

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No.D- 3383 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objections.
2. For hearing of M.A- 19130 of 2016.
3. For hearing of M.A- 20080 of 2016.
4. For hearing of main case.

29.09.2020

Petitioner Muhammad Arif present in person.

Mr. Safdar Laghari Advocate holds brief on behalf of Mr. Muhammad Arshad S. Pathan, Advocate for Petitioners and submits that latter counsel is out of station.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Mr. Zaheeruddin Sahito Advocate for respondents / SBCA alongwith Ashkar Dawar Director General SBCA and Naveed Asim RD SBCA.

Mr. Irfan Ahmed Qureshi, Advocate for respondent No.9.

Mr. Irfan Ali Bhugio, Advocate for respondents / HDA.

=

ABDUL MAALIK GADDI, J.- Through this petition, the Petitioners have prayed for following relief(s):-

- a) To issue writ declaring that the acts of official respondents No.2 to 4 & 6 are illegal, unlawful in respect of property bearing CS No.2702/1, Ward-E, situated at Street No.5 Fort Area Hyderabad in a Plaza commonly known as "Saman Plaza" and to declare that the approval of building plan of 4th floor vide approval dated 01.11.2016 is illegal, unlawful, without hearing, notice, though objections and applications were already filed and the suspension order dated 14.10.2016 being in existence and the approval is illegal, unlawful, unwarranted, in violation of Building & Town Planning Regulations 2002 & 2007.
- b) To declare that the property Saman Plaza is not capable of 4th floor (in actual 6th floor) and Stability Report dated 01.11.2016 issued by respondent No.7 in contradictory to earlier report dated 17.03.2015 and the same is the prerogative of Director (P&DC) and of Sindh Building Control Authority itself and the approval / revise plan of 4th floor is illegal, passed by using excess of power, without lawful authority, liable to be cancelled and construction if any being outcome of illegal act liable to be demolished being encroachment as the roof of 3rd floor is the common property of all the residents for their common use and the construction made by the private respondents at the behest of official respondents is illegal, unlawful and is encroachment.

- c) To direct the respondents No.3 & 4 to act in accordance with law and withdraw from the approval and get stopped the construction and remove the encroachment over the top floor of Saman Plaza without delay.
- d) To direct the respondent No.6 S.H.O PS Fort not to harass the Petitioners at the instance of private respondent and from illegal, unlawful calling and detention to occupants of Saman Plaza.
- e) To direct the respondents not to stop the usage of top floor by the Petitioners and other occupants and restrain them from making any restriction, stoppage etc. in any manner whatsoever.
- f) Any other relief which this Honourable Court deems fit and proper.
- g) Cost of the petition.”

2. After going through the pleadings of the parties, the main question involved in the present petition is whether the structure presently existing on plot bearing CS No.2702/1-D comprising ground plus three floors can sustain the load of one additional floor i.e fourth floor to be constructed by respondents No.8 and 9. It is noted that several reports in this behalf have been submitted by SBCA and Mehran University Jamshoro in pursuance of orders passed in the present petition from time to time. Lastly, it was ordered that report with regard to controversy agitated in this petition be called from a qualified Structural Engineer of N.E.D University, Karachi, which was submitted and is available on record.

3. It is also noted that residents of the said Plaza have challenged the construction of 4th floor. Allegedly the roof of said Plaza was disposed of to respondent No.9 who raised the columns which construction has been challenged by the Petitioners. The building originally was constructed without any approved plan. That when this construction was challenged at that point of time the building plan was approved which disclosed 39 columns originating from the basement. We have seen the order passed by this Court dated 10.03.2020 with regard to controversy involved in this petition. The operative part of said order is reproduced as under:-

“ They must carry out physical inspection of the building and submit Report to the best of their ability so that a stability certificate be considered to save the building from being demolished or otherwise. The report be filed within ten (10) days from today.

Entire structure of the 4th floor i.e. over the roof of third floor be removed at the risk and cost of respondent No.8. The SBCA shall take immediate and serious steps in lodging prosecution against the Builder who has erected the building without approved plan and that too on account of insufficient columns and also against vigilance team /

officers of SBCA responsible at the relevant time and submit periodical reports of the prosecution. In case of failure to prosecute the Builder the head of SBCA shall be called to appear in court.”

4. Today, pursuant to said order compliance report has been submitted by respondents No.2 to 4 / SBCA Hyderabad Region alongwith certain photographs, taken on record, a copy whereof has been provided to other side. Learned counsel for respondents / SBCA submits that compliance of said order has already been made by them in its letter and spirit.

5. We have perused said compliance report, which shows that on 15.09.2020, the entire construction of 4th floor over roof of 3rd floor over CS No.2702/1 has been demolished by adopting all safety measures at site under the supervision of Deputy Director Demolition Cell of SBCA Hyderabad and Police assistance. The report also indicates that in compliance of the order of this Court prosecution proceedings against the Builders / owners and Officers / Officials of Sindh Building Control Authority, Licensed Architect and Licensed Structural Engineer have also been filed, which are pending before the Court of VIII-Civil Judge & Judicial Magistrate, Hyderabad and B.Ws have been issued against the accused / aforesaid persons / officials have been issued and the next hearing in said proceedings is fixed on 09.10.2020. In support of such report, certain photographs and photostat copy of B.Ws have been annexed.

6. In view of the above report it appears that compliance of the order dated of this Court dated 10.03.2020 has been made in its letter and spirit. Petitioner No.1 present in Court is also satisfied with such compliance report. Accordingly, this petition appears to have achieved its purpose; therefore, the same stands disposed of alongwith pending applications.

7. As regard the prosecution proceedings filed by SBCA against the Builder and others, the learned Judicial Magistrate / trial Court is directed to expedite and dispose of the same preferably within a period of 60 working days and submit compliance report before this Court through Additional Registrar.

8. Copy of this order be faxed to learned Judicial Magistrate / trial Court for information and compliance.

JUDGE

JUDGE