

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Constitutional Petition No.D-2009 of 2016

Before:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo

Petitioner: Mst. Irshad Soomro w/o Muhammad
Arshad Zahid Siddiqui through Mr. Asad Ali
Jatoi, Advocate.

For the private Respondents: Mr. Bakhtiar Ali Panhwar, advocate.

For the official Respondents: Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing: 03-09-2025

Date of Judgment: 03-09-2025

JUDGMENT

Jan Ali Junejo, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner assails the order dated 31.05.2016 (hereinafter referred to as the “*Impugned Order*”) passed by the learned District & Sessions Judge, Hyderabad (hereinafter referred to as the “*Revisional Court*”) in *Suo Moto* Civil Revision Application No. 37 of 2016. By the impugned order, the learned District Judge set aside the judgment and decree dated 29.08.2015 & 05.09.2015 passed by the learned 3rd Senior Civil Judge, Hyderabad (hereinafter referred to as the “*Trial Court*”) in F.C. Suit No.47 of 2012 and remanded the matter for a fresh decision. The petitioner has invoked the constitutional jurisdiction of this Court, contending that no adequate alternative remedy is available, and that the impugned order suffers from inherent lack of jurisdiction and manifest illegality.

2. The petitioner instituted a civil suit for declaration and permanent injunction in respect of Flat No. 01, Ground Floor, situated in Momal Heights, Qasimabad, Hyderabad. The principal reliefs claimed therein were:
(a) a declaration of ownership on the basis of a registered Sale Deed; (b) a

direction to the builder/developer (Respondent No. 2) to have the subject flat regularized from the Sindh Building Control Authority (Respondent No. 3); and (c) a permanent injunction restraining the SBCA from taking any coercive action, including demolition of the flat.

3. The suit was contested primarily by the SBCA, which asserted that the construction of the flat on the ground floor was illegal and in violation of the approved building plan, which only permitted shops and parking on that level. The learned Trial Court decreed the suit in favour of the petitioner, primarily on the grounds that the SBCA failed to lead evidence to substantiate its claim of illegality and that the petitioner's ownership was established by a registered sale deed. The decree was not challenged in appeal by the SBCA, thereby attaining technical finality, which aspect has been stressed by the petitioner.

4. Subsequently, the learned District Judge initiated *suo moto* revision proceedings under Section 115 of the Code of Civil Procedure, 1908 (CPC), citing observations made during a judicial inspection by Honourable Judge of this Court. The District Judge, after receiving comments from the SBCA which detailed the illegalities (construction in parking area, no lift, no occupancy certificate), set aside the trial court's decree and remanded the case for a fresh trial.

5. Learned counsel for the petitioner vehemently contended that the impugned order passed by the learned District Judge is liable to be set aside as the same has been passed without jurisdiction. It was argued that the learned District Judge assumed to exercise *suo motu* revisional powers, whereas under Section 115, C.P.C., such jurisdiction vests exclusively with the High Court. Hence, the impugned order is *coram non judice* and devoid of lawful authority. Learned counsel further argued that the order does not disclose any specific illegality or material irregularity committed by the trial court in the

exercise of its jurisdiction, and yet the matter has been remanded in a manner prejudicial to the petitioner. It was urged that the petitioner is a bona fide purchaser of the suit property under a registered sale deed, and would suffer irreparable loss and grave hardship if the lawfully acquired property is demolished on the basis of such unlawful exercise of jurisdiction. In these circumstances, learned counsel prayed that the impugned order be set aside and the petition allowed.

6. The learned counsel for Respondent No.3 countered that the petition should be dismissed, arguing that the trial court's judgment was a failure of justice because it decreed the suit based on ownership while entirely ignoring the fundamental issue of the construction's legality. They asserted that the trial court erred by placing the entire burden of proof on the respondent and by decreeing the suit simply because the respondent did not lead evidence, failing to consider that the petitioner's claim was based on an illegal act. The counsel justified the *suo moto* action of the District Judge as necessary to prevent the perpetuation of an illegality and to uphold the rule of law, particularly concerning unauthorized constructions which constitute a public nuisance. They concluded that the wider public interest in enforcing building control laws and regulations outweighs the private interest of the petitioner and that courts have consistently held that such illegal constructions cannot be protected.

7. The learned Additional Advocate General (A.A.G.) supported the dismissal of the petition, contending that the trial court's judgment was flawed as it overlooked the illegality of the construction, which is a matter of public interest. He argued that the trial court should have considered the violation of building plans and regulations as a primary factor, rather than focusing solely on the issue of ownership. The A.A.G. further asserted that the District Judge's *suo moto* intervention was justified to correct a grave miscarriage of

justice and to prevent the perpetuation of a public nuisance. The A.A.G. emphasized that upholding the rule of law and the sanctity of building regulations is paramount, and therefore, the petition should be dismissed.

8. We have considered the arguments advanced by the learned counsel for the Petitioner, the learned counsel for the private Respondents and the learned Additional Advocate General, Sindh. We have also perused the material available on record with utmost care. The foremost issue is whether the Revisional Court possessed jurisdiction to assume *suo motu* powers under Section 115 CPC. It would be expedient to examine and reproduce Section 115 of the CPC as follows:

“115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that, where a person makes an application under this subsection, he shall, in support of such application, furnish copies of the pleadings, and documents order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.:

Provided further that such application shall be made within ninety days of the decision of the subordinate Court which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.

(2) The District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If any application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court”.

Section 115 of the Code of Civil Procedure confers revisional jurisdiction upon the High Court and the District Court to keep subordinate Courts within the bounds of their lawful authority. Under sub-section (1), the High Court may call for the record of any case in which no appeal lies, and where the subordinate Court has either exercised jurisdiction not vested in it, failed to exercise jurisdiction so vested, or acted with illegality or material irregularity in the exercise of its jurisdiction. Sub-section (2) extends similar powers to the District Court in respect of cases decided by Courts subordinate to it, provided the value of the subject matter does not exceed its revisional jurisdiction. Importantly, the expression “may call for the record” makes it clear that such powers are not confined to applications filed by aggrieved parties but may also be exercised *suo motu* by the revisional Court, whenever it notices jurisdictional defects or material irregularities in the orders of subordinate Courts. However, the scope of revision remains limited to jurisdictional errors and cannot be stretched to function as a substitute for an appeal. In the present matter, the learned District Judge initiated *suo motu* revision proceedings under Section 115 of the Code of Civil Procedure, 1908 (CPC), on the basis of observations recorded during a judicial inspection by the Honourable Judge of this Court. Upon calling for and examining the comments of the Sindh Building Control Authority (SBCA), which disclosed multiple irregularities, such as construction raised in the parking area, absence of a lift, and lack of an occupancy certificate, the learned District Judge found the decree of the trial Court to be unsustainable. Consequently, he set aside the decree and remanded the matter for a fresh trial. The course adopted was presented as an exercise of revisional jurisdiction under Section 115 CPC. In this regard, reference may be made to the case of *Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 SC 400)*, wherein the Honourable Supreme Court of Pakistan considered the scope of *suo motu* revisional powers

of the District Court and laid down guiding Principles by observing that: “Now question arises whether suo motu jurisdiction under Section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefor. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismisses it on technical grounds”. Emphasis supplied.

9. The learned Trial Court committed a serious error of law by compartmentalizing the issues instead of addressing the core question. The controversy did not turn solely on the petitioner’s ownership evidenced through a sale deed; rather, it concerned the very legality and existence of the

property which she claimed to own. A sale deed cannot convey a better title than that possessed by the seller. If the construction itself was illegal and unauthorized ab initio, as specifically alleged by the SBCA, then the seller had no lawful, transferable title in respect of the flat. The Trial Court failed to appreciate this fundamental distinction between title to a lawfully existing property and documents relating to an unlawful structure.

10. The Trial Court's reasoning on Issue No. 3 is legally untenable. It shifted the entire burden onto the SBCA to prove illegality and decreed the suit solely on the basis that the SBCA "*failed to lead evidence*". Such an approach reflects a misapplication of the law of evidence. While it is correct that the burden to prove the positive assertion of illegality rested initially with the SBCA, the plaintiff's own claim was inherently conditional and required scrutiny. By seeking a direction for *regularization*, the plaintiff effectively admitted that the construction was irregular in its present form. In this context, the approved building plan was a pivotal document going to the root of the dispute. The Trial Court was duty-bound to ascertain the true facts and could, in exercise of its powers under Order XIII Rules 1 and 2 CPC, have summoned the original building plan from the SBCA. Its omission to do so, and its decision to grant a permanent injunction restraining demolition of an allegedly unauthorized structure, amounted to a material irregularity in the exercise of its jurisdiction. A decree validating a *prima facie* illegal construction undermines building control laws, zoning regulations, and public safety. Courts cannot confer legitimacy upon an illegality merely due to evidentiary lapses of a regulatory body.

11. A decree that has the effect of validating a *prima facie* illegal construction by default, without a substantive determination on the merits, is contrary to settled principles of law, public policy, and the broader interests of justice. Courts cannot be seen to confer legitimacy upon an illegality merely

because one party failed to lead evidence or because procedural lapses occurred at an earlier stage. The comments submitted by the SBCA before the learned District Judge disclosed specific and material violations, including construction raised within the designated parking area. Such violations not only undermine the sanctity of approved building plans but also compromise public safety, defeat zoning regulations, and adversely affect the rights of other allottees and the public at large.

12. The petitioner has urged that there was no alternative remedy available. This contention, however, is misplaced. The SBCA, being the primary regulatory authority and directly aggrieved party, had the statutory right to assail the trial court's decree through an appeal or revision before the competent forum. Its omission to exercise that right does not, and cannot, render the trial court's judgment immune from scrutiny, nor does it sanctify a decree tainted with legal infirmities.

13. It must also be borne in mind that the jurisdiction of this Court under Article 199 of the Constitution is extraordinary, discretionary, and equitable in nature. It is not intended to function as a substitute for statutory remedies, nor is it exercised for the correction of every legal error. Rather, it is invoked to prevent manifest injustice, ensure the enforcement of fundamental rights, and protect the rule of law. To uphold the trial court's decree in this case would amount to perpetuating an alleged illegality. Conversely, to strike down the impugned order of the learned District Judge purely on technical grounds, without addressing the manifest flaws in the trial court's judgment, would leave an erroneous decree intact. Both outcomes would offend the conscience of this Court and undermine the principles of justice.

14. In circumstances where a gross failure of justice is apparent on the face of the record, procedural technicalities cannot be permitted to override

substantive justice. The learned District Judge, in exercise of suo motu revisional jurisdiction under Section 115, C.P.C., rightly intervened to correct jurisdictional defects and material irregularities committed by the learned Trial Court. The Honourable Supreme Court of Pakistan in *Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 SC 400)* has recognized that both the High Court and the District Court may exercise such revisional powers *suo motu* to prevent perpetuation of illegality and to ensure proper administration of justice. The intervention by the learned District Judge in the present case was, therefore, legally sustainable and in furtherance of the ends of justice.

15. For the foregoing reasons, the instant constitutional petition was dismissed, and the impugned order dated 31.05.2016 passed by the learned District Judge, Hyderabad in Suo Moto Civil Revision Application No.37 of 2016 was upheld. The learned Trial Court was directed to proceed with the matter on a day-to-day basis and decide the same expeditiously, strictly in accordance with law, and in compliance with the directions contained in paragraph No.3 of the impugned order. The parties shall appear before the learned Trial Court on 13.09.2025 without insisting upon further notice, and no unwarranted adjournment shall be entertained. The learned Trial Court shall submit a compliance report in chambers for perusal. There shall be no order as to costs. These are the detailed reasons in support of the short order announced on 03.09.2025.

JUDGE

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