

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,*

C.P. No.D– 1879 of 2011

Amber Alibhai & others

Vs.

Younus Ali Gilani & others

1. For hearing of Misc. No.5193 /2014 (U/S. 151 CPC) :
 2. For hearing of Misc. No.9709/2012 (U/S. 151 CPC) :
 3. For hearing of Misc. No.8566/2018 (Stay) :
 4. For hearing of main case:
-

Petitioner: Through Mr. Basil Nabi Malik, Advocate

Respondent No.1: Through Jam Zeeshan, Advocate

Respondent No.5: Through Mr. Ghulam Akbar Lashari, Advocate

Respondents No.6 to 8: Through Mr. Jawwad Dero, Additional Advocate General

Date of hearing: 15.12.2023

ORDER

MOHAMMAD ABDUR RAHMAN,J: Through this Petition, the Petitioners have impugned the construction and the commercialisation of Plot No.144/A, Block-2, P.E.C.H.S Karachi (hereinafter referred to as the “Said Property”).

2. The Respondent No.1 who is the owner of the Said Property has entered appearance through Mr. Jam Zeeshan and has made a

representation that he wishes to demolish the entire structure and sell the Said Property and is abandoning both the original permission and demolishing the construction that has so far been raised on Said Property.

3. Mr. Basil Nabi Malik, who appears for the Petitioners, has contended that while the purpose of this Petition has been served there is a concern that if the Petition is disposed of on the basis of the statement of the Respondent No. 1, unless a demolition permission is issued by the SBCA, it is possible for the Respondent No., after the disposal of the petition, to restart construction on the basis of the existing plan which would not have been set aside.

4. Mr. Jam Zeeshan while agreeing with the contentions of the Petitioner had on 17 November 2023 stated that he would file an application for the demolition permission with the SBCA and it was directed that the application when received would be decided by SBCA within a period of seven days.

5. A report has been filed today that while the application has been maintained by the Respondent No. 1, seeking the permission for the demolition of the construction on the Said Property, it is the policy of the SBCA that in a case where approval for a construction has been accorded for a "Public Sale Project" and whereafter the proponent of the construction applies for permission to demolish the construction, the SBCA does not grant the application for demolition until and unless the project is declared as "abandoned" and which entails a public notice being issued by which representations may be placed before the SBCA from allottees of that project as to the liability of the Proponent of the Project to the allottees. The SBCA state that it is only after the settlement of all dues are made to the allottees will the demolition permission be granted.

6. Mr. Jam Zeeshan in reply has stated that no allotments had been made by the Respondent No. 1, but so as to satisfy the requirements of the SBCA an application for abandoning the project has also been maintained.

7. We have heard the counsels and perused the record. Permission for construction is accorded by the SBCA under Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1997 read with Regulation 3-2.6 of the Karachi Building and Town Planning Regulations 2002. Once permission has been granted, under Sub-Section (1) of Section 12 of the Sindh Building Control Ordinance, 1979 read with Regulation 5-1 of the

Karachi Building and Town Planning Regulations, 2002 it is mandatory for a Proponent of such construction to obtain permission for the sale of units in that Project through “audio-visual” aids and only thereafter will the Proponent of a Project be permitted to sell out units in the project so being constructed.

8. In the event that the builder wishes to abandon the Project for whatever reason, so as to secure the interests of any third party allottees, Regulation 5-1-22 of the Karachi Building & Town Planning Regulations, 2002, clarifies as under:

“5-1-22. Abandonment of the Project

If, for any reason, the project is abandoned by the Builder, the Builder will refund the total amount received from the purchaser with mark up at the present bank rate on the same, for the whole period of retention of the money, along with an additional compensatory amount equal to 10% of the amount received from the allottee up-to-date against the booked unit, within 60 days of the publishing of the public notice A5 size in Urdu and English newspapers in accordance with the specimen approved by the Authority. Authority will declared the project abandonment on payment of prescribed fee as per Schedule-A.”

This regulation, as is obvious, secures the interests of the allottees of a Project, so as to ensure that a Proponent of a project, if he reneges on his obligation, remains liable to the allottees for amounts received by the Proponent of a Project until such liability is fully discharged and would be enforceable as contractual rights secured by such allottees, irrelevant as to this Regulation.

9. We have also considered the Regulation 3-2.18 of the Karachi Building & Town Planning Regulations, 2002 and which states as under:

“3-2.18. Permit to Demolish Buildings.

No building may be demolished without written permission from the Authority on a prescribed form (ZD-10). No permit to demolish will be issued unless the Authority is assured by the applicant through an undertaking that the electricity, gas, water, sewerage or other utility services connections to the building or portion to be demolished shall be effectively cut off or relocated and such connections shall remain cut off/ relocated during the period of the work in case of any adverse eventuality the owner/contractor shall be fully responsible.

The Authority shall reject/approve application for demolition within 15 days from the date of submission. In case of refusal by the Authority the rejection letter shall specifically cite the relevant clauses etc.

All applications for a permit to demolish a building shall be made on appropriate form (ZP-8) and permission to demolish by the Authority shall be issued on appropriate form (ZD-10)."

10. We have considered both the provisions of Regulation 5-1.22 of the Karachi Building & Town Planning Regulations, 2002 and Regulation 3-2.18 of the Karachi Building & Town Planning Regulations, 2002 and are clear that while each of these provisions need to be complied with they are each independent of the other as no exception has been created in Regulation 3-2.18 of the Karachi Building & Town Planning Regulations, 2002 to first comply with the provisions of Regulation 5-1-22 of the Karachi Building & Town Planning Regulations, 2002, in case of "Public Sale Projects," prior to obtaining a sanction for demolition. That being the case we are not inclined to except the contentions of the SBCA and which are in this regard rejected, and it is clarified that the SBCA is obligated to consider each of the applications maintained by the Respondent No. 1 independently and not to make the decision on the application under Regulation 3-2.18 of the Karachi Building & Town Planning Regulations, 2002 contingent on the decision of the application under Regulation 5-1-22 of the Karachi Building & Town Planning Regulations, 2002.

11. In the circumstances we hereby direct the SBCA to:

- (i) decide the application submitted by the Respondent No. 1 under Regulation 3-2.18 of the Karachi Building & Town Planning Regulations, 2002 within a period of one week of the date of this order and to submit a report to the MIT-II confirming that compliance has been made of this Order; and
- (ii) process the application submitted by the Respondent No. 1 under Regulation 5-1-22 of the Karachi Building & Town Planning Regulations, 2002.

This petition stands disposed of along with all listed applications in the above terms with no order as to costs.

JUDGE

JUDGE