

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1202 of 2005

[Mrs. Taranum Sabih *versus* Sindh Building Control Authority and others]

- Date of hearing : 12.05.2022 and 23.05.2022.
- Date of Decision : 13.09.2022.
- Plaintiff : Mrs. Taranum Sabih, through M/s. Ahmed Ali Hussain, Zorain Khan and Aman Aftab, Advocates.
- Defendant No.1 : Sindh Building Control Authority, through M/s. Afsheen Aman and Muzaffar Ali, Advocates, and Master Plan Department / S.B.C.A., through Mr. Khurram Ghayasuddin, Advocate.
- Defendant No.2 : Karachi Development Authority, through Mr. Naseer Ahmed, Advocate.
- Defendants No.3-9 : Government of Sindh and others through Mr. Pervez Ahmed Mastoi, Assistant Advocate General Sindh.

J U D G M E N T

Muhammad Faisal Kamal Alam, J: - Plaintiff has filed present *Lis* in respect of A commercial Plot No.6-KIOSK, Block-3, Scheme No.5, Clifton Karachi, admeasuring 100 Square Yards (“**Suit Plot**”), whereupon, (as averred) a structure was raised but subsequently pulled down by the official Defendants.

2. Following is the prayer clause_

“a) *Defendants be restrained not to create any obstacles, interfere in the smooth constructions of the Restaurant, over the commercial plot bearing No.6-KIOSK, Block-3, Scheme No.5, Clifton Karachi, admeasuring 100 Sq. yards.*

OR

The defendants are directed to pay Rs.5,88,00000/- (Rupees Five Crore Eighty Eight Lac), severally and jointly, being the market price of the plot.

AND

- b) *The Defendants be directed to pay compensation/damages of Rs.1,10,60,000/- (Rupees One Crore Ten Lac Sixty Thousand) being mental torture destruction / stolen materials of construction severally and jointly.*
- c) *Costs of the suit.*
- d) *Any other relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case.*
- e) *To direct the defendant No.9 or any other authorized officer / authority of the City District Government to provide alternate commercial plot of 100 sq. yards to the plaintiff in the same vicinity / locality against the suit plot which was duly leased in the name of the plaintiff and have been merged in the Bagh-e-Bin Qasim Clifton by the management of the City District Government Karachi. ”*

3. Relevant facts as averred in the plaint are that the above Suit Plot was leased out to Plaintiff by Defendant No.3 – KDA (Karachi Development Authority) through Lease Deed dated 30.01.1996, which is produced in the evidence as **Exhibit P-3**, *inter alia*, for raising construction of a restaurant for which building plan was submitted and was duly approved by Defendant No.1 – Sindh Building Control Authority (“S.B.C.A.”), exhibited in the evidence as **Exhibit P-6**, whereafter, construction was partly raised, when on 04.06.2005, Defendants No.7 and 8 along with other persons arrived at the Suit Plot at 6.30 a.m. in the morning and without any prior notice, demolished the construction. Plaintiff was informed by her guard, whereafter husband and brother-in-law of Plaintiff visited the site/ Suit Plot, raised objection but Official Defendants did not pay any heed to the request. Averred that due to prime location, the Suit Plot attracted buyers and one Asad-un-Nabi offered to purchase the Suit Plot way back in February 2006 for a sum of Rs.5,88,00,000/-, out of which Plaintiff received Rupees One Million as part payment. However, the sale transaction could not be concluded, because of the obstacles created by the

Defendants through their illegal actions, including, demolishing the structure at the Suit Plot.

4. According to the Written Statement filed by Defendant No.1 and 8 (the then Karachi Building Control Authority and now Sindh Building Control Authority – SBCA and its Chief Controller), the present *Lis* is not maintainable in law and barring provision of Section 20 of the Sindh Building Control Ordinance, 1979 (“**SBCO**”) and Section 56 of the Specific Relief Act, 1877, are attracted. Averred that since the Lessor in the present case – the then Deputy District Officer (Commercial) Land Management has addressed a letter dated 24.04.2004, that no building plan should be approved in respect of all the 22 plots of KIOSK category, which information was conveyed to Plaintiff vide Reply dated 06.08.2004; hence, initially, the proposed plan was not approved but after promulgation of Karachi Building and Town Planning Regulations, 2002 [**KBTPR**], when Plaintiff submitted fresh proposed building plan, then said Defendants approved the same in accordance with the provisions of SBCO and KBTPR. While disputing the stance of Plaintiff, it is stated by the Building Control Authority that approval was granted for the construction of a KIOSK – ground and loft only, for a Restaurant, but since violations were made in the structure, therefore, after due notice to Plaintiff on 03.06.2005, demolition action was taken on 04.06.2005.

5. A joint Written Statement was filed on behalf of Defendants No.2, 3 and 7 – present Karachi Development Authority, Commissioner Karachi and the Deputy Commissioner (South). Stance of these Defendants is that the Suit Plot was carved out from the amenity plot reserved for Bagh-e-Ibne Qasim, known as Beach Park Clifton, Karachi. Since the amenity plot cannot either be leased out or regularized in favour of any person, hence, the Suit Plot of Plaintiff was cancelled by the Authority; as it was allotted

in violation of the Law, Rules and Regulations. After issuing cancellation letter dated 05.08.2005, the possession of the Suit Plot was resumed by the Defendants (the then City District Government Karachi). Consequently, it is stated, that Plaintiff does not have any legal vested right over the Suit Plot. With regard to the contention of Plaintiff about further sale transaction of the Suit Plot, it is stated that the Sale Agreement does not confer any right in favour of the purchaser, *particularly*, when the seller himself does not have any title in respect of a Suit Plot. It is denied that any construction was raised by the Plaintiff at the Suit Plot while denying the claim of damages of Plaintiff.

6. From the pleadings of the parties, following Issues, by consent, were settled by the Court, vide order dated 10.05.2010_

- i. Whether the plaintiff is bonafide lease holder of commercial plot bearing No. KIOSK-6, Block-3, Improvement Scheme No.5 Clifton Karachi vide registered lease No. 204, Book No.3 page 125-128, Sub-Registrar T.Div 11-B, Karachi dated 30.01.1996?*
- ii. Whether the plaintiff after approved plan raised constructions on the suit plot and it was illegally demolished by the defendant's No.1 to 8 jointly & Severally?*
- iii. Whether the plaintiff is entitled for alternate plot of land and the defendant No.9 is bound to provide it in the same area or its value prevailing in the market when the leased plot of the plaintiff has been incorporated in the Bagh-e-Bin Qasim by the defendant No.9?*
- iv. Whether the plaintiff has suffered loss due to the demolishing of the constructions raised by the plaintiff on the suit plot after approved plan issued by the defendant No.1 and incorporation of suit plot in to Bagh-e-Bin Qasim by the defendants if so to what extent and what amount he is entitled for damages?*
- v. Whether the suit is not maintainable under the law and the plaintiff has no cause of action against the defendants?*

- vi. *Whether the plaintiff raised construction in violation of the approved plan?*
- vii. *Whether the K.B.C.A. after issuance of Notice dated 03.06.2005, took action for demolition against the violation of the approved Building Plan?*
- viii. *What should the decree be?*

7. Both Plaintiff and Defendants led the evidence. On behalf of Plaintiff, her husband / attorney Sabih Ahmed son of Waris Ali testified, *whereas*, on behalf of Official Defendants, Khalid Zafar Hashmi, Additional D.O. (Commercial) of the then City District Government Karachi (“**CDGK**”) and Mujahid Abbas, Deputy Controller of Buildings - S.B.C.A. (the then Karachi Building Control Authority [**KBCA**]), deposed.

8. Plaintiff’s counsel has cited the following case law_

- i. **1999 S C M R 2883**
[*Ardeshir Cowasjee and 10 others versus Karachi Building Control Authority (KMC), Karachi and 4 others*] – **Cowasjee case**;
- ii. **P L D 2010 Supreme Court 759**
[*In the matter of: Human Rights Case Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010*];
- iii. **P L D 2020 Sindh 427**
[*Muhammad Faisal through General Power of Sub-Attorney and others versus The Cantonment Board Faisal, Karachi through Cantonment Executive Officer and 2 others*]; and
- iv. **2020 M L D 1810**
[*Asif Majeed and 3 others versus Karachi Metropolitan Corporation through Mayor, Karachi*].

9. *Whereas*, Plaintiff’s counsel so also legal team for Official Defendants, both have relied upon the judgment of the Honourable Supreme Court handed down in the case of *Province of Sindh through Chief Secretary and 8 others versus Syed Kabir Bokhari* [2016 S C M R 101] – *Kabir Bokhari case*.

10. Précis of the case law cited by Plaintiff’s counsel is, that defendants being government functionaries have demolished the structure on a

property, without notice, in such circumstances suit is maintainable. When claim of ownership is based on the registered document, truth and genuineness is attached with such instrument, unless and until they are rebutted through strong and cogent defence. Proprietary rights are recognized nationally as well internationally. Article 17 of the Universal Declaration of Human Rights provides that everyone has a right to own property alone as well as in association with others, similarly, Part-II of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”) ensures protection of fundamental rights of the individuals, including proprietary rights. No person can be deprived of his property except through due process of law. Where the ownership of property is proven, direction was given that plaintiff (of the reported case) will occupy the property and construct a new building in place of demolished one, as per law. Alteration or modification in the sanctioned scheme is permissible but in the manner prescribed by the relevant statute. Registered instrument, *inter alia*, can only be cancelled by the Court of competent jurisdiction on the ground of fraud or otherwise and cannot be cancelled through Notice given by government department. If a complaint is filed, government functionaries should not see it as a challenge to their authority, but if such grievance is genuine, then government functionary is duty bound to address the same within the parameters of law, in a swift and efficient manner.

11. It is necessary to mention that a reported judgment of Cowasjee Case (*ibid*) also known as *Costa Livina case*, has been cited by the Plaintiff’s counsel in support of his arguments, that *firstly*, the Suit Plot is situated in Bagh-e-Ibne Qasim, which is near Jehangir Kotri Parade, Clifton Karachi, facing the Arabian Sea, and not in that area {as claimed by the Defendants} regarding which the Honourable Supreme Court in Kabir Bokhari case (*ibid*) has ruled that purported allotted KIOSK was not part of the Master

Plan;*secondly*, the Honourable Supreme Court in Cowasjee Case has held that a revolving Restaurant is permissible on an amenity plot but not the proposed residential units and thus it was directed the structure relating to residential units have to be pulled down / demolished.

12. Arguments heard and record perused.

13. On 11.12.2019, a **Statement** was filed on behalf of Master Plan Department (S.B.C.A.) by its Deputy Director (SCH-05) Syed Sagheer Abid along with Layout Plan of Scheme No.5, Clifton Karachi.

14. In compliance of order dated 12.12.2019, Affidavit was filed by the Senior Director, Master Plan Department – S.B.C.A., Karachi along with two drawings / layout plans of K.D.A. Scheme No.5, Clifton, Karachi, dated 12.11.1985, which was further amended on 15.11.1987, showing that an area for 22 KIOSKS is earmarked including Suit Plot, each measuring 100 Square Yards, situated at Grass Portion within the boundary wall of Bagh-e-Ibne Qasim, on 300 Feet wide road. It is stated that all these allocated portions of KIOSK fall under the category of amenity.

15. Plaintiff's witness has produced the following documents_

- i. Special Power of Attorney – Exhibit P/1;
- ii. Indenture of Lease dated 30.01.1996 issued by Karachi Development Authority – Exhibit P/3;
- iii. Three payment challans to the then City District Government Karachi – Exhibit P/4, P/5, P/6, towards, *inter alia*, scrutiny fee;
- iv. Order dated 26.11.2004 in C. P. No. D – 1051 of 2004 filed by present Plaintiff against Defendants – Exhibit P/7;
- v. Letter of Approval along with the Building Plan for ground floor with loft dated 12.03.2003 issued by KBCA in favour of Plaintiff – Exhibit P/8;
- vi. NOC dated 01.03.2005 issued by City District Government Karachi (Master Plan Group of Offices) to Deputy Controller of Buildings, KBCA – Exhibit P/9;

- vii. Letter of 07.05.2005 by Town Officer (Municipal Regulation Saddar Town, Karachi) to Plaintiff for production of ownership and other documents – Exhibit P/10;
- viii. Response by Plaintiff to the above correspondence – Exhibit P/11;
- ix. Agreement to Sell dated 18.02.2005 between present Plaintiff and one Asad-un-Nabi in respect of the Suit Plot – Exhibit P/12;
- x. Payment receipt towards purported sale transaction – Exhibit P/13;
- xi. Correspondence (19.05.2005) to Town Municipal Administration by Plaintiff for release of Building Material – Exhibit P/14;
- xii. Complaint dated 25.05.2005 to Town Municipal Regulation Officer by Plaintiff – Exhibit P/15;
- xiii. Photographs of the construction at the site – Exhibit P/16 and P/17;
- xiv. Letter dated 04.06.2005 to Chief Controller, KBCA – Exhibit P/18;
- xv. National Tax Number Certificate of Plaintiff – Exhibit P/19.

16. The above witness of CDGK has produced the following document_

- i. Authority letter in his favour.

17. Witness of the then Defendant KBCA [now S.B.C.A.] has produced the following document_

- i. Approval of Building Plan along with the Building Plan dated 12.03.2005 in favour of Plaintiff – Exhibit D/4 and D/5, respectively;
- ii. Photographs at the site – Exhibit D/6;
- iii. The alleged Notice dated 03.06.2005 stating violation in the construction – Exhibit D/7.

18. Evidence of witnesses has been evaluated. Record of earlier C. P. No. D – 25 of 1999, filed by present Plaintiff against Official Defendants, has also been brought on record.

19. Above Witness of Plaintiff has reiterated his stance in the Examination-in-Chief, that the Suit Plot was duly leased out (Exhibit P/3) to Plaintiff for raising construction of a Restaurant and after approval from the Competent Authority, that is, Defendants, construction was raised. In the intervening period, even documents of ownership were submitted to Defendant No.5 (Town Officer Municipal Regulation). Construction was raised as per the approved plan – Exhibit P/8. The said witness has deposed that in due course Suit Plot became a prime land, especially after getting requisite approvals, and it was sold to one Asad-un-Nabi for a total sale price of Rs.5,88,00,000/- and Rupees One Million was received as advance payment. In support of this Agreement to Sell is also produced as Exhibit P/12 (*ibid*), but due to continuous impediment created by Defendants, the said transaction was cancelled. The said witnesses has deposed that construction work started as per the approved plan after purchasing of building material, but it was intermittently, obstructed by Defendants regarding which the Senior Officials were approached for redressal of grievances of Plaintiff, but without any result; that on 04.06.2005, Defendant No.7 along with other persons came at the site and demolished the entire construction without giving any notice, as a consequence Plaintiff suffered a loss of Rupees One Million, besides, suffered mental agony and humiliation, as she is a respectable member of business community. Plaintiff claims damages of Rupees Ten Million. The other grievance regarding which the witness has deposed is, that in the intervening period, Suit Plot was illegally merged (at the relevant time) in a Park-Bagh-e-Bin Qasim and consequently, the said land / Suit Plot, became unuseable. The testimony of Plaintiff about construction of a Restaurant after approval of building plan could not be contradicted in his cross-examination by Defendants' counsel; conversely, the above witness of the then KBCA, in paragraph-2 of his Affidavit-in-Evidence / examination-in-chief, has

admitted that Suit Plot was a commercial plot and a building plan for construction of Restaurant as ground floor with loft was approved, however, the said witness has further stated that the same was raised in violation of approved plan. The stage of construction as mentioned in the evidence of Plaintiff's witness about part construction at the Suit Plot could not be falsified during the evidence of Plaintiff's witness, so also testimonies of witnesses of Official Defendants. It has been categorically stated by the Plaintiff's witness that construction was raised as per approved plan, which assertion was reiterated in the cross-examination and nothing contrary came on record. The assertion of Plaintiff's witness about not receiving any prior notice before demolition, *particularly*, alleged notice dated 03.06.2005, could not be disproved in the cross-examination.

20. Plaintiff's witness was also cross-examined by the learned counsel for the then CDGK. The initial part of the cross-examination is mostly on the Special Power of Attorney given by Plaintiff to the said Attorney / Witness, who deposed on her behalf, but, nothing contradictory could be extracted from the Plaintiff's witness, with regard to authenticity of the said Special Power of Attorney (Exhibit – P/1). Plaintiff's witness was cross-examined about the subsequent sale transaction, that the purchaser was not in Pakistan when the alleged Sale Agreement (Exhibit – P/12) was executed, which was denied by the Plaintiff's witness.

Although, in the cross-examination it is admitted by the Plaintiff's witness that at present Suit Plot has become part of Muhammad Bin Qasim Park, but denied that any Notice of cancellation of Lease [which is the real bone of contention in the present *Lis*] was given to Plaintiff. This categorical denial, could not be further disproved in the cross-examination. It has also come on record that Plaintiff had applied to Defendants for an alternate plot; however, it is denied that the Suit Plot was an amenity plot.

21. The witness of Defendants No. 2, 3 and 7, Khalid Zafar Hashmi (Exhibit D/1) in his Affidavit-in-Evidence / Examination-in-chief has reiterated that the Suit Plot was an amenity plot (reserved for Bagh-e-Ibn-e-Qasim known as Beach Park Clifton Karachi) and could not be leased out or regularized in favour of Plaintiff and subsequently its allotment was canceled vide Order dated 05.08.2005, hence Plaintiff is not in possession of any title documents. The said witness has deposed that since no title vests in Plaintiff, therefore, she could not have sold the Suit Plot to some other person. Said witness has also denied that the Plaintiff is entitled for any damages or there was any construction on the Suit Plot.

22. In his cross-examination the above official witness has acknowledged the fact that he has not filed any document to substantiate his deposition that the suit plot is an amenity plot. He has admitted that suit plot was allotted to Plaintiff so also leased out; to a specific question, has admitted that Plaintiff had paid all the dues in respect of the Suit Plot. To a suggestion he has replied that he does not know the current market value of the Suit Plot; not denied the fact that it was worth rupees twenty million (when the evidence was recorded). He has not denied the suggestion that Plaintiff raised construction over the Suit Plot or that it was demolished by the Building Authority, viz. the then KBCA (now Defendant S.B.C.A.). He has denied the suggestion and reiterated that City District Government Karachi [CDGK] can / could cancel the allotment of Suit Plot in favour of Plaintiff. He has admitted in his cross-examination that no document is brought on record in the evidence that lease (Exhibit P/3) of the Suit Plot was cancelled, as claimed that this was cancelled vide Order dated 05.08.2005.

23. The other Official witness, Mujahid Abbas (Exhibit D/3) deposed on behalf of the then KBCA (now S.B.C.A.). In his Affidavit-in-Evidence /

Examination-in-chief he has admitted that Suit Plot was a commercial plot and a building plan in respect of the same was approved for construction of Restaurant as ground floor with loft. Since construction was being raised in violation of the approved plan by decreasing the approved height from 16 feet to 10 feet and loft was eliminated from the construction, therefore, necessary action of demolition was taken after due notice given to Plaintiff, that is, Notice dated 03.06.2005. Structure was demolished on 04.06.2005. The witness has deposed that Officials were bound to implement the provisions of Singh Building Control Ordinance, 1979, and the action of demolition was taken under Section 7-A of the above law.

24. In his cross-examination he has admitted that no Report of Field Staff was filed to show that construction was raised in violation of the building plan. He has admitted that he has not produced any notice of Field Staff that the Notice was pasted at the Premises, admitted that the then Deputy Controller of Buildings, Mr Imtiaz Ahmed is still in service.

25. He has reiterated that due to violation in construction, demolition action took place and he has produced his Report in this regard, as **Exhibit D/7**; replied that in fact the above Exhibit D/7 is a Notice of 03.06.2005, as mentioned on the document itself, mentioning the violation(s). He has reiterated that the same Notice – Exhibit D/7 was pasted at the Premises by the Field Staff. He has denied the claim of Plaintiff that the latter (Plaintiff) suffered any loss or damage due to such demolition.

26. In view of the above discussion, the Issue wise determination is as under_

ISSUE NO.v:

27. Since this Issue pertains to maintainability of present *Lis*, therefore, it is decided first. The evaluation of above evidence and applying the case

law cited in the present case, in which material facts are undisputed, that a Suit Plot was properly leased out to Plaintiff by Official Defendants and construction was being raised after the approved building plan which was latter pulled down, the present *Lis* is maintainable and Issue No.v is answered in Negative, in favour of Plaintiff.

ISSUE NO.i:

28. This Issue is answered in Affirmative. Plaintiff is / was *bona fide* leaseholder of the Suit Plot, in view of the evidence led. Secondly, it is necessary to clarify, that Official Defendants, in their evidence, so also pleadings, have attempted to confuse the Issue of amenity category with that of commercial. The Lease – Exhibit P/3 was not illegally given to Plaintiff by Defendants, because, the Suit Plot was part of number of KIOSK, which were planned to be established in the locality, as is usually seen in such recreational areas, locally as well as internationally. The Official Layout Plans produced during proceeding (as stated in the foregoing paragraphs), has proven this fact that Suit Plot was situated in an area, which is earmarked for such type of KIOSKS (22 in numbers) and other Sea Shell Stalls. Near this allocated area for KIOSKS a proposed ‘Lily Pond’ is also shown in the Layout Plan, besides, on the right side of it different areas are allocated for parks and swimming pool.

In view of the above discussion, the judgment handed down by the Honourable Supreme Court in the Costa Livina case (*ibid*) is applicable to the facts of present case, as it also relates to the same locality / area; besides, that though the Lease Deed specifies the use as commercial, but it was for the limited purpose of using the Suit Plot as a KIOSK, which has not violated the overall amenity use of Bagh-e-Ibn-e-Qasim, as held in the Costa Livina Case, wherein, construction of a Revolving Restaurant was not disallowed. Thirdly, even in the Lease Deed there are specific

limitations about the use of the Suit Plot, which conditions / restrictions were never violated by Plaintiff. The judgment of Honourable Supreme Court in the case of Kabir Bokhari (*supra*) for the above reasons, is not applicable; although in that judgment, it was observed that plots in question (of the reported decision) are not mentioned in the layout plan, yet considering the fact that private respondents (of the reported case) were subjected to protracted litigation and they were given the plots by official defendants, said private respondents were compensated by refunding the money paid towards occupancy value / price with 18% markup per annum from the date of receipt of occupancy value by the Officials till it is actually refunded. The second distinguishable factor in the Kabir Bokhari case (*supra*), is that plots in question were never leased out to the private respondents, as is done in the present case. It is an admitted fact that ownership lease of the Suit Plot was given to Plaintiff. Official witnesses have acknowledged that requisite payments were already made by Plaintiff to the concerned Departments / Defendants.

ISSUES NO.ii, vi AND vii:

29. The above evidence of Plaintiff and Defendants leads to the conclusion that admittedly, Plaintiff started raising construction of KIOSK after due approval of the Building Plan, which was subsequently demolished by the representatives of Defendant –S.B.C.A. In this regard, the claim of Plaintiff is that it was demolished without any prior notice, *whereas*, Official Defendants maintained that a prior Notice dated 03.06.2005 was served on Plaintiff before taking demolition action. This notice has been exhibited by the Defendants' witness as Exhibit-D/7.

This Notice is considered. The only alleged illegality as mentioned is the unauthorized “*extra first floors columns*”. Admittedly, the building plan

was approved for construction of ground floor with loft. Photographs produced during evidence do not show any First Floor. Even in his evidence the representative of Building Authority has stated that the height was decreased from approved 16 feet to 10 feet. No Regulation is cited in support of the stance of official Defendants, that if a height is reduced, it also falls within a violation, which is not regularizable and is to be pulled down/demolished. However, this is not the case, even in the Exhibit-D/7, the violation is mentioned as First Floor column, which is quite vague and the Notice does not specify the purported violations, if any, justifying the action of demolition.

Whether the above Notice mentioning the violation / Exhibit-D/7, was properly served upon Plaintiff or not, the onus is on Defendant – S.B.C.A., because it entails a punitive action, which was taken by Defendants; so also, it has been categorically denied by Plaintiff throughout in her pleadings and evidence that the Notice was never served. In this regard, the evidence led by official witnesses and particularly witness of Defendant –S.B.C.A. (the then KBCA) has not successfully disproved the assertion of Plaintiff, that the above prior Notice (Exhibit-D/7) was duly served on Plaintiff before taking demolition action. To a specific question, Defendants’ witness has stated that *“I have not filed the Report of Field Staff that the notice was pasted at the suit premises”*. Conversely, this reply in cross-examination has not proved the stance of Defendants about service of prior notice (Exhibit-D/7).

Admittedly, when the construction at the Suit Plot was demolished by official Defendant – S.B.C.A., it was structurally not complete and it has not been proven in the evidence of Defendants that it was raised in violation of the approved plan.

30. Consequently, in view of the above discussion, the Answer of Issue No.ii is that Plaintiff had started raising the construction on the Suit Plot after approval of building plan and it was illegally demolished by the Defendants, hence answered in Affirmative; *whereas*, Issue No.vi is answered in Negative, that construction was not raised in violation of the approved plan. Similarly, Issue No.vii is also answered in Negative, that Defendant – S.B.C.A. failed to prove that prior Notice dated 03.06.2005 was served on Plaintiff before taking demolition action. It is further clarified that Authorities, in the present case, Defendant – S.B.C.A., should have effected service of notice prior to taking demolition action under Section 7-A of the SBCO, 1979, so also the Building and Town Planning Regulations, and it is not sufficient, merely to ‘issue’ a notice before taking any action.

31. Adverting to Issues No.iii and iv. Before determining these Issues, it is necessary to discuss the rule propounded through judicial pronouncements with regard to award of damages.

32. Plaintiff has prayed for two categories of damages; her first claim is for damages of Rs.588,000,00/-, being the sale price which was agreed between the Plaintiff and one Asad-un-Nabi, the prospective buyer, and in this regard the Sale Agreement was exhibited by the Plaintiff’s witness as Exhibit P/12. The second claim is for compensation / damages of Rs.110,600,00/- towards mental torture, destruction, stolen material of construction.

33. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. The Superior Courts have held in number of decisions, *Abdul Majeed Khan versus Tawseen Abdul Haleem-2012 CLD*

{Supreme Court of Pakistan} page 6, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Similarly, in the case of *Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore-PLD 1996 Supreme Court 737*, the damages vis-à-vis mental agony has been discussed and the conclusion is that there can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.

34. With regard to the first claim, although the Sale Agreement has been exhibited, but its second author, that is, above named purchaser Asad-un-Nabi was never examined, therefore, positive and convincing evidence for justifying the first claim of damages (which are special damages) has not been led by Plaintiff and thus this claim for awarding special damages cannot be granted.

Since, admittedly the construction was being raised as per the Approved Building Plan and it has been proved in the evidence that it was demolished by the Defendants, without any prior Notice, in violation of the statutory provisions, particularly, Section 7-A of the SBCO 1979, therefore, it is logical to conclude, that Plaintiff had suffered mental agony and humiliation within its social and business circle. More so, undisputedly, Plaintiff being an owner of the Suit Plot is being continuously deprived of her right to use and enjoy the same, for the past eighteen years, because, as already discussed in the foregoing paragraphs, Official Defendants are unable to prove that the Subject Lease was cancelled after due process of law. The ownership right is a fundamental right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and its breach should

be remedied forthwith; conversely, Official Defendants, instead of addressing the genuine grievance of Plaintiff, have opted to contest the present Litigation that too on flimsy grounds. Thus, Plaintiff is entitled for her second claim of damages, that is, of Rs.110,600,00/- payable by Plaintiffs, jointly and severally.

35. The facts of present case have not only proven high handedness of Official Defendants, but also their blatant acts of illegalities, which they have done with impunity. Ironically, Defendants have attempted to mislead this Court through their pleadings and evidence, which is contrary to the record produced by their Official (as discussed above), *particularly*, the Layout Plan of Scheme No.5, Clifton.

36. The poor performance, corrupt practices and *mala fide* acts of the Official Defendants, in collusion with other vested interest, have devastated the City of Karachi. This is not the first case where a viable Scheme for recreation for the citizens of Karachi has been sabotaged, but, due to policies of Executive, City has regressed instead of moving towards progression. It is a matter of common knowledge that sea front in different Countries attracts tourism, because they are provided with various facilities. It is also a matter of common knowledge that globally sea fronts also have small KIOSKS and Stalls to facilitate visitors / tourists, so also it is beneficial for creating job opportunities. Unfortunately, the Executive at the helm of the affairs of this City of Karachi lacks vision, Will and bona fide intentions for preparing and executing such plans and schemes, which can give this Cosmopolitan a modern look.

ISSUE NO.viii:

37. The prayer of alternate plot cannot be accepted, because no other KIOSK is operating at the site and there is no issue of discriminatory treatment.

38. Consequently, the upshot of the above is that the present Suit is partly decreed and Defendants are liable to pay damages to the tune of Rs.110,600,00/- to Plaintiff with 10% markup from the date of institution of suit till the realization of said amount.

39. Consequently, Plaintiff is also entitled for the costs of present *Lis*.

Judge

Karachi.

Dated: 13.09.2022.

Riaz / P.S.