

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP No.D-4453 of 2023

alongwith
CP No.D-2629/2021
CP No.D-6196/2023

Date _____ Order with signature(s) of Judge(s) _____

Present: **Mr. Justice Salahuddin Panhwar**
Mr. Justice Amjad Ali Sahito

Priority

1. For orders on CMA No.29603/2023
2. For orders on CMA No.29601/2023
3. For orders on CMA No.29602/2023
4. For orders on Nazir report dated 21.12.2023.
5. For hearing on CMA No.26341/2023.
6. For hearing on CMA No.24839/2023.
7. For hearing on CMA No.24830/2023.
8. For hearing on CMA No.23341/2023.
9. For hearing on CMA No.20541/2023.
10. For hearing of main case.



15.08.2024

Mr. Zaheeruddin Mujahid, Advocate for the petitioner in CP No.D-4453/2023 and Respondent in CP No.D-6196/2023.

Mr. Asim Iqbal, Advocate for the petitioner in CP No.D-2629/2021 and CP No.D-6196/2023 and Respondent in CP No.D-4453/2023

Mr. Anwar Ali Shah, Advocate for SBCA.

Mr. Qaim Ali Memon, Advocate for Rangers.


Mr. Shahryar, AAG.

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Salahuddin Panhwar, J:- In all these three petitions, issue pertains to illegal construction exceeding the approved building plan. Both petitioners being rivals are challenging the legality of the construction, alleging that the building in question has not been approved and that there has been illegal construction exceeding two floors as permissible.

2. Counsel for the petitioner in CP No.D-4453 of 2023 contends that illegal construction has taken place beyond the approval of the SBCA, though two portions were demolished but the respondent subsequently erected new floors without obtaining the necessary approval.

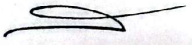
3. In similar fashion, counsel for the petitioner in CP No.D-2629 and 6196 of 2023 and 2021 respectively state that construction raised on



the subject matter property is not approved. Counsel for the respondent appearing in CP No.D-6196/2023 has referred to the comments of SBCA and Nazir report, which show that in 2012, construction was being carried out and the approval of building for regularization was submitted but not processed by the concerned officials. Counsel for SBCA contends that in CP No.D-2629/2021, he has personally examined the files and according to him claim of the petitioners is baseless as the requisite documents were not submitted before the SBCA.

4. We have heard learned counsel for the parties and have perused the relevant record.

5. Under Section 18-A of the Sindh Building Control (Amendment) Act 2013, a Special Court is competent to adjudicate upon all questions with regard to regularization and illegal construction by any party, as such, matters pertaining to alteration, regularization and contravention of SBCA provisions i.e. demolition or any criminal action are also falling within the purview of Special Court. 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 Apex 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".

6. Since the Sindh Building Control (Amendment) Act 2013 provides an alternate and adequate remedy, the jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973 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.

7. Invoking the High Court's constitutional writ jurisdiction would undermine the purpose and integrity of the specialized regulatory framework created by the Sindh Building Control (Amendment) Act 2013. The Act sets forth specific procedures, timelines, and forums for resolving disputes related to building control and construction. Allowing litigants to bypass these established mechanisms and directly approach the High Court would fragment the adjudication process, create inconsistencies, and risk undermining the effectiveness of the regulatory regime.

8. For the reasons delineated above, these petitions are disposed of. The parties to the Petition are left to seek redressal of their grievances through the appropriate forums established under the Sindh Building Control (Amendment) Act 2013. Each party shall bear its own costs.


JUDGE


JUDGE