

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.297 of 2013

(Dr. Pervaiz Mehmood Hashim Vs. Sindh Building Control Authority & others)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Agha Faisal

Date of hearing : 01.12.2021 .
For the petitioner : Khawaja Shams-ul-Islam, Advocate. .
For the respondents No.1&2 : Mr. Dhani Bux Lashari, Advocate. .
For the respondent No.3. : Mr. Ali Safdar Deepar, Assistant Advocate General (AAG). .
For the respondent No.4. : Mr. Muhammad Tariq, Advocate. .

J U D G O M E N T

IRFAN SAADAT KHAN, J. This petition has been filed on the ground that the respondent No.4 has illegally constructed multi-storeyed building on the property bearing House No.229, Street No.4, Azam Basti, Karachi, without there being a proper approved building plan and map.

2. Notices thereafter were issued to the respondents and even Nazir of this Court was appointed to inspect the site and furnish his report. All the official respondents as well as Nazir have categorically submitted that the respondent No.4 has raised illegal construction on the above referred property. Various orders on different dates were passed by this Court, while hearing the instant matter, for demolishing

the unlawful construction raised by the respondent No.4, however it is noted with annoyance that though some cosmetic demolition was made on the aforesaid property by the Sindh Building Control Authority (**SBCA**) but these orders were not complied with in letter and spirit.

3. Khawaja Shams-ul-Islam Advocate has appeared on behalf of the petitioner and stated that from the statements /compliance reports, as furnished by the official respondents and from the Nazir's report, it is evident that the respondent No.4 has raised illegal construction which needs to be demolished altogether. The learned counsel stated that the official respondents are protecting respondent No.4, even when there are several orders passed by this Court in this very petition for demolishing the building and for cutting of the utility services available on the property but these orders have not been complied with in letter and spirit. He, therefore, stated that the building, which neither has approved building plan or map, may be demolished in accordance with law.

4. Mr. Dhani Bux Lashari Advocate has appeared on behalf of the respondents No.1&2 /SBCA and stated that a number of attempts were made for demolition of the building but on each occasion law and order situation was created either by the respondent No.4 or other inmates or the neighbours. He stated that neither the Deputy Commissioner (**DC**) East nor the Senior Superintendent of Police (**SSP**) East, K-Electric authorities, Karachi Water & Sewerage Board (**KW&SB**) and Sui Southern Gas Corporation (**SSGC**) have with the

SBCA for carrying out demolishing process and to cut down the utility services though various letters were written to these authorities. He stated that if proper force is provided to the SBCA needful will be done in accordance with law. He has further endorsed the contention of Mr. Khawaja Shams-ul-Islam that the building raised does not either have approved map or building plan and has been raised in violation of the SBCA rules and regulations.

5. Learned AAG has appeared on behalf of the respondent No.3 and stated that a number of attempts were made by the concerned SSP and DC for demolishing the building but on each occasion law and order situation was created by the inmates or the neighbourers, therefore, proper demolition of the building could not be carried out and only upper portion of the building has been demolished. He, however, undertakes that if some time is granted, he will make sure that the demolition process, with the aid of proper police force, would be carried out without any delay.

6. Mr. Muhammad Tariq Advocate has appeared on behalf of the respondent No.4 and stated that the respondent No.4 purchased the property in an auction. He stated that all the houses situated in neighbourhood also do not have approved building plan or map. He further stated that since the property of the respondent No.4 is situated in Katchi Abadi hence he does not require any approved building plan or map. He, therefore, stated that since the respondent No.4 resides in the lower portion of the house alongwith his family hence he may not be disturbed and this petition may be dismissed.

7. We have heard all the learned counsel at some length and have also perused the record.

8. There is no denial to the fact that the building constructed on the plot mentioned above neither has any approved map nor approved building plan. It is also a matter of record that a number of attempts to demolish the said house were made by the police officials but on each occasion law and order situation was created by either the inmates or the neighbourers. It is also a matter of record that in spite of issuing several restraining orders by this Court the respondent No.4 has raised substantial construction on the property. We categorically asked the learned counsel for the respondent No.4 to show us any law that for Katchi Abadi neither approved map nor approved building plan is required, no such law was placed before us by him. Moreover this issue was previously raised while arguing the present petition on 29.05.2013 and the learned Bench rejected the said plea raised by the respondent No.4. The record clearly reveals that the building has been raised without there being any approved map or building plan, which has been endorsed by the SBCA authorities. We are of the view that no lease could be granted to the respondent No.4 simply on the ground that some other buildings have also been constructed in the area which do not have proper map or building plan, since we are dealing with the case of the respondent No.4 in respect of the property mentioned above and there is no denial to the fact that so far as the disputed plot is concerned there is neither any approved map nor any approved building plan, as per the various reports and statements

furnished by the official respondents, including that of the Nazir's report. It is evident that the construction has been raised without approved building plan.

9. We, therefore, under the circumstances are left with no option but to direct the SBCA authorities to demolish the unlawful construction raised on the above referred property strictly in accordance with law and also to get the utility services, available on the said property, disconnected. The SBCA authorities, however, would be at liberty to take the assistance of the concerned DC, SSP and if needed Pakistan Rangers in this regard and furnish compliance report within one month's time from today. With these directions the instant petition alongwith all listed /pending application(s) stands disposed of.

JUDGE

JUDGE

Karachi:

Dated: .12.2021.