

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-2817 of 2023
C.P. No. D-119 of 2024
C.P. No. D-290 of 2025

Date	Order with Signature of Judge
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Priority

1. For hearing on Misc. 1829/2025.
2. For hearing of Main Case

20-03-2025

Mr. Mujtaba Sohail Raja Advocate for the Petitioner in CPD-2817/2023
Mr. Talha Javed Advocate for the Petitioner in CPD-119/2024 and 290/2025
Ms. Maria Shoaib Khan Advocate for proposed intervenor in CPD-290/2025
Mr. Nadir Burdi Advocate for the Respondent
Mr. Zia-ul-Haq Makhdoom Advocate for the Respondent No.5
Mr. Dhani Bakhsh Lashari Advocate for the Respondent/SBCA
Mr. Khursheed Jawed Advocate for the Respondent/KDA
Ms. Nazia Siddiqui Advocate for the Respondent
Mr. Sartaj Malgani Advocate for the Respondent
Mr. Kashif Nazir, Assistant Attorney General
Mr. Sandeep Malani, Assistant Advocate General Sindh
M/s. Ashfaq Hussain, Director South, Asif Rizvi, Director East, Jalees Siddiqui, Director Central, Sami Jam Lani, Director Korangi, Ali Ghufraan, Director Malir, Abdul Rehman, Director Kimari, Shehzad Siyal, Deputy Director West, SBCA

These petitions are in respect of illegal / unsanctioned commercial use of residential property and / or utilization thereof otherwise than permissible vide its instrument of allotment / lease.

Briefly stated, commercial operations were admittedly taking place on residential properties, being, (i) Plot No. D-183, Main Shahrah-e-Firdousi, Block-5, Clifton, Karachi (in CPD-2817/2023), (ii) Plot Nos. D-181, D-182, D-183, Block-5, Clifton, Karachi. An *ad interim* order, rendered in restraint of such illegal activity in CP D 290 of 2025, was assailed before the Supreme Court in CPLA 131 of 2025. A three member bench of the apex court was pleased to dismiss the petition on 28.02.2025 while observing as follows:

“This petition calls into question the interim order, dated 23.01.2025, made by a Division Bench of the High Court, by which the respondents were directed to ensure that no illegal/commercial activity other than that for which it was leased is being carried out on the subject property. We do not find any infirmity or jurisdictional error in the said order. Given the circumstances, we are not inclined to interfere with the impugned order. This petition fails and is accordingly, dismissed. Leave to appeal is refused.”

The dismissal referred to supra was in respect to challenge to an interim order. We are assisted with the fact that a final order / judgment was rendered in *pari materia* circumstances in the case of *Headstart School*

(judgment dated 15.01.2025 in CP D 133 of 2022, CP D 5775 of 2023 and CP D 93 of 2023). The operative observations are reproduced herein below:

7. "The determination of whether the School is entitled to regularization / conversion perhaps requires evidence etc., determination whereof is not amenable in writ jurisdiction, however, *admittedly* as of today no regularization, conversion and / or any form of sanction is available.

8. Regularization, by definition, implies that there is a violation, in need of acquiesce, and in the present circumstances any perceived delay in consideration of the request, if any, could not be considered to be grant thereof. Even otherwise this Court is assisted with the order of the Supreme Court in *Abdul Karim*¹ wherein such *conversion* appears to have been banned. The Court was pleased to hold as follows:

"DG shall take steps to have all such plots which were originally meant for residential purposes amenity plots and playgrounds to restore them to original position and remove all illegal and unlawful construction on such plots. There seem to be an epidemic in the city of marriage halls, shopping malls, petrol pumps/CNG stations and the houses are being allowed to be converted for these purposes. Besides, encroachments upon and change the use of amenity plots like playgrounds, parks and meant for other amenities. **Henceforth, that is from today there is a complete ban on Master Plan Department of SBCA or any other authority of the City Government or Government of Sindh of allowing change in the use of land. No such change of use of land shall be permitted.** Conversion of residential houses and amenity plots meant for parks, playgrounds and other amenities, their conversion shall not be allowed for commercial use that of marriage halls, markets, shopping malls, apartments, marquees, petrol pumps/CNG stations etc. **This complete ban in cessation of conversion of residential plots, amenity plots like that of parks, play grounds and other amenities shall apply all across Karachi City including cantonment areas.**"

9. The operation of commercial schools upon residential property has consistently been deprecated by the Supreme Court and *Yawar Azhar Waheed*² is another such instance. The Court duly appreciated the harm occasioned to area residents and concluded *inter alia* that all private educational institutions in residential areas are to be removed. Excerpts from the judgment are reproduced herein below:

"13. It is shocking that Cantonment Board approved the erection of new building for commercial purposes i.e. to run a school with hundreds of children, thus, conveniently ignored the initial condition imposed by itself that the plot shall not be used for any other purpose except residential house. The sanction was accorded blind-foldedly through third degree tactics without the sanction of law..."

17. The appellant purchased, the plot on the basis of the allotment order, issued to the original owner of the plot by the Cantonment Board and as stated above, there was a strict condition incorporated therein that the plot shall be used for erection of residential building thereon however,

¹ *Abdul Karim vs. Nasir Salim Beg & Others* reported as 2020 SCMR 111.

² Per *Dost Muhammad Khan J* in *Mst. Yawar Azhar Waheed vs. Khalid Hussain & Others* reported as 2018 SCMR 76.

the purpose of use was in blatant violation of law was converted by the Board to commercial house, while approving the building plan, the only motive behind it was to trample the law on the subject for money and financial benefits and for no other purpose.

18. The respondents' suit was fully justified because they are the residents of the same area situated at a little distance. If the school building is put into operation, hundreds of children would be brought in cars and other vehicles, for which there is no parking facility and even for the employees of the school, besides it would create massive pollution emitting carbon monoxide gas on daily basis. Drinking -water consumption would increase manifold which is at present not even sufficient to meet the requirements of the residents of the area. Sanitation condition would be worsen because hundreds of children would definitely create multiple problems like pollution, garbage etc. The security of the area would be compromised in view of the prevailing condition in the country and the lives of the residents would be at stake as well...

20. Copy of this judgment be sent to the Attorney General for Pakistan and Secretary Defence who shall ensure that all the private educational institutions i.e. schools, colleges, etc. constructed in the Cantonments and all the commercial buildings erected in residential areas of Cantonments throughout Pakistan shall be removed gradually, having been constructed in violation of the law and rules as well as by-laws and the master plan and their original shape be restored.”

10. The import of efflux of time, coupled with third party interests, was articulated in defense of perpetuating *admittedly* unsanctioned activity at the Suit Property. Respectfully, it is the considered view of this Court that the same could not be employed to affix a seal of judicial approval to holding the pertinent governing building and town planning laws in abeyance.

11. In *pari materia* circumstances this Court has deliberated and disallowed perpetuation of illegal commercial / school activity on residential premises, in *Ardeshir Cowasjee*³, *Jaffar Public School*⁴, *Mrs. Rozina Ali*⁵ *CPLC Neighborhood Care*⁶ and *Mehreen Shoaib Baghpatee*⁷. Interestingly, the judgment in *Jaffer Public School* was rendered specifically in the instance of the Suit Property. The edicts cited supra are hereby cited with appreciation and held to be squarely applicable herein.

12. Therefore, in *mutatis mutandis* application of the authority cited, CP D 133 of 2022 (filed by the neighbors) is allowed and CP D 93 of 2023 and CP D 5775 of 2023 (filed by the School and certain individuals) are dismissed with costs of Rs. 100,000/- per petitioner; to be deposited with the Sindh High Court Clinic within a week hereof. In the event that

³ Per *G H Malik J* in *Ardeshir Cowasjee & Others vs. Muhammad Naqi Nawab & Others* reported as *PLD 1993 631*.

⁴ Per *Anwar Zaheer Jamali J* in *Arif & Another vs. Jaffar Public School & Others* reported as *2002 MLD 1410*.

⁵ Per *Muhammad Junaid Ghaffar J* in *Mrs. Rozina Ali vs. KMC* reported as *2019 CLC 1081*.

⁶ Per *Adnan Iqbal Chaudhry J* in *CPLC Neighborhood Care vs. Federation of Pakistan* reported as *2019 YLR 911*.

⁷ Order dated 11.01.2024 in Suit 583 of 2023 – *Mehreen Shoaib Baghpatee vs. Province of Sindh & Others*.

the costs are not deposited as aforesaid, the same may be recovered as arrears of land revenue.”

Highlights supplied for emphasis

The aforementioned judgment was also assailed before the apex court in CPLAs 200, 201 and 202 of 2025, however, per the determinant order therein dated 04.03.2025 the findings remained undisturbed.

In view hereof, it was represented by the learned counsel, for the respondents in CP D 119 of 2024 and 290 of 2025 & for the petitioners in CP D 2817 of 2023, upon instructions, that the said residential property shall not be used / permitted to be used for any illegal / unsanctioned purpose and / or for any purpose contrary to the terms of its allotment / lease. Therefore, as collectively sought, CP D 119 of 2024 and 290 of 2025 are allowed in the said terms; and CP D 2817 of 2023 is dismissed.

Pursuant to Order dated 27.02.2025 the SBCA has filed an interim compliance report. It is submitted that a survey of 15% of the city has been conducted and as a consequence over 1,035 instances have been discovered in six districts, wherein, residential properties are illegally being used for commercial purposes and in violation of lease terms. It is stated that show cause notices have been issued / are being issued in all such instances, seeking cessation of such illegal activities. Learned counsel states that the exercise is ongoing with regard to survey of the remaining areas of Karachi and issuance of consequent show cause notices. Learned counsel further states that in this endeavor the SBCA requires the assistance of other regulatory authorities and the law enforcement agencies. Mr. Khursheed Jawed, states that the KDA has also finalized a public notice, to be published in the daily newspapers, so as to assist with the endeavor.

The assistance of the learned counsel and officers of the regulatory agencies present is appreciated. The SBCA and KDA shall continue with the endeavors and in such regard shall remain at liberty to seek the assistance of any regulatory and / or law enforcement agency; deemed necessary. They shall also remain at liberty to prefer an application to seek the assistance of the Court; if warranted.

Office is directed to place copy of this order in each connected file.

Judge

Judge

Amjad PS