

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No.3657 of 2025
(Muhammad Ali Taufique v S.B.C.A & Ors.)

Date Order with signature(s) of Judge(s)

Priority.

1. For orders on office objections.
2. For hearing of Misc. No.15182/2025
3. For hearing of main case.

15.01.2026.

Mr. Rehan Kayani, Advocate for Petitioner.

Mr. Muhammad Ibrahim Baig, Advocate for respondent No.4

Mr. Abdul Jalil Zubedi, Assistant Advocate General Sindh.

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has challenged the Sealing Notice dated 28.07.2025 issued by Sindh Building Control Authority (`SBCA`) and sealing of the property Survey No. 99, 100 Bakala Trade Centre, Deh Thoming, Sohrab Goth, District East, Karachi (**subject property**).

2. Learned counsel for the petitioner contended that respondent No.1 has unlawfully sealed the subject property without issuance of any notice and without affording the petitioner an opportunity of hearing, in blatant violation of Section 7-A of the Sindh Building Control Ordinance, 1979 (SBCO) and the principles of natural justice. It is contended that the petitioner, pursuant to a Memorandum of Understanding dated 24.12.2020 with M/s. White House Builders (owner of the subject property), acquired 50% development rights as a joint venture partner, where-after a General Power of Attorney dated 06.05.2021 was executed in his favour authorizing planning, approval, and execution of the project. Learned counsel submits that the subject property already stood covered by approved plans and NOCs issued by the Cantonment Board, Malir Cantonment in the year 2000. After execution of the power of attorney, the petitioner applied for approval of a revised building plan; statutory advertisements were duly published on 30.04.2025 under Regulation 18-5.2(b), the Master Plan Department approved the proposed layout plan on 16.05.2025, all requisite dues were deposited, and the revised building plan was approved by the competent authority of respondent No.1 in its meeting held on 20.06.2025. It is further submitted that despite the

approvals, respondent No.1 has neither issued the sanctioned building plan nor communicated any deficiency. Learned counsel further contends that respondent No.4 instituted Suit No.5002 of 2025, before the Court of Senior Civil Judge Malir, thereafter respondent No.1, inspected the site, sealed the petitioner's booking office on 28.07.2025 without disclosing any violation or initiating proceedings in accordance with law. He lastly prayed for allowing instant petition.

3. Learned counsel for respondent No.1 (SBCA), assisted by learned counsel for respondent No.4, has argued that the impugned sealing was carried out by SBCA strictly in exercise of its statutory powers conferred under the SBCO and the relevant Regulations on account of violations committed by Petitioner. It is contended that the petitioner's claim of being a reputed builder is denied for want of proof, and the existence, validity, and enforceability of the Memorandum of Understanding dated 24.12.2020, the General Power of Attorney dated 06.05.2021, and the Tripartite Agreement dated 13.09.2021 are specifically disputed as these documents are already the subject matter of pending civil litigation involving disputed ownership and development rights between M/s White House Builders, the petitioner, and respondent No.4, and therefore cannot be examined in constitutional jurisdiction of this Court. Learned counsel submits that the old approvals and NOCs relied upon by the petitioner pertain to a different layout and period, long prior to the petitioner's involvement, and do not confer any present legal entitlement. It is further argued that the alleged meeting dated 20.06.2025 was not conclusive, as issuance of any sanctioned plan was subject to fulfilment of mandatory conditions, including clearance of ownership disputes and compliance with SBCA Regulations, which the petitioner has admittedly failed to satisfy. It is contended that no sanctioned building plan or NOC was ever issued. It is lastly submitted that the allegations of mala fide and collusion are frivolous, involved disputed questions of fact requiring evidence, and are already sub judice in Suit No.5002 of 2025. The sealing action, it is asserted, was lawful and justified, and in any event the petitioner had an efficacious alternate statutory remedy of appeal and/or review under SBCO, which has not been availed, rendering the petition not maintainable.

4. Heard arguments and perused the material available on record.

5. It is the case of the petitioner that despite of the approval of the building plan from SBCA, the petitioner is not allowed to carry on the

construction activities at the site. In support of his contentions, the petitioner has relied upon the minutes of meeting of SBCA when the building plan submitted by the petitioner was approved. On perusal of the minutes of meeting dated 20.06.2025, available at Pages-153 to 171 of the Court's file, it reveals that the case of petitioner was considered in a meeting and approved subjected to fulfilment of codal formalities. For the sake of convenience, Para-3 of the minutes of meeting is reproduced below:

"3. After detailed discussion, following cases were considered, accepted & approved subject to the fulfilment of all codal formalities as per KB&TPR-2002 (amended upto date):

6. from bare reading of above, it is deduced that the approval was subject to fulfilment of formalities, which petitioner is required to complete. The SBCO and the Karachi Building and Town Planning Regulations, 2002, are governing laws that regulated the development of the sites and construction of buildings in Karachi region. Under the provisions of law, no building can be constructed until the final approval of the building plan is given by the SBCA. Section 6 of the SBCO being relevant is reproduced below:

***"6. Approval of plan.** (1) No building shall be constructed before the Authority has, in the prescribed manner, approve the plan of such building and granted no objection certificate for the construction thereof on payment of such fee as may be prescribed:*

Provided that in the case of a building the construction whereof has commenced before coming into force of this Ordinance, the Authority's approval of the plan and no objection certificate shall be obtained not later than six months after the enforcement of the Ordinance.

Explanation. - (I) The word "construct" with all its variations used in this section and hereafter shall include "reconstruct" with all its variations and additions or alteration.

(2) No building mentioned in sub-section (1) shall be, occupied by any person or shall be allowed by the builder to be occupied, before the Authority has, on application of the occupant or owner, issued occupancy certificate, in such manner as may be prescribed.

(3) No building mentioned in sub-section (1) shall, except with the permission of the Authority, be used for the purpose other than that for which its plans were approved.

(4) Where the Authority is satisfied that the purpose for which the building is desired to be used is consistent with the approved plans of the building, it may grant the permission under sub-section (3) on such conditions and on payment of such fees as it may fix.

[(5) At any time after a no-objection certificate has been issued under sub-section (1) but before the completion of building, 8 [Authority] may, if it is satisfied that the construction of any type of building or

buildings in any area is not in the public interest or is otherwise inexpedient, notwithstanding anything contained in this Ordinance, rules or regulations made there under and without notice suspend or cancel the certificate.

Explanation. ----- The expression "completion of building" used in sub-section means the completion of building in all respects according to the approved plan and in respect where of occupancy certificate has been issued.

(6) Where any order is passed under sub-section (5), the matter shall be reprocessed by the Authority in accordance with the procedure, prescribed by regulations."

7. From perusal of the above provision of law, it is crystal clear that the construction work cannot be started without a prior approval and No Objection Certificate (NOC) tendered by SBCA. It is further case of the petitioner that he was the Builder and Developer and for the purpose of developing the project on 7 acres and 16 ghuntas of land bearing Survey No.99 & 100 Bakala Trade Centre, Deh Thoming, Scheme 33 Karachi, the petitioner after approval of the building plan has requested the authority for issuance of NOC but instead of issuing NOC the premises were sealed. The stance so advanced is vehemently controverted by SBCA asserting that the plan submitted by the petitioner was approved subject to fulfillment of conditions which the petitioner has failed and before obtaining NOC had started the construction activities in the premises and issued advertisement for booking and selling, as such had violated the provisions of SBCO. When confronted counsel for the petitioner stated that Petitioner was constructing an office at the site however he could not deny the issuance of advertisements for sale. Under the provisions of SBCO, the sale and construction activities start after approval of plan and issuance of NOC. Section 12 of the SBCO, 1979, deals with the sale, which reads as under:

"12. Sale of building. 17(1) No builder shall sell or, advertise for sale any building, through any audiovisual aids or any other means before he has obtained approval in writing of the Authority, and he shall mention such fact in the advertisement which will further specify all such details about the building as may be prescribed.

(2) The approval granted by the Authority under sub-section (1) shall be displayed at a conspicuous place in the office in the builder, if any, and at the site of the building.

(3) The builder shall not entertain and register any application mad in response to the advertisement under sub-section (1), if it is in excess of the number of housing units provided in the building.

(4) Where any application is mad in response to the advertisement, an agreement shall be executed between builder and the applicant for construction and transfer of the building and the agreement shall, inter

alia, specify the date by which the construction shall be completed and possession of the building shall be delivered and the total price to be paid in lump sum or in installments and also the interest payable by either party in the event of default: Provided that the payment if any made by the applicant before the execution of the agreement shall not exceed such maximum of the total price as may be specified by the Authority.

(5) Notwithstanding the agreement mentioned in sub-section (4) no builder shall cancel the transfer by sale or otherwise without observing the prescribed procedure.

(6) No builder shall without approval of the Authority, make any alterations in the structures described in the plans, design and specification approved by the Authority.

(7) The builder shall take out a contractors All Risk Insurance Policy in respect of the building which shall also cover losses arising out of defects in design and earthquake.

(8) The builder shall maintain a list of buildings already constructed or transferred by him with full particulars as may be specified by the Authority, including the names, and addresses of the transferees and the terms and conditions on which the buildings were transferred and shall, on demand of the Authority furnish a copy of such list or part thereof.

(9) Where any structural defect in the building or the material used in construction thereof or any unauthorized change therein is brought to the notice of the builder within a period of one year in respect of structure and, six months in respect of the fixtures, from the date of offering physical possession to the transferee such defect or unauthorized change shall be removed without any additional cost from the transferee or appropriate compensation be paid to him, and in the case of dispute as to the defect or change or quantum of compensation the decision of the Authority shall be final."

8. From perusal of the above provision of law, it is clear that the property can be offered for sale once the NOC is granted by the authority but in the instant case no such NOC has been granted and even respondent No.4 has also disputed the title of the petitioner in the subject property for which Suit No.502/2025 is also pending adjudication between the parties before the Court of Senior Civil Judge Malir Karachi.

9. Since the Petitioner was granted approval subject to fulfillment of codal formalities and for issuance of NOC. Once the formalities are complete the SBCA is under an obligation to decide the fate of the request made by the Petitioner. On completion of required formalities Petitioner may approach SBCA for issuance of NOC, the SBCA shall decide the fate of NOC within a period of two months from the date of filing of the request. In case of refusal of NOC by SBCA, the Petitioner has got an adequate remedy to file an appeal under section 16 of the SBCO. SBCA would be at liberty to take any penal

action against the Petitioner provided under the law in case of any violation during development of the site, but property of the Petitioner shall not be sealed without giving him a right of audience.

10. The petition stands *disposed of* in above terms.

JUDGE

**JUDGE
HEAD OF CONST. BENCHES**

Approved for reporting

*Nadir**