

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI  
**C. P. No. D – 2576 of 2024**

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Date:                      Order with signature(s) of the Judge(s)  
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1. For orders on CMA No. 11725/2024 (Urgent Appl.).
2. For orders on CMA No. 11726/2024 (Exemption Appl.).
3. For orders on CMA No. 11727/2024 (Stay Appl.).
4. For hearing of main case.

**23.05.2024**

M/S. Taimoor Ali Mirza and Ali Nawaz Khuhawar Advocates for the  
Petitioners.

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1.        Urgency is granted.
  
2.        Exemption application is granted subject to all just exceptions.
  
- 3-4.     Petitioners are aggrieved of different Notices issued to the  
Petitioners No.2 to 5 by Respondent No.2 & 3-SBCA as well as  
Respondent No.6-Assistant Commissioner (Pages 73 to 81), calling upon  
the Petitioners to remove the construction material / debris from the roads  
/ streets in front of subject plots, whereupon construction has being done.  
Contended that no such Notice was issued to Petitioner No.1 (Jumani  
Builders) but yesterday evening, Police has picked up his workers at the  
Site, which is nothing but highhandedness. Has referred to the individual  
Approved Building Plans issued by S.B.C.A. [available at pages-33 to 47],  
besides, approval from the Concerned Authority, viz. Karachi Metropolitan  
Corporation (KMC), Town Municipal Corporation Saddar Karachi (TMC),  
whereby permission is granted to the Petitioners for utilizing the land  
temporarily for putting building material; requisite fee / charges are also  
paid in respect thereof as mentioned in the documents, Pages 49 to 59.  
Argued that the impugned Notices have been issued on the insistence and  
at the behest of Respondent No.6-Assistant Commissioner Civil Lines,  
Sub-Division (South) Karachi, who has addressed a Correspondence

dated 08.05.2024 (also impugned) to the Concerned Authorities / Official Respondents; the two provisions of Karachi Building and Town Planning Regulations, 2002, viz. 4-13.2.9 and 8-18.5 on the basis of which the purported impugned action is taken, are also referred.

The above provisions state, *inter alia*, that the Builders / Developers will be responsible for disposal of debris / waste material and keep the road / street clear for traffic; *whereas*, Petitioners' counsel has read Regulation 8-2, which is reproduced herein under\_

**"8-2. Use of Public Streets**

*No part of any street shall be used in connection with the construction, repair or demolition of any building except with the written permission of the Concerned Authority. Any person holding such permission shall put up and maintain to the satisfaction of the Concerned Authority, fences or barriers in order to separate the building work from such street. Where such separation is not possible he shall make arrangement for the security of public to the satisfaction of the Concerned Authority."*

The above shows that the requisite building approvals and utilization of land on temporary basis exist in favour of the Petitioners, thus, issuance of the impugned Notices are *prima facie* not a fair and reasonable exercise of lawful authority, coupled with the fact that apparently these Notices were issued at the behest of the Assistant Commissioner-Respondent No.6, pursuant to the above purported Correspondence. Petitioners' counsel has referred to photographs that building material has not obstructed any traffic or caused any nuisance. This can be ascertained through a site inspection.

A well-known judgment of the Honourable Supreme Court is also of relevance, reported in **1993 SCMR 1533** *Independent Newspapers Corporation (Pvt.) Ltd. and another vs. Chairman Fourth Wage Board and Implementation Tribunal for Newspaper Employees, Government of Pakistan, Islamabad and 2 others*, holding, that the excessive use of lawful power is also unlawful. Issue notices to the Respondents by all

modes except publication as well as to learned Advocate General Sindh, for **30.05.2024** at **11:00 a.m.** Till the next date of hearing, operations of all the impugned Notices issued by SBCA as well as Respondent No.6 shall remain suspended.

Learned Nazir is appointed as Commissioner to inspect the Sites, where construction is carried out by the Petitioners to ascertain the following:

1. Whether public streets are blocked by the Petitioners;
2. Whether proper fencing is done to separate the area, where building material is put on the public road / streets, as per the Approvals / Permissions.

Such inspection shall be carried out within three (03) working days, after due notice through Whatsapp and other usual modes in particular to Respondents No.3, 5, 6, 7, 8 and 9. Fee of the inspection shall be Rs.30,000 (Rupees Thirty Thousand Only) for each site, payable by the Petitioners.

On the next date of hearing, Respondent No.3-Deputy Director District South SBCA and Respondent No.6 should be present in Court.

**JUDGE**

**JUDGE**