

IN THE HIGH COURT OF SINDH KARACHI

Suit No. [-] 3324 of 2021

[M/s. Metro International School (Pvt.) Ltd & Others versus The Sindh Building Control Authority & Others]

Plaintiffs : M/s. Metro International School (Pvt.) Ltd
& Others through Mr. Muhammad Jibran
Nasir, Advocate.

Defendants 1-3 : The Sindh Building Control Authority
through Mr. Ghulam Akbar Lashari,
Advocate.

Defendant No.4 : Nemo.

Date of hearing : 25-01-2022

ORDER

Adnan Iqbal Chaudhry J. - By CMA No. 22159 of 2021, the Plaintiffs pray for a temporary injunction to restrain the Defendants 1 to 3, the Sindh Building Control Authority (SBCA) from taking coercive action against the Plaintiff No.1 pursuant to show-cause notice dated 06.12.2021 and sealing orders dated 09.12.2021 and 14.12.2021.

2. The Plaintiff No.1 is running a school at Plot No. D-145, Block-5, Clifton, Karachi ('suit premises'), admittedly a residential house on a residential plot, after taking the same from its owner under a tenancy agreement dated 09.04.2020. Per the Plaintiff No.1, on-campus activity at the school could not commence until 14.10.2020 due to the Covid-19 pandemic. However, before that, the SBCA had issued a caution notice dated 28-09-2020 to the Plaintiff No.1 informing that it had received a complaint that the Plaintiff No.1 is renovating the suit premises for commercial purposes, and that it should refrain from converting the suit premises from residential to commercial. When the Plaintiff No.1 nonetheless went ahead, the SBCA issued a sealing order dated 22.10.2020. That sealing order was challenged by the Plaintiff No.1 vide C.P. No. D-2050/2021. By an order dated 22.03.2021, the learned Division Bench was inclined

to stay coercive action against the Plaintiff No.1/school, but on the condition that the school would not operate after 10.06.2021.

3. Apparently, despite the aforesaid order in C.P. No. D-2050/2021, the school continued at the suit premises even after the cut-off date of 10.06.2021. Thus, on 06.12.2021, the SBCA issued a fresh show-cause notice to the school on grounds *inter alia* that material changes had been made to the suit premises against the approved building plan; that the suit premises was being used for a purpose contrary to the residential lease of the plot; and that such use was in violation of section 6(3) of the Sindh Building Control Ordinance, 1979 [SBCO], and also of orders passed by the Supreme Court in C.P. No. 814-K/2016. Since the Plaintiff No.1 did not respond, the said show-cause notice was followed by sealing orders dated 09.12.2021 and 14.12.2021 issued by the SBCA. This suit was then filed to challenge the aforesaid show-cause notice dated 06.12.2021 and the consequential sealing orders.

4. Since C.P. No. D-2050/2021 filed by the Plaintiff No.1/school against the previous sealing order was already pending when this suit was filed, the office raised an objection to the maintainability of the suit. On 13.01.2022, when this suit came up for hearing, Mr. Jibran Nasir, learned counsel for the Plaintiffs submitted that owing to subsequent events, the Plaintiff No.1 intended to withdraw C.P. No. D-2050/2021. However, that has not been done to-date. Today, learned counsel states that the said petition could not be withdrawn on the last date as it did not reach its turn and was discharged. He undertakes to withdraw the same before the next date. Given that statement at the Bar, learned counsel was heard on the listed application.

5. It is accepted by the Plaintiffs that the school is operating on a residential plot in a residential neighborhood. There is also no denying the fact that the order dated 22.03.2021 passed in C.P. No. D-2050/2021 had permitted the Plaintiff No.1 to run the school only up till 10.06.2021, and not thereafter. To justify the continuation of

the school at the suit premises, learned counsel pointed to an application dated 24.05.2021 made by the Plaintiff No.1/school to the Master Plan Authority for converting the suit premises for education purposes as provided in Regulations 18-4.2.2 and 25-5.2 of the Karachi Building & Town Planning Regulations, 2002 [KBTPR], which application, per learned counsel, had yet to be decided by the SBCA. He further submitted that there were other schools operating in the vicinity and yet the Plaintiff No.1 was being singled out by the SBCA. On the other hand, learned counsel for the SBCA submitted that the suit premises is not on a 60 feet wide road, and thus it did not qualify for conversion to education use under Regulations 18-4.2.2 and 25-5.2 KBTPR; and that in any case, by an order dated 22.01.2019 passed in C.P. No. 814-K/2016, the Supreme Court has placed a ban on conversion of residential plots to any other use.

6. The relevant provisions of Regulations 18-4.2 and 25-5.2 KBTPR which are cited by learned counsel are as follows:

“18-4.2. Change of land use of Residential plots:

18-4.2.1. No residential plot shall be converted into any other use except with the approval of Master Plan Department, Sindh Building Control Authority after the recommendations of the concerned Authority.

18-4.2.2. Residential plot within a residential neighborhood can be allowed to be used for Education/Health purpose provided the plot lawfully allowed for usage as education/health by the Master Plan Department, as per prescribed procedure after inviting public objection from neighborhood. The applicable road-width, FAR, number of floors and COS shall be governed by section 25-5.2 of KBTPR.

25-5.2. On residential plots for allowing education and health activity as per 18-4.2.2 following ratio shall be applicable:

S. No.	Level of Activity	Min. Road width	Plot Size (Sq.Yds.)	F.A.R.	No. of Floors	Min. COS Front	Min. COS Sides	Min COS Rear
1.	Primary School / Clinic	60 ft.	Up to 240	1:2.0	G+2	3 ft.	---	3 ft.
..

7. The 'prescribed procedure' for change of land use referred to in Regulation 18-4.2.2 is then detailed in Regulation 18-5 KBTPR, which can commence only when an application in the prescribed form is made simultaneously to the concerned Union Council, Master Plan Department and the SBCA, along with copies of advertisements inviting public objections to the proposed change of land use.

8. It will be seen that one of the conditions prescribed for the conversion of a residential plot to education use, as per Regulation 25-5.2 KBTPR, is that, for a primary school the plot must be situated on a minimum of a 60 feet wide road. In the facts of the instant suit, there is nothing thus far to show that the suit premises is situated on a road at least 60 feet wide so as to be eligible for change of land use for education purposes. The so-called application dated 24-05-2021 moved by the Plaintiff for conversion of the suit premises is also not in the form and manner prescribed by Regulation 18-5 KBTPR, nor accompanied by the requisite documents. In fact, I do not see how such application could have been made in the first place by the Plaintiff No.1 as a tenant without the authority of the owner of the suit premises.

9. Be that as it may, while the KBTPR envisages that a residential plot in a residential neighborhood can be used for education purposes, but that is only if the conditions laid down in Regulations 18-4.2.2 and 25-5.2 KBTPR are met, and then the procedure prescribed in Regulation 18-5 is followed for converting the residential plot for education use, which involves *inter alia* the hearing of public objections. In other words, the use of the suit premises for education purpose without its conversion for such use, is an act prohibited by Regulation 18-4.2.1 KBTPR and section 6(3) of the SBCO, 1979. Reliance can be placed on the cases of *Hussain Bux Memon v. KBCA* (2015 YLR 2448); *The City School (Pvt.) Ltd. v. Federation of Pakistan* (2018 CLC Note 4); *CPLC Neighborhood Care v. Federation of Pakistan* (2019 YLR 911); and *Rozina Ali v. Karachi Metropolitan Corporation* (2019 CLC 1081).

10. It was then submitted by learned counsel for the Plaintiffs that there are other schools operating in the vicinity, and that in running a school the Plaintiff No.1 was rendering a public service. Same submissions were also advanced in the cases cited above, but were rejected. As regards the first submission, it was held that two wrongs cannot make a right. And, as regards the second submission, it was observed that the very purpose of amending the KBTPR to provide conditions for conversion of residential plots for education purposes, was with the aim of balancing the rights of residents of the area on the one hand and the public service element of having schools on the other; and thus a school cannot be permitted to commence operations on a residential plot without fulfilling the conditions laid down for such purpose. The Plaintiff No.1 accepts that it has not fulfilled said conditions, and therefore it has no legal basis to operate a school at the suit premises. Cases in which a school has been operating on a residential plot prior to the amendments made to the KBTPR to provide for a conversion to education use, are however on a different footing where the Court may consider *inter alia* giving time to the owner of the plot to apply for a conversion. But that is not the case here where the Plaintiff No.1 admittedly commenced the school on a residential plot in year 2020.

11. At this juncture, learned counsel for the Plaintiffs submitted that in cases of schools, the Courts have usually allowed the school to complete the academic year, and therefore he prayed that the Plaintiff No.1 may also be given time till the end of the academic year, till June 2022, to shift the school from the suit premises. While it is correct that in some cases the Courts have permitted schools to complete the academic year, that concession is always based on the equity of the case. In the instant case, as discussed in para 2 above, the Plaintiff No.1 had already been given time up till 10-06-2021 by the learned Division Bench in C.P. No. D-2050/2020, but the Plaintiff No.1 flouted that order by continuing with the school even thereafter. To give any further concession to the Plaintiff No.1 would amount to a premium over a wrong.

12. In view of the foregoing, the Plaintiffs do not have a *prima facie* case for the grant of a temporary injunction. Having concluded that the Plaintiff No.1/school is in violation of law, there is no balance of convenience or a case of irreparable harm in favor of the Plaintiffs. Consequently, CMA No. 22159/2021 is dismissed. If the Plaintiff No.1 is found continuing with the school at the suit premises after 10 days hereof, the SBCA shall take action against it in accordance with law. For purposes of information, the office shall place a copy of this order in C.P. No. D-2050/2021.

JUDGE

Karachi
Dated: 25-01-2022

*PA/SADAM