

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

C.P. No. D - 3213 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Fresh Case.

1. For order on Misc. No.15233 of 2023.
2. For order on Office Objection.
3. For order on Misc. No.15234 of 2023.
4. For order on Misc. No.15235 of 2023.
5. For hearing of Main Case.

03-07-2023

M/s. M.M. Aqil & Faizan Memon, Advocates for Petitioners.

1] Urgency granted.

2-5] The Petitioners have challenged notice dated 21-06-2023 **[impugned notice]** issued under section 185 of the Cantonments Act, 1924, **[the Act]** requiring the Petitioners to remove an iron structure erected within Kashif Centre, a building on Shahrah-e-Faisal, Karachi Cantonment. Per the Petitioners, the iron structure erected is for the purposes of establishing a cafeteria in an open space within the building, and that the same is being done at the instance of the majority occupants of the building excepting the Respondent No.4 at whose behest the impugned notice has been issued.

Learned counsel first submit that the impugned notice having been issued by the Cantonment Executive Officer is without lawful authority as the same is not backed by a resolution of the Cantonment Board. However, the impugned notice categorically states that it has been issued "*for and on behalf of the Cantonment Board Karachi*". In any case, the foremost question is whether the act of construing a cafeteria by the Petitioners is in accordance with law.

Sections 178A and 179 of the Act envisage the sanction of the Board for erecting or re-erecting a building by stipulating as follows:

“178A. Sanction for building.-- No person shall erect or re-erect a building on any land in a cantonment, except with the previous sanction of the Board, nor otherwise than in accordance with the provisions of this Chapter and of the rules and bye-laws made under this Act relating to the erection and re-erection of buildings.

179. Notice of new buildings.--(1) Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice in writing of his intention to the Board.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who –

(a) makes any material alteration or enlargement of any building, or

(b) converts into a place for human habitation any building not originally constructed for that purpose, or

(c) converts into more than one place for human habitation a building originally constructed as one such place, or

(d) converts two or more places of human habitation into a greater number of such places, or

(e) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation, or

(f) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or

(g) makes any alteration to any building which increases or diminishes the height of, or area converted by, or the cubic capacity of, the building or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act.”

The sanction of the Board is then either accorded or refused under section 181 of the Act.

When queried whether the Petitioners have obtained the sanction of the Board for constructing the cafeteria, learned counsel submit that section 178A and 179 of the Act are not attracted inasmuch as the Petitioners are not erecting any new building but merely a cafeteria within an existing building. However, in our view, the definition of ‘building’ in section 2(iv) of the Act is not confined to a new building. It includes additions being made within an existing building. That much is also manifest in section 179(2) of the Act *supra*. It is not the case of the Petitioners that the nature of

construction being raised does not require a prior sanction from the Board, in that, by letter dated 15-05-2023 the Petitioners themselves have sought sanction from the Cantonment Board for constructing the cafeteria. Since that sanction has not been issued thus far, nor is there anything to show that such sanction has been declined, the petition is without any force. The petition is therefore dismissed in *limine* alongwith pending application(s).

JUDGE

JUDGE

SHABAN*