

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 2967 of 2018

Date	Order with signature of Judge
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Priority :

1. For hearing of CMA No.14993/2018 (U/O VI R 17 CPC) :
2. For hearing of CMA No.12869/2018 (Stay) :
3. For hearing of main case :

23.11.2022 :

Mr. Salman J. Mirza, advocate for the petitioners.

Mr. Naseer Ahmed Khan, advocate for respondents 3 & 4.

Mr. Ghulam Akbar Lashari, advocate for SBCA.

Mr. Miran Muhammad Shah, Addl. Advocate-General, Sindh.

NADEEM AKHTAR, J. The petitioners, who are admittedly the lawful co-owners of the subject plot, are raising construction of a building thereon comprising basement and ground plus fifteen upper floors. They have stated that all necessary approvals and no objection certificates were obtained by them from relevant authorities prior to commencement of the construction. They have alleged that private respondents 3 to 5 wanted to sell their properties to them, but when the petitioners did not accept their demand, the said respondents started interfering in the construction activity in collusion with respondent No.1 / SHO concerned. The petitioners have prayed, *inter alia*, for a declaration that respondent No.1 has no lawful authority or jurisdiction to interfere in the building control and town planning matters as they fall within the domain of respondent No.1 / SBCA ; respondents be restrained from interfering in their lawful construction ; respondent No.1 be directed to take action in respect of their complaint against respondents 3 to 5 in accordance with law and to provide due security to them and to their property and business against the private respondents.

In their objections to the main petition, respondents 3 and 4 have alleged that the documents filed and relied upon by the petitioners are forged and bogus ; petitioners are raising construction without obtaining the requisite approvals from the competent authorities, particularly the building plan ; the NOC issued by Environmental Protection Agency is questionable ; they had been blocking streets of the subject residential area with heavy construction / excavation / demolition machinery and vehicles creating inconvenience, unrest, nuisance and traffic jam for the entire neighbourhood ; and, the subject

construction of commercial nature is not permissible on the plot in question which is located in a purely residential area. The allegations made by the petitioners against respondents 3 and 4 have been denied by the said respondents by leveling counter allegations against the petitioners.

It may be noted that a counter affidavit only to the listed stay application has been filed by respondent No.3, and respondents 3 and 4 have not filed any counter affidavit in response to the main petition. The objections / para-wise comments filed by respondents 3 and 4 are not supported by their affidavits. Whereas, respondent No.5 has not filed any counter affidavit or objections. It may be observed that as the averments and allegations made in the petition by the petitioners are on oath, respondents 3, 4 and 5, being private respondents, were required to deny the same on oath by submitting their counter affidavits. It may further be observed that the facility of filing comments in response to a constitutional petition before this Court is extended only to official respondents as they respond and act in their official capacity on behalf of their department / Federal or Provincial Government ; and, not to private respondents who are required to deny on oath the averments and allegations made against them on oath in the petition. In the absence of a specific denial on oath, the averments and allegations made on oath in the petition are to be deemed to have been admitted by the private respondents.

In their counter affidavit to the main petition and listed stay application, SBCA has stated that the proposed building plan and the architectural concept plan submitted by the petitioners were approved by SBCA ; the no objection certificate from the lessor / KMC, the height restriction no objection certificates from Civil Aviation Authority and Pakistan Air Force and the no objection certificate from Environmental Protection Authority were submitted by the petitioners ; the building plan submitted by the petitioners was restricted by SBCA to the height restriction ordered by the Hon'ble Supreme Court and was approved accordingly ; and, there was no violation in the impugned construction.

From the counter affidavit filed by SBCA, *prima facie*, it appears that the impugned construction is in accordance with the approved building plan and it was raised after obtaining necessary approvals and no objection certificates from all relevant authorities. Regarding the allegations made by the private respondents, suffice it to say they have admittedly not initiated any proceedings up till now to challenge the impugned construction and or against the petitioners for creating the alleged inconvenience or nuisance. If they are aggrieved in any manner by any of the actions of the petitioners, they are still at liberty to initiate appropriate proceedings against them. Likewise, in case of any violation of the

approved building plan and or the building rules and regulations, SBCA shall be at liberty to take appropriate action in accordance with law.

The petition and listed applications stand disposed of in the above terms with no order as to costs.

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