ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D-3421 of 2010
(Syed Tahir Hussain Vs. Imam Bargah Yadgar-e-Hussaini Trust & others)

Date	Order with signature of Judge

Before:-
Mr. Justice Riazat Ali Sahar
Mr. Justice Muhammad Hasan (Akber)

1. For orders on CMA No.11070/2023.
2. For orders on office objections.
3. For hearing of CMA No.30549/2014.
4. For hearing of CMA No.30550/2014.
5. For hearing of CMA No.13699/2010.
6. For hearing of Main Case.

11.11.2026

None present for the Petitioenr.
M/s. Dhani Bux Lashari & Ghulam Akbar Lashari, Advocates for Respondent/SBCA.
Mr. Mujtaba Sohail Raja, Advocate for Applicant/Intervener.

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RIAZAT ALI SAHAR, J. The instant constitutional petition pertains to the year 2010 and has remained pending for more than sixteen years without any meaningful progress. Even today, neither the Petitioners nor their learned counsel have appeared to proceed with the matter the matter, nor has any intimation been received explaining their absence.

2. Briefly stated, the Petitioners claim to be beneficiaries of Imam Bargah Yadgar-e-Hussaini Trust, allegedly established in 1971 in respect of plots bearing old Nos. 343 to 347 and new Nos. 73, 73-A and 74 to 77, situated at Street No. 3, Agra Taj Colony, Lyari Town, Karachi, measuring approximately 480 square yards. Their grievance is that the private Respondents, claiming to be Trustees and office-bearers of the said Trust, in collusion with the concerned authorities, have raised a multi-storeyed residential-cum-commercial building over the subject property in violation of the objects of the Trust, the terms and conditions of the lease and the sanctioned building plan. It is further alleged that the property, originally dedicated to religious and charitable purposes, has unlawfully been converted to residential and commercial use and that portions thereof have been alienated through registered sub-lease deeds. On these premises, the Petitioners seek appropriate directions for protection of the

Trust property, enforcement of the applicable building regulations and restraint against its alleged unauthorized use and alienation.

3. Respondents No. 1 and 2 have filed comments contesting the maintainability of the petition, principally on the grounds that the Petitioners lack locus standi and have failed to disclose any enforceable legal right or cause of action. According to the said Respondents, the Petitioners are neither Trustees nor members of the Trust and, therefore, possess no lawful authority to interfere in its management or administration. It is further alleged that the Petitioners and their associates have themselves attempted to interfere unlawfully in the affairs of the Trust and dispossess Respondent No. 2 from the subject property. The private Respondents maintain that the Trust has been administered by its duly authorized Trustees and that the proceedings have been instituted for collateral purposes. They have accordingly sought dismissal of the petition with compensatory costs.

4. The record further reflects that the then Karachi Building Control Authority (KBCA), now Sindh Building Control Authority (SBCA), submitted a report indicating that the original building plan sanctioned in favour of Respondent No. 1 Trust permitted construction of Ground plus First Floor for residential purposes. Subsequently, a regularization/completion plan for Ground plus Five Upper Floors, submitted on 25.04.2001, was rejected on 23.06.2001 on account of construction beyond the permissible limits and the existence of unauthorized shops on the ground floor. The report further discloses that notices under Section 7-A of the Sindh Building Control Ordinance, 1979, were issued and demolition operations were undertaken on 13.01.2001 and 27.02.2001. Thereafter, another regularization plan was submitted on 22.05.2002 under the Amnesty Scheme, 2002, which was referred to the competent MPGO/CDGK authorities for consideration of the proposed change of land use in respect of the shops constructed on the ground floor. However, no final decision on the said proposal was reported.

5. The subsequent report submitted by SBCA on 24.09.2014 reveals that, pursuant to this Court’s order dated 10.12.2013, the matter was referred to the Senior Director, MPGO, through letter dated 11.09.2014, requesting a decision regarding regularization/change of land use within the period stipulated by this Court. Nevertheless, no final determination by the competent authority has been brought on record.

6. We have carefully examined the available record and considered the nature of the controversy involved. It appears that the principal dispute revolves around the constitution, management and administration of a private Trust, the competing claims of the parties regarding their respective status and authority, the alleged misuse and alienation of Trust property and the legality of the transactions and sub-lease deeds executed in respect thereof. While the Petitioners assert their status as beneficiaries, the private Respondents categorically dispute their entitlement and authority to question the affairs of the Trust. The determination of these rival claims necessarily involves disputed questions of fact, examination of the relevant Trust documents, scrutiny of the transactions and appreciation of evidence. Such matters are ordinarily within the domain of the competent civil forum and cannot appropriately be resolved in constitutional proceedings without first establishing the underlying civil rights and legal relationships of the contesting parties.

7. As regards the allegations of unauthorized construction and change of land use, the reports submitted by the building control authority indicate that proceedings were initiated under the relevant building laws, notices were issued, demolition action was undertaken and the subsequent regularization proposal was referred to the competent authority. However, the record does not disclose any final decision on the proposed regularization or change of land use. It is well settled that the mere submission or pendency of an application for regularization does not, by itself, confer legality upon an otherwise unauthorized construction, nor does it create any vested right in favour of the applicant. Equally, the absence of a final decision on such proposal does not dispense with the necessity of establishing an enforceable legal right and a proper foundation for the particular relief claimed in constitutional jurisdiction. The competent statutory authorities remain under an obligation to discharge their functions strictly in accordance with law, irrespective of the outcome of the present proceedings.

8. Moreover, the allegations concerning the alleged unlawful constitution of the Trust, unauthorized alienation of its property, execution of sub-lease deeds, dispossession and competing claims to its management are matters requiring adjudication upon proper pleadings and evidence. The extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution cannot be employed as a substitute

for ordinary civil proceedings, particularly where the very existence, nature and extent of the rights asserted by the parties remain seriously disputed. No sufficient material has been placed before us to justify determination of these controversies in the present jurisdiction.

9. Another significant aspect is that the petition has remained pending since 2010, yet the Petitioners have failed to demonstrate any diligence in perusing their claim. Even today, neither they nor their counsel have appeared to assist the Court or establish that any effective relief continues to survive for adjudication. The prolonged pendency of proceedings, coupled with the absence of Petitioner and the disputed nature of the claims, furnishes no justification for keeping the matter pending indefinitely.

10. In view of the foregoing facts and circumstances, we are of the considered opinion that the Petitioners have failed to make out a case warranting interference in the exercise of constitutional jurisdiction. Consequently, the instant petition stands **dismissed**, along with all pending application(s), if any, with no order as to costs.

11. It is, however, clarified that the observations made herein shall not prejudice the rights of the parties to seek appropriate remedies before the competent forum in accordance with law. Likewise, the competent statutory authorities shall remain at liberty and under an obligation to proceed against any unauthorized construction, misuse or unlawful change of land use, if established, strictly in accordance with the applicable law. Nothing contained in this order shall be construed as approval or regularization of the construction or transactions in question.

JUDGE

JUDGE

M. Khan