

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Ahmed Ali M. Shaikh, CJ

Mr. Justice Yousuf Ali Sayeed

CP No.D-5297 of 2021

Fresh Case

1. For orders on Misc. No.21984/2021 (urgent)
2. For orders on Misc. No.21985/2021 (exemption)
3. For orders on Misc. No.21986/2021 (stay)
4. For hearing of main case

06.09.2021

Mr. Faiz Durrani, Advocate for petitioners.

AHMED ALI M. SHAIKH, CJ.- Through instant petition, Petitioners seek indulgence of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Petitioners claimed to be bonafide lawful allottee/residents of villas/bungalows/apartment, of the Project Saima Arabian Villa's (hereinafter referred to as "**the Project**") situated at survey No.72to 76 and 78 to 81, Deh Jam Chakro, Tapo Manghopir, Gadap Town, Karachi. They booked different units and after final payment, including clearance of dues, possession letters with NOCs for shifting, etc were issued to them by the Saima Real Estate Builders and Developers, Karachi. The Project was initiated in the year 2010 and as per the NOC dated 17.04.2010 the completion date of the project was 31.5.2014. However, Petitioners claimed the project is still incomplete lacking basic necessities e.g. water, sewerage and gas while the Builder Respondent No.10 carried out substandard construction.

2. Per averments made in the memo of petition, the Builder/Respondents No.10 and 11 instead of providing individual domestic connections of electricity, gas and water to the resident, unlawfully obtained bulk supply connections of water, gas, SSGC and KW&SB. It is further averred that the Respondents No.10 and 11 constructed the units in gross violation of the building rules and regulations/building plan approved by the Sindh Building Control Authority and also provided illegal electric connections to some constructed units generating bills at their own rates.

3. It is further averred in the memo of the petition that in the year 2019, the Respondents No.10 and 11 on their own installed four to five thousand Sui Gas Meters without obtaining permission and they are receiving gas charges exorbitantly at their own rates with active collusion of the Respondent No.4, Sui Southern Gas Company causing colossal loss to the National Exchequer. Per contents of the petition, the underground work of cabling, sub-station and panel boxes were carried out poorly resulting in breakdown after rain while the K-Electric, Respondent No.6, is reluctant to install meters for non-execution of subleases by the Respondents No.10 and 11. Furthermore, the Respondents No.10 and 11 are charging Rs.300,000.00 to Rs.700,000.00 as transfer on sale/purchase of unit though under the law the transfer fee is to be charged at 0.5% of the unit price. It also alleged that the Respondents No.10 and 11 are extorting monthly maintenance charges of about Rs.8,000,000.00 approximately and have, with mutual consent, unlawfully received maintenance charges for 18 months in advance at the time of giving "Due Clearance Certificate" and "possession." Petitioners further alleged that the Respondents No.10 and 11 are charging Rs.75,000.00 to Rs.125,000.00 from the allottees of the Project in the name of parapet wall and staircase charges, not even mentioned in the booking agreement or the schedule of payment. The Petitioners claimed to have approached the Respondents No.10 and 11 and official Respondents-Civil Agencies several times for the provision of Gas/Water connections, execution of sub-leases, maps of ground and first floors, completion certificate, restoration of amenity plots, refund of exorbitant utility charges received by the Respondents No.10 and 11 , etc but to no avail. It is also averred that the Respondents No.10 and 11 have employed gunda elements under the garb of security guards to harass and intimidate the Petitioners/allottees of the Project raising voice against the illegal and unlawful acts and actions of the Respondents No.10 and 11. It is also averred that the official Respondents No.1 to 6 instead of taking legal action against the Respondents No.10 and 11 are overtly and covertly supporting them.

4. The learned counsel for the Petitioners submits that under Article 4 of the Constitution, every citizen of Pakistan has an inalienable right to protection of law and no action detrimental to the life, liberty, body, reputation and/or property could be taken. He submits that despite gross

violation of the approved building plan and denying the amenities as provided in the plan the Respondent No.1 Sindh Building Control Authority has failed to perform its lawful obligations though as per law it can cancel the license of the Builder forfeiting all securities/deposits. He highlighted that though the Respondents No.10 and 11 have failed to execute subleases creating hurdles in getting individual connections from the K-Electric, the Respondent No.6, the SBCA has failed to taken notice of such illegality. He also contended that though the Respondents No.10 and 11 are charging transfer fee as per their will completely in violation of the NOC issued to them, the SBCA has not taken notice and such inaction is encouraging the Builders to charge the allottees of the Project more and more.

5. He further submitted that though the Respondents No.10 and 11 have installed thousands of gas meters having official logo and collecting gas charges exorbitantly minting money, the Respondent No.4 has also failed to act in accordance with law to check such bulk connection obtained illegally for the Project. He further submitted that it is a fit case of cheating public at large but neither the FIA, Respondent No.7, nor the NAB, Respondent No.8 nor the Chairman, Enquiries and Anti-Corruption Establishment, Respondent No.9, has taken any action or initiated any enquiry into the matter.

6. The learned counsel next submitted that under Sections 3 and 4 of the Sindh Condominium Act, 2014, the Respondents No.10 and 11 can collect maintenance fees for one year only and the maintenance of services and amenities at a public sale projects shall be the responsibility of a Cooperative Society registered under the Sindh Cooperative Societies Act, 1925. He also submitted that though the possession of the residential units has been handed over to the residents, the Respondents in sheer violation of Building Rules have not executed the mandatory subleases. According to him the Respondents have received maintenance charges in advance for 18 months and in case of wilful and deliberate violation of the Karachi Building and Town Planning Regulations, 2002, the Respondents No.1 and 2 after issuance of show cause notice can suspend/cancel/revoke the license of the Respondents No.10 and 11.

7. We have considered the contentions advanced by the learned counsel for the Petitioners and with his able assistance scanned the record. So far as the grievances of the Petitioners are concerned the same relate to the different Agreements/instruments executed between the parties at the time of booking of those units. So far as violation of the Building Rules and Regulations and reluctance of the Respondents No.10 and 11 to execute the subleases in favour of the allottees and charging exorbitantly for Gas and Electricity provided to the Project and non-action on the part of the official Respondents is concerned the said aspects relate by and large to the enforcement of the terms and conditions of the Agreements/documents signed between the Petitioners and the Builder, which also warrant adducing of evidence. In case Petitioners are being charged exorbitantly in respect of Sui Gas and Electricity Charges and the Builder is minting money, the Petitioners can approach the relevant forum for redressal of their grievances in accordance with law. As far as the irreparable loss being caused to the public exchequer or the Government at the hands of the Respondents No.10 and 11 is concerned the Petitioners under the Relevant Law may approach the prime Anti-Graft Agency with evidence which can determine/examine the material presented before them and do the needful in accordance with law, in case there is substance in the complaint. All these aspects are based on the factual controversy requiring recording of evidence, which exercise cannot be undertaken by this Court under Article 199 of the Constitution, 1973.

In light of above, while granting the Misc. Application seeking urgent hearing of the case, instant Petition alongwith remaining Misc. Applications is dismissed leaving the Petitioners are liberty to avail the remedy provided under the law for redressal of their grievances, if so advised.

Chief Justice

Judge