

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-2476 of 2023

(Abdul Rauf & another versus Sindh Building Control Authority & Others)

C. P. No. D-2507 of 2023

(Mrs. Humaira Ali & another versus The Sindh Building Control Authority & others)

C.P. No. D-2577 of 2023

(M/s Royal Club & others versus Sindh Building Control Authority & others)

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 01.09.2026.

M/s. Syeda Sara Kanwal, Muhammad Shahid Mohal and Usman Tufail Shaikh, advocates for the petitioners in CP Nos. D-2476/2023 and 2577/2023

Mr. Muhammad Arif Sheikh, Advocate for the petitioners in CP No. D-2507/2023

Mr. Zohaib Sarki, Additional Advocate General Sindh.

M/s. Amanullah and Ghulam Akbar Lashari, Advocates for the Respondent/SBCA

M/s Rafique Ahmed Bhumbhro and Anwar Khalid Soomro, advocates for the respondent/SMPA

Mr. Khursheed Javed, advocate for the respondent/KDA

Mr. Muhammad Nouman Jamali, advocate for interveners Nadeem Aftab Shaikh and others

PI Muhammad Rashid, P.S. Soldier Bazar.

ORDER

Adnan-ul-Karim Memon, J. Petitioners in C. P. No. D-2476 of 2023 have filed this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs: -

- a. *To direct the respondent No.1 to 3, 5 & 7 to issue the letters/order of the conversion/commercialization of the suit properties to the plaintiffs.*
- b. *To restrain the respondents from taking any action against the petitioner and not to demolish the subject property bearing No. GRE-140, measuring 4023 Square yards, category of Plot H-3/1, which is categorized for residential cum commercial purpose by birth, situated at main Nishtar Road, Garden East, Karachi.*
- c. *To grant permanent injunction against the respondents thereby restraining them, their agents, servants, colleagues, representatives and/or anybody else acting through them or on their behalf from demolishing, threatening, creating harassment and/or disturbing the business activities over the suit properties. i.e., bearing No. GRE-140, measuring 4023 Square yards, category of Plot H-3/1, which is categorized for residential cum commercial purpose by birth, situated at main Nishtar Road, Garden East, Karachi, in any manner whatsoever in nature, without due course of law.*
- d. *to direct the respondents to act according to law.”*

2. Petitioners in C. P. No. D-2577 of 2023 have filed this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs: -

a. To restrain the respondents from taking any action against the petitioner and no to demolish the subject properties as follows:

1. Plot bearing No.C-11, measuring 1015 square yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

11. Plot bearing No.C-13, measuring 1048.33 Square yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

III. Plot bearing No.C-8, measuring 945 Square Yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

b. To suspend/dismissed the so-called final Show Cause Notice dated 27.02.2023 and 18.05.2023.

c. To restrain the respondents and their agents, employees, associates, subordinates and/or anyone else acting, posing on their behalf from making any attempt, giving any threats for and to restrain them not to take any curative including demolition action against the subject properties as follows:

I. Plot bearing No.C-11, measuring 1015 square yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

II. Plot bearing No.C-13, measuring 1048.33 Square yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

III. Plot bearing No.C-8, measuring 945 Square Yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi.

c. To direct the respondent No.1 to look after the matter of the petitioner in person and take action against his officials as well as respondent No.2 and initiate a legal/official proceeding against them.

d. to direct the respondents to act according to law.

3. Petitioners in C. P. No. D-2507 of 2023 have filed this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs: -

a) Restrain the respondents and any other person under them action/step in from taking any further continuation/pursuant to the impugned Notice / Order No. SBCA/ADD / (District Central) / 2023/79 dated 15.05.2023 from ejecting the Petitioners and from demolishing the subject property and from taking any adverse action in any manner against the Petitioners' subject property namely "Crystal Banquet" Plot No. C-5, Block-10, F.B. Area, Karachi, measuring 600 square yards in any manner whatsoever, by declaring the aforesaid impugned Notice/order dated 15.05.2023 (Annexure-P) is illegal, mala fide, ultra vires, bad in law, without jurisdiction/in excess of jurisdiction, without lawful authority, and is of no legal effect, and the same may kindly be set aside/quashed.

4. The petitioners/interveners are joint owners of Plot Nos.GRE-140, measuring 4023 Square yards, category of Plot H-3/1, C-11, measuring 1015 square yards, situated at KDA Scheme-24, Block-3, Gulshan-e-Iqbal, Karachi, Plot bearing No.C-5, Block-10, KDA Scheme No.16, F.B. Area, Karachi, measuring 600 square yards, along with the constructed marriage banquet/halls filed the present Constitutional Petitions under Article 199 of the Constitution, challenging the impugned Ejectment Notice/Orders issued by the Sindh Building Control Authority (SBCA). Through the impugned notices, the petitioners/intervener were directed to vacate the premises within seven days and remove the structures, failing which demolition was threatened.

5. The petitioners' counsel contended that the property had been lawfully purchased through a registered Conveyance Deed and subsequently mutated in their names by KDA after completion of all formalities and payment of requisite charges. They further maintained that the previous owner had obtained approval for conversion of the land use from residential to commercial from the competent authorities in 2016. Thereafter, SBCA approved the building plan for a ground-floor commercial marriage banquet and subsequently issued a Completion Certificate in April 2018. The banquet has, therefore, been operating since 2018 pursuant to the approvals granted by the competent authorities. According to the petitioners, the impugned notice was illegal, without jurisdiction and in excess of jurisdiction, as it declared the construction illegal and directed ejectment and demolition without first issuing any proper notice or providing an opportunity of hearing. They asserted that such action violated the principles of natural justice and Article 10-A of the Constitution, besides infringing their rights under Articles 4, 18, 23, 24 and 25. They further denied that the matter fell within Section 7-A of the Sindh Building Control Ordinance and maintained that no adequate or efficacious alternate remedy was available to them. They consequently sought quashing of the impugned notices dated 15.05.2023 and restraint against the respondents from ejecting them, demolishing the Crystal Banquet or taking any adverse action against the subject property.

6. Learned counsel for the respondent / KDA has submitted that as per record with the Respondent KDA, residential Plot No.C-8, measuring 946 square yards, situated in Block-03, Gulshan-e-Iqbal, KDA Scheme No.24, Karachi was originally allotted in favour of Mrs. Afsari Begum W/o S. Yar Khan vide allotment order No.2760 dated: 27-03-1971. First transfer was affected in favour of Karim Bux S/o Muhammad Umer vide Transfer Order No.976 dated: 20-08-1975. The Plot involved in instant petition was sub-divided into two units bearing residential Plot No.C-8 and C-8/1, each measuring 472 square yards respectively vide Sub-Division Letter No.1107 dated: 01.08.1977, KDA formal letter No.354 dated 15.10.1977 in favour of Mr. Karim Bux through Attorney Shakeela Begum. The sub-divided CP Plot No. C-8, measuring 472 square yards, Block-03, Gulshan-e-Iqbal, KDA Scheme No.24, Karachi. It is further submitted that 2nd Sub-Divided Residential Plot bearing No.C-8/1, measuring 472 square yards stands transferred in favour of Mrs. Nighat Begum W/o Muhammad Ayaz vide Transfer Order No. 1277 dated: 17.09.1981; that record file of CP involved residential Plot bearing No. C-8, Block-03, Gulshan-e-Iqbal, KDA Scheme-24, Karachi is not available in record. As such, detail of ownership is obtained from other sub-divided record file bearing Plot No.C-8/1, measuring 472 square yards, situated at Block-03, Gulshan-e-Iqbal, KDA Scheme-24, Karachi; that the Second CP involved Plot bearing No.C-11,

measuring 1015 square yards, situated at Block-03, Gulshan-e-Iqbal, KDA Scheme No.24, Karachi, was originally allotted to Mrs. Raeesa Moin W/o Dr. Muhammad Moin Islam vide Allotment Order NO.3144 dated 12.06.1971. First Transfer was affected in favour of Mrs. Shakil Abbas S/o Sana Hussain vide Transfer Order No.1445 dated: 19-09-1986. Second Transfer stands in favour of Mr. Shabbir Ahmed S/o Nazir Ahmed vide Transfer Order No.1086 dated 21.12.1992 and he also submitted prescribed lease application Form No.5/359 vide Diary No.180 dated 04.06.2013, but the said Form was not finalized due to non-completion of due required formalities. Counsel further submits that the third CP involved Plot bearing No.C-13, measuring 1048 square yards, situated at Block-3, Gulshan-e-Iqbal, KDA Scheme No.24, Karachi, was originally allotted in favour of Mr. Imam Ali under GHQ Quota vide allotment order No.523 dated 07.05.1975. The allottee has obtained CTC of all the title documents vide No.73 dated 22.01.1990. Thereafter, the suit plot was firstly stand transferred in favour of Syed Ansar Ali Shah S/o Syed Akhtar Ali Shah vide Transfer Order No.751 dated 14.09.1992 (by way of sale agreement). Transferee namely Syed Afsar Ali Shah applied for CTC of all title documents on prescribed Form No.7/1089 vide Diary No.979 Dated 22.09.1999 but the case of CTC was not finalized because of dispute between transferee and his family. The plot involved in this CP still stands in the name of Syed Ansar Ali Shah S/o Syed Akhtar Ali Shah. It is further submitted that the power to change of land use from residential to commercial is entrusted with Respondent No.3; that the concerned office of the respondent KDA is not authorized to convert any land use i.e. from residential to commercial.

7. Respondent No.5, in the comments submitted that the marriage halls/banquets in the area had been constructed on plots originally allotted by KDA as residential plots. It was further contended that large numbers of guests attending functions caused serious parking and traffic problems, resulting in congestion and frequent accidents. The respondent also alleged that sewerage discharge and live cooking on roads had damaged the road infrastructure, while excessive consumption of water, gas and electricity adversely affected the supply available to neighboring residents. It was therefore urged that the issue required immediate attention in the interest of public safety, commuters and the residents of the area.

8. Learned counsel for the interveners submitted that the petitioners in the subject petition have concealed and misrepresented material facts by claiming ownership of Plot No. GRE-140, Nishtar Road, measuring 4023 square yards, merely based on an agreement of sale dated 23.06.1997, and thereby obtained interim orders and abused the process of law. It was contended that the interveners are lawful co-owners of the property, which originally belonged to Muhammad

Rasheed Chawla and devolved upon his legal heirs, who subsequently executed a GPA in favour of Aftab Khalil Sheikh. He entered into agreements with Shaukat Hussain in 1989 and 1997, which were never performed and stood cancelled by conduct; nevertheless, Shaukat Hussain purportedly transferred the property to the petitioners through the agreement dated 23.06.1997, despite having no title himself. Counsel argued that an agreement of sale creates no title or vested ownership and that the petitioners have raised disputed questions of fact which cannot be adjudicated in constitutional jurisdiction. It was further submitted that, although possession was allegedly given for a residential project, the petitioners constructed and operated a marriage hall in breach of the agreement and lease conditions and have continued to enjoy the property since 1997 under interim orders in Civil Suit No.1037/1998, without impleading the lawful co-owners. Reference was also made to subsequent civil suits filed by Shaukat Hussain and the co-owners. Counsel maintained that the petitioners, being neither owners nor lawful title-holders, have no locus standi to seek regularization or conversion of the land or challenge the action of SBCA, particularly in view of the Supreme Court's order dated 22.01.2019 in C.P. No.815-K/2016, which is stated to be equally applicable to the subject property. Consequently, the petitioners were/are not entitled to the reliefs sought in the subject petitions.

9. We have heard the learned counsel for the parties/interveners and perused the record with their assistance.

10. The petitioners have asserted that the subject properties were lawfully acquired through a registered conveyance, were duly mutated in their favour by KDA, and that the change of land use, building plan and subsequent Completion Certificate were all approved by the competent authorities. The construction has thereafter been used as a marriage banquet since 2018. Thus, on the petitioners' case, the construction cannot be treated as an admittedly illegal structure merely through a subsequent ejectment notice, particularly when the competent authorities themselves had earlier granted approvals and permitted its use.

11. The impugned notice dated 15.05.2023 in one of the petitions, whereby the petitioners were directed to vacate the premises within seven days and threatened with demolition, therefore, required the respondents to demonstrate the precise statutory provision under which such drastic action was taken, the jurisdiction exercised by the issuing authority, and the procedure followed before declaring the construction unlawful. A coercive order having civil consequences cannot ordinarily be sustained where the affected persons were not afforded a meaningful opportunity of hearing and where their earlier approvals and vested interests were

not duly considered. The requirement of due process assumes greater significance where demolition of an existing commercial structure is contemplated.

12. It is urged by the counsel for the parties that the recent Honorable Federal Constitutional Court (FCC) judgment dated 12.5.2026 concerning the regulation of buildings in Karachi is particularly relevant. The FCC has clarified that enforcement of building-control laws is primarily the responsibility of the competent provincial authorities and that Courts must remain within the constitutional limits of adjudication rather than themselves undertaking administrative regulation or issuing generalized demolition directions. It is pointed out by the counsel that the Honorable Federal Constitutional Court held that a court, particularly while exercising appellate jurisdiction, must confine itself to the controversy actually brought before it and may issue directions beyond the pleadings only where such directions are necessary for the effective resolution of the lis. Judicial proceedings cannot be expanded into a general inquiry concerning matters that are neither in issue nor necessary for deciding the case. In the present matter, the original controversy was confined to the legality and demolition of a particular building situated at Plot No. LY-10/82, Mussa Lane, Lyari, Karachi. However, while exercising appellate jurisdiction, the Supreme Court subsequently issued sweeping directions concerning all allegedly illegal constructions throughout Karachi and thereby transformed the proceedings into a broader, continuing supervisory exercise. The Federal Constitutional Court held that such expansion had no necessary or rational nexus with the original dispute and, therefore, exceeded the permissible limits of judicial adjudication. The Court further held that appellate jurisdiction could not be converted into original jurisdiction merely because wider public or regulatory issues appeared to arise, nor could such directions be justified solely by invoking the power to do complete justice. Even where a court acts with the legitimate objective of protecting the city or enforcing building laws, the enforcement of those laws primarily falls within the domain of the competent executive and regulatory authorities. Such authorities are required to act strictly in accordance with the applicable law and after observing due process. Consequently, demolition or other coercive action against buildings or dwellings cannot be ordered merely based on reports or generalized allegations without affording the affected persons the procedural safeguards guaranteed by law. Accordingly, the Court recalled the Supreme Court's orders dated 21.12.2018 and 22.01.2019, together with all consequential directions, reports, proceedings and actions

taken pursuant thereto, and directed the concerned authorities to proceed independently and strictly in accordance with law. The judgment, therefore, establishes that judicial power must remain confined to the determination of the lis before the Court; broader policy, regulatory and enforcement matters cannot be assumed by the judiciary where they fall within the statutory domain of the executive authorities, particularly without observance of due process.

13. At the same time, the judgment does not confer an unfettered power upon SBCA or any other authority to demolish a building at will; rather, the statutory authority is required to exercise its powers strictly within the four corners of the law and in accordance with due process.

14. Consequently, the objections raised by Respondents regarding traffic congestion, parking difficulties, sewerage, water, gas, electricity consumption and inconvenience to neighboring residents, though undoubtedly relevant to public interest and urban planning, cannot by themselves constitute a lawful substitute for the statutory procedure prescribed for cancellation of approvals, determination of unauthorized construction, ejectment or demolition. Public-interest considerations must be addressed by the competent authority through lawful regulatory measures and after determining the petitioners' legal status and the validity of the approvals already granted to them.

15. It is equally important that the petitioners' claim cannot be accepted merely because approvals were previously granted. If this is the position of the case and if respondents establish before the competent authority that the conversion, building plan, Completion Certificate or commercial use was contrary to the governing law, was obtained without lawful authority, or that the construction presently exists in violation of mandatory building regulations, the competent statutory authority dealing with change of land use, commercialization issue and conversion, remains empowered to take appropriate action in accordance with law after hearing all concerned. However, such action must follow the procedure prescribed by law and cannot be founded upon an abrupt demolition threat without determination of the petitioners' objections on the subject issue raised in the present petitions.

16. The constitutional jurisdiction of this Court is, therefore, attracted not for itself regularizing or legalizing the subject construction, but to ensure that the statutory authorities exercise their powers lawfully. The Federal Constitutional Court has recognized that Article 199 of the Constitution, which could be invoked where the impugned action is found to be without lawful authority, suffers from

jurisdictional defects, or violates principles of natural justice, notwithstanding the general rule that constitutional jurisdiction should not ordinarily be exercised where an adequate statutory remedy is available.

17. The petitions need to be disposed of by setting aside the impugned ejectment/demolition notice dated 15.05.2023 to the extent that it had been issued without affording the petitioners due process and without determining the legal status of the previously sanctioned conversion, building plan and Completion Certificate. The competent authority of the relevant department dealing with such issues are left at liberty to initiate fresh proceedings strictly in accordance with law, after providing the petitioners a proper opportunity of hearing, considering their approvals and documents, addressing the objections relating to traffic, parking and public safety, and passing a reasoned and speaking order under the applicable building-control laws and in accordance with the ratio of the Federal Constitutional Court judgment.

18. These petitions are disposed of in the above terms with pending application(s).

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