

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-639 of 2002
C.P. No.D-1201 of 2002

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

Present:

Muhammad Ali Mazhar, J.
Abdul Maalik Gaddi, J.

C.P. No.D-639 of 2002

Mohiuddin Badar Petitioner

versus

The Director General,
Military Lands &
Cantonments, Ministry of
Defence & 4 others Respondents

C.P. No.D-1201 of 2002

Mrs. Nighat Ara Petitioner

versus

President Cantonment
Board Faisal Cantt.
& 2 others Respondents

08th February, 2017.

Ms. Humaira Nadeem Rana, Advocate for the Petitioner in C.P. No.D-639/2002.

Mr. Muhammad Junaid Farooqui, Advocate for Respondents No.1 to 3 in C.P. No.D-639/2002 and Respondents No.1 to 3 in C.P. No.D-1201/2002.

Mr. Muhammad Hafiz Arif, Advocate for Respondent No.4 in C.P. No.D-639/2002 and Petitioner in C.P. No.D-1201/2002.

Mr. Sohail H. K. Rana, Advocate for Respondent No.5 in C.P. No.D-639/2002.

Muhammad Ali Mazhar, J. In C.P. No.D-639 of 2002, the petitioner who is resident of Flat No.A-27, 3rd floor, Sunny Terrace has lodged the grievance that the residents of ground floor of said project, particularly, Flats Nos.B-1, B-2, B-3, B-4, B-7 and A-5 have

unlawfully constructed the shops in the open space of their flats and also encroached upon the compulsory open space. It is further alleged that all said shops on the ground floor of the project have been constructed without any approved building plan.

2. The learned counsel for the petitioner in C.P. No.D-639 of 2002 argued that the directions be issued to the respondent No.1 to 3 to perform their statutory duties and remove all such encroachment.

3. Whereas the learned counsel for the Cantonment Board Faisal supported the contention of the petitioner and argued that all such occupants have unlawfully constructed the shops. The demolition action was taken earlier but they have again constructed the shops unlawfully. While learned counsel for Sunny Terrace Residents Welfare Association argued that entire project is residential and there is no question of constructing any shops at ground floor flats. In fact he supported the stance taken by the petitioner and the Cantonment Board and made a request that Cantonment Board may be directed to remove the encroachment instantly and demolish the shops so that entire structure may come into original character.

4. The learned counsel for the petitioner in C.P. No.D-1201 of 2002 and respondent No.4 in C.P. No.D-639 of 2002 argued that issue does not pertain to the possession and or occupation of Flat No.B-01, Sunny Terrace, Block-13, Gulistan-e-Johar, Karachi but as a matter of fact, there was some extra land in front of the petitioner/respondent No.4 flat which was purchased by her from the builder against the sale consideration of Rs.1,80,000/- (Rupees One Lac Eighty Thousand only). He has also shown us indenture of sub-lease dated 26.05.2008 in which extra commercial land measuring 180 square yards situated in front of Flat No.B-01, ground floor is said to have been sub-leased in favour of petitioner by M/s. Asian Builders. In the same indenture, a judgment and decree of the Civil Court passed in Suit No.1792 of 2004 is also reflected. He further argued that trade license has been issued in favour of petitioner and for this extra land all assessments are made on commercial tariff including KESC. He further argued that the petitioner applied for regularization of extra land to the Cantonment Executive Officer but

their application is still pending. He further argued that for the purposes of house tax and conservation, Cantonment Board Faisal assessed this extra land as commercial venture.

5. The learned counsel for the petitioner, Cantonment Board and Sunny Terrace Welfare Association jointly pointed out the attached file of a disposed of **C.P. No.D-1278 of 1999 (Re: Tariq Saeed v. Executive Officer, Cantonment Board Faisal & 2 others)** and argued that the above petition was disposed of by the learned divisional bench of this court on 16.01.2001 with the directions to the Cantonment Board Faisal to remove all illegal structure within three months with compliance report to the Registrar of this court so they jointly request that the present petitions may be disposed of in the same terms.

6. Be that as it may, it is statutory responsibility of the Cantonment Board as a regulatory authority to keep vigilance as to whether construction has been raised according to approved building plan or not? According to the learned counsel for Cantonment Board, earlier also demolition action was taken but illegal construction was raised again. Quite the reverse, the learned counsel for respondent No.4 has raised the plea that extra land was allocated by the builder/project owner against valuable sale consideration which sub-lease was executed after executing main sub-lease of the flat. It is further alleged that application for regularizing the commercial use is pending before the Cantonment Board. Whether this sub-lease was executed lawfully or in accordance with approved building plan or whether the builder shown any such piece of extra land for any commercial activity or venture need evidence and obviously in the writ jurisdiction it is not possible to examine and or decide the factual controversy or disputed question of facts.

7. The most appropriate solution to resolve the present controversy on the basis of available document is to direct the respondent No. 1 to 3 to decide the pending application of the Respondent No.4 in C.P. No.D-639/2002 and Petitioner in C.P. No.D-1201/2002 where she may produce all relevant documents and after providing ample

opportunity of hearing, the application shall be decided in accordance with the law and applicable building bye laws/regulations.

8. The respondent No.1 to 3 through their concerned department shall also conduct inspection of the building/project to examine whether other shops have also been constructed illegally in the compulsory open space or not.

9. As we have already observed that it is the responsibility of the official respondents to remove illegal construction therefore both the petitions are disposed of in the following terms with pending applications:

1. The respondent No.3 shall decide the application of the Respondent No.4 in C.P. No.D-639/2002 and Petitioner in C.P. No.D-1201/2002 if any pending for regularization of extra land for commercial use within 30 days in accordance with law and applicable building bye laws/regulations.
2. The Cantonment Board Faisal will take action strictly in accordance with law against the construction, if any, raised in violation of the approved building plan of Sunny Terrace situated at Plot No.FL-1, Block-13, Gulistan-e-Johar, Karachi, project of M/s. Asian Builders. However, before taking any action against the alleged encroachers, proper notice for removal of encroachment shall be issued to all such occupants who are operating commercial activities in the ground floor flats in violation of approved building plan and building Byelaws/Rules.
3. The illegal construction shall be removed within 60 days after complying with all requisite legal formalities/due process of law.

Judge

Judge