

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,*

**C.P. No. D-5549 of 2022
&
C.P. No. D-6026 of 2023**

C.P. No. D –5549 of 2022

1. For hearing of Misc. No.23716/2022 (Stay) :
2. For hearing of main case:

C.P. Nos.D–6026 of 2023

1. For hearing of Misc. No.28127/2023 (Stay) :
2. For hearing of main case:

Petitioner in CP No.
D- 5549 of 2022 and
Respondent No. 4
in CP No. D- 6026 of 2023 : Through M/s. Ali Muhammad Tahir and
Muhammad Hashim, Advocates

Respondents No.1, 2, 6 to 8
in CP No. D- 5549 of 2022 : Through Mr. Jawwad Dero, Additional
Advocate General

Respondent No.3
in CP No. D- 5549 of 2022
and Respondent No. 1 in
CP No. D- 6026 of 2023 : Through Mr. Ghulam Akbar Lashari and Ms.
Humera Jatui, Advocates along with Muhammad
Raqeeb (CNIC # 42101-1667099-3) Director
District East SBCA, Niaz Hussain (CNIC # 41201-
3298970-3) Assistant Director SBCA

Petitioner in CP No.
D- 6026 of 2023 and
Respondent No 9 in
CP No. D- 5549 of 2022 : Through Mr. Shahzeb Akhter, Advocate

Respondent No.3 : Through Mr. Ghulam Akbar Lashari and Ms.
Humera Jatui, Advocates along with Muhammad
Raqeeb (CNIC # 42101-1667099-3) Director
District East SBCA, Niaz Hussain (CNIC # 41201-
3298970-3) Assisat Director SBCA

Respondents No.1,2, 6 to 8 : Through Mr. Jawwad Dero, Additional
Advocate General

Date of hearing: : 19.12.2023

ORDER

MOHAMMAD ABDUR RAHMAN J. These Petitions have each been maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in respect of the construction on Plot No. B-10 Block-16, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi (hereinafter referred to as the "Said Property") and on which has admittedly been constructed a Ground + 3 storey building.

A. The Petitions

2. C.P. No. D-5549 of 2022 has been maintained by the Petitioner challenging the construction on the Said Property as having been constructed without obtaining an approval as mandated under Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 (hereinafter referred to as the "SBCO,1979"). On 23 September 2022 directions were given in this Petition to the Sindh Building Control Authority (hereinafter referred to as the "SBCA") clarifying that if there was any illegality in the construction on the Said Property that it should be demolished. The SBCA had filed their comments stating that they had issued a notice under section 7-A of the SBCO, 1979 stating that no approval had in fact been accorded by the SBCA, for the construction on the Said Property, under Sub-Section (1) of Section 6 of the SBCO, 1979 and that the construction on the Said Property having not been sanctioned by the SBCA was illegal and was liable to be demolished.

3. CP No. D-6036 of 2023 has been maintained by the owner of the Said Property contending that an approval for a Ground + 01 storey building for a residential bungalow was submitted to the SBCA on 25 August 2021. A copy of the application for approval and a payment of Rs.69,640/- has been appended to that Petition. As there was an inconsistency on account of these documents that had been submitted by the Petitioner in CP No. D-6036 of 2023 and the submission that had been made by the SBCA in C.P. No. D-5549 of 2022 regarding the approval, we had modified our order dated 23 September 2022 and restrained the demolition of the structure on the Said Property until the status of the application was determined.

4. The SBCA have now filed a report stating that an approval was in fact applied for by the Petitioner in CP No.D-6036 of 2023 and where after a letter was issued by the SBCA to the Karachi Development Authority (hereinafter referred to as the "KDA") to verify the title of the owner to the Said Property and against which a reply was received from the KDA ,not denying the title of the Petitioner in CP No.D-6036 of 2023 to the Said Property, but by stating that there were certain dues on the Said Property that were outstanding in their record. The SBCA has on this basis therefore contended before us that while the plan that had been submitted by the Petitioner in C.P. No. D-5549 of 2022 could have been "deemed" approved under the provisions of Regulation 3-2.6 of the Karachi Building & Town Planning Regulations, 2002 (hereinafter referred to as the "KB&TPR, 2002") as

there were amounts owing to the KDA, therefore no approval could be “deemed” to have been accorded by the SBCA to the Plan submitted in respect of the construction on the Said Property.

5. SBCA have further contended that even if the sanction is to be considered as having been “deemed” to have been made under the provision of Regulation 3-2.6 of the KB&TPR, 2002, then as per Regulation 3-2.6.2 of the KB&TPR,2002 such an approval cannot be considered as having been made as the structure has been constructed in violation of the provisions of the KB&TPR,2002 i.e. a Ground + 3 storey structure has been constructed as against the “deemed” approval of Ground + One Storey structure. They finally contended that the owner of the said property is liable to rectify the building works under Regulation 3-1.4 of the KB&TPR,2002 to bring it in compliance with the provisions of the KB&TPR,2002 before any further decision on the Petitioner’s application can be made.

6. The Counsel for the Petitioner in CP No.D-6026 of 2023 has conversely contended that the deviations are regularisable and the same may be considered by the SBCA under the mandate conferred under clause (c) of Regulation 3-2.20 of the KB&TPR, 2002. Conversely, Counsel for the Petitioner in CP No.D-5549 of 2022 has contended that the deviations in the construction are clearly not regularisable and are liable to be demolished.

7. We have heard Mr. Ali Muhammad Tahir, Mr. Shahzeb Akhter and Mr. Ghulam Akbar Lashari, advocates appearing for the parties and have perused the record.

B. Approval And Deemed Approvals

8. The authority conferred on the SBCA to sanction an approval for a construction is contained in Sub-Section (1) of Section 6 of the SBCO, 1979 and which *inter alia* states that permission for construction is to be taken “before” any construction is commenced. Where however an application is made for an approval but is not “processed” by the SBCA, Regulation 3.2.6 of the KB&TPR,2002 provides that:

“ ... **3-2.6. Period of Approval .**

3-2.6.1 (a) After the receipt of an application for approval of building plan the Authority shall examine and shall approve or reject within 60 days and from the date of issuing letter for re-verification of title document required after issuing letter for re-verification of title document required from concerned Authority /Lessor along with compliance of observation issued by Authority. In case reply has not been received from concerned Authority /Lessor within ten (10) days. The case may be considered deemed to be re-verified. Appropriate action shall be taken against the concerned officer under

E&D rules if the case is not processed within the period specified above.

(b) In the case of refusal/ rejection explicit objection will be communicated in writing quoting provision of the regulations. If the applicant complies with the specific objections communicated earlier within a period of one year no further scrutiny fee shall be charged.

(c) Upon approval of the submission construction should be commenced within a period of one year failing which renewal of permission to construct shall be obtained from the Authority.

3-2.6.2. If no order is passed on an application within 60 calendar days for category I & II and 90 days for category III & IV of table 3.1 of its receipt, it shall be deemed to have been sanctioned to the extent to which it does not contravene the provisions of these Regulations or the Master Plan Department or sanctioned Site Development Scheme, if any, and after giving notice to the Authority, the person may proceed to carry out the said building works at any time within one {1} year starting from the date of submission provided the title of land is clear from all disputes and objections.”

(i) The Time Period for Examination, Approval or Rejection of a Plan

9. Under clause (a) of Regulation 3-2.6 of the of the KB&TPR, 2002, it is incumbent on the SBCA to first examine and thereafter to “approve” or “reject” an application for a sanction of a plan within 60 days. We are of the opinion that this provision is to be treated as mandatory as consequences¹ are specified in that Regulation if the plan is “not processed” within the time frame mentioned and which consequences are contained in the latter part of that regulation and which read as under:

“ ... *Appropriate action shall be taken against the concerned officer under E&D rules if the case is not processed within the period specified above.*”

As such if the plan is neither approved nor is rejected through a speaking order in terms of Clause (b) of Regulation 3-2.6 of the KB&TPR,2002 within the time frame provided for then, mandatorily, action must be taken by the SBCA as against any and all of its errant officers.

(ii) Verification as to Title of Property

10. The time period for the approval or the rejection having been dealt with, the rest of the regulation creates some complexity on account of the incompressible language that

¹¹ See Maulana Nur-ul-Haq vs. Ibrahim Khalil 2000 SCMR 1305, Ghulam Hussain vs. Jamshed Ali 2001 SCMR 1001; Wattan Party through President vs. Federation of Pakistan through Caninet Committee of Privtization, Islamabad and others PLD 2006 SC 69; and The State through Regional Director ANF vs. Imam Bakhsh 2018 SCMR 2039

is used in that Regulation. While, it is apparent that the regulation attempts to seek confirmation from the lessor of the land e.g. the KDA, the Karachi Municipal Corporation, the Province of Sindh etc. to confirm the ownership to the property on which the construction is sought to made, **and rightly so** as to do otherwise would result in the SBCA have participated in a trespass to that property by sanctioning such an approval, regrettably, the language of the regulation is indecipherable the offending portion of which reads as under:

“ ... *and from the date of issuing letter for re-verification of title document required after issuing letter for re-verification of title document required from concerned Authority /Lessor along with compliance of observation issued by Authority..”*

What is however understood is that in the event that the verification of the title is not received **“from the concerned Authority /Lessor within ten (10) days, title may be deemed to have been “reverified.”**

11. We are of the opinion that such a “deemed” verification of title as has been given by the SBCA regarding the ownership of the Said Property is clearly in excess of the jurisdiction of the SBCA as no such power is conferred on the SBCA under its constituting statute i.e. the SBCO, 1979 and such portion of the regulation in terms of Section 21A of the SBCO, 1979 is therefore inconsistent with the provisions of that statute and is void. Nowhere, in that statute does the SBCA have the authority to determine a person’s title to a property on which an approval for construction is being sought and as such the SBCA lacks the jurisdiction to determine title to property let alone to “deem” such a determination of title. That being said, we are equally clear that the SBCA, as an administrative measure **must mandatorily inform itself** as to the ownership to a property for which sanction is being sought as to do otherwise would be to sanction a trespass to a property. Clearly, once such a letter is issued, the lessor of the property would be mandatorily required to confirm such ownership, post haste, as to do otherwise would to our mind violate the fundamental right of the owner of the property as guaranteed under Sub-Article 1 of Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973 and which omission on the part of the lessor, having held up the application for construction, would amount to “depriving” a person to deal with his property in accordance with law.

12. We note that, as per the SBCA, they had issued a letter to the KDA to inform themselves as to the title of the Petitioner in CP No.D-6026 of 2023 to the Said Property and while objections had been raised regarding certain amounts that were purportedly due by the owner of the Said Property to the KDA, there has been no objection that has apparently been made by the KDA as to the title of the

Petitioner in CP No.D-6026 of 2023 to the Said Property. While, the SBCA has contended before us that on account of the observation made by the KDA they are unable to process the approval for the sanction of the construction we cannot agree with such a contention. There is no provision in either the SBCO, 1979 or the KB&TPR,2002 which permits the SBCA to refuse to sanction an approval under Sub-Section (1) of Section 6 of the SBCO, 1979 on the grounds that there are amounts owed by the owner of a property to a lessor and as such the failure on the party of the SBCA not to process the application for construction on such a grounds would be in violation of its obligation to process such an approval under that section. If the lessor wishes to recover any such amount it can do so under the dispensation given to it in its enabling statute or in terms of the obligations under the lease issued by them, but clearly the lessor cannot affect such a recovery indirectly through the SBCA by restraining the sanction of an approval under Sub-Section (1) of Section 6 of the SBCO, 1979. The objection that has therefore been raised by the SBCA to refuse to process the application of the Petitioner in CP No.D-6026 of 2023 for construction on the Said Property on account of there being amounts owed by the owner of the Said Property to the lessor is therefore not sustainable and the SBCA is directed to process all applications made for construction as long as they have informed themselves as to the title of the Said Property has been verified by the lessor.

(iii) Deemed Approval of Construction

13. Under Regulation 3-2.6.2 of the KB&TPR, 2002, in the event that an application is submitted by an owner of a property and no order is passed by the SBCA on that application ***“within 60 calendar days for a category I & II and 90 days for category III & IV of table 3.1”***, the plan that has been submitted shall be ***“deemed to have been sanctioned to the extent to which it does not contravene the provisions of these Regulations or the Master Plan Department or sanctioned Site Development Scheme.”***

14. In the case of the Petitioner in CP No.D-6026 of 2023, admittedly a plan has been submitted on 25 August 2021 and even if the construction is of the nature warranting the larger period of 90 days to have elapsed, since that period has also elapsed the ground plus one storey approval applied for by the owner of the Said Property would necessarily be deemed to have been approved under Regulation 3-2.6.2 of the KB&TPR, 2002, unless the SBCA through a speaking order can demonstrate as to whether the construction on the Said Property, as identified in the plan submitted by the Petitioner in CP No.D-6026 of 2023, does or does not violate:

- (a) any provisions of the Karachi Building and Town Planning Regulations 2002, **or**
- (b) the Master plan of the area within which the Said Property is located, **or**
- (c) the Site Development Scheme within which the Said Property is located

15. Clearly, in the event that the SBCA concludes that the plan submitted for the construction on the Said Property does not violate any of the abovementioned factors, then the plan must be “deemed” to have been sanctioned under Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 for authorising the construction as per that plan and the applicant would be at liberty to commence construction within one year from the date when the application was submitted. We would add, that there being no consequences specified in Regulation 3-2.6.2 of the KB&TPR,2002 as to the status of the approval if construction is not commenced within the time period specified in that regulation, would to our mind lead to the conclusion that the time period specified was in fact directory and not mandatory and the applicant could even commence construction after the period of one year but nevertheless within a reasonable period.²

16. Conversely, in the event that the plan submitted for construction does violate **any of the abovementioned factors** or if the title of the owner of the land is not clear from “all disputes” and “objections”, then the plan cannot be deemed to have been approved and **must be considered as having been rejected** and the construction on the Said Property would be liable to be demolished. Regarding the title of the owner of the land being required to being clear from “all disputes” and “objections”, while a dispute as to title would be quite clearly ascertainable on the basis of rival or concurrent claims as to ownership we would also consider the expression “objections” to also be as towards the title of the owner of the property and not as to the nature of the construction that is proposed to being raised on the property.

17. Finally, we are at pains to clarify, that the “deemed” approval of the plan does not have any connection with the construction that exists on the Said Property and which would have to be examined independently under other provisions of the KB&TPR,2002 and which have been clarified hereinunder. Needless to say, if the plan is found to be in conformity with the abovementioned factors, then the Petitioner in CP No. D-6026 of 2023 would have the right to construct a building on the Said Property in accordance with that plan.

² See *Maulana Nur-ul-Haq vs. Ibrahim Khalil* 2000 SCMR 1305, *Ghulam Hussain vs. Jamshed Ali* 2001 SCMR 1001; *Wattan Party through President vs. Federation of Pakistan through Caninet Committee of Privtization, Islamabad and others* PLD 2006 SC 69; and *The State through Regional Director ANF vs. Imam Bakhsh* 2018 SCMR 2039

C. Alteration And Revised Plans

18. We have been informed that the plan that was submitted by the Petitioner in CP No. D-6026 of 2023 was for a ground plus one storey construction for a bungalow while the construction that exists on the site is a ground plus three storey construction for apartments. In this regard, it would be incumbent to refer to the provisions of Regulation 3.2.4 and 3.2.5 of the KB&TPR, 2002 and which read as under:

“ ... 3-2.4. *Alteration of Design*

In case of category-1 category-II and category-III Buildings

(a) *If the Owner/ Professional intends to alter the design after grant of approval, such that there is no increase in floor area, change of open space/s or increase in height of buildings, no further submission or permission shall be required provided that the proposed changes do not violate any of the provisions of these Regulations.*

(b) *In the event that proposed alteration/s after grant of approval, involves increase in floor area and/or change in open space/s and/or increase in height of building, provided that the proposed changes do not violate any of the provisions of these Regulations, the Owner/ Professional shall be required to submit a revised submission plan. However during the period of processing of revised plan by the authority construction may continue.*

(c) *In case of category-IV building*

If at any time after grant of approval the Owner/Professional intends to alter the design, the Owner/ Professional shall be required to submit a revised submission plan

During the period of processing of revised plan by the authority, Construction may allow.

3-2.5. *Revised/Amendment of Plan –*

In public sale buildings deviation in internal layouts shall not be allowed during the construction stage. No structural deviations or deviations in the external envelope of the building shall be permitted. The owner shall be required to submit a revised plan for approval before proceeding with the construction of such structural or external envelope changes.”

As is apparent, in the event that the construction is considered by the SBCA to come within the scope of a category-1 category-II or category-III construction, as identified in Table 3.1, then:

- (i) under clause (a) of Regulation 3.2.4 of the KB&TPR, 2002, after a plan was approved, which we consider could include a plan that is deemed to have been approved under Regulation 3.2.6 of the KB&TPR 2002, then the plan can be altered if there is:
- (a) no increase in floor area,
 - (b) no change in open spaces, or
 - (c) no increase in the height of building.

without the need for a revised plan being submitted **unless the proposed changes violate the provisions of the KB&TPR, 2002** and in which case an approval, if possible, for the regularisation of the construction which violate the provisions of the KB&TPR 2002;

- (ii) under clause (b) of Regulation 3.2.4 of the KB&TPR, 2002 if an alteration was sought after grant of approval or a deemed approval under Regulation 3.2.6 of the KB&TPR, 2002 which involved either:
- (a) an increase in floor area, or
 - (b) a change in open spaces, or
 - (c) an increase in height of building,

then, in the event that the proposed alteration **did not violate any of the provisions of the KB&TPR,2002**, a revised plan would be required to be submitted for approval and which would be considered at the time of the issuance of a completion plan, **but such a deviation, as it does not violate the provisions of the KB&TPR,2002 would not necessitate the construction being stopped.**

- (iii) In the event that the construction that is being carried out relates to a category-IV building as identified in Table 3.1 then, if there is an alteration to the design, a “revised” plan would be required to be submitted. It is interesting to note that the language of clause (c) of Regulation 3.2.4 of the KB&TPR,2002 is at variance with the language of clause (b) of Regulation 3.2.4 of the KB&TPR,2002 in as much as while clause (b) of Regulation 3.2.4 of the KB&TPR,2002 permits an alteration to made to the plan which does not violate the provisions of the KB&TPR,2002, clause (c) of Regulation 3.2.4 of the KB&TPR,2002 is silent as to whether the alteration that is being sought through the revised plan has to conform with the provisions of the KB&TPR,2002 or not.

The variation in language are to be examined in terms of Sub-Section (1) of Section 6 of the SBCO, 1979 and wherein it is stipulated that:

“ ... *No building shall be constructed before the Authority has, in the **prescribed** manner, approved the plan of such building and granted No Objection Certificate for the construction thereof on payment of such fee as may be prescribed. ...*”

The expression “prescribed” is defined in sub-section (l) of Section 3 of the SBCO, 1979 and which stipulates that:

“ ... *"prescribed" means prescribed by rules or regulations made under this Ordinance;*”

If one is to consider the meaning of the expression “prescribed” as used in Sub-Section (1) of Section 6 of the SBCO, 1979 the only interpretation that can be given to that Section is that a construction of a building on a plot, which comes within the jurisdiction of the SBCA, cannot be commenced unless there is a plan that was approved, in accordance with Rules framed under Section 21 or in accordance with regulations framed under Section 21A of the SBCO, 1979 and which for Karachi are the KB&TPR, 2002.

Applying such an interpretation to clause (c) of Regulation 3.2.4 of the KB&TPR 2002, if an alteration of a plan is being sought, then clearly an “alteration” through a revised plan, as to be contrasted with a “regularisation”, must come within the provisions of the KB&TPR 2002. Any contrary interpretation could only be that where a revised plan is submitted under clause (c) of Regulation 3.2.4 of the KB&TPR, 2002 then the SBCA would have the power to sanction such a revised plan in excess of the provisions of the KB&TPR, 2002 and which to our mind would in fact be seeking a “regularisation” of a deviation under clause (c) of Regulation 3.2.20 of the Karachi Building and Town Planning Regulations, 2002 and would not amount to an “alteration” and would in fact amount to a “regularisation”. The only way to reconcile these two provisions would be to either read into clause (c) of Regulation 3.2.4 of the KB&TPR, 2002 by inserting the words “*provided that the proposed changes do not violate any of the provisions of these Regulations*” between the words “*design*” and “*the*” or to “read in” to that Regulation so as to bring that regulation in conformity with the Sub-Section (1) of Section 6 of the SBCO, 1979.³ In the circumstances rather than to hold that the provisions of clause (c) of Regulation 3.2.4 of the KB&TPR, 2002 are ultra vires of the SBCO, 1979 we consider it appropriate to “read in” the words as mentioned above into that regulation to bring into conformity with the provisions of the

³ See *AAM Log Ittehad vs. The Election Commission of Pakistan* PLD 2022 SC 34

SBCO,1979 and hence such alteration is applicable as long as the alteration sought does not exceed the provisions of the KB&TPR, 2002.

D. Compounding / Regularisation

(i) Section 19 of the SBCO, 1979 and the right to Compound an Offence

19. The purported function of the Sindh Building Control Authority to “compound” a construction that has been made deviation in a plan sanctioned under Sub-Section (1) of Section 6 and which function is colloquially referred to as “Regularisation” is often misconstrued as being found in Section 19 of the SBCO, 1979 and which as originally drafted read as under:

“ ... 19. Penalty. (1) *Whoever has contravened any provision of this Ordinance shall be punished with simple imprisonment for a term not exceeding six months or with fine not less than ten thousand rupees, or with both.*

(2) *No court shall take cognizance of an offences under this Ordinance except upon a complaint in writing made by the Authority or any person authorised by it. “*

These provisions have been amended twice⁴ and which at present reads as under:

“ ... 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 an offence relating to building works of a building plan** which was approved prior to the promulgation of the Sindh Building Control(Amendment) Ordinance, 2001 on payment of the existing composition fee enhanced by fifty percent to three hundred percent for the different areas as categorized in the property valuation table issued by the Board of Revenue Sindh as mentioned in the table below and other fees as prescribed, on production of a certificate of structural Engineer on such terms and conditions as may be prescribed:*

Provided that no offences shall be compounded in respect of a building constructed within ¾ mile (1.2 km) radius of Quaid-e-Azam’s Mausoleum above a podium level of 91 feet (27.72 m) from the mean sea level.

⁴ See section 17of the Sindh Building (Amendment) Ordinance No. III of 1982 and Section 2 of the Sindh Ordinance XXXVII of 2001 entitled the Sindh Buildings Control (Amendment) Ordinance, 2001.

Explanation.-For the purpose of this sub-section "building works" include excess covered area, violation of compulsory open spaces or height restrictions.

TABLE

For the areas mentioned in Category VI of the said valuation table. 50%

For the areas mentioned in Category V of the said valuation table 75%

For the areas mentioned in Category IV of the said valuation table 150%

For the areas mentioned in Category II & III of the said valuation table 250%

For the areas mentioned in Category A1 & 1 of the said valuation table 300%

(1-B) Notwithstanding the provisions of sub-section (1-A), no offence shall be compounded in respect of the building-

(a) which have environmentally degrading activities such as manufacturing, storage of dangerous or inflammable materials, or cater to the service of transport sector until such activities are removed;

(b) where parking space is used for other purposes until such space is restored to its original purpose;

(c) which have been constructed in violation of the reservation of road widening scheme or property line, or are in any hazardous use.

*(1-C) The Authority or any person authorised by it in this behalf may **compound any offence relating to the works commenced or carried out in violation of the regulations** in respect of foot print, compulsory open space, excess covered area and projections of the building on payment of the existing composition fee enhanced by four hundred percent and other fees, if the deviation does not exceed beyond twenty percent of the permissible limits on the terms and conditions, as prescribed by the Authority.*

(2) No court shall take cognizance of an offence under this Ordinance except upon a complaint in writing made by the Authority or any person authorised by it"

20. As can be seen Sub-Section (1) of Section 19 of the SBCO, 1979 stipulates that where there is a violation of any provision of the SBCO, 1979 the breach would amount to an "offence" i.e. a criminal offence and the person violating that provision would be subjected to a term of simple imprisonment or a fine for such an offence. Sub-Section 1A and 1B of the Section 19 of the Sindh Building Control Ordinance, 1979 stipulates that the "SBCA or any person" has the authority to "**compound an offence relating to building works of a building plan which was approved prior to the promulgation of the Sindh Building Control (Amendment) Ordinance, 2001.**" Finally, Sub-Section 1C of the

Section 19 of the Sindh Building Control Ordinance, 1979 permits the SBCA to “compound any **offence** relating to the works commenced or carried out **in violation of the regulations.**”

21. An examination of the provisions to our mind lead to a conclusion that an authority has been conferred on the SBCA is a right to “compound an offence” i.e. a criminal offence that may have been committed under Sub-Section (1) of Section 19 of the Sindh Building Control Ordinance, 1979 and not a right to “regularise” a deviation of the of the approved plan that has been sanctioned by the SBCA under Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979.

(ii) The Right to Regularise

22. By contrast, such a right to “regularise” a deviation of the of the approved plan has been sanctioned by the SBCA under Sub-Section (1) of Section 6 of the SBCO, 1979 is found in clause (c) of Regulation 3-2-20 of the Karachi Building and Town Planning Regulations, 2002 and which reads as under:

“ ... **3-2.20. Regularization of Works Carried out in Violation of Regulations.**

3-2.20.1. *If the building works are commenced or carried out contrary to the provisions of these regulations the Authority shall...*

(c) **Regularize** the violations in the existing structure after realization of regularization fee as per Table I & II, depends on the nature and merits of the case, provided that no violation shall be regularized:

- (i) *Which have environmentally degrading activities such as manufacturing, storage of dangerous or inflammable or hazardous materials or Cater to the service of transport sector until such activities are removed;*
- (ii) *-Building constructed within 3/4 mile (1.2 Km) radius of Quaid-e-Azam Mausoleum above podium level of 91 feet (27.72 meter) from the mean sea level;*
- (iii) *Where parking space has not been provided or is intended for misuse for other purposes, until such space is restored to its original purpose;*
- (iv) *Which has been constructed in violation of the reservation or road widening scheme or property line, or is in any hazardous use;*

- (v) *If the building works or part thereof exceed the maximum permissible height and number of stories;*
- (vi) *If the violations/deviations in building works do not exceed beyond Twenty percent of the permissible limit in respect of compulsory open space/covered area;*
- (vii) *If the building work extends beyond the property limits except otherwise provided in pro- vision No. 9-5 KB&TPR-2002:*
- (viii) *If the building work or part thereof violated fire or any other safety requirements;*
- (ix) *For any other violation of the Master plan not falling in the above category.*
- (x) (a) *Where approved arcade has not been provided or is misused for other purposes, until such space is restored to its original purpose.*
- (b) *However recreation already approved may be allowed to be shifted/ relocated to any other suitable space, but it shall not be in basement and over parking space. Such shifting/relocation shall only be allowed provided that activity on approved non-saleable/exempted area is maintained within such building.*
- (xi) *Where approved passage and stairs have been altered or misused for other purpose until such space is restored to its original purpose as per approved plan, however alteration/addition/variation upto 10% of the combined total exempted spaces as mention in Proviso 25-1.7.1(b) & 25. 1.7.2(b) shall be considered for completion/regularization.*
- (xii) *Where approved air raid shelter has been altered or misuse for other purpose until such space is restored to its original purpose as per approved plan. Furthermore owner/builder shall hand over the possession of the air raid shelter to the association of flats/units allottees.”*

Similar provisions existed in Regulations 16, 20 and 25 of the Karachi Building and Town Planning Regulations, 1979 were subject to interpretation before the Honourable Supreme Court of Pakistan as elaborated hereinunder.

(iii) **The Decisions of the Honourable Supreme Court of Pakistan**

23. The judgment reported as **Abdul Razak v. Karachi Building control Authority and others**⁵ first considered the question of regularisation and in which decision it was held that:

“ ... **It may be pointed out that Regulation Nos.2 deals inter alia with regularization of unauthorized construction if the same can be brought in conformity with the Regulations, ...**

12. Admittedly the appellant Abdul Razak started construction work in deviation of the approved plan which was approved as pointed out hereinabove on 12-4-1990. It is also an admitted position that the Authority served above notice dated 21-5-1990 calling upon appellant Abdul Razak to rectify the above unauthorised construction within 24 hours. As stated hereinabove, the appellant Abdul Razak gave above commitment to the effect that he would not construct shops or flats or high-rise buildings before the Division Bench during the hearing of the stay application but apparently he completed the building not in accordance with the original plan approved by the Authority. He got regularisation plan approved during the pendency of the above writ petition, but the High Court allowed the above writ petition in the above terms for the following reasons:-

"It could not, therefore, have been the intention, of the legislature to confer a power on the Authority to condone, by regularising, erection of a building so erected as to adversely affect and endanger the health and safety of the citizens. The intention evidently was that any building erected in violation of the Regulations must either be demolished completely or in part, as maybe necessary, or so altered as to conform to the Regulations. Further, it would be absurd to say that on the one hand regulations have been framed for the purpose of ensuring the safety and the health of the citizens and on the other hand that the, legislature intended to confer power on the Authority to condone violation of those very regulations and thus defeat the object and the purpose thereof. The conjecture "or" occurring between paras. (b) and (c) of Regulation 16(2) has, therefore, to be read as "and". **That being so, there is no power in the Authority and any of its officers to condone violation of the Regulations by regularising a building erected in contravention thereof. Authority and/or its officers can only compound the offence after a delinquent builder has put the building in order in accordance with the Regulations pursuant to the action taken**

⁵ PLD 1994 SC 512

under orders passed either under Regulation 16(2)(a) or Regulation 16(2)(b) of the Karachi Building and Town Planning Regulations, Part 1.

...”

.... But it does not mean that discretion contained therein can be exercised by the Authority in derogation or violation of the provisions of the Ordinance and the Regulations.

The High Court, after referring, to the relevant regulations, concluded as under:--

"The object and the consideration for the rule requiring minimum open spaces to be left in any building are thus, to ensure safe and hygienic conditions of living for the citizens in general. They do not concern any one individual alone.

The regulations contained in Chapters 7 and 8 relating to drainage and sanitation and fire precautions are similarly intended to ensure healthy and safe living for the public in general."

17. We are inclined to concur with the above conclusion of the High Court. We may observe that the discretion given to the Authority under section 19 of the Ordinance or under Regulation No.16 to compound an offence or discretion given by Regulations Nos.20 and 25 is subject to the well settled principle of legal jurisprudence that discretion is to be exercised fairly and reasonably and not at the cost or prejudice of third parties.

We may also point out that there is marked distinction between a criminal liability under section 19 of the Ordinance and a civil liability under the Regulations to rectify irregularity/breaches. The Authority may compound criminal liability but it cannot regularise a breach of the Regulations which is of the nature which has changed the complexion or character of the structure, which was originally intended to be erected or of the plot."

As can be seen this Court, in the Petition before it, was considering as to whether the erstwhile Karachi Building Control Authority had the right to regularise a construction that was made in deviation of a plan that was approved under the provisions of Sub-Section (1) of Section 6 of the SBCO, 1979 had concluded that the erstwhile Karachi Building Control Authority had no such authority and only had the right to **"compound an offence."** It is also to be noted that the Honourable Supreme Court of Pakistan while considering the decision of this Court had:

- (i) approved the decision of this Court and had directed that the construction must conform with the approval as sanctioned by the

erstwhile Karachi Building Control Authority and that a deviation from those regulations could not be regularised;

- (ii) It was further pointed out by the Supreme Court that that there was a distinction between the **criminal liability that was contained in Section 19** and a civil liability “**to rectify irregularity/breaches**” that would have to be made by the proponent of the construction in terms of the Regulations; and
- (iii) Finally, the Supreme Court of Pakistan held that the Karachi Building Control Authority had the authority **to compound criminal liability** but it **could not** regularise a breach of the Regulations which was of a nature which had changed the “**complexion**” or “**character**” of the structure that was originally to be constructed on the property or impacted rights of third parties.

24. A different interpretation was taken in the decision reported as **Multiline Associates vs. Ardeshir Cowasjee**⁶ in which it was held that:

“ ... **44. In the instant case, there appears to be no violation of the Regulations when the builders have got their building plan regularized after composition and have paid requisite fees for additional floors and have obtained no -objection certificate.**”

25. As can be seen this decision permitted the regularisation of a construction where there was a deviation in the form of numerous additional stories having been constructed. The contradiction between the two decisions was resolved by the Honourable Supreme Court of Pakistan in the decision reported as **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**⁷

“ ... 19. Before concluding the above judgment, we may refer to the conflict of views between the two judgments of this Court in the case of *Abdul Razak v. Karachi Building Control Authority and others* (PLD 1994 SC 512) (*supra*) and *Multiline Associates v. Ardeshir Cowasjee and others* (PLD 1995 SC 423)(also in 1995 SCMR 362) (*supra*) noticed in the leave granting order which reported is to be resolved. ...

20. The perusal of the above quoted extracts from the above judgments indicates that in the case of *Abdul Razak*, this Court **has held that the power to regularise contained in the Ordinance and the Regulations is intended and designed to be exercised when irregularity of the nature which does not change the complexion or character of**

⁶ 1995 SCMR 362

⁷ 1999 SCMR 2883

the original proposed construction nor it adversely affects third parties' rights/ interests. It has been further held that the paramount object of modern city planning seems to be to ensure maximum comforts for the residents of the city by providing maximum facilities and that a public functionary entrusted with the work to achieve the above objective cannot act in a manner, which may defeat the above objective. It has been further held that deviation from the planned scheme will naturally result in discomfort and inconvenience to others. It has also been held that framing of a housing scheme does not mean simpliciter, levelling of land and carving out of plots, but is also involves working out approximate requirement of water, electricity, gas, sewerage lines, streets and roads etc. and if a housing scheme is framed on the assumption that it will have residential units 1 + 1 but factually the allottees of the plots are allowed to raise multi-storeyed buildings having flats, the above public utility services will fall short of requirements, with the result that everyone living in the aforesaid scheme will suffer. It has also been held that to reduce the miseries of most of the Karachiites, it is imperative on the public functionaries like the Authority to ensure adherence to the Regulations. However, it has also been clarified that it may not be understood that once a scheme is framed, no alterations can be made. Alterations in a scheme can be made for the good of the people at large, but not for the benefit of an individual for favouring him at the cost of other people. **On the contrary, in the judgment in the case of Multiline Associates (supra) somewhat different view has been taken. It has been held that if the builder have got their building plan regularise after composition and have paid requisite fees for additional floors and have obtained no objection certificate, there is no violation of the Regulations.** It has been further held that in the city of Karachi there is congestion on account of over-population and in such situation there is no other way out except construction of high-rise buildings. Such high-rise buildings are already in existence in the close vicinity of the building in dispute. It has been also held that it is imperative upon the Court while exercising jurisdiction in a Constitution Petition to see that discretion is to be, exercised in such a way that mischief and chaos is prevented particularly when construction of high-rise building is in public interest and the construction of the building in dispute is not the first building in the area in the neighbourhood of which there are no high-rise buildings already constructed.

21. **The above conclusion recorded in the case of Multiline Associates v. Ardeshir Cowasjee and others (PLD 1995 SC 423) (supra) runs contrary to what has been held in the judgment of this Court in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) (supra) highlighted hereinabove: With due defence, we are unable to subscribe to the above view found favour in the case of Multiline Associates v. Ardeshir Cowasjee and others (PLD 1995 SC 423).** The legal position enunciated, inter alia, in the abovequoted extracts from the judgment in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) is in consonance with the provisions, of the Karachi Development Authority Order, 1957, Sindh

*Building Control Ordinance, 1979, and the Building Regulations, 1979. **The power to regularise contained in the Ordinance and the Regulations is intended and designed to be exercised when irregularity is of the nature which does not change the complexion or character of the originally proposed construction. The Government or the Authority under the Ordinance does not enjoy unbridled or unfettered power to compound each and every breach of the Regulations. The Regulations should be applied for the benefit of the public and not for favouring an individual. Simpliciter the factum that on account of tremendous increase in 'the population in Karachi the situation demands raising of high-rise buildings, will not justify the conversion of residential plots originally intended to be used for building ground-plus-one and allowing the raising of high-rise buildings thereon without providing for required water, electricity, gas, sewerage lines, streets and roads etc. ...***

The Courts while considering question of ad interim or final relief in a case in which deviation of the above nature is allowed, or breach of the approved plan is complained, should keep in mind above factors..."

(iv) The Decisions of this Court

26. The issue has also been examined by this court and was first considered by a Learned Single Judge of this Court in the decision reported as **Muhammad Usman vs. K.B.C.A.**⁸ and in which it was held that:

" ... *It is an admitted position that the plaintiff has violated the approved plan but the plaintiff contends that the violation is only in respect of the internal construction of the building. Basic structure of the building continues to remain the same as per the approved plan. Furthermore, the plaintiff contends that the violation of the internal construction was itself necessitated by the architectural plans and under the regulations cited above these can be regularised upon payment of penalty. In so far as the defendant No.1 is concerned while they admit that certain deviation from the approved plan can be regularised under these regulations, there are certain exceptions to the rule which have been clearly laid down in these regulations and the plot ratio which in this case was 1:4 is one such exception. Consequently, there is no possibility of regularisation of this deviation. Moreover, they contend that as per the Government of Sindh notification such regularisation in any case has now been banned.*

The concept of regularisation of deviation from the approved plan is, I must admit, quite unpalatable to me. One might ask what is the purpose of making a rule or regulation which can be deviated from and such deviation can be compounded upon payment of penalty. Surely this would be contradiction in terms, for, rules are

⁸ 1999 YLR 1170

made to be obeyed and not to be deviated from. If such be the case then that would tantamount to allowing premium on deviation from the rules and, thus, those who choose to obey the rules would suffer and would be at a disadvantage as compared to those who choose not to obey the rules. Town Planning and Building Regulations had been introduced in major cities the world over in the aftermath of the first world war due to great influx of population from the villages to the cities. Purpose of Town and Building Regulations basically is to prevent the builders from construction which can in any way interfere with the tangible as well as intangible rights of other citizens of city. While tangible rights need not be dwelled upon here, the intangible rights relate to right of a citizen to, amongst other things, enjoy a good quality of life by having a better environment around him. Need it be said that it is human nature to try and obtain maximum advantage even if it is to the detriment of the others. The civilized societies introduce rules and regulations to prevent free play to such primitive instincts and the hallmark of such societies is the observance of such rules. Consequently if a rule is made and is violated and then it is condoned the entire structure of a society can collapse. A rule, a regulation or law by its very nature must be enforced because only if it is enforced there is purpose to its formation. Rules assume meaning only when they are enforced and it is only when such enforcement is without any discrimination and without any consideration of status or position of the violators of the rules that the enforces of rules acquire credibility. A wrong once committed cannot be righted by payment of penalty, for that would be a wrong in itself and two wrongs cannot make a right. The concept of penalty was devised as a punishment for a wrong and not as condonation of it. It essentially entails two things. First the reversion to the original state and then payment of fine for having committed the offence. If the first element is missing then it is not a penalty but a disguised mode of permitting the perpetuation of a wrong. It is the availability of such discretion with the State functionaries that leads to corruption and opens windows for wrong doing whereby Government officials use this opportunity to black mail others and relying on the avaricious nature of human being exploit them to extract money. In my view the concept of compounding of an offence is relevant only to criminal law where an illegal act of an individual affects another individual/individuals or the State. On the other hand in civil law where illegal act of an individual affects society at large compounding would amount to discrimination between law abiding and non law abiding citizens and, thus, violative of Article 25 of Constitution of Pakistan and hence to that effect would be of no legal effect.”

27. Another Learned Single Judge of this Court in the decision reported as **Muhammad Asif vs. Controller of Buildings, K.B.C.A, Karachi**⁹

⁹ PLD 2002 Khi 405

“ ... 3. Mr. Naim-ur-Rehman, learned counsel for KBCA, in that context has taken me through the latest amendment made in section 19 of the Sindh Buildings Control Ordinance by adding new subsection (1-A) which authorises the authority to **compound an offence**. He contended that the import of amendment has been misconstrued. In this regard he referred to the case of Abdul Razak v. KBCA PLD 1994 SC 512 wherein the provisions of section 19 of KBCA Ordinance and relevant regulations under the Karachi Building and Town Planning Regulations, 1979 were examined and it was, *inter alia*, observed that the **discretion given to the authority under section 19 of the Ordinance or under Regulation 16 to compound an offence is to be exercised fairly and reasonably and not at the cost or prejudice of third parties. It was pointed out that there was marked distinction between a criminal liability under section 19 and a civil liability under the Regulations to rectify irregularity/breaches. The authority may compound criminal liability but it cannot regularise a breach of the regulations. The above view was endorsed by Full Bench of Honourable Supreme Court in the case of Ardeshir Cowasjee v. KBCA 1999 SCMR 2883.**

4. I agree with Mr. Naim-ur-Rehman. Generally the legal position as interpreted by the Courts is well-settled and it has been frequently observed by the superior Courts that the **civil and criminal liability are altogether different** and an action in respect of each will be a separate action to be taken under the procedure provided under relevant law. Nevertheless, if a penal action is taken, it would not preclude the authority or a Court from taking any action related to civil liability. **No doubt under the circumstances amended Ordinance does authorise the authority to compound an offence and assuming for the sake of arguments that the offence stands compounded, that would simply relieve the delinquent of the criminal liability and absolve him of the penalty provided under section 19 of the Ordinance, it would not, ipso facto, debar the Authority from taking action for violation of the building plan under section 7-A of the KBCA Ordinance. ...**

28. A Learned Division Bench of this Court in the decision reported as **Citizen Welfare Society through Vice President and another vs. Karachi Building Control Authority through Chief Controller of Buildings and Another**¹⁰ wherein the Court while considering the abovementioned decision of the Honourable Supreme Court of Pakistan has opined that that:

“ ... *Although the case of Abdul Razak (supra) has been approved by 1999 SCMR 2883 **but the crux of contention in this petition has been solved by Para. 21 of the judgment of Honourable Supreme Court in that authority, which is as follows:-***

¹⁰ 2009 YLR 215

"(21) The above conclusion recorded in the case of Multiline Association v. Ardeshir Cowasjee and others (PLD 1995 SC 423) (supra) runs contrary to what has been held in the judgment of this Court in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) (supra) highlighted hereinabove. With due defence, we are unable to subscribe to the above view found favour in the case of Multiline Associates v. Ardeshir Cowasjee and others (PLD 1995 SC 423). The legal position enunciated, inter alia, in the above quoted extracts from the judgment in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) is in consonance with the provisions of the Karachi Development Authority Order, 1957, Sindh Building Control Ordinance, 1979, and the Building Regulations, 1979. The power to regularize contained in the Ordinance and the Regulations is intended and designed to be exercised when irregularity is of the nature which does not change the complexion or character of the originally proposed construction. The Government or the Authority under the Ordinance does not enjoy unbridled or unfettered power to compound each and every breach of the Regulations. The Regulations should be applied for the benefit of the public and not for favouring an individual. Simpliciter the factum, that on account of tremendous increase in the population in Karachi the situation demands raising of high-rise buildings, will not justify the conversion of residential plots originally intended to be used for building ground-plus-one and allowing the raising of high-rise buildings thereon without providing for required water, electricity, gas, sewerage lines, streets and roads etc."

In the above para, it has been specifically mentioned that power to regularize contained in the Ordinance and the Regulations is intended and designed to be exercised when the irregularity is of the nature which does not change the complexion or character of the originally proposed construction. The said authority has also discussed the nature of change in the use of plot, its location in the amenity plot and its effects. In the light of above authorities as well as keeping in view the scheme of law and regulations, we have observed that K.B.C.A is sitting as a watch dog to inspect, monitor and regularize the work of the buildings with certain limitations, which have been imposed upon K.B.C.A by the law and that the violation of the building should not be of the nature that it may change the complexion of the building or convert its status from one category to another category or to cause public nuisance. The regularization can be ordered keeping in view the public interest as well as construction in the environment and need as well as interest of the people, which can be a basic requirement."

(v) **Outstanding Issues**

29. While we have opined that, as per the decision in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**,¹¹ it has been settled that Section 19 of the SBCO, 1979 permits compounding of an offence i.e. a criminal offence; we are clear that those decisions do not discuss as to which Section of the SBCO, 1979 grants the power to the SBCA to “regularise” a deviation from construction and no judgment of any court has as of yet stated where that power within the SBCO, 1979 arises from and instead each of the decisions seem to be premised on the decisions of the Honourable Supreme Court of Pakistan in **Abdul Razak v. Karachi Building Control Authority and others**¹² or on the decision in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**¹³. To our mind, after reviewing all these judgments, the issues that arise can be summarised as under:

- (i) Whether the decision in either **Abdul Razak v. Karachi Building Control Authority and others**¹⁴ or in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**¹⁵ or in **Jawad Mir Muhammad and others v. Haroon Mirza and others**,¹⁶ has specifically decided as to whether the power to regularise a deviation from a plan approved by the SBCA, are intra vires or ultra vires of the provisions of the SBCO, 1979¹⁷ or as to whether those decisions are *Sub-Silentio* on this issue;¹⁸ and
- (ii) Whether the point of law recorded in the order of the Learned Single Judge of this court in **Muhammad Usman vs. K.B.C.A.**¹⁹ in the context of hearing an injunction application, as to whether the right of the SBCA to regularise a deviation from a plan approved by the SBCA, discriminates in favour of people who violate the law and prejudices people who follow the law, is violative of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 has not yet come to be considered by a Court as that

¹¹ 1999 SCMR 2883

¹² PLD 1994 SC 512

¹³ *op cit.*

¹⁴ *op cit.*

¹⁵ *op cit.*

¹⁶ PLD 2007 SC 472

¹⁷ See **Province of East Pakistan vs. Nur Ahmad and another** PLD 1964 SC 451; **Khawaja Ahmad Hassan vs. Government of Punjab** 2005 SCMR 186; **Zarai Taraqati Bank Limited and others vs. Said Rehman and others** 2013 SCMR 642; **Azam Wazir Khan vs. Messrs Industrial Development Bank of Pakistan and others** 2013 SCMR 678; **Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat Islamabad and others** 2015 SCMR 630; **Mir Shabbir Ali Khan Bijrani and 3 others vs. Federation of Pakistan and others** PLD 2018 Sindh 603. **Messrs Asio African Co. (Pvt.) Ltd. and others vs. Federation of Pakistan** 2019 PTD 1368

¹⁸ See **Chaudhary Parvez Elahi vs. Deputy Speaker, Provincial Assembly of Punjab, Lahore** PLD 2023 SC 539, **Mst Sumaira Malik vs, Malik Umar Aslam Awan** 2018 SCMR 1432; **Gulzar Ahmed vs. State** 2010 PCr LJ 800; **Sindh High Court Bar Association through its Secretary vs. Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad** PLD 2009 SC 879;

¹⁹ 1999 YLR 1170

decision simply decided an injunction application and remains open for interpretation.

30. While each of these issues are quite relevant to determining the power of the SBCA to regularise a deviation made from an approval sanctioned by the SBCA under Sub-Section (1) of Section 6 of the SBCO, 1979 we are mindful that the right of the SBCA to regularise and hence the provisions of clause (c) of Regulations 3-2.20 of the KB&TPR,2002 have not been challenged before us in these Petitions and a decision on these issues in these proceedings may well amount to judicial overreach.²⁰ Needless to say, until struck down in appropriate proceedings, the provisions of clause (c) of Regulations 3-2.20 of the KB&TPR,2002 will have to be followed. We therefore pass no opinion on the above-mentioned questions and which may be raised and decided in appropriate proceedings.

E. The Opinion of the Court

31. On the facts the Petitioner in this CP No.D-6036 of 2023 has maintained an application for approval and which has not been adjudicated on by the SBCA. The Petitioner in CP No.D-6036 of 2023 is therefore fully entitled to have the application considered and if the plan as submitted is not found to violate the provisions of the KB&TPR,2002 the same must be deemed as approved under Regulation 3-2.6.2 of the KB&TPR,2002 and hence the Petitioner may well be considered to have deemed to have secured approval for construction of a ground plus one storey structure on the Said Property. That being the case we cannot say that the Petitioner in CP No.D-6036 of 2023 has not secured an approval for construction on the Said Property until such determination is made.

32. If the approval is found by the SBCA to have deemed to have been approved under Regulation 3-2.6 of the KB&TPR,2002 then the Petitioner in CP No. 6036 of 2023 would also have a right to seek an alteration to that plan in conformity with the provisions of Regulation 3-2.4 of the KB&TPR,2002 as long as the alteration is not in excess of the permissible limits as mandated under the provisions of the KB&TPR, 2002.

33. Finally, as the power to Regularise a deviation under clause (c) of Regulation 3-2.20 of the KB&TPR,2002 still subsists, in the event that the Petitioner in CP No.D-6036 of 2023 plan is deemed to be approved under Regulation 3-

²⁰See National Engineering Services Pakistan [Nespak] (Pvt.) Limited and others vs. Kamil Khan Mumtaz 2018 SCMR 211; Water and Sanitation Agency, Lahore through M.D. vs. Lottee Akhtar Beverages (Pvt.) Ltd. Lahore and others 2019 SCMR 1146; Chief Executive Officer, Multan Electric Power Company Ltd. Vs Khanewal Road, Multan vs. Muhammad Illyas and others 2021 SCMR 775

2.6.2 of the KB&TPR,2002 the same can be entertained by the SBCA and thereafter decided by the SBCA against the criteria that has been determined by the Honourable Supreme Court of Pakistan in the decision reported as **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**²¹ and as interpreted in **Jawad Mir Muhammad and others v. Haroon Mirza and others**,²² and in which it was held that:

- (a) the SBCA has a right to regularise construction which does not change the “complexion” or “character of the originally proposed construction”?²³ and
- (b) the SBCA does not have a right to regularise construction which would “prejudice the rights of third parties”²⁴

34. The question that arises therefore is what is meant by the expressions “complexion” and “character of the originally proposed construction”? The expression “complexion” has been defined in the Oxford English Dictionary²⁵ to mean:

“ ... the natural colour, texture of the skin, esp of the face.”

The expression “Character”²⁶ has also been defined in the Oxford English Dictionary to mean:

“ ... *the collective qualities or characteristics , esp. mental and moral that distinguish a person or thing.*”

To our mind the meaning of these expressions should be interpreted in light of the decisions in **Abdul Razak v. Karachi Building Control Authority and others**.²⁷ In that case a construction of a ground plus two storey structure for a house was converted into a ground plus two structure containing flats and which was declined by both this court and by the Honourable Supreme Court of Pakistan as incapable of being regularised. It would therefore seem that where an approval is given of a structure, the authority that the SBCA has to regularise, **does not** include the right to regularise a change in the amount of storeys of the building as that would change the “complexion” of the i.e. the face of it and can also not change the “character” of the building i.e. they cannot convert the nature of the approval e.g. from a residential bungalow to Apartments or to shops or offices. In addition, and

²¹ *op cit.*

²² *op cit*

²³ *op cit.* at paragraph 21

²⁴ *op cit.* at paragraph 17

²⁵ Persall, J. and Trumble, B. (2008) **Oxford Reference Dictionary** OUP, Delhi

²⁶ *Ibid*

²⁷ PLD 1994 SC 512

as held by the Honourable Supreme Court of Pakistan²⁸ the construction raised could not prejudice the rights of third parties and which as identified therein would mean that it was incumbent on the SBCA while considering an application to regularise a construction to not mechanically look at the matter from a mathematical point of view to an extent of a percentage but rather to examine the regularisation application maintained by the owner of the construction and to see as to whether the regularisation would or would not:

“ ... ensure safe and hygienic conditions of living for the citizens in general. They do not concern any one individual alone.”²⁹

The Honourable Supreme Court elaborated this point in the decision reported as **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**³⁰ wherein it was held that:

“ The Regulations should be applied for the benefit of the public and not for favouring an individual. Simpliciter the factum that on account of tremendous increase in 'the population in Karachi the situation demands raising of high-rise buildings, will not justify the conversion of residential plots originally intended to be used for building ground-plus-one and allowing the raising of high-rise buildings thereon without providing for required water, electricity, gas, sewerage lines, streets and roads etc.”

It would therefore seem that the rights that were being secured by the Honourable Supreme Court of Pakistan were not the rights of the builder or the occupants but rather were the rights of the residents of the area to ensure that the civic amenities that are available to them is not compromised on account of the regularisation. As such where the regularisation plan is maintained by an owner and would lead to an increase in the usage of the plot by say, an increased number of units on a plot, the application for regularisation cannot be accepted as that would clearly put a stress on the civic amenities of the area.

35. To summarise, the power of the SBCA to regularise as per the decisions of the Honourable Supreme Court of Pakistan is not a **mechanical calculation based on a percentage but rather, when the SBCA considers an application under clause (c) of Regulation 3-2.20 of the KB&TPR, 2002, it has to look to see whether:**

²⁸ *op cit.* at paragraph 17

²⁹ *op cit.* at paragraph 16 as approved in Paragraph 17

³⁰ *op cit.* at paragraph 21

- (i) **the application changes the complexion of the structure that was originally approved e.g. an increase in the number of stories or units in the structure;**
- (ii) **the application changes the character of the building e.g. its change from a house to a multi storied building;**
- (iii) **the application impacts the rights of third parties e.g. by placing pressure on civic amenities enjoyed by the residents of the area e.g an increase in the number of stories or units in the structure;**

and which is to be considered as against the threshold as determined by the Honourable Supreme Court of Pakistan in **Abdul Razak v. Karachi Building Control Authority and others**³¹ and in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**³² and as approved in **Jawad Mir Muhammad and others v. Haroon Mirza and others**³³ and by passing a speaking order considering why the deviation that is sought to be regularised can either be or cannot be regularised.

36. The Petitioner in CP No.D-6036 of 2023 has various rights both under the application filed by him on 25 August 2021 and if found to have been deemed to be approved then both to make an application to alter that plan in accordance with the provisions of Regulation 3-2.4 of the KB&TPR,2002 and also to regularise the structure in terms of clause (c) of Regulation 3-2.20 of the KB&TPR,2002 in terms of the decisions of the Honourable Supreme Court of Pakistan. Such an application has as of yet not been maintained by the Petitioner in CP No.D-6036 of 2023 and in the circumstances we are inclined to direct that:

- (i) the SBCA shall, within a period of 14 days of this order, decide the Application maintained by the Petitioner in CP No.D-6036 of 2023 and that was filed by him on 25 August 2021 so as to determine whether or the application that was filed conformed with the provisions of the KB&TPR,2002 or not and pass a speaking order thereon;
- (ii) in the event that application that has been maintained by the Petitioner in CP No.D-6036 of 2023 does not conform with the provisions of the KB&TPR, 2002, then the application cannot be deemed approved under the provisions of Regulation 3-2.6.2 of the KB&TPR,2002 and must

³¹ *op cit.*

³² *op cit.*

³³ *op cit.*

be rejected and the entire construction on the Said Property shall be demolished by the SBCA as being unauthorised within a period of one month from the date of the order passed in terms of clause (i) above;

- (iii) in the event that the application that has been maintained by the Petitioner in CP No.D-6036 of 2023 does conform with the provisions of the KB&TPR, 2002, then the application must be deemed as approved under the provisions of Regulation 3-2.6.2 of the KB&TPR,2002 and the Petitioner in CP No.D-6036 of 2023 is entitled to construct a structure in accordance with that plan on the Said Property and also to apply for an alteration under the provisions of Regulation 3-2.4 of the KB&TPR, 2002;
- (iv) in the event that an application is thereafter maintained by the Petitioner in CP No.D-6036 of 2023 to regularise the existing construction on the Said Property, the Petitioner in CP No.D-6036 of 2023 must maintain the application for regularisation within a period of 14 days from the date of that order being passed in terms of clause (i) above and the same should be examined by the SBCA, within a period of 14 days of the application being maintained; the application should be decided not by mechanically by only seeing whether or not it falls within the perimeters of clause (c) of Regulation 3-2.20 of the KB&TPR,2002 but also by examining the application for regularisation, as opined on by the Honourable Supreme Court of Pakistan in the decision reported as **Abdul Razak v. Karachi Building Control Authority and others**³⁴ and in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**³⁵ and as approved in **Jawad Mir Muhammad and others v. Haroon Mirza and others**³⁶ as clarified hereinabove.
- (v) if the application for regularisation as may be maintained by the Petitioner in CP No.D-6036 of 2023 is rejected, then the SBCA is with a period of one month, from the date of rejecting the order for the regularisation passed in terms of clause (iv) above directed to demolish the construction that is found to be in deviation of the approval deemed to have been passed in terms of Regulation 3-2.6 of the KB&TPR, 2002.

Each of the Petitions are therefore disposed of in the above terms, along with all pending applications, with no order as to costs and with directions to the SBCA to file a compliance report with the MIT within seven days of the passing of the

³⁴ *op cit.*

³⁵ *op cit.*

³⁶ *op cit.*

orders, as directed by this Court, in terms of clause (i) or clause (iv) hereinabove.

JUDGE

Karachi dated ____ February 2024

JUDGE