

## IN THE HIGH COURT OF SINDH AT KARACHI

CP D 133 of 2022 : Nauman Qasim Paracha & Others vs. Sindh Building Control Authority & Others

CP D 93 of 2023 : Syeda Ayesha Tanweeer Ansari & Others vs. Province of Sindh & Others

CP D 5775 of 2023 : Head Start School System (Pvt.) Ltd. vs. Federation of Pakistan & Others

For the Petitioners : Mr. Umer Sikander, Advocate  
Mr. Talha Javed, Advocate  
Mr. Abbas Rasheed Razvi, Advocate

For the Respondents : Ms. Sara Malkani  
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Mr. Muhammad Kamran Khan,  
Assistant Advocate General Sindh

Mr. Abdul Moiz Jaferii, Advocate

Date of hearing : 15.01.2025

Date of announcement : 15.01.2025

### ORDER

**Agha Faisal, J.** The law proscribes commercial activity on residential property, however, despite Sindh Building Control Authority's final notice, requiring cessation of illegal activity, having been served back in 2022, commercial activity of running a school is perpetuating on residential premises under the garb of *ad interim* orders obtained herein.

2. *Admittedly*, Head Start School System (Private) Limited operates a commercial school ("School") on a residential property, being Plot 43/3/F Block 6 PECHS, Karachi ("Suit Property"). CP D 133 of 2022 has been preferred by neighbors seeking the cessation of commercial / school activity on the Suit Property. The latter petitions have been filed by the school itself, and 6 individuals claiming to be parents of children enrolled at the School, seeking to perpetuate commercial / school activity on the Suit Property. These petitions shall be determined vide this common order.

3. The neighbors' argument is that permitting the functioning of commercial activity / school on residential premises is blatant violation of the law; in addition to being a grave inconvenience, nuisance and anathema to the residential locale. The School and the parents, while admitting that commercial

activity is taking place of residential premises, insist that the activity ought to be permitted as others are doing so as well in Karachi; the School would be / is seeking regularization and pending any adjudication / decision in such respect, by the concerned authority, no restraint ought to be placed thereupon.

4. Heard and perused. It is observed that a regulator, Sindh Building Control Authority, has been issuing notices to the School since 2022 seeking cessation of illegal activity at the Suit Property; a final notice dated December 2022 is on record. There is no cavil with respect to the applicable law and / or jurisdiction of the regulatory authority, however, the School continues to operate on residential property by virtue of *ad interim* orders obtained herein that subsisted till date. The primary question for this Court to determine is whether orders can be rendered having the effect of suspending the law and whether in the *admitted* absence of any sanction / regularization, illegal commercial / school activity on residential premises can be sanctioned by this Court.

5. The Karachi Building and Town Planning Regulations 2002, including *inter alia* Regulations 18-4.2.2, 18-4.8, 18-5 and 25-2.2, are within the cognizance of this Court and the present utilization of the Suit Property is in *prima facie* derogation thereof. Prior to addressing any other aspect of this matter, it is observed that any order rendered herein perpetuating the violation of the aforesaid would render the very law otiose.

6. The Supreme Court has deprecated the tendency to render orders having the effect of suspending a law. It has been consistently maintained that interim orders, having the effect of suspending a law, ought not to be passed. There is a plethora of authority to such effect, including that reported as PLD 1989 SC 61, 1993 SCMR 2350 and AIR 1985 SC 330; and recently the same has been emphasized in the order dated 29.02.2024, passed in the case of Commissioner Inland Revenue, Large Taxpayers Office vs. Pakistan Oilfields Ltd. Rawalpindi & Others (Civil Petitions No.3472 to 3475 of 2023).

7. The determination of whether the School is entitled to regularization / conversion perhaps requires evidence etc., determination whereof is not amenable in writ jurisdiction, however, *admittedly* as of today no regularization, conversion and / or any form of sanction is available.

8. Regularization, by definition, implies that there is a violation, in need of acquiesce, and in the present circumstances any perceived delay in

consideration of the request, if any, could not be considered to be grant thereof. Even otherwise this Court is assisted with the order of the Supreme Court in *Abdul Karim*<sup>1</sup> wherein such *conversion* appears to have been banned. The Court was pleased to hold as follows:

“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.”

9. The operation of commercial schools upon residential property has consistently been deprecated by the Supreme Court and *Yawar Azhar Waheed*<sup>2</sup> is another such instance. The Court duly appreciated the harm occasioned to area residents and concluded *inter alia* that all private educational institutions in residential areas are to be removed. Excerpts from the judgment are reproduced herein below:

“13. It is shocking that Cantonment Board approved the erection of new building for commercial purposes i.e. to run a school with hundreds of children, thus, conveniently ignored the initial condition imposed by itself that the plot shall not be used for any other purpose

<sup>1</sup> *Abdul Karim vs. Nasir Salim Beg & Others* reported as 2020 SCMR 111.

<sup>2</sup> Per *Dost Muhammad Khan J* in *Mst. Yawar Azhar Waheed vs. Khalid Hussain & Others* reported as 2018 SCMR 76.

except residential house. The sanction was accorded blind-foldedly through third degree tactics without the sanction of law...

17. The appellant purchased, the plot on the basis of the allotment order, issued to the original owner of the plot by the Cantonment Board and as stated above, there was a strict condition incorporated therein that the plot shall be used for erection of residential building thereon however, the purpose of use was in blatant violation of law was converted by the Board to commercial house, while approving the building plan, the only motive behind it was to trample the law on the subject for money and financial benefits and for no other purpose.

18. The respondents' suit was fully justified because they are the residents of the same area situated at a little distance. If the school building is put into operation, hundreds of children would be brought in cars and other vehicles, for which there is no parking facility and even for the employees of the school, besides it would create massive pollution emitting carbon monoxide gas on daily basis. Drinking -water consumption would increase manifold which is at present not even sufficient to meet the requirements of the residents of the area. Sanitation condition would be worsen because hundreds of children would definitely create multiple problems like pollution, garbage etc. The security of the area would be compromised in view of the prevailing condition in the country and the lives of the residents would be at stake as well...

20. Copy of this judgment be sent to the Attorney General for Pakistan and Secretary Defence who shall ensure that all the private educational institutions i.e. schools, colleges, etc. constructed in the Cantonments and all the commercial buildings erected in residential areas of Cantonments throughout Pakistan shall be removed gradually, having been constructed in violation of the law and rules as well as by-laws and the master plan and their original shape be restored."

10. The import of efflux of time, coupled with third party interests, was articulated in defense of perpetuating *admittedly* unsanctioned activity at the Suit Property. Respectfully, it is the considered view of this Court that the same could not be employed to affix a seal of judicial approval to holding the pertinent governing building and town planning laws in abeyance.

11. In *pari materia* circumstances this Court has deliberated and disallowed perpetuation of illegal commercial / school activity on residential premises, in *Ardeshir Cowasjee*<sup>3</sup>, *Jaffar Public School*<sup>4</sup>, *Mrs. Rozina Ali*<sup>5</sup> *CPLC Neighborhood Care*<sup>6</sup> and *Mehreen Shoaib Baghpatee*<sup>7</sup>. Interestingly, the judgment in *Jaffar Public School* was rendered specifically in the instance of the Suit Property. The edicts cited supra are hereby cited with appreciation and held to be squarely applicable herein.

12. Therefore, in *mutatis mutandis* application of the authority cited, CP D 133 of 2022 (filed by the neighbors) is allowed and CP D 93 of 2023 and CP D 5775 of 2023 (filed by the School and certain individuals) are dismissed with costs of Rs. 100,000/- per petitioner; to be deposited with the Sindh High Court Clinic within a week hereof. In the event that the costs are not deposited as aforesaid, the same may be recovered as arrears of land revenue.

Judge

Judge

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<sup>3</sup> Per *G H Malik J* in *Ardeshir Cowasjee & Others vs. Muhammad Naqi Nawab & Others* reported as *PLD 1993 631*.

<sup>4</sup> Per *Anwar Zaheer Jamali J* in *Arif & Another vs. Jaffar Public School & Others* reported as *2002 MLD 1410*.

<sup>5</sup> Per *Muhammad Junaid Ghaffar J* in *Mrs. Rozina Ali vs. KMC* reported as *2019 CLC 1081*.

<sup>6</sup> Per *Adnan Iqbal Chaudhry J* in *CPLC Neighborhood Care vs. Federation of Pakistan* reported as *2019 YLR 911*.

<sup>7</sup> Order dated 11.01.2024 in Suit 583 of 2023 – *Mehreen Shoaib Baghpatee vs. Province of Sindh & Others*.