

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.NO.D-4103/2013

Present:-

Mr. Justice Aqeel Ahmed Abbasi,

Mr. Justice Muhammad Junaid Ghaffar

Maqsood Ahmed -----Petitioner

versus

Federation of Pakistan & others-----Respondents

Date of hearing: 21.5.2015

Date of Order: 21.5.2015

Petitioner

**Through Mr. Moulvi Iqbal Haider,
advocate.**

Respondent No.1

**Mr. Dilawar Hussain, Standing
Counsel**

Respondent No.2

Mr. Agha Zafar Ahmed, advocate

Respondent No.3

Mr. Shafiq Ahmed, advocate

Respondent No.4

Mr. Saifullah, AAG

Respondent No.5

Sayed Ghulam Nabi Shah, advocate

Respondent Nos.7&8

**Ms.Afsheen Aman, advocate.
SBCA**

Respondent No.10

**M/s Akhter Hussain & Muhammad
Masud Ghani, advocates.**

ORDER

MUHAMMAD JUNAID GHAFFAR, J:- Through instant petition, the petitioner has sought several relief(s), however the learned Counsel for the Petitioner at the time of arguing instant petition has pressed the following relief (s):-

- b) To declare the respondent published the project of Behria Town Icon for the construction of 62 floors without obtaining NOC/approved building plan, from the concerned respondent(s) thus the construction of said Behria Town Icon is illegal, unlawful, arbitrary and therefore unconstitutional.
- c) To declare the respondent published the project of Behria Town Tower for the construction of 24 floors and the project of Behria Town, Karachi without obtaining NOC/approved building plan, from the concerned respondent(s), thus the construction of said Behria Town Tower and Behria Town, Karachi are illegal, unlawful, arbitrary and therefore unconstitutional.
- f) To direct the respondent No.6 to 9 to produce the documents relating to issuance of NOC/approved building plan in respect of (I) "Behria Town Icon, (Shahrah-e-Firdousi), (II) Behria Town Tower, (Tariq Road), (III) Behria Town, Karachi, (Master planned) community).
- g) To direct the respondents No.6 to 9 to take legal action against the respondent NO.10 in violation of building laws and town planning in accordance with law.
- h) Restrain the respondent No.10 from further advertisement in respect of their projects as mentioned in this petition and as well as from receiving any single penny from any citizen on account of the said projects in any manner of whatsoever nature.
- i) Any other relief which deem fit may also be granted in the interest of public at large.

2. Precisely, the facts as stated in the Memo of petition are that the petitioner, who also claims to be the Secretary of Awami Himayat Tehreek Pakistan and Organization for the Rule of law is aggrieved by the construction of various projects by respondent No.10 (Builder/private respondent), as according to the petitioner all these projects as mentioned in Para 1 of the petition are being constructed without obtaining No Objection Certificate/proper approval from Respondent Nos. 7 to 9 (SBCA). Notices were ordered in the instant petition, whereafter, comments have been filed by SBCA as well as private respondents along with annexures and documents pertaining to permission/NOC in respect of projects in question.

3. Learned Counsel for the petitioner has contended that the instant petition is a public interest litigation and since respondent No.10 is constructing all these projects without proper approval/NOC and in

violation of Sindh Building Control Regulation, therefore, the respondent No.10 may be restrained from carrying on any further construction, whereas, the official respondents including SBCA may be directed to demolish the illegal/unauthorized construction, so far raised in these projects.

4. Conversely, learned Counsel for the respondent No.10 has raised an objection as to maintainability of instant petition for being false, frivolous and also scandalous in nature, and has contended that all the allegations as raised through instant petition are otherwise contrary to the facts, as the respondent No.10 has already complied with all the codal formalities and legal requirements before initiating the said projects. Per learned Counsel, No Objection Certificate (NOC) as well as Building plan(s) have been obtained from Sindh Building Control Authority, as well as other Regulating Authorities and there is no violation of Building laws, rules or regulations. Learned Counsel further contended that the instant petition is frivolous in nature, whereas, no specific allegation has been leveled and only vague and bald assertions have been made, which otherwise stand falsified in view of the NOC/approval letters issued by competent authority in accordance with law. It has been prayed that instant petition being misconceived in law and facts may be dismissed in limine with cost.

5. Similarly, learned Counsel for the SBCA has contended that no illegality has been committed by the respondent No.10, whereas, proper No Objection Certificate (NOC) has been issued in respect of these projects and the building plan(s) have been duly approved by them in accordance with law, Rules and Regulations. Per learned Counsel, since all the legal and codal formalities have been duly fulfilled, whereas, construction being carried out is strictly in accordance with approved

building plan and in conformity with the provision of Sindh Building Control Ordinance, 1979 and read with Karachi Building and Town Planning Regulation, 2002, hence, instant petition is liable to be dismissed.

6. We have heard all the learned Counsel for the parties and perused the record. It appears that instant petition has been filed by the petitioner in his individual capacity, who also claims to be the General Secretary of Awami Himayat Tehreek Pakistan and Organization of the Rule of law, whereas, no bye-laws or Articles and Memorandum of Association or any Authority letter has been annexed along with instant petition, from which, the locus standi of the petitioner could be ascertained, whereby, petitioner could seek the aforesaid relief (s), at least with regard to and on behalf of the said Organizations. Nonetheless, insofar as the allegations with regard to alleged construction being carried out on these projects without obtaining NOC or approval of Building plan(s) is concerned, the same also appears to be misconceived and contrary to record, hence, not maintainable, as the Official respondents through their counter affidavit have annexed the requisite approval/NOC issued by them in respect of these projects, in response to which no counter objection through Affidavit in Rejoinder has been filed. Learned Counsel for the petitioner while confronted with such documents could not satisfactorily respond or controvert such documents, however, contended that all these approvals/NOC's appears to have been obtained with connivance and collusion of the respective departmental authorities and further submitted that respondent SBICA may be directed to furnish the entire record on the basis of which the said approval /NOC's have been obtained. In our view such contention of the learned Counsel for the petitioner appears to be misconceived as this Court under its writ

jurisdiction cannot be asked to perform any investigative assignment, whereas, on the other hand no specific allegation and unlawful conduct on the part of the official respondents has been raised or brought to our notice through instant petition, of which this Court, exercising jurisdiction under Article 199 of the Constitution can take note of. It may be appreciated that such jurisdiction vested in this Court is discretionary in nature and can only be exercised in favour of an aggrieved person, once it is established before the Court, that refusal to exercise such discretion would seriously prejudice, the aggrieved person, whereas, the grievance of the aggrieved person cannot be redressed in any other manner. Insofar as instant petition is concerned, we have not been able to persuade ourselves to come to the conclusion that any substantial question of law has been raised before us, rather disputed questions of facts without any substantial material and in a very generalized manner have been raised, which are merely assertions of the petitioner for which a detailed investigation is required, with which we cannot enter into in our writ jurisdiction. In our view, instant petition, prima facie appears to be motivated and based on surmises and conjectures, whereas the primary relief sought by the petitioner through a declaration is against a private person, who has launched these projects, which appears to have been initiated after proper approval and grant of necessary No Objection Certificate by the Regulatory Authorities, who have also endorsed such approval/NOC. Hence, instant petition appears to be misconceived and has rather sought further probe and investigation in the instant matter, whereas, in somewhat similar situation, this Bench has already dismissed a petition bearing C.P.No.D-5129/2013 vide order dated 11.11.2014 (*Syed Tariq Ali Shah versus Malik Riaz & others*).

7. In view of hereinabove facts and circumstances of the instant case, we do not find any substance in the instant petition, accordingly, we had dismissed the same in limine along with pending applications vide short order dated 21.5.2015 and above are the reasons for the short order.

JUDGE

JUDGE

Talib