

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 1842 of 2023

Date	Order with Signature of Judge
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For hearing of CMA No.13844/2023 (Stay) :

27.09.2023 :

M/S Abid S. Zuberi, Ayan Mustafa Memon & Ali Abid Zuberi,
Advocates for the plaintiffs.

M/S Anwar Ali Shah and Dhani Bux Lashari, Advocates for SBCA
a/w Syed Asif Rizvi Director West / former Director South SBCA and
Jafar Imam Siddiqui Deputy Director East / former Deputy Director South SBCA.

Mr. Nadir Khan Burdi, Advocate for defendant No.2 / D.G. SBCA
a/w Muhammad Ishaque Khuhro Director General SBCA.

Mr. Hassan Akbar, Advocate General Sindh a/w M/S Rafiq Rajourvi, Addl. A.G.
Sindh, Sundeep Malani, Asst. A.G. Sindh, and Mr. Saifullah, Asst. A.G. Sindh.

Through this application, the plaintiffs have prayed that the sealing order dated 14.09.2023 issued by defendant No.1 / SBCA be suspended and the defendants be restrained from interfering in their peaceful possession of the suit property till the pendency of the Suit and from taking any coercive action in relation thereto. The impugned sealing order reads as under:

“The premises of subject plot has(!) been sealed as per the orders of Competent Authority under Section 7-A of Sindh Building Control Ordinance, 1979, (amended up to date) on account of construction against approved building plan.

If this seal is found tempered / broken by any person or persons he / she / they shall be prosecuted under Section 19 of SBCO-1979 (amended up to date) or any other penal action permissible under the law.

*Sd/-
Deputy Director District South SBCA”*

2. It is stated that the plaintiffs are carrying on business in the name and style of ‘Toyota Clifton Motors’ as the authorized dealer / franchisee of Toyota Indus Motors since several years at the suit property viz. showroom / office situated on the ground floor and workplace situated in the basement of the building constructed on Plot No. F-70, Block 4, KDA Scheme No.5, Clifton, Karachi. Pursuant to the impugned sealing order, the suit property was sealed by the defendants on 14.09.2023 at 07:30 p.m. Vide order dated 25.09.2023 passed in the instant Suit, the Deputy Director District South SBCA, who had issued the impugned sealing order, and the competent authority referred to therein were directed to appear before this Court in person on the next date.

Accordingly, the said Deputy Director Jaffer Imam Siddiqui and Syed Asif Rizvi Director West SBCA, claiming to be the said competent authority at the relevant time, appeared in person on the next date of hearing, when they conceded that no ground and/or violation in construction were disclosed in the impugned sealing order. It was stated by them that the violations were mentioned in the show cause notice issued by SBCA to the plaintiffs on 10.07.2023 under Section 7-A of the Sindh Building Control Ordinance, 1979, (**the Ordinance**), copy whereof has been filed by SBCA along with its counter affidavit.

3. It was stated by the above named Director SBCA / competent authority that the impugned sealing order was issued under the orders of the Director General SBCA who had personally visited the suit property and had given instructions to seal it. Following statement was submitted by him in writing on 26.09.2023 :

“ STATEMENT DATED 26.09.2023

It is respectfully submitted that in the matter of Plot No.F-70, Reveria Project situated at Clifton, Block-4, Karachi, I along with the Assistant Director was called in the C.M. House through D.G. Sindh Building Control Authority on 14.09.2023. In the C.M. Secretariat the Deputy Secretary informed the displeasure of the Worthy Caretaker Chief Minister Sindh regarding delay of action and warned if action is further delayed, A.D. and D.G. SBCA may be arrested for the same, although Deputy Secretary, CM Secretariat was informed that concerned A.D. and other SBCA officials are reluctant due to status quo order operative, but efforts in vein.

This petrified Worthy D.G. SBCA and instantly ordered town staff and all the demolition squads to initiate action today and he himself will monitor action at site. Accordingly, this whole scenario was brought on the note-sheet / file and the respective officers were communicated D.G. directive.

The building is in violation of the approved building plan, thereby, in the basement parking area was converted into workshops and ninth floor exclusively reserved for recreational area was converted into flats, hence the action was taken on 15.09.2023 in presence of the area police and all the concerned, this too was brought to the official file record.

Submitted for kind perusal.

*Karachi
Dated 26.09.2023*

*Sd/-
(SYED ASIF RIZVI)
DIRECTOR (WEST)
EX-DIRECTOR (SOUTH) S.B.C.A.”*

4. In addition to his above-quoted statement, the above named Director SBCA / competent authority has filed an affidavit today, the relevant portion (paragraphs 2 to 5) whereof reads as under :

- “2. *I say that in the matter of Plot No.F-70, Reveria Project situated at Clifton, Block-4, Karachi, I alongwith the Assistant Director was called in the C.M. House through D.G. Sindh Building Control Authority on 14.09.2023. In the C.M. Secretariat the Deputy Secretary informed the displeasure of the Worthy Caretaker Chief Minister Sindh regarding delay of action and warned if action is further delayed, A.D. and D.G. SBCA may be arrested for the same, although Deputy Secretary, CM Secretariat was informed that concerned A.D. and other SBCA officials are reluctant to initiate action due to status quo order operative, but efforts in vein.*
3. *I say that this petrified Worthy D.G. SBCA and instantly order town staff and all the demolition squads to initiate action today and he himself will monitor action at site. Accordingly, this whole scenario was brought on the note-sheet / file and the respective officers were communicated D.G. directive.*
4. *I say that the building is in violation of the approved building plan, thereby, in the basement parking area was converted into workshops and ninth floor exclusively reserved for recreational area was converted into flats, hence the action was taken on 14.09.2023 in presence of the area police and all the concerned, this too was brought to the official file record.*
5. *I say that on 10.07.2023, a notice under Section 7-A of SBCO, 1979, has already been issued and duly received. The residents of the building had also filed a complaint with SBCA on 29.08.2023, on which the Worthy the then Director General, SBCA was pleased to issue directive for taking action and report back in three days on 04.09.2023, so also the building had already been inspected by the Nazir of this Hon'ble Court on 12.04.2023 in which major violations were found and reported. Accordingly, the action was scheduled and taken on 14.09.2023, the authority of the SBCA acted strictly in accordance with law.*

That whatever stated hereinabove is true and correct to the best of my knowledge and belief.”

5. In view of the above statement dated 26.09.2023 submitted by the Director SBCA, notice was issued to Director General SBCA to appear before this Court today in person in order to explain his position. Director General SBCA Muhammad Ishaque Khuhro, present in Court, concedes that the direction for sealing the suit property was issued by him. He insists that the direction and the action taken in pursuance thereof were fully justified in view of serious violations in the construction on the subject land including violations on the ninth floor of the subject building. He has submitted an affidavit the relevant portion (paragraphs 2 to 5) whereof reads as under :

- “2. *I say that I am posted as D.G. SBCA on 05.09.2023. On 14.09.2023, during the discussion about the complaints of illegal constructions, the DS (Complaint) CM Secretariat pointed out the matter of Plot No.F-70, Reveria Project situated at Clifton, Block-4, Karachi and instructed that action in accordance with the law may be taken in case any violation has occurred in the construction of aforesaid project.*
3. *I say that I instructed the Director (South) to act in accordance with law and was apprised that regarding this project Nazir of this Hon'ble Court has also conducted an inspection in which violations were highlighted*

too, so also my predecessor in office had also issued directives for taking action on 04.09.2023.

4. *I say that the building is in violation of the approved building plan, thereby, in the basement parking area was converted into workshops and ninth floor exclusively reserved for recreational area was converted into flats, hence the action was taken on 14.09.2023 by the Director and Deputy Director in presence of the area police and all the concerned, this too was brought to the official file record.*
5. *I say that on 10.07.2023, a notice under Section 7-A of SBCO, 1979, was issued and duly received. The residents of the building had also filed a complaint with SBCA on 29.08.2023, on which my predecessor in office issued directive for taking action and report back in three days on 04.09.2023. Accordingly, the action was scheduled and taken on 14.09.2023, the authority of SBCA acted strictly in accordance with law.*

That whatever stated hereinabove is true and correct to the best of my knowledge and belief.”

6. The Director SBCA, who had issued and executed the impugned sealing order, has also submitted an affidavit, the contents whereof are similar to those of the affidavits filed by the Director General and Director SBCA. The Director General, Director and Deputy Director SBCA present in Court reiterate the contents of their statement and affidavits and further state that there are serious violations in the existing construction of the suit property and ninth floor of the subject building. It appears that it is not disputed that the entire area of the suit property is confined only to some portions of the basement and ground floor of the subject building. Therefore, their reference to alleged violations in other portions of the building is irrelevant and unjustified. They further state that the show cause notice under Section 7-A of the Ordinance was received by the plaintiffs on 11.07.2023, but they did not respond to the same. On the other hand, learned counsel for the plaintiff strongly asserts that the said notice was never received by the plaintiffs. He submits that had the notice been received by the plaintiffs, they would have immediately contested it with documentary evidence. He further submits that the allegations relating to alleged violations in the suit property are false and malafide as the plaintiffs have all requisite approvals granted by SBCA, therefore, the impugned action taken by the defendants is malafide and clearly discriminatory.

7. Perusal of the copy of the show cause notice filed by SBCA shows that it was received purportedly by one Nasrullah at the reception of the subject building, and its acknowledgement by the plaintiffs and/or their representative is not available thereon. Thus, it is not disputed that the notice was purportedly delivered by SBCA at the main reception of the subject building. As noted above, the suit property comprises of only some portions of the basement and ground floor of the subject building. Therefore, *prima facie*, it appears that the notice was not served at the plaintiffs' office / suit property situated on a portion of the ground floor of the subject building. In such circumstances, it

is clear that the notice was not duly served upon the plaintiffs in accordance with law, and as such no action in pursuance thereof could be taken by SBCA. Consequently, the impugned action of sealing the suit property by the defendants pursuant to the notice was illegal.

8. It is contended by the learned Advocate General Sindh that no specific direction to take action against the suit property was given at the Chief Minister House, and only general directions were given in relation to unauthorized and illegal construction in the city of Karachi as a Complaint Cell for this purpose has been established at the Chief Minister House which Cell is functioning since long. He submits that indeed the directions issued by the Complaint Cell are to be complied with by the relevant authorities strictly in accordance with law.

9. From the statement and affidavits submitted by the above named officers of SBCA and the submissions made by them, it is clear that the show cause notice purportedly issued under Section 7-A of the Ordinance was not duly served upon the plaintiffs in accordance with law ; despite this position, the impugned action of sealing the suit property was taken by SBCA without affording any opportunity of hearing to the plaintiffs ; the impugned action was taken in violation of law and the well-settled principles of natural justice ; the due process of law has not been followed by SBCA in this case ; the impugned sealing order did not disclose any of the alleged violations / grounds for sealing the suit property ; the impugned order of sealing was passed by the Deputy Director in an arbitrary and mechanical manner, without application of mind and under undue influence and pressure of the Director General and Director SBCA ; there was no application of mind also by the Director General and Director SBCA while directing the Deputy Director to issue and execute the impugned sealing order, and they were also under undue influence and pressure while issuing such direction ; and, SBCA and all its officers and personnel were duty-bound to act strictly within the powers vested in them by the Ordinance and to not take dictation from any person / authority / office not having jurisdiction in any of the matters falling under the Ordinance.

10. Being public functionaries, the above named officers of SBCA were bound to perform their functions and duties strictly in accordance with law and within the powers and authority vested in them by the Ordinance. The performance of their functions and duties should not only be done, but it should be seen to have been done. *Prima facie*, it appears that they have acted in an arbitrary and unjustified manner, contrary to law and have blatantly misused their position and power. Issue show cause notice to (i) Director General SBCA Muhammad Ishaque Khuhro, (ii) Director West / Ex-Director South SBCA Syed Asif Rizvi and (iii) Jafar Imam Siddiqui Deputy Director East SBCA, to

show cause within fifteen (15) days why disciplinary proceedings should not be ordered to be initiated against them.

11. For the foregoing reasons, it is hereby ordered as under :

- a. The suit property shall be de-sealed by the defendants during course of the day ;
- b. The period of seven (07) days mentioned in the impugned show cause notice dated 10.07.2023 under Section 7-A of the Ordinance shall be computed from today ;
- c. The plaintiffs will be at liberty to respond to the impugned show cause notice within the stipulated period, whereafter adequate opportunity of hearing shall be granted to them / their authorized representative by SBCA ;
- d. A speaking order with cogent reasons shall be passed by the competent authority of SBCA in relation to the impugned show cause notice, which order shall be served upon the plaintiffs in a proper manner in accordance with law ;
- e. In case of any compoundable violation in the suit property, the plaintiffs shall be allowed reasonable time in accordance with law to seek regularization / rectification of such violation ; and
- f. If the violation(s) is/are non-compoundable, SBCA will be at liberty to take action in respect of the suit property, however, strictly in accordance with law.

The application stands disposed of in the above terms with no order as to costs.

JUDGE