

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. Nos. D – 1585 of 2023

Date	Order with Signature of Judge
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1. For hearing of Msic. No.8175/2023 (Stay) :
2. For hearing of main case :

24.01.2024 :

Mr. Usman Farooq, Advocate for the Petitioner.
Mr. Muhammad Amir Khan, Advocate for Respondent No.5.
Mr. Naeem Suleman, Advocate for Respondents 8 & 9.
Mr. Ghulam Akbar Lashari, Advocate for SBCA
a/w Muhammad Asim Ansari (CNIC # 41304-6233755-1)
Deputy Director SBCA Karachi East.
Mr. Khurram Ghayas, Advocate for KDA.
Mr. Jawwad Dero, Addl. A.G. Sindh.

MOHAMMAD ABDUR RAHMAN, J. Through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has impugned the illegal use of Plot No.PB-5, Block No.8, National Cement Employees Cooperative Housing Society R-8, Row No.6, Rashid Minhas road, Gulshan-e-Iqbal, Block No.10-A, Karachi, admeasuring 1280 square yards (hereinafter referred to as the "Said Property") from its status as amenity plot meant for a "community center" into a school.

2. There is no dispute as to the fact that the Said Property has been designated as an amenity plot to be used for the purpose of a Community Center and which is now purportedly being constructed to be put to the use of a School.

3. Mr. Usman Farooq appeared on behalf of the Petitioner has contended that an amenity plot meant for a specific use cannot be converted into any other use and as such the purported conversion of the Said Property from an amenity plot meant for a community center to a school is illegal. Mr. Muhammad Amir Khan, who entered appearance on behalf the Respondent No.5 has contended that the Said Property is designated to be used as a Community Center and the Respondent No. 5 in collusion with the former members of the managing committee of the society had allowed the Said Property to be put to the use of a School. Mr. Naeem Suleman who appeared on behalf of the Respondent No.8 has contended that he has secured approval for the construction of a Community Center and which has been stopped by the SBCA; he however conceded that the Said Property was being put to the use of a school. Mr.

Ghulam Akber Lashari advocate for SBCA has contended that approval was accorded by the SBCA for the construction of basement plus ground plus two storey structure for a community centre and which has illegally been converted to be put to the use of a school. He has contended that the SBCA had ensure that work at the site had stopped and no further work is occurring at present. Mr. Jawwad Dero, learned AAG Sindh and Mr. Khurram Ghayas advocate for the KDA contend that neither the Province of Sindh nor the Karachi Development Authority had any role in this matter.

4. Regulation No.18-4.1 of the Karachi Building & Town Planning Regulations, 2002, (hereinafter referred to as the “KB& TPR, 2002”) specifies that :

“ ... 18-4.1. Change of land use of amenity:

No amenity plot reserved for the specific purpose shall be converted or utilised for any other purpose.”

An “amenity plot” is defined in Regulation 2-7 of the KB& TPR, 2002 as under:

“ ... means a plot allocated exclusively for the purpose of amenity uses as define in Chapter 19 of these Regulations, such as Government uses in 19-2.2.1, Health and Welfare uses in 19-2.2.2, Education uses in 19-2.2.3, Assembly Uses in 19-2.2.4, Religious uses in 19-2.2.5, Parks and Play grounds in 19-2.2.7 Burial grounds in 19-2.2.8, Transportation right-of-way in 19-2.2.9, Parking in 19-2.2.10 and Recreational Areas in 19-2.2.12.

As can be seen any kind of usage of plot that is designated in the master plan of an area to be used for a purpose as identified in Regulation 19-2.2.1, 19-2.2.2, 19-2.2.3, 19-2.2.4, 19-2.2.5, 19-2.2.7, 19-2.2.8, 19-2.2.9, 19-2.2.10 and 19-2.2.12 of the KB & TPR,2002 are designated as plots that are amenity in nature and once designated for that “specific purpose” cannot be either converted or utilised for any other purpose. To clarify, if a plot is designated as an amenity plot for a park it cannot be converted or put to any other i.e. residential, commercial, industrial or even to any other amenity purpose other than for what purpose it was designated. The prohibition is absolute.

5. The Honourable Supreme Court of Pakistan in the case of **Naimutullah Khan Advocate vs. Federation of Pakistan and others**¹ was pleased to hold that

“ ... *It seems that two plots were specifically meant for amenity purposes, i.e., for use of school and public park but incidentally, the office bearers of Karachi Cooperative Housing Societies Union Limited have not only mismanaged the amenity plots but*

¹ 2022 SCMR 171

have tried to create interests of individual persons through a fictitious Al-Riaz Cooperative Society. Apparently, in the master plan, a copy of which has been filed in CMA No. 773 of 2021, these two plots are shown to be as amenity plots. Plot No. SNP A-23 is specifically shown as public park, a part of which at one corner is meant for Jinnah School and at the other corner there is Modern Club. Plot No. SNP A-21-B is shown as open amenity plot. This very original Layout Plan appears to be tampered with by the Karachi Cooperative Housing Societies Union Limited and such tampering by the Union, is illegal, for that a Layout Plan once prepared in which amenities are provided, such amenities cannot be removed or altered/converted into private buildings or used for commercial purposes, in that, the members of the society have acquired vested rights in the amenities, which are provided in the society and those cannot be taken away or allotted by the union for any purpose other than those shown in the original master plan.”

As has been clarified by the Honourable Supreme Court, a plot having been designated for an amenity plot for a particular purpose cannot be used for any other use other than for that purpose. The actions of the Respondent No. 8 of putting the Said Property to the use of a school cannot therefore be sustained and the petition must therefore be allowed.

For the foregoing reasons this Petition is allowed with directions to each of the Respondents, not to permit the use of the Said Property to be put to any use other than that of an amenity plot meant for a community centre. This Petition stands disposed of in the above terms, along with listed application, with no order as to costs.

JUDGE

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