

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D- 3507 of 2024
(Samira Mahamadi v. Federation of Pakistan and others)

DATE	ORDER WITH SIGNATURE OF JUDGES
------	--------------------------------

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 29.09.2026

Petitioner Samira Mahamadi in person
Ms. Uroosa Memon, Advocate for the respondent No.2-DHA
Mr. Muhammad Naqash, Advocate for the respondent No.3.
Ms. Wajiha Mehdi, Asstt. Attorney General.

-.-.-.-.-.

ORDER

Adnan-ul-Karim Memon, J. The petitioner, Samira Mahamadi, who appears in person, has filed the instant constitutional petition under Article 199 of the Constitution, seeking directions for removal/demolition of the alleged unauthorized construction at House No. 9-B, 4th East Street, DHA Phase-1, Karachi, comprising a servants quarter, bathroom, staircase and a boundary wall allegedly exceeding the permissible height. She contends that such construction violates the PDOHA Building Control and Town Planning Regulations, 2020, particularly Sections 13.23.1 and 17.1/17.2, and infringes her fundamental rights to life, privacy, security and property under Articles 9, 14 and 23 of the Constitution. She further seeks a compliance report regarding demolition and action against the concerned DHA officer, relying upon *Ardeshir Cowasjee v. KBCA* (1999 SCMR 2883) and the judgment in C.P.D-4634/2019.

2. Learned AAG, assisted by the counsel for the Respondent No.2/DHA has opposed the petition, maintaining that the construction in question, including the servants quarters and washroom, was duly regularized and incorporated in the completion plan in accordance with the rules prevailing at the relevant time. Counsel for the DHA has also raised objections of laches, unclean hands and abuse of process, and submits that no fundamental right of the petitioner has been infringed. It further contends that the petitioner's reliance upon judgments concerning public-interest matters is misplaced, as the present petition arises from a private dispute. Counsel for the DHA therefore seeks dismissal of the petition with exemplary costs.

3. The learned counsel for the Respondent No.3 contests the petition and submits that the property was constructed pursuant to an approved plan of

1979/1981 and that the construction was subsequently regularized by the competent authorities in 2002 upon payment of the prescribed penalty, followed by issuance of a certificate of regularization and regularized plan on 01.01.2004. It is therefore contended that the 2020 Regulations cannot be applied retrospectively to a structure lawfully constructed and regularized decades earlier. Respondent No.3 further raises objections of laches, mala fide, unclean hands, and abuse of process, asserting that the petitioner, despite being a neighbor, remained silent for many years and has filed multiple proceedings. It is also alleged that the photographs relied upon by the petitioner were obtained through trespass and that the petitioner has no legal authority to issue a demolition notice. Respondent No.3 accordingly seeks dismissal of the petition with costs.

4. We have heard the petitioner, who appears in person, and the learned counsel for the respondents as well as learned AAG on the subject issue and perused the record with their assistance.

5. The questions for determination are as follows:

- 1) Whether the construction raised at Plot No. 9-B, 4th East Street, DHA-I, Karachi, including the excessive boundary wall, servants' quarter, bathroom and staircase in the compulsory open space, is unauthorized and in violation of the PDOHA Building Control and Town Planning Regulations, 2020, and
- 2) whether the petitioner is entitled to seek its removal/demolition through constitutional jurisdiction under Article 199 of the Constitution? Further,
- 3) Whether the alleged failure of the competent DHA authorities to inspect, prevent or remove such construction, despite the applicable regulatory provisions and the petitioner's complaint, amounts to non-enforcement of the statutory/regulatory scheme and infringes the petitioner's fundamental rights under Articles 9, 14 and 23 of the Constitution?
- 4) Whether the competent authorities are legally obliged to take action against unauthorized construction in accordance with Sections 13.23.1, 17.1 and 17.2 of the PDOHA Regulations, and
- 5) Whether, in view of the principle that regulations are to be applied for the benefit of the public and not to favour an individual, as recognized in *Ardeshir Cowasjee v. KBCA* (1999 SCMR 2883), and the directions issued by this Court in *Muhammad Idrees and another v. Government of Sindh* (C.P. No. D-4634 of 2019), any corresponding duty arises to proceed against officials allegedly responsible for permitting or failing to prevent the unauthorized construction.

6. The petitioner alleges that the servants' quarter, bathroom, staircase and boundary wall violate Sections 13.23.1, 17.1 and 17.2 of the PDOHA Building Control and Town Planning Regulations, 2020. However, the respondents assert that the property was constructed under an approved plan of 1979/1981 and that the disputed additions were regularized by the competent authority in 2002,

followed by issuance of a regularized plan/certificate dated 01.01.2004. If such regularization is established from the official record, the 2020 Regulations cannot retrospectively invalidate a structure lawfully approved or regularized under the earlier regime, though they would apply to any subsequent construction, alteration or extension.

7. The decisive question, therefore, is whether the disputed structures are covered by the sanctioned/regularized plan.

8. Mere delay or photographs obtained do not absolve the competent authority of its duty to independently inspect and verify the property. Besides, allegations of mala fide or misconduct against officials require cogent material and cannot be presumed.

9. It may be observed that the constitutional rights under Articles 9, 14 and 23 may be engaged where an established unauthorized construction materially affects a neighbour's lawful rights, but such infringement must be proved through cogent evidence. The principles in *Ardeshir Cowanjeev KBCA* (1999 SCMR 2883) require enforcement of building regulations, but do not dispense with determination of the construction's sanctioned or regularized status.

10. Accordingly, the competent DHA authority is directed to verify the subject property against the original sanctioned plan, regularized plan/certificate dated 01.01.2004 and applicable regulations, and to conduct a fresh physical inspection after notice to the affected parties. If the servants' quarter, bathroom, staircase and boundary wall are found covered by valid approval/regularization, no action shall be taken merely on the basis of the subsequent 2020 Regulations. Conversely, if any portion is found outside the sanctioned/regularized plan or constitutes a subsequent unauthorized addition, the competent authority shall initiate and conclude proceedings under the applicable law, including Sections 13.23.1, 17.1 and 17.2 of the 2020 Regulations, after due notice and opportunity of hearing, and take such action, including removal or demolition, as may be authorized by law. The question of any departmental action against DHA officials shall likewise be considered only after determining, from the record, whether any statutory duty was breached and by whom. The petition is accordingly disposed of in the aforesaid terms.

JUDGE

JUDGE