

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 104 of 2024
[Aqeela Younus & others versus SBCA & another]

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No. 1716 of 2024.
2. For orders on CMA No. 1717 of 2024.

29-01-2024

Mr. Muhammad Mustafa Mamdani, Advocate for Plaintiffs.

Adnan Iqbal Chaudhry J. - Urgency granted. 2. The Plaintiffs have challenged notice dated 22.01.2024 issued by the Sindh Building Control Authority [SBCA], hereinafter '**the impugned notice**', rejecting the proposed building plan submitted by the Plaintiffs for constructing Plot No. 18, Row No.7, Block II-A, Nazimabad, measuring 422 square yards [**suit plot**]. By CMA No. 1717/2024 the Plaintiffs pray for a temporary injunction to restrain the SBCA from demolishing the construction already raised on the suit plot. Thus, the Plaintiffs acknowledge that construction raised on the suit plot was without an approved building plan which is a violation of section 6(1) of the Sindh Building Control Ordinance, 1979 [SBCO]. The case of the Plaintiffs is that on 25.07.2023 they had applied to the SBCA for approval of a building plan in respect of the suit plot; that such building plan was neither approved nor rejected by the SBCA despite the passing of 60 days; consequently, the building plan proposed by the Plaintiffs was deemed approved by virtue of sub-section (3) of section 7-D of the SBCO¹ read with Regulation 3-2.6.2 of the Karachi Building & Town Planning Regulations, 2002 [KBTPR]; and thereafter, said building plan could not have been rejected by the SBCA. Heard learned counsel.

The 'deemed' approval of a building plan under sub-section (3) of section 7-D of the SBCO is subject to an important qualification, *viz.* that the proposed building plan does not

¹ There is an error in the numbering of the provision. Section '7-D' is numbered twice. The reference here is to the second one.

contravene the building regulations (KBTPR), the Master Plan or the Site Development Scheme of the area. Regulation 3-2.6.2 of the KBTPR further requires the builder to give notice to the SBCA before commencing building works on the deemed approval.

From the impugned notice it appears that the Plaintiffs were already on notice to show-cause against rejection of the proposed building plan for it allegedly proposed construction beyond the building regulations, but the Plaintiffs failed to respond to such show-cause notice, hence the impugned notice. In other words, it appears that the SBCA was not silent on the proposed building plan.

The proposed building plan has not been annexed with the plaint to disclose the extent of the construction proposed, nor does the plaint disclose whether notice was given to the SBCA under Regulation 3-2.6.2 of the KBTPR before commencing construction. While the application seeking approval proposes construction of basement + ground + one floor, the photographs annexed to the plaint show partial construction also of a second floor. The photographs further reflect that construction has been raised over the entire plot area without leaving any compulsorily open space, a violation of Regulation 25-2.1 of the KBTPR; and that projections are protruding beyond the property line contrary to Regulation 9-4 KBTPR. In such circumstances, reliance on sub-section (3) of section 7-D of the SBCO appears to be misplaced. In respect of a similar provision in the erstwhile Regulation No.13(3) of the Karachi Building and Town Planning Regulation, 1979, a learned Division Bench of this Court in *Jamil Ahmed versus Karachi Building Control Authority* (2001 MLD 1635) had observed that such provision cannot be invoked to confer a cloak of legality on action already taken in defiance of law.

Therefore, in view of the foregoing, the Plaintiffs do not make out a *prima facie* case for a temporary injunction. CMA No. 1717/2024 is dismissed *in limine*.

JUDGE