

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar;

Mr. Justice Abdul Hamid Bhurgri.

C.P No.D-6617 of 2026

[Mudassir Fida & another V. Government of Sindh and others]

Petitioners : Through M/s Nabeel Ahmed Khan and Sarang Waswani, Advocates.

Respondent No.1 : Through Mr. Faizan Hussain Memon, Additional Advocate General Sindh.

Respondent No.2 : Through Mr. Ghulam Akbar Lashari, and Ms. Humaira Jatoi, Advocates.

Respondent No.3 : Through Mr. Rehan Kayani, Advocate.

Respondent No.4 : None present.

Date of Hearing : 21.10.2026

Date of Order : 21.10.2026

J U D G M E N T

Abdul Hamid Bhurgri, J.- The petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking protection against alleged unlawful and unsafe demolition activities concerning the subject building, as well as enforcement of the statutory obligations of respondent No.2, Sindh Building Control Authority (SBCA). According to the petitioners, a dispute regarding title and possession of the subject property is already pending adjudication before the competent Civil Court, where orders directing maintenance of status quo and restraining demolition or damage to the property have also been passed. It is alleged that, notwithstanding such orders, demolition activities involving structural portions and foundations of the building have been undertaken, thereby endangering the lives and property of its occupants. The petitioners maintain that the present proceedings are confined to the alleged unlawful demolition activities and the statutory obligations of SBCA, without seeking adjudication of their disputed title.

2. Respondent No.2/SBCA has filed comments stating that, upon receiving a complaint dated 29.09.2026 from one Sunny Kumar, an occupant of the same project, an inspection was conducted on 30.09.2026, during which three blocks were found to

be in a dangerous condition. The matter was thereafter referred to the Technical Committee for Dangerous Buildings (TCDB), which inspected the premises on 02.10.2026 and reported serious structural deficiencies, including deterioration of concrete covers and damage to reinforcement rings in several columns. On the basis of the technical assessment, SBCA maintains that the building is unsafe for human habitation and requires demolition rather than repairs. It is further asserted that action under Section 14 of the Sindh Building Control Ordinance, 1979, is warranted.

3. Learned counsel for respondent No.3 submits that the dispute between the parties is already sub judice before the competent Civil Court and that the building has been declared dangerous by the competent technical authority. He, therefore, contends that the present petition is not maintainable.

4. We have heard learned counsel for the parties and examined the material available on record. The principal question requiring determination is whether, in the circumstances of the case, the petitioners should be permitted to invoke the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution when civil proceedings concerning the same property are already pending before a competent Court.

5. Admittedly, the petitioners have already invoked the jurisdiction of the Civil Court for declaration and injunction concerning the subject property, and interim orders have also been passed therein. When confronted with the availability of remedies before the Civil Court, learned counsel for the petitioners contended that SBCA is not a party to the pending suit and that the present petition, being directed against its alleged failure to discharge statutory duties, is independently maintainable. We are not persuaded by this contention in the peculiar circumstances of the case. The mere fact that SBCA has not been impleaded in the pending suit does not, by itself, render the remedy before the Civil Court ineffective or justify parallel proceedings concerning the same property and the alleged acts affecting its possession and physical condition.

6. In this regard, Order I Rules 3 and 10(2), CPC, provide for joinder and addition of parties whose presence is necessary for

the effective and complete adjudication of the questions involved in a suit. Rule 5 further clarifies that every defendant need not be interested in all the reliefs claimed. Thus, where a cause of action is disclosed against an official authority in relation to the subject matter of the suit, its impleadment may be sought before the competent Civil Court, subject to the requirements of law. The petitioners are, therefore, not precluded from seeking impleadment of SBICA and appropriate consequential or interim relief before the Court already seized of the matter.

7. It is a settled principle of law that the extraordinary constitutional jurisdiction under Article 199 of the Constitution is not ordinarily exercised for adjudication of complicated and disputed questions of fact requiring recording and appreciation of evidence, particularly where an adequate and efficacious remedy is available before a competent forum. The Hon'ble Supreme Court has consistently held that where determination of material factual controversies necessitates an elaborate inquiry or recording of evidence, the parties should ordinarily be relegated to the competent forum.¹ However, the mere existence of a factual dispute does not constitute an absolute bar to constitutional jurisdiction where the controversy can be resolved on admitted facts or incontrovertible documentary material.² In the present case, the nature and extent of the alleged demolition activities, the structural condition of the building, the legality of the measures allegedly undertaken and the effect of the subsisting orders of the Civil Court involve competing factual assertions requiring examination of evidence. These matters cannot appropriately be determined in the present proceedings.

8. Furthermore, it is equally well settled that where an adequate, efficacious and effective remedy is available under the ordinary law, constitutional jurisdiction is not ordinarily exercised unless exceptional circumstances warrant interference.³ The petitioners have already approached the competent Civil Court

¹ *Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar* (2023 SCMR 1442); *Fida Hussain and another v. Mst. Saiqa and others* (2011 SCMR 1990); *Col. Shah Sadiq v. Muhammad Ashiq and others* (2006 SCMR 276).

² *Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Shah Faisal Wahab and others* (2023 SCMR 1642).

³ *Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others* (2011 SCMR 1813); *Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar* (2023 SCMR 1442).

concerning the same property, which is empowered to consider applications for impleadment, amendment of pleadings and appropriate interim protection, subject to law. The mere absence of SBCA from the pending suit does not establish that the remedy before the Civil Court is inadequate. In these circumstances, we find no sufficient justification for permitting parallel proceedings under Article 199 of the Constitution.

9. Insofar as the report of the TCDB is concerned, Section 14 of the Sindh Building Control Ordinance, 1979, empowers the competent authority to take appropriate measures concerning buildings considered dangerous, subject to compliance with the procedure prescribed by law. The correctness of the technical assessment, the necessity or otherwise of demolition and the legality of any action taken pursuant thereto are not being determined in these proceedings. Nevertheless, the pendency of a civil dispute does not, by itself, extinguish the statutory responsibilities of SBCA concerning public safety, nor does the declaration of a building as dangerous dispense with compliance with the applicable statutory requirements. The competent authority remains bound to act strictly in accordance with law.

10. For the foregoing reasons, we are of the considered view that the petitioners have an appropriate remedy before the competent Civil Court, where proceedings concerning the subject property are already pending, and no exceptional circumstances have been established warranting the exercise of constitutional jurisdiction. Consequently, we decline to entertain this petition, which is accordingly dismissed, along with all pending application(s), if any. The petitioners shall, however, be at liberty to seek impleadment of the concerned authority and such other relief as may be permissible under law before the competent forum. Any such application shall be decided independently, in accordance with law, without being influenced by the observations made herein. It is clarified that nothing contained in this judgment shall be construed as an expression of opinion on the disputed title, possession, structural condition of the building, validity of the technical report or legality of the alleged demolition activities. The subsisting orders of the competent Civil Court shall remain subject to that Court's

jurisdiction and shall not be treated as having been varied or vacated by this judgment.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Ayaz Gul