

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-989 of 2018

[Kathiawar Co-operative Housing Society Ltd. v. Sindh Building Control Authority & another]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

1. For hearing of Misc. No.4188/2018.
2. For hearing of main case.

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Date of hearing:- 27.08.2025

Mr. Muhammad Nazir Tanoli, Advocate for the petitioner.

Mr. Ghulam Akbar Lashari, Advocate for Respondent No.1/SBCA.

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Abdul Hamid Bhurgri, J.- The petitioner through this petition has prayed for the following relief:-

- i) To declare that the Respondent No.1 is under statutory duty to ensure that the subject residential house to be used for residential purpose only not for any other.***
- ii) To direct the Respondent No.1 to discharge its statutory duty by taking action against the Respondent No. 2 or any person working for and under him and to stop the use of subject house/plot other than (than) the use for residential house including 'madersa' and 'masjid' in any manner what so ever including other religious purpose.***
- iii) Restrain the Respondent No. 2, his representative(s), agent(s), successor-in-interest(s) person or person(s) working for and under him from using of said residential house for any purpose other than (than) residential purpose.***
- iv) Cost of the Petition.***
- v) Any other relief or relives which this Court may deem fit and proper.***

2. Brief Facts of the Case are that the Petitioner is a Cooperative Housing Society, registered in 1949 under the Cooperative Societies Act, 1925, managing land and houses in accordance with its bye-laws. Respondent No.1 is the Sindh Building Control Authority, responsible for regulating construction and use of buildings within its jurisdiction. Respondent No.2 is the present owner of House/Plot

No.356, Block-B, Adamjee Nagar, Kathiawar Cooperative Housing Society, Karachi, measuring 200 sq. yards, allotted and transferred from time to time strictly for residential purpose. It is further stated in the petition that the allotment order, sub-license and lease deed expressly stipulate that the said plot shall be used exclusively for residential purpose, and not otherwise, without written consent of the lessor/competent authority. Despite such restriction, Respondent No.2 has converted the subject plot into a Madrassa and Masjid, which is in clear violation of the terms of allotment/lease as well as Sindh Building Control Ordinance, 1979 and Karachi Building & Town Planning Regulations, 2002. The petitioner further contended in the petition that inhabitants of the area repeatedly complained, whereafter the Petitioner issued notices and served legal notice to Respondents No.1 and 2, but no remedial action was taken. Respondent No.1 failed to discharge its statutory duty to prevent such unlawful change of use, leaving the Petitioner with no other efficacious remedy except to invoke jurisdiction of this Court under Article 199 of the Constitution.

3. On notice, Respondent No.2 has entered appearance and filed his counter affidavit wherein it is stated that he is in peaceful possession of the subject residential plot and is using the same solely for residential purposes along with his family. He further contended that the allegation of establishing Madrassa and Masjid is vehemently denied. The Respondent being a respectable Islamic scholar and social worker enjoys goodwill in society, and his followers occasionally visit him and offer prayers at his residence, which act does not amount to change of use of the property. It is also contended that photographs of the subject plot and affidavits of neighbouring residents, who have no objection, are annexed. The Respondent No.2 has not violated any lease conditions, rules or regulations of the Society. At the end he contended that the instant petition is misconceived, not maintainable and liable to be dismissed.

4. We have heard the counsel for the petitioner as well as learned counsel for Respondent No.1/SBCA and perused the material available on record.

5. The grievance raised by the petitioner-Society is that respondent No.2 has converted a residential plot into commercial use

by allegedly running a Madarsa therein. Respondent No.2 has categorically denied the allegation and asserted that he is a spiritual leader who only receives visitors. These are disputed questions of fact which cannot be resolved in constitutional jurisdiction under Article 199 of the Constitution. It is well-settled that this Court, while exercising its writ jurisdiction, does not function as a trial court to record evidence or adjudicate upon factual controversies. Furthermore, under the terms and conditions of the lease agreement, the petitioner-Society itself is vested with authority to take appropriate action. Instead of availing such contractual remedies, the petitioner has invoked the constitutional jurisdiction of this Court, which is not the proper course. Reliance is placed on *Muhammad Shamim Ali v. Mst. Asma Begum and others*, 2024 SCMR 1642, wherein the Honourable Supreme Court has held as under:-

9. Since the legislature has conferred exclusive jurisdiction upon the Family Courts, by virtue of section 5 of the Family Act, to expedite family cases and tried to cordon off family litigation to the extent of a single family appeal, it would not reflect well on a Constitutional Court to interfere with the exclusive jurisdiction of the Family Courts under the Writ Jurisdiction as provided under Article 199 of the Constitution, unless the jurisdiction exercised by the Family Courts was contrary to law and/or findings reached in exercise of said jurisdiction are perverse and without proper appreciation of evidence that non-interference would lead to a grave miscarriage of justice or for that matter injustice. It is pertinent to state here, at the expense of reiteration, that the learned Counsel for the Petitioner's assertions about supposedly fake and fabricated receipts of dowry articles is a factual inquiry, which was undertaken by the Family Court and the Appellate Court and could not have been done by the High Court in its jurisdiction under Article 199 of the Constitution, or this Court under its jurisdiction under Article 185 (3) of the Constitution. Therefore, the High Court, in the impugned judgment, dated 28.02.2024, rightly declined to interfere in the findings of the two fora below.

Reliance is also placed on *Messrs T & N Pakistan Private Limited v. The Collector Customs and others*, 2022 SCMR 1119, wherein the Honourable Supreme Court has held as under:-

8. The letters of the law envisions that under section 196 of the Customs Act, Reference Application is a remedy meant for deciding and answering a question of law which should arise from the order passed by the Customs Appellate Tribunal. The fact findings recorded by the Tribunal, unless wrong-headed or unjustified in fact and law the same could not be interfered in referral jurisdiction. The precise intent of remedy of reference provided under section 196 to resolve and adjudicate only the question of law originating and stemming from the order passed by the Appellate Tribunal. The High Court cannot embark upon factual aspects or controversy. Here throughout the proceedings, only factual question was involved with regard to the production of certificate of origin. The authorities had not denied or disputed the provision of exemption flowing from the document of S.R.O but they were merely asking the petitioner to produce the certificates of origin as mandatory compliance but despite various opportunities provided by the lower fora, the petitioner failed to fulfill the requisite formalities, even the judgment of the learned High Court depicts that an opportunity was also afforded to the petitioner at the time of hearing of reference to produce the original certificate of origin, but they failed to produce and ultimately the learned High Court reached to the conclusion that no question of law raises in the reference to consider under section 196 of the Custom Act but the entire focus was on factual controversy which could not be agitated as question of law.

6. The petition is, therefore, held to be not maintainable and stands dismissed, leaving the Society at liberty to proceed in accordance with law and the lease agreement.

JUDGE

JUDGE

Ayaz Gul