

THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No.D-3580 of 2023

Before: Salahuddin Panhwar & Khadim Hussain Soomro, JJ

Petitioners : Muhammad Waseem & Others
 Respondents : Director General, SBCA and others
 Date of hearing : 07.05.2024.
 Date of judgment : 07.05.2024.

Appearance.

Mr. Muhammad Kamran Shabbir advocate for the Petitioner.
 Syed Anwar Ali Shah and Ms. Roopmala Singh advocates for SBCA.
 Mr. Jawad Dero, AAG.

J U D G M E N T

KHADIM HUSSAIN SOOMRO, J. Through the instant petition, Petitioner is seeking demolition of illegal construction raised by Respondent No.2, 3 & 4 with the following prayers:

- a. *To call and restrain the respondent No.2 to 4, their agents, representatives and anybody else from raising illegal construction on Plot No. 3-C-12/26 Nazimabad, Karachi, without any approved map / plan, as the said illegal construction over the Building is very dangerous for the lives of other residents, neighbors as well as peoples of the locality.*
- b. *To direct the Official Respondent No. 1 to provide the complete record in respect of construction on the subject Plot, and also direct the official respondents to demolish the illegal structure. Also to direct the respondent No. 1 to demolish the structure constructed on the land in between plot 3-C-12/26 and railway line. Further Respondent No. 1 may please be directed to demolish structure on the land in between plot 3-C-12/25 and Plot 3-C-12/26 illegally occupied by the Respondent No. 2 to 4.*
- c. *To direct the respondent Nos. 1 to act strictly in accordance with law and to provide legal protection to the petitioner and inhabitants of the area.*
- d. *Cost of the petition.*
- e. *Any other relief(s), which this Honourble Court may deem fit and proper under the circumstances of instant petition.*

2. Precisely relevant facts are that the Petitioners No. 1 to 8 resides in plots adjacent to Plot 3-C-12/26, Nazimabad, where illegal construction of flats is taking place; that the construction is allegedly being carried out illegally by Respondents No. 2 to 4, with the involvement of Respondent No. 1 and SBCA officials; that the construction of flats on the residential plots is stated to be completely illegal, with construction ongoing despite objections raised by the petitioners; that the construction is being done hastily and on weak foundations, posing a danger to the lives of residents and neighbors; that the construction is against the law, as only Ground + 2 floor construction is allowed on the plot, but the respondents are constructing flats for sale purposes, violating the rights of the petitioners; that the construction is being carried out against approved plans, covering compulsory open space and encroaching upon additional land not designated for construction in the master plan; that respondents are accused of not seeking proper permissions and ignoring complaints from the residents and their counsel; that the illegal construction is claimed to have caused disturbance to basic amenities in the area, leading to conflicts among residents; that despite complaints and reminders to the authorities, no action has been taken, and it is alleged that officials are complicit in the illegal activities; that the petitioners have received threats from the respondents, causing them mental anguish, and they feel compelled to seek legal recourse.

3. SBCA filed comments, being relevant Paragraphs 3 & 5 are reproduced as follows:

"3. Brief History.

- 1. It is respectfully submitted that it is a case of construction on the basis of approved building plan.**
- 2. That initially the authority had granted approval for construction of residential bungalow comprising of Ground + 1st Floor only vide letter dated 17.03.2010 [photocopy annexed as 'A'].**
- 3. That the owner did not raise construction and the approved was expired after one year. The owner submitted application for renewal of building plan which was granted by the authority vide letter dated 05.06.2023. [photocopy annexed as 'B']**

4. That after getting renewal of building plan the owner started raising construction on half of portion of plot, however, he raised columns of Ground Floor and fixed shuttering in front COS against which the authority took demolition action and demolished the columns and removed shuttering from the COS on Ground Floor [Photographs annexed as 'C'].

5. That in view of the above, it is respectfully submitted that the construction is being raised on the basis of approved plan and the violation committed so far has been removed. In case any violation is found in future, same will be removed / demolished'.

4. In light of the observations presented, it is acknowledged that the Petitioners have not substantiated any legal transgressions or procedural anomalies in relation to the building in question. Moreover, the Sindh Building Control Authority Ordinance prescribes a remedy for such matters. Notably, Section 7-A of the Sindh Building Control Ordinance, 1979, was introduced through The Sindh Building Control (Amendment) Ordinance, 1982 (Sindh Ordinance No. III of 1982), which stipulates:

"7-A. Where the provisions of sub-section (1) of section 6 are violated the building may without prejudice to any other action including sealing of the building or ejection of the occupants be ordered by the authority or any officer of the authority authorized in this behalf to be demolished, at the cost of the builder in the case of public buildings and the owner in other cases".

5. It is manifestly clear that, in instances of contravention of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979, the Sindh Building Control Authority (SBCA) is endowed with the legal authority to undertake actions prescribed under Section 7-A of the same Ordinance. This encompasses, among other prerogatives, the authority to seal upon structures wherein construction endeavours are in breach of the prescribed regulations, specifically, those executed without an officially endorsed plan from the Sindh Building Control Authority (SBCA) or in deviation from an authorized schematic. Such enforcement actions by the SBCA, undertaken "without prejudice" to any additional remedies they may choose to initiate, ought to be construed as a testament to their expansive regulatory dominion. This includes the authority to demolish unlawful structures on said property or to initiate criminal proceedings

against the transgressors. Furthermore, the prerogative vested in the SBCA under Section 7-A of the Sindh Building Control Ordinance, 1979, operates autonomously from the authority granted under Section 19 of the same Ordinance, which reads:

"19. Penalty.- (1) Whoever contravenes any provision of this Ordinance, shall be punished with simple imprisonment for a term not exceeding three years or with fine not less than fifty thousand rupees or with both and if the offence is a continuing one, further fine not exceeding five hundred rupees for each day after the date of the first commission of the offence.

(1-A) The authority or any person authorized by it in this behalf may compound any offence under this Ordinance on such terms and conditions as may be prescribed".

6. Pursuant to the Sindh Building Control Ordinance of 1979, a Special Court has been established under the aegis of Section 18-A, specifically to adjudicate offences delineated in Sub-Section (1) of Section 19. This judicial body, in accordance with Sub-Section (2) of Section 19, is empowered to initiate proceedings exclusively upon the lodgment of a complaint by the Sindh Building Control Authority (SBCA) or an individual duly empowered by the SBCA. The provisions enshrined in Section 18-D of the Ordinance further delineate the scope and purview of the Special Court, which provides: "A Special Court shall take cognizance of an offence falling under this *Ordinance*, on receiving the complaint and a report in writing by any police officer for violating the provisions of the *Ordinance* which constitute an offence under the *Ordinance*".

7. This Court has previously directed the Government of Sindh to constitute "Special Courts" on a District basis, in alignment with the essence and purpose of Section 18-A of the Sindh Building Control Authority (Amendment) Ordinance, 2013, and this establishment is to be completed within a period of one month. Notwithstanding this directive, the Petitioner retains the prerogative to initiate legal proceedings against any infractions committed by construction entities or builders, which can be pursued before the Sindh Building Control Authority (SBCA) according to Section 7-A of the Sindh Building Control Ordinance, 1979, as well as before the aforementioned Special Courts. The dictum laid down by the Honourable Apex Court of Pakistan in the case of ***Mian Azam Waheed***

and others v. The Collector of Customs through Additional Collector of Customs, Karachi (2023 SCMR 1247) emphasizes the principle that the High Court's writ jurisdiction should not be overused as a primary avenue for addressing all grievances and hardships. Instead, it should only be invoked when no other effective, alternative, and adequate legal remedies are available. This principle is rooted in the doctrine of exhaustion of remedies, which requires a litigant to fully utilize the legal remedies provided by law before seeking a new one in a different court or jurisdiction. This approach ensures that the judicial system functions efficiently and that the higher Courts are not burdened with cases that could be resolved through other means provided by law.

8. In consideration of the stipulation contained in the aforementioned provisions, it becomes evident that the subject matter lies beyond the ambit of writ jurisdiction. Consequently, the instant petition is adjudged non-maintainable and is thus dismissed, along with all interlocutory applications pending before this Court.

9. Before parting with this Order, it is imperative to direct that the Law Secretary diligently oversee the establishment of Courts per the provisions set forth in the Sindh Building Control Authority (Amendment) Act, 2013. Alternatively, with the concurrence of the Honourable Chief Justice of Sindh High Court, the Law Secretary shall promptly notify the Civil/District Courts vested with the authority to function as "Special Courts," as stipulated under Section 18-A of the Sindh Building Control Authority (Amendment) Ordinance, 2013. This directive must be implemented within a strict two-month timeframe without exception. A comprehensive compliance report shall be submitted to this Court.

10. These are the reasons for the short Order announced on 07.05.2024.

JUDGE

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