

# *IN THE HIGH COURT OF SINDH AT KARACHI*

## **Constitution Petition No. D – 4818 of 2023**

### PRESENT:

Mr. Justice Aqeel Ahmed Abbasi,  
Chief Justice &  
Mr. Justice Abdul Mobeen Lakho.

### **Priority**

1. For orders on Misc. No. 4291/2024.
2. For orders on office objection.
3. For hearing of Misc. No. 22090/2023.
4. For hearing of Main Case.

22.03.2024.

Mr. Usman Farooq, Advocate for the petitioners

Mr. Ubaidullah Abro, Advocate for the respondent/SBCA.

Mr. Abdul Razzak, Advocate for intervener.

Mr. Saifullah, Assistant Advocate General.

## **ORDER**

1. Through instant petition, the petitioners, *who claim to be the residents of the Gulshan-e-Maymar*, have approached this Court for issuance of directions to the Sindh Building Control Authority to allow the petitioners to form and register a Residents Maintenance Society of Gulshan-e-Maymar Housing Project, while referring to provision of Regulation 5-2.24 of the Karachi Building and Town Planning Regulations, 2002 as according to the learned counsel for the petitioner, being the owners/residents of the Gulshan-e-Maymar, want to maintain the society by collecting the maintenance charges from the residents of Gulshan-e-Maymar.

2. Notices were issued to respondents as well as Advocate General Sindh, pursuant to which, comments have been filed, wherein the claim of the petitioners has been seriously disputed on the ground that petitioners do not represent the entire residents, whereas, they are mostly estate brokers and are chronic defaulters towards maintenance charges of respondent No. 3, whose details have been annexed alongwith the comments. It has been further contended by the learned counsel for respondent No.3 that petitioners have no locus standi to form such an association for the reason that respondent No.3 being a private limited company is the lessor and not a cooperative housing society and already maintaining the entire society to the satisfaction of all the owners/residents, whereas, the society as spread over to 1100 acres of land, wherein, there are large number of projects constructed therein.

3. It has been further contended by the learned counsel for respondent No.3 that petitioners have otherwise not approached with clean hands to this Court as they are chronic defaulters towards maintenance charges and in order to avoid such payments and to blackmail the respondent's management, have filed instant frivolous petition, whereas, some of the residents has also filed application under Order 1 Rule 10 CPC to become a party, and to dispute their right or entitlement to form a maintenance committee under the aforesaid provision of law and to become the representatives of large number of owners/residents of Gulshan-e-Maymar. It has been further submitted by the learned counsel for respondent that since the entire housing scheme is still being managed and maintained by the respondent No.3, which is a private limited company,

therefore, no occasion has been arisen either to handover the possession or its management to petitioners or to authorize the formation of a maintenance committee, whereas, constitutional jurisdiction of this Court under Article 199 of the Constitution cannot be invoked against a private limited company.

4. Learned counsel representing the Sindh Building Control Authority also supports the contention of learned counsel for respondent No.3 and submits that prima facie, the provisions of Regulation of 5-2.24 are not attracted in the instant case as the respondent No.3 is not a Registered Cooperative Housing Society, and it is owned and being managed by a private limited company, whereas, prima facie, dispute relates to private parties and the SBCA has nothing to do with such dispute.

5. Learned Assistant Advocate General has also referred to the provision of the Sindh Condominium Act, 2014 and the Sindh Act No. XI of 2015, which deal with the formation of maintenance societies in respect of cooperative societies only, whereas, according to learned Assistant Advocate General, prima facie, in respect of private limited company, there are no such provisions whereby, maintenance committee could be formulated.

6. While confronted with hereinabove factual and legal position, learned counsel for the petitioners could not submit any reasonable explanation, however, submits that since the petitioners are the owners/residents of Gulshan-e-Maymar, therefore, they are desirous to form a maintenance committee in terms of the aforesaid Regulations of the Karachi Building and Town Planning Regulations, 2002.

7. We have heard the learned counsel for the parties as well as the learned Assistant Advocate General, perused the record and also examined the relevant provisions of law, which prima facie reflects that petitioners, who are representing a very small number of residents of Gulshan-e-Maymar and are reportedly chronic defaulters towards the payment of maintenance charges of respondent No.3, could not make out a prima-facie case either of their locus standi or their representative capacity of large number of owners/residents of Gulshan-e-Maymar, therefore, cannot persuade the Court for issuance of directions to the respondents to process their request for formation of maintenance committee. Moreover, the matter primarily involves disputed facts and relates to diversified claims of the private parties, which cannot otherwise be examined or resolved by this Court while exercising its constitutional jurisdiction.

9. Accordingly, instant petition being misconceived, is dismissed alongwith all listed applications.

**CHIEF JUSTICE**

**JUDGE**

**\*A.S.\***