

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3823 of 2017
(Public Interest Law Association of Pakistan (PILAP) and others
versus
Government of Sindh & others)

Constitutional Petition No. D-6928 of 2018
(State Bank of Pakistan & others
versus
Province of Sindh & others)

Date	Order with signature of Judge
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 01.9.2026

Mr. Faisal Siddiqui, Advocate for the petitioner in C.P No.D.6928/2018
Mr. Zubair Ahmed Abro, Advocate for the petitioners in C.P No. D-3823/2017
alongwith Mr. Afaq Akhtar, Advocate
Barrister Zohaib Zulfiqar Sarki, Additional AG
Mr. Muhammad Yaseen Azad, Advocate for respondents No.6&7
Mr. Gohar Mehmood, Advocate for Respondent No.7 in both petitions
M/s Amanullah and Ghulam Akbar Lashari, Advocates for the SBCA
Syed Manzoor-ul-Haq, Law Officer, State Bank of Pakistan

ORDER

Adnan-ul-Karim Memon, J. Both petitions involve common questions of law and facts; hence, with the consent of the parties, they are taken up together and disposed of by this common order.

2. In C.P. No. D-3823 of 2017, the petitioners, concerned citizens and organizations working for the protection of environment and architectural heritage, challenged the permission/NOC dated 29.06.2016 granted for alteration of the notified Protected Heritage/immovable antiquity, Emirates Bank International Ltd. (Lloyds Bank), I.I. Chundrigar Road, Karachi, in connection with the proposed “Silk Bank Office Tower” comprising Basement + Ground + 32 floors.

3. The petitioners averred in the pleadings that the 1932 heritage building was structurally intact and that the proposed construction would substantially damage or demolish it, leaving only its façade, in violation of the Antiquities Act, 1975, Sindh Cultural Heritage (Preservation) Act, 1994, Sindh Environmental Protection Act, 2014, SBCA Regulations and Articles 4, 9, 14 and 28 of the Constitution. They also alleged that the Heritage authorities lacked lawful authority to permit such alteration, that Section 22 of the Antiquities Act was not complied with due to the proximity of Merewether Tower, and that the EIA public hearing suffered from irregularities; accordingly, they sought declaration that the NOC was unlawful and void and restraint against any damage, demolition or mutilation of the heritage building.

4. In response, SBCA submitted that the existing Ground + 3-storey building was a protected heritage structure and that the owner's proposal concerned addition/alteration to the rear portion while preserving the façade. SBCA stated that the necessary Heritage approval and other NOCs had been obtained; its NOC dated 17.03.2017 was conditional upon EIA/SEPA approval, the Architectural Concept Plan dated 31.03.2017 was expressly not valid for construction, and the structural NOC was issued on 10.04.2017, while final approval had not yet been granted. It further maintained that the original building remained intact and no violation had been observed; therefore, the petition was premature and liable to be dismissed.

5. Through Constitutional Petition No. D-6298 of 2018, the Petitioners, led by the State Bank of Pakistan (SBP), challenged the legality of the various heritage, building and environmental approvals granted for the proposed 32-storey high-rise construction by Respondent No.6 on Plot No.2, RY-3, Railway Quarters, Karachi, situated adjacent to the historic SBP Building and involving the alteration/demolition of the declared heritage Lloyd's Bank Building. The Petitioners averred in the pleadings that the impugned approvals, including those dated 31.03.2017, 05.01.2017, 01.06.2018, 26.05.2017, June 2016, 13.10.2016 and 17.03.2017, were issued without lawful authority, in violation of the Sindh Building Control Ordinance, 1979, KBTPR, 2002, heritage and environmental laws, and contrary to the Supreme Court's order dated 14.01.2018 restricting construction to six commercial/residential floors. They alleged that the SBCA approval dated 01.06.2018 was obtained in the name of Respondent No.7 despite the property having already been sold to Respondent No.6, and was therefore based on misrepresentation. The Petitioners further asserted that the approved construction failed to maintain the mandatory open space under Regulation 25.3 of KBTPR, particularly adjoining the SBP property, and that demolition, piling and heavy construction activities posed serious risks to the SBP Building, boundary wall, underground water barrier and essential utilities, with the collapse of a nearby wall on 15.02.2018 cited as evidence of inadequate safety measures. They also alleged that portions of the protected heritage structure had already been damaged to accommodate a ramp, driveway, R.O. plant, electrical and PTCL rooms, staircase and elevators, contrary to the statutory obligation of preservation. It is further submitted that the environmental approval was challenged on the ground that the SBP was not given proper notice or meaningful participation in the EIA process, and that objections raised during the public hearing concerning heritage damage, traffic congestion and air pollution were ignored. The Petitioners also challenged the heritage NOC as arbitrary, unreasoned and issued without substantive notice or consultation, and submitted that, after the judgment dated 27.07.2017 in C.P. No. D-2386 of 2011 and connected matters striking down Chapter 15 of KBTPR, the heritage approvals required fresh consideration

by the competent authority. They further alleged that, despite the Supreme Court's order, SBCA permitted construction from the 2nd to the 12th floors and failed to reconsider the approvals despite SBP's letters dated 28.06.2018 and 10.07.2018 pointing out building-law violations. The Petitioners maintained that the Respondents had failed to discharge their statutory duties and had acted arbitrarily, illegally and without jurisdiction; accordingly, they sought cancellation of all impugned approvals, restraint against further construction, demolition of unauthorized construction, and fresh consideration of the heritage, building and environmental approvals after notice and hearing to the affected parties.

6. Learned counsel for the Petitioner in Constitutional Petition No. D-6298 of 2018 led the arguments and submitted that the approvals granted for the proposed construction were illegal, arbitrary and without lawful authority. It was contended that Respondent No.7 had already sold the subject property to Respondent No.6 in February/March 2018 and, therefore, could not lawfully obtain the SBCA approval dated 01.06.2018 in his own name. It was further argued that the proposed construction violates Regulation 25-3.1 and other provisions of KBTPR, 2002, as the mandatory open space of 10 feet has not been maintained. The proposed ramp, emergency staircase and piling works are immediately adjacent to the Petitioner's boundary wall, causing obstruction to air and light and posing a serious risk of structural damage to the State Bank's heritage building. Learned counsel submitted that the Environmental Impact Assessment and the NOC issued by the environmental authorities were also unlawful, as the Petitioner, being the immediate neighbour, was not given proper notice of the public hearing. The NOC was allegedly issued without adequate reasoning and despite objections regarding damage to the protected heritage building, traffic congestion and air pollution. It was contended that the proposed works would adversely affect the character and preservation of the heritage structure. It was further submitted that the heritage NOC was issued in violation of the Sindh Cultural Heritage (Preservation) Act, 1994, without substantive notice or consultation with the Petitioner. Counsel also relied upon the judgment of this Court dated 27.07.2017 concerning heritage-building approvals and argued that the impugned approvals required reconsideration in accordance with law. Learned counsel also relied upon the Supreme Court's order dated 14.01.2018 in C.P. No.38 of 2016, restricting construction to six commercial/residential floors, and contended that the SBCA nevertheless permitted construction from the 2nd to the 12th floors, despite referring to the said order itself. It was further submitted that the ongoing piling and construction had already caused damage to the Petitioner's property and its utilities, including sewerage lines, fire-water lines, cables and security installations, while vibrations from piling posed a further threat to the old heritage structure. The construction of a water barrier beneath the

SBP boundary wall was also alleged to have encroached upon the Petitioner's space and threatened the building's integrity. Lastly, counsel submitted that the proposed 32-storey building would cause serious nuisance, traffic congestion, pollution and additional pressure on existing municipal infrastructure and would overshadow and alter the character of the State Bank's notified heritage building. Reliance was also placed on the Antiquities Act, 1975, which restricts new construction within 200 feet of a protected immovable antiquity without requisite approval. On these grounds, the impugned approvals were sought to be declared illegal and set aside, the ongoing construction restrained/demolished, and the authorities directed to reconsider the heritage, building and environmental approvals afresh after notice and hearing to the Petitioner.

7. Learned counsel for the petitioners in C.P. No. D-3823 of 2017 also argued that the petitioners, being concerned citizens and organizations engaged in protecting the environment and architectural heritage, challenged the NOC dated 29.06.2016 permitting alteration of the protected heritage building, Emirates Bank International Ltd. (Lloyds Bank), I.I. Chundrigar Road, Karachi, for construction of the proposed "Silk Bank Office Tower" (Basement + Ground + 32 floors). He contended that the 1932 heritage building was structurally intact and that the proposed construction would substantially damage or demolish it, leaving only its façade, in violation of the relevant heritage, environmental and building laws and Articles 4, 9, 14 and 28 of the Constitution. He further argued that the Heritage authorities lacked lawful authority to grant such permission, Section 22 of the Antiquities Act, 1975 was not complied with, particularly in view of the proximity of Merewether Tower, and the EIA public hearing was conducted irregularly. Accordingly, he sought a declaration of the NOC as unlawful and restraint against any damage, demolition or alteration of the heritage building.

8. Learned counsel for Respondents No.6 and 7 submitted that the petitions are not maintainable under Article 199 of the Constitution and had been filed by the petitioners with mala fide intention on false, baseless and fabricated allegations. It was contended that in Constitutional Petition No. D-3823/2017 a detailed counter-affidavit along with the relevant approvals and documents had already been placed on record. It was submitted that the subject property, Plot No.2, RY-3, Railway Quarter, Karachi, was owned by Respondent No.7, Silk Bank Limited, and Respondent No.6, M/s Park View Corporate Centre (Pvt.) Ltd., was undertaking construction pursuant to an agreement to purchase the property on deferred payment executed in September 2015. Since the title continued to vest in Respondent No.7, the necessary approvals were obtained in its name. Learned counsel further submitted that the process for obtaining all requisite approvals and NOCs had commenced in 2016/17 and the competent authorities had duly granted the required permissions, including height clearance from CAA, approval of the

Heritage Department, environmental approval/EIA, NOCs from SBCA, approval of the Heritage Technical Committee, and building-plan approvals dated 05.12.2017 and 01.06.2018. Thus, the construction was being undertaken strictly in accordance with the approvals granted by the competent authorities and the applicable KBTPR-2002 regulations, including the requirements relating to compulsory open space. With regard to the allegation of encroachment or damage to the SBP property, it was submitted that there was no encroachment whatsoever and that the construction was confined entirely within the property lines. The respondents also denied that the piling work would damage the boundary wall of SBP or heritage structure. It was explained that rotary drilling, rather than percussion machinery, was being used to minimize vibration, and that piles had already been installed without causing any damage. The respondents also maintained that the piling was being carried out at a safe distance from the SBP boundary and in accordance with accepted engineering practices. It was further submitted that Respondent No.6 had even requested SBP to permit installation of a temporary protective wall for additional protection of its boundary and property, but SBP declined the request. Nevertheless, Respondent No.6 modified its construction arrangements within its own property to avoid any possible damage. The learned counsel for the respondents also stated that efforts were made through meetings between representatives of SBP and Respondents No.6 and 7 to address SBP's concerns, but the matter could not be resolved due to lack of cooperation from SBP. Regarding the alleged blockage of groundwater or creation of a water barrier beneath the SBP boundary, the respondents denied the allegation and stated that the sea-water level was only about seven feet below ground level, whereas potable water was available at a much greater depth, approximately 600 feet below ground level, far below the depth of the piles. As to the environmental and heritage objections, it was contended that the NOCs and approvals had been granted by the competent authorities after completion of the prescribed legal process under the Sindh Environmental Protection Act, 2014, the relevant environmental regulations, the Sindh Cultural Heritage (Preservation) Act, 1994 and the Antiquities Act, 1975. The counsel for the respondents therefore maintained that the petitioner's objections were without legal basis and were motivated by an attempt to obstruct the project. Learned counsel also denied that the SBCA approval dated 01.06.2018 violated the order dated 14.01.2018 passed by the Hon'ble Supreme Court in Constitution Petition No.38 of 2016. It was asserted that all approvals had been granted strictly in accordance with law and were not in conflict with any order of the Supreme Court. Finally, it was submitted that the construction had been stopped pursuant to the interim order dated 25.10.2018, causing substantial financial loss to Respondents No.6 and 7, contractors and daily-wage workers, as much water has already flown under the bridge and the cost of the project is now much higher than the original cost due to

the stay order passed by this Court. The counsel for the respondents asserted that the project was/is being executed in accordance with the approvals of the competent authorities and that the heritage façade as portrayed would be preserved through appropriate engineering measures, including necessary bracing during piling and construction. On these grounds, it was prayed that the petitions be dismissed with costs, as the petitioners were/are not entitled to the relief sought.

9. Learned counsel for Respondent No.3, SBCA, submitted that the petitions are not maintainable under Article 199 of the Constitution, particularly as Petitioner No.1, being a financial institution, has no mandate under the State Bank of Pakistan Act, 1956 or its regulations to challenge an action undertaken by a statutory authority under a special law in relation to construction. It was contended that the petitioners had acted beyond their constitutional and legal authority, while Petitioners Nos.2 and 3 were not personally aggrieved by the approval or construction in question. It was further argued that the alleged damage to property involves disputed questions of fact requiring appreciation of evidence and, therefore, could not appropriately be adjudicated in constitutional jurisdiction. On the merits, learned counsel explained that the original building plan had been approved in 1949. Although the concerned building is included in the heritage list, the Culture and Heritage Department, Government of Sindh, granted an NOC for the proposed addition and alteration subject to preservation of the architectural façade. It was submitted that the private respondents/owner of the subject building/plot thereafter obtained the requisite NOCs and approvals from the Heritage Department, the Deputy Commissioner South, the Civil Aviation Authority and the Air Headquarters, and submitted the relevant architectural and structural drawings to SBCA. After scrutiny by the concerned Town Planning and Structural Sections, SBCA issued the necessary NOCs for such constructions in accordance with the applicable provisions of the Karachi Building & Town Planning Regulations, 2002. Learned counsel further submitted that, pursuant to the orders of the Hon'ble Supreme Court, construction of certain upper floors was initially kept in abeyance. Subsequently, following modification of the Supreme Court's order, further floors were released in accordance with the applicable SOP, while the remaining floors continued to remain in abeyance. The approved construction at the relevant time comprises the basement, ground floor, mezzanine, first and second floors, with the remaining floors subject to the restrictions imposed by the competent authorities. It was emphasized that no violation had been observed by SBCA, and the construction was still at its initial stage, with excavation and piling/foundation work in progress. However, he added that the heritage façade was being maintained. Accordingly, no coercive action was considered necessary by SBCA. Learned counsel finally contended that SBCA had acted strictly in accordance with law, the applicable regulations and the directions of the Hon'ble Supreme Court, and that the petitioners had

failed to identify any illegality or violation attributable to SBCA. The petitions are therefore liable to be dismissed as being misconceived, unwarranted and without lawful basis.

10. The learned AAG referred to the comments filed by the Sindh Environmental Protection Agency and submitted that the approval for the proposed construction was granted in accordance with the Sindh Environmental Protection Act, 2014 and EIA Regulations, 2014, subject to compliance with the conditions imposed therein. He added that the Public notices were published in English, Urdu and Sindhi newspapers through the Information Department, and more than 100 participants attended the public hearing. He submitted that all concerns raised during the hearing were placed before the Committee of Experts constituted under Section 12(2) of the EIA Regulations, and the approval was granted only after completion of all codal formalities. He further submitted that M/s Silk Bank Limited was required to protect the heritage structure and undertake construction strictly in accordance with the recommendations and conditions of the Heritage Committee, without affecting the sanctity of the heritage site or surrounding structures beyond the prescribed limits/buffer. Lastly, it was submitted that SEPA had already initiated legal proceedings against Respondent No.7 by issuing notice under Section 21(1) of the Sindh Environmental Protection Act, 2014, and the matter was being proceeded with in accordance with law. Learned AAG also referred to the comments of the respondent No.1 and submitted that the concerned building is enlisted as a Protected Heritage Building under the Sindh Cultural Heritage (Preservation) Act, 1994. An application under Section 8 of the Act, along with a proposal for preservation of the heritage structure in its original form and construction of a new modern building, was received on 13.05.2015. The Technical Committee considered the proposal in several meetings, examined its technical aspects and, after detailed deliberation, recommended it to the Advisory Committee. The Advisory Committee also examined the matter and ultimately approved the proposal, which was forwarded to the Sindh Building Control Authority for scrutiny in accordance with the applicable building laws.

11. When confronted with the legal and factual aspect of the case, on the premise that considerable time had passed since the construction was restricted in 2018 and subsequent High Court/Supreme Court/Federal Constitutional Court decisions on the subject issues, all parties, after some arguments, agreed that the matter required fresh consideration by the competent authorities.

12. If this is the position of the case, without touching the merits of the case and with the consent of the parties present in Court, the petitions are disposed of in the following terms: _

- i) The Sindh Building Control Authority (SBCA) shall reconsider the building proposal and all connected approvals afresh, strictly in accordance with law, the applicable rules and regulations, after providing due notice and reasonable opportunity of hearing to all concerned parties. While undertaking such exercise, SBCA shall specifically examine the requirement of compulsory open space, along with all other applicable building-control requirements and the directions/orders of the superior Courts.
- ii) The Sindh Cultural Heritage Department/competent Heritage Authority shall reconsider the matter afresh in accordance with the Sindh Cultural Heritage (Preservation) Act, 1994, particularly keeping in view the status of the existing structure as a Protected Heritage Building. The Heritage Authority shall examine whether the proposed construction is consistent with the statutory requirement of preservation and protection of the heritage structure and shall decide the matter after affording due notice and opportunity of hearing to all concerned stakeholders.
- iii) Similarly, the Sindh Environmental Protection Agency (SEPA) shall reconsider the environmental approval strictly in accordance with the Sindh Environmental Protection Act, 2014 and the applicable EIA Regulations, and shall ensure completion of all requisite codal formalities, including proper consideration of the objections and concerns raised during the public hearing. The competent environmental authority shall pass a reasoned order after considering all relevant environmental and public-interest aspects of the proposed project.
- iv) The aforesaid exercise shall be undertaken and concluded by the respective competent authorities within a period of three months from the date of receipt of a copy of this order.
- v) Until such exercise is completed and final decisions are rendered, through speaking order, the earlier approvals/NOCs granted by the respondents/respective departments shall remain in abeyance, and the parties shall maintain status quo about the subject construction and the adjacent existing heritage structure.
- vi) It is clarified that the respective competent authorities shall independently examine the matter on its merits by hearing all concerned and shall not be influenced by the observations or proceedings in these petitions.
- vii) The petitions, along with all pending applications, are accordingly disposed of in the above terms.

JUDGE

JUDGE