

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D-431 of 2016

[Ahmed Ali Nizamani vs. Province of Sindh & Others]

C.P No. D-1065 of 2016

[Superior College of Science for Girls & Boys v. Province of Sindh & Others]

C.P No. D-1101 of 2016

[Raheel Bawani vs. Province of Sindh & Others]a

BEFORE:

JUSTICE MUHAMMAD SALEEM JESSAR

JUSTICE NISAR AHMED BHANBHRO

C.P No.D-431 of 2016

Ahmed Ali Nizamani

Mr. Abdul Ghafoor Hakro, advocate

Respondent No 14

Superior College of Science

M/s Muhammad Arshad Pathan,

Safder Hussain Leghari, advocates

Respondent No 15

The County College

M/s Pervez Tarique Tagar

Imran Ali Tunio, advocates

C.P No.D-1065 of 2016

Superior College of Science

M/s Muhammad Arshad Pathan,

Safder Hussain Leghari, advocates

Respondent No 5

Ahmed Ali Nizamani

Mr. Abdul Ghafoor Hakro, advocate

Mr. S.M Naveed Farooqui, advocate for H.D.A

Mr. Muhammad Ismail Bhutto, Additional A.G Sindh

None present for petitioner in C.P No.D-1101 of 2016,

SBCA & HMC in all petitions so also for Respondents

No. 10 to 13 in C.P No.D-431 of 2016

Date of hearing & decision: 20.10.2025

ORDER

MUHAMMAD SALEEM JESSAR,J: Through petition No.D-431 of 2016 the petitioner has sought restraining orders against the private respondents No.10 to 15 (Private Schools) from running their respective schools in residential areas, whereas in C.Ps No.D-1065 & 1101 of 2016 the principals/owners of private schools (*Superior College of Science for Girls & Boys and The Smart School City Campus respectively*) have challenged the notices issued to them by the Sindh Building Control Authority regarding demolition/sealing of alleged un-authorized constructions of school buildings.

2. Since common question of fact and law is involved in these Petitions; therefore, the same are proposed to be decided through this common order.

3. Mr. Abdul Ghafoor Hakro, who is representing the petitioner in C.P No.D-431 of 2016 and respondent No.5 in C.P No.D-1065 of 2016, argued that private respondents No.10 to 15 (principals/owners of private schools) either hired or purchased the Bungalows No.A/23, B/240, A/11, A/62, A/64, A/27 and A/26 at GoR Colony Unit No.1 Latifabad (**subject area**), which is a pure residential area, however, the aforesaid respondents are carrying out commercial activities by running the schools in said area, which is against the law. Since the commercial activities are creating disturbance to the residents of the locality including petitioner due to the heavy traffic; that petitioner moved applications to higher authorities for taking legal action against said respondents, but to no avail, compelling the petitioner to seek indulgence of this Court. He prayed that directions may be issued to the Sindh Building Control Authority to take legal action against the above respondents/private schools in accordance with law.

4. Mr. Muhammad Arshad Pathan advocate, who is representing the petitioner in C.P No.D-1065 of 2016 and respondent No.14 in C.P No.D-431 of 2016 argued that the petitioner (private school) is carrying out its activity strictly in accordance with law; that the petitioner/private school has also obtained required certificate of registration from Joint Stock Companies in the year 2005-06; that it had taken the properties from owners through rent agreement and running the school in accordance with law since 2005; that the area where petitioner is running school is purely commercial one and number of other schools are also carrying out their activities there as well; that the respondent/petitioner Ahmed Ali Nizamani himself is encroacher and has encroached upon the area of road and in order pressurize the school owner so that no one can move forward against, he has filed the petition; that even otherwise a complete mechanism is available before the Sindh Building Control Authority, but same was not exhausted by the said Ahmed Ali Nizamani and directly filed the petition before this Court. So far as notices issued by the SBCA, he argued that petitioner-private school is carrying out activity strictly in accordance with law, but the respondent SBCA issued demolition notices

without even hearing the petitioner, which is against the principle of natural justice and liable to be set aside.

5. Mr. Pervez Tarique Tagar advocate, who is representing the respondent No.15 in C.P No.D-431 of 2016 also adopted the arguments advanced by Mr. Pathan.

6. Despite notices, no one effected appearance on behalf of SBCA, Municipal Corporation/Committee and respondents No.10 to 13 in C.P No.D-431 of 2016. Whereas, learned Additional A.G and counsel for H.D.A submit that they are proforma party.

7. Arguments heard and record perused.

8. Perusal of record reflects that through petition bearing No. D-431 of 2016 restraining orders have been prayed from continuing any commercial activity in subject area by the private educational institutions. It appears that in said petition petitioner Ahmed Ali Nizamani had also moved application(s) to respondent Sindh Building Control Authority (SBCA), Regional Director of Hyderabad Development Authority (H.D.A), that was forwarded to the Administrator Municipal Corporation Hyderabad and Director Planning & Development Control Department H.D.A and pursuant to said applications show cause notices have been issued, which resulted in filing of connected petitions bearing No.D-1065 and 1101 of 2016 by the owners/principals of private educational institutes. In both these connected petitions it has been demonstrated on behalf of the petitioners /private institutes that in the subject area various other private Institutes, Banks, Restaurants, Guest Houses and Shopping Plazas are operating but the petitioner Ahmed Ali Nizamani has not filed any application against said entities and has only targeted the Superior College of Science for Girls & Boys, The Smart School City Campus and some other private educational Institutes, therefore, said action on part of Ahmed Ali Nizamani, who is petitioner in C.P No.D-431/2016 and respondent No.5 in C.P No.D-1065/2016, is based on personal grudge.

9. From the record it further appears that M/s Superior College of Science for Girls & Boys is running in the area since long. The impugned show cause notices, issued to M/s Superior College of Science for Girls &

Boys as well as to M/s The Smart School City Campus, reveals that police aid have been sought from the SSP Hyderabad for demolition/sealing of the building of the above institutes, without giving any opportunity of hearing to concerned. Even otherwise Regulation No.18.4 of Regional Interim Building & Town Planning Regulations, 2018 [**Regulations 2018**] deals with the 'change of land use' and Regulation No.18-4.2.2 of Regulations 2018 provides that residential plot within a residential neighborhood can be allowed to be used for Educational/Health purposes. For sake of convenience, it would be advantageous to produce below Regulation No.18-4.2.2:-

18-4.2.2. Residential plot within a residential neighborhood can be allowed to be used for Education/Health purpose provided the plot faces minimum width of road 60 ft. and lawfully converted into an Amenity plot for education/health (for Clinic purpose only) by the SBCA as per prescribed procedure after inviting public objection from neighborhood. The applicable rates of conversion criteria, FAR, No. of Floors and COS shall be prescribed at the time of change of land use.

10. Above Regulation specifically permits that a residential plot can be used for educational /health purposes. Further the petitioner Superior College of Science for Girls & Boys is the tenant in the subject bungalow and has attached with the petition copies of permission letters from the competent authorities for running educational institutes in said bungalow, that was constructed in the subject area long ago. Therefore, if there was any violation in construction, it could have been the owner that should have been issued a show cause notice, but show cause notice to a tenant is not mandated under the law, and since the tenant has to abide by the terms and conditions of the rent agreement and cannot alter it except without permission of the owner.

11. It further reflects from the record that Ahmed Ali Nizamani [petitioner in C.P No.D-431 of 2016 & respondent No.5 in C.P No.D-1065 of 2016] is the close relative of the owner of the property/bungalow under the use of M/s Superior College of Science for Girls and Boys. It further reveals from the record that there is grudge between the parties [Ahmed Ali Nizamani and owner/principal of Superior College] over construction

of a room by the respondent No.5 Ahmed Ali Nizamani, which per claim of the owner/principal of college is constructed on pathway, therefore, it appears that instant is nothing but based on personal bias. The mala fide of respondent/petitioner Ahmed Ali Nizamani and official respondents also transpires from the fact that except Superior College and Smart School City Campus no notice has been issued to other entities carrying out commercial activities in the said area. It is well settled law that once the malafide of the fact is established it can negate the validity of an official or legal action.

12. Since the malafide on part of the petitioner/respondent Ahmed Ali Nizamani in collusion with the official respondents is prima facie established, it makes the impugned actions as nullity in the eyes of law and void. Resultantly petitions bearing No.D-1065 and 1101 of 2016 stand ALLOWED and the impugned show causes issued thereon are set at naught; whereas the petition bearing No.D-431 of 2016 apparently based on malafide stands dismissed accordingly.

JUDGE

JUDGE

Sajjad Ali Jessar

APPROVED FOR REPORTING

20.10.2025