

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-723 of 2010

Before:

**Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

Farooqu-e-Azam & another ----- Petitioners

VERSUS

Province of Sindh & others ----- Respondents

Date of hearing and Decision: 22.09.2020

Mr. Muhammad Asif Shaikh advocate for petitioners.

Mr. Zaheeruddin Sahito, Advocate for respondents No.2 to 4

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh
alongwith Imran Hussain Deputy Director Sindh Building Control
Authority Hyderabad Region.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioners have sought directions to the official Respondents, inter alia for removal / demolition of illegal construction of shops as well as staircase, made by the private respondent, in violation of building plan as well as other Municipal laws, and its conversion into commercial use.

2. Petitioners have submitted that houses of petitioners are situated on the first floor of Alimchand Menghraj, 1939 situated at West Kacha Lajpat Road Hyderabad where six windows of petitioner No.1 and three windows of petitioner No.2 are affixed for ventilation purpose. The respondent No.4 vide letter dated 21.4.2010 approved the building plan of the ground floor of House No.471/14 belonging to respondent No.5 converting residential building into commercial use and permitted to construct five shops in said house. Respondent No.5 started construction of staircase in violation of the building plan damaging the privacy of petitioners' houses and so also connected the roof of the shops with the first floor of the houses of petitioners damaging the wall of houses of petitioners apprehending the collapse of the houses of petitioners. The petitioners moved applications to respondents 1, 2 & 3 and respondent No.4 vide notice dated 19.5.2010 directed respondent No.5 to remove the illegal and unapproved construction of staircase but to no avail.

3. Mr. Muhammad Asif Shaikh learned counsel for the petitioners has argued that the petitioner by filing this constitutional petition is seeking, inter alia, issuance of writ of mandamus to the Respondents for implementation of the law and the policies made for construction of Buildings in Hyderabad, and for enforcement and protection of fundamental rights of the petitioners guaranteed under Article 9 (right of life liberty), Article 14 (right of dignity), Article 26 (right of access to public places of entertainment) and Article 38(b) (provision of available leisure places) of the Constitution. He submits that the government should implement the Regulations of buildings, which provides that except prior sanction of Sindh Building Control Authority, no building shall be put to a use other than the use as shown in the sanctioned building plan according to which it was erected or re-erected; that the Municipal Committee, Sindh Building Control Authority is not authorized to sanction any change in the building plan which violates the contravention of Master Plan or Site Development Scheme, if any, under the law; that the competent authority has been restrained from time to time, granting the change of land use; that law provides that a formal application for sanctioning the change of use of a building and the approval is to be granted only after considering whether or not the sanction would conform with the Master Plan or Site Development Scheme if any. Neither the private respondent had moved a formal application for change of use of his building / shops, nor indeed has any sanction been granted, if granted which is illegal and without lawful authority. He adds that the government's inaction is glaringly not protecting the rights of citizen of citizens and due to this negligent act i.e. non-implementation of the provision of law, have cropped up, in an alarming strength which has overloaded the domestic facilities meant for residents of the area in the shape of choking of drains, parking of vehicles on roads, coming of strangers to the locality, traffic conjunction, use of extra electricity and gas, rather in a nutshell it has become a nuisance for the residents, only due to the negligent and malicious mum of the official respondents; that right to life implies the right to food, water, decent environment, education, medical care and shelter, thus fundamental right cannot be snatched away or waived off pursuant to any approval of building plan if any by the official respondents. He lastly argued that the above-narrated negligence and non-implementation of law had encouraged other peoples in other localities and residential townships, created under the other laws i.e. Local Area Authorities and it is witnessed that the residential premises are misused for commercial purposes, just giving an advantage to the individuals.

4. The stance of respondent No.5 is that he is owner of property bearing C.S No.471/14, and has been granted permission by Hyderabad Development Authority (HDA) to raise construction of 5 shops; that the area where subject

shops are being constructed is commercial; that there is no illegal construction and in this regard he submitted revised building plan to HDA for approval.

5. Mr. Zaheeruddin Sahito learned counsel appearing for respondents 2 & 4 has referred to his Para Wise comments and argued that the proposed building plan was approved vide permission dated 21.4.2010 for construction of subject shops; that so far as the staircase is concerned, notice was issued to respondent No.5 for raising construction in violation of approved building plan with direction to remove the same; that respondent No.5 submitted revised building plan for regularization of amended portion of staircase; that the subject property is located at Lajpat Road which is commercial area, where several shops exist in street and running business and respondent No.3 has allowed conversion of subject plot from residential to commercial, therefore, the petitioners are not entitled to any relief as prayed in the instant petition.

6. We have heard learned counsel for the parties and perused the material available on record.

7. The moot point arises in the instant petition whether directions can be issued to H.D.A. or other authorities of provincial government under Article 199 of the Constitution to implement the mandatory provisions of law?

8. It appears from the record that the petitioners have challenged the conversion of land from residential to commercial in violation of Building Laws/ bye-laws. Prima Facie the issue of construction raised by respondent No.5 is causing inconvenience to the residents of area. The respondent-Sindh Building Control Authority has accepted the revised / completion building plan of Plot C.S No.471/14 situated at Lajpat Road, Ward-F, Taluka City District Hyderabad vide letter dated 1.6.2018. Record reflects that vide letter dated 21.1.2010 the subject Lajpat Road Hyderabad has already been declared as commercial by the Deputy Director Planning & Development Control HDA. In our view writ of mandamus can be issued to an authority under Article 199 of the Constitution preventing miscarriage of justice, but here the question arises that the competent authority has approved the building plan of private respondent for construction of shops, which factum, in our view, can be looked into by the forum of plenary jurisdiction and the petitioners have the remedy to approach the competent civil court for annulment of such revised / completion building plan of Plot C.S No.471/14 situated at Lajpat Road, Ward-F, Taluka City District Hyderabad vide letter dated 1.6.2018 as well as for enforcement of their civil rights as provided under the law.

9. We have noticed that this court vide order dated 15.6.2010 appointed the Additional Registrar of this Court to inspect the site in presence of the

parties and submit Report with regard to status of construction. And excerpt of the Report dated 21.6.2010 is reproduced as under:--

1. "The site in question situated at West Katcha Lajpat Road was inspected in presence of all the parties. In all five shops have been constructed on the ground floor. The respondent No.5 claimed that the same have been constructed in the court-yard of his house. At the time of inspection plaster work was being carried out in two shops facing the street between the buildings in question and building situated on F/45-469. Iron shutters have been installed on two shops one facing towards main Bazaar and the other facing towards main Bazar as well as street, whereas on the rest of the shops iron frames have been affixed and only shutters were to be installed

2. After the shops in question, an iron gate has been affixed adjacent to the gate of stairs leading towards the house of petitioner No.1 on first floor. After entering this new gate, stairs have been constructed on the back side leading towards roof of the shops in question. No plaster work has been carried out as yet on stairs. On the roof of the shops a boundary wall of about 4 feet height has also been constructed on the three sides of the building. No construction has been raised on the side of the house of the petitioner No.1 whose six windows are opening on the side of the roof of the shops in question. An over-head tank has also been constructed on the roof of the said shops. The petitioner No.1 showed his apprehension that the respondent No.5 will raise further construction, therefore all windows of house opening towards roof of the said shops will be closed and there will be no cross ventilation to his house.

3. In view of the above it is respectfully submitted that in so far the stage of construction is concerned, the same has approximately has been completed as five shops have been constructed on the land in question. Boundary wall on three sides of roof and over-head tank has been constructed. Only plaster work in two shops, stairs and walls of new Iron Gate, installation of shutters in two shops, and construction of footsteps in front of shops remains to be carried out. The construction material was also lying in front of back side gate of house of petitioner No.2

4. Some photographs were also taken by the photographer arranged by the petitioner No.1 which are enclosed hereto as annexure A, A-1 to 1-17.

The report is submitted as desired."

10. In view of the above, while dismissing this writ Petition, official respondents are directed to re-visit the site within fifteen (15) days after passing of this order and if found that the private respondent has illegally encroached / occupied the government land narrowing the street of Lajpat Road then they are at liberty to remove the same as per law without being influenced by this order.

Petition stands disposed of.

JUDGE

JUDGE