

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Suit No.666 of 2024

Date	Order with signature of Judge

For hearing of CMA No.9400/2024

07.09.2024

M/s. Mirza Moiz Baig, Advocate for the Plaintiff

Mr. Dhani Buksh Lashari, Advocate for SBCA along with Syed Fahim Murtaza, Secretary TCDB, SBCA

Mr. Irshad Ahmed Shaikh, AAG along with Mr. Ashraf Ali Mirani, Law Officer CTA&AD, Mr. Abdul Fatah Shaikh Secretary Technical Committee of the Sindh Cultural Heritage (Preservation) as well as Director General Antiques and Zahid Abbas Akhund, Director CTA&AD

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**MOHAMMAD ABDUR RAHMAN, J.** This order will decide CMA No. 9400 of 2024 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 read with Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking the following relief:

“ ... *The Plaintiff most respectfully prays that for the facts and grounds disclosed in the accompanying affidavit, this Court may be pleased to suspend the Impugned Notification dated June 03, 2021 and restrain Defendant No. 2's officer instrumentalities, and/or anyone acting on their behalf from interfering with the Plaintiff's right to restructure the Subject Property (a building known as Maryam Mansion, measuring 548 square yards, situated on land bearing Survey No. 17, Sheet No. G.K.1, Ghulam Hussain Kassim Quarters, Karachi).*

*Ad-interim Orders are also solicited.”*

2. The Plaintiffs are the owners of an immovable property bearing Survey No.17, Sheet No. GK-1, Ghulam Hussain Kassim Quarters, Karachi admeasuring 540 square yards (hereinafter referred to as the Said Property) and on which is constructed a building known as “Maryam Mansion”.
3. It seems that the Province of Sindh through the Secretary Culture, Tourism, Antiquities and Archives Department i.e. the Defendant No. 2 has issued a notification dated 3 June 2021 wherein at page 13, the Said Property has been “notified” under Sub-Section (1) of Section 6 of the Sindh

Cultural Heritage Preservation Act, 1994 (hereinafter referred to as the “Act, 1994”) as a “Protected Heritage”.

4. Concurrent with such an exercise the Sindh Building Control Authority (hereinafter referred to as the “SBCA”) exercising its powers under Section 14 of the Sindh Building Control Ordinance, 1979 (hereinafter referred to as the “SBCO, 1979”) has on or around 27 July 2023 through its “Technical Committee for Dangerous Buildings (hereinafter referred to as the “TCDB, SBCA”) declared the building as a Dangerous Building and whereafter the SBCA in terms of their powers under Section 14 of the SBCO, 1979 have ordered the occupants of the Said Property to vacate the units of the building that is in their possession so that it can be demolished.

5. The direction of the SBCA moving towards demolishing the structure on the Said Property when being implemented by the Plaintiffs is being restrained by the Defendant No. 2 and who have issued a Show Cause Notice dated 8 June 2024 under Sub-Section (1) of Section 10 of the Act, 1994, restraining the demolition of the structure constructed on the Said Property and which seems to be premised on the assumption that the SBCA does not have the requisite jurisdiction to authorize the demolition of a structure declared as “protected heritage” under Sub-Section (1) of Section 6 of Act, 1994 and which jurisdiction can only be exercised by the Defendant No. 2 under the Act, 1994. The Plaintiffs therefore *inter alia* maintain this *lis* before this court challenging the jurisdiction of the Defendant No. 2 to interfere within the order issued by the SBCA and have maintained the application under order seeking injunctive relief as against the Defendant No. 2 from interfering in the demolition of the structure constructed on the Said Property.

6. Mr. Mirza Moez Baig entered appearance on behalf of the Plaintiffs and referred to the provisions of Sections 6, 7, 8, 10 and 18 of the Act, 1994 and which read as hereinunder:

“ ... 6. *Declaration of protected heritage.*

(1) Government may, by notification in the official Gazette on the recommendation of committee or otherwise declare any premises of historical, cultural or architectural value to be protected heritage within the meaning of this Act.

(2) A copy of every notification published under subsection (1) shall be published in newspapers and fixed up in a conspicuous place on or near such premises/object together with an intimation that any objections to the issue of the notification received by Government within one month from the date of the Notification shall be taken into consideration.

(3) On the expiry of the said period of one month, Government after considering the objections, if any, may confirm or withdraw the notification.

(4) A notification under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the premises or objects to which it relates is a protected heritage within the meaning of this Act.

## **7. Acquisition of right in or guardianship of a protected heritage of the Government.**

(1) The Committee with the sanction of the Government, may purchase or assume custodianship of any protected heritage.

(2) The Committee, may accept the gift or bequest of any protected heritage.

(3) The owner of any protected heritage may, by written instrument, appoint the Committee as the guardian of the protected heritage, and the Committee may with the sanction of Government, accept such guardianship.

(4) When the committee has accepted the guardianship of protected heritage under subsection (3), the owner shall except as expressly provided in this Act, have the same status, right, title and interest in the protected heritage or object as if the Committee had not been appointed guardian thereof.

(5) When the Committee has accepted the guardianship of a protected heritage under subsection (3), the provisions of this Act relating to agreement executed under section 8 shall apply to the written instrument executed under the said subsection.

## **8. Preservation of protected heritage.**

(1) The committee may, with the previous sanction of Government propose to the owner to enter into an agreement with Government for the preservation of any protected heritage.

(2) An agreement under this section may provide for the following matters or for such of them as is may be found expedient to include in the agreement.

a) The maintenance and custody of the protected heritage and the duties of any person who may be employed to watch it,

b) The restriction of the owner's right to destroy, remove, alter or deface the protected heritage;

c) The facilities of access to the public or to any portion of the public and to persons deputed by the Committee to inspect or maintain the protected heritage.

d) The notice to be given to Government in case the land on which the protected heritage is situated is offered for sale by the owner, and the right to reserve by Government to purchase such heritage, or any specified portion of such heritage, at its market value;

e) The payment of any expenses incurred by the owner of Government in connection with the preservation of the protected heritage; and

f) Any matter connected with the preservation of the protected heritage which is a subject of agreement between the owner and Government.

(3) The terms of nay agreement under this section may be altered from time to time with sanction of Government.

(4) Either party may terminate an agreement under this section on giving three months' notice in writing to the other party ...

10.

*(1) If it is apprehended that any person intends to destroy, remove, alter, deface or imperil the protected heritage or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 8, the Committee may an order prohibiting any such contravention.*

*(2) If an owner or other who is bound by an agreement for the preservation or maintenance of a protected heritage under section 8 refuses to do any act which is in the opinion of the Committee is necessary to such preservation for maintenance, or neglects to do any such act within such reasonable time as may be fixed by the committee may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.*

*(3) A person aggrieved by an order under this section may appeal to Government which may cancel or modify it, and its decision shall be final. ...*

18. *Penalty.*

*Where any person including the owner destroys, removes, injures, alters, defaces a protected heritage maintained by Government under this Act or in respect of which an agreement has been executed under section 8, shall be punishable with fine which may extend to on lakh rupees, or with imprisonment which may extend to three years, or with both."*

7. He contended that on a literal reading of these provisions there was no absolute right that had been conferred by the Act, 1994 on the Defendant No.2 to restrain the demolition of a structure that may have been declared as a "protected heritage" under Sub-Section (1) of Section 6 of the Act, 1994. He further stated that as per the Act, 1994 the Defendant No. 2, at times operating through an Advisory Committee, constituted under Section 3 of the Act, 1994, (hereinafter referred to as the "Committee") had four powers that vested in it to regulate a structure declared as "protected heritage" as stated hereinunder:

- (i) The first was under Sub-Section (1) of Section 7 of the Act, 1994 whereby the Committee with the concurrence of the Government of Sindh<sup>1</sup> could either acquire or be declared as the custodian of a structure declared as "Protected Heritage".
- (ii) The second was under Sub-Section (2) of Section 7 of the Act, 1994 where the Committee would accept a "gift or bequest" of any structure that had been declared as a "protected heritage" and which would then vest in it and which they would then be obligated to maintain;

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<sup>1</sup> Mustafa Impex vs. Federation of Pakistan

- (iii) The third was under Sub-Section (3) of Section 7 of the Act, 1994 and whereby any owner of a structure declared as a “protected heritage” could by written instrument, appoint the Committee as the “guardian” of the protected heritage, and by the acceptance of such a responsibility the Committee would exercise, with the sanction of Government, all the powers that were contained in Section 8 of the Act, 1994 to preserve the Said Property and which inter alia prescribes that the Committee would pursuant to an agreement maintain the Said Property; and
- (iv) Fourthly, independent of Section 7, the Committee can under Section 8 of the Act, 1994 enter into an agreement with the owner of the structure and whereby the structure declared as heritage would be preserved for the term of the Agreement but which agreement, as clarified in Sub-Section (4) of Section 8, would be terminable on three months written notice.

8. He contended that only where it comes to the notice of the Committee that a “protected heritage” **being subject to an agreement under Section 8 of the Act, 1994 or “guardianship” under the provisions of Section 7 of the Act, 1994** is threatened to be destroyed, removed, altered, defaced or imperiled then under Sub-Section (1) of Section 10 of the Act, 1994 the Committee has the power to pass an order restraining the breach of the agreement. He further contended that only on a violation of Sub-Section (1) of Section 10, the Act, 1994 could the penal sections available under section 18 of the 1994 Act be invoked by the Defendant No.2 and not otherwise.

9. He concluded his contentions in respect of the provisions of the Act, 1994 by clarifying that a simpliciter declaration of a structure as being a “protected heritage” under the provisions of Sub-Section (1) of Section 6 of the Act, 1994 would not restrain an owner of such a structure from demolishing it and which could only be restrained where the property was in custodianship or guardianship of the Committee or where the Structure was acquired by the Committee. He further contended that as neither the Said Property nor the structure thereon had been subjected to an agreement under Section 8 of the Act, 1994 or to guardianship under Section 7 of the Act, 1994 the Show Cause Notice dated 5 June 2024 issued by the Defendant No. 2 was clearly in excess of the jurisdiction of the Defendant No. 2 and therefore illegal.

10. Regarding the jurisdiction of the SBCO under the provisions of the SBCO, 1979 he referred to Section 2 and Section 14 of the SBCO 1979 and which reads as hereinafter:

“ ... 2:- Non-application of a law.

*Nothing contained in any other law for the time being in force shall apply to any matter regulated by this Ordinance.*

4:- Dangerous buildings.

*(1) If it comes to the notice of the authority that a building is likely to collapse, the authority may, after such enquiry as it deems fit order for carrying out the specific repairs or demolition of the whole or part of the building.*

*(2) Where the specific repairs are to be carried out, the Authority may, by notice, require the owner of building or in the event of his failure the occupier thereof to carry out such repairs within such period as may be specified in the notice and if the repairs are not carried out within the specified period, the Authority may, notwithstanding any other law for the time being in force proceed to have the building demolished and the cost of demolition shall be recovered from the owner or arrears of land revenue.*

*(3) Where the whole or a part of the building is to be demolished, the Authority may, by notice, require the occupier or occupiers thereof 1. to vacate the building within the period specified in the notice and if the building has not been vacated within such period, the Authority may, notwithstanding any other law for the time being in force order that occupier or occupiers of the building be ejected, if necessary, by force 2.*

*Provided that no action shall be taken under this section unless the Person who is likely to be affected thereby is given an opportunity of being heard.”*

11. He submitted that under section 14 of the Sindh Building Control Ordinance, 1979 the sole power to regulate a “dangerous building” vested with the SBCA. He contended that as it was conceivable that there may be an overlap between a structure declared as a “protected heritage” under the Act, 1994 and a “dangerous building” on account of its dilapidated condition, the provisions of Chapter 15 of the Karachi Building and Town Planning Regulations 2002 (hereinafter referred to as the “KB&TPR, 2002”) had catered for this eventuality but which Regulations were specifically struck down by a Division Bench of this Court in the decision reported as **Karachi Property Investment Company Pvt. Limited vs. Government of Sindh**<sup>2</sup> and wherein it was held as hereinafter:

“ ... 21. As discussed above, the purpose and object of enacting the Heritage Act, as specified in its preamble, is to preserve and protect ancient places and objects of architectural, historical, archaeological, artistic, ethnological, anthropological and national interest in the Province of Sindh, which purpose and object have no nexus whatsoever with the above mentioned purpose and object of SBCO. The Heritage Act and SBCO were brought in the field for separate, distinct, specific and special purposes, and the functions, powers and jurisdiction of the Government under the Heritage Act and of SBCA under SBCO are also separate,

<sup>2</sup> PLD 2017 Sindh 690

*distinct, independent and exclusive in respect of respective subject matters falling separately under both the said laws. In our humble opinion, both the laws are special laws in their own ways in relation to and to the extent of the specific aim, object and purpose clearly defined therein. The Heritage Act is a special law for preservation and protection of ancient places and objects in the Province of Sindh declared as protected heritage under the said Act ; whereas, SBCO is a special law for regulating the planning, quality of construction, building control, prices charged, publicity made for disposal of buildings and plots by builders and societies, and demolition of dangerous and dilapidated buildings in the Province of Sindh. It is important to note that preservation or protection of heritage buildings/protected heritage mentioned in the impugned Chapter 15 of the Regulations does not fall within the scope of SBCO, and such power, authority and jurisdiction vest only with the Committee and Government under Sections 8, 10, 12 and 18 of the Heritage Act, which have the overriding effect by virtue of Section 19 of the Heritage Act. As noted above, the Heritage Act and SBCO, being special laws and independent of each other, have specific provisions for making rules and regulations only for carrying out their respective purposes. Therefore, rules or regulations made under either of the said laws cannot be applied to the subject matter of the other law.*

*22. In view of the above, we are of the considered view that the impugned Chapter 15 of the Regulations, being ultra vires the SBCO and in clear conflict with the Heritage Act, cannot be applied to protected heritage declared under the Heritage Act, and this view expressed by us is fortified by Khawaja Ahmed Hassan (supra). In the above-cited case, it was held inter alia by the Hon'ble Supreme Court that if the rules framed under the statutes or bye-laws framed under the rules are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions, then these provisions must be regarded as ultra vires of the statute and cannot be given effect to a rule-making body cannot frame rules in conflict with or derogating from the substantive provisions of the law or statute under which the rules are framed ; rules cannot go beyond the scope of the Act nor can they, by themselves, enlarge the scope of statutory provisions or militate against the provision under which they were made; in each case it is the duty of the Courts to be satisfied that the rules and regulations are made by the authority mentioned in the Act and they are within the scope of the power delegated therein; rules made under any Act could never be intended to override the specific provisions of the Act itself ; the purpose of the rules is to provide for procedural matter or matters which are subsidiary to the provisions of the Act and, the general power to make rules cannot be used to widen the purposes of the Act or to add new and different means for carrying out or to depart from and vary its terms."*

12. Having clarified that Chapter 15 of the KB&TPR, 2002 had been struck down, he referred us to Section 2 of the SBCO and the interpretation cast on that section in an unreported decision bearing CP No. D-6115 of 2023 entitled **Saad Aqil vs. Province of Sindh & Others** in which a Division Bench of this Court held as under:

" ... We have already clarified that one of the purposes of enacting the SBCO, 1979, as indicated in the Preamble, was inter alia to regulate the demolition of "dilapidated" and "dangerous" buildings within the Province of Sindh. Section 2 of the SBCO, 1979, also contains a clause which, to our mind, is not a non obstante clause and which reads as under:

**2. Non-application of a law**

*Nothing contained in any other law for the time being in force shall apply to any matter regulated by this Ordinance."*

*On a literal reading of this provision, we are clear that the intention of this section is not to override but rather to exclude the application of any law to any matter that is regulated by the SBCO, 1979.*

24. From a point of interpreting these two provisions, it is interesting to note that the heading of Section 3 of the SRPO, 1979 is entitled as "applicability" while the heading of Section 2 of the SBCO, 1979 is identified by the negative statement of "non-applicability." To our mind, by excluding the application of "any other law for the time being in force" to any matter "regulated" by the SBCO, 1979 by declaring that "Nothing contained" therein would apply to "any matter" regulated by the SBCO, 1979 we would consider that that such a clause would, whether or not there is any inconsistency between those two statutes, override that statute to the extent of the matters regulated by the SBCO 1979 and which would include, but not be limited to, negating the impact of a Non-Obstante Clause contained in any other statute such as the one that exists in Sub-Section (1) of Section 3 of the SRPO, 1979."

13. He clarified that as a Division Bench of this Court had opined that the provisions of the SBCA, to the extent of the jurisdiction that it exercised under the SBCO 1979 would override the provisions of any other law, he contended that the SBCA would therefore be the sole and absolute arbiter of law and fact in respect of an adjudication to be made as to the status of a structure being dangerous, irrelevant of the structure having been declared a Protected Heritage, and which would be regulated by the SBCA in terms of Section 14 of the SBCO, 1979 read with the Regulations prescribed in Chapter 7 of the KB &TPR, 2002.

14. He further contended that the SBCA having passed an order on 21 September 2023 as to the status of the structure on the Said Property being dangerous, the Defendant No. 2 had no jurisdiction to interfere with the demolition of the structure on the Said Property. He submitted that a prima facie case having been made out, the balance of convenience vested in the Plaintiff as if portions of the structure fell on passersby, in addition to the possible loss of life and injury that may be caused, there would be criminal cases registered as against the Plaintiff, through no fault of their own, and which may result in irreparable loss of life let alone the liberty of the Plaintiff.

15. Mr. Abdul Fatah Shaikh, Director General Sindh Cultural Heritage (Preservation), Tourism and Antiques appeared along with Mr. Ashraf Ali Mirani, Law Officer of the Defendant No.2 and addressed the Court. It was contended that it was the jurisdiction of the Defendant No. 2 to regulate "protected heritage" under the provisions of the Act, 1994. He contended that while rules were notified under section 20 of the Act, 1994 Act and which were entitled the Sindh Cultural Heritage Property (Identification, Enlistment and Protection) 2017 (hereinafter referred to as the "Rules, 2017") no criteria had been detailed in the Rules, 2017 for determining as to whether a structure, that had been declared as a "protected heritage" under Sub-Section (1) of Section 6 of the Act, 1994 was to be considered



a “dangerous building” to allow for it to be demolished and instead relied upon Rule 8 and Rule 9 of the Rules, 2017 and which read as hereinunder:

- “ ... 8.(1) No person shall alter the protected heritage property without the prior approval of Advisory Committee having known that such property has been enlisted or notified as protected heritage or has been recommended for the enlistment, or the objections of its enlistment are under consideration.
- (2) An application for permission to alter the listed heritage properties shall be made in writing to the Department, who shall refer the application to the Technical Committee for its recommendation.
- (3) The Technical Committee shall process the matter under to these rules and shall submit recommendation to the Advisory Committee for consideration which may grant the permission either with or without conditions or may refuse it.
- (4) The Department shall advise the applicant of the final determination made by the Advisory Committee.
9. (1) If the property has been destroyed or damaged by any cause, decay or accident or the property has lost its heritage value over the time, the Advisory Committee may, on an application of the owner or on its own motion, recommend to Government that the heritage property which has lost its heritage value may be removed from the list of protected heritage.
- (2) Where Government delists a property, the Department shall cause notice of the delisting to be sent to the owner of the property and a copy thereof to be deposited in the Department, and placed in the Central Record Room, the Record Room of the relevant District, or in the registrar's office for the registration district in which the property is situated.
- (3) The Department may cause a sign, plaque or other marker to be placed on protected heritage property indicating the protected status of the property, or may allow the owner to display such status in a specified manner.”

16. On this basis it was contended that when a structure is declared as a “Protected Heritage” then the owner of such structure on account of Sub-Rule (1) of Rule 8 of the Rules, 2017 are prevented from “altering” the structure so declared. In the event that the owner of a structure that has been declared as a “protected heritage alters the structure without the approval of the Advisory Committee then the penal provisions of Section 18 of the Act, 1994 can be invoked as against that person.

17. As per Rule 19 of the Rules, 2017 it was stated that if the owner of a structure that has been declared as a “Protected Heritage” under Sub-Section (1) of Section 6 of the Act, 1994 considered that the property had either been destroyed or damaged by any “cause, decay or accident” then an application could be made for its removal from the list of protected heritage and which would thereafter be considered for delisting. He contended that applications are received and are from time to time decided. On a question put by the Court as to the procedure and criteria to be

followed in respect of such delisting, he stated that these decisions were subjectively made by the Committee and submitted a proposal for a procedure that they would follow in deciding such applications as hereinunder:

“ ... 3. *Dangerous Building*

*3-(A) The structure which is considered in the high stage of vulnerability:*

*i. Where all options of its salvage are exhausted.*

*ii. The intervention cannot possibly revive the substantial part of structure, on which the basic/main structure depends.*

*iii. The revival of the elements, which render its characteristics of heritage are not possible as no evidence of these exist.*

*iv. The partial intervention may be made instantly, so to avert any untoward situation, or loss of life, or loss to the substantial part of the property.*

*v. Dismantling the part which is in danger of collapse, without hurting the structure's other salvageable parts.*

*i. The demolition may be allowed, in case of highly dilapidated structure, which is beyond repair as reported by Structural Engineer Registered as Proof Engineer of Category 'A' by SBCA, the same elevation of the façade may be made in new construction with the help of photographs and material available at the site after approval of the Technical and Advisory Committee for Sindh Cultural Heritage.*

*3-(B) The Structure where one or more parts have collapsed, or is feared to collapse, also one or more parts are stable and are standing.*

*ii. The structure where the informed professional intervention can revive the elements, which had caused the property to be enlisted, partial demolition may be agreed to urgently by Technical Committee, where the collapse of such part is eminent, to avert loss of life or property, and the said work may be done by Proof Structural Engineer of A-Category.*

*4-i. On receipt of the recommendations / report of the TCDB (SBCA) or through some other source, the matter shall be referred immediately to the sub-committee for Dangerous Buildings.*

*iii. The urgency application / proposal shall be taken up, by the Technical Committee for consideration, as soon as possible (not exceeding 10 working days). Decision regarding urgent application shall not exceed 89 working days, as the case may be, whereas the normal cases shall stand attended within 179 working days.*

*iv. The decision to demolish an enlisted heritage structure shall be taken on perusal of report submitted by Structural Engineer Registered as Proof Engineer of Category 'A' by SBCA shall be examined and considered by the sub-committee on Dangerous Buildings who shall submit its recommendations to the Technical Committee for Sindh Cultural Heritage, and decision shall be made the Advisory Committee/ Government.”*

18. Mr. Dhani Buksh Lashari entered appearance on behalf of the SBCA and contended that as per an unreported decision of a Division Bench of this Court bearing CP No. D- 6115 of 2023 entitled **Saad Aqil vs. Province of Sindh & others** the provisions of Section 2 of the SBCO, 1979 would override all other statutes in respect of the right to regulate dangerous building, irrelevant as to whether the structure being demolished was or was not a “protected heritage”. He also relied upon the decision of a Division Bench of this Court reported as **Karachi Property Investment Company Pvt. Limited vs. Government of Sindh**<sup>3</sup> and stated that the Division Bench of this Court had come to the opinion that the provisions of Chapter 15 of the KBTPR, 2002 were outside the domain of SBCA and declared the same ultra vires. That decision was appealed by the Province of Sindh before the Supreme Court of Pakistan in CP No. 578-K of 2017 entitled **Government of Sindh through Secretary Culture Department vs. Karachi Property Investment Company (Pvt.) Ltd.** and which Civil Petition was dismissed as not pressed by the Province of Sindh on 6 August 2018.

19. He clarified that while Regulation 15-3.1 of the KB&TPR, 2002 had restricted the demolition of structure that had been declared as “protected Heritage”, that Regulation having been struck down, there was no other prohibition in either the SBCO, 1979 or for that matter the provisions of the KB&TPR, 2002 which prevented them from demolishing a heritage structure where it fell into the category of a “dangerous building”. He further contended that so as to bring the decision making process of the SBCA and the Defendant No. 2 in unison, a representative of the Defendant No. 2 has been nominated onto the committee of the Technical Committee on Dangerous Buildings and on account of which the concerns of the Defendant No. 2 will of course be considered at the time of making of such a decision. However, he concluded by saying, that the SBCA and not the Defendant No. 2 nor the Committee would be the sole arbitrator of fact and law as to the decision as to whether any structure did or did not come with the classification of “Dangerous Building” under Section 14 of the SBCO so as to be demolished.

20. In respect of the structure that existed on the Said Property, he clarified that the Technical Committee on Dangerous Buildings had specifically deliberated as to the structure that existed thereon **and with the approval of the representative of the Defendant No. 2** had come to the

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<sup>3</sup> PLD 2017 Sindh 690

conclusion that the structure was indeed dangerous and had ordered for its demolition.

21. I have heard Mirza Moeez Baig, Mr. Dhani Buksh Lashari, Mr. Ashraf Ali Mirani and have perused the record.

22. The issue raised in this petition is an important issue relating to preservation of the heritage in Province of Sindh. The Act, 1994 Act in its preamble clarifies the role of the Defendant No. 2 and states that :

“ ... *Whereas it is expedient to preserve and protect ancient places and objects of architectural, historical, archaeological, artistic, enthonological, anthropological and national interest in the Province of Sindh.*”

23. By virtue of Section 3 of the Act, 1994 the Committee has been constituted and which exercises its jurisdiction under various provisions of that statute. As clarified by Mr. Mirza Moez Baig, the starting point seems to be the Defendant No. 2 notifying a structure as being a “Protected Heritage” under Sub-Section (1) of Section 6 of the Act, 1994. However, it seems that the simpliciter declaration of a structure as a “Protected Heritage” would not automatically restrain a person from demolishing such a structure as nowhere in that section has such a restriction been imposed. The only restriction that exists in the Act, 1994 seems to be in Sub-Section (1) of Section 10 and which can only be invoked where an owner of a structure that has been declared as a “Protected Heritage” enters into an Agreement under Section 8 of the Act, 1994 to preserve that structure and **whereafter** in violation of that agreement if an intention is manifested that a person intends to either “*destroy, remove, alter, deface or imperil the protected heritage or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 8*” then **in the circumstances indicated** the Committee may pass an order restraining such a structure from being demolished. Where however no agreement has been entered into under Section 8 of the Act, 1994 neither the Defendant No. 2 nor the Committee has any power under that statute to restrain the demolition of the structure and the only power that the Committee could exercise would be to acquire the structure under Section 12 of the Act, 1994. Needless to say it is only where there is a breach of an order that is passed under Sub-Section (1) of Section 10, of the Act, 1994 that action can be taken Sub-Section (2) of Section 10 of the Act, 1994 or under Section 18 of the Act, 1994.

24. That being the case, the question that comes before this Court is how does the Defendant No. 2 then restrain the demolition of a structure

declared as a “protected heritage”. The answer to that question. it seems to me, comes from Sub-Rule (1) of Rule 8 of the Rules, 2017 and which restricts the alteration of structure declared as a “protected heritage” without the permission of the Committee. It would seem that the powers therefore are being exercised under the 2017, Rules, without that power having been conferred on the Defendant No. 2 under the SBCO, 1979 and which would prima facie give the impression that Sub-Rule (1) of Rule 8 of the Rules, 2017 was ultra vires the SBCO, 1979.

25. While there therefore seems to be no provision of the Act, 1994 that prevents the demolition of a structure on it’s simpliciter being declared as a “protected heritage” under Sub-Section (1) of Section 6 of the Act, 1994. While reliance was placed by the Defendant No. 2 on the provisions of Sub-Rule (1) of Rule 8 of the Rules, 2107 it would seem that as such a power was not conferred on either the Defendant No. 2 or the Committee under the Act, 1994, that rule would therefore prima facie be beyond the power conferred on the Defendant No 2 and the Committee under that statute. It would therefore seem that even if such a power vested with the Defendant No. 2, on account of Section 2 of the SBCO, 1979, **in respect of dangerous buildings**, the provisions of that statute would, as correctly contended by Mr. Mirza Moez Baig override the provisions of the Act, 1994 as has been held by me in the unreported decision bearing CP No. D- 6115 of 2023 entitled **Saad Aqil vs. Province of Sindh & others.** the sole jurisdiction therefore to regulate the repair and demolition of structure that would come within the definition of a “dangerous building” would therefore vest in the SBCA.

26. The power having been determined, we have considered the criteria by which a building is to determine as being “dangerous” as indicated in Regulation 7-1 of the KB&TPR, 2002 and which are divided into two different categories as hereinunder:

“ ... 7-1.1. Any Building or structure whose strength, stability, serviceability, robustness and/or durability has been impaired due to any reason such as improper structural design and detailing, faulty and/or poor construction, decay, dilapidation, obsolescence, natural disasters or leading to abandonment due to all these reasons to a level, where it cannot be restored to its original status, **shall classify as Dangerous Building Category-1, and shall liable to be demolished.**

7-1.2. Any building or structure or part thereof whose strength, stability, robustness, serviceability and/or durability has been impaired due to all such reasons as cited in 7.1.1 to a level, where it could by way of strengthening, re-strengthening, upraised and restoration be brought partially or wholly near to its original status, **shall be classified as Dangerous Building Category-2, and shall be governed by the Regulation No.7-4 set forth in these regulations**

27. As is apparent there are two classifications of a dangerous building. The first is Category-1 which cannot be repaired and which is therefore liable to be demolished. The second, Category-II are those structures that are capable of being repaired and which repair would be regulated by Regulation 7-4.1 of the KB&TPR, 2002.

28. Under Regulation 7-2.1 of the KB&TPR, 2002, an obligation is conferred on the Controller of Buildings of a concerned circle of the SBCA to examine or cause to examine every building or structure in his jurisdiction and refer any building or structure that he identifies as a dangerous building to the Technical Committee on Dangerous Buildings and on which falls the sole authority to determine whether a structure is or is not a dangerous building. The constitution of the Technical Committee on Dangerous Buildings is prescribed in that Regulation and which is as hereinunder:

“ ... 7-2.1.1. A nominee of Pakistan Engineering Council who has at least 15 years of practical experience in the field of Structural Engineering.

7-2.1.2. A nominee of Pakistan Council of Architects & Town Planners, who has at least 15 years of practical experience in the professional field.

7-2.1.3. A nominee of K.M.C. not less than the rank of Chief Engineer with experience in the relevant field.

7-2.1.4. A nominee of KDA not less than the rank of Superintending Engineer with experience in the relevant field.

7-2.1.5. A nominee of Department of Heritage

7-2.1.6. COB (Dangerous Buildings), Member/Secretary of the Committee.

7-2.1.7. In addition to the above, the committee (TCDB) may co-opt experts for specific purposes as and when required. The Committee shall operate under the rules of business, as framed and approved by the Committee in its first meeting.”

29. The Technical Committee on Dangerous Buildings once constituted exercises extensive powers under the provisions of Chapter 7 of the KB&TPR, 2002 to regulate all aspects of dangerous buildings.

30. A reading of the law can only lead to the conclusion that while it is the jurisdiction of the Defendant No. 2 and the Committee to preserve heritage as mandated under the Act, 1994, that duty can only be exercised in the manner specified under Section 7 and Section 8 of the Act, 1994 and which would, on account of Section 2 of the SBCO, 1979 is in respect of protected heritage which can also be clarified as a “dangerous building” be overridden by the provisions of Section 14 of the SBCO, 1979. However, so as to ensure that the Technical Committee on Dangerous Buildings does take into account the status of the structure as a “Protected Heritage” an

officer of the Defendant No. 2 has been co-opted on to the Technical Committee on Dangerous Buildings and wherein such concerns of the Defendant No.2 and the Committee can be addressed. I am therefore clear that prima facie the right to regulate dangerous building vests solely within the jurisdiction of SBCO, 1979 and the issue of whether or not a “protected heritage” is a “dangerous building” does not need to be referred to the Defendant No. 2 and whose responsibilities and obligations under the Act, 1994 are secured by their nomination on to the “Technical Committee for Dangerous Buildings” and where it can address any concerns at a meeting of that Committee.

31. In the circumstances as clarified hereinabove it would seem that prima facie an order has been passed by the SBCA’s Technical Committee for Dangerous Buildings on 26 July 2023 **and which had been acceded to by the representative of the Defendant No. 2 who has also confirmed that the structure that exists on the building is dangerous and hence liable to be demolished.** In the circumstances any interference including, but not limited to, the issuance of the notice dated 8 June 2024 by the Defendant No.2 purporting to exercise powers under Sub-Section (1) of Section 10 of the Act, 1994 restraining the demolition without first obtaining the consent of the Defendant No. 2 are prima facie illegal, in excess of its jurisdiction and mala fide. In addition, clearly in event that the structure is in fact dangerous, the balance of convenience also vest with the Plaintiff as if a portion of the structure falls on passersby the Plaintiff will be held personally responsible for such an incident. This application must therefore be granted.

32. For the foregoing reasons it is hereby ordered that:

- (i) The SBCA is at liberty to issue a demolition certificate without obtaining the NOC of the Defendant No.2 or from the Committee but after passing a speaking order through its Technical Committee for Dangerous Buildings determining whether or not the structure on the Said Property is a Dangerous Building Category -1 or not;
- (ii) the notice dated 8 June 2024 issued by the Defendant No.2 is suspended and the Defendant No. 2 and the Committee are each restrained from interfering in any manner with the demolition of the structure on the Said Property, except through it’s participation in a meeting of the Technical Committee for Dangerous Buildings for determining whether

or not the structure on the Said Property is a Dangerous Building Category -1 or not.

33. CMA No. 9400 of 2024 stands allowed in the above terms with no order as to cost.

JUDGE