

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**  
**Suit No. 1306 of 2010**

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**DATE:** **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

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**For examination of parties / settlement of Issues.**

**07.05.2019.**

Mr. Farhan Zia Abrar, Advocate for the Plaintiff.

M/s. Ghulam Akber Lashari and Musrat Ali, Advocates for Defendant No.1-S.B.C.A. along with Mr. Abdul Basit, Assistant Director (S.B.C.A.).

None for Defendant No.2.

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Arguments heard and record considered.

The present *lis* has been filed by the Plaintiff, which is a Cooperative Housing Society in terms of Cooperative Societies Act, 1925, against the illegal construction of a house by Defendant No.2 (as claimed). It is averred in the plaint that Defendant No.2 though is a transferee of a residential plot bearing No.C-223, measuring 1000 Square Yards, situated in Plaintiff Society, Sector 31-F, main Korangi Road Karachi, but after bifurcation of the above plot, Defendant No.2 in effect has changed the original use of plot into a commercial one. It is further averred that despite complaints, the Defendant No.1 – S.B.C.A., which is a statutory Authority, has not taken appropriate action against Defendant No.2. It is pleaded that Defendant No.2 has raised an illegal construction on the bifurcated plot No.223-C/1.

Today an interim Report along with annexures has been filed on behalf of Defendant No.1 – S.B.C.A., which is taken on record. Mr. Abdul Basit, Assistant Director, S.B.C.A. is present in person. No one is in

attendance on behalf of Defendant No.2. A.R. Diary shows that the contesting Defendant No.2 (Rizwan-ur-Rehman) was debarred from filing the Written Statement as despite service of summons, he did not file Written Statement. On 11.10.2010, Mr. Munawar Hussain, Advocate, appeared and undertook to file power on behalf of Defendant No.2, but thereafter no Written Statement has been filed.

As per the interim Report dated 07.05.2019, filed today by the Deputy Director, Korangi Town, S.B.C.A. Karachi, the Defendant No.2 although obtained approval for construction of double storeyed house on the Plot No.C-223, but after seeking approval from Master Plan Department of Defendant No.1 for bifurcation into two plots, three storeyed construction was raised on Plot No.C-223/1, regarding which no building approval exists. Learned counsel for Defendant No.1-S.B.C.A. has referred to certain paragraphs from Written Statement, in which it is stated that Defendant No.1 – S.B.C.A. has earlier also taken action against Defendant No.2 in respect of illegal construction on the bifurcated plot No.223-C/1. Today, the learned S.B.C.A. has reiterated that action against Defendant No.2 will be taken strictly in accordance with law and Sindh Building Control Ordinance, 1979, and Karachi Building & Town Planning Regulations, 2002 (Regulations).

Record of the case further shows that site inspection was done by the Assistant Registrar (Civil) of this Court and his Report dated 08.09.2010 was taken on record on 11.10.2010, to which no objection has been filed. Perusal of the Report shows that on the date of site inspection, representatives of Plaintiff-Society, S.B.C.A. and Defendant No.2 (Builder) were also present. As per Report, Defendant No.2 has constructed a ground plus one structure on the plot No.C-223 and the adjacent plot No.C-223/1, which is the subject dispute, was lying vacant. However, today both learned

counsel for the Plaintiff and Defendant No.1 (S.B.C.A.) stated that in the intervening period, construction has been raised on the plot in dispute – C-223/1.

Under Section 6 of the Sindh Building Control Ordinance, 1979, *inter alia*, no construction can be raised without approval of the building plan by the competent authority viz. Defendant No.1, and if this provision is violated, then penalty is provided in the above *Statute*; including that of sealing and criminal prosecution.

From the perusal of record of the case, it is obvious that despite notice of the present proceeding, Defendant No.2 has deliberately opted to remain absent. Therefore, the version of the Plaintiff, which is supported by the official version of Defendant No.1, has gone unchallenged. Even otherwise, there is no triable issue involved in the present case, which can be disposed of on the basis of record. Since Parties are not at issue and it has come as an undisputed fact that construction on Plot No.C-223/1 is an illegal construction, therefore, this Suit stands decreed in terms of prayer clause(s) ‘C’, ‘D’, and ‘E’ in the following terms\_

- i. Defendant No.1 will take an action against Defendant No.2 but after following the due process of law and the Officers of Defendant No.1 – S.B.C.A. shall ensure that if under the above Statute and the Karachi Building & Town Planning Regulations, 2002, an illegality can be regularized, then the appropriate orders will be passed in this regard and if the structure of Plot No.C-223/1 is completely illegal and cannot be regularized under the above Regulations, then the illegal structure or that portion, which cannot be regularized, shall be pulled down / demolished.

- ii. In this regard, a compliance report should be submitted to this Court within four weeks from today, through M.I.T.-II.

On the above terms, suit stands decreed and pending applications, if any, are disposed of having become infructuous. However, there will be no order as to costs.

Riaz /P.S.

**Judge**