

THE HIGH COURT OF SINDH AT KARACHI

CP.No.D-3465 of 2022

Present: Mr. Justice Salahuddin Panhwar
Mr. Justice Khadim Hussain Soomro

Petitioner : Tahir Hussain
Respondents : The Director Central & others
Date of hearing : 30th April 2024
Date of Judgment : 30th September 2024

M/s. Abu Bakar Khalil and Nancy Dean advocate for interveners
Mr. Mumtaz Ali Jarwar, advocate for interverners.
Mr. Khurram Gyas, advocate for SMPA
Ms. Nazia Siddiqui, advocate for KDA
Mr. Dhani Bux Lashari, advocate for SBCA
Dr. Liaquat Ali Abro, Law Officer, Law Department, Government of Sindh.

JUDGMENT

Salahuddin Panhwar, J. According to the petitioner, the **respondent No.3**, being a *construction company*, raised construction over plots **No A-83 & A-86, Block Q, North Nazimabad Karachi** (*the property*), without an **approved plan** in violation of Sindh Building Control Ordinance 1979 (SBC Ordinance 1979) and Karachi Building and Town Planning Regulation, 2002 (KBTPR, 2002); that petitioner has time and again **approached** to the concerned authorities, but they failed to pay any heed, thus, it is claimed that they having no alternative remedy, the petitioner has approached to this Court with **prayer**, that the construction raised on the said plot is in violation of **SBC Ordinance 1979**, therefore, the same may be **demolished** accordingly.

2. **Notices** were issued to the respondents. **SBCA** (Respondent No.1) filed comments by contending that the building in question is **occupied** by different persons/**allottees**, who *purchased* units in subject matter building. According to **SBCA**, Ground+2 is *permissible* as per plot area, ratio reserved for the category "**A**" i.e. **1:2**; that final notices have been issued to the occupants as well as owner with direction to remove the *violation* within **seven days**.

3. **Additionally**, certain directions were also issued by this court, regarding *demolition* of **illegal construction**. In compliance whereof, reports were submitted, which reflect **partial demolition** of property in question/ building, along with photographs. However, it appears that such directions were issued without hearing the occupants, which is their mandatory right

under Section 7-E of SBC Ordinance 1979, which is reproduced as under for the sake of convenience:-

7-E. Completion of buildings, etc. (1) Every person who has **erected or re-erected a building** shall, within **thirty days** of the completion of the building, report such **completion** to the Authority.

(2) The Authority shall **cause every building** which has been **completed** to be **inspected**, and if it has been **constructed in violation or contravention** of any provisions of this Ordinance, if any, the Authority may **require the alterations of the buildings** so as to be in compliance therewith, and where such an alteration is not possible, the Authority may require the building or any part thereof **to be demolished** or, on the application of the owner of such building, compound, the offence of such contravention; provided that no offence shall be so compounded if it involves any violation or contravention of the provisions of a master plan or of a sanctioned Site Development Scheme.

(3) if a building is required to be demolished under the provisions of clause (2), and such requirement is not completed with, within the specified period, the Authority may have the building demolished through its own agency and the cost incurred thereon shall be deemed to be a tax levied on the owner or occupier of the building under this Ordinance and be recovered accordingly: **Provided that no action shall be taken under this paragraph unless the person likely to be affected thereby is given an opportunity of being heard.**

[Emphasis added]

4. The above reproduced **Section 7-E** of the SBC Ordinance 1979, is *essential* in the context of the present *controversy* and it exclusively deals with the completion of **buildings** and the **responsibilities** of the building owner and the Authority in this regard, the provisions of this section needs to be *strictly adhered to, especially* in public sale **projects** in order to *safeguard* the rights and interests of allottees/occupants. The salient features of the provisions of Section 7-E, are as follows;

- **Reporting Completion:** Individuals who have erected or re-erected a building must report its completion to the Authority within thirty days.
- **Inspection by Authority:** The Authority is responsible for inspecting completed buildings to ensure compliance with the Ordinance.
- **Alterations Required:** If a building violates any provisions of the Ordinance, the Authority may require alterations to bring it into compliance.

- **Demolition or Compounding:** If alterations are not feasible, the Authority may require the building or parts of it to be demolished. Alternatively, the owner may apply to compound the offence, except in cases involving violations of a master plan or sanctioned Site Development Scheme.
- **Demolition by Authority:** If demolition is required and not completed within the specified period, the Authority may demolish the building using its own resources.
- **Cost Recovery:** The costs incurred for demolition will be treated as a tax levied on the owner or occupier of the building and will be recovered accordingly.
- **Right to be Heard:** No action for demolition will be taken without providing the affected person an opportunity to be heard.

5. However, the **occupants/allottees** filed an application under **Order 1 Rule 10** Civil Procedure Code, 1908, contending therein that they are in lawful possession of their respective **units/flats**, which were **purchased** by them from the **builder** and in support of their version, they have annexed sale agreements. At this juncture, this Court called **report** from the Chief Secretary, Sindh, *enquiring* whether any **shelter scheme** has been offered or provided under the **Co-operative Societies Act, 1925** and the recently enacted **Sindh Cooperative Societies Act, 2020**, to uplift the poor people, who are not in a position to buy their permanent place of residence. Being relevant clause *(iii)* and *(v)* are reproduced as under:-

*“iii. Director General KDA submitted a report that KDA has not allocated any land/space for persons who are **shelter less** on any reason because the **KDA schemes** are **advertised** for public purpose through competitive process for general public.*

*v. The matter of scheme / road map under the Sindh Cooperative **Societies Act, 2020**, for **poor person** to uplift them was **deliberated** between the Chief Secretary Sindh, and Mayor Karachi and it was observed that presently no specific scheme is available for poor person for their uplift. **The Societies framed under Cooperative Societies Act, 2020, are generally meant for the class of persons who can afford payment of cost of land, internal and outer development charges and cost of amenities.** In a separate case, a committee headed by Chairman Planning and Development Board was constituted in pursuance of this Honourable Court’s order in M.A No.69 of 2022 for poverty elevation alongwith other primary purposes. The committee is still finalizing its report and the same will be shared with the Honourable Court in two months.”*

6. The **Director** General, of the Karachi Development Authority (**KDA**), has *filed* a **report** indicating that the **KDA** has not allocated any land or spaces

for *shelterless* persons, as per the **KDA** Regulations. According to the report, the **KDA** has initiated/established schemes for the public purpose, in accordance with the **KDA** Ordinance of 1957 and the Allotment Regulations of 1965. Clause **5(i)** of these Regulations provides for a competitive process, for the general public, and further clarifies that the **KDA** has no land available for **allocation** to shelter less persons. It is important to note, that the **KDA** was *established* by Order No. V of **1957**, with the **objective** of *developing* and *improving* the city of Karachi. This was to be achieved by providing **public amenities**, such as executing works for water supply and sewerage, or by providing other public facilities, preparing, and executing development or improvement schemes, building research schemes, and similar initiatives.

7. However, over the passage of time, the condition of Karachi has unfortunately deteriorated. Most of the main roads in the city are in a *dilapidated state*, and there is also lack of **public amenities**, such as parks, gardens, and playgrounds, within the city. This is concerning, as the primary purpose of the **KDA's** establishment was to **develop** and **improve** the city of Karachi by providing **essential public** infrastructure and facilities. However,

- i. *The KDA has not allocated any land or spaces for shelterless persons, despite its regulatory responsibility to do so.*
- ii. *The KDA's schemes are designed for the public, as per the Allotment Regulations, and do not cater to the needs of the shelter less population.*
- iii. *The KDA was established to develop and improve Karachi, but the city's condition has deteriorated over the time, with poor road infrastructure and a lack of public amenities, contrary to the KDA's original mandate.*

8. This suggests a need for KDA to *re-evaluate* its priorities and strategies to better fulfil its core **objective** of developing and improving the city of Karachi, including addressing the needs of the shelter less population, in order to achieve the main purpose and object in accordance with the **KDA** Ordinance of **1957** and the Allotment Regulations of **1965**.

9. That, to the surprise of this Court, during the course of proceedings, it has also been transpired that, though the provisions of Section **7-B**, **incorporated** through amendment made in the year **2014**, to the Sindh Building Control Ordinance, 1979, but due to the reason that this mandatory provision has not been complied with, by *strategically* preparing the master plans of each

of the towns/districts, throughout the province of Sindh, as a result of which, the *mushroom growth* of unplanned widespread constructions, has destroyed the infrastructure completely and made the lives of the inhabitants absolutely miserable. The urbanized towns throughout the province of Sindh, are growing at a dangerously rapid pace, without any well thought and planned strategy even need of the same, neither any survey or policy has been formulated with reference to need of housing projects, so that every person may not initiate at his own, which are not required in near future. It will not only save the land to be used for agriculture or industrial purpose, but hard-earned income of innocent people as well, who are being enticed from different projects/housing schemes and buildings later found it abundant. It shall be part of the town planning that how many housing units/residential schemes or buildings will be required in next 50 years, keeping in view population ratio, to prevent people from dead investments being commercialized by displaying bill boards and creating housing projects, which are beyond reach of common people.

10. The recent devastations, in the shape of **urban flooding**, which *literally handicapped* the lives of millions, as **floods** badly hit the province of Sindh in particular, the damage sustained, would definitely take *considerable* time to normalize, *predominantly* the ultimate reason, which paved the way, leading to urban flooding, mainly owing to the *illegal constructions*, without adhering to town planning and zoning regulations, illegal occupation of the encroachers, closure of natural waterways, by the illegal occupiers and encroachers, who have **developed** such *illegal housing/commercial schemes*, without any prior or proper approval, was also one of the main reasons, for the **failure**. The concerned **SBCA** officials ought to have **conducted** themselves in accordance with law, as per their job description, the **omission** on their part has far reaching *consequences*, in this context, very recently the Hon'ble bench of Apex Court in the case of *Raja Zahoor Ahmed versus Capital Development Authority*, reported as 2022 SCMR 1411, has held that;

"7. The necessity of planned urban development is accentuated in the vulnerable age of climate change. Climate change poses a series of interrelated challenges to the country's most densely populated places: its cities. Many cities depend on infrastructure, like water and sewage systems, roads, bridges, and power plants, that is aging and in need of repair or replacement. Rising sea levels, storm surges, heat waves, and extreme weather events will compound

these issues, stressing or even overwhelming these essential services. Climate change and its impacts threaten the well-being of urban residents. Essential infrastructure systems such as water, energy supply, and transportation will increasingly be compromised by interrelated climate change impacts. The nation's economy, security, and culture all depend on the resilience of urban infrastructure systems. Direct and interacting effects of climate change will expose people who live in cities to multiple threats. Climate changes affect the built, natural, and social infrastructure of cities, from storm drains to urban waterways to the capacity of emergency responders. Climate change increases the risk, frequency, and intensity of certain extreme events like intense heat waves, heavy downpours, flooding from intense precipitation and coastal storm surges, and disease incidence related to temperature and precipitation changes. The vulnerability of urban dwellers multiplies when the effects of climate change interact with pre-existing urban stressors, such as deteriorating infrastructure, areas of intense poverty, and high population density.

8. Pakistan falls amongst the most vulnerable countries and is seriously hit by climate change, even though it has negligible contribution towards greenhouse. The National Climate Change Policy 2012 underlined the seriousness of this existential threat. Climate resilient development and adaptation® was the focus of this policy document though as a responsible member of the global community due importance was also accorded to mitigation^o efforts. However, after Paris Climate Accord 2015, Pakistan has updated its climate policy and the focus of the National Climate Change Policy 2021 is equally placed on adaptation and mitigation with the major emphasis on nature-based solutions. Such solutions include vegetal cover expansion, coastal resource management, and mangrove and natural reef ecosystem protection. Infrastructure-based solutions comprise climate-proofing infrastructure, including storm drainage systems, water supply and treatment plants, as well as the protection or relocation of energy or solid waste management facilities. Some coastal cities may also need to plan for infrastructure development, protection and/or relocation related to a rise in sea level.!!

9. Our national response to climate change, inter alia, is to continuously evolve innovative and smart "adaptation" strategies. Our adaptation climate change strategy requires that Pakistan and its public institutions make climate resilient policies and rest its decisions on sustainability. Our infrastructures must be strong enough to withstand climate change e.g., heavy rains, floods, earthquakes and other extreme weather. Shutting eyes to the ominous signs of climate change will plunge us into a world that may not be able to sustain fundamental human values. It could affect our basic physical and larger social needs including harnessing and consuming energy, water and food as well as habitation, travelling and communication potentialities. It is doubtful that our early town planners were driven by climate considerations. However, climate must, in the wake of climate change, form a basic determinant of urban planning and design.¹² Climate-resilient development in cities of all sizes is crucial for improving the well-being of people and increasing the life opportunities of future generations. Any change in the Master Plan to an urban

scheme without taking account of the climate factor would be detrimental.

10. The concept of "***the Right to the City***" has become a common framework for articulating alternative visions of the city and making a host of demands on issues related to urban equity and social justice. ***It has also been used for making urban governance, planning, and budgeting more participative and inclusive.*** The Right to the City is interdependent to all recognized international human rights; and its conception is based on an integral view, which includes civil, political, economic, social, cultural and environmental rights enshrined in the International Human Rights Treaties.

11. Effect of climate change on cities, affects its residents and their core fundamental rights to life, dignity and property guaranteed under Articles 9, 14, 18 and 23 of the Constitution of the Islamic Republic of Pakistan, 1973. In an urban living, climate change can impair the quality of life of a person, offend his dignity and deprive him of his property or the right to fully enjoy his property. ***Incorporating adaptation, climate resilience and sustainability, in the policy decisions by the urban development authorities, are essential to actualize the fundamental rights of the people and therefore form an integral part of the fundamental human rights of the people of Pakistan.*** In the face of the grave existential threat of climate change, adaptation, climate resilience and sustainability assume the role of a constitutional necessity and of an overarching constitutional obligation.

12. Our urban development authorities need to ensure that their urban development plans consider and support adaptation, climate resiliency and sustainability. **Before putting up a proposal for amendment or modification in the Master Plan or a scheme or before proposing a new development plan or scheme, the urban development authorities need to seriously consider the climate change angle.** Any conversion of residential neighbourhoods to commercial zones is likely to lead to adverse environmental consequences on account of increased human and vehicular traffic and activity, and should not be permitted without proper investigation, forethought and remedial measures to control the soaring thermal environment. **It is high time that our urban planners prioritize the climate factor in their development approaches to address the triple planetary crises of Climate Change, Air Pollution and Loss of Biodiversity.** The CDA shall ensure to factor in adaptation, climate resiliency and sustainability into their plans, policies, and decisions in order to protect the constitutional rights to life, dignity and property of the residents of Islamabad, in particular, and people of Pakistan, in general.

[Emphasis supplied]

11. In view of the above reproduced, relevant part of the judgement, considering the legislature's wisdom behind enacting the newly **added Section 7-B** to the Sindh Building Control Ordinance, 1979, which is significantly important and **analogous** to the context of the Apex Court's Judgement discussed Supra, which casts this *fiduciary* duty upon all the relevant **officials of SBCA/Town planning Department/Sindh Master Plan Authority**, to strictly

adhere to the mandatory provisions of **Section 7-B**, which is reproduced herewith,

7-B Town Planning. - *The Authority shall draw up a Master plan for all Districts of the Province which shall, among other matters provide for -*

(a) a survey of the District including its history, statistics, public services and other prescribed particulars;

(b) development, expansion and improvement of any part of the District;

(c) restrictions, regulations and prohibitions to be imposed with regard to the development of sites, and erection and re-erection of buildings within the district;

(d) earmarking of land for mosques where necessary:

Provided that the Master Plan shall be presented to Government for its consideration and shall be given effect after approval by Government.

12. **That**, as per this *statutory provision*, and the mandatory requirement, upon the failure on part of officials of **SBCA/Sindh Master Plan Authority** to perform and deliver, this Court while taking *exception*, as the judicial propriety demands, the **Chief Secretary Sindh** is directed to submit, compliance report in view of **Section 7-B**, which has now very long been amended and promulgated. The **report** must **contain** all the **master plan** of all the towns/**districts** situated in the province of Sindh, it is *expected* that strict compliance whereof be made, by the **officials concerned**, stationed at various regions, and if any deviations are reported against the **approved master plans**, the delinquent would strictly be dealt with in accordance with law.

13. With regard to the **Section-16** of the Sindh Building Control Ordinance, 1979, which mainly deals with the provision of appeal, against an order passed under this Ordinance. This section provides a complete **mechanism** for aggrieved parties to **challenge** the decisions of the Sindh Building Control Authority (the Authority) or the Government of Sindh, as the case may be; whereas, the timeline provided to any *aggrieved* person to **challenge** any order by which he is *aggrieved*, must be filed **within 30** days of the date of the order which is appealed against. Hence, an appeal must **legally** be filed within **thirty days** from the date of the **order** against which the appeal is being made. This **time limit** is crucial, and any *delay* beyond *thirty days* may render the appeal invalid.

Appellate Authorities: The appeal can be filed before **two separate authorities**, depending on the nature of the **order** being appealed:

(a) Government of Sindh: If the order being appealed is made by the Authority, the appeal lies with the Government of Sindh. This means that if the **Authority has passed an order** under the ordinance, the aggrieved party can **appeal** to the Government of Sindh. This is a higher authority that can review the decision of the Authority and pass a fresh order.

(b) Sindh Building Control Authority: In all other cases, the appeal lies with the Authority itself. This implies that if an order is passed by any other authority or officer under the ordinance, the appeal against that order will be heard by the Authority. **The Authority will review its own decision or the decision of its subordinate officers and pass a fresh order.**

Appeal must be filed in the Prescribed Manner: The appeal must be filed in the prescribed manner, which means that the appellant must follow the procedures and formalities laid down by the ordinance or the rules made thereunder. This may include filing a written appeal, paying the required fee, and providing all necessary documents and evidence to support the appeal.

Scope of Appeal: The appeal provision under Section 16 is wide enough to cover all types of orders passed under the ordinance. This may include orders related to building plans, construction, occupancy certificates, demolition, or any other matter regulated by the ordinance. The appeal can be filed by any person or entity aggrieved by an order, including builders, developers, architects, engineers, or property owners.

Effect of Appeal: The filing of an appeal does not automatically stay the implementation of the order being appealed. The appellant may need to seek a stay order from the appellate authority to prevent the execution of the order until the appeal is decided. The appellate authority may grant or refuse a stay order, depending on the circumstances of the case.

14. In conclusion, **Section 16** of the Sindh Building Control Ordinance, **1979** provides a **mechanism** for appeal against orders passed under the Ordinance. The appeal can be **filed** before the Government of Sindh or the Authority, depending on the nature of the order being appealed. The appeal must be filed within *thirty days*, and the appellant must follow the prescribed manner. The appeal provision is an *essential* part of the ordinance, as it provides an *opportunity* for aggrieved parties to seek **redressal** and ensures that the decisions of the Authority and other officers are reviewed and corrected, if necessary.

15. Whereas, **Section 17** of the Sindh Building Control Ordinance, 1979, deals with the disposal of applications and appeals filed under the 1979,

Ordinance. This section *sets out* the time frame for **disposing** of such applications and appeals, as well as the *requirement* for providing an opportunity of being heard to the applicant or appellant.

- (i) **Time Frame for Disposal:** According to Section 17, an application or **appeal** made under the ordinance shall be **disposed** of **within thirty days** of the receipt thereof. This means that the Authority or the Government, as the case may be, is required to take a **decision** on the **application** or appeal within **thirty days** from the date of its receipt.
- (ii) **Extension of Time Limit:** However, the **time limit** of thirty days can be extended from **time to time** by the Government on the request of the Authority. This implies that if the Authority requires more time to dispose of an application or *appeal*, it can request the Government to *extend* the time limit. The Government, in its discretion, can grant such an **extension**. The provision for **extension** of time limit, on the other hand, allows for *flexibility* in cases, where more time is *required* to dispose of an application or appeal
- (iii) **Opportunity of Being Heard:** The attached proviso to **Section 17** provides that no application or **appeal shall** be disposed of unless the applicant or appellant, as the case may be, is given an opportunity of being heard. This means that before taking a decision on an application or appeal, the Authority or the Government must provide the applicant or appellant with an opportunity to present their case, **either in person** or through a representative. This provision is a fundamental principle of natural justice, which ensures that the affected party is heard before a decision is taken that may affect their rights or interests. The opportunity of being heard may be provided through a personal hearing, written representations, or any other mode that the Authority or Government may deem fit. The requirement of providing an opportunity of being heard ensures that the affected party is not deprived of their right to be heard, and that the decision-making process is transparent and fair.
- (iv) **Importance of Section 17:** Section 17 is an important provision in the Sindh Building Control Ordinance, 1979, as **it ensures that applications and appeals are disposed of in a timely and fair manner**. The time frame of thirty days provides a sense of urgency and accountability on the part of the Authority and the Government to take decisions promptly.
- (v) **Consequences of Non-Compliance:** Failure to comply with the provisions of Section 17 may have serious consequences. If an application or appeal is not disposed of within the prescribed time frame, or if the applicant or appellant is not provided with an opportunity of being heard, the decision taken by the Authority or Government may be challenged in a court of law. **In such cases, the court may declare the decision invalid or set it aside and direct the Authority or Government to reconsider the**

application or appeal in accordance with the provisions of the ordinance. This may lead to delays, inconvenience, and additional costs for all parties involved.

16. **In conclusion**, Section 17 of the SBC Ordinance, 1979 is a **vital** provision that ensures the *timely* and *fair* disposal of applications and **appeals** filed under the Ordinance. The provision for **extension of time** limit and the requirement of providing an opportunity of being heard are essential safeguards that protect the rights and interests of the affected parties.

17. It is pertinent to refer **orders** of Apex Court dated **22nd January 2019, 24th January 2019** as well as **14th February 2024** passed in CP.No.815-K 2016 & C.R.P. 19-K/2017 etc. Being relevant **paragraphs No. 7 to 10** of order dated 14th February 2024 passed by the Apex Court in said matters are reproduced as under:-

“7. CMA No.643-K/2022: Mr. Muhammad Hasseb Jamali, learned ASC states that he is under instructions to withdraw this application. Therefore, this application is dismissed as withdrawn.

8. This main matter pertains to the **unauthorized and illegal construction** being raised in the city of Karachi. What apparently transpires is that **construction** is raised **in excess** of the permissible limit, **contrary** to the **stipulated** conditions of the lease, such as land **designated** as *residential* is converted to commercial use, and/or additional/unauthorized construction is raised. **Unsuspecting buyers buy such properties, while the builder pockets the money and profit and the Sindh Building Control Authority (SBCA) looks the other way.** After the construction has been raised the consequences of **the action of demolishing are to be suffered by those who have bought such properties, but who may not have known that the land’s use was changed and/or construction raised was illegal/unauthorized.**

9. We inquired from the representative of SBCA whether **it is a requirement that those raising construction must disclose the approval for which it is granted and it transpires that this is not done.** The mischief could be prevented if SBCA had directed that (a) copy of the approved building plan, (b) the nature of the building, that is, whether residential, flat site or commercial, and (c) the number of permissible floors are disclosed on a prominent board together with the contact details of SBCA wherefrom the same can be further verified. And, if the same is laminated such approved plan will not tear or deteriorate. The Director General SBCA states that he will recommend to the government to mandate this and the learned Additional Advocate-General, Sindh supports the same. On the next date of hearing let such notification/rule be produced.

10. Our attention has also been drawn to section 18-G of the Sindh Building Control Ordinance, 1979 ('the Ordinance') reproduced hereunder:

18-G. Provision of utility services. No authority shall-

- (i) provide the utility services including electric connection, gas connection, water connection and sewerage disposal facility to any premises unless the approved completion plan is produced before it; and
- (ii)
- (iii) register the sale deed, lease or sub-lease in respect of the newly constructed premises unless the approved completion plan with the deed is produced before it.

The learned counsel and DG SBCA state that the utility providers disregard the aforesaid provision. **Needless to state every law must be strictly complied with. Section 19 of the Ordinance stipulates that failure to comply with the Ordinance attracts criminal consequences. SBCA will be within its rights to initiate criminal proceedings against the utility providers and the sub-registrar if they violate section 18-G of the Ordinance.** The Government of Sindh is directed to **draw the attention** of the Registrar and sub-registrars to **section 18-G** of the Ordinance- and to inform them that failure to abide thereby is an offence **under section 19 of the Ordinance, and further that disciplinary proceedings will be initiated against them if compliance therewith is not made."**

Accordingly, SBCA before taking any action of demolition shall ensure that the occupants have been compensated in view of the above referred decisions of the Apex Court.

18. However, the law governing the building control in the **urbanized** parts of the province is governed through the provisions as provided in the SBC Ordinance, 1979 (Amended), is a key legislative framework aimed at regulating **construction** and development activities across the province of Sindh. To ensure **strict compliance** with its provisions, the 1979 Ordinance mandates for **the establishment of Special Courts in view of Section 18-A, with significant powers and functions to address violations effectively.** The legislature has purposively enacted and amended the **original statute**, as it was **predominantly** essential for these **courts** to serve as a **crucial mechanism** for upholding building regulations, **maintaining urban planning standards, and ensuring that development activities conform to approved plans.**

19. Whereas, the **establishment** and jurisdiction of **Special Courts**, have been defined under Sections **18-A, 18-B, 18-C, 18-D and 18-D** of the Sindh Building Control **Ordinance**, 1979, the Government of Sindh is authorized to establish Special Courts specifically to handle offences arising in pursuance to the 1979, Ordinance. These courts are **endowed** with **exclusive** jurisdiction, meaning thereby any violation of the ordinance, such as **unauthorized construction**, deviation from **sanctioned** building plans, or illegal use of land, must be tried exclusively by these specially enacted courts. This exclusivity ensures that all issues related to building control are addressed by a specialized judicial body equipped with the requisite knowledge and authority.

20. In this context it is necessary to state here that, **Section 18-A**, was **incorporated** in the year **2013**, through an amendment made to original statute with an intentional and purposive addition, for the establishment of special courts, therefore, it would be conducive to reproduce herewith the newly added, Section 18-A (1) and (2) of the Sindh Building Control (Amendment) Act 2013, same is reproduced as under :

“18-A. (1) Establishment of Special Court. Government shall, by notification in the official gazette, establish as many Special Courts as it considers Insertion of section 18-A in Sind Ordinance No.V of 1979. necessary and appoint a Judge for each of such Courts and where it establishes more than one Special Court, it shall specify in the notification, the place of sitting of Judge of each Special Court and the territorial limits within which it shall exercise the jurisdiction under this Ordinance.

(2) A Judge of Special Court shall be appointed by Government after consultation with the Chief Justice of the High Court of Sindh and no person shall be appointed as Judge of the Special Court unless he is or has been a Sessions Judge, Additional Sessions Judge or has ten years standing as an Advocate.

21. That, the provisions of **Section 18-A**, provides a complete mechanism and as the Province of Sindh was bound to establish Special Courts in the districts/towns, all over Sindh. Though this provision of establishing special courts was brought through the specific and intended change, the amendment was having been made in the year **2013**, but for more **than 08 years** the special courts under the purview of **Section 18 A** have not been established or notified, until recently, when this Court, while hearing a constitution petition, relating to the Sindh Building Control Authority had taken an *exception* and directions were issued to notify the Special Courts and in compliance thereof, now the

Special Courts have been notified in view of Notification No.S.JUDL:4-1/2020/55 dated 03rd May 2021 and made functional. Needless to mention, since such courts have been notified *division-wise* in places other than Karachi, the **Secretary Law**, Government of Sindh shall **ensure that these Special Courts are notified in all districts throughout Sindh within three months**. Section-18 A subsections (3), (4) and (5) further, *elaborates the functions*, powers and procedure under which these newly established **courts**, are going to carry out its functions, being relevant sub- Sections 18 A (3), (4) and (5) are also reproduced herewith;

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, all cases relating to the violation of the provisions of this Ordinance, shall be triable exclusively by a Special Court.

(4) All cases relating to the violation of the provisions of this Ordinance, pending in any court immediately before the appointment of a Judge of Special Court, shall stand transferred to the Special Court, having jurisdiction over such cases.

(5) In respect of cases transferred to a Special Court by virtue of subsection (4), the Special Court shall not, by reason of the said transfer, be bound to recall and re-hear any witness, who has given evidence in the case before transfer and may act on the evidence already recorded by or produced before the Court which tried the case before transfer."

22. The powers to be exercised by the **presiding** officers are equivalent to Magistrates. The Special Courts under the Sindh Building Control Ordinance are vested with powers comparable to those of a **Magistrate** of the First Class. This includes broad powers *to summon individuals, enforce attendance, and examine witnesses under oath*. The courts can **demand** the production of relevant **documents** and evidence, issue **commissions** for witness examination, and take evidence on affidavits. This extensive authority ensures that the courts can thoroughly investigate and adjudicate cases brought before them.

23. The **procedural** framework of the Special Courts is **modelled** criminal trial process as outlined in the Code of Criminal Procedure, 1898. This includes the structured **presentation** of evidence, allowing for the **cross-examination** of witnesses, and providing opportunities for both prosecution and defence to present their cases comprehensively. The courts are *empowered* to hear arguments, assess the evidence presented, and *deliver judgments* based on the merits of the case. This structured trial process **ensures** that cases are *handled* with the same **rigor** and **fairness** as in other criminal proceedings, thereby upholding the rule of law.

24. A crucial function of the Special Courts is the **imposition** of **penalties** on individuals or **entities** found **guilty** of **violating** the ordinance's provisions. The **penalties** can vary **depending** on the **severity** of the violation, ranging from fines to more severe sanctions such as imprisonment. One of the most significant **powers** of the **Special Courts** is their **ability** to order the **demolition** of unauthorized **constructions**. This is a vital tool in ensuring compliance, as it allows the courts to directly address and rectify illegal developments that might otherwise persist and cause broader urban planning issues.

25. Orders and decrees issued by the **Special Courts** carry the same weight as those issued by civil courts. This means that the orders are **enforceable** by law, and relevant **authorities** are obligated to carry them out. For instance, *if a court orders the demolition of an illegal structure*, the concerned municipal or development authority **must execute** this order promptly.

26. This enforceability is key to maintaining the integrity of the building control regime. The **Special Courts** also have the **power** to address instances of **contempt**, such as *disobedience* of court orders or any act that obstructs justice. The ability to punish contempt is crucial for *maintaining* the authority and *effectiveness* of the courts. Moreover, while the decisions of the Special Courts are binding, they are subject to appeal in the High Court. However, those *appeals must be filed within a specified period, ensuring that justice is both swift and final*.

27. The **powers** and functions of Special Courts under the *Sindh Building Control Ordinance* are designed to ensure that **construction** and development activities in Sindh adhere to legal and *regulatory standards*. Through their exclusive jurisdiction, rigorous trial processes, and enforceable orders, these courts play a vital role in maintaining urban order, protecting public safety, and ensuring that development in Sindh is both lawful and sustainable. Their ability to impose **penalties**, enforce **compliance**, and address violations *swiftly* makes them a **cornerstone** of building control in the region.

28. As, discussed above, the first **remedy** for an aggrieved person is to file an appeal in view of **Section-16** of SBC Ordinance 1979, against the **actions** or **omissions** of the concerned officers, authority or government, in respect of any violations or deviations of the approved building or housing plans/master plans, **secondly** an aggrieved person, has to approach the **Special Court**,

established in view of Section 18A of the Sindh Building Control (Amendment) Act 2013, for redressal of the grievance of the aggrieving party, therefore the argument as set forth by the learned counsel for the petitioner regarding absence of alternate *remedy available to him*, is unfounded and cannot sustain in the given circumstances.

29. In any event under the amended Section 18-A, of the Sindh Building Control (Amendment) Act 2013, a Special Court established under this provision, is competent to adjudicate upon the *controversy* with regard to occupation and **civil rights** of the occupants which cannot be determined *directly* by this court in its writ jurisdiction, because of the **multiplicity** of the claims or in a case of disputed questions of facts, which cannot be thrashed out or decided, without **recording** of evidence, thus cannot be decided by this court exercising writ jurisdiction under Article 199 of the Constitution of 1973. In Case of **Dr. Abdul Nabi, Professor, Department Of Chemistry, University Of Balochistan, Sariab Road, Quetta v. Executive Officer, Cantonment Board, Quetta** (2023 SCMR 1647), it was held by the Supreme Court of Pakistan that:

“The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy which should also be remedium juris i.e. more convenient, beneficial and effective. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition. This extraordinary jurisdiction is provided as remedy to cure an illegality which can be established without any elaborate enquiry into disputed facts. In the case of Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813), this Court held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy and also articulated the guiding principles to be considered by the High Courts in order to determine the adequacy of the alternate remedy that if the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief within the meaning of Article 199 and the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent”.

30. That, as far as the contentions of the petitioner are concerned, that there is *no alternate remedy* available to him according to law, and therefore

he has approached this court under Article 199 by filing of present constitution petition, which is also **misconceived** and not tenable, as *first* of all, the remedy available to any aggrieved party, *specifically* in view of section 16 of the SBC Ordinance 1979 i.e. by filling of an appeal, and said provision provides two separate forums for filling of an appeal at, details of which are already given hereinabove. Therefore, without **exhausting** the remedy of *filling* an **appeal** against any *illegality* or *irregularity* by any aggrieved person or authority under the provisions of **Section-16** of SBC Ordinance 1979, filing of constitution petition *directly* Under Article-199 of the Constitution of Islamic Republic of Pakistan 1973, under any stretch of imagination, would not be competent, and thus not *maintainable*.

31. Needless to say, under the purview of **Article-199** of the Constitution of Islamic Republic of Pakistan 1973, the High Courts have the authority and **discretion** to issue various nature of **writs**, including those of **mandamus**, **certiorari**, **prohibition**, and **quo warranto**. These writs are aimed at ensuring that public authorities are acting within the law, and they allow the High Courts to **intervene** in matters, where fundamental rights are **violated** or where there is a need to ensure that lower courts or public officials are acting within their **jurisdiction**.

32. In the context of urban development, the exercise of extra ordinary vast constitutional jurisdiction as enunciated under **Article-199** of the Constitution, of 1973, cannot be exercised in a **manner** which can be **detrimental** to the life, liberty or property of any adversely effected party, therefore the **exercise** of **writ** jurisdiction needs to be done in very exceptional circumstances, with great caution, specially while issuing the writs relating to the **demolition**, **vacation**, or even for the purpose of **regularization** of proposed buildings/housing plans, particularly when there are **allegations** of illegal construction or non-compliance with building **regulations**. However, the *writ of mandamus* (a court order compelling a public authority to perform a duty which such public authority is otherwise obligated to perform normal circumstances), is generally issued only when there is a clear duty, that the authority has failed to perform. If the facts surrounding the construction are disputed and require detailed evidence to be recorded, the High Court in its writ jurisdiction would typically refrain from deciding such matters directly filed before it. These disputed questions of facts and issues might instead, therefore be addressed through civil suits, where

evidence can be *led* and fully examined, nevertheless writ jurisdiction is primarily reserved for legal questions and not for detailed fact-findings.

33. Since the Sindh Building Control (Amendment) Act 2013, provides **proper** and **adequate remedies**, the jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973 is barred and cannot be invoked. The Sindh Building Control (Amendment) **Act 2013, establishes** a *specialized* regulatory framework and *dispute resolution* mechanism for matters related to building control and construction. By enacting this **legislation**, the legislature has clearly intended for such disputes to be addressed through the **channels** and **procedures** specified in the Act, rather than through the writ jurisdiction of the High Court. Thus, the petitioner may **approach** to the Special Court, if he aggrieves.

34. Before dilating further, upon the crux of the present discussion (*exercise of writ jurisdiction Under Article-199, in matters relating to violation, contravention or contradiction to the provisions of SBCA ordinance 1979*), it is necessary to discuss the enabling provision and the **precondition** which needs to be mandatorily **exhausted** or **fulfilled**, prior to invoking the cannons of **Article 199** of the Constitution of Islamic Republic of Pakistan, 1973, while making sure that *there is absolutely* no other alternate remedy available to the aggrieved person at all, and thereafter finding no other alternate lawful remedies available him, then such aggrieved person can invoke **Article-199**, for the purpose of *understanding* this constitutional arrangement, governing all the powers to be exercised by High Courts, prior to issuing any kind of the writs, which otherwise obligated to issue by the High Court, in view of **Article-199** of the Constitution of Islamic Republic of Pakistan, 1973, which is reproduced herewith for the ready reference:

“199. (1) Subject to the Constitution, a **High Court may**, if it is **satisfied** that **no other adequate remedy** is provided by law, —

(a) on the **application** of any **aggrieved party**, make an order —

(i) **directing** a person performing, within the territorial jurisdiction of the Court, **functions** in **connection** with the affairs of the Federation, a Province or a local authority, to **refrain from doing anything** he is not **permitted** by law to do, or to do anything he is required by law to do; or

(ii) **declaring** that any **act done** or proceeding taken within the territorial jurisdiction of the Court by a **person performing functions in connection** with the affairs of the Federation, a

Province or a local authority **has been done or taken without lawful authority and is of no legal effect**; or

(b) on the **application of any person**, make an order –

(i) **directing** that a person in **custody within the territorial jurisdiction of the Court be brought before** it so that **the Court may satisfy itself** that he is not being held in **custody without lawful authority or in an unlawful manner**; or

(ii) **requiring a person within** the territorial jurisdiction of the Court **holding or purporting to hold a public office to show under what authority of law he claims to hold that office** ; or

(c) on the application of **any aggrieved person**, make an order giving such **directions to any person** or authority, including any Government exercising any power or performing any **function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.**

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the **Fundamental Rights** conferred by **Chapter 1 of Part II** shall not be **abridged**.

(3) An **order shall not be made under clause (1)** on application made by or in relation to a person **who is a member of the Armed Forces** of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.

(4) Where –

(a) **an application is made** to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an **interim order** would have the **effect** of prejudicing or **interfering** with the **carrying out** of a public work or of otherwise **being harmful to public interest** [or State property] or of impeding the assessment or collection of public revenues, **the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the Court**, for reasons to be recorded in writing, is satisfied that the interim order –

(i) would not have such affect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order

made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made:

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.

(5) In this Article, unless the context otherwise requires, –

“**person**” includes any body **politic** or **corporate**, any **authority** of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan ; and

“prescribed law officer” means –

(a) in relation to an **application affecting** the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and

(b) in any other case, the Advocate-General for the Province in which the application is made”.

35. It may be observed here that, the **Article 199** of the Constitution of Pakistan, 1973, is a *vivacious* provision that **outlines** the **powers** of the High Courts in Pakistan to ensure that individuals' fundamental rights are protected and that the authorities exercising power within their territorial jurisdiction act within the bounds of law. The **Scope of Article 199**, is *delineated* as follows:

Powers of the High Court

The High Court is empowered to **issue orders** and directions to various public authorities either Federation or Provincial or individuals within its territorial jurisdiction which is summarized as follows;

Sub-Article (1)(a) as follows

- Direct a person performing functions in connection with the affairs of the Federation, a Province, or a local authority to:
 - **Refrain** from doing **anything** they are **not permitted** to do by law (e.g., stop an illegal activity).
 - **Do something** they are required to do by law (e.g., take a necessary action).

- **Declare** that any act done or proceeding taken by a person performing functions in **connection** with the affairs of the Federation, a Province, or a local authority:
 - **Has been done or taken without lawful authority and is of no legal effect (e.g., declare a decision or action null and void).**

Sub-Article (1) (b)

- Direct that a person in custody within the territorial jurisdiction of the Court be brought before it to:
 - Ensure that the person is not being held in custody without lawful authority or in an unlawful manner (e.g., to prevent arbitrary detention).
- Require a person holding or purporting to hold a public office to show under what authority of law they claim to hold that office (e.g., to verify the legitimacy of a public official's appointment).

Sub-Article (1) (c)

- Give directions to any person or authority, including any Government, exercising power or performing functions in, or in relation to, any territory within the jurisdiction of the Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution (e.g., to protect rights such as freedom of speech, assembly, or religion).

Limitations and Clarifications

- The powers of the High Court under Article 199 are subject to the Constitution, meaning that the Court must act within the framework of the Constitution and not exceed its jurisdiction.
- The right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution cannot be abridged (restricted or limited) in any way.

Significance and Implications

Article 199 is a crucial provision that:

1. Ensures **accountability** of public **officials** and **authorities**, **preventing** them from acting **outside** the bounds of **law**.
2. **Protects individuals'** fundamental **rights**, including those related to **life, liberty, and dignity**.
3. Provides a **safeguard** against **arbitrary** detention and **ensures** that **individuals** are not held in custody without lawful **authority**.

In summary, **Article 199** of the Constitution of Pakistan, 1973, is a *powerful* tool that enables the High Court to enforce the rule of law, protect *individual* rights, and ensure *accountability* of public officials and *authorities* within its territorial jurisdiction.

36. A **plain** reading of **Article 199** of the Constitution reveals, that a *prerequisite* condition must be met before a High Court can exercise its powers under this provision. Specifically, the **Court** must be *satisfied*, that the petitioner has exhausted all available remedies and that no other adequate legal recourse exists prior to invoking the High Court's *extraordinary* writ jurisdiction. In essence, the Court must be **convinced** that the **aggrieved** person has no alternative remedy available, thereby *necessitating* the intervention of the High Court under Article 199.

37. In this context, where an aggrieved person **directly** approaches the High Court *without* **exhausting** the available remedies under the law, the petition will be deemed incompetent. This court is bolstered by the authoritative judgment of the Honourable Apex Court in the case of **Mian Azam Waheed vs The Collector of Customs**, reported in (2023 SCMR 1247), which unequivocally supports this stance. The pertinent excerpt from the judgment is *reproduced* below for reference:

8. The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action, so as in this case, the Customs Act, which is in its/own wisdom a complete set of law with regard to the genus of remedies, but the petitioners, rather than filing a Revision petition against the impugned Valuation Ruling under section 25-D of the Customs Act, directly approached the learned Islamabad High Court where the writ petitions were ultimately dismissed due to lack of jurisdiction and the net result emerging from the entire litigation is that the impugned valuation ruling is intact.

38. That, in another recent judgement passed in the case of **Government of Punjab** through **Secretary Communication and works Department, Lahore**

versus Yasir Majeed Shaikh, reported as 2021 SCMR 624, the Apex Court, has reiterated the settled principles for the exercise of writ jurisdiction, the relevant part from the reported judgement is reproduced herewith;

In cases based upon factual propositions, extraordinary writ jurisdiction of the High Court should not be exercised on the mere apprehension of the party. Jurisdiction conferred on the High Courts under Art. 199 of the Constitution was an extraordinary relief and **the same had to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums unless it was shown that the impugned order, action or inaction was in violation of any provision of law** or without lawful authority or jurisdiction.

Where the law had provided an adequate remedy, constitutional jurisdiction under Art. 199 of the Constitution could not be exercised as the same was to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. Propensity to bypass remedy provided under the relevant statute by resorting to constitutional jurisdiction was to be discouraged so that legislative intent was not defeated.

39. Furthermore, this court derives **additional strength** and **conviction** from the recent *pronouncement* of the Apex Court in the case of **Sana Jamali versus Mujeeb Qamar**, reported in 2023 SCMR 316. The pertinent excerpt from the judgment is also reproduced below for ready reference, thereby lending further credibility to the stance adopted by this Court:-

*“Object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, **the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right** --Writ jurisdiction of the High Court cannot be expended as the solitary resolution or treatment for undoing the wrongdoings, anguishes and sufferings of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction.”*

40. It would be expedient to examine **Sections 18-D & 18-E**, of the Sindh Building Control Ordinance, 1979, as under:-

Section 18-D: Procedure of Special Court

1. **Cognizance of Offence:** A Special Court shall take cognizance of an **offence** falling under the Sindh Building Control Ordinance, 1979, on receiving a **complaint** and a written report from a **police officer** for violating the provisions of the Ordinance, which constitute an offence under the Ordinance.

2. **Procedure:** In all matters where no procedure has been prescribed under the Ordinance, the **Special Court** shall follow the procedure as laid down in the Code of Criminal Procedure, 1898. This means the **Special Court** will adhere to the general criminal procedure code when handling cases related to the Sindh Building Control Ordinance, unless there are specific procedural guidelines provided in the Ordinance itself.

Section 18-E: Punishment

Imprisonment and Fines: Any person who contravenes any of the provisions of the Sindh Building Control Ordinance, 1979, or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three years, or with a fine which may extend to one hundred thousand rupees, or with both.

Continuing Offences: If the contravention is a continuing one, the offender shall be punishable with a further fine which may extend to one thousand rupees for every day during which the contravention continues after the first day.

Compounding of Offences: The Director or any officer authorized by him in this behalf may, either before or after the institution of the prosecution, compound any offence committed under the Ordinance or the rules or regulations made thereunder, on payment of such amount as the Director or the authorized officer may determine, but not exceeding the maximum amount of fine provided for such offence.

41. To sum up, **Section 18-D** outlines the *procedure* for the **Special Court** to take cognizance of offences under the Sindh Building Control Ordinance, 1979, while **Section 18-E** prescribes the punishment for contravening the provisions of the Ordinance, including imprisonment, fines, and the option for compounding of offences. It is noteworthy to mention here, that the jurisdiction of the Special Court under the Sindh Building Control Ordinance is limited to the cognizance and adjudication of criminal offences. Whereas, the Ordinance does not provide any specific procedure for the Special Court to handle civil matters, such as the regularization of buildings. In such circumstances, the civil courts would have the ultimate jurisdiction to adjudicate civil matters related to the Sindh Building Control Ordinance, as these matters would require the consideration of evidence and the application of civil law principles.

42. Henceforth, the Sindh Building Control Authority (SBCA) shall ensure that coercive measures are taken against the builder, who has raised an unauthorized construction. This should include both civil and criminal liability,

and the builder must be *compelled* to get the building regularized in accordance with the law. He shall also be required to pay all the fees and penalties incurred during the regularization process. It is important to note, that **the occupants of the building cannot be held responsible**, who had no knowledge of the construction being carried out without proper approvals. The **authorities** were **negligent** in failing to stop the **construction** or **adequately** inform the public about the unapproved nature of the project, through electronic media and newspaper notices. Accordingly, the officials of the **SBCA** are also liable for action and shall be held **accountable**. The **Director** General of the **SBCA** shall initiate appropriate action against the SBCA officials, as well as the owner/builder and construction company, with regard to any *identified illegalities*. It is observed that the city of Karachi has become a “**concrete jungle**”, with widespread illegal construction taking place without the approval of building plans by the **SBCA** and **its** officials are in deep sleep instead of exercising their authority to stop illegal construction from inception. The authorities often wake up only after the buildings raised, units have been sold, which is unacceptable. Therefore, it is ordered that in case any illegal construction is found after the occupation of a building by the occupants, stern action shall be taken against all the concerned officials, as well as the builder, by the Director General of the **SBCA**. If it is found that this order is not complied with in letter and spirit, it will be deemed a defiance of the court's order, and the delinquent officer(s) shall be exposed to contempt proceedings.

The key directives are to be complied with are as follows:

- Ensure **coercive measures**, including **civil** and criminal **liability**, against the **builder** who has raised **unauthorized construction**.
- **Compel** the **builder** to get the building **regularized** and pay **all fees** and penalties.
- **Absolve** the **occupants** of **responsibility**, as they had no knowledge of the unauthorized construction.
- Initiate action against **SBCA** officials for **negligence** in failing to stop the illegal construction well in time or aware the public.
- Action be taken against **SBCA officials** and the owner/builder and construction company for any identified **illegalities**.
- **Mandate** stern action against all concerned parties, including officials and builders, for any *future instances* of illegal construction found after occupation.

- The **overarching goal** is to hold all responsible parties *accountable*, regularize unauthorized **constructions**, and prevent future occurrences of illegal building activities in Karachi.
- **Compensate/adjust** innocent occupants before taking any coercive action by the respective parties, establish special courts under SBCA Ordinance 1979 in each *taluka* all over Sindh

43. Hence, parties are, therefore, at liberty to approach either the **Special Court** for the redress of offences as defined in SBCA Ordinance 1979 or the civil courts of **competent** jurisdiction for the **resolution** of civil **matters**, including the **regularization** of buildings if so desired after **exhausting** remedy before the competent authority as provided under the SBC Ordinance 1979/ Amended Act 2013. In light of the aforementioned observations, the instant petition is hereby **disposed of** accordingly. The parties shall bear their own costs. Learned MIT is directed to communicate the order to concern quarters for compliance and information.

This judgment shall be circulated to all District Courts, Special Courts under SBCA Laws, Additional Chief Secretary, Local Government and SBCA Authority for compliance.

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Sajid