

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 303 of 2021

Before:-
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah,

Mr. Irfan Ahmed Qureshi, Advocate for Petitioners
Mr. Bhagwandas Bheel, Advocate for respondent No.7
Mr. Sarfraz Metlo, Advocate for respondent No.11
Mr. Ayaz Ali Rajpar, Asstt. A.G.

Date of Hearing : 26.04.2022

Date of Announcement : 29.04.2022

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.- Subject matter of this petition is an amalgamated plot as Plot No. C-01 having cumulative area of 3920 sq.yds. The petitioner has challenged the approved plan of a building and construction raised thereon. Petitioner's contention is that a plan being commercial, could not have been approved by Sindh Building Control Authority as it abuts on 60 feet wide road where no commercial activity could be carried out and secondly, such construction has caused damage to the houses of the petitioners.

2. Notices were issued and the respondents filed their respective replies.
3. Respondent No.11 Arbab Muhammad Din Memon being Builder has filed Counter Affidavit and contended that the plan was approved in terms of the Town Planning Regulations and no violation was committed by them.
4. Respondent Nos. 1, 2 and 3 i.e. Sindh Building Control Authority have also filed their parawise comments and have not questioned the approval of the plan and the construction raised thereon stated to be in accordance with law.

5. We have heard learned counsel and perused the material available on record.

6. We would first deal with the issue of amalgamation of three plots i.e. Plot Nos. 1, 2 & 3 measuring 1431 sq.yds, 1244.44 sq.yds and the third also of 1244.44. sq.yds respectively, forming an aggregate as 3920 sq.yds. No question challenging the Amalgamation in terms of 18-3.2 was raised. The building plan for basement – 1 and basement -2 (parking) G + 11) having (3rd, 4th and 5th floor parking) was approved as Shams Icon. The construction till date has been raised upto fourth floor which is not disputed. Mukhtiarkar Qasimabad verified the ownership documents of all three plots which were declared to be commercial. Hyderabad Electric Supply Company, Sui Southern Gas Company and Water and Sanitation Agency have issued no objection certificates for the subject project and the approval to the respondent No.11 was accorded over the subject plot measuring 3920 sq.yds being of commercial category. The approval of the building plan also disclosed two basements for parking and Air Raid Shelter which is defined in terms of Regulation 9-14 as under:-

9-14. Air raid shelter is mandatory in all commercial and Public Sale Projects having minimum plot area 300 sq.yds. and above with minimum three storeys and above as per order of Home Department, Government of Sindh. Letter No.SO(pdpc)/1-29/2002. Dated 15-03-2004 and Ministry of Science & Technology, Government of Pakistan letter No.7(1)/2002-ASA(P&C) Vol. II, dt. 22.01.2004.”

7. Similarly Regulation 25-B.1(c) provides for the exclusion of the parking floors from the floor count. The plot is situated on 120 feet wide road and not as suggested by Mr.Irfan Ahmed Qureshi, advocate as per record. Mr. Imran Qureshi advocate has not been able to cite any regulation which is claimed to have been ignored or violated in the approval of the building plan of the subject plot and the construction so far raised.

8. The question which emerged during the pendency of this petition was of damage caused to the structure of the petitioner's houses which was noticed on 18.3.2021 when respondent No.11 undertook to ensure that the entire exercise of repair shall be completed expeditiously. Even on 22.3.2022 Mr. Metlo has undertaken that any damage, if caused, on account of construction of the subject plot, to the houses of the petitioners, shall be repaired; however, any substantial / major damage which is being claimed by the petitioner, was stated to be on account of defective construction of petitioner's houses inasmuch as the plinth was not carved out as required in consideration of a soil status of the area. This would require detail analysis and perhaps will depend on evidence as to whether such major damage to

the plinth or the structure of the houses is on account of defective construction of the houses or on account of construction being raised by respondent No.11, which is only possible through an independent proceedings before civil court where evidence could be recorded and experts can depose conclusively.

9. In view of the above facts and circumstances we are therefore of the view that since no violation has been pointed out by the petitioners in so far as the construction over the subject amalgamated plot is concerned, we are inclined to dismiss this petition; however, the normal repair work which was undertaken by respondent No.11 on 22.3.2022 and also on 18.3.2021 be carried out at the earliest.

JUDGE

JUDGE

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