

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,

C.P. No.D- 6190 of 2023

Abdullah Yaqoob & another

Vs.

Government of Sindh & others

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1. For hearing of Misc. No.28933/2023 :
 2. For hearing of main case.

Petitioner : Through Mr. Ihsrat Zahid Alvi, Advocate

Respondent No.1 : Through Mr. Miran Muhammad Shah,
Additional Advocate General

Respondents No.2 to 5 : Through Mr. Dhani Buksh Lashari,
Advocate along with Jehangir Deputy
Director SBCA

Date of hearing : 12.01.2024

ORDER

MOHAMMAD ABDUR RAHMAN, J: This is a petition that has been maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking directions to be given to the Sindh Building Control Authority (hereinafter referred to as the "SBCA") to demolish the structure that exists on Plot No. GRW 84, Garden West, Karachi (hereinafter referred to as the "Said Property") on account of the structure thereon falling within the category of a "Dangerous Building" as identified under Section 14 of the Sindh Building Control Ordinance, 1979 (hereinafter referred to as the "SBCO, 1979").

2. The Petitioner has attached to this Petition various photographs, the bare perusal of which can leave no doubt that the construction that exists on the Said Property is a hazard and which if left in its current state would eventually fall and may even be a threat to the lives of persons who may be within the immediate vicinity of the Said Property at that time.

3. The SBCA have filed a report, which is taken on record, and which states as under:-

“ ... 2. That previously the owner of the plot subject matter of this petition has obtained demolition permission from the authority (SBCA) on 27-11-2023, thereafter, started demolition of the said building to obtain fresh approval of construction on the said plot, in this regard a separate report is already been filed by the concerned District of SBCA.

3. That the site inspection of the plot has been carried out by the Technical Committee on Dangerous Buildings (TCDB) and observed that the building in question is comprising of Ground + 4 upper floors and partially demolished by the owner himself. It is pertinent to mention here that neither the building in question was declared dangerous nor the same was recommended for heavy repair as the owner of the building has obtained demolition permission from the concerned District South of SBCA.

4. That undersigned and others members of Technical Committee on Dangerous Building is of the view and considering the material facts and suggested the building subject matter of this petition is critically damaged structure is at high risk of and getting collapse anytime resulting loss of human lives in future and demolish without any delay as the building is partly being demolished by the owner and does not come under the domain of TCDB. Report is submitted for kind perusal and furthers orders.”

4. We enquired from Mr. Dhani Bux Lashari, who appeared on behalf of the SBCA, to clarify as to how a permission for demolition having been sanctioned by the SBCA could override the statutory obligations of the SBCA to both declare a building as dangerous and to demolish such structure. The reply that has been received from the SBCA was that once a demolition permission had been granted,

the jurisdiction of the SBCA under section 14 of the Sindh Building Control Ordinance, 1979 is ousted.

5. We are unable to agree with the contention of the Counsel for the SBCA. The preamble of the SBCO. 1979 reads as under:

“ ... *Preamble.*

*Whereas it is **expedient to regulate the planning, quality of construction and buildings control. Prices charged and publicity made for disposal of buildings and plots by builders and societies and **demolition of dangerous and dilapidated buildings**** in the province of Sind*

Further under section 14 of the SBCo, 1979 it is clarified that:

“ ... **14. Dangerous Buildings**

(1) If it comes to the notice of the Authority that a building is likely to collapse, the Authority may, after such enquiry as it deems fit order for carrying out the specific repairs or demolition of the whole or part of the building.

(2) Where the specific repairs are to be carried out, the Authority may, by notice, require the owner of building or in the event of his failure the occupier thereof to carry out such repairs within such period as may be specified in the notice and if the repairs are not carried out within the specified period, the Authority may, notwithstanding any other law for the time being in force proceed to have the building demolished and the cost of demolition shall be recovered from the owner as arrears of land revenue.

(3) Where the whole or a part of the building is to be demolished, the Authority may, by notice, require the occupier or occupiers thereof to vacate the building within the period specified in the notice and if the building has not been vacated within such period, the Authority may, notwithstanding any other law for the time being in force order that occupier or occupiers of the building be ejected, if necessary, by force.

Provided that no action shall be taken under this section unless the person who is likely to be affected thereby is given an opportunity of being heard.”

As is apparent the purpose of the SBCO, 1979, as indicated in the Preamble, was *inter alia* to regulate the demolition of “dilapidated” and “dangerous” buildings within the Province of Sindh. The duty cast is clearly in furtherance of the duty of the SBCA to ensure that construction in the Province of Sindh ensures the safety of the public and which we have no doubt includes the demolition of dilapidated” and “dangerous” structures which are and have in the past been the cause of a loss to human life. It barely needs to be said that such structures have in the past both on account of seismic activity and on account of seasonal rains led to a loss of human life as portions of the structure of such construction have detached from the main structure and have fallen on persons who were within the vicinity of such a construction. It is in this regard, that the provisions of Sub-Section (1) of Section 14 of the SBCO, 1979 cast on the SBCA a mandatory obligation, to take notice of a structure which is “likely to collapse” and after conducting an enquiry to either compel the owner of the structure to either:

- (a) carry out specific repairs, or
- (b) to demolish the whole or a part of the building.

We would stress that the obligation that is cast on the SBCA to take notice, is not to wait for information to be placed before it regarding the likelihood of a building to collapse but rather it is a continuing obligation to take a proactive role by itself in reviewing the construction of buildings within its jurisdiction so as to identify buildings that are likely to collapse and after completing an enquiry, to forthwith take action to direct the owner to carry out specific repairs to remove the likelihood of the building from collapse or to direct the owner to demolish the “whole” of the

building or a “part” of a building to remove the likelihood of the building from collapse.

6. We have in this regard considered the contentions of Mr. Dhani Bux Lashari, that as the SBCA has ordered for the demolition of the building and which having partially been undertaken by the owner of the Said Property, the SBCA are thereafter absolved of their obligation under Sub-Section (1) of Section 14 of the SBCO, 1979 to regulate the status of a building even if there is a likelihood that the building may collapse. We not only are unable to agree with such contentions but are also deeply concerned with the position taken by the SBCA in abdicating its duty as cast on it under Sub-Section (1) of Section 14 of the SBCA, 1979 to regulate buildings which are such a state. While, we understand that having obtained a permission from the SBCA to demolish a construction on a property the responsibility is on the owner of the Said Property to ensure that the demolition is completed, we do not agree with Mr. Dhani Bux Lashari that the issuance of such a demolition permission would override the statutory obligation cast on the SBCA under Sub-Section (1) of Section 14 of the SBCO, 1979 to regulate buildings which are likely to collapse. In the facts of this Petition, it is admitted by the SBCA that after partially demolishing the construction, the owner of the Said Property has discontinued the demolition leaving the structure in what can only be described as a perilous state. The demolition having been discontinued by the owner of the Said Property and the remaining structure having every likelihood of collapse should have compelled the SBCA to conduct an enquiry under Sub-Section (1) of Section 14 of the SBCA, 1979 to determine the likelihood of the collapse of the structure and to thereafter take measures to proportionally deal with the risk as assessed. This was not been done and the SBCA having abdicated its responsibilities is now hiding behind the demolition permission issued by it the SBCA to the owner of the Said Property while putting human life at risk. To that

extent we have examined both the provisions of Sub-Section (1) of Section 14 of the SBCO,1979 as well as the provisions of Regulation 3-2.18 of the KB&TPR, 2002 and note that neither the statute nor the regulation create any exception to exclude the obligation of the SBCA to regulate dangerous buildings where a demolition permission is granted. We would consider that such an obligation would continue and any expense incurred by the SBCA to recover the costs of such demolition can be recovered by the SBCA under Sub-Section (2) of Section 14 of the SBCO,1979 as arrears of land revenue. There being no justification for not demolishing the construction on the Said Property, the Petition therefore must be allowed.

7. For the foregoing reasons we are of the opinion that the under Sub-Section (1) of Section 14 of the SBCO, 1979 the SBCA, notwithstanding that they have issued a permission to the owner of a project to demolish the construction on a property, have a continuing obligation to regulate all buildings which are likely to collapse and to regulate their demolition or repair in terms of Section 14 of the SBCO, 1979 read with the provisions of Regulation 7 of the KB&TPR, 2002. The Petition is therefore allowed, with no order as to costs, with directions to the SBCA to demolish the entire structure on the Said Property within 3 weeks and to submit a report to the MIT-II confirming its compliance of this Order.

Karachi:
Dated:

JUDGE

JUDGE