

*Order Sheet*

IN THE HIGH COURT OF SINDH AT KARACHI

**C. P. No. D – 4435 of 2023**

Date	Order with Signature of Judge
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1. For hearing of CMA No.20455/2023 :
2. For hearing of main case :

**14.12.2023**

Mr. Sikandar Baig, Advocate for the Petitioner.

Mr. Ashraf Ali Butt, Advocate for respondent No.2

Mr. Nishat Warsi, Advocate for Respondent No.5  
a/w Ms. Rehmat-un-Nisar, Advocate.

Mr. Ghulam Akber Lashari, Advocate for SBCA.

Mr. Jawwad Dero, Addl. A. G. Sindh.

**MOHAMMAD ABDUR RAHMAN, J.** The Petitioner has maintained this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stating that he is a member of a Cooperative Housing Society known as the Tipu Sultan Cooperative Housing Society Limited i.e. the Respondent No. 5 and is an allottee of a plot in that society. He contends that the land which comprises the Society comes within the administrative jurisdiction of the Cantonment Board, Malir i.e. the Respondent No. 2 and who are refusing to sanction an approval to him for constructing on the plot allotted to him on account of their being no layout plan having been sanctioned for the Society, by the Cantonment Board Malir i.e. the Respondent No. 2, and he therefore seeks directions to be given to the Respondent No. 2 to sanction the construction that he is proposing on his property.

2. It has come on record that the Master Plan for the land which comprises the Society has been accorded by the Karachi Development Authority Master Plan and Environmental Control Department vide letter No. URP-33.27/MP & EC/77/UD-1118/4046 on 28 December 1985 and also by the Cantonment Board Malir, Karachi vide letter No. MLR/L.P/ T.S.C.H.S/99/1538 dated 31 May 1999.

3. Mr. Ashraf Ali Butt, appearing on behalf of the Cantonment Board, Malir has filed a statement indicating the basis of the jurisdiction that has been conferred on the Cantonment Board, Malir to issue a "layout" plan. In this regard, he relied on an

amendment made on 7 August 2023 to the Cantonments Act, 1924 and whereby the Section 178AA and Section 179A were inserted into that statute and which state as under:

“ ... 178AA. *Land use planning, layout planning, control over building plan, etc. –*

*(1) the cantonment executive officer, with the approval of board may cause to be prepared a spatial plan for land use to be followed in the cantonment which shall include, but not limited to,*  
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*(a) Earmarking of zones for residential, institutional, commercial, industrial and other activities; and*

*(b) Improvement scheme for areas within the cantonment if so required.*

*(2) The Board shall give publicity to the land use plan prepared under sub-section (1) by publishing the gist of plan in a local newspaper and by other public information means including uploading on official website;*

*Provided that till the preparation and execution of land use plan, all the actions and decisions of the Board in view of implementations of land use plan under various policies issued by administrative division from time to time shall be deemed to have been validly issued under this Act.*

179A. *Notice and sanction of new scheme. –*

*(1) Whoever intends to develop or revise a scheme shall apply for sanction by giving notice in writing of his intentions to the Board.*

*(2) The Board may either refuse to sanction or may sanction it either absolutely or subject to such modifications or limitations as it thinks fit for the welfare of users of the scheme.*

*(3) Every sanction for the new or revised layout plan of a scheme shall be valid for one year in line with section 183.*

*(4) A Board, when sanctioning the erection or re-erection of a building as hereinbefore provided, shall specify a reasonable period after the work has commenced within which the development of layout plan is to be completed in line with section 183A.*

*(5) In cases of illegal development of a scheme, the provisions of sections 184 and 185 shall apply.”*

As is evidence the provisions of Section 183 of the Cantonment Act, 1924 are also relevant and which are reproduced hereinunder

“ ... 183. *Lapse of sanction.*

*Every sanction for the erection or re-erection of a building given or deemed to have been given by the Board as hereinbefore provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun unless the Board on application made therefor has allowed an extension of that period.”*

Relying on the abovementioned provisions of law Mr. Ashraf Ali Butt has contended that it is mandatory under Section 183 of the Cantonments Act, 1924 for the Society to **re-  
seek** the sanction of the Cantonment Board, Malir **of the same Master Plan every  
year** and until such sanction has not been obtained by the Society no further approvals for construction will be sanctioned by the Cantonment Board, Malir for any plot of a member of the Respondent No. 5.

4. We have considered the provisions of the Cantonment Act, 1924 that have been relied on by Mr. Ashraf Ali Butt and on a reading of the aforementioned sections we have reached the following conclusions:

- (i) the jurisdiction to sanction a “spatial plan for land use” and which is colloquially referred to as a “layout plan” or a “master plan” in an area notified as a cantonment under Section 3 read with Section 4 and 5 of the Cantonments Act, 1924, vests with a Cantonment and with no other local government authority irrelevant as to the ownership of the land on which the layout plan is being requested as under;<sup>1</sup>
- (ii) the authority to **prepare** the “spatial plan for land use” under Sub-Section (1) of Section 178 AA of the Cantonment Act, 1924 vests with the Cantonment Executive and which will, after the mandatory publications are made in conformity with Sub-Section (2) of Section 178AA of the Cantonment Act, 1924, be sanctioned with **the approval** of the “Board” as defined in Sub-Section (ii) of Section 2 of the Cantonment Act, 1924 and constituted under Section 13 A of the Cantonment Act, 1924;

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<sup>1</sup> See **Zeeshan Builders vs. Karachi Building Control Authority** 1992 MLD 2259

- (iii) while considering these provisions we note that ambiguity exist in:
- (a) the interpretation of the proviso which can only be applicable to regulate the provision which precedes it i.e. Sub-Section (2) of Section 178AA of the Cantonment Act, 1924,<sup>2</sup> but which in reality seems to be attempting to regulate Sub-Section (1) of Section 178AA of the Cantonment Act, 1924;
  - (b) respect of areas which are owned by other land owning agencies e.g. the Province of Sindh, the Karachi Development Authority, the Malir Development Authority etc., but which, on account of the land being declared as part of a cantonment, fall under the regulatory domain of a Cantonment and as to whether any plan issued by that authority would under these provisions need to be ratified by the Cantonment Board afresh under Section 178 AA of the Cantonment Act, 1924 and as to whether the consent of such land owning agencies would be required prior to the Cantonment Board sanctioning any revision to the “spatial plan for land use” as issued by that authority; and
  - (c) respect of allotments which have been made by various land-owning authorities without a sanctioned spatial plan.

5. While the jurisdiction vests with the Cantonment Board to sanction a “Spatial Plan for Land Use”, the procedure for applying and obtaining a sanction for a “scheme” has been clarified in Section 179 A of the Cantonments Act, 1924. While in this regard, it is apparent that the language of Section 178AA and Section 179A of the Cantonments Act, 1924 are clearly at variance and noting that the expression “scheme” has not been defined in the Cantonment Act, 1924, we are of the opinion that the expression scheme on its meaning alone<sup>3</sup> would be wide enough to include a “ Spatial Plan for Land Use” and under Sub-Section (1) of which any person owning the entire land comprising a scheme for which approval is being sought, may apply to the Board for its sanction to either “develop” or “revise” a scheme and which would include but not be limited to a “Spatial Plan for Land Use”, the Board retaining the authority under Sub-Section (2) of

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<sup>2</sup> See *Muhammad Ashraf vs. Sh, Muhammad Akram* 2022 CLD 638

<sup>3</sup> Defined in the *Oxford University Dictionary* Online Edition to mean “A plan, design; a programme of action; the designed scope and method of an undertaking or a literary work, etc. Phrases, to †cast, lay a scheme.

Section 179A of the Cantonment Acts, 1924 to either refuse the sanction or to grant the sanction with or without any modifications or limitations by passing a speaking order determining whether or not the scheme or revision thereof is for the “welfare of the users of the scheme.” Finally, under Sub-Section (3) of Section 179 A of the Cantonments Act, 1924 such sanction for a new or revised lay out plan of a scheme would be valid for a year “in line with Section 183” and which section prescribes that the development of the scheme must be “begun” within that period. It follows that once the sanction for a scheme has been granted by the Cantonment Board under Sub-Section (1) of Section 178AA of the Cantonments Act, 1924, the proponent of the Scheme must begin the development of the Scheme within one year and if he does so **no further permission** is required from the Cantonment Board unless he revises the scheme and for which a further application would need to be made.

We have noted that the Cantonment Board Malir, Karachi vide letter No. MLR/L.P/ T.S.C.H.S/99/1538 dated 31 May 1999 has approved the Master Plan approval for which had already been obtained from the Karachi Development Authority Master Plan and Environmental Control Department vide letter No. URP-33.27/MP & EC/77/UD-1118/4046 dated 28 December 1985. Without going into the issue as to whether the Cantonment Board, Malir in 1999 had the jurisdiction to approve such a plan, keeping in mind that the Scheme has already been sanctioned by the Cantonment Board, Malir in the year 1999 we hereby direct that:

- (i) the Society should approach the Respondent No.5 within a period of fifteen (15) days from the date of passing of this order to confirm whether they had commenced the development of the Scheme that had been sanctioned by the Cantonment Board, Malir vide letter No. MLR/L.P/ T.S.C.H.S/99/1538 dated 31 May 1999 within the time period of one year from the date of the sanction;
- (ii) The Malir Cantonment Board, will thereafter, after giving the Respondent No. 5 a right to a hearing, adjudicate upon the representation made by the Society within a period of **one month** and if it comes to the conclusion that:
  - (a) the development of the Scheme had been commenced by the Respondent No. 5 within a period of one year of the sanction accorded by letter No. MLR/L.P/ T.S.C.H.S/99/1538 dated 31 May 1999, then no further sanction is required from the Respondent No. 2 for the reapproval of the Scheme as

compliance of Section 183 of the Cantonments Act, 1924 had been made;

- (b) the development of the Scheme had not been commenced by the Respondent No. 5 within a period of one year of the sanction accorded by letter No. MLR/L.P/ T.S.C.H.S/99/1538 dated 31 May 1999, then to consider an extension of the time for commencing the development as permissible under Section 183 of the Cantonments Act, 1924 and to pass a speaking order in this regard within the time period mentioned above.
- (iii) Once a decision is made by the Cantonment Board, Malir in terms of clause (ii) (a) and (b) above, individual applications for constructions of plots will be considered and decided by the Cantonment Board, Malir.

While parting we note, that as the Cantonment Board, Malir had accorded its sanction to the "Spatial Plan for Land Use" of the area comprising the society of the Respondent No. 5, the ambiguities that exist in the interpretation of these provisions of the Cantonment Act, 1924 as noted above, while not relevant to these proceedings, will necessarily have to be considered and decided in appropriate proceedings as and when they come before a Court. This Petition, however, having served its purpose is disposed of in the above terms, along with all pending applications, with no order as to costs.

JUDGE

JUDGE



