

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Adnan Iqbal Chaudhry &
Mohammad Abdur Rahman, JJ,*

HCA No.263 of 2018

Muhammad Azam & others

Vs.

Khalid Manzoor & others

Appellant: Mian Mushtaq Ahmed, Advocate
Respondent No.1: Nemo
Respondent No.2: Mr. Hassan Tariq, Advocate
Respondent No.3: Ghulam Akbar Lashari, Advocate
Respondent NO.4: Mr. Saifullah, Assistant Advocate General
Date of hearing: 08.08.2023

J U D G M E N T

MOHAMMAD ABDUR RAHMAN,J: This Appeal has been maintained by the Appellant under Section 3 of the Law Reforms Ordinance, 1972 against an order dated 20 August 2018 passed in Suit No. 961 of 2008 and by which the Appellant while being permitted to unconditionally withdraw Suit No. 961 of 2008 was subjected to an order directing that the construction on Khalid Chambers, Plot No. 1180, Sheet No. 1, Akhtar Colony, Korangi Road, Karachi (hereinafter referred to as the "Said Property") was to be sealed.

2. Counsel for the Appellant submits that he was the Plaintiff in Suit No. 961 of 2008 and on 20 August 2018 had addressed the Court that he was inclined to withdraw the suit unconditionally. On that date a Nazir Report dated 21 March 2014 (indicated in the order dated 20 August 2018

as being of 19 March 2014) was listed for orders. In that report the following facts have been stated:

“ ... entire building has achieved the status of an irretrievable stage due to its dangerous conditions. Thus the safe shelter has become an unsafe from top to bottom for its inhabitants, crowded public streets and congested irregular conglomeration of low height structures in immediate neighborhood of Katchi Abadi”

3. The learned single Judge while allowing the request of the Plaintiff to unconditionally withdraw the suit, on the basis of the Nazir's report had further directed the Nazir to seal the construction on the Said Property with the assistance of the KBCA (now SBCA).

4. Learned Counsel for the Appellant alleges that once the suit had been withdrawn, the Court became *functus officio* and lacked the jurisdiction to pass any order thereafter and inasmuch the direction that was given by the Court in the order dated 20 August 2018 to seal the property was illegal.

5. Counsel for the Respondent No.2 submits that the building that has been constructed on the Said Property is in a dilapidated and dangerous condition and he has independently maintained a Constitution Petition before this Court seeking directions for the demolition of the building.

6. Without going into the dispute *inter se* the Appellant and Respondent, we are of the opinion that once the suit was dismissed as withdrawn, the Court had become *functus officio* and no further direction could have been given in Suit No.961 of 2008 to the Nazir to seal the Building.

7. In the circumstances, we are inclined to allow this Appeal and set aside the direction given in the order dated 20 August 2018 passed by the learned single Judge in Suit No. 961 of 2008 whereby the Nazir was

directed to seal the construction on the Suit Property. Needless to say, this Judgement shall in no manner prejudice the petition of the Respondent No. 2 or any action by the SBCA under the Sindh Building Control Ordinance, 1979 against a building declared dangerous, if so.

7. The appeal stands disposed of along with pending applications, if any.

Judge

Judge