

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6390 of 2020

(Syeda Farhat v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:-16.01.2025

Mr. Muhammad Ayoub Chanhio advocate for the petitioner.

Mr. Ali Safdar Depar AAG.

Mr. Siraj Malkani advocate for SBCA

Peer Darwesh Khan attorney of respondent No.6

ORDER

Adnan-ul Karim Memon, J;

Petitioner seeks the following declarations

and orders:

- A) *Declare that the notice dated 30.12.2024 and 19.12.2024 issued by respondent No.4/SBCA for sealing the premises of petitioner without notice in as much during the pendency of suit and operation of the interim order, illegal, malafide, misuse of authority amounting to violation of fundamental right as also against principles of natural justice.*
- B) *To restrain the Sindh Building control authority/respondent No.4 directing them not to take any further action till the final disposal of Civil Revisions and 2nd appeal and others pending before this court based on said notices.*

2. We questioned the petitioners' counsel on the maintainability of this petition under Article 199 of the Constitution on the premise that this Article is for clear-cut cases of unlawful government action, not complex disputes requiring extensive fact-finding/evidence and in such eventuality, petitioners should pursue alternative remedies, as this court's jurisdiction addresses clear illegalities, not intricate matters, as prima facie the subject building has been declared dangerous by the Sindh Building Control Authority (SBCA) therefore this Court cannot intervene in such affairs of SBCA when the technical committee opined and recommended the building as dangerous.

3. Learned counsel for the petitioners has submitted that a notice dated 30.10.2024 and 19.12.2024 issued by respondent/SBCA for sealing the subject premises, without notice, in as much as during pendency of civil proceedings wherein interim order is operating, as such the petition is liable to be allowed. We do not agree with the contention of the learned counsel for the petitioners for the simple reason that once he initiated the civil proceedings up to the Revision Court, this court cannot circumvent the civil proceedings under the garb of issuing the writ of mandamus under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973.

4. Mr. Siraj Malkani advocate for SBCA for respondent No.4 has opposed the submissions of the petitioners and contended that Horizon Plaza" is deemed dangerous due to structural issues, including exposed steel and corrosion. Per learned counsel inspections confirmed the need for significant repairs, which were never carried out. However, SBCA has the authority under Section 14 of the SBCA Ordinance 1979 to order repairs, demolition, and evictions of dangerous buildings. Per counsel, eviction notices have been issued to all occupants. He requests the court to order immediate evacuation of the remaining occupants to ensure public safety. He prays for the dismissal of the petition.

We have heard the argument of the petitioners' counsel on the case's maintainability and reviewed the relevant documents and case law cited at the bar.

5. Petitioners, residents of a property in Karachi, claim to have purchased flats in the Horizon Plaza building from the respondent. This purchase followed the respondent's public invitation to buy flats, offices, and shops in the building. However, a separate lawsuit was filed against another party in 2005, which the petitioners became aware of in 2011. They then sought relief from the court. In the year 2005 Abdul Latif Khan said to be chairman of private respondent filed Suit No. 888 of 2005 against respondent No.5 resident of 116 Huma Height Garden Karachi for declaration injunction and cancelation; that the petitioners came to know about said suit, in the year 2011 hence they moved an application before this court under section 12(2) CPC; that the petitioners questioned the order of appellate court before this court in Civil Revision No. 144 and 145 2020 and Civil Revision 127/2021 and others which is pending and stay is operating; that thereafter respondent No.4 issued notice under section 14 of the SBCA 1979 dated 30.10.2024 by directing the residents to vacate the premises as the building has been declared dangerous and it was followed by another notice /letter dated 19.12.2024 for sealing the building.

6. This court concluded that the complex factual issues, including the subject issues as agitated by the petitioner to declare the subject notices as illegal, should be resolved in a civil/revisonal court, where the lis is stated to be pending. Therefore, this petition is found to be not maintainable and is dismissed along with the pending application(s), and the petitioners may seek remedies through the civil court process as discussed supra.

JUDGE

JUDGE