

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No. 242 of 2018

Dadabhoy Foundation & another
Versus

Karachi Building Control Authority & others

Date of Hearing: 12.12.2023

Appellants: Through Mr. Tariq Memon Advocate.

Respondent No.2&5: Through Qazi Abdul Hameed Siddiqui, Deputy Attorney General.

Respondent No.4: Through Mr. Sandeep Malani, Assistant Advocate General.

Respondent No.6: Through Mr. Muhammad Najeeb Jamali Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Record shows that suit No.74/2003 was being taken up along with suit No.891/2003. The appellants have impugned order dated 15.08.2018 passed by learned Single Judge in Suit No.891 of 2003 whereby learned Single Judge has directed plaintiffs/appellants to remove the construction or the placement of the containers at site, within a period of ten days, failing whereof Nazir was directed to remove the same at the cost of the alleged contemnors/appellants. Prayer of the two suits is reproduced for a comparative analysis:-

<i>Suit No.74/2003</i>	<i>Suit No.891/2003</i>
<i>i. Declaration that the plaintiffs are entitled to use the property bearing No.SNPA-17-B, near Hill Park, Karachi Cooperative Housing Society Union, Karachi, for establishing and running university/ educational institution.</i>	<i>a. Declare that the amenity plot bearing No.SNPA-17-B with constructed building thereon (which was previously known as waseem toosy Hospital) Survey No.35-P/1 measuring 3700 Sq. yards, situated at Karachi Co-operative Housing Society</i>

<p>ii. <i>Permanent injunction restraining the defendants from stopping the plaintiffs from using the aforesaid premises as university/ educational institution or interfering with their use in any manner whatsoever.</i></p> <p>iii. <i>Cost of the Suit.</i></p> <p>iv. <i>Any other relief which this Honourable Court may deem fit and proper under the circumstances of the case.</i></p>	<p><i>Union Limited Block No.3, KARACHI, is an amenity plot meant for the use of a hospital and the Defendant No.3 has illegally converted the same into a commercial education institution.</i></p> <p>b. <i>Declare that the Defendant No.3 has committed violations of the law and rules concerning building control as well as educational institutions/ universities.</i></p> <p>c. <i>Direct the Defendant No.2 to take immediate action against Defendant No.3 in accordance with law and rules.</i></p> <p>d. <i>Permanently restrain the Defendant No.4 from transferring the said property in favour of Defendant No.3 or in that matter in favour of any person/ institution in violation of law.</i></p> <p>e. <i>Permanently restrain the Defendant No.5 and 6 from granting Charter/permission to the Defendant No.3 to run university/ educational institution in violation of law.</i></p> <p>f. <i>Cost of the suit.</i></p> <p>g. <i>Other reliefs as deemed appropriate during course of the suit.</i></p>
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2. Heard the counsels and perused record.

3. Previously an injunctive order was passed in suit No.74/2003 on 21.01.2003 whereby the “parties” were required to maintain status quo. The status of the subject plot of the suits was disputed between parties. The plot is situated near Hill Park whereas status of the plot was claimed to be either educational and/or meant for hospital and so it is yet to be determined in the proceedings. However, learned Single Judge on 21.01.2003 was pleased to direct the parties to maintain status quo. It is not disputed, in fact admitted by Mr. Tariq Memon Advocate, that shifting of the “containers” took place subsequent to the said order of “status quo” and it is appellants’ case that this “status quo” order was effective only for the defendants/respondents and not appellants. Counsel for appellants has also referred to an order passed in JM 3 of

2004, which arises out of one of the suits in respect of an order passed therein, wherein construction raised at that time, being contemptuous, was ordered to be considered/ adjudged at the time of disposal of the suit. However, this recent development of shifting of containers, was subsequent to the order dated 29.10.2010 passed in JM 3 of 2004 and order of status quo dated 21.01.2003. Even otherwise, the order passed in JM has not given a license to carry on construction in violation of status quo order. In fact it restrained the parties from raising construction. Even the permission claimed from Sindh Building Control Authority is of no avail in presence of status quo order and the matter being subjudice.

4. Apparently and undisputedly, as could be seen in undisputed photographs placed on record of this appeal, the containers were shifted for a purpose as an alternate construction, which in any case is violative of status quo order. Containerized structure could not defeat the purpose of status quo order to be maintained by “both parties” and not as interpreted in the order of J.M 3/2004.

5. We are more concerned of the violation of the status quo order, which was passed and/or directed against both the parties and apparently violated and hence it was ordered to be removed. Thus, in these circumstances, appeal merits no consideration and the same is accordingly dismissed along with pending applications. Insofar as contempt proceedings are concerned, they may continue to be proceeded in accordance with law and be taken to its logical end by the learned Single Judge, without being influenced by any of the observations here.

Judge

Judge