

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 3375 of 2023

Date	Order with Signature of Judge
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1. For orders on office objection :
2. For hearing of CMA No.15896/2023 (Stay) :
3. For hearing of CMA No.15897/2023 (Inspection) :
4. For hearing of main case :

18.12.2023

Ms. Amna Usman, Advocate for the Petitioner.
Mr. Ghulam Akber Lashari and Ms. Humaira Jatui, Advocate for SBCA.
a/w Altaf Hussain Khokhar (CNIC No.43203-4269193-7), Deputy
Director SBCA Karachi East.
Mr. Faheem Shah, Advocate for Respondent No.8.
Mr. Jawwad Dero, Addl. A.G. Sindh.

Through this Petition, the Petitioner has impugned the construction on:

- (i) Plot No.644-A (419), Sector 'G', Manzoor Colony, Karachi,
- (ii) Plot No.198, Street No.35, Sector 'C', Manzoor Colony, Karachi, and
- (iii) Plot No.C-392, Street No.2, Sector 'C', Manzoor Colony, Karachi,

and which it is contended have been raised either without any approval from the SBCA or in deviation of the approval granted by the SBCA. It was noted that Petitioner was present in person on numerous dates but was unable to assist the Court properly regarding this legal issues that existed in this Petition and as he had stated that he was not in a position to engage a counsel, Ms. Amna Usman, Advocate appeared and acted on a pro bono basis on behalf of the Petitioner.

The Sindh Building Control Authority have filed their comments and in which they have identified the illegalities in each of construction that has been raised on each of the Said Properties as under:

- “ 1. **Plot No.644-A (419), Sector 'G', Manzoor Colony, Karachi.**

APPROVAL:

As informed by the Record Section of SBCA, no record of approval in respect of subject plot is found.

SITE POSITION:

The site inspection reveals that old occupied building comprising of G+05 upper floor, exists at site.

No fresh construction activity is observed.

VIOLATIONS:

Construction of G=05 upper floor building without approval from the Authority (SBCA). (Photographs annexed as "A").

2. **Plot No.198, Steet-35, Sector 'C', Manzoor Colony, Karachi.**

APPROVAL:

As informed by the Record Section of SBCA, no record of approval in respect of subject plot is found.

SITE POSITION:

The site inspection reveals that old occupied building comprising of G+04 upper floor, exists at site.

No fresh construction activity is observed.

VIOLATIONS:

Construction of G=04 upper floor building without approval from the Authority (SBCA). (Photographs annexed as "B").

3. **Plot No.392, Street-02, Sector 'C', Manzoor Colony, Karachi.**

APPROVAL:

As informed by the Record Section of SBCA, no record of approval in respect of subject plot is found.

SITE POSITION:

The after site inspection it is reported by the field staff that this plot is not traceable.

In compliance of the orders passed by this Hon'ble Court in the instant Petition, the eviction & demolition action against the illegal construction of buildings has been scheduled on 15.11.2023 and following effective measures / pre-requisites have been made:

ACTIONS TAKEN:

- i. Ejectment Notices U/S 7-A of SBCO 1979-82 (amended to date) have been issued on both the plots of subject matter of instant petition on 31.10.2023. (Annexure-C).
- ii. Letter to the Deputy Commissioner, District East, Karachi was written with the request to provide requisite support by the Assistant Commissioner concerned as well as security cover on scheduled date of action was sent on 07.11.2023. (Annexure 'D')
- iii. Letter to the SSP, District East, Karachi, with the request to provide proper security cover to maintain law & order situation during eviction and demolition action on scheduled date and time was also sent on 07.11.2023. (Annexure 'F').
- iv. Letters to all utility Agencies have been written with the request to disconnect the utility Services if provided and not to provide utility services to the said illegal buildings on the said plots in future. (Copies annexed as 'G').
- v. That the Sub-Registrar Jamshed Town has also been requested by this office for necessary action at his end. (Copy of said request is annexed as 'H')."

Comments have been filed by the Respondent No.8 and in which, while accepting that no approved plan has been obtained by the Respondent No.8 for the construction raised by the Respondent No. 8, the locus standi of the petitioner has been assailed on the ground that the Petitioner no longer lives in the area and hence the Petition is not maintainable. It was further contended that C.P. No.D-3845 of 2020 had been maintained by the sister of the Petitioner in respect of Plot No.279, Block-F, Manzoor Colony, Karachi, and which was disposed of on account of the pendency of Suit No.225 of 2020 that was pending before IXth Senior Civil Judge Karachi (East) on the ground that the Petitioner could not avail two separate remedies. The Respondent No. 8 further contended that another C.P. No.D-3751 of 2022 had been maintained by the petitioner in respect of another Plot No.313, Street-3, Manzoor Colony, Karachi, which is still pending before this Court. He finally contended that he has a registered Indenture of Sub-Lease dated 20.11.2022 in respect of a unit in the Said property and prays that in the circumstances as narrated above the Petition should be dismissed.

We have considered the report that has been submitted by the Sindh Building Control Authority and the contentions of the Respondent No. 8 and have perused the record.

The entire construction that has been raised on each of the Said Properties are prima facie illegal and on account of which the same is liable to be demolished. We are not impressed with the contention of the Respondent No.8 as in respect of the locus standi of the Petitioner to maintain this Petition as in the decision of the Honourable Supreme Court of Pakistan reported as **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**¹ it has been held that:

“ ... *“Reference may also be made to the treatise Judicial Review of Administrative Action (Fifth Edition) by de Smith, Woolf & Jowell relied upon by Mr. Naim-ur-Rehman, wherein the authors have summarised the concept of locus standi in the context of ‘sufficient interest’ as under:-*

“The general approach can be summarised as follows:-

- (1) ‘Sufficient interest’ has to receive a generous interpretation. It has to be treated as a broad and flexible test.*
- (2) Only issues as to standing where the answer is obvious should be resolved on the application for leave. In other cases lack of standing should not prevent leave being granted.*
- (3) Issues as to standing at the leave stage do not depend on the remedy which is then being claimed.*
- (4) If the applicant has a special expertise in the subject-matter of the application that will be a factor in establishing sufficient interest. This applies whether the applicant is an individual or some type of association. The fact that the applicant’s responsibility in relation to the subject of the application is recognised by statute is a strong indication of sufficient interest.*
- (5) A great variety of actors are capable of qualifying as sufficient interest. They are not confined to property or financial or other legal interests. They can include civic (or community) environmental and cultural interests the interests can be future or contingent.*
- (6) The gravity of the issue which is the subject of the application is a factor taken into account in determining the outcome of questions of standing. The more serious the issue at stake the less significance will be attached to arguments based on the applicant’s alleged lack of standing.*
- (7) In deciding what, if any, remedy to grant as a matter of discretion, the Court will take into account the extent of the applicant’s interest. At this stage different remedies may require a different involvement by the applicant.”*

The above quoted passage from the well-known treatise indicates that the concept of locus standi has been whittled down inasmuch as the expression “sufficient interest”, inter alia,

¹ 1999 SCMR 2883

includes civic or (community) environmental and cultural interest.”

Clearly the contention of the Respondent No. 8 that the Petitioner lacked the requisite locus standi as the Petitioner no longer resided in the area known as Manzoor Colony is not sustainable. The Honourable Supreme Court of Pakistan had clearly stated that *“The more serious the issue at stake the less significance will be attached to arguments based on the applicant’s alleged lack of standing.”* The issue of illegal construction and the collusion that exists as between carrying on the illegal construction with the officials of the SBCA is a serious issue that impacts every single citizen of Karachi especially residents of the area in which such construction is being raised and keeping in mind the illegal construction that has been raised inter alia by the Respondent No. 8 we are not minded to dismiss this petition on what in the circumstances is technical ground.

Regarding the Respondent No. 8 contention that on the basis of a registered indenture of Sub-Lease that was issue in his favour, the construction that has been made can be upheld again we find ourselves at a variance with the contention raised by the Petitioner. In the decision of this Court reported as **Muhammad Aslam Gatta And Another vs. Karachi Building Control Authority (K.M.C.), M.A. Jinnah Road, Karachi And 13 Others**,² a single judge of this Court while considering the rights of allottees in 15 separate suits, in the context of Section 23 of the Contract Act, 1872; wherein each of the Plaintiffs had acquired title to units in buildings which had been constructed in violation of the Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 and wherein each of the Plaintiffs claimed that they were bona fide purchasers who had no notice of the illegalities in the construction that they have purchased, held that:

“ ... 27. Section 23 of the Contract Act, 1872, makes all such agreements void, the object or consideration of which is unlawful. There are several instances incorporated in section 23 and under its illustrations which further envisage that where the agreement is forbidden by law or if it defeats the provisions of any law or is fraudulent or involves or implies injury to the person or property of another or if the Courts regard it as immoral or if it is opposed to public policy falls within the category of void agreements. It was strenuously argued on behalf of plaintiffs that nowhere in section 6, in particular, and nowhere in the provisions of Ordinance, 1979 the builders are forbidden to enter into any agreement with the purchaser prior to completion of construction and, therefore, the agreements between allottees and builders are not hit by the provisions of section 6(2) of the Ordinance 1979, which view is not correct. One of the condition provided in section 23 of the

² 1998 MLD 544

Contract Act is that if any contract is of such a nature that if permitted it would defeat the provisions of law then such agreement is unlawful and void. In the instant case, there is a specific prohibition imposed on the builders that no building as mentioned in subsection (1) to section 6 shall be occupied by any person or shall be allowed by the builders to be occupied by any person or unless on an application of the occupant or owner the Building Control Authority has issued occupancy certificate in a prescribed manner. Therefore, in order to obtain permission to occupy any building or its portion by any occupant or owner the first requirement is that such building should have been constructed strictly in accordance with the approved building plan as provided under section 6(1) of the Ordinance, 1979. The second condition of grant of permission to occupy a building is that an occupant or owner must have obtained occupancy certificate from the Building Control Authority. In the present case, the defendant/KBCA has successfully established that all the buildings were raised in clear violation of the approved building plan. The plaintiffs were not able to show that prior to occupying their respective flats/shops, either they or any of the builders obtained occupancy certificate from the K.B.C.A. In my view this provision was enacted in order to keep check on the illegal and unauthorised construction and to ensure that all the buildings are raised strictly in accordance with section 6(1) of the Ordinance, 1979. It may be due to this reason that under subsection (4) to section 6, the Building Control Authority was empowered to grant permission after it is satisfied that the building so constructed is consistent with the approved plan. It, therefore, settled that where a possession of any building or its portion is delivered by a builder to an occupant, even through a written agreement, but without first obtaining occupancy certificate from the K.B.C.A. for a building which admittedly was constructed in violation of the approved building plan, it will amount to an agreement to defeat the provisions of Sindh Building Control Ordinance, 1979.

... Resume of all the case-laws above clearly indicates that where an agreement is made, even in absence of any clear prohibition in the law to execute such agreement, but if permitted to apply it would amount to defeat any provision of law or it is against public policy then, it is clearly permissible to a Court not to enforce it. In the circumstances of all these suits, I am of the considered view that since the plaintiffs were not able, prima facie, to show that their possession were not intended to defeat the provision of Ordinance, 1979, therefore, the equity does not lie in their favour.”

This decision was approved by the Honourable Supreme Court of Pakistan in the decision reported as Muhammad Saleem and 5 Others vs. Administrator, Karachi Metropolitan Corporation, KBCA (KMC), Karachi and 2 Others³ wherein while dismissing an application for leave to appeal it was held that:

“ ... 9. Learned High Court relied upon the judgment in the case of Muhammad Aslam Gatta v. Karachi Building Control Authority (1998 MLD 544), (inadvertently typed as 1989 MLD 544) dealing

³ 2000 SCMR 1748

with the agreements opposed to public policy as contemplated by section 23 of the Contract Act. In the reported case, a learned Single Judge of the Sindh High Court observed that in the face of specific prohibition contained in subsection (2) of section 6 of the Ordinance that no building mentioned in subsection (1) shall be occupied by any person or shall be allowed by the builder to be occupied by any person unless on an application of the occupant or owner the KBCA has issued occupancy certificate, submission that agreements of purchase between the builders and the purchasers, prior to completion of the construction were not hit by the provisions of section 6(2) of the Ordinance was not correct. Learned counsel seriously attempted to assail this observation followed by learned Judges of the Division Bench of the High Court by stating that in the city of Karachi there are a large number of Projects in which the people are lured to obtain allotments of shops, godowns and apartments in the under-construction building complexes. Be that as it may, it may be pertinent to observe that if the object of an agreement is to defeat the object of law the agreement may be rendered illegal and void it being against public policy. In the peculiar facts of this case in which the petitioners did not produce their title documents it would be difficult to say that they had obtained any valid and legal right, interest and title to property or that the contract entered into by them were bona fide. At any rate, the petitioners having come to know about the notices issued to the builders and having agitated their rights before the High Court C for the last five years do not appear to have equities in their favour and cannot be permitted to say at this stage that they were condemned unheard or seriously prejudiced in their defence.

*10. Aforesaid view has been taken in a number of cases by the Sindh High Court which view was duly affirmed by this Court from time to time. Although in view of clear mandate of law contained in the statute itself it may not be necessary to refer many cases on the subject yet it may not be out of place to cite decided cases namely *Hawa Bai v. Haji Ahmed* (1987 CLC 558), *Qasimabad Enterprises v. Province of Sindh* (1997 CLC 1246), both by two different Single Judges of the Sindh High Court, *Shaukat Ali Qadri v. Karachi Building Control Authority* (1998 CLC 1387), a Division Bench case from the Sindh High Court, *Zubaida A. Sattar v. Karachi Building Control Authority* (1997 SCMR 243) and *Muhammad Khurshid Abbasi v. Administrator/Assistant Commissioner* (1999 SCMR 2224)."*

The decision of this Court, as approved by the Honourable Supreme Court of Pakistan, has been further reinforced by an amendment made by the insertion of Sub-Section (ii) of Section 18 G of the Sindh Building Control Ordinance, 1979 and which clarifies that:

“ ... 18-G. Provision of utility services.

No Authority shall –

(ii) register the sale deed, lease or sub-lease in respect of the newly constructed premises unless the approved completion plan with the deed is produced before it.”

The amendment clearly prohibits the registration of any “sale deed lease of sub-lease” without the issuance of a completion plan issued by the SBCA.

As is now well settled, an agreement of sale does not give a person any right, title or interest in an immovable property⁴. Further, in the case of a building constructed in violation of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979, a person cannot, on account of Section 18G of the Sindh Building Control Ordinance 1979, claim entitlement to have an instrument registered in their favour to convey a right, title or interest in a unit in building constructed on an immovable property in violation of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 without a completion plan having been issued by the SBCA. It follows, that a person who claims title to an immovable property that is in a building that has been constructed in violation of the provisions of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 cannot be said to have any right, title or interest therein; their entitlement being deemed on account of Section 23 of the Contract Act, 1872 to be void. Such a person cannot also claim any right to have registered, in their favour, an instrument to convey any such right, title or interest in such a property as the registration of such an instrument has been prohibited under Sub-Section (ii) of Section 18 G of the Sindh Building Control Ordinance, 1979 and therefore they have neither any right or title or interest in any unit constructed on a property in violation of the Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979.

We are therefore inclined to state that while the execution of a Sub-Lease may confer rights to the land, it cannot in any manner justify a construction on a property that has been made in violation of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979. The construction on each of the properties having been raised without an approved plan are each liable to be demolished. In the circumstances we issue directed to the concerned Director and Deputy Director of the SBCA to demolish each of the structures that have been constructed on each of the properties without an approved plan and to submit a report on the next date of hearing. The concerned Deputy Commissioner and SSP are directed to provide the SBCA with the requisite support to ensure that no law and order situation arises during the demolition process. All the utility agencies are directed to disconnect all utility services to each of the buildings. Office is directed to issue notice to the concerned Deputy Commissioner,

⁴ See *Muhammad Iqbal vs. Nasrullah* 2023 SCMR 273; *Rao Abdu Rehman (Deceased) vs. Muhamamd Afzal (Deceased)* 2023 SCMR 815; *Syed Imran Ahmed vs. Bilal* PLD 2009 SC 546; *Muhammad Yousaf vs. Munawar Hussain and others* 2000 SCMR 204

SSP, K-Electric, Sui Southern Gas Company Limited and Karachi Water and Sewage Corporation to ensure compliance.

Relist on 30 January 2024 on which date the concerned Director and Deputy Director are directed to be in appearance in person along with a report confirming compliance of the above order.

JUDGE

JUDGE

Nasir

