

IN THE HIGH COURT OF SINDH KARACHI

CP No.D-6256 of 2025

(*Nisar Ahmed Korai v. Province of Sindh and others*)

Date	Order with signature(s) of Judge(s)
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Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

1. For orders on office objection
2. For hearing of CMA No.26155/2025
3. For hearing of main case

Date of hearing and order: 21.01.2026

Mr. Farooq Iftikhar Goraho, Advocate for the Petitioner

Barrister Mustafa Mahesar and Muhammad Yasir Bughio, Advocates for the Respondent No.4 and 5

Mr. Muhammad Asif Malik, Advocates for Respondent No.3

Mr. Dhani Bux Lashari, Advocate for SBCA

Mr. Abdul Jalil A. Zubedi, Assistant Advocate General

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has claimed following relief(s):

a. Declare that the impugned notice dated 22.12.2025 is illegal, unlawful, malicious, ultra vires, and arbitrary, and is contrary to the settled principles of law

b. Suspend the operation of the impugned notice dated 22.12.2025

c. Quash the impugned notice dated 22. 12. 2025

d. Restrain the Respondents, their agents, attorneys, subordinates, and officers from interfering with the Petitioner's property, taking any coercive action against him, or engaging in any illegal acts

e. Impose heavy fines on Respondent Nos. 2 and 4 for their illegal acts and abuse of authority

f. Initiate penal consequences against Respondent Nos 2 and 4 for their unlawful actions

g. Direct Respondent Nos. 6 and 7, as police authorities, to ensure that Respondent Nos 2 and 4 do not take any coercive action against the Petitioner, do not hinder his access to the property, and do not cause any harm to him.

h. Pass any other order which this Hon'ble Court may deem just, proper, and appropriate in the circumstances of the case."

2. Learned counsel for the Petitioner contended that the Petitioner is owner of the Flat No.201 Sumya Homes, Plot No.8/1, CL-8, Civil Lines Quarters, Karachi, wherein he has started an online business of temporary

rentals. He further submitted that Sindh Building Control Authority (SBCA) has issued the impugned notice dated 22.11.2025 without lawful authority as the petitioner being owner of Flat No.201 can utilize it for any purpose. He argued that to engage in any trade or business was the fundamental right of the Petitioner and guaranteed under article 18 of the Constitution of Islamic Republic of Pakistan of 1973 (the constitution) and impugned action was taken against him in violation of law. He prayed to set aside the impugned notice by allowing this petition.

3. Learned counsel for Respondents No.2 to 5 opposed the petition on the ground that the petitioner was carrying on commercial activities in a residential Flat. They contended that Petitioner provided temporary rental facilities through online system to strangers and mostly the vagabonds and unruly group of people avail such facility; that the temporary hiring tenants carry immoral activities in flat which caused disturbance to the families permanently residing in the Sumaya Homes; that the activities of Petitioner were highly objectionable therefore complaint was preferred by the residents of the Sumaya Homes against him and SBCA pursuant to said complaint has initiated action in the matter; that there is no illegality in the impugned notice as the petitioner cannot carry commercial activities in an apartment which was exclusively developed for residential purposes thus prayed for dismissal of the petition.

4. Learned Assistant Advocate General supported the stance of the respondents No.2 to 5 and contended that the impugned notice was issued pursuant to the directions contained in CP No.D-2817 of 2023. He submitted that the petitioner was using residential Flat for commercial purposes in violation of provisions of the Sindh Building Control Ordinance, 1979 (SBCO) and rules & regulations of the SBCA. He prayed to dismiss the petition.

5. Heard arguments of the parties and perused the material made available before us on record.

6. From the careful examination of the material on record it transpired that the petitioner has started a business of temporary rentals through online booking. Under the provisions of SBCO a building can be used for the purpose it was developed. There is no denial to the fact that Sumaya Homes were developed purely for the residential purposes and no commercial activity can be allowed within the premises of the said building except by a

permission accorded by the concerned authority. Section 6 of the SBCO deals with the approval of plan and use of premises, which reads as under:

“6. Approval of plan. (1) No building shall be constructed before the Authority has, in the prescribed manner, approve the plan of such building and granted no objection certificate for the construction thereof on payment of such fee as may be prescribed:

Provided that in the case of a building the construction whereof has commenced before coming into force of this Ordinance, the Authority's approval of the plan and no objection certificate shall be obtained not later than six months after the enforcement of the Ordinance.

Explanation. - (I) The word “construct” with all its variations used is this section and hereafter shall include “reconstruct” with all its variations and additions or alteration.

(2) No building mentioned in sub- section (1) shall be, occupied by any person or shall be allowed by the builder to be occupied, before the Authority has, on application of the occupant or owner, issued occupancy certificate, in such manner as may be prescribed.

(3) No building mentioned in sub-section (1) shall, except with the permission of the Authority, be used for the purpose other than that for which its plans were approved.

(4) Where the Authority is satisfied that the purpose for which the building is desired to be used is consistent with the approved plans of the building, it may grant the permission under sub-section (3) on such conditions and on payment of such fees as it may fix.

[5) At any time after a no-objection certificate has been issued under sub-section (1) but before the completion of building, 8 [Authority] may, if it is satisfied that the construction of any type of building or buildings in any area is not in the public interest or is otherwise inexpedient, notwithstanding anything contained in this Ordinance, rules or regulations made there under and without notice suspend or cancel the certificate.

Explanation. ----- The expression “completion of building” used in sub-section means the completion of building in all respects according to the approved plan and in respect where of occupancy certificate has been issued.

(6) Where any order is passed under sub-section (5), the matter shall be reprocessed by the Authority in accordance with the procedure, prescribed by regulations.”

7. From perusal of the above provision of law, it is crystal clear that no building can be utilized for a purpose other than the plan approved except by permission from SBCA. Learned counsel for the petitioner frankly conceded that no such permission was granted by the SBCA, nor did the petitioner ever approach to SBCA for conversion of land use. It is a settled proposition of law that things ought to be done in the manner prescribed

under the law. SBCO, 1979, prohibits the use of a building for a purpose other than sanctioned under plan except by permission from the authority. There is no denial to the fact that plan of Sumaya Homes housing Flat No.201 was approved for residential purposes and the petitioner ws using the same for temporary rental through online booking. Providing facilities for temporary rental falls within the ambit of commercial activities as this facility equates with those of booking hotel rooms that too provide temporary accommodation. The Petitioner cannot carry out such activities without getting permission from SBCA and other concerned authorities. Important to say that not only the SBCA but the NOD of the residents permanently residing in the flats or apartments was also a mandatory requirement as such activities may cause inconvenience to the families and promote indecency.

8. Adverting to the contention of Counsel for the Petitioners that impugned notice infringed his fundamental rights as to do lawful trade and business. No doubt, through article 18 of the constitution, right to do lawful trade and business has been guaranteed as fundamental right but such right was subject to the conditions and restrictions imposed under the law. It will be conducive to reproduce article 18 of the constitution for the sake of understanding, which reads as under:

18: Freedom of trade, business or profession

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent-

a. the regulation of any trade or profession by a licensing system; or

b. the regulation of trade, commerce or industry in the interest of free competition therein; or

c. the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any

trade, business, industry or service, to the exclusion, complete or partial, of other persons.

9. From the bar reading of Article 18 of the constitution it is vivid and crystal clear that right to do business or trade was not absolute in nature granting unqualified permission to the citizens to enter into any trade or business but such rights were always fettered to conditions and restrictions imposed under the law. The business of temporary rentals has no backing of the law, however SBCA can alter the use of any premises under section 6 of the SBCO. No material was placed on record to evince that the Petitioner was permitted to change the use of premises for commercial activities. The petitioner has failed to demonstrate that his fundamental rights were impinged upon by issuance of impugned notice, which called upon the petitioner to show cause under what authority of law he was using the residential premises for commercial activities. The petitioner has failed to point out any illegality, perversity or infirmity in the impugned notice that may require interference by this Court.

10. In the wake of the above discussion, no case for indulgence of this Court is made out. This petition being devoid of merits is hereby dismissed along with pending application with no order as to costs. SBCA shall proceed with the matter strictly in accordance with law, rules and regulation.

JUDGE

JUDGE
HEAD OF CONST. BENHCES

Approved for reporting

Nadir*