

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &  
Mohammad Abdur Rahman, JJ,

C. P. No. D – 1396 of 2020

Shamim-ul-Haq & others  
Vs.  
Province of Sindh & others

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For orders as to maintainability of petition :

Petitioner: Through Mr. Khawaja Naveed Ahmed, Advocate  
Respondent No.1: Through Mr. Naeem Akhtar Talpur, Addl. A.G. Sindh  
Respondent Nos.2 &3 : Through Mr. Nadir Khan Burdi, Advocate  
Date of hearing: 14.11.2023  
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**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** This is a Petition that has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, impugning three show cause notices each dated 19 February 2020 issued by Sindh Building Control Authority (hereinafter referred to as the "SBCA") in respect of the usage of three separate plots as marriage halls.

2. The Petitioners are each the owners of plots, the details of which are indicated in the table below:

Petitioner. No.	Name on Lease	Plot No.	Usage
1.	Shamim ul Haque	1111 &1112 Sheet No. III, Sector No. 11 ½ Mansoor Nagar, Karachi	Commercial
2.	Mehmood Alam	7,8,53, 54. Sheet No. I, Sector 14 i, Sir Syed Colony, Orangi Township, Karachi	Commercial

3.	Anjum Ara	304, Sheet No. II, Sector 16, Gulshan e Bahar, Karachi	Commercial
4.	Nazeer Ahmed and Abdul Rasheed	209,210 & 211, Sheet No. I, Sector 16, Sir Syed Colony, Orangi Township, Karachi	Commercial
5.	Afzal Hussain and Ajmal Hussain	347 & 248, Sheet No. I, Sector 11 ½, Ghaziabad, Orangi Township, Karachi	Commercial
6.	Abdul Majeed and Khairunissa	Plot No. 1, Sheet No. II, Sector No. 16-I, Orangi Town, Karachi	Commercial
7.	Muhammad Manzurl Haque	349 & 350, Sheet No. I, Sector 11 1/2 , Ghousia Baloch, Karachi	Commercial
8.	Asif Raza	326,327,328, Sheet No. I, Sector II, Bewa Quarters, Korangi Township, Karachi	Commercial
9.	Muhammad Fazal Haq and Jamila Khatoon	203, 204, 205, 206, 207, & 208, Sheet No. II, Sector 16, Sir Syed Colony, Orangi Township, Karachi	Commercial

The Petitioners have attached to the Memo of Petition copies of their leases along with the leases of two other plots the details and ownership of which are indicated below:

Petitioner. No.	Name on Lease	Plot No.	Usage
6.	Muhammad Saleem	348-A, Sheet No. I, Sector 11 ½, Ghaziabad, Orangi Township, Karachi	Commercial
7.	Muhammad Ameer ud Din	224, Sheet No. 1, Sector 16, Gulshan e Bahar, Karachi	Commercial

As is apparent each of the properties that are involved in each of these petitions have been planned, allotted and leased as Commercial Properties.

3. The Honourable Supreme Court of Pakistan in the decision reported as **Abdul Karim vs. Nasir Salim Baig**<sup>1</sup> has held that:

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<sup>1</sup> 2020 SCMR 111

“ ... Besides, Jam Sadiq Ali Park, there are so many other amenity plots in the city meant for parks, playgrounds and other amenity use as per the original Master Plan of the city which have been allowed to be converted into commercial use. DG shall take steps to have all such plots which were originally meant for residential purposes amenity plots and playgrounds to restore them to original position and remove all illegal and unlawful construction on such plots. There seem to be an epidemic in the city of marriage halls, shopping malls, petrol pumps/CNG stations and the houses are being allowed to be converted for these purposes. Besides, encroachments upon and change the use of amenity plots like playgrounds, parks and meant for other amenities. Henceforth, that is from today there is a complete ban on Master Plan Department of SBCA or any other authority of the City Government or Government of Sindh of allowing change in the use of land. No such change of use of land shall be permitted. Conversion of residential houses and amenity plots meant for parks, playgrounds and other amenities, their conversion shall not be allowed for commercial use that of marriage halls, markets, shopping malls, apartments, marquees, petrol pumps/CNG stations etc. This complete ban in cessation of conversion of residential plots, amenity plots like that of parks, play grounds and other amenities shall apply all across Karachi City including cantonment areas. SBCA nor any other authority shall approve any conversion including pending ones. All conversion allowed by these authorities shall be reviewed and all efforts shall be made to ensure that the land which was originally provided in the Master Plan of City of Karachi is restored to that status.

4. Pursuant to such directions given by the Honourable Supreme Court of Pakistan, the SBCA has issued Show Cause Notices each dated 19 February 2022, to various persons, including the Petitioners No. 1, 2, and 3 (hereinafter referred to as the “Impugned Notices”) on the following grounds:

- (i) that their property is being used as a “marriage hall” without a “NOC”;  
and
- (ii) that their property was originally residential and has been converted to commercial and as such fell within the perimeters of the order passed by the Supreme Court of Pakistan.

5. Mr. Khawaja Naveed Ahmed, Advocate for the Petitioners has assailed these impugned notices on the grounds that each of the Petitioners properties has not been

converted from residential to commercial and were in fact planned, allotted and leased as commercial properties. In this regard he has produced the leases of the plots owned by the Petitioners and which each contain the following clause:

“ ... 5 a) *The said plot and the structure building or erections built thereon shall exclusively be used for Commercial Purpose only and in no way shall be diverted to any other use except with prior consent of the lessor in writing*”

He submitted that as each of the Petitioners properties are in fact planned to be used for commercial purposes, there has been no conversion of the properties and the Impugned Notices are therefore mala fide and the orders of the Supreme Court of Pakistan in the decision reported as **Abdul Karim vs. Nasir Salim Baig**<sup>2</sup> are being deliberately misinterpreted by the SBCA for extorting money from the Petitioners. He states that in the circumstances the show cause notices cannot be possibly fall within the purview of the order of the Supreme Court of Pakistan and are as such void ab-initio and liable to be set aside.

6. Mr. Nadir Khan Burdi, Advocate for the Sindh Building Control Authority has defended the Impugned Notices. He submits that pursuant to the directions issued by the Honourable Supreme Court of Pakistan in the decision reported as **Abdul Karim vs. Nasir Salim Baig**<sup>3</sup> the SBCA was directed to ensure *inter alia* that all Marriage Halls, that had been constructed on residential plots that had been converted into commercial plots, were liable to be sealed and such activities prohibited thereon. He further contended that under Regulation 18-14 and Regulation 18 -15 of the Karachi Building and Town Planning Regulations, 2002, the usage of a property as a marriage hall was permitted but as per Regulation 18-15 (i) of the Karachi Building and Town Planning Regulations 2002 could only to be constructed on a plot of 2000 sq. yds and that to against certain conditions which are indicated as under :

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<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

“ ... 18-15.-POLICY FOR FUTURE ESTABLISHMENT MARRIAGE: LAWNS / HALLS / GARDEN / BANQUET HALLS :

*(i) Marriage lawns / halls / gardens / banquet halls shall be allowed on the plots having minimum area equal to 2000 Sq. yds. and above with the following conditions :*

*(ii) Marriage lawns / halls / ‘gardens / banquet halls shall be allowed to establish on the plots situated on roads declared open for change of land use after payment of prescribed fee.*

*(iii) Conversion of residential plot situated on roads declared open for change of land use for the purpose of Marriage lawns / halls / gardens / banquet halls shall be allowed after 50% of the prescribed fee with the allowable FAR 1:1.*

*(iv) Conversion shall be granted to use residential plots as Marriage lawns / halls / gardens / banquet halls situated on 150 feet or above roads on payment of 50% of prescribed fee of nearby commercial road/as per Revenue Category (Section 18-6, KB & TPR-2002 amended to date) as Notified from time to time with the allowable FAR of 1:1.*

*(v) Amount adjustment Policy as described 18-4.1 (ii) & 18-4.2 (iii) shall be applicable.*

*(vi) All general recommendations as at para (18-14.7) shall strictly be followed.”*

7. We have heard the learned counsel for the Petitioners and the Respondents and perused the record. The definition of the activities that can be carried out on commercial plots have been clarified in Regulation 19-2.2.6 of the Karachi Building and Town Planning Regulations 2002 and amongst which are:

“ ... Commercial (trade) uses: Normally includes only the land used for the activity in questions, though this may be increased by additional open or green space, if the operation of the facility concerned requires it. Commercial (trade) uses includes: ...

*(d) catering: including restaurants, banquet halls, **marriage hall/lawn** refreshment stalls, buffets...”*

(Emphasis is added)

As is apparent the definition of the commercial includes the usage of such a plot for the purpose of a “marriage hall or lawn”. We have examined the provisions of both Regulation 18-14 and 18-15 of the Karachi Building and Town Planning Regulations 2002 that were each inserted into those regulations by an amendment that was published in the Sindh Government Gazette on 20 July 2017 and note that each of those regulations pertain either to plots that:

- (i) were originally residential but are located on roads on which plots are permitted to be converted from residential to commercial use but which have not been converted (Regulation 18-14.1);
- (ii) are residential in nature but which are not located on roads on which the plots are permitted to be converted from residential to commercial use (Regulation 18-14.2);
- (iii) are amenity in nature and on which such activities would not be permitted. (Regulation 18-14.3);
- (iv) are residential plots on which the usage of the plot had been “regularized” by the Karachi Metropolitan Corporation or by the Karachi Development Authority to permit them to being used as Marriage Halls/Lawns. (Regulation 18-14.4);
- (v) are plots in respect of which “Z forms” have been submitted (Regulation 18-14.5);
- (vi) are plots which have been regularised under the Amnesty Scheme 2002,2003 or 2004 (Regulation 18-14.6); and

- (vii) are plots which will be regularised after the insertion of Regulations 18-14 and 18-15 on 20 July 2017 into the Karachi Building and Town Planning Regulations 2002. (Regulation 18-15).

As can be seen each of these regulations relate to plots that were planned as residential plots and which are now sought to be converted from residential to commercial use or for the specific use of that plot as a marriage hall. Regulation 18-14 and 18-15 of the Karachi Building and Town Planning Regulations 2002 to our mind do not in any manner regulate plots which were planned, allotted and leased for commercial use and to that extent we believe that the reliance placed on clause (i) of Regulation 18-15 of the Karachi Building and Town Planning Regulations 2002 by Mr. Nadir Khan Burdi, Advocate for the Sindh Building Control Authority is misplaced. Clearly, each of the properties involved in each of these petitions have been planned, allotted and leased for commercial use and were never converted from residential to commercial. As clarified above such a use under clause (d) of Regulation 19-2.2.6 of the Karachi Building and Town Planning Regulations 2002 includes for such plots to be used to establish a "marriage hall/lawn" and we are therefore of the opinion that properties that are designated as commercial properties can be utilised for establishing a marriage Hall/lawn.

8. We are equally clear that the reliance that the reliance placed by Mr. Nadir Khan Burdi, Advocate for the Sindh Building Control Authority on the decision of the Honourable Supreme Court of Pakistan reported as **Abdul Karim vs. Nasir Salim Baig**<sup>4</sup> is also misplaced. Having carefully examined that order, we do not consider it to be an order which directs that plots that were planned, allotted and leased for commercial purposes cannot be used for marriage halls/lawns and rather it is an order which prevents residential and amenity plots from being converted to commercial use or for use as a marriage hall and hence we see no basis for the SBCA to have premised

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<sup>4</sup> *Ibid*

the Impugned Notices in respect of the properties involved in each of these Petitions on the basis of that order. That having been said, the validity of Regulations 18-14 and 18-15 of the Karachi Building and Town Planning Regulations, 2002 and the enforcement of the order passed by the Honourable Supreme Court of Pakistan reported as **Abdul Karim vs. Nasir Salim Baig**<sup>5</sup> in the context of residential or amenity plots that have been converted to commercial use will have to be examined independently in appropriate proceedings.

9. For the foregoing reasons and without touching the validity of Regulations 18-14 and 18-15 of the Karachi Building and Town Planning Regulations, 2002 we are of the considered opinion that the Impugned Notices were misconceived and could not be sustained and which had caused us, by our short order dated 14 November 2023, to allow this petition and set aside the Impugned Notices and these are the reasons for that order. Needless to say, the findings in this Petition will not prevent the SBCA from proceeding as against the Petitioners for any other violation of the provisions of either the Sindh Building Control Ordinance, 1979 or the Karachi Building and Town Planning Regulations, 2002 as the case may be.

JUDGE

JUDGE

Nasir

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<sup>5</sup> *Ibid*