

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Const. Petition No. D-921 of 2022

Dated	Order with signature of Judge
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Present: **Mr. Justice Salahuddin Panhwar**
Mr. Justice Omar Sial

Priority

1. For orders on office objection
2. For hearing of Misc. No.4205/2022
3. For hearing of Main Case

22.08.2024

Mr. Muteeullah Gondal Advocate for the Petitioner

Mr. Kashan Ahmed Memon Advocate for Respondent No.6
and 7

Mr. Shahryar Mahar, AAG

Mr. Ghulam Akbar Lashari and Ms. Humaira Jatoi Advocates
for SBCA

Abdul Rasheed Solangi, D.G. SBCA, Ashfaq Khokhar,
Director South, Ms. Benish Shabar, Secretary Technical
Committee, Engr. Arif Khan, SBCA

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Salahuddin Panhwar, J:- In the present petition the Petitioner has challenged the notice whereby building in question has been declared as dangerous and required to be demolished.

2. Learned counsel for private respondents contends that they have filed Civil Suit No. 394 of 2023, which is pending adjudication before the Court of Senior Civil Judge, Karachi-South pertaining to ownership and possession against the petitioner. Besides, question of declaration of building as dangerous by the SBCA in writ jurisdiction cannot be adjudicated as same require evidence. In a detailed judgment passed in Suit No. 1003 of 1997 (Mst. Fatima Bai & others Vs. The Karachi Building Control Authority & another) this

Court, while entertaining same issue examined the criteria of declaring any building as dangerous, has held that matter requires evidence and parties were not heard. Paragraph 14, 17 and 18 of the judgment being relevant are reproduced hereunder:

“14. In order to resolve this controversy, it would be appropriate to reproduce Section 14 of the Sindh Building Control Ordinance, 1979 :-

“14. Dangerous Buildings (1) If it comes to the notice of the Authority that a building is likely to collapse, the Authority may, after such enquiry as it deems fit order for carrying out the specific repairs or demolition of the whole or part of the building.

(2) Where the specific repairs are to be carried out, the Authority may, by notice, require the owner of building or in the event of his failure the occupier thereof to carry out such repairs within such period as may be specified in the notice and if the repairs are not carried out within the specified period, the Authority may, notwithstanding any other law for the time being in force proceed to have the building demolished and the cost of demolition shall be recovered from the owner as arrears of land revenue.

(3) Where the whole or a part of the building is to be demolished, the Authority may, by notice, require the occupier or occupiers thereof to vacate the building within the period specified in the notice and if the building has not been vacated within such period, the Authority may, notwithstanding any other law for the time being in force order that occupier or occupiers of the building be ejected, if necessary, by force.

Provided that no action shall be taken under this section unless the person who is likely to be affected thereby is given an opportunity of being heard.”

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17. Under Section 22-A of the Sindh Building Control Ordinance, 1979, it is provided that the authority may frame regulation not in consistent with the provision of this Ordinance and the Rules made thereunder. Government of Sindh vide Notification No.SO(VI)8(27)/72 dated 30.10.1978 constituted a committee of experts from official and professional bodies to frame uniform building byelaws and the

committee decided to frame unified building and town planning regulation for the whole Karachi Division. The regulations were given legal effect vide Section 29-A (3) of the Sindh Building Control Ordinance (Amendment), 1982. Under sub-section (3) of Section 21-A of the Ordinance, 1979 it is provided that the Karachi Building and Town Planning Regulations 1979 in the case of the Authority of Karachi and the byelaws of the council concerned in other cases, duly published shall until the regulations are framed under this Section, be deemed to be the regulations, not framed; provided that they are not inconsistent with the provisions of this Ordinance and the rules framed thereunder. Even in the 1978/1979 Regulations, Chapter 10 was relevant to the dangerous building and under Regulation No.157 it was provided that the Controller of Buildings will refer the matter to the Technical Committee for inspection and investigation regarding the dangerous/ruinous/unsafe buildings. Similar, provision is available under Karachi Building and Town Planning Regulations 2002 in which Chapter 7 deals with dangerous buildings and Regulation 7.2 relates to technical committee on dangerous building (T.C.D.B) which provides that the Controller of the building of the concerned circle of the authority shall examine or cause to examine every building or structure or portion in his circle reported as dangerous and shall refer the matter to the technical committee especially constituted by the authority for a term of office not more than three years. It is further provided in Regulation 7.2.2 that if for the opinion of Controller of Buildings of the concerned circle a building or portion thereto has become dangerous for human habitation he shall give at least 24 hours' notice to the owners/occupants for inspection of such building by the technical committee. Other details are also provided in the same chapter dealing the dangerous buildings.

18. It is an admitted fact that neither the defendant No.1 placed on record any inspection report nor any other material, nor provided any opportunity of being heard to the occupants/plaintiffs as envisaged under Section 14 of the Ordinance. The purpose of referring to the regulations is to show that in order to declare any building dangerous the report of technical committee is required. But at the same time the

expressed provision made under Section 14 of the Ordinance cannot be overlooked under which it is incumbent upon authority to provide right of hearing to the affected persons, which cannot be by passed by the authority.

3. Accordingly, the case at hand cannot be resolved through a writ petition, as the writ jurisdiction is not the appropriate legal avenue for addressing this matter. Therefore, the parties involved should approach the Civil Court either to institute new legal proceedings or to continue the litigation that is currently pending adjudication. While parting with this order, it is crucial to emphasize that in Constitutional Petition No. D-6372 of 2023, through the order dated 14.02.2024, Sections 4(A) and 4(B) of the Sindh Building Control Authority Ordinance, 1979, were extensively deliberated upon. It was conclusively declared that an individual cannot function as a corporate body or authority. Consequently, the appointment of an officer as the Director General (D.G.) of the Sindh Building Control Authority (SBCA) for the province of Sindh is in contravention of the intent and spirit of Section 4. The pertinent portion of this order is reproduced hereunder:

“By order dated 23.01.2024, directions were issued that Director and Deputy Director, SBCA shall be in attendance. Reply as well as Vakalatnama has been filed on behalf of Respondents No.2 and 3, which is taken on record.

Further, it has come on record that in view of Section 4 of the Sindh Building Control Ordinance 1979, Government has to notify the authority being relevant Section 4, 4-A and 4-B is reproduced as under:

4. Authority.

(1) Government may, by notification, appoint anybody corporate or council, or any department

of such body corporate or council, or any Government department or functionary or any organization to act as Authority for such area as may be specified in notification.

(2) Where a body corporate, a council, or an organization, or any Government department or department of body corporate or council is appointed as Authority, the Chief Executive or incharge of such body corporate, or council of organization or department, as the case may be, shall act as the Chief Executive of the Authority.

4-A. Officers and Servants of the Authority.

(1) The Authority may appoint such Officers, advisers, experts, consultants, and employees for efficient performance of its functions and on such terms and conditions, as may be prescribed.

(2) All Officers, advisers, experts, consultants and employees appointed under sub-section (1) Shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV 1860) and shall be subject to such disciplinary action as may be of prescribed.

4-B. Supervision over the Authority

Government may appoint a Committee which may subject to the control and direction of Government oversee the functioning of an Authority.

Accordingly, notification shall be submitted whereby Authority as referred hereinabove has been constituted by Government of Sindh. Further Section 4-A provides appointment of Officers in different scales under the SBCA Ordinance 1979.

Upon query, counsel for SBCA contends that in routine, Authority notifies committee and inducts officers up to the grade of BPS-17 in view of Rules whereby candidates are required to appear in written test and viva voce. (DG) SBCA shall be in attendance and submit complete mechanism of appointment in terms whether such appointments are based on prometric system or through third party testing agencies as adopted by government of Sindh and shall also submit guidelines to conduct the exams. Complete details of recruitment within last six years shall be

submitted including the details of tests conducted by that committee alongwith publications and mandate of that committee.

Further, Section 4B contents that Government of Sindh may appoint Committee which may subject to the control and direction of Government oversee the functioning of an Authority. Accordingly, Secretary Local Government, Government of Sindh shall submit notification, if any, under Section 4B referred above and focal person of Secretary Local Government, Government of Sindh shall be in attendance to assist the Court.”

4. In light of the aforementioned order and considering that one month has passed since its issuance, it is concerning that the present Director General (DG) of the Sindh Building Control Authority (SBCA) was appointed on 23.03.2024, in apparent violation of the legal principles established therein. Given this discrepancy, the present DG SBCA is hereby restrained from acting in the capacity of an authority for a period of 10 days. This restraint is imposed to prevent further legal inconsistencies and potential misuse of authority until this matter is thoroughly reviewed. The issue will be addressed in detail in Constitutional Petition No. D-6372 of 2023, which is scheduled to be listed for hearing on 29.08.2024.

To come up on 29.08.2024 alongwith CP.No.D-6372 of 2023.

Sd/-
JUDGE

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JUDGE