

ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

HCA No. 445 of 2024

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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Hearing:

1. For hearing of main case
2. For hearing of CMA No.2702/2024 (stay)

06.02.2025

Mr. Naeem Akhtar Talpur, Addl. A.G. Sindh for the appellants along with Mr. Zahid Abbas Akhund, Director Culture, Focal Person on Court matters, Mr. Ashraf Ali Mirani, Law Officer, Government of Sindh, Mr. Muhammad Ali Bhatti, Assistant Director (Heritage), and Ms. Pirah Mangi, Deputy Director, Heritage Department

Mirza Moiz Baig, Advocate for respondent No.1 on statutory notice.

Ms. Afsheen Aman, Advocate for respondent No.2

This appeal impugns Order dated 07.09.2024 passed in Suit No.666 of 2024 wherein the learned Single Judge ordered, inter alia, that the Defendant No.3 in the said Suit, Sindh Building Control Authority ("Defendant No.3-SBCA") may issue a Demolition Certificate without obtaining a NOC of the Defendant No.3, i.e. Appellant No.2 (The Secretary, Tourism & Antiquities Department ("Appellant-Defendant No.2-TAD") or from its Committee but after the Technical Committee for Dangerous Building ("TCDB") of Defendant No.3-SBCA determines whether or not the structure of the building known as "Maryam Mansion" ("Suit Property") is a Dangerous Building Category -1, which was notified as a "protected heritage" by the Appellant/TAD. Learned A.G. Sindh for the Appellant-Defendant No.2-TAD has argued that the impugned Order amounts to granting final relief to the Plaintiff in Suit No.666/2024, and the impugned Order does not restrain Defendant No.3-SBCA from such demolition.

We have heard Counsel and perused the appeal file. The Plaintiff, the alleged owner of the Suit Property, has sought negative declarations against the actions of the Appellant-Defendant No.2-TAD, issuing certain notices to the Plaintiff and permanent injunction restraining the owner from restructuring the building. Meanwhile, Defendant No.3-SBCA issued Notice dated 27.07.2023 to the occupants to vacate the Suit Property on account of building constructed thereon declared as a "Dangerous Building." The learned Single Judge has not granted any relief in terms of the prayer clause of the suit which may be construed as granting final relief. This is apparent from the impugned Order. Neither any interim nor final declaration is articulated in the impugned Order. Instead, the learned Single Judge has directed the SBCA to pass a speaking order setting out the reasons whether or not the structure of the Suit Property is a Dangerous Building Category -1. There is no determination of this issue on the part of the learned Single Judge. Further, the Appellant is impleaded as Defendant No.2 in Suit No.666/2024, and as such its apprehension viz. as a co-defendant and sans any counter-claim and cross-claim, is also misconceived since it has taken no action if at all it is aggrieved by SBCA's notice dated 27.07.2023 concerning the demolition of the "protected heritage" building.

Appellant-Defendant No.2-TAD next contended that SBCA has issued a Demolition Certificate but this is not so. The averment is factually incorrect. The issuance of the proposed "Demolition Certificate" has been made conditional. It is contingent upon the Technical Committee for Dangerous Building passing a speaking order. This event is yet to take place and is relevant too because under Regulation 7-2.1.5 of the Karachi Building and Town Planning Regulations, 2002 (KB&TPR, 2002"), includes

the representative/nominee of Appellant-Defendant No.2-TAD to be one of the members of the Technical Committee for Dangerous Building of Defendant No.3-SBCA . Therefore, the Appellant-Defendant No.2-TAD is assured a seat in the decision-making process of the Technical Committee and participation in the meeting leading upto the issuance of the Demolition Certificate. The Appellant-Defendant No.2-TAD's concerns (raised in this appeal) may well form part of the record of the proceedings, and will have to be addressed in the speaking order which will have to articulate reasons for accepting or rejecting the Appellant-Defendant No.2-TAD's contentions. Finally Appellant-Defendant No.2-TAD, also has all options available to it in case it is aggrieved by the speaking order of SCBA Technical Committee for Dangerous Building CATEGORY-1. Appellant-Defendant No.2-TAD grievance raised in this appeal has no legs to stand in the present facts and circumstances of the case.

Accordingly, given the above, the appeal along with its applications are dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE