

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Ms. Sana Akram Minhas, J.

C.P. No. D-5162 of 2024

Petitioner	:	Muhammad Faizuddin, through Mr. Amir Saleem, Advocate.
Respondent No. 1.	:	Province of Sindh through Chief Secretary, through Mr. Jawad Dero, Assistant Advocate General.
Respondent No. 2.	:	Sindh Building Control Authority through Ms. Humera Jatoi, Advocate.
Respondent No. 3.	:	M/s. Grey Developers, through its Managing Director (Nemo)
Date of hearing	:	13.11.2024.
Date of order	:	13.11.2024.

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Constitutional Petition, the petitioner inter-alia seeks following relief:-

i) To direct the Respondent No.2 and its officials to act as per law, to stop further illegal construction of Shops at the open space, demolish and remove the unauthorized and illegal construction of shops at the open spaces/corridors as well as in between the two corner shops in the Project namely "GREY NOOR TOWERS AND SHOPPING MALL", constructed on Plot No.Com-2, Sector 29, K.D.A. Scheme No.33, Karachi, owned and being constructed by the Respondent No.3.

ii) To declare that extra Shops cannot be constructed/built/booked illegally without approval of the competent authority, in between corner shops as well as other open spaces/corridors of the Project and such Shops cannot be allotted to any person and further cancel the illegal allotment, if any.

iii) To direct the Respondent No.2 to act as per law by removing/demolishing illegal and unauthorized construction of Shops in the open spaces as well as in between two corner Shops specifically Shop No.47A and further to stop/demolish such illegal construction.

iv) To restrain the Respondent No.3, its men, employees, attorneys, representatives, assigns or any other person(s) acting for them, from raising illegal construction/booking/selling the illegally constructed Shops within corner shops or at the compulsory open spaces in the Project namely "GREY NOOR TOWERS AND SHOPPING MALL", constructed on Plot No.Com-2, Sector 29, K.D.A. Scheme No.33, Karachi, in collusion with Respondent No.2.

2. Learned counsel for the petitioner contended that Respondent No. 3 is a builder/developer who launched a project titled "Grey Noor Towers and Shopping Mall" on Plot No. Com-2, Sector 29, K.D.A. Scheme No. 33, Karachi, wherein the petitioner booked a corner Shop No. 48 on the ground floor; that at the time of booking, Respondent No. 3 displayed the approved building plan and complete design of the project, which clearly depicted Shop No. 48 as a corner shop with a corridor separating it from Shop No. 47; that after paying the final installment, the petitioner visited the site and discovered that Respondent No. 3 had constructed an additional shop (Shop No. 47-A) in the corridor/open space between Shops Nos. 47 and 48; that the petitioner subsequently learned that Respondent No. 3 had constructed several additional shops in the open spaces and corridors of the project without the consent of allottees and without obtaining approval from the Sindh Building Control Authority ("**SBCA**"); that as a consequence of such unauthorized construction, Shop No. 48 no longer retains the character and status of a corner shop, while the additional structures obstruct and encroach upon the project's open spaces and corridors; that the petitioner was initially asked verbally to wait while the matter was examined, but after Respondent No. 3 failed to provide a satisfactory response, the petitioner issued a written communication, which remained unanswered; that the petitioner also addressed several letters to the Association of Builders and Developers ("**ABAD**"), which provided replies alongside copies of correspondence exchanged between Respondents No. 2 and 3; that ABAD also supplied a letter addressed by Respondent No. 1 to SBCA, wherein Respondent No. 3 had raised various disputes, including utility charges and a proposed cancellation of the petitioner's booking; that in view of the threatened cancellation and disputes arising therefrom, the petitioner instituted a civil suit seeking specific performance, possession, mesne profits, damages, and permanent injunction; that the petitioner repeatedly requested SBCA to provide the approved building plan and initiate legal action against Respondent No. 3 regarding the unauthorized constructions; however, SBCA officials neither provided the plan nor took effective legal action due to alleged collusion with Respondent No. 3; that Respondent No. 3 continued selling the illegal shops to the general public; that the petitioner, verbally and via legal notice, called upon Respondent No. 3 to demolish Shop No. 47-A and all other unauthorized shops constructed in open spaces and corridors; that Respondent No. 2, as the relevant building control authority, was legally obligated to prevent unauthorized construction, enforce the sanctioned plan, and proceed against violations committed by Respondent No. 3; that on 06.10.2024, the petitioner submitted a formal application to Respondent

No. 2 requesting legal action; however, Respondent No. 2 failed to provide the approved plan or initiate enforcement measures, giving rise to an apprehension that multiple unauthorized shops have been constructed in open spaces; that the petitioner's right to acquire, hold, and enjoy property is protected under Article 23 of the Constitution of the Islamic Republic of Pakistan, 1973; that the construction of shops between corner shops and in corridors deprives the petitioner of the benefit and character of his corner shop while causing obstruction to users and adjoining owners; that the acts and omissions of the respondents violate fundamental and constitutional rights, and that the unauthorized structures are liable to be demolished.

3. On the other hand, learned counsel appearing on behalf of SBCA as well as the learned Assistant Advocate General ("**AAG**") vehemently opposed this petition, submitting that the petitioner has already instituted a civil suit for specific performance, possession, damages, and permanent injunction; that filing a constitutional petition while a civil suit on the exact same factual matrix remains pending constitutes a clear abuse of the judicial process; and that constitutional jurisdiction cannot be invoked to resolve deeply contested factual disputes—such as measuring corridors, verifying layout deviations, or determining contractual breaches—which require recording of evidence before a competent Civil Court.

4. We have heard the learned counsel for the petitioner, learned counsel for Respondent No. 2/SBCA, learned AAG, and perused the material available on record.

5. The controversy raised by the petitioner essentially pertains to the alleged unauthorized construction of Shop No. 47-A and other shops in the corridors/open spaces of the project, alleged deviations from the approved building plan, and the consequential effect thereof upon the petitioner's rights regarding Shop No. 48. These matters involve disputed questions of fact, including the identification and measurement of open spaces/corridors, comparison of existing site conditions with the sanctioned plan, and a determination of whether additional construction was raised with or without competent approval. Such questions cannot appropriately be adjudicated under constitutional jurisdiction without recording and evaluating evidence.

6. More importantly, it is an admitted position that the petitioner has already instituted a civil suit seeking, inter alia, specific performance, possession, damages, mesne profits, and permanent injunction concerning the same project and factual matrix. The grievances raised here are substantially interconnected

with and arise from the same controversy. The petitioner cannot be permitted to invoke the extraordinary constitutional jurisdiction of this Court to secure a determination on matters already pending before a competent Civil Court. The existence of an adequate and efficacious alternate remedy assumes greater significance where the dispute necessitates a factual determination based on evidence.

7. Regarding the allegation that Respondent No. 2/SBCA failed to discharge its statutory obligations, no material has been placed on record to warrant the sweeping directions sought, particularly when the legality of the construction remains disputed and requires verification against the sanctioned plan and relevant building regulations. The allegation of collusion between officials of Respondent No. 2 and Respondent No. 3 is similarly unsupported by cogent material sufficient to invoke constitutional jurisdiction of this Court.

8. The relief sought cannot be granted merely on the basis of assertions made in the petition. The appropriate forum for determining disputed factual and contractual matters is the competent Civil Court, where parties may adduce evidence to establish their claims. However, nothing contained herein shall preclude the competent building control authority from taking action permissible under the law if, upon independent inspection or verification, any construction is found to be in violation of the sanctioned plan or governing building laws.

9. For the foregoing reasons, we find no exceptional circumstances warranting the exercise of the constitutional jurisdiction of this Court. The petition is accordingly dismissed.

10. The above are the reasons for our short order dated 13th November, 2024.

JUDGE

JUDGE

Athar Zai