DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. *For orders on CMA No.19024/2024 (U/A).*
2. *For orders on CMA No.19025/2024 (Stay).*

08.01.2025

Mr. Haider Imam Rizvi, Advocate for the Plaintiffs.

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1.   Urgency granted.

2.   Learned Counsel for the Plaintiffs submits that the Plaintiffs are the lawful owners of the suit property and had submitted an application for submission of the proposed building plan on 10.07.2021 (available on page 337 of the suit file) along with challan in respect of the suit property with the Government Defendant Officials. He contended that this matter has been pending with them since 19.07.2021, and as the Plaintiffs received no response, they proceeded to raise construction on the suit property. Yet as per paragraphs 16 and 27 of the plaint, Counsel contended that the officials of Defendant No.1 along with Defendant Nos.4 to 6 have been visiting the suit property and threatened to demolish the construction raised by the Plaintiffs as well as threatened the Plaintiffs' labourers/contractors at the site of the suit property. According to the prayer clause, he seeks a declaration under Regulation 3-2-6-2 of the Karachi Building and Town Planning Regulations 2002 to enable him to continue to raise construction and directions (which are also articulated under CMA No.19025/2024 as an ad-interim measure) to restrain these Government officials in terms thereof.

During arguments, this Bench queried counsel how this lis may be heard as per the Roster assigned to it by this Constitutional Court (i.e. High Court of Sindh) based on the prayer clauses of plaint, which subject matter could be agitated after the 26th Amendment to the Constitution of the Islamic Republic of Pakistan, 1973 ("the 1973 Constitution") before the Roster of Constitutional Bench under Article 202A(3) of the 1973 Constitution.

Counsel has submitted that this Court has always exercised inherent jurisdiction under Section 9 of the CPC, and therefore, this plaint, as filed is maintainable. Further, this bench (as per the Roster assigned to it) can grant all the reliefs, which should not be denied as the subject matter raised by this Court is subjudice before this Court and the Supreme Court of Pakistan and the Plaintiffs should not be prejudiced. Additionally, he contended that even though the Plaintiffs have not impleaded any private persons as Defendants in the lis, the subject matter will require evidence. Hence, this lis is not amiable to Article 199 of the 1973 Constitution.

While the interpretation of this provision and the vires of the 26th Amendment to the 1973 Constitution are pending before this Court, a particular issue that would arise is whether, after the passing of the 26th Amendment to the Constitution of the Islamic Republic of Pakistan 1973 (the "1973 Constitution"), this bench, according to the Roster assigned to it, i.e. exercising original jurisdiction, can even entertain this lis, and if so, grant interim relief which is in the nature of the same relief which the 26th Amendment has specifically assigned to the roster of the Constitutional Bench of the High Court under Article 199(a)(i) and (c) and Article 202(A)(3) of the 1973 Constitution. In order words, whether the 26th Amendment has prima facie removed from the roster matters assigned by the Constitutional Court (of the High Court of Sindh) under Section 9 of the CPC, 1908, as such matters are to be dealt by the Constitutional Benches under Article 202(A)(3) alone, particularly, when the Plaintiff, as per the pleadings, in the present circumstances, has impleaded only Government Officials as Defendants and none else (no private defendants, either)? Plaintiff's Counsel to address the question raised by this bench on the next hearing date.

Notice to Defendants by all modes excluding publication and Advocate General's Office for 29.01.2025. Meanwhile, Defendants are restrained from taking any action against the Plaintiffs without due process or contrary to law, until the next hearing date.

JUDGE

NADEEM QURESHI P.A.