

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2544 of 2024

Date	Order with signature of Judge
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1. For order on office objection.
2. For order on CMA No.19886/24.
3. For hearing on CMA No.13477/24.
4. For hearing on CMA No.11612/24.
5. For hearing of main case.

20.11.2024

Mr. Kamran Iqbal Bhutta, Advocate for the petitioner.

Mr. Jawad Dero, AAG.

Mr. Tassadduq Nadeem, Advocate for respondent-Sindh Building Control Authority (**SBCA**) along Mr. Sartaj Malgani and Ms. Humaira Jatoi, Advocates.

The petitioner, claiming to be the owner of Plots No.D2/22 and D2/23, Saud Abad, Model Colony, Malir, Karachi, has prayed for, inter alia, the following relief:

1. *That this Honorable Court may be please pass a restraining order against the official Respondents (2&3) not to take any coercive action in order to damage and demolish the petitioner's properties:*
 - i) *Bearing Plot no. 23 Block D/2 measuring 80 sq. yards situated at malir township Karachi vide lease deed registration no. 7683 page 126 to 128, volume no. 1967, Book I, Additional sub-registrar T-Div. II, Karachi dated: 08-01-1978.*
 - ii) *Bearing Plot no. 22 Block D/2 measuring 80 sq. yards situated at Malir township Karachi vide lease deed registration no. 10986 page 121 to 123, volume no. 225, Book I, Additional sub-registrar T-Div. II, Karachi dated: 26-10-1974.*

Learned counsel for the petitioner has contended that respondents No.2 and 3 (Director General and Deputy Director, SBCA, respectively) have taken malicious and illegal actions against the petitioner's property in connivance with private respondents No.4 and 5, without providing reasonable time to the petitioner to rectify

any illegality committed in the construction made on his aforementioned plots; that respondents No.4 and 5 have a business dispute with the petitioner and have lodged two FIRs against him and his sons; that the petitioner has raised commercial construction over the said plots, which are located on a commercial road with many commercial buildings; that the respondents SBCA officials have taken multiple illegal actions and caused damage to the petitioner's property with mala fide intent, abuse of power, and violation of due process of law under the influence of private respondents, hence this petition has been maintained.

On the other hand, learned counsel appearing on behalf of the respondents/SBCA has maintained that the petitioner raised construction for Ground (Shops) + Mezzanine + 2 upper floors on his plots without any approved building plan by amalgamating two plots (80 square yards each) without any permission from the concerned authority i.e. Sindh Master Plan Authority and he is using the same for commercial activity by violating the lease conditions, which permits him using of the plot only for residential purposes. He has also maintained that the petitioner was served with various notices by the SBCA, including notice dated 08.05.2024 to stop unauthorized construction on the said plots forthwith but he failed to make any reply, then he was served with another notice by the SBCA dated 16.05.2024 to vacate the illegal floor within seven days, which was also not responded and thereafter, vide notices dated 27.05.2024 and 03.06.2024, the petitioner was given an opportunity of hearing before taking any action, but again failed to make his appearance on the

requisite date and time. According to the learned counsel, under these circumstances, on 04.06.2024, the SBCA issued letter to the Deputy Commissioner, District Korangi, Karachi, for providing necessary security cover during eviction/sealing and demolition action against un-authorized/illegal construction on the aforesaid plots and on the same date (04.06.2024) letters were also issued to the Sub-Registrar, Korangi Zone and the Managing Directors, K-Electric, SSGC and KW&SB for cancellation of lease/sub-lease and disconnection of utility services, respectively, and thereafter, on 10.06.2024, the SBCA also issued a letter to the SHO, PS SBCA for police assistance during demolition and sealing action, when the subject plots were sealed by respondent No.3. He has further maintained that the SBCA officials have acted in accordance with law and before taking any action requisite notices were issued to the petitioner, opportunity of hearing was given to him but he failed to reply and appear before the concerned authority of SBCA. He has also maintained that SBCA has nothing to do with the private dispute of the petitioner with private respondents. Lastly, he has sought dismissal of this petition with cost.

Heard and perused the record.

It reflects from the perusal of the registered sale deed of the subject plots (Annexures P1 and P2, available at Page Nos. 17 to 33 and Page Nos. 35 to 51 of the memo of petition) that the subject plots are “residential plots.” As per the report submitted by the Nazir of this Court, in compliance of the order dated 22.08.2024, the petitioner raised construction comprising Ground + Mezzanine + two upper floors, with a banner fixed bearing the name “Ayyaan Mobile Mall,”

having shops on the ground floor, which was found sealed with a pasted letter duly stamped on the locks. Though the subject plots are located on a commercial road, yet their status remains residential. The petitioner has failed to provide any document evidencing the conversion of his residential plots into commercial ones. It is an admitted fact that the entire commercial construction was undertaken by the petitioner without an approved plan, violating Sections 6 and 7 of the Sindh Building Control Ordinance, 1979 (**the Ordinance**). Under Section 7-A of the Ordinance, the SBCA is empowered to seal the building or evict occupants, without prejudice to any other action. The petitioner has falsely alleged that the action was initiated by the SBCA in collusion with private respondents. In fact, the petitioner has not approached this Court with clean hands. The action taken by the officials of the respondents/SBCA is within their lawful duty, appearing neither mala fide nor violative of due process, nor under any unlawful influence.

In view of the above discussion, this petition is dismissed along with all listed/pending applications, with a cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to be deposited by the petitioner within two weeks in the High Court Clinic Funds.

JUDGE

JUDGE

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