# IN THE HIGH COURT OF SINDH AT KARACHI

**SUIT NO.1029/2015**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

Plaintiffs : Asad Ahmed and another.

Through: M/s. Haider Waheed and Shahzeb Akhtar Khan, advocates.

Defendants : Federation of Pakistan,

Through: Minister of Housing and Works,

and others,

through: M/s. Arshad M. Tayebaly and Amel Khan Kansi, advocates for defendants No.4 & 5.

Mr. Muhammad Shehzad, advocate.

Date of hearing : 19th & 26th November 2015 and 8th December 2015.

Date of announcement : 22.12.2015

**O R D E R**

This order will dispose of application under Order 39 Rules 1 and 2 CPC (CMA No.9431/2015) filed by plaintiff with prayer for direction to defendants to maintain status quo in respect of construction and third party interest on Plot No.29, Modern Cooperative Housing Society (MCHS), Block 7/8, Tipu Sultan Road, Karachi, till pendency of suit.

2. Plaintiffs pleaded that plaintiff No.1 is owner of Plot No.19, Delhi Mercantile Society, Tipu Sultan Road, Karachi while plaintiffs are residents of Plot 21, Delhi Mercantile Society, Tipu

Sultan Road, Karachi for past decades; defendant No.1 is lessor of properties falling within the jurisdiction of defendant No.3 which is a housing society, defendant No.2 is regulatory body for town planning and building laws, defendant No.4 is owner of Plot No.29, MCHS which is facing the residence/plot of plaintiffs, defendant No.5 is builder who entered into an agreement to build 18 storied commercial cum residential project on Plot No.29; that plaintiffs in order to protect the personal interest in preserving residential sanctity of the area plaintiffs have already been pursuing litigation against builder mafia which intends to convert the entire city into concrete jungle; that in 2012 Council of Karachi Metropolitan Corporation vide resolution No.51 dated 21.12.2012 accorded approval for declaration of Tipu Sultan Road where plots of defendant No.4 and plaintiffs are located, as open for conversion from residential to commercial but such conversion is subject to observance of provisions of law attracted and thus such properties as mentioned in resolution did not become commercial ipso facto but change of land use is subject to process as provided in regulations 18-4 to 18-5.1.1 of Karachi Building and Town Planning Regulations (KBTPR) and further that as per regulation 18-4.2.1 no plot can be converted into commercial without approval of master planning group office and upon recommendation of concerned authority mentioned at serial NO.5 of schedule 1A of KBTPR; that in addition to above, section 17 of Sindh Environmental Protection Act 2014 no commercial construction can take place nor high rise can be built without approval and NOC of Environmental Protection Agency; that plaintiff came to know that defendant No.4 and 5 without observing required formalities/process of law, started commercial activity upon Plot No.29 whereupon billboards of defendant No.5 building a

commercial cum residential complex of 18, were displayed; that impugned construction of “Roshan Towers” or any commercial activity on Plot No.29 of defendant No.4 will severely affect living conditions of plaintiffs and result in insufficiency of amenities and cause nuisance; such illegalities committed by defendants No.4 and 5 were in active collusion of officers of defendant No.2 who had accorded NOC for sale and advertisement of residential flats/showrooms for the subject project.

3. Defendant No 2 SBCA, in written statement has contended that there is no illegality in subject matter conversion; suit is barred under sections 16 and 20 of SBCA; all legal; and codal formalities were fulfilled; SBCA is functionary body, in case of any violation will take strict appropriate action in accordance with law

4. Learned counsel for plaintiffs have argued that subject property has been illegally amalgamated and consequently commercialized illegally as, as per regulations 2-6 and 18-3.2.1 of The KBTPR two or more plots of the same land use can be amalgamated only if the land grant/allotment conditions of the plots are similar; that amalgamation falls within land development as per regulation 3-3.1.1 for which special development permit is required. It is further argued that a public notice per regulation 3-1.1 is mandatory for special development permit/amalgamation while as per regulation 3-1.1.1(a) the public notice for the purpose of the KBTPR needs to be, at least in two (One English and one Urdu) newspapers, such newspapers ought to be leading ones, it needs to be a display advertisement and not a classified one, it needs to include a location plan; while publication effected by defendants does not comply with above mandatory provisions of law as the is no publication in any English newspaper, the publication in Urdu daily

is not in a leading newspaper, the amalgamation public notice is a classified advertisement That plaintiffs were never made aware of the ensuring amalgamation in order to lodge proper objections at appropriate forum, however prior to illegal amalgamation Plot NO.29 consisted of three different plots bearing Nos.29, 30 and 31 as is evident from NOC for amalgamation dated 22.02.2013; that out of these old plot numbers, which plot plot faces and has direct access from Tipu Sultan Road and which plot number do not face that road, is unclear due to which reason plaintiffs also moved CMA No.11130/2015 for production of documents; that the alleged NOC for amalgamation was issued by KMC on 22.02.2013 and public notice for change of land use was published on 23.02.2013 thus on the date when KMC was issuing alleged NOC for amalgamation it was already processing an application to commercialize the newly amalgamated and unified plot NO.29 which act of KMC and defendants No.4 and 5 clearly establishes that they were all working in tandem with malafide intentions; amalgamation of Plot NO.29 is unlawful, any resulting commercialization is also unlawful as it is done on the basis of the amalgamation; that residences facing portion of a property cannot be used to commercial activity; that as per section 17(1) of Sindh Environmental Protection Act, 2014 no proponent of a project shall commence construction or operation unless he has filed with the agency an initial environmental examination or environmental impact assessment, and has obtained from the agency approval in respect thereof, further as per regulation 4 of Sindh Environmental Protection Agency (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations 2014 a proponent of a project falling in any category listed in Schedule II shall file an EIA with the agency and the

provisions of section 17 shall apply to such projects; It is contended that regulation 24-9 of KBTPR allows for construction of parking plaza on a residential plot in exceptional circumstances, unless the defendants share the detailed proposals/architectural and structural plan it is impossible for plaintiffs to ascertain whether defendants have in fact proposed three additional parking floors in addition to the required parking space. Lastly, in case injunction is not allowed the plaintiffs will be deprived to fully enjoy their own properties as subject illegal construction will severely affect the amenity of the area which was not planned for providing to such huge commercial structures as defendants No.4 and 5 intend to construct, even otherwise any illegality specially those of building and commercialization laws, cannot be allowed to sustain even in absence of direct infringement of any persons personal rights and any violation of law is a violation of the rights and privileges of the public at large; that balance of convenience lies in favour of plaintiffs. Learned counsel relied upon 2013 SCMR 1665, 2006 YLR 3209, 2014 CLD 1279, 1999 CLC 66, PLD 1993 Karachi 631, 2007 CLC 912, 2004 CLC 1029, 1999 SCMR 2883 and PLD 1996 Lahore 442.

5. Conversely, learned counsel for defendant No.1 has argued that plaintiff has no locus standi to. file this suit, he has approached this court with unclean hands; all the required rules, procedure and directives were complied with; deviation, *if any,* being not of much significant be not taken as fatal to process of law; all the quarter concerned have approved / stamped the legality of the project in question hence plaintiffs, being not resident of adjoining plots, cannot *legally* question such process of law. Reliance has been placed on PLD 2014 SC 47, 2013 YLR 2294, 2001 YLR 2542 and 1999 PTD 1313.

6. Heard arguments, perused the record.

7. The first question *required to be considered* is that of ***'amalgamation'.*** On this aspect the learned counsel for the plaintiff has referred to certain provisions of Karachi Building & Town Planning Regulations 2002 (KBTPR) which is:

> '***Regulation 2-6: 'Amalgamation'*** means the joining of *two or more adjoining plots of the same land use into a single plot in accordance with these Regulations.*

The meaning of the ***amalgamation*** being self-explanatory needs no much debate. Now, let's proceed with further to respond the issue. For which a reference to Regulation 18-3.2.1, being directly related, is made hereunder:-

> '***Regulation 18-3.2.1:*** *"Amalgamation of two or more residential plots* **shall be allowed** *by the concerned Authority with the concurrence of the MPGO up to area of amalgamated plot maximum of 1200 Sq.yds. (1008 Sq.m) provided* **land grant / allotment conditions of the plots are similar.** *The above limits do not apply to the plot other than residential. Seven copies of proposed amalgamation plan shall be submitted with the signature of Town Planner and owner for approval.*

From bare reading of the above, it stands clear that ***'amalgamation'*** of *two or more plots* has not been left at the discretion of the authority rather the phrase ***'shall be allowed'*** has been used which *prima facie* leaves nothing discretionary with the authority if conditions, *referred in regulation supra* are existing which are:-

*i) area of amalgamated plot does not exceed 1200 Sq.yds;*

*ii) land grant / allotment conditions of the plot(s), sought to be amalgamated, are similar;*

8. In the instant matter, the maximum of amalgamated plots is not disputed to be exceeding from the *maximum* limit and since it is also a matter of record that *conditions* for lease of the plots, sought to be *amalgamated* were similar as the same were leased / allotted by one and same authority. The issue of amalgamation *no where* speaks about change of status of the plot but speaks about land grant / allotment conditions of the plots. This seems to be with an *object* that ***amalgamation*** (joining of two or more *residential* plots)alone of ***residential plots*** not likely to cause any prejudice to people residing in neighbourhood because ***'amalgamation'*** alone does not permit the *use* of amalgamated plots for other purpose from that of *residential one'.*

9. Further, the above procedure, *provided by Regulation,* has been confined by use of sentence that**'The above limits do not apply to the plot *other than residential.'*** Further, it is not the case of the plaintiff that amalgamation of the plots *in question* is not in ***concurrence*** with MPGO hence I am not in agreement with the arguments of the learned counsel for the plaintiff that such ***amalgamation*** was that falling within scope of *Regulation 3-3.31 to 3-3.5.3* which deals with matter of *'Special Development Permits* **for any other land development'** as it squarely falls within object and scope of *Regulation 18-3.2.1* which is for ***'amalgamation of two or more* residential plots**, therefore, in the peculiar circumstances, the procedure, referred in Regulation 3 was / is not applicable as regard the question of **'amalgamation'** was / is related.

10. The case of Muhammad Siddique v. Federation of Pakistan (2013 SCMR 1665), referred by the learned counsel for the

plaintiff, is also not applicable to issue of ***'amalgamation'*** because it was relating to **'conversion of plots'.** This would stand clear from a reference to relevant portion of the said judgment which is:-

> *'…However, the local body, housing society or the private developer has to apply to the Commissioner for the change of* **land use** *or* **conversion** *for any other purpose for the plots reserved for the purpose as mentioned above with full justification and details. …'*

Further, it is also available on the chest of the record that there had been an NOC for such *amalgamation* which was/is by the quarter concern (*competent authority)* on the move for such purpose, therefore, *prima facie* there appears no illegality in *amalgamation.*

11. As regard, the second question of illegalities in ***conversion,*** what, *undisputedly,* is available at the heart of the record shows that:

> *i) plots in question are located on Tipu Sultan Road;*
>
> ii) *The said road (portion in question) has been Notified on 07.01.2013 as* commercialized;

Hence, the Case of Muhammad Siddique V Federation of Pakistan also, *in my opinion,* does not apply to the peculiar facts of the instant case. To make my view clear, It would be pertinent to refer the relevant portion of the dictum which reads as:-

> '9. It may be noted that subsequent to grant of leave, a Bench of 5 Judges of this Court in the case of Ardeshir Cowasjee v Karachi Building Control Authority (1999 SCMR 2883) made following observations:-
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> 20. The perusal of the above quoted extracts from the above judgments indicated that in the case of Abdul Razak, this Court held that the ***power to regularize***

***contained in the Ordinance and the Regulation is intended and designed to be exercised when irregularity of the nature which does not change the complexion or character of the original proposed construction nor it adversely affects third parties rights / interest. ...***

*'21. The above conclusion recorded in the case of Multiline Associates v. Ardeshir Cowasjee and others PLD 1995 SC 423 (supra) runs contrary to what has been held in the judgment of this Court in the case of Abdul Razak v. Karachi Building control Authority and others PLD 1994 SC 512(supra) highlighted hereinabove. With due deference , we are unable to subscribe to the above view found favour in the case of Multiline Associates v. Ardeshir Cowasjee and others PLD 1994 SC 423. the legal position enunciated, inter alia, in the above quoted extracts from the judgment in the case of Abdul Razak v. Karachi Building Control Authority and others PLD 195 SC 512 is in consonance with the provisions of Karachi Development Authority order, 1957 , Sindh Building Control Ordinance, 1979 , and the Building Regulations, 1979. The power to regularize contained in the Ordinance and the Regulations is intended and designed to be exercised* **when irregularity of the nature, which does not change the complexion or character of the originally proposed construction.** *.... Simpliciter the factum that on account of tremendous increase in the population in Karachi the situation demands raising of high-rise buildings, will not justify the conversion of residential plots originally intended to be used for building ground-plus-one and allowing the raising or high-rise buildings thereon* **without providing the required water, electricity, gas, sewerage lines, streets and roads etc**.

*We may observe that the conversation of a residential plot on the main roads into a commercial plot is warranted on account of change in the situation, the legal requirement of public notice, inter alia, as envisaged by Article 40 of the KDA. Order (if applicable) and para.3 of Schedule 'D' to the Regulations is to be complied with. Secondly ,* **simpliciter conversation of a residential plot into commercial does warrant granting of permission for a high-rise building having 17/18 floors, but the Government or the Authority is under obligation to keep in view the quantum of water, electricity, gas, sewerage lines, streets and roads e.tc, available in the locality involved, and efforts should be made to allow**

> **minimum floors, so that the same may cause less inconvenience and discomfort to the inhabitants of the locality involved.;**
>
> *(Underlining has been supplied for emphasis)*

The above also shows that conversion of the residential plots into ***commercial*** is not prohibited but insist has been made for:

i) *following the required procedure;*

ii) *keep in view the quantum of water, electricity e.t.c available in the locality involved;*

iii) *allow minimum floors, so as to avoid much inconvenience & discomfort to the inhabitants of the locality involved;*

Thus, suffice to say that its speaks about issue of conversion which is underArticle 40 of the KDA and not for plots, the status whereof already stood changed within meaning of Article 40(3). At this juncture it is necessary and relevant to refer the operative part of the case of Arshad Abdullah v. Government of Sindh (2006 YLR 3209) which has been relied & referred by either sides. The operative part reads as:-

> *"5. The stand of the respondents in these proceedings was common to the stand, which have taken in the referred petitioners, which petitions were disposed of on 05.11.2004. In the aforesaid petitioners, we have held that pursuant to the Notification dated 20.7.1998 issued by the respondent No.1, in purported exercise of its powers under section* **40(3) of the KDA Order,** *six different roads of Karachi, including Shahrah-e-Faisal were declared commercial. Therefore,* **any plot facing Shahrah-e-Faisal was covered by the Notification dated 20.7.1998 issued by the Provincial Government and no permission either from KDA or from any other authority for change of status of plot from residential to commercial was required.** *Hence we have held in these petitions that the KDA or any other authority which has entered into the shoes of the KDA, could not charge commercialization for in respect of properties which are located on the said roads of Karachi, which were notified*

*as 'commercial' in the said notification of the Sindh government.*

*6. In the present proceedings the issue is somewhat different. The petitioners seek commercialization of our plots, which they claim to have been amalgamated as one plot. The amalgamated plot of which commercialization is sought, if revived to its previous position, would reflect that only sub-divided Plots Nos.24/1, 24-1/A and 24/2, were facing Shahrah-e-Faisal and sub-divided Plot No.24/5 did not have any access to Shahrah-e-Faisal, Karachi. Therefore, .we are of the opinion that the original plots of petitioners i.e. Plots Nos.1 and 2, (now sub-divided in Plots Nos.1-A, 1 and 2) Delhi Muslim Cooperative Housing Society Limited, measuring 2137 and 2141 square yards already stood commercialized on the basis of our judgment delivered in C.Ps. No.D-771, 936 and 1122 of 2004. Therefore, the petitioners in respect of the said plots are not required either to approach the City District Government, Karachi or any other authority for seeking permission of conversion from residential to commercial use and the petitioners would be free to construct a commercial building on said two (now three) plots after necessary approvals are obtained by them from the relevant authorities. However, in regard to sub-divided Plot No.24/5, which now petitioners claim to form part of amalgamated Plot No. 1, cannot be given benefit of commercialization as the said sub-divided' plot is not facing Shahrah-e-Faisal and therefore, cannot be included in the same category as the plots facing Shahrah-e-Faisal. Nevertheless, as the petitioners have applied sometime ago for its commercialization, the said request of the petitioners for the said sub-divided Plot No.24/5 would be processed by the concerned authorities at the rate prevailing at the time when such application was made as this issue has already been decided by us in our judgment passed in the other three Constitution petitions, referred to herein-above."*

Further, the case of *Adershir Cowasjee v. Karachi Building Control Karachi* also carried same view. The operative part thereof is reproduced hereunder:-

*'..Apart from the contention of Mr. Munir A. Malik that subject plot was commercialized after observing all usual formalities and such permission was granted for construction as per approved plan; in view of the decision of the City Council approving the commercial status of four major roads including Khayaban-e-Roomi on which the subject plots*

> *located, which is within the competence of City Council, position has changed.* **Grievance of the petitioners that conversion of land use in the plot from residential flat side to commercial is in violation of the applicable law and null and void ab initio stands vanished.**

Fromabove,*prima facie* appears that on issuance of notification of **'roads'** the status of all the plot(s), *facing notified roads,* would obtain the status of the ***'commercial'*** even without a *formal* order of conversion in this regard. Since, it is the domain and competence of the ***Authority*** to decide / declare the status of a plot to be *commercial, residential* or *otherwise* therefore, any writing or undertaking *even* will not come in the way of enjoying the privileges what the law itself permits. The position, being so, was also taken into consideration by the learned counsel for the plaintiff because of which the arguments was also insisted with reference of non-facing of one of the amalgamated plots. Hence it would suffice to say that amalgamation of all the plots into one was sufficient to change the status of all the plots.

12. Be as it may, the record further shows that there was publication of the notice and NOC(s) from quarters concerned and even approval thereof. The requirement for publication in Urdu & English newspaper was / is there. The object whereof seems to be nothing but that to put the pubic of the locality onto notice. The publication of notice is there though in one newspaper. It is *however* not the case of the plaintiffs that they are *readers* of the English newspaper only or that newspaper, wherein notice was published, is not a ***leading local newspaper***. Any irregularity in getting the notice, published, cannot be said to be the mistake of the proponent hence one (proponent) should not be allowed to suffer for any

irregularity if committed by the authority. As regard, the period mentioned in notice as that of ***'15 days'*** in place of ***'30 days'*** must have carried weight if the plaintiffs would have come forward with a plea that they did approach to file objections within 30 days of the notice but same were not received and entertained.

13. To properly respond, the plea of construction merely on basis of IEE (*initial Environmental examination)* , it would be proper and relevant to refer the Section 17 of **Sindh Environmental Protections Act, 2014** which is:

> *'17.(1)* **No proponent** of a project shall commence construction or operation **unless he has filed with the Agency** an ***initial environmental examination*** or **environmental impact assessment,** and has obtained from the Agency approval in respect thereof.
>
> (2) The Agency shall—
>
> (a) review the initial environmental examination and accord its approval, subject to such terms and conditions as it may prescribe, or require submission of an environmental impact assessment by the proponent; or
>
> (b) review the environmental impact assessment and accord its approval subject to such terms and conditions as it may deem fit to impose or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated or decline approval of the environmental impact assessment as being contrary to environmental objectives.
>
> (3) Every review of an environment impact assessment shall be carried out with public participation and, subject to the provisions of this Act, after full disclosure of the particulars of the project;
>
> (4) The Agency shall communicate its approval or otherwise within a period of two months from the date that the initiatal ....

> (5) The provisions of sub-sections (1), (2), (3) and (4) shall apply to such categories of projects and in such manner as prescribed.
>
> (6) The Agency shall maintain separate registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open for inspection to the public during office hours.

The bare reading of the above provisions shows that the role of the *proponent* is that of *filing an IEE or EIA* with the Agency. The use of **'or'** in between IEE and EIA in Section 17(1) is sufficient to make the intention of the *legislature* clear that filing of either of two i.e IEE or EIA would be sufficient for proponent to discharge its obligation.

14. Further, sub-rules of Section 17 of the Act would show that the Agency **'shall'** review the IEE and accord its approval subject to such terms and conditions as it may prescribe or *per 17(2)(a)*:

> *i) require submission of an environmental impact assessment by the proponent;*

Accordingly, it is clear that compliance of Section 17(1) *supra* does not necessarily earn an ***'approval'*** but the **'Agency'** continues to be under a mandatory obligation to approve the same or to ***require submission of an EIA***. The moment **'agency'** require submission of an ***EIA*** while reviewing ***IEE*** within mandatory obligation of Section 17(2)(a) , the provision of Section 17(2)(b) comes into play which includes :

> *i) require re-submission of* **EIA** after necessary modification as may be stipulated; or
>
> *ii)* decline approval of the ***EIA*** only if is contrary to ***environmental objectives;***

Now, I can conclude that the **'agency'** cannot be said to be left with no option but to approve an ***IEE*** even if, *at the end of the day (procedure u/s 17(2(a)* it is fund to contrary to ***environmental objectives.*** The view in the case of *Pakistan Defence Officers Housing Authority v. Federation of Pakistan &Ors (2014 CLD 1279 )*is in conformity wherein it was held that:

> *'This provides that an* **IEE** *may either be approved or the Agency may require an* **EIA** to be submitted. However, the ***IEE cannot be outright reject***.'

Now, reverting to the merits of the case, I am not hesitant in saying that the case in hand, being a project, falling within meaning of **'I(2) of Schedule-II** which is:

> *'I(2). Residential / commercial high rise buildings / apartments from 15 stories and above.'*

was requiring an ***EIA*** and not an ***IEE*** as has been done in the instant case but since within meaning of Section 17 it was mandatory obligation of the **Agency** to require submission of EIA even if proponent had submitted an IEE but **'agency'** seems to have lost sight of this aspect. *However,* since the proponent *prima facie* made compliance of all other required formalities, as demanded by the Agency therefore, solely on count of failure of **'agency'** to properly exercise its jurisdiction, vested by Section 17(2)(a) and (2) it would not be appropriate to declare all superstructure as illegal when *prima facie* fault is not upon the *proponent.* Even, in the case of Pakistan Defence Officers Housing Authority, relied by counsel for the plaintiffs, the project was not declared to be illegal nor *'approval of IEE for a project* requiring an ***EIA*** was held fatal rather submitting of

an EIA was instructed to be processed with complete liberty to **'agency'** to accord approval if so found. Since, within meaning of Section 19 of the Act the **Agency** continues under mandatory obligation for ***'arranging environmental monitoring'*** therefore, the authority shall also keep in view that proponent while dealing with its project does nothing contrary to ***environmental objectives*** which is the sole *ground* for *decline of an EIA*.

15. Since, the proponent *prima facie* seems to have complied with all requisite formalities and there are NOCs/approvals from quarter concerned therefore, a *prima facie case* & balance of convenience flows in favour of the proponent and not in favour of the present plaintiffs who *even* is not resident of adjoining plot(s). The responsibility to keep monitoring over the project and examine its raising strictly within four corners of law and procedure continues upon the quarter concerned which duty never relaxes till completion of the project *strictly* as per its approved design, scheme and object. Therefore, I am not inclined to hold that plaintiffs have made out a case for injunction. Reference can be made to the case of Sheri C.B.B v K.B.C.A (2003 YLR 1086), wherein it was held:

> '9. After hearing the learned counsel and perusal of the record, the admitted position which emerges is that the construction has been raised I accordance with the approved building plans; no additional construction in violation to the building plans has been raised; the defendant no.6 is already enjoying the title under duly executed document; the property is situated on a main road already commercialized to a good extent though the **plaintiffs are residents of the same society they are not the immediate neighhbours;** the regularization plan has already been submitted. The case law citied by learned counsel for the plaintiffs pertain to unauthorized structure raised without approved building plans which is not attracted to the facts and circumstances of the present case and are distinguishable as in the instant case the provisions of law has not only been complied

> with but in pursuance of the objections. The construction was sealed on more than one occasion. It was only after a detailed inquiry and consideration that it was *desealed* even d**uring construction stage and the plaintiffs were fully aware of the conversion of the plot throughout but allowed significant time to elapse**. In view of the foregoing considerations, I am of the humble opinion that by allowing present application to restrain the defendants from exercising the powers conferred upon them under the law would be contrary to the public purpose for which the special law i.e The Sindh Building Control Ordinance, 1979 has been enacted.
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> (Underlining is provided for importance)
>
> 10. The facts lead to the conclusion that the **defendants have from time to time complied with the objections and have raised construction according to the approved building plan except for minor deviation, not of a significant nature** that are pending consideration in the shape of absence of partition walls for which a revised plan has been filed. **Main road on which the property is situated is also subject to commercial activities and there is no likelihood of irreparable losses to the plaintiffs calling for interference.**

Worth to add here that the above view was not disturbed in the case of *Navid Hussain v. City District Government (2007 CLC 912)* , referred and relied by the counsel for the plaintiffs.

16. Since, the above discussion *prima facie* brings a question about *locus standi*of the plaintiffs to file the instant suit. The plaintiffs have not claimed *infringement* of their direct or indirect *legal rights* which *otherwise* is a mandatory condition to sustain a suit within meaning of Section 42 of the Specific Relief Act. The plaintiff *legally* cannot seek a declaratory decree in respect of status of third person or his property hence prayer clause (a) seems to be not sustainable; since commercial use is result of declaration of

notification of road *(Tipu Sultan road)*, issued by the authority, hence in absence of a challenge to such notification the prayer clause (b) to (c) also cannot legally sustain. Further, the plaintiffs *nowhere* have claimed that any of their *easmentary rights* are involved in the matter. In short, it can safely be said that through instant suit the plaintiffs have been challenging and calling in question the legality of *status* of property & owner thereof with reference to certain *claimed* illegalities in procuring such *status.* A simple case of seeking such a declaration without showing ***'an interest of the plaintiff* or *a threat to any of his legal rights'*** would not sustain else the purpose and object of *'locus standi & legal character* , insisted upon to maintain a suit, shall fail. A ***lis*** complaining acts or omission of some body could sustain but if it is shown that such acts and omission of such person are ***invasion of private rights*** of plaintiffs, as held :

> *"Right of enjoyment of a property is independent right and it is shown that the public functionaries act in a manner as it may* **encroach upon a private right** *which may also be invasion of a public right than individual whose rights are encroached may bring an action against such invasion'. (PLD 2003 Kar. 477)*

> *'As far as the objections of learned counsel for the defendants that plaintiff has no right which could be enforced.* ***In my humble opinion section 42 of the Specific Relief Act do give a right to institute a suit to any person who has (sic). Any right as to any property".*** *As discussed above, such right read with 'Right of Enjoyment of a property as postulated under section 54 of Specific Relief Act do give such right to a plaintiff who could establish that the right to view and exposure of his commercial establishment is of some beneficial interest to him. Right to life as has been expounded by the Hon'ble Supreme Court in ShelaZia's case reported in PLD 1994 SC 693 as approved in 'Costal Livina's case in 1999 SCMR 2882 that Right to Life is not merely a vegetative living .Likewise, right of property or*

*right to carry on business on a property are also recognized under the Constitution, 1973. Such right to property is not be interpreted in a narrow sense but must be given a broader perspective and meaning more particularly in present commercial environment where every bit of a commercial premises or establishment has its due importance and pecuniary benefit.* **Injunctive relief is also obtainable in case of invasion of civil right in the nature of Tort. A person seeking injunction must make out a case of actual or of threatened violation of its right.**

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**Clifton &Defence TW Association Vs. President CCB**

**(PLD 2003 Karachi-495)**.

*'Where act constitute a public nuisance are not defined under the Code of Civil Procedure. Nuisance cannot be defined exactly and exhaustively, all definitions are merely illustrative, it is premise on large number of variables. Causes keep on adding with emergence of new and complex inter personal relationship between person to person and person to society.* **Nuisance amounts to interference with the person's use or enjoyment of his property or any right appurtenant thereto, a tortious act.**

*An act at the same time can be both, public or private nuisance, public because it effects adversely many person or community at large and private in the sense that it also entails special damages or injury to private and individual right of one or few.* **Where an act complained of is both public and private nuisance, then any person effected by such wrong or nuisance may bring an action without permission of Advocate-General.**

17. Though, through the instant suit the plaintiff has been challenging and calling in question the legality of *status* of property & owner thereof with reference to certain *claimed* illegalities in procuring such *status.* If, it had been a simple case of seeking such a declaration without showing ***'an interest of the plaintiff* or *a threat to any of his legal rights'*** then such a ***lis*** would not sustain. However, the position will become different if plaintiff

*though not having direct interests* but claims infringement of his / her *easmentary* rights in result of lawful exercise of ownership even.

> *"Right of enjoyment of a property is independent right and it is shown that the public functionaries act in a manner as it may encroach upon a private right which may also be invasion of a public right than individual whose rights are encroached may bring an action against such invasion'. (PLD 2003 Kar. 477)*

> *'As far as the objections of learned counsel for the defendants that plaintiff has no right which could be enforced.* ***In my humble opinion section 42 of the Specific Relief Act do give a right to institute a suit to any person who has (sic). Any right as to any property".*** *As discussed above, such right read with 'Right of Enjoyment of a property as postulated under section 54 of Specific Relief Act do give such right to a plaintiff who could establish that the right to view and exposure of his commercial establishment is of some beneficial interest to him. Right to life as has been expounded by the Hon'ble Supreme Court in ShelaZia's case reported in PLD 1994 SC 693 as approved in 'Costal Livina's case in 1999 SCMR 2882 that Right to Life is not merely a vegetative living .Likewise, right of property or right to carry on business on a property are also recognized under the Constitution, 1973. Such right to property is not be interpreted in a narrow sense but must be given a broader perspective and meaning more particularly in present commercial environment where every bit of a commercial premises or establishment has its due importance and pecuniary benefit.* **Injunctive relief is also obtainable in case of invasion of civil right in the nature of Tort. A person seeking injunction must make out a case of actual or of threatened violation of its right.**

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**Clifton & Defence TW Association Vs. President CCB (PLD 2003 Karachi-495).**

> *'Where act constitute a public nuisance are not defined under the Code of Civil Procedure. Nuisance cannot be defined exactly and exhaustively, all definitions are merely illustrative, it is premise on large number of variables. Causes keep on adding with emergence of new and complex inter personal relationship between person to*

> *person and person to society.* **Nuisance amounts to interference with the person's use or enjoyment of his property or any right appurtenant thereto, a tortious act.**
>
> *An act at the same time can be both, public or private nuisance, public because it effects adversely many person or community at large and private in the sense that it also entails special damages or injury to private and individual right of one or few.* **Where an act complained of is both public and private nuisance, then any person effected by such wrong or nuisance may bring an action without permission of Advocate-General.**

From the above, it is *quite* clear that to maintain a suit even on the ground of *easmentary right* the person has to show his / her suffering from an independent act of other over his own property *even* which *prima facie* is not the case of the present plaintiffs, as no such thing is mentioned or referred in the pleading (plaint). The plaintiffs *attempted* to save their *lis* by arguing that it was filed as *representative suit* but even to maintain such a suit the plaintiff must show that **'he has an actual existing interest in the subject matter'** which is not the case with the present plaintiffs.

18. To maintain an ***ordinary civil suit*** the plaintiff is always required to establish his ***locus standi*** if he intends to seek a declaratory decree. Therefore, after consideration the contention raises by learned counsel for plaintiff with regard to maintainability of lis, I am of the clear view that present plaintiffs have no locus standi to file the suit in its present form hence in consequence thereof the plaint is hereby rejected under Order 7 r 11 CPC. It is needless to add that once a ***lis*** is found to be not sustainable in law then the Courts are *legally* bound to reject such an incompetent suit even without waiting for such an application from. Albeit , opportunity of hearing on this issue was specifically provided to the

leaned counsel for plaintiff side. On this proposition, reference can be made to the case, reported as 2007 SCMR 741, being sufficient is made hereunder:-

> *It is pertinent to mention here that in view of the Order VII rule 11 CPC it is the duty of the Court to reject the plaint if, one a perusal thereto, it appears that the suit is incompetent, the parties to the suit are at liberty to draw courts' attention to the same by way of an application. The Court can, and, in most cases hear counsel on the pint involved in the application meaning thereby that court is not only empowered but under obligation to reject the plaint, even without any application from a party, if the same is hit by any of the clauses mentioned under rule 11 of Order VII CPC.*

19. While parting it is needless to add that in case of any breach or violation of approval/NOC the authority concern or **'agency'** as the case may be shall take necessary legal action against proponent and project. Any person, having any interest in the project, may communicate any deviation or violation which shall be sufficient to activate the authority to initiate legal course.

Imran/PA **J U D G E**