspapers from reputed builders for construction on self-finance basis for residential and commercial project on the subject site. Respondent No.5 claimed to have submitted bid and was successful as being highest bidder and eventually approved by Taluka Council. The agreement of consideration, as agreed, was then entered into on 09.05.2008 and accordingly Work Order was issued on 12.05.2008 in favour of respondent No.5.

Fourth months later on 25.09.2008 respondent No.5 received a letter from TMA Sukkur City directing respondent No.5 to stop work on

the ground of orders from District Coordination Officer Sukkur who acted considering this property as heritage property under Sindh Cultural Heritage (Preservation) Act, 1994.

Thus petition challenges the construction raised on the subject plot in violation of the notification declaring the property as heritage with the prayer that the agreement executed between local administration and respondent No.5 be declared illegal and unlawful on the basis of commercial-cum-residential structure raised thereon.

We have heard the learned counsel and perused the material available on record.

Before dealing with the merits of the petition, it is necessary to view the earlier litigation as initiated by the petitioner as petition is claimed to be barred under section 11, Order 2 Rule 2 and Order 23 Rule 1 CPC by applying the doctrine of constructive resjudicata. The record shows that earlier petitioner preferred CP No.D-1744 of 2014 with almost identical grounds and facts with eventually same prayer against the same parties, which petition was disposed of on 17.11.2016.

For the convenience the prayer clauses of CP No.D-1744 of 2014 and that of this petition is reproduced in comparative form as under:-

Prayer in present CP No.D-470 of 2018	Prayer in CP No.D-1744 of 2014
<p>Declare the C.S No.C-400/A Sukkur is heritage property and constructed over the Kundan Das Historical Beef Market is property of respondent No.1, commercial construction raised over heritage property without observing legal formalities is illegal, malafide and perverse and liable for whatever so far construction demolition on cost of builder, to save its reserved object and purpose.</p> <p>Further declare illegal and malafide agreement by the respondent No.4 and 5 this act of</p>	<p>Declare the C.S No.C-400/A Sukkur is heritage property and constructed over the Kundan Das Historical Beef Market is property of respondent No.1 and 10, the handed over to respondent No.9 by respondent No.8 who demolished it with motive to erect plaza without observing legal formalities is illegal, malafide and perverse and liable for whatever so for constructed demolition on cost of builder, to save its reserved object and purpose.</p> <p>Further declare the CS No-404 and</p>

<p>Municipal authorities is also contrary to law, the agreement between parties regarding Al-Noor Tower is of loot and plunder from simple purchasers liable for action.</p>	<p>C-405 Sukkur Municipal Property/ public property handed over to respondent No.9 by the respondent No.8 through illegal and malafide agreement by the respondent No.8 and this act of Municipal authorities is also contrary to law, the agreement between parties regarding Al-Noor Tower is of loot and plunder from simple purchasers liable for action.</p>
<p>2) The builders be directed to supply full names and addresses of persons upon whom they have settled the so called tenancy or recovered any sum in connection with rehabilitation of such persons together with the details of such amounts recovered from them to be dealt with according to law.</p>	<p>2) The builders be directed to supply full names and addresses of persons upon whom they have settled the so called tenancy or recovered any sum in connection with rehabilitation of such person in property No.C-400/A, C-404 and C-405 camp road Sukkur together with the details of such amounts recovered from them to be dealt with according to law.</p>
<p>3) Builder be restrained from raising construction by whatever name over the Heritage property themselves or through their relatives, servants, workers, labors and authorities keep strict vigilance over their building activities on site.</p>	<p>3) Builder be restrained from raising construction by whatever name over CS No:C-400/A, C-404 and C-405 camp road Sukkur themselves or through their relatives, servants, workers, labors and authorities keep strict vigilance over their building activities on site.</p>
<p>4) Declare inaction of the respondents No.1 to 3 and 6 are disloyal to his duty illegal and malafide and liable for action.</p>	<p>4) That the be directed to furnish particulars of assessment of annual letting value of the properties constructed over CS No.C-400/A, C-404 and C-405 camp road Sukkur and tax recovered from the builders and commissioner income tax/respondent No.13 and sub-registrar Sukkur be directed tax explain why no action is taken by them and if taken what is result thereof.</p>
<p>5) Further construction may be stopped till decision of this Honorable Court.</p>	<p>5) That the builders and Municipal authorities be restrained hence forth from setting in any tenant over on built portion of CS No. C-400/A, C-404 and C-405 camp road Sukkur.</p>
<p>6) Costs</p>	<p>6) Declare inaction of the respondent No.4 is disloyal to his duty illegal and malafide and liable for action.</p>
<p>7) Any other relief.</p>	<p>7) Further construction may be stopped till decision of this Honorable Court.</p>

	8) Costs
	9) Any other relief.

The aforesaid petition was disposed of on 17.11.2016 in terms of following order:-

*“Petitioner present in person submits that he would be satisfied if in terms clause ‘3’ of letter dated 8<sup>th</sup> September, 2010 issued by Local Government department, Government of Sindh to the Administrator Taluka Municipal Administration Sukkur City action to be taken in accordance with law. Respondent No.2 is directed to take such action and submit compliance report to this Court through Additional Registrar of this Court within 90 days’ time. Copy of this order be communicated to respondent No.2 for compliance. Interim orders already passed in this petition are hereby recalled. Petition is accordingly disposed of along with pending applications.”*

Eventually the earlier petition was disposed of in terms of Clause 3 of the letter dated 08.09.2010. Clause 3 of the aforesaid letter dated 08.09.2010 is reproduced as under:-

*“3. Necessary legal action shall be taken against the defaulted officer. Please forward names of incumbents.”*

Not only that the petition was disposed of in terms of the said clause but the interim order granted was also recalled.

The expression of interest in respect of the subject property was invited vide advertisement dated 31.07.2007 where respondent No.5 came out as successful bidder. The tender documents and evaluation report is neither in dispute nor challenged. The agreement as Memorandum of Understanding was then entered into on 09.05.2008 and work was awarded on 12.05.2008. There were four months in between work awarded and preservation of the site as a heritage site as letter was issued in this regard on 25.09.2008. Thus by the time the letter of 25.09.2008 was issued the construction had already commenced and there is no evidence contrary that the structure on the subject plot had

already been demolished and without any dispute, by the time the earlier petition was filed, there was no construction at all except the building as raised by respondent No.5.

The earlier petition, as disposed of on 17.11.2016 was not ended up in granting relief to the petitioner rather interim orders were recalled and action was ordered to be taken in terms of clause 3 of the letter dated 08.09.2010, as reproduced above. Petitioner kept quiet for some time and then yet again filed this petition in the year 2018 with same relief on same set of facts and grounds. By all means it is nothing but a constructive resjudicate.

There was no structure, which is claimed to be a heritage site when earlier petition was filed and also when instant petition was filed in the year 2018. When letter of 25.09.2008 was issued the demolition had already taken place and the photographs were attached in response thereto.

On 17.12.2011 on the face of these facts the building plan on the subject site was approved by respondent No.4 and admittedly the first petition in this regard after approval of plan was filed as CP No.D-1744 of 2014. By that time there was no structure in existence as in response to letter dated 25.09.2008 it was shown that the structure had already been demolished. Thus not only this petition but apparently at the time of previous petition too there was no structure in existence which could claimed to be heritage. The officials such as respondents No.1 and 6 slept over their responsibilities, which ended up in demolition of the structure which could have been declared as heritage and saved at the relevant time.

The petitioner is shown to be habitual of filing such cases. One such case is C.P. No.820 of 2006, which also challenges the construction over a plot owned by Taluka Council, which was eventually dismissed by

Division Bench of this Court where he appeared as public pro bono. In another case before Hon'ble Supreme Court, as Criminal Petition No.40-K of 2003, the Bench of Hon'ble Supreme Court reduced the cost imposed on petitioner from Rs.50,000/- to Rs.25,000/-.

Thus there is nothing that can be done with regard to structure that could have been saved as being heritage by the concerned department had the notification been issued at the relevant time and nobody but these departments are to be blamed.

The petition was accordingly dismissed along with listed applications vide short order dated 21.05.2019 and above are its reasons.

Dated:

**Judge**

**Judge**