

# THE HIGH COURT OF SINDH AT KARACHI

**Present:**

**Mr. Justice Adnan Iqbal Chaudhry**

**Suit No. [-] 1267 of 2022**

[Tanwir Jamshed versus The Sindh Building Control Authority & Others]

Plaintiff : Tanwir Jamshed through Mr. Muhammad Umar Lakhani, Advocate.

Defendants 1-4 : Nemo.

Defendants 5-8 : Muhammad Hanif & 03 Others through Mr. Mansoor-ul-Arfin, Advocate.

Date of hearing : 18-08-2022

## **ORDER**

**Adnan Iqbal Chaudhry J.** - Delay in filing court fee is condoned. By CMA No. 10490/2022 the Plaintiff prays for a temporary injunction against the Defendants 1 and 2 and the Defendants 5 to 8 from dispossessing him from the suit shop, interfering with his ingress and egress, and from sealing or demolishing the suit shop. The Defendants 1 and 2 are the Sindh Building Control Authority [SBCA]. The Defendants 5 to 8 are the owners/landlords of the suit shop and the building in which it is situated. The Plaintiff is the tenant of the Defendants 5 to 8.

2. It is acknowledged by the Plaintiff that in a rent case by the Defendants 5 to 8, the Rent Controller has already passed an order for the Plaintiff's ejectment from the suit shop, upheld in appeal, and is presently the subject matter of a Constitution Petition by the Plaintiff pending before this Court. The ejectment order has not been stayed thus far and an execution application by the Defendants 5 to 8 is pending before the Rent Controller.

3. The suit shop is at the ground floor of a building known as 'Kirshna Mansion' situated in Saddar, Karachi. It is a fact that said

building is 'protected heritage' under the Sindh Cultural Heritage (Preservation) Act, 1994 [**Heritage Act**], however, the Advisory Committee constituted under said Act has not taken custody or guardianship of the building under section 7 of the Act, nor has it contracted with the Defendants 5 to 8 under section 8 of the Act for preservation of the building.

4. The cause of action for the suit is a banner/notice [**impugned notice**] said to have been pasted by the SBCA at the building of the suit shop which reads:

*“WARNING  
THE BUILDING IS DECLARED AS DANGEROUS  
NOT FIT FOR HABITATION  
PLEASE DO NOT ENTER  
Sindh Building Control Authority”*

5. Mr. Umer Lakhani, learned counsel for the Plaintiff submits that the impugned notice prohibits the use of the suit shop and has been pasted by the SBCA in collusion with the Defendants 5 to 8 so as to oust the Plaintiff by portraying the building as dangerous, and then to demolish the same so as to escape the Heritage Act which restricts demolition of a protected heritage except with the sanction of the Advisory Committee. Learned counsel submits that the procedure for determining a building as dangerous and then prohibiting its use is set-out in Chapter 7 of the Karachi Building & Town Planning Regulations, 2002 [**KBTPR**]; whereas the Technical Committee constituted for such purpose has not made any determination under Regulations 7-2.3 and 7-2.4 of the KBTPR that Krishna Mansion is dangerous, nor did the SBCA give the Plaintiff prior notice under Regulation 7-3.1 before prohibiting use of the building.

6. On the other hand, Mr. Mansoor-ul-Arfin, learned counsel for the Defendants 5 to 8 submits that the building had been determined as dangerous by the SBCA long ago, which fact is known to the Plaintiff as evident from the ejection order passed by the Rent Controller; that the Plaintiff had never taken issue to that

determination; that if at all a fresh notice has been pasted at the building by the SBCA, that is presumably in view of the heavy rain in the city and has nothing to do with the Defendants 5 to 8. Learned counsel submits that the allegation that the Defendants 5 to 8 intend to demolish the building in violation of the Heritage Act and Rules has no basis; and that the suit is clearly *malafide*, brought to frustrate the ejectment order as evident from the interim order dated 06-07-2022 obtained by the Plaintiff which restrains the Defendants 5 to 8 from dispossessing the Plaintiff.

7. Heard the learned counsel and perused the record.

8. From the record it appears that Krishna Mansion was first notified as protected heritage by notification dated 07-09-1995 issued under section 6 of the Heritage Act. The Defendants 5 and 6 had challenged such inclusion *vide* C.P. No. D-3803/2015 on grounds *inter alia* that Krishna Mansion had been determined as dangerous by the Technical Committee of the SBCA in the year 2012. The petition was allowed by order dated 06-10-2017, *albeit* not for the reason that the building had been determined dangerous, but in line with the case of *Karachi Property Investment Company (Pvt.) Ltd. v. Government of Sindh* (PLD 2017 Sindh 690) which had held a notification issued under section 6 of the Heritage Act without fulfilling the requirements of said Act, was unlawful; that Chapter 15 of the KBTPR, which prescribed special regulations for protected heritage, was *ultra vires* the SBCO; the Government was directed to make Rules under the Heritage Act and fulfill its requirements before notifying protected heritage. It was in furtherance thereof that the Government made the Sindh Cultural Heritage Property (Identification, Enlistment and Protection) Rules, 2017 [**Heritage Rules**] and then re-notified Krishna Mansion as protected heritage along with a number of other buildings *vide* notification dated 23-01-2018.

9. Though it is correct that Rule 8 of the Heritage Rules envisages prior approval of the Advisory Committee before altering a protected

heritage, but at present there is nothing to show that the SBCA has determined, ordered or permitted the demolition of Krishna Mansion. The impugned notice also does not state that the building has been marked for demolition. The allegation that the impugned notice has been engineered only to demolish said building is not only unsubstantiated but also premature at this stage. In any case, I do not see how the Plaintiff can claim to be affected by any perceived demolition of the building when an ejectment order operates against him.

10. From the record it appears that the determination by the SBCA that Krishna Mansion is a dangerous building, is not something recent. In C.P. No.D-3803/2015, filed by the Defendants 5 and 6 in 2015, they had categorically pleaded that Krishna Mansion had been determined a dangerous building by the Technical Committee of the SBCA in the year 2012 after conducting an inspection. That fact was then urged by the Plaintiff to argue before the Rent Controller, as apparent from the ejectment order dated 23-12-2019, that since the building was dangerous, the ground of personal need was meritless. With their counter-affidavit the Defendants 5 to 8 have also filed photographs to show that the upper floor of the building lies collapsed. Therefore, the Plaintiff's contention that it is only now that the building has been determined dangerous, does not appear to be correct. The first part of the impugned notice seems to be a reiteration that the building is dangerous, presumably because it lies exposed to the ongoing rains in the city.

11. I advert now to the second part of the impugned notice, which per Mr. Lakhani, further prohibits the use of the suit shop. Though Mr. Lakhani concedes that the temporary injunction sought cannot and would not affect the ejectment order passed by the Rent Controller, his submission is that till such time a writ of possession issues for the suit shop, the Plaintiff is in lawful occupation and entitled to be treated accordingly under the KBTFR.

12. Regulations 7-3 to 7-5 of the KBTPR envisage that once a building is determined dangerous and unfit for occupation, then before prohibiting its further use, the SBCA will call upon the owner or occupier thereof and hear their objections, if any, so as to finalize further course of action, viz. whether to permit the dangerous building to be remedied by repairs or whether to permit its demolition, and the course for its evacuation as the case may be. The hearing of such objections is of course independent of the SBCA's power/duty under Regulations 7-3.2 and 7-7.1 to evacuate the building forthwith where it poses an immediate threat to public safety. As already observed above, after the Heritage Rules, where a dangerous building is protected heritage, the approval of the Advisory Committee constituted under the Heritage Act is also necessitated for its alteration or demolition.

13. The record thus far does not show whether the SBCA complied with the Regulations discussed above before prohibiting use of the suit shop by way of the impugned notice. The SBCA, who could have best apprised the Court, has not entered appearance despite service. At the same time it is a fact that the Plaintiff has been in continuous use of the suit shop and the impugned notice does not state that the condition of the building requires immediate evacuation in terms of Regulations 7-3.2 or 7-7.1 of the KBTPR. Mr. Arfin too states that as long as the ejectment order against the Plaintiff is not prejudiced, he has no objection if the SBCA provides a hearing to the Plaintiff before prohibiting the use of the suit shop.

14. In view of the foregoing, this application is disposed of in terms that within two weeks the SBCA shall call the Plaintiff and the Defendants 5 to 8 for a hearing in terms of Regulation 7-3.1 of the KBTPR before determining the action required to be taken under Chapter 7 of the KBTPR in respect of the suit shop keeping in view the role of the Advisory Committee under the Heritage Rules discussed in para 12 above. Till such time, the SBCA shall not stop the Plaintiff from using the suit shop unless the SBCA deems that the

building poses an immediate threat to public safety. As and when a writ of possession is issued by the Rent Controller for the suit shop, the relief granted to the Plaintiff herein shall cease to have effect. The office shall communicate this order to the SBCA.

**JUDGE**

Karachi  
Dated: 18-08-2022