

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petitions No.D-953, 6541, 6927, 7271, 7272,
7329, 7330, 7331 of 2015 and 2966, 3127 and 5067 of 2016

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

A. Razzaq Dawood : (in C.P. No.D-953 of 2015)
Haji Asif : (in C.P. No.D-6541 of 2015)
A. Razzaq Dawood : (in C.P. No.D-6927 of 2015)
Urban Properties : (in C.P. No.D-7271 of 2015)
Union Properties : (in C.P. No.D-7272 of 2015)
Freeway Heights : (in C.P. No.D-7329 of 2015)
Ahmed Tabba : (in C.P. No.D-7330 of 2015)
Ahmed Tabba : (in C.P. No.D-7331 of 2015)
Urban Properties : (in C.P. No.D-2966 of 2016)
M/s. Check and Watch Environment Foundation (NGO) : (in C.P. No.D-3127 of 2016)
Muhammad Akram Memon : (in C.P. No.D-5067 of 2016)
.....Petitioners.

Vs.

M/s Urban Properties Builders and others : (in C.P. No.D-953 of 2015)
The Province of Sindh and others : (in C.P. No.D-6541 of 2015)
Director General/Chief Executive SBCA and others : (in C.P. No.D-6927 of 2015)
Pakistan Civil Aviation Authority and another : (in C.P. No.D-7271 of 2015)
Pakistan Civil Aviation Authority and another : (in C.P. No.D-7272 of 2015)
Pakistan Civil Aviation Authority and another : (in C.P. No.D-7329 of 2015)
Pakistan Civil Aviation Authority and another : (in C.P. No.D-7330 of 2015)
Pakistan Civil Aviation Authority and another : (in C.P. No.D-7331 of 2015)
Federation of Pakistan and another : (in C.P. No.D-2966 of 2016)
The Province of Sindh and others : (in C.P. No.D-3127 of 2016)
Pakistan Civil Aviation Authority and others : (in C.P. No.D-5067 of 2016)
.....Respondents

Dates of hearing : 30.03.2021, 31.03.2021, 01.04.2021,
05.04.2021, 06.04.2021, 07.04.2021,
04.05.2021, 20.05.2021 and 26.05.2021.

For the petitioners : M/s. Sharjeel Akram Shaikh and Abbad-ul-
Hussnain, Advocates (in CP No.D-953 and 6927
of 2015)

Mr. Abdur Rehman, Advocate (in C.P. No.D-
7271, 7272, 7329, 7330, 7331 of 2015 and 5067 of
2016)

Mr. Mansoorul-ul-Arfin, Advocate
alongwith Mr. Abdur Rehman, Advocate (in
C.P. No.D-2966 of 2016)

Ms. Sadia Khatoon, Advocate (in C.P. No.D-
6541 of 2015)

Muhammad Talib Shah (claimed himself to be
the President of the Petitioner/NGO) in person (in
C.P. No.D-3127 of 2016)

For the Respondents : Mr. Abdur Rehman, Advocate (in CP No.D-953 of 2015 for respondents No.1 to 9)

Dr. Shahnawaz, Advocate for Civil Aviation Authority alongwith Mr. Zubair Ghazi, Director Airspace & Aerodrome 10Regulations, Civil Aviation Authority.

M/s. Iqbal Khurram, Advocate for Karachi Municipal Corporation alongwith Ms. Naheed Akhtar, Advocate.

Mr. Muhammad Nishat Warsi, Deputy Attorney General for Pakistan alongwith Sqn. Ldr. PAF Moazzam.

Mr. Ali Safdar Depar, A.A.G.

Mr. Dhani Bukhsh Lashari, Advocate for Sindh Building Control Authority.

Mr. Waleed Rehan Khanzada, Advocate for Karachi Water & Sewerage Board.

J U D G M E N T

IRFAN SAADAT KHAN, J. Since common grounds and cross objections are agitated in these petitions they are heard and disposed of by this common judgment. The lead petition bearing CP No.D-953 of 2015 relates to the issue of amalgamation of two Plots No.F-16 and F-17 Dawood Cooperative Housing Society, Scheme No.7, Gulshan-e-Iqbal, Karachi (henceforth '**subject Plots**') and its commercialization in a residential area, beside other grounds which are discussed in the later part of this judgment.

2. The petition bearing No.953 of 2015 has been filed on the ground that the petitioner is residing in a property bearing No.F-15, Scheme No.7, Dawood Cooperative Housing Society, which is claimed to be a purely residential property, which the petitioner purchased vide lease deed dated 14.02.1979 duly registered with the

Registrar. It is claimed by the petitioner that adjacent plots bearing No.F-16 and F-17, owned by the respondents No.1 to 9, are also residential properties and have illegally been declared as commercial properties hence it is prayed in the instant petition that the project, namely, “Urban Twin Tower” being constructed on the above referred two plots may be declared to be illegal and unlawful, being constructed in an illegal and unlawful manner and in violation of the relevant rules and byelaws and regulations. It is also prayed that the said two properties and other adjoining properties, being residential in nature, have illegally been declared as commercial hence the said declaration may be termed as illegal and uncalled for. It is also prayed that all the actions done by the respondents in converting the above residential properties into commercial are to be declared as null and void and as non-operative and the employees, subordinates and agents of the respondents may be restrained from constructing the above referred project and also to restrict the respondents, their agents, representatives, employees and subordinates to deal in selling the properties to third parties and to carry out other commercial activities on these projects.

3. Before unpacking the questions raised on behalf of the parties on the subject issue, it may be observed that all the said questions have already been set at naught by the Hon’ble Supreme Court through various authoritative pronouncements. However, learned counsel for the parties insisted on the decision on merits. Accordingly, full opportunity was afforded to all of them on several dates of hearing to make their respective submissions. In the above

circumstances, we deem it appropriate to record their submissions in this judgment as under.

4. M/s. Sharjeel Akram Shaikh Advocate has appeared alongwith Mr. Abbad-ul-Husnain Advocate, for the petitioner and stated that the conversion of the residential plots into commercial was illegal and uncalled for. They, while elaborating their viewpoint, stated that while commercializing the above plots various building laws, codes, rules and regulations have been violated by the respondents No.1 to 9 (**the private respondents**). They stated that the conversion of the residential plots into commercial would have a negative impact on the privacy of the persons residing in the vicinity and hence would have a negative environmental impact as well. They stated that there would also be problems with regard to parking and other utilities. They further stated that the construction of these high-rise buildings would be an imminent danger to the aeroplanes flying in the vicinity as, according to them; airport is not far away from this project. They further stated that violation of relevant laws and rules of Sindh Building Control Authority (**SBCA**), Civil Aviation Authority (**CAA**) and Pakistan Air Force (**PAF**) have also been violated by the respondents while constructing the said property or making the proposed construction plan hence they pray that firstly the conversion of the plots from residential to commercial may be declared as illegal; secondly the amalgamation of the two plots is also illegal; thirdly there is a violation and deviation in approved building plan and

fourthly the building is also a threat for an incoming and outgoing aeroplanes, being a high-rise building.

5. So far as the issue of commercialization is concerned, the learned counsel stated that the said plots have been converted from residential to commercial without fulfilling the legal and codal formalities. They stated that the plots are located in Dawood Housing Cooperative Society and 'No Objection Certificate' (NOC) has not been obtained from the said Society for converting the properties from residential to commercial. They further stated that the conversion was also without the consent of other members. The learned counsel also invited our attention to Regulation No.18-5.1.1 of the Karachi Building and Town Planning Regulations (KBTPR-2002) to show that residential plots could be converted into commercial after fulfilling the commercialization policy. According to the learned counsel the said commercialization policy has not been followed. They further invited our attention to Regulation No.18-4 to show that no residential property could be converted into commercial without the approval of MP&ECD which condition in the instant case, according to them, has not been followed. They further stated that since due process of converting a residential property into commercial has not been followed hence the process of commercialization was ab-initio void and illegal. They further stated that the other procedures for converting the plots from residential to commercial, as given in the Sindh Local Government Ordinance (SLGO) vide Sections 39(A)(C), 40A and 192(1) have also not been followed. They further submitted

that Karachi Metropolitan Resolution No.383 dated 06.01.2002 has also not been followed. They further stated that Byelaw No.9 relating to Master Plan also has not been followed and the requirements with regard to sending applications to Union Council and MPGO on prescribed format also has not been followed. In support of the above arguments, the learned counsel have placed reliance upon the following judgments:

- i) *Mst. Ummatullah through Attorney vs. Province of Sindh through Secretary Ministry of Housing and Town Planning, Karachi and 6 others (PLD 2010 Karachi 236)*
- ii) *Dr. Raheela Magsi Vs. Province of Sindh through Chief Secretary and 2 others (2013 CLC 1420)*
- iii) *Khawaja Ahmad Hassan Vs. Government of Punjab and others (2005 SCMR 186)*
- iv) *Civil Petition No.815-K/2016 (by the Hon'ble Supreme Court of Pakistan)*
- v) *Abdul Razak vs. Karachi Building Control Authority and others(PLD 1994 SC 512)*
- vi) *Ahmad Javed Shah Vs. Lahore Development Authority (1996 CLC 748)*
- vii) *Lahore Grammar School (Pvt.) Ltd. Vs. Mst. Hameeda Begum and another (1996 PLD Lahore 442)*
- viii) *Muhammad Iqbal and another Vs. Director General, Lahore Development Authority and another (1995 CLC 1881)*
- ix) *Mrs. Shamim Rizwan Vs. Province of Punjab and others (PLD 1997 Lahore 580)*

6. They further argued that the amalgamation of the plots was in violation of the KBTPR Regulation No.18.3.2 as, according to the learned counsel, as per the said Regulation the amalgamation is only

possible upto maximum of 1200 square yards, whereas after the amalgamation the area of the two plots would come to 2000 square yards, which is not inconsonance with the permissible area as given in the above Regulation. They further attacked the NOC issued by the Sindh Building Master Plan Department dated 13.03.2014 and stated that as per the said NOC after amalgamation the plots would be used “as per its original allotment /lease conditions”. They stated that as per the original allotment /lease conditions the plot could only be used for residential purposes but the private respondents in utter violation of the said NOC and the conditions as prescribed by the relevant laws have converted the residential property into commercial hence, according to the learned counsel, they have violated the terms of the NOC. The learned counsel further read out clause 8 of the said NOC that in case of violation of item 6 & 7, which talks about the original allotment /lease conditions, the amalgamation permission shall stand cancelled automatically. They stated that the private respondents since have violated the NOC hence their amalgamation permission has stand cancelled automatically, therefore, the private respondents may be restrained permanently from raising any construction on the said residential plots. The learned counsel further stated that even the NOC issued by the SBCA dated 25.03.2014 has also not been followed by the private respondents wherein similar condition was imposed by the SBCA to utilize the property for residential purposes but the private respondents have brushed aside the said NOC and after amalgamating the two plots have started doing commercial activities on a residential property. They further stated that the conditions 4, 6 & 8 of the NOC

issued by the Master Plan Department also have been violated by the private respondents. The learned counsel then read out those conditions to augment their submissions. They further submitted that even the clause 8 and 11 of the lease agreement dated 27.05.2013 between the City District Government Karachi (**CDGK**) and the respondents have been violated wherein it has categorically been mentioned that the property would exclusively be used for residential purposes only.

7. The learned counsel next invited our attention to the alleged violations in respect of the sanctioned building plan. They stated that the NOC has not been obtained by the private respondents with regard to height restrictions from CAA and PAF. It is stated that the permissible limit for construction is 107 square feet, whereas 'Tower A' comprises of 196 square feet, whereas 'Tower B' comprises of 174 square feet. According to the learned counsel it is very much evident that the height of the building, if allowed to be constructed would be in violation of permissible height limit, as prescribed by the official respondents. They stated that though NOC was obtained from CAA but that NOC, according to them, is not in accordance with the law and is in contradiction with the permissible limit as prescribed by the PAF. The learned counsel further stated that as many as four inspections were carried out by the Nazir of this Court wherein in each report flagrant violations with regard to construction have been noted down by the Nazir, however, it is surprising to note that no action has been taken by the official respondents to clear /remove

those objections /violations. The learned counsel in this regard pointed out towards various violations detected on the ground floor and other floors with regard to Compulsory Open Space (COS) and other violations. They stated that even the SBCA has issued various Show Cause Notices to the private respondents in this behalf but no heed was paid by the respondents to remove those violations /illegalities /irregularities. They invited our attention to all the four Nazir's reports to strengthen their arguments. In support of their above arguments the learned counsel have placed reliance upon the following decisions:

- i) *Ardeshir Cowasjee & others vs. Karachi Building Control Authority (KMC), Karachi & others (1999 SCMR 2883)*
- ii) *Hussain Bux Memon & another vs. Karachi Building Control Authority through Chief Controller of Buildings & others (2015 YLR 2448)*
- iii) *Farooq Hamid & others vs. L.D.A & others (2008 SCMR 493)*
- iv) *Mst. Yawar Azhar Waheed (Deceased) through LRs Vs. Khalid Hussain and others (2018 SCMR 76)*
- v) *Messers Continental (Pvt.) Limited vs. Government of Sindh through Secretary, Housing Town Planning Department, Karachi & another (1996 CLC 417)*
- vi) *Abdul Razak vs. Karachi Building Control Authority and others (PLD 1994 SC 512)*
- vii) *A. Razak Adamjee & another vs. Messrs Datari Construction Company (Pvt.) Limited & another (1991 MLD 1112)*
- viii) *Hameed Akhtar vs. Member (Colonies), Board of Revenue, Punjab, Lahore & another (2005 YLR 998)*
- ix) *Messrs Continental (Pvt.) Limited Vs. Government of Sindh through Secretary, Housing Town Planning Department, Karachi and another (1996 CLC 417)*

8. Mr. Abdul Rehman Advocate has appeared on behalf of the private respondents (respondent No.1 to 9) and at the very outset stated that no illegality and irregularity has been committed by the said respondents. He stated that so far as commercialization of the plots owned by the said respondents is concerned the whole Stadium Road has been declared as a commercial road by the Karachi Municipal Corporation (**KMC**) vide order dated 29.05.2013. The learned counsel also invited our attention to various Gazette Notifications in respect of this claim. He next submitted that the commercialization was duly authorized to the then Administrator of KMC, who has full authority under Section 179A of the SLGO Ordinance 2001. He stated that the said Administrator has exercised his powers with regard to change of land use as per the relevant laws and Master Plan Byelaws 2003 to declare and convert any residential property into commercial. He stated that all necessary legal requirements regarding issuance of public notice and issuance of Gazette Notifications etc. have duly been fulfilled by the said respondents. The learned counsel next submitted that under Article 4 of the Karachi Development Authority Order 1957 the Governing Body of KDA has the authority to unilaterally declare plots on the declared roads from residential to commercial and in respect of his above contention he placed reliance on the following decisions:

- i) *Abdul Razak Adamjee and another Vs. Director General, Karachi Development Authority and others (1995 MLD 803)*

- ii) *A. Razzak Adamjee and another Vs. Messrs Datari Construction Company (Pvt.) and another (2005 SCMR 142)*
- iii) *Jawad Mir Muhammadi and others Vs. Haroon Mirza and others (PLD 2007 SC 472)*
- iv) *Ardeshir Cowasjee and 4 others Vs. Clifton Cantonment Board and 20 others (1998 MLD 1818)*
- v) *Irfan & others vs. Karachi Building Control Authority & others (2005 CLC 694)*
- vi) *Capt. S.M. Aslam and others Vs. Karachi Building Control Authority through Chief Executive Nazim-e-Aala and others (2005 CLC 759)*
- vii) *Sheikh Naeem Ahmed and others Vs. Province of Sindh and others (2006 CLC 1231)*
- viii) *Arshad Abdullah and others Vs. Government of Sindh through Secretary, Housing and Town Planning Department and others (2006 YLR 3209)*
- ix) *Muhammad Hanif Vs. Sameena Sibtain and 8 others (2007 YLR 3113)*
- x) *Mrs. Zunaira Khan through attorney Vs. Federation of Pakistan through Secretary Mainstay of Petroleum and Natural Resources and others (2008 YLR 1701)*
- xi) *Zahid Saeed & others vs. City District Government, Karachi & others (PLD 2010 Karachi 218)*
- xii) *Zainab Garments (Pvt.) Ltd. & others vs. Federation of Pakistan & another (PLD 2010 Karachi 374)*
- xiii) *Nighat Jamal Vs. Province of Sindh and others (2010 YLR 2624)*
- xiv) *Muhammad Nasir and 7 others Vs. Government of Pakistan through Ministry of Housing and Town Planning, Islamabad and 6 others (2014 CLC 1666)*
- xv) *Salim Godil & others vs. Province of Sindh & others (2014 CLD 222)*
- xvi) *Amber Alibhai & others vs. Muhammad Ghulam Jan Muhammad & others (2016 MLD 1208)*

9. The learned counsel next submitted that the CAA has no power to impose height restriction as the said powers rests with the Federal Government. He then invited our attention to Section 6A of the CAA Ordinance 1960. In support of his contention, the learned counsel has placed reliance on the decision in the case of Messrs Mustafa Impex, Karachi and others Vs. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808). He further stated that the Federal Government was required to issue notification empowering the CAA with regard to height restriction but since there is no such notification issued by the Federal Cabinet, therefore, the CAA, in his view, has no jurisdiction to either instruct the SBCA or to act unilaterally with regard to the height issue. In support of his contention, the learned counsel has placed reliance on the decision given in the case of *Government of the Punjab, Food Department & another vs. Messrs United Sugar Mills Ltd. & another (2008 SCMR 1148)*

10. The learned counsel next attacked the Civil Aviation Rules 1994 and stated that CAA only has the authority with regard to safeguarding of aerodrome but has no authority to regulate the height of the building which, in his view, rests with SBCA and in support thereof has placed reliance on the decision given in the case of *Khawaja Ahmad Hassaan Vs. Government of Punjab and others (PLD 2004 SC 694)*

11. The learned counsel further stated that there is no deviation from the approved plan and stated that the SBCA has supported his

version that apart from minor deviations, which are compoundable and regularizable, there are no major deviations which would entail the whole project as illegal. He stated that the amalgamation process has been made as per clause 18-3 of the KBTPR and there is no violation in this regard. He also stated that change of land use has duly been mentioned under Regulation 18-4 and 18-3 of KBTPR, which have been followed by the respondents.

12. The learned counsel next submitted that it is not only the plots owned by the private respondents which have been declared as commercial but the whole road, which includes the plot owned by the petitioner as well, which has been declared as commercial by the concerned authorities, therefore, according to the learned counsel, it could not be presumed that any favour has been taken by the private respondents or something which is not permissible under the law has been granted to them. He next submitted that the issues regarding COS and parking ramp have been regularized by the SBCA Authorities and the contention of the petitioner in this regard is misplaced. He next submitted that there are four reports of the Nazir; the first report is that of 31.05.2015, the second report is that of 18.02.2016, the third report is that of 03.08.2016 and the fourth report is that of 25.08.2016 and all these four reports are in favour of the private respondents duly mentioning that no violation of any law, either with regard to commercialization, amalgamation or construction of the building beyond the approved building plan have been found by the Nazir. However, so far as the permissible height limit is

concerned, he stated that even on this issue the CAA supports the stance of the private respondents. He in the end submitted that the petition has been filed with mala fide intention by the petitioner and no illegality or irregularity has been committed by the private respondents in making construction upon the two plots, hence, the instant petition being bereft of any merit is liable to be dismissed with heavy cost.

13. Mr. Iqbal Khurram Advocate has appeared on behalf of the KMC /respondent No.20, 21 and 22 and stated that both these plots were allotted as residential property and at no point of time permission was accorded by their department for commercialization of the said plots. He further stated that as per their record these plots have been allotted as residential and if the private respondents have obtained NOC or permission from other government departments for commercialization, in his view, that is not in accordance with law and as per their record even today the plots are considered as residential properties and only residential activities could be carried out on these plots and construction on these plots could only be made for residential purposes. He, therefore, supported the stance of the petitioner and stated that the petition may be allowed as prayed. So far as the issue of amalgamation of the two plots is concerned, he stated that their department has given permission for amalgamation of the two plots but has never given any permission for commercialization of the same hence on this aspect also the learned counsel supported the stance of the petitioner and on this issue stated that the amalgamation

process has been carried out by their department in accordance with law.

14. Mr. Waleed Khanzada Advocate has appeared on behalf of the Water & Sewerage Board /respondent No.17 and stated that as per the record of their department the properties have been registered as commercial and the permission for sewerage and water has been given for the use of commercial activities but they will abide by whatever decision is given by this Court.

15. Mr. Dhani Bux Lashari Advocate has appeared on behalf of the SBCA /respondents No.10 to 13 and stated that his department has no concern with regard to whether the building is residential or commercial but is concerned regarding construction raised on the said two plots. He stated that no doubt some violation or irregularities were detected on the said plots but; firstly those violations /irregularities are within permissible limit and secondly whatever illegal construction has been raised by the respondents have either been demolished or Show Cause Notices for removal of those illegal construction have timely been given to the private respondents hence, according to him, his department has taken due action regarding the violation /irregularity committed by the private respondents. He stated that allowable height for both the towers is 107 square feet and if any construction is being raised by the private respondents beyond this point that would be a matter between the CAA and PAF and the private respondents and his department has got nothing to do in this behalf.

16. Mr. Khurram Ghayas Advocate has appeared on behalf of the Sindh Master Plan Department and stated that the entire Stadium Road site starting from plot No.F-14 to F-22 has been declared as commercial vide Notification dated 07.06.2013, after fulfilling all codal and legal formalities, hence, according to him, no illegality with regard to commercialization of the property has been committed by his department and the entire lane starting from F-14 to F-22 since has been declared as commercial hence the claim of the petitioner that these two plots have illegally been declared as commercial is incorrect and uncalled for as these two plots alongwith other plots have been declared as commercial after fulfilling all the legal and codal formalities as provided under KBTPR and other rules and regulations, hence, this petition being meritless is liable to be dismissed with heavy cost.

17. Mr. Ali Safdar Debar, AAG has appeared on behalf of the respondents No.14, 15, 16, 23, 24, 25, 26 and 27 and stated that it is a matter between the petitioner and the private respondents whereas government departments would like to add that if the plots are residential and have illegally been declared as commercial, appropriate action ought to have been taken against the private respondents in this behalf.

18. Dr. Shahnawaz Advocate has appeared on behalf of the CAA /respondent No.28 and stated that the private respondents could construct the building upto 107 square feet only and whatever

construction raised beyond this point is a threat to the aeroplanes landing and taking off from the airport. He in this regard has supported the arguments of the petitioner and stated that on the height issue he will support the arguments of the petitioner; however, his department has got nothing to do either with regard to commercialization or amalgamation issue of the two plots.

19. Mr. Nishat Warsi, DAG appearing for the respondent No.29 has adopted the arguments of Dr. Shahnawaz. He, however, submitted that the respondents, so far as height issue is concerned, have not taken any approval from the PAF hence, according to him, the said project is a constant threat to the aeroplanes used for civil as well as military purposes. Hence he also supports the viewpoint of the petitioner.

20. None has appeared for the respondent No.18, whereas learned counsel for the petitioner did not press this petition against the respondent No.19.

21. While rebutting the arguments of the learned counsel for the respondents, the learned counsel for the petitioner submitted that the decisions relied upon by the learned counsel for the respondents are distinguishable. They further stated that those decisions, in their opinion, are per incuriam as those judgments have been passed by ignoring other decisions given by the Hon'ble Supreme Court and the High Courts. They further stated that even if CAA and PAF declares that the building is not a threat to the aeroplanes, that would not cure

the other defects /irregularities and illegalities as pointed out by them. In support thereof they placed reliance upon the decision in the case of *Lahore Improvement Trust, Lahore through its Chairman vs. The Custodian, Evacuee Property, West Pakistan & others (PLD 1971 SC 811)*. In the end they stated that the instant petition may be allowed with cost.

22. We have heard the learned counsel for the parties at considerable length and have also perused the record and the decisions relied upon by the learned counsel for the parties.

23. Before proceeding any further, we deem it appropriate to reproduce herein below the relevant laws relied upon by the learned counsel appearing for the parties:

Karachi Town Planning Regulations, 2002

18-3. Sub-Division and Amalgamation of plots

For the sub-division and amalgamation of plots in the approved schemes and other areas, the criteria laid down below shall be followed.

18-3.1. Sub-Division of Plots:

(a) Fee for minor sub-division of plots shall be charged at the following rates :

i. RESIDENTIAL	Rs.150 Per Sq. Yd.
ii. COMMERCIAL	Rs.300 Per Sq. Yd.
iii. INDUSTRIAL	Rs.300 Per Sq. Yd.

(b) Fee for Major sub-division/layout plan of plots shall be charged at the following rates:

i. NEW	Rs.12000 Per Acre.
ii. REVISED	Rs.8000 Per Acre.
iii. RESTORATION	Rs.5000 upto 10 Acre.

Above 10 Acres Rs.10,000/- per Acre.

18-3.1.1. Sub-division of any residential commercial and industrial plots shall be allowed by the Concerned Authority in case of minor sub-division and with the approval of MPGO in case of major sub-division as per the rules set forth in these Regulations.

18-3.1.2. Plots earmarked for flats shall not be considered for sub-division in to smaller plots.

18-3.1.3. Sub-division of residential plots will only be considered to the extent that sub-divided plot shall not be less than 400Sq.yds.(336.13 sq.m).

18-3.1.4. Sub-division of commercial plots will only be considered to the extent that sub-divided plot shall not be less than 725 sq yards (609.41 sq.m) having a minimum frontage of 60 ft.(18.27m). The FAR of the original plot, COS and Foot Print of the revised plot shall be allowed.

18-3.1.5. In case of sub division of industrial plot having area upto 1000 sq.yds the sub divided area shall not be less than 25% of the original allotted plot and for plots having area more than 1000 sq. yads (836.12 sq.m) the minimum subdivided area shall not be less than 1000 sq yds.

18-3.1.6 * * * * *

18-3.1.7. No sub-division of a plot shall be considered without each of the sub-divided plots having a direct approach from a planned road /street/lane or approach provided by the plot owner from his own land upto a minimum of 16 ft (4.87M) width.

18-3.1.8. Building regulations of the original category of the plots shall be applicable to the subdivided plots. However, a five feet (1.5m) minimum open space shall be provided on both sides of the sub-dividing lines.

18-3.1.9 For built-up plots a demolition permission will be produced before allowing subdivision. Only the construction is falling under the sub-division line or its COS.

18-3.1.10. (Old Clifton)

(a) Civil Lines, Frere Town, Clifton, Queens Quarters, and Bath Island Quarters.	Area of the sub-divided plot shall be from 477 Sq.yds.(401Sq.m) to 952 sq yds. (800 Sq. m).
(b) Garden East and West, Tahilram and Lawrence Quarters (as per Govt. Garden Quarters Scheme No. II)	Minimum Area of the sub divided plot shall be 952 Sq.yds: (800 Sq. m)
(c) Jamshed Quarters and Muslimabad.	Minimum Area of the sub-divided plot shall be 571 Sq.yds (480 sq.m).
(d) Railway Quarters, Serai Quarters, Ghulam Hussain Qasim Quarters, Bunder Road Quarters, Old Town Quarters, Wadhmal Odharam Quarters, Market Quarters, Napier Quarters, Ranchore Quarters, Ramswamy Quarters, Preedy Quarters, Rambagh Quarters, Saddar Bazar	Minimum area of the sub-divided plot shall be 142 Sq.yds. (120 sq m) & minimum frontage 30ft. (9m)

Quarters, Harchand Rai Vishamdas Quarters. Keamari Quarters.	
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18-3.1.11. For Katchi Abadis the Concerned Authority, with the approval of MPGO may allow subdivision.

18-3.1.12. No relaxation of these rules shall be allowed in respect of the sub-divided plots.

18-3.2. Amalgamation of plots:

18-3.2.1. Amalgamation of residential, commercial, industrial and Amenity plots shall be allowed subject to maximum area not exceeding four times area of the larger plot of the category concerned or 1200 Sq.yds whichever is greater provided land grant/allotment conditions of the plots are similar and on payment of fees as may from time to time be determined by the CDGK.

Seven copies of proposed amalgamation plan shall be submitted with the signature of Architect/Town Planner and owner for approval.

Fee for amalgamation of plots shall be charged at the following rates:

- | | | |
|------|-------------|---|
| i. | RESIDENTIAL | Rs.25 Per Sq. Yd.
Upto 240 Sq. Yds.
(amalgamated). |
| ii. | RESIDENTIAL | Rs.100 Per Sq. Yd.
Upto 240 Sq. Yds.
(amalgamated). |
| iii. | COMMERCIAL | Rs.200 Per Sq. Yd. |
| iv. | INDUSTRIAL | Rs.150 per Sq. Yd. |
| v. | AMENITY | Rs.50 Per Sq. Yd. |

18-3.2.1-A * * * * *

18-3.2.2. For residential, Industrial and Amenity plots:

Regulation of new i.e. respective category of plot shall be applicable.

For Commercial plots, regulations of the new category of plot shall be applicable. However, the increase of FAR due to increased size of plot, shall be allowed to the extent of 50% of the FAR applicable to the original plot, or 1.:5:5 whichever is less. Where there is no similar category of plots, the terms and conditions shall be determined by the Master Plan Group of Offices.

18-4. CHANGE OF LAND USE:

18-4.1. Change of land use of amenity: No amenity plot reserved for the specific purpose shall be converted or utilized for any other purpose.

18-4.2. Change of land use of Residential plots:

18-4.2.1. No residential plot shall be converted into any other use except with the approval of MPGO after the recommendations of the Concerned Authority.

18-4.2.2. The applicant shall apply and pay necessary fee to the concerned authority for change of land use of the plot with full justification, which shall examine the application in the light of the planning of the area and forward it to the MPGO for consideration.

18-4.2.3. The MPGO shall also issue a public notice for the change of land use of the plot / plots in accordance with the provisions of these Regulations and the expenses shall be borne by the applicant.

18-4.2.4. The MPGO, shall give due consideration to the objections from the Public before the final decision.

18-4.2.5. The applicant shall pay the prescribed fees and other charges to MPGPO.

18-4.2.6. Final NOC (No Objection Certificate) shall be issued by the Concerned Authority, after approval of MPGO.

18-4.2.7. Industrial plot cannot be converted into residential and commercial use except for Petrol Pump and CNG Station with the approval of MPGO on payment of charges.

18-4.2.8. Residential plot within a residential neighbourhood can be allowed to be used for education provided the plot faces minimum width of road 60 ft. and lawfully converted into a amenity plot for education by the MPGO as per prescribed procedure after inviting public objection from neighbourhood.

18-4.2.9. Plots designated for use as cinema may be allowed to use upto 25% of the permissible covered area for commercial activity in a (multiplexes) provided the remaining 75% continues to be used exclusively for cinema.

18-4.2.10. Any particular individual industrial plot surrounded by planned residential/flats /commercial area may be allowed to be converted into residential/flats/commercial plots. The fees charged will be same as those applicable to the nearest declared commercial road.

18-5. Commercialization of plots:

18-5.1.1. Conversion of residential plot into Commercial shall be allowed only according to a uniform commercialization policy formulated and revised from time to time by Master Plan & Environmental Control Department with approval of Government and notified in Sindh Government Gazette on the basis of comprehensive study of various urban areas under pressure for

commercialization. Individual plots outside the policy will not be considered for commercialization.

Sindh Local Government Ordinance, 2001

39. **Functions and powers of Zila Council.**- The functions and powers of a Zila Council shall be to-

- (a) approve bye-laws proposed by the District Government under this Ordinance;
- (b)
- (c) approve long term and short term development plans, annual and supplementary budgetary proposals of the District Government and, where required, intra-district fiscal transfers;

40. **Functions of Zila Council in a City District.** – In addition to the functions specified in section 39, the Zila Council in a City District shall perform the following functions, namely:-

- (a) approve master plans, zoning, land use plans, including classification and reclassification of land, environment control, urban design, urban renewal and ecological balances;

179A. Conduct of elections.- (1) Notwithstanding anything contained in this Ordinance, for the elections to be held in the year two thousand and five, immediately on notification of the Schedule of Elections in a district or districts by the Chief Election Commissioner, the Zila Council, Taluka Councils, Town Councils and Union Councils in such district or districts shall stand dissolved and all Nazims, Naib Nazims and members of the Councils shall cease to hold their respective offices.

- (2) Within twenty-four hours of the announcement of the Schedule for local government elections by the Chief Election Commissioner, the Provincial Chief Secretary shall appoint government officers as Care-takers to perform the functions and exercise the powers of the Nazims of the respective local governments till the newly elected Nazims take oath of their offices.
- (3) The elected members of Zila Council, Taluka Councils, Town Councils, Union Councils and Zila Nazim, Taluka Nazims, Town Nazims and Union Nazims shall assume the charge of their respective offices within seven days of the Notification of the result of district and Taluka level elections by the Chief Election Commissioner under section 164 of this Ordinance.
- (4) During the election period the Care-takers provided in sub-section (2) are looking after the affairs of the local governments, no new development scheme shall be initiated nor shall the Government or the Care-takers or any other officer of a local government make posting and transfer of any officer or official of the local government without the prior approval of the Chief Election Commissioner.
- (5) This section shall only be for the local government elections held in the year two thousands and five and shall cease to have any effect and be deemed to be omitted from this Ordinance forthwith

on the completion of assumption of offices referred to in sub-section (3).

192. Bye-laws.- (1) A Zila Council, Taluka Council, Town Council and Union Council may, in their ambit of responsibilities, make bye-laws to carry out the purposes of this Ordinance.

CIVIL AVIATION ORDINANCE, 1980

6A. Powers of the Federal Government to prohibit or regulate construction of buildings, planting of trees, etc. (1) If the Federal Government is of opinion that it is necessary or expedient for the safety of aircraft operations, it may, by notification in the Official Gazette-

(a) Direct that no building or structure shall be constructed or erected, or no tree shall be planted on any land within such radius not exceeding fifteen kilometers from the aerodrome reference point, as may be specified in the notification, and where there is any building, structure or tree on such land, also direct the owner or the person having control of such building, structure or tree demolish such building or structure or, as the case may be, to cut trees within such period as may be specified in the notification; and

(b) Direct that no building or structure higher than such height as may be specified in the notification shall be constructed or erected, or no tree, which is likely to grow or ordinarily grows higher than such height as may be specified in the notification, shall be planted, on any land within such radius, not exceeding fifteen kilometers from the aerodrome reference point, as may be specified in the notification and where the height or any building or structure or tree on such land is higher than the specified height also direct the owner or the person having control of such building, structure or tree to reduce the height thereof, so as not to exceed the specified height, within such period as may be specified in the notification.

(2) In specifying the radius under clause (a) or clause (b) of sub-section (1) and in specifying the height of any building structure or tree under the said clause (b), the Federal Government shall have regard to-

- (a) The nature of requirement of the safety of aircraft operations;
- (b) The nature of the aircraft operated or likely to be operated in the aerodrome; and
- (c) The international standards and recommended practice governing the operation of aircraft.

(3) Where any notification has been issued under sub-section (1) directing the owner or the person having control of any building structure or tree to demolish such building or structure or to cut such tree or to reduce the height or any building, structure or tree, a copy of the notification containing such direction shall be served with a notice, on the owner or the person having the control of the building, structure or tree, as the case may be-

- (a) by delivering or tendering it to such owner or person; or

(b) *If it cannot be so delivered or tendered, by delivering or tendering it to any officer of such owner or persons or any adult male member of the family of such owner or person or by affixing a copy thereof, on the outer door or on some conspicuous part of the premises in which such owner or person is known to have last resided or carried on business or personally worked for gain; or failing service by these means; by registered post.*

(4) *every person shall be bound to comply with any directions contained in the notice and the notification issued under sub-section(1).*

Article 4 of the Karachi Development Authority Order 1957.

4. Management-*(1) The general direction and administration of the Authority and its affairs shall vest in the Governing Body which may exercise all powers and do all acts and things which may be exercised or done by the Authority.*

(2) The Governing Body in discharging its functions shall act on sound principles of development, town planning and housing with special regard to the re-housing of affected persons and shall be guided on question of policy by such directions as Provincial Government may from time to time given.

(3) If a question arises as to whether any matter of policy or not, the decision of the Central Government shall be final.

24. From the facts and the arguments, it is evident that there have been divergent stances taken by the learned counsel representing the private respondents and the learned counsel for the respondents appearing for the government departments. Though it has been averred that the due process with regard to commercialization of the two plots and their amalgamation has been fulfilled and the KMC authorities have given due permission for conversion of the two plots rather the whole road on which the two disputed plots, including the plot of the petitioner, exist but from the arguments and the various documents furnished by the KMC authorities it is evident that the properties are residential in nature and the claim of the private respondents, with regard to converting the residential properties into commercial, has vehemently been denied by the KMC from whom it

was claimed that due permission was taken from the then Administrator of the KMC, after fulfilling all the legal and codal formalities. From the clauses of the NOC and other documents it could be seen that at no point of time the respondents were allowed to raise any commercial construction on the said initially declared residential properties. It is a mystery that under what circumstances the whole road has been declared as commercial without taking the approval from the residents of the other residential properties excluding the properties of the private respondents. It has vehemently been denied by the learned counsel representing the petitioner that at no any point of time they were consented for commercialization of their residential property which, according to them, has been done behind their back just to accommodate the illegal action committed by the then Administrator in granting permission for commercialization to the private respondents. The various rules and regularization of KBTPR-2002, as enumerated above, clearly stipulates that residential property could only be converted into commercial or could be amalgamated after fulfilling the legal requirements, which apparently seem to be lacking in the instant matter.

25. We are also cognizant of the fact that in the recent past the Hon'ble Supreme Court of Pakistan has taken a serious note in respect of the boom of commercialization being made on various roads of Karachi, including that of Shahrah-e-Faisal and other main road of Karachi city. The Hon'ble Supreme Court has even ordered demolition of various buildings /marriage halls etc. which were found

to be illegally constructed on the main roads and those which were found to be in any residential area being operated for commercial purposes. The matter raised in the present petition /petitions in our view is a matter of factual controversy rather than legal that whether any property situated on a main road could be declared as commercial upon fulfilling of certain formalities without looking to the various aspects which are to be undertaken and considered before declaring any residential property /road for commercialization purposes. Though the KMC authorities could declare a residential property /road for commercial purposes but that has to be made after fulfilling all the legal and codal requirements as prescribed under various laws and bylaws in this behalf.

26. Now coming back to the present case, though it is claimed by the learned counsel for the private respondents that the then Administrator KMC has accorded permission to the project for commercial purposes but equally true is the fact that as per the learned counsel representing the KMC in their record the property even today has been mentioned as a residential property and the NOC or the permission issued by the department in their view is a flagrant violation of the various terms of the NOC granted by the KMC or the rules and regulations of other relevant departments have also been violated by the private respondents.

27. During arguments, we have been informed that as many as 26 major thoroughfares have been regularized for commercial use over the years. According to the respondent-Master Plan department,

various roads had already been declared to be commercial in Karachi in 1975. Subsequently, the Sindh local government department, which handled the land use affairs at the relevant time, had converted several roads in 1978, 1980, 1989, and then 2001. It is urged that the Honorable Supreme Court has been pleased to ban the conversion of residential and amenity plots for commercial use and ordered to raze all illegal constructions in the metropolis; consequently, the SBICA has banned the conversion of residential and amenity plots for commercial use.

28. To assess the legal position of the case and to elaborate on the procedure/necessities of the commercialization/amalgamation of a plot, prima-facie, the only requirement for the commercialization/amalgamation of any plot by allowing change is Public Notice publish in one English and one Urdu leading daily newspaper calling for the objections of the people of the vicinity who can be affected on this account. However, it was argued by the petitioners that no such public notices were ever issued before alleged amalgamation/commercialization; that in the case of *Messrs. Excel Builders and others Vs. Ardeshir Cowasjee and others* reported in **1999 SCMR 2089**, the Honorable Apex Court has observed that the conversion of a residential plot on the main road into a commercial plot is warranted on account of the change in the situation would not justify the violation of any provision of any law or building bye-laws or regulations, nor it would warrant the grant of permission for a high-rise building; that the Government or the

Authority concerned is under obligation to decide the question of many floors keeping in view the extent of availability of utility services like water, electricity, gas, sewerage lines, streets, and roads in the locality involved and the permission for construction of a proposed building should be of minimum floors which may cause minimum inconvenience and discomfort to the residents of the locality; that in the present case admittedly the road where the subject plots are situated is non-commercial and area in question is purely residential and no high-rise building is situated on the said non-commercial road; that the official respondents have failed to perform their duties in accordance with law; and, even nothing has been brought on record to prove that the complaints/objections made by the residents of the area including petitioners were decided by the competent authority or they were called and heard before impugned amalgamation/commercialization. Learned counsel for the petitioners referred to Regulation 18-4.2.1 which provides that no residential plot shall be converted into any other use except with the approval of MPGO after recommendations of the concerned authority after due notice to the public at large. It is further urged that prima facie, the record does not reflect the compliance of the aforesaid regulation has been made; besides above, the conversion of residential plot into commercial could only be allowed as per commercialization policy by the competent authority with the approval of Government and notified in Sindh Government Gazette as provided under Regulation 18.5.1.1, however, no such uniform policy for commercialization for the subject plots has been placed

on record. Be that as it may, we have a reservation to the extent of amalgamation of the subject plots and its approval by the relevant quarters so far as their maximum area is concerned. Prima facie, the area of the two plots after amalgamation exceeds the area as provided under Regulation 18-3.2.1 of the regulations.

29. The above position of the case explicitly shows that the respondent Government departments have not taken into consideration the legal/factual position of the case as well as the dicta laid down by the Hon'ble Supreme Court on the subject issue from time to time. We have also reservations to the extent of purported permission granted by the then Administrator KMC for the subject project for commercial purposes which needs to be looked into afresh after appropriate proceedings if the private respondents approach them for the aforesaid purpose which shall be decided strictly under the law and relevant rules and regulations after providing meaningful hearing to all concerned.

30. We, therefore, under the circumstances, without indulging ourselves in respect of the factual controversies whether the project which as per the petitioner is constructed on residential plots could be converted /declared as commercial and whether amalgamation process undertaken by the private respondents being violative of Regulation 18.3 of KBTPR, deem it appropriate to refer the matter once again to the concerned authorities with directions to the private respondents to move a fresh application to the concerned authorities for conversion of the properties from residential to commercial, if they so desire.

Needless to state that process of amalgamation would thereafter follow, which would be considered in view of the relevant rules, regulations and byelaws. The application furnished by the private respondents in this regard should be complete in every aspect by taking approvals and permissions from various government agencies /departments including CAA, PAF and other concerned departments. We also direct the concerned respondents /departments that after receiving the application, which should be complete in every aspect, to decide the matter within three (03) months' time from the date of receipt of the application and while doing so they would also keep in view and abide by the various directions /instructions issued by the Hon'ble Supreme Court of Pakistan in respect of the commercialization of the main roads or the properties situated in a residential area. We further direct that no construction should be carried out on the disputed properties involved in the present petitions by the private respondents in any manner whatsoever. So far as the issue with regard to height, violation of SBCA Rules and other aspects are concerned, we do not deem it appropriate to give any decision on these issues at present, as these issues would come into picture only when the issue of amalgamation /commercialization would be decided by the competent authority.

31. In view of the above, we therefore under the circumstances partially allow the petitions bearing No.D-953 and 6927 of 2015 by remitting the matter to the competent authorities of respondent Government departments to look into the aspect of the

amalgamation of subject plots and its subsequent commercialization afresh and take a decision, after appropriate proceedings, if the private respondents approach them, within three (03) months.

32. So far as Petition bearing No.D-3127 of 2016 is concerned, since the facts of this petition are akin to the facts of two petitions bearing No.D-953 and 6927 of 2015, hence the above referred decision would mutatis mutandis apply to this petition as well. Apropos Petitions bearing No.D-7271, 7272, 7329, 7330, 7331 of 2015 and 2966 and 5067 of 2016 are concerned, since the main concern therein is about the height issue, the same are also disposed of as having become infructuous, as the issue of height and the powers of CAA, as challenged in these petitions, would only come into picture after permission with regard to commercialization is accorded to the properties under dispute by the concerned respondents /departments, if any; hence these petitions also stand disposed of alongwith all the listed /pending application(s). So far as petition bearing No.D-6541 of 2015 is concerned that is an already disposed of matter in which some compliance is pending, which could be taken up for that purpose hence discharged at the moment.

33. The upshot of the above discussion is that Petitions bearing No.D-953 and 6927 of 2015 and 3127 of 2016 stand partly allowed in the above terms, whereas Petitions bearing No.D-7271, 7272, 7329, 7330, 7331 of 2015 and 5067 and 2966 of 2016 stand disposed of as having become infructuous. The listed /pending applications in all the

above Petitions also stand disposed of. There would however be no order as to cost.

JUDGE

JUDGE

Karachi:

Dated: .07.2021.

(Tahseen, PA)