

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-4037 of 2023

[Mrs. Viqar Unisa Begum V. The Province of Sindh & others]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

Date of hearing : 19.03.2025
Date of decision : 24.04.2025
Petitioner : Through Mr. Muhammad Tariq Mansoor, Advocate.
Respondents No.2-3/SBCA : Through Mr. Ghulam Akbar Lashari, Advocate.
Respondent No.4/KDA : Mr. G.M. Saryo, Advocate.
Respondents No.12-15 : Through M/s Rizwana Ismail and Noor Muhammad, Advocates.
Respondents (Official) : Syed Hussain Shah, Assistant Advocate General, Sindh.

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Petition has been filed by the Petitioner who states that she is owner of property bearing no. 159, Block 7/8 C.P. & Berar C.H. Society, Karachi. Her grievance is that on the nearby / neighbouring Plot No.158 Block 7/8 C.P. & Berar C.H. Society, Karachi (measuring approx. 306.40 sq. yards) (“**the Plot**”) construction has been (and continues to be) carried out for commercial purposes, whereas the said Plot No. 158 is for residential use only. The crux of the Petitioner’s disagreement is that she states the Respondents have unlawfully allowed construction and conversion of the said Plot, from residential to commercial.

2. The Petitioner (through her Counsel) has argued that she has been residing at her premises since the year 1965. She claims in the year 2023, she became aware that construction for a residential-cum-commercial project was being conducted on the Plot, through which an apartment building with showrooms / shops on ground level was being built. She states that letters of complaint were written to the Sindh Building Control Authority (Respondents No. 2 & 3 / SBCA) dated 13.02.2023 (available at Page 87 of the File); to Berar Housing Society (Respondent No. 6) dated 09.02.2023 (available to Page 89 of the File), and to Karachi Cooperative Housing Societies Union Ltd. dated 14.03.2023 (available to

Page 91 of the File), allegedly by residents of Respondent No. 6, complaining against the construction.

3. Respondent No.6, who is the relevant housing society, responded vide letter dated 16.02.2023 (available at Page 93 of the File), stating that the Plot was legally transferred and work was being undertaken with permission and a valid construction plan. The letter further stated that any violation of construction would be notified to the SBCA.

4. It is now the case of the Petitioner that the Respondents are in connivance, and that unlawful conversion and construction is being carried out and permitted, whereas, as per the Petitioner, the same is contrary to law.

5. Learned Counsel for the Petitioner has also submitted that as per dictum of the Supreme Court of Pakistan, any conversion of property from residential to commercial is now unlawful, and in this regard has referred to orders passed by the Hon'ble Supreme Court in Civil Petition No. 815-K/2016 and CP No. 09/2010.

6. Counsel for the Petitioner has further stated that under the Karachi Building & Town Planning Regulations 2002 (KBTPR), there have been several violations committed by the Respondents, and has urged that appropriate action may be taken against the delinquent officials involved in allowing such alleged illegality.

7. The Counsel for the Petitioner averred that the Petitioner is a conscientious citizen and the alleged actions of the Respondents have violated her fundamental rights. Furthermore, that she has also approached the Court in larger public interest, and states that this is the case of the public interest as well as that of public importance. She has referred to Articles 2-A, 3, 4, 5, 9, 10-A, 14, 25, 37 & 38 of the Constitution of Islamic Republic of Pakistan 1973 which she claims have been violated by the Respondents¹.

8. Learned Counsel appearing for the Owners (i.e. Respondents No. 12 to 15) has strongly contested the allegations submitted by the Petitioner. They have stated that the Plot is a commercial plot and that no violation was committed. They further submitted that relevant official Respondents have lawfully approved

¹ Para 17 of the Memo of Petition

construction submission plans for the Plot, in accordance with the KBTPR and other applicable laws.

9. Learned Counsel for the Owners, i.e. Respondent No. 12 has filed Objections / Reply against the Memo of the Petition, and has attached certain relevant documents showing ownership of the Plot, as well as its commercialization status.

10. SBCA / Respondents No. 2 & 3 also filed their Comments / Report, in which they have supported the stance of the Owners, and have stated that all approvals for construction etc. on the Plot have been complied in accordance with law. SBCA has further stated that commercialization records are with the Sindh Master Plan Authority (formally Master Plan Department) or with lessees of the Plot². SBCA have themselves endorsed the view that the Plot is shown as commercial. The SBCA stated that the Karachi Development Authority (KDA) change status of the Plot from residential into commercial vide an order dated 06.03.1971.³

11. The Sindh Master Plan Authority / Respondent No.4 also filed their brief Comments, in which they have stated that no NOC was granted for change of land use in favour of the Plot, and that as per order dated 22.01.2019 in C.P. No. 815-K of 2016, the Supreme Court has imposed the complete ban on change of land use / conversion in City of Karachi.

12. We have heard the learned Counsels, and after having perused the voluminous pleadings and documents, we opine as follows:

13. The Plot No. 158 was allotted to one Mr. Ismail Shaikh by Karachi Cooperative Housing Society Ltd., / Respondent No. 7 (KCHS), who are the original allottees / lessees of all property within the remit of Berar Cooperative Housing Society (Respondent No. 6).

14. It transpires that Mr. Ismail Shaikh then sold the Plot to Syed Nasiruddin K. Kamal Shah vide Sale Agreement dated 22.08.1970, followed by a Conveyance Deed dated 08.10.1978.⁴

² In this case that would be KCHSUL / Respondent No. 7

³ Copy of the order dated 06.03.1971 is attached (available at Page 667 of the File)

⁴ Available at Page 547 of the File.

15. Prior to entering the said Conveyance Deed, Mr. Ismail Shaikh entered into a Sub-Lease with Karachi Cooperative Housing Society Union Ltd. / Respondent No. 7⁵, for the said Plot. The Sub-Lease is what is referred to as “C – Lease” in common parlance, i.e. it is a lease for commercial property. Therefore, the Plot was deemed to be commercial by virtue of the Sub-Lease issued by KCHSUL / Respondent No. 7.

16. A previous order / letter dated 06.03.1971 has also been attached by the Owners / Respondents No. 12 – 15 along with their intervener application (as they were initially not made a party by the Petitioner), issued by the Karachi Development Authority (KDA) Town Planning and Architect Department, whereby a no-objection for commercialization of the said Plot in the year 1971 was granted.

17. Various other documents were filed, showing the Plot to be inherited by (late) Syed Nasiruddin K. Kamal Shah’s next of kin, from whom the current Owners (Respondent Nos. 12 to 15) purchased the Plot, vide Sale Deed dated 10.11.2022⁶.

18. The Plot was mutated in the names of Respondent Nos. 12 to 15 vide Mutation Order dated 04.01.2023⁷. The current Owners, i.e. Respondents No. 12 to 15, are in process of undertaking and completing a project on their Plot, whereby they intend to build a multi-storey residential property which hosts one commercial showroom and services at the ground level, with the intended residences above.

19. There are three main points we have narrowed for consideration in the instant matter, which are:

- i. Whether (if at all) the Petitioner holds any *locus standi* to file the instant Petition?
- ii. What is the commercial status of the Plot?
- iii. Whether the instant Petition is hit by the doctrine of *laches*?

20. The Petitioner stated that she has been owner of the neighbouring property to the Plot, which is how she initially claims to have been an aggrieved person. Throughout the Memo of the Petition, she has stated that she is aggrieved by the alleged unauthorized change of land use as well as by unlawful construction being

⁵ Available at Page 535 of the File.

⁶ Sale Deed available at Page 511 of the File.

⁷ Available at Page 531 of the File.

carried out on the Plot. She contends she holds a right to file this Constitutional Petition by virtue of residing at the property neighbouring the Plot.

21. However, she has also severely contradicted herself in her own Memo of Petition. She repeatedly stated that this Constitutional Petition has also been filed in the larger public interest⁸. It is trite law that the two avenues, i.e. '*public interest litigation*' is entirely separate from '*private interest litigation*', and persons must be extremely cautious before approaching the Courts with such claims.

22. In the recent judgment by the Hon'ble Supreme Court in *Premier Battery Industries Private Ltd.*⁹, a clear divide was defined between '*public interest litigation*' and '*private interest litigation*'. The Apex Court expressed that where there is any self-interest, the same cannot be considered in public interest, and as such the Courts are required to be extremely cautious before entertaining such petitions. A relevant portion reads:

“12. Coming to the alternative stand taken by learned counsel for the petitioner that the matter may be treated as 'public interest litigation'. It is noted that on realizing that the petitioner was unlikely to succeed in view of his failure to participate in the process at any stage, the learned counsel tried to persuade us to examine the matter as one of public importance to undo the process, which according to him, had been undertaken in violation of SPP Act, 2009 and the Rules framed thereunder. It was urged that the entire process be repeated afresh. This necessitates an examination of the scope and parameters of public interest litigation. Such litigation does not strictly fall under any part of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, it has received judicial recognition enabling the Courts to enlarge the scope of the meaning of 'aggrieved person' under Article 199 of the Constitution to include a public spirited person who brings to the notice of the Court a matter of public importance requiring enforcement of Fundamental Rights. However, the constitutional jurisdiction of the superior Courts is required to be exercised carefully, cautiously and with circumspection to safeguard and promote public interest and not to entertain and promote speculative, hypothetical or malicious attacks that block or suspend the performance of executive functions by the Government.”

“13. While the Court is not inclined without evidence to impute any motives to the petitioner, we must emphasize that public interest litigation undertaken by a citizen must in the first place transparently demonstrate its complete bona fides; that such litigation is not being undertaken to serve a private or vested interest and is demonstrably aimed at serving public interest, good or welfare.

“14. We are in no manner of doubt that the petitioner has a personal interest in the present litigation. It is motivated purely by its own economic interest and thus it wants reversal of the entire process so that it or somebody it represents, can avail another opportunity of joining the process leading towards bidding of the project after having missed the deadline. The present litigation is therefore

⁸ Reference to Para Nos. 6, 7, 11, 13, 16, 17, 18 of Memo of the Petition.

⁹ 2018 SCMR 365

not public interest but rather personal interest litigation. We are therefore not inclined to examine the case from the stand point of public interest litigation.”

23. In the more recent case of *Senator Kbalida Ateeb*¹⁰ a learned Division Bench of this Court held:

“5. Article 199 of the Constitution contemplates the discretionary² writ jurisdiction of this Court and the said discretion may be exercised upon invocation by an aggrieved person³ and in the absence of an adequate remedy”.

“6. While the learned counsel insisted that this matter merited indulgence in the public interest, however, we are constrained to observe that the present petition appears to be an attempt to seek publicity, without any justifiable cause of action. Per settled law, public interest litigation ought not to be aimed at seeking publicity and the law requires the Court to ascertain whether the supplicant is acting in a bona fide manner⁶. Public interest litigation should not be a mere adventure, an attempt to carry out a fishing expedition and / or to settle personal scores⁷. The Court must distinguish between public interest litigation and publicity motivated litigation, private interest litigation and / or politically motivated litigation⁸”.

24. We find the Petitioner, throughout the Petition and in arguments, as well as in her written synopsis, has been completely haphazard in trying to establish her *bona fide locus standi*. A simple perusal of the Memo of Petition and Arguments (which is full of contradictions & inconsistency) show that she has simply made various unsubstantiated and generic allegations, without specifically qualifying any legal assertion. Moreover, the Petitioner has completely moved back and forth between relying on ‘public interest litigation’ and ‘private interest litigation’, having claimed both. It appears she is attempting to create a broad (but vague) attempt to try and unduly gain sympathy, in an effort to cause hindrance to the Plot Owners, for reasons we can only consider as sinister.

25. As per our observation, and in line with the dictum established by our settled jurisprudence (*ibid.*), these conflicting claims of both public and private interest litigation cannot be tolerated, and in our further observation / conclusion the same appears to be done due to *mala fide* motives.

26. A comparison between the ‘Memo of Petition’ and ‘Synopsis Written Arguments’ filed by the Petitioner would show that her arguments have excessively digressed. In the Memo of Petition, she has narrated her grievance first as a resident, then (conversely) in the larger public interest. In her Written Synopsis she has gone and made further allegations against the Respondents of

¹⁰ PLD 2024 Sindh 273

money laundering¹¹. This broad-spectrum approach does not carry weight, as it appears the Petitioner is attempting a fishing expedition by making all forms of unsubstantiated allegations. Her motives remain highly questionable due to her actions. Even otherwise, pleas not taken in arguments but taken in a written-synopsis cannot be considered.¹²

27. The Petitioner has referred to various provisions of law such as the Sindh Building Control Ordinance 1979, Karachi Building and Town Planning Regulations 2002, as well as several articles of the Constitution of Pakistan 1973, but has failed to indicate how any of them would specifically be applicable to the matter at hand. Simply citing provisions of law and the Constitution without providing application and justification of the same, would not suffice in establishing a claim. It was incumbent upon the Petitioner to show how these provisions have been violated, which she has not done.

28. We accordingly find in this regard the Petitioner has failed to show her *locus standi*, and has been unable to establish herself within the definition of “aggrieved person” under Article 199 of the Constitution of Pakistan 1973. We are fortified in our assessment, and cite the case of *Abid Hussain Chandio*¹³ in which a Division Bench of this Court held:

“5. In a legal and procedural context the term 'aggrieved person' denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused to him something which he was legally entitled to. There is wisdom in the use of word "aggrieved" appearing in Article 199 of the Constitution, because it helps in checking litigation for the sake of litigation by those, who may not be aggrieved. So that Courts are confronted with real questions, which should occupy their attention and not questions, which are of an academic nature involving political issues and where the issuance of a writ is a mere futile exercise. Person aggrieved invoking constitutional jurisdiction under Article 199 must establish a direct or indirect injury to himself and substantial interest in subject matter of proceedings. Further for the purpose of issuance of writ of Quo warranto and habeas Corpus, being aggrieved is not mandatory requirement. Moreso the apex court also laid down guidelines to distinguish those cases in which petitioners under the garb of public interest litigation actually accumulate dump of frivolous litigation to seek publicity or in accomplishment of personal agenda/ vendetta. Such litigation must be laid to rest at very inception on account of maintainability. Public interest litigation is a weapon which has to be used with great care and circumspection and we have to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and or publicity seeking is not lurking.”

¹¹ Para 25 at typed Page 6 of the Written Synopsis

¹² 2015 YLR 1303

¹³ PLD 2024 Karachi 448

29. The second point for consideration is the status of the Plot. The Plot changed its status from residential to commercial on 06.03.1971,¹⁴ as was sanctioned by the Karachi Development Authority (KDA). Even the current Sindh Building Control Authority (SBCA) in their Para-Wise Comments stated that the Plot is a commercial plot, and was properly converted by the KDA on 06.03.1971. This has been further endorsed by a perusal of the conveyance deed¹⁵, as well as the sub-lease dated 02.07.1978 issued by Karachi Cooperative Housing Society's Union Ltd. (KCHS / Respondent No.7), which clearly shows that the property has a legitimate commercial lease and operation.

30. A brief background of the circumstances is required, for purposes of clarity. The Karachi Development Authority was established vide the KDA Order, in 1957. The purpose was to oversee the planning and development in the city of Karachi. The KCHS / Respondent No. 7 was established in the year 1949, to develop and sub-lease land to its member societies in Karachi, in a bid to control and facilitate housing / land development. They were allotted land, which was accordingly sub-leased to members societies in Karachi.

31. Respondent No.7, being the proper and lawful possessor of the Plot, issued the Sub-Lease, and also approved conversion from residential to commercial status. The KDA, was part of urban planning and development in the city of Karachi. In the year 1971 when the Plot was commercialized, the KDA appears to have been the relevant authority who had power for such conversion, along with the allottee Respondent No. 7 / KCHS. The KDA Order 1957, which is KDA's parent statute, specifically confers powers on the KDA to convert property within certain limits in the city of Karachi¹⁶. The proper due process (as required in the year 1971) appears to have been followed, and the Plot obtained the requisite approvals to be commercialized.

32. In the *Jawaid*¹⁷ case, a learned Division Bench of this Court held:

“12. It has been settled by now that commercialization / amalgamation / sub-division of any plot by allowing change of land use is a prerogative of the official respondents (Government Functionaries) and such powers cannot be interfered but only if all the laws, rules, byelaws and regulations issued from time to time in this regard by the competent authority have been complied with.”

¹⁴ Letter at Page No.667 of the File.

¹⁵ At Page 547 of the File.

¹⁶ Article 40 & 52-A KDA Order 1957.

¹⁷ 2019 CLC 1032

33. The learned Counsel for the Petitioner, as well as Respondent No.4 (through their Para-Wise Comments) have referred to Change of Land use and Master Planning By-Laws 2003; Chapter 18 KBTPR 2002 Regulations and Section 21-A Sindh Building Control Ordinance 1979, but they have failed to provide any explanation as to how the aforementioned statutes are relevant, or as to how they would have been applicable to conversion of the Plot in the year 1971, which was the time at which the said Plot was converted by the KDA and endorsed by Respondent No.7, which as per our understanding and observation were the correct authorities for the same. In the case of *Hamida Suleman v SBCA*¹⁸ the court held (albeit for different circumstances) that once the status of a property has been changed in the past, there would be no requirement for seeking any further change of status. Therefore, even this basic submission by the Petitioner that there was a requirement to seek conversion of the Plot under the above-stated laws / regulations, is unfounded. Especially considering those laws / regulations referred by the Petitioner came into effect much after the Plot had already been converted. The laws and process *de jure* would apply, and not any potential future law / regulation.

34. The authenticity of the documents attached showing commercialization of the Plot (back in the year 1971) and due its acknowledgment have not been disputed, nor has the Petitioner challenged the same, and therefore they would be considered as having attained finality.

35. The third point to be considered is that the Petitioner herself states that she has resided at her property which is (according to her) neighbouring the Plot¹⁹ since the year 1965, so the question begs as to why she has waited for over 50 years before questioning the conversion?

36. By the Petitioner's own admission she has remained at her property and in the vicinity for over 50 years before approaching the Court, and hence we feel the doctrine of *laches* would be applicable to the matter at hand. In the case of *Muhammad Azaad Minhas*²⁰ the Hon'ble Supreme Court observed:

“14. ... It is established principle that delay defeats equity and equity leans in favour of vigilant. Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable. Law of limitation is not considered a mere formality and is required to be observed being of mandatory nature. Law of laches takes away right of the party to have the right enforced, which otherwise, is enforceable under the law because law requires that one having an enforceable right

¹⁸ 2017 MLD 1391

¹⁹ Para Nos. 1 & 4 of the Memo of Petition

²⁰ PLD 2024 SC 235

should seek enforcement whereof within time specified by law. Although as a general principle bar of limitation is not applicable to the proceedings under Articles 199 and 184 of the Constitution but insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches.”

37. In the case of *Fayyaz Dawar*²¹ a three-member bench of the Supreme Court discussed the principle of *laches*, and held that any claim must be filed within the reasonable time, and that secondly that where such a claim is made without explanation for delay the Constitutional Court under Article 199 of the Constitution of Pakistan 1973, cannot assume jurisdiction to settle such a matters. A relevant portion reads:

“9. ... Merely advancing a plea that the respondent was engaged in correspondence with different government officials for pursuing his claim does not protect or save the respondent from the drawbacks or impediments of the doctrine of laches which explicates that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.” (emphasis supplied).

38. There has been no plausible explanation put forth by the Petitioner explaining her inordinate delay in approaching the Court. She herself claims to be over 82 years and living at her premises (next to the Plot) for nearly sixty (60) years, yet she has approached the Courts extremely belatedly challenging a commercialization that took place in the year 1971, i.e. fifty two years prior.

39. The Petitioner’s only submission in this regard is that is that she saw demolition / construction commencing in December 2022²² being carried out on the Plot, giving her an alleged cause of action. But this contradicts the Memo of Petition itself, which states her cause of action arose on 14.02.2022 and then 09.02.2023²³ without mention of December, 2022. These glaring discrepancies throughout the Petitioner’s own pleadings and arguments have created a massive doubt in her approach & intentions. And such an extraordinary delay on her part [considering that the Plot was converted in the year 1971, and even the

²¹ 2023 SCMR 1442

²² Para 5 of Written Synopsis (typed pg. 2)

²³ Para 13 Memo of Petition (pg. 31)

commercial lease etc. were executed in the year 1978] has not been in any manner justified.

40. Therefore, this Constitutional Petition also appears to clearly be hit by the doctrine of *laches*. Even if the said previous conversion (of 1971) is now disputed by the Petitioner at this extremely belated stage, the same would result in disputed question of facts for which evidence etc. would be required, which as per settled law cannot be adjudicated in a Constitutional Petition.

41. We would like to conclude by passing our observations that whilst there needs to be proper checks and balances against illegal conversion / construction etc., the same should not be used as a tool by vigilante persons holding questionable motives (e.g. the Petitioner in the instant case). There needs to be strict action taken against persons approaching the courts claiming to be working in the best interest of the public, when it appears that their motives are personal and sinister. In such cases, serious action should be taken by the courts against miscreants involved in abusing the privilege of due process. It is also further observed that petitions which have been filed without any proper legal backing or appearing to lack *bona fide* should be dealt with at the earliest, and the persons involved with such mischief must be admonished. It has unfortunately become common place belief of persons that they will have no repercussion for filing meritless petitions, which needs to be controlled. Such meritless petitions cause immeasurable loss not only to innocent affected persons, but also to the exchequer / economy at large

42. As we have found the Petitioner neither holds any *locus standi* and the Petition suffers from *laches*, we do not find the Petition to be maintainable and is accordingly dismissed with costs of Rs. 100,000/- imposed on the Petitioner, to be paid to the current owners, i.e. Respondents No.12 to 15 for costs incurred by them.

43. This Petition stands accordingly dismissed / disposed of.

JUDGE

JUDGE