

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-5185 OF 2023

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE ADNAN-UL-KARIM MEMON, J.
MR. JUSTICE ZULFIQAR ALI SANGI, J.

Abdul Samad and others
versus
Province of Sindh and others

Date of Hearing 04-02-2026.

M/s. Omar Soomro and Zain A. Soomro, Advocates for the
Petitioners.

Mr. Muhammad Mujtafa Mamdani, Advocate for Respondent
No.7.

Syed Ahsan Imam Rizvi, Advocate for Respondent Nos.6, 8, 9, 10
and 11.

Mr. Salahuddin Ahmed and Nadeem Ahmed, Advocates for
Respondent No.6.

Mr. Ali Safdar Depar, AAG.

M/s. Azain Nadeem, Ghulam Akbar Lashari, Rafiq Bhanbhro
and Amanullah, Advocates for SBCA.

ORDER

ZULFIQAR ALI SANGI, J: Through instant petition the Petitioner has
prayed for the following relief:-

A. Implement the Order dated 22.01.2019 passed by
Hon'ble Supreme Court by declaring that the
Impugned Letter dated 22.02.2023 issued by
Respondent No. 1 (Assistant Director, District East/
Jamshed Town, SBCA) is a colorable exercise
conducted in a clandestine manner, arbitrary,
perverse and illegally issued under a nefarious
design in order to dump the compliance already
made.

B. Declare that the Official Respondents and
Respondent No. 3 (Assistant Director, District East/
Jamshed Town, SBCA) have no authority to
re-review, re-agitate and reverse the Final Order
dated 27.08.2021 passed by the then DG SBCA in
compliance of the Order dated 22.01.2019 passed
by Hon'ble Supreme Court wherein building plan of
Respondent No. 6-10 was already recalled.

C. Declare that the Impugned Letter dated 22.02.2023 restoring the building plan and illegally REJECTING the Final Order dated 27.08.2021, passed by the Respondent No. 1 (DG SBCA) in compliance of Order dated 22.10.2019 of the Hon'ble Supreme Court, is a abuse of process / law and blatant violation of the Order dated 22.01.2029 passed by Hon'ble Supreme Court.

D. Declare that the Respondent No. 1 (SBCA) and Respondent No. 3 (Assistant Director, District East/ Jamshed Town, SBCA) has no authority to re-review, re-agitate and reverse the Final Order dated 27.08.2021 passed by the then DG SBCA in compliance of the Hon'ble Supreme Court's Order dated 22.01.2019.

E. Declare that the Regulations 25-2 and 25-9 of Karachi Building and Town Planning Regulations, 2002 and all other enabling provisions are illegal, unconstitutional to the extent that they do not acknowledge allotment/lease conditions, hence, a breach of the rights of residents/petitioners guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan and Section 40 of the Transfer of Property Act, 1882 in light of law laid down in *1990 CLC 448 (Karachi)*.

F. Declare that the Approved Building Plan dated 24.05.2023 of the multistorey project 'Rukhsana Homes' allowing construction up to Ground+8 floors is illegal and in violation of lease conditions (Ground+1), Hon'ble Supreme Court's Order dated 22.01.2019, Order dated 29.10.2020 passed by Learned Single Judge in Suit No. 2224 / 2016, and Final Order dated 27.08.2021 passed by the Respondent No. 1 (DG SBCA) in compliance of the Order dated 22.01.2019 passed by Hon'ble Supreme Court and a violation of the rights of residents/petitioners guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan and Section 40 of the Transfer of Property Act, 1882.

G. Declare that Muhammad Jalees Siddiqui, (Deputy Director, District East/ Jamshed Town, SBCA) has blatantly abused the process and law by filing false and misleading Affidavit dated 22.03.2023 (Titled: Affidavit in Respect of Latest Position on Behalf of Defendants (SBCA)) in Suit No. 153/2022 which is in stark contradiction, deliberate concealment, and recession from assertions and affirmations made in the Statement dated 18.01.2021 filed by the Official Respondent No. 2 in HCA No. 223/2020, Written Statement and Counter Affidavit filed by Muhammad Jalees Siddiqui himself in Suit No. 153 / 2022 and Counter Affidavits to CMA No. 6130 /2020 and CMA No. 6131 / 2020 filed by the Official Respondent No. 2 in Suit No. 2224 / 2016.

H. Declare that the Respondent No. 4 (KMC) being the leasing authority cannot allow the construction in violation of the lease conditions (Ground+1). Hence, declare that the Letter dated 22.02.2023 issued by the Respondent No. 5 (Deputy Director Land, KMC) and Forwarding Letter dated 29.08.2016 issued by the Respondent No. 4 (KMC) is arbitrary and illegal and a violation of the rights of residents / petitioners guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan and Section 40 of the Transfer of Property Act, 1882.

I. Restore the Final Order dated 27.08.2021 passed by the Respondent No. 1 (DG SBICA) in compliance of Order dated 22.01.2019 passed by Hon'ble Supreme Court.

J. Direct the Respondents to not interfere with the Final Order dated 27.08.2021 which is a detailed and speaking order passed by the Respondent No. 1 (DG SBICA) in compliance of Hon'ble Supreme Court's Order dated 22.01.2019.

K. Direct the Respondent No. 1 to implement the Order dated 22.01.2019 passed by Hon'ble Supreme Court of Pakistan and restrain the Respondents No. 6-11 from raising any construction.

L. Direct that the Official Respondents to initiate inquiry against Muhammad Jalees Siddiqui (Deputy Director, District East/ Jamshed Town, SBICA) and Respondent No. 3 (Assistant Director, District East/ Jamshed Town, SBICA) and they should be prosecuted for abusing the process and law through filing false and misleading affidavit and issuing the Impugned Letter dated 22.02.2023 under a clandestine and nefarious design.

M. In the meanwhile, (i) suspend the operation of the Impugned Letter dated 22.02.2023 issued by the Respondent No. 3 (Assistant Director, District East/ Jamshed Town, SBICA), (ii) restrain the Respondent No. 6 to 10 from raising any construction on the Subject Plot and Respondent No. 11 from raising any construction at Plot No. 988 (Old No. 57), Muslimabad Co-operative Housing Society Ltd, Jamshed Quarters, Karachi (iii) restrain the Respondent No. 6 to 11 from creating any third party interest.

N. Grant any other relief, which this Hon'ble Court may deem just and proper.

2. Briefly stated, the factual matrix of the case is that the Petitioners, who are residents of Muslimabad Cooperative Housing Society, have invoked the constitutional jurisdiction of this Court under Article 199

of the Constitution of the Islamic Republic of Pakistan, 1973. Through the present petition, they seek enforcement and implementation of the Order dated 22.01.2019 passed by the Hon'ble Supreme Court of Pakistan and have assailed the legality and propriety of the letter dated 22.02.2023 issued by Respondent No.3, namely the Assistant Director, District East, Sindh Building Control Authority (SBCA). By virtue of the said impugned letter, a binding and final Order dated 27.08.2021 passed by the Director General, SBCA, was purportedly rejected and the previously recalled building plan was unlawfully restored. The Petitioners contend that the subject plot, situated in Muslimabad Cooperative Housing Society, is governed by a lease deed executed in the year 1948, which unequivocally restricts construction thereon to Ground plus First Floor only. Notwithstanding such express restriction, a multistorey building plan was approved in the year 2016 in favour of Respondents No.6 to 10, which approval became the subject matter of prolonged litigation before this Court as well as the Hon'ble Supreme Court of Pakistan.

3. The Hon'ble Supreme Court of Pakistan, vide its Order dated 22.01.2019, issued clear, categorical, and binding directions mandating strict adherence to the lease conditions and the applicable law. In compliance thereof, the Director General, SBCA, after examining the entire record and affording due consideration to all relevant aspects, passed a detailed, reasoned, and speaking Final Order dated 27.08.2021, whereby the approved building plan was recalled and demolition was directed, thereby ensuring faithful compliance with the directions of the Hon'ble Supreme Court. The said Final Order remained operative at all material times, was never challenged, recalled, or set aside by any competent forum, and was consistently defended by SBCA itself before this Court in subsequent proceedings.

4. The principal grievance of the Petitioners is that despite the binding and conclusive nature of the Final Order dated 27.08.2021, Respondent No.3, who is merely an Assistant Director of SBCA, issued the impugned letter dated 22.02.2023, whereby the building plan was purportedly restored on the basis of an alleged reconfirmation by the Karachi Metropolitan Corporation (KMC). By doing so, Respondent No.3 effectively nullified the Final Order passed by the Director General, SBCA, and facilitated Respondents No.6 to 10 to resume construction activities. It is vehemently contended that such conduct

amounts to a colorable exercise of authority, abuse of process of law, and a flagrant violation of the express directions issued by the Hon'ble Supreme Court.

5. Learned counsel for the Petitioners strenuously argued that neither Respondent No.1 nor Respondent No.3 possessed any lawful authority, jurisdiction, or competence to re-examine, review, reopen, or reverse the Final Order dated 27.08.2021 passed by the Director General, SBCA, particularly when the said order was passed strictly in obedience to and in compliance with the directions of the Hon'ble Supreme Court. It was contended that the impugned letter is wholly without jurisdiction, void ab initio, non est in the eye of law, and therefore liable to be struck down. It was further submitted that reliance upon Regulations 25-2 and 25-9 of the Karachi Building and Town Planning Regulations, 2002, cannot override or supersede explicit lease conditions, nor can administrative correspondence or internal instructions defeat binding judicial pronouncements. Allegations of concealment of material facts and submission of misleading affidavits by SBCA officials were also forcefully advanced.

6. Conversely, learned counsel appearing on behalf of Respondents No.6 to 11 raised preliminary objections with regard to maintainability of the petition. It was contended that the Petitioners had indirectly challenged the vires and application of Regulations 25-2 and 25-9 of the Karachi Building and Town Planning Regulations, 2002, without impleading all affected persons, thereby violating the principles of audi alteram partem as well as the mandate of Order I Rule 8 of the Code of Civil Procedure, 1908. It was further argued that the presence of disputed questions of fact, availability of alternate remedies, pendency of civil suits, and alleged suppression of material facts disentitled the Petitioners from invoking the constitutional jurisdiction of this Court.

7. Learned Assistant Advocate General, Sindh, along with learned counsel for SBCA, supported the impugned action and contended that the building plan was restored after verification and reconfirmation by KMC, that the construction in question was residential in nature, and that Respondent No.3 had acted in accordance with directives of the competent authority as well as subsisting court orders.

8. We have heard the learned counsel for the parties at considerable length and have perused the record with their able assistance. The

questions that arise for determination are: whether the impugned letter dated 22.02.2023 was issued with lawful authority and jurisdiction; whether an Assistant Director of SBCA could lawfully nullify, override, or frustrate a binding Final Order passed by the Director General, SBCA, in compliance with the directions of the Hon'ble Supreme Court; whether express lease conditions restricting construction could be disregarded on the basis of building regulations or administrative correspondence; and whether the objections relating to maintainability, disputed questions of fact, and availability of alternate remedies disentitle the Petitioners from relief. It is also an admitted position that civil suits have been filed by the parties and that the issue has remained subject to long-standing litigation before this Court.

9. It is a settled principle of constitutional jurisprudence that orders passed by the Hon'ble Supreme Court are binding on all executive and administrative authorities under Article 189 of the Constitution, and no subordinate authority is permitted to sit in appeal over, dilute, or frustrate the effect of such orders. The Final Order dated 27.08.2021 was admittedly passed by the Director General, SBCA/the competent authority strictly in compliance with the Order dated 22.01.2019 passed by the Hon'ble Supreme Court in Civil Petition No.815-K of 2017 (Abdul Karim vs. Nasir Saleem Baig and others). The said Final Order has neither been recalled nor set aside by any court of competent jurisdiction. The record unmistakably reveals that the impugned letter dated 22.02.2023 was issued by an Assistant Director purporting to restore the building plan and, in effect, reject and nullify the Final Order passed by the Director General. Such an act is ex facie without jurisdiction, as a subordinate officer cannot override or annul a final and binding order passed by a superior authority, particularly when the latter order emanates from compliance with the directions of the Hon'ble Supreme Court. The administrative hierarchy, constitutional discipline, and rule of law do not permit such an inversion of authority. The reliance placed on an alleged reconfirmation letter issued by KMC is of no legal consequence, as administrative correspondence cannot supersede lease conditions nor can it override binding judicial determinations. Lease restrictions, once judicially acknowledged and enforced, continue to bind all parties, and any construction in derogation thereof is patently unlawful.

10. The objections raised regarding maintainability and non-joinder are misconceived in the peculiar facts and circumstances of the case. The core relief sought by the Petitioners is the enforcement and implementation of an existing order passed by the Hon'ble Supreme Court and a final administrative order passed in compliance thereof, rather than a generalized or abstract challenge to statutory regulations affecting a large class of persons. Record reflects that the counsel for the petitioner also not pressed the prayer clause "E" on 01.11.2024. The constitutional jurisdiction of this Court is rightly invoked where actions of public functionaries are shown to be without lawful authority, arbitrary, mala fide, and in defiance of binding judicial commands.

11. As regards the contention relating to disputed questions of fact, it is trite law that where the controversy revolves around interpretation and enforcement of admitted documents, express lease conditions, and binding court orders, the mere assertion of factual disputes does not operate as a bar to the exercise of constitutional jurisdiction.

12. In view of the foregoing discussion, this Court is of the considered opinion that the impugned letter dated 22.02.2023 is a colorable exercise of authority, devoid of lawful jurisdiction, and violative of the binding Order dated 22.01.2019 passed by the Hon'ble Supreme Court of Pakistan as well as the Final Order dated 27.08.2021 passed by the Director General, SBCA. Consequently, the petition is disposed of by setting aside the impugned letter dated 22.02.2023 and remanding the matter to the Director General, SBCA, with the direction to call for the entire record from KMC in respect of the disputed plot and to pass a fresh, reasoned, and speaking order strictly in accordance with law and in view of the Order dated 22.01.2019 passed by the Hon'ble Supreme Court of Pakistan.

13. The petition stands disposed of along with all pending applications, if any.

JUDGE

JUDGE