

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C.P No.D-1441 of 2025

(Muhammad Yousuf v. Province of Sindh & others)

PRESENT:

MR. JUSTICE ZULFIQAR ALI SANGI

MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : **Muhammad Yousuf** through Mr.
Muhammad Yousuf Maher, Advocate.

Respondents: Nil.

Date of Hearing : **04.09.2025**

Date of Decision : **04.09.2025**

J U D G M E N T

RIAZAT ALI SAHAR J: - The petitioner has filed instant constitutional petition, with the following prayer(s):-

- A.** *Direct the official respondents to initiate immediate action against unauthorized illegal construction in compliance of order dated 18th August, 2025 passed by Regional Director Sindh Building Control Authority, Sukkur Region, within stipulated time, which this Honourable Court may graciously be pleased to fix.*
- B.** *Grant any relief(s) as this Honourable Court may deem just and proper in the circumstances of the case.*

2. In his petition, the petitioner has averred that on 08.11.2022, he instituted a Civil Suit No.74 of 2022 titled “*Muhammad Yousuf v. Province of Sindh & others*” before the learned IIIrd Senior Civil Judge, Sukkur, seeking declaration, specific performance of contract and permanent injunction. He

has asserted that upon observing unlawful construction being carried out over the disputed agricultural land, the petitioner approached the Sindh Building Control Authority (“SBCA”) by way of an application dated 30.01.2023, apprising them of illegal construction of a market on the subject property without the requisite sanction/approval as envisaged under law. During the pendency of the said civil suit, the defendants unlawfully transferred the subject property in favour of respondent No.7, namely Qurban Ali Mirani. Consequent thereto, the petitioner moved an application under Order XXXIX Rules 1 and 2, C.P.C., seeking ad-interim injunction to restrain the respondents from creating third-party interest, alienating the property and/or continuing with the illegal construction. The learned trial Court granted an order of status quo on 13.04.2023 (available at page-19 of the Court file). The petitioner has further asserted that despite existence of the said injunctive order, the private respondents continued unabated construction activities, raised a market structure, leased and sublet shops to third parties, thereby creating third-party interests in open and deliberate defiance of the Court’s restraining order. The petitioner has further asserted that despite being duly apprised, the SBCA failed to discharge its statutory obligations under Section 6 of the Sindh Building Control Ordinance, 1979. The petitioner made repeated visits to the SBCA office at Sukkur and submitted both

verbal and written representations, but his complaints were ignored and only hollow assurances were extended without any effective remedial action. According to petitioner, such inaction, amounts to unspoken approval of illegalities and facilitates encroachment and lawlessness, resulting in miscarriage of justice. The petitioner has further asserted that his allegations regarding illegal construction stand fortified by the report of the commissioner / the learned IIIrd Civil Judge & Judicial Magistrate, Sukkur, who, in his report dated 08.11.2024, confirmed the unlawful construction upon the disputed land in Civil Suit No.74 of 2022.

3. In his petition, the petitioner has also asserted that he had earlier invoked the constitutional jurisdiction of this Court by filing C.P. No.D-2138/2024, which was disposed of on 18.03.2025 with a direction to respondent No.3 to decide the petitioner's pending application. In purported compliance, the Directorate of SBCA passed an order acknowledging illegal and unauthorized construction of the Fish Market, Sukkur, and recommended removal/demolition of the same with the assistance of local police and district administration. Pursuant thereto, the Regional Director, SBCA issued letter dated 26.05.2025 to the Deputy Commissioner, Sukkur, requiring removal of the shops of Fish Market to enable SBCA to proceed in accordance with law, which letter was further forwarded to the

Assistant Commissioner, New Sukkur, on 30.05.2025. However, no tangible action has been taken till date. The petitioner has further asserted that the Deputy Director, SBCA, Taluka New Sukkur, vide letter dated 05.08.2025, requested the SSP Sukkur to provide police security on 07.08.2025 to facilitate sealing/demolition of unauthorized structures, but despite such request no action was materialized. Thereafter, the Regional Director, SBCA, Sukkur Region, vide order dated 18.08.2025, candidly recorded that despite issuance of repeated letters to the Deputy Commissioner, Sukkur, and the SSP Sukkur, no cooperation was extended; rather, on 07.08.2025, when SBCA officials arrived at the site in large numbers, no police contingent was present, resulting in a situation where shopkeepers and other persons gathered, attempted to attack the officials and the SBCA team narrowly escaped by fleeing from the site. According to the petitioner, he has vested proprietary and monetary interests in the subject property, having invested his life savings acquired through lawful means, but due to sheer negligence, indifference and non-cooperation of official respondents, the illegal construction remains intact. He has alleged that the official respondents are only engaged in exchange of correspondence and issuance of letters without demonstrating *bona fide* intent to take decisive and effective action, as required by law.

4. Learned counsel for the petitioner contended that the construction raised over the subject property is wholly unauthorized and without mandatory approval of SBCA and despite a subsisting stay order dated 13.04.2023 passed by the learned trial Court, the private respondents continued with construction in utter violation thereof, which strikes at the root of administration of justice. He contended that SBCA, being a statutory body under the Sindh Building Control Ordinance, 1979, was legally bound to restrain and demolish such unlawful construction but failed to perform its statutory duty. He pointed out that the petitioner made repeated complaints and representations which were ignored, demonstrating negligence and complicity of the official respondents whereas the commissioner's report dated 08.11.2024 fully corroborates the petitioner's stance. Counsel further contended that despite clear directions of this Court in C.P. No.D-2138/2024, no effective action has been taken by SBCA or the district administration and even the police failed to provide assistance, thereby allowing encroachers to continue. He has further contended that the petitioner, having vested proprietary and monetary rights in the subject property, is suffering irreparable loss while the encroachers are unjustly enriched, hence, this Court may issue appropriate directions to ensure immediate demolition of the illegal structure and protection of the petitioner's lawful rights.

5. After having given thoughtful consideration to the submissions advanced on behalf of the petitioner and upon perusal of the record, it appears at the very outset that the present petition is nothing but a reiteration of prayers already sought, agitated and adjudicated upon by this Court in earlier proceedings arising out of C.P.No.D-2138 of 2024. The record shows that in the said petition, the petitioner prayed for demolition of the construction raised on the disputed agricultural plot allegedly without the approval of the SBCA and further sought restraining orders against the private respondents from carrying on construction and against the official respondents from alienating the subject land. After hearing the parties at length, this Court passed a detailed order dated 18.03.2025, wherein it was categorically observed that since a civil suit was already pending between the parties before the competent Court of law, wherein questions of title and ancillary reliefs were *sub judice*, the attempt of the petitioner to invoke constitutional jurisdiction was uncalled for and amounted to misuse of process of Court. This Court further recorded a clear admonition that the petitioner had attempted to use this Court as a tool to indirectly influence the outcome of his pending suit, which practice was strongly deprecated. Nevertheless, while disposing of the earlier petition, directions were issued to respondent No.3/SBCA to decide any pending application of the petitioner in accordance

with law and it was further clarified that the trial Court was not to be influenced by any observations made by this Court, but to decide the civil suit strictly in accordance with law.

6. We have noted that despite the above position, the petitioner has once again approached this Court by way of the instant petition, seeking substantially the same reliefs, contained in slightly altered language and relying on subsequent correspondence between various offices of SBCA, district administration and police. In our humble opinion, such conduct, amounts to re-litigation of an already settled controversy and is barred on the principle that multiplicity of petitions on the same cause not only clogs the docket of the Court but also demoralizes the sanctity of judicial orders. The grievance of the petitioner is that although SBCA has passed an order acknowledging unauthorized construction and recommending demolition, the same has not yet been acted upon. However, this grievance, even if assumed to be correct, does not vest jurisdiction in this Court under Article 199 of the Constitution to act as an executing authority of administrative or judicial directions already issued.

7. At this juncture, it is pertinent to highpoint that the petitioner himself has pleaded in paras-4 and 5 of his petition that the learned trial Court has already passed an injunctive order dated 13.04.2023 restraining the respondents from creating

third-party interests or continuing construction. Having obtained such protection from the competent Civil Court, it was incumbent upon the petitioner to pursue remedies available under law in case of breach or violation of such injunction. The scheme of the Civil Procedure Code is clear in this regard, as Order XXXIX specifically provides a mechanism to move the Court granting injunction for contempt or disobedience of such orders. Therefore, once the Civil Court has seized the matter and granted interim protection, this Court cannot be called upon to supervise the execution, enforcement, or compliance of such orders under its writ jurisdiction. To hold otherwise would be to substitute the Civil Court by this Court, thereby disrupting the well-established hierarchy of judicial remedies.

8. The learned counsel for the petitioner, when confronted with this legal position during hearing, could not satisfy the Court as to why the petitioner has not invoked the jurisdiction of the trial Court for enforcement of the injunction order, nor could he demonstrate why constitutional jurisdiction should be exercised as a substitute for remedies specifically available under the procedural law. It is a trite principle that writ jurisdiction under Article 199 of the Constitution is extraordinary and discretionary in nature and is not to be exercised where an adequate, alternate and efficacious remedy exists under the ordinary law of the land.

9. Furthermore, this Court cannot act as executing machinery of the SBCA's administrative orders or letters issued to Deputy Commissioner, SSP, or other local authorities. If SBCA has acknowledged illegality, it is for the said authority to pursue implementation of its order through lawful channels. In case of continued inaction or deliberate failure, the petitioner may avail appropriate remedies against such administrative inaction in accordance with law, but not through repeated invocation of constitutional jurisdiction in parallel to a pending civil suit. To permit such practice would amount to encouraging forum shopping, multiplicity of litigation and circumvention of established judicial procedures.

10. Another important dimension is that the controversy raised by the petitioner is inherently interlinked with questions of title and proprietary rights over the subject property. The petitioner claims vested rights based on contract and investment of life savings, whereas the defendants claim transfer of title in favour of respondent No.7. These are issues of fact requiring evidence, examination and determination by the Civil Court seized of Civil Suit No.74 of 2022. This Court, while exercising writ jurisdiction, cannot assume the role of a trial Court, record evidence, or adjudicate disputed questions of fact. The jurisprudence is well-settled that where matters involve disputed facts requiring evidence, the parties must pursue civil remedies

rather than constitutional jurisdiction. In this regard, we are fortified with the observation of the Honourable Supreme Court made in the case of *M. HAMAD HASSAN v. Mst. ISMA BUKHARI and 2 others (2023 S C M R 1434)* whereby it is held that;

“6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.”

11. It is pertinent to note here that by filing successive petitions, the petitioner seeks to indirectly achieve what he cannot directly secure in his pending civil suit. The earlier observations of this Court in its order dated 18.03.2025 already cautioned the petitioner against this very practice. Yet, the petitioner persists, thereby not only burdening the docket of this

Court but also attempting to undermine the authority of the trial Court. Such conduct warrants strong dissatisfaction.

12. In light of the above discussion, it is fully clear that a civil suit between the parties is pending wherein questions of title and incidental reliefs are to be decided; the trial Court has already granted interim injunction in favour of the petitioner; the appropriate remedy for violation of such order lies before the trial Court itself under the relevant provisions of the CPC. More so, the SBCA has passed an order but its execution lies within the administrative and statutory framework, not within writ jurisdiction of this Court and the petitioner, having already approached this Court earlier and having obtained directions, cannot maintain successive petitions for the same cause of action. Consequently, for what has been discussed above and in view of the availability of efficacious and alternate remedies, we do not find any merit in the instant petition, which, being misconceived and not maintainable, is **dismissed** *in limine* along with all pending applications, if any. These are the reasons for our short order dated 04.09.2025.

JUDGE

JUDGE

Ahmad