

IN THE HIGH COURT OF SINDH AT KARACHI

(In exercise of its Original Civil Jurisdiction)

Suit No.

/ 2022

Tamsila Naeem,

Wife of Muhammad Naeem,

Muslim, adult, resident of House No. 70K,

Situated in Block No. 2 of PECHS,

Karachi; acting through her authorized representative

Muhammad Arsalan

...

PLAINTIFF

VERSUS

1. Punjabi Saudagar Multipurpose Cooperative Housing Society Ltd.;

A society registered under provisions of

The Cooperative Housing Societies Act of 1925,

To be served through its Honorary General Secretary,

Having office at Plot No. A30,

Situated in Block No. 7/8 of KCHSU,

Karachi

2. Sindh Building Control Authority;

A statutory body notified under Section 4 of

The Sindh Building Control Authority Ordinance of 1979,

To be served through its Director General;

Having office at Civic Centre (Annex),

Karachi

3. PS Sachal,

To be served through its Station House Officer,

Karachi

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DEFENDANTS

SUIT FOR DECLARATION(S) & INJUNCTION(S)

1. For purposes of institution of present proceedings, the Plaintiff acts through an authorized representative. If so required, the Plaintiff reserves right(s) to delegate further authority to the authorized representative with regard (procedural) furtherance of present cause.

I – GRIEVANCE(S)

2. Being aggrieved by and dissatisfied due recurrent attempts made by Defendant No. 1 to prejudice ongoing construction works being undertaken by / at the behest of the Plaintiff on Commercial Plot bearing No. Comm-3, admeasuring 1088 Square Yards, situated Sector No. 25A of Punjabi Saudagar Multipurpose Co-operative Housing Society Ltd., located in Scheme-33, located in Gulzar-e-Hijri, Karachi (**PROPERTY**), she is compelled to institute present proceedings.

II – PLAINTIFF'S ENTITLEMENT TOWARDS THE PROPERTY

3. That the Property was initially leased by Defendant No. 1 in favour of [REDACTED]. Reference, in this regard, is drawn to (registered) Lease Deed dated 01.04.2015. That [REDACTED] subsequently executed an Agreement to Sell in favor of the Plaintiff, which was coupled with a (registered) General Power of Attorney dated 15.05.2018, surrendering all rights obtaining from the Property to the favor of the latter. Therefore, for present purposes, the Plaintiff is and must be deemed the absolute lawful owner entitled to (proprietary and possessory) rights obtaining from the Property. In any event, her title or rights there-against are not disputed.

(Copies of the Lease Deed, Agreement to Sell & General Power of Attorney are attached herewith as Annexures 'P1' to 'P3' respectively)

4. That the Plaintiff, in order to materialize its utility, intended to raise construction for public sale on the Property. The 'end product' is intended to be referred to as [REDACTED] (**PROJECT**). In order to do so, the Plaintiff called upon Defendant No. 1 to forward its proposed building plan to Defendant No. 2 (**INITIAL PLAN**). It is submitted that the Initial Plan represented a structure comprising a ground and 8 additional

floors. Permission for raising construction was sought to that extent. The proposal was, after receipt of 'fee' claimed, forwarded by Defendant No. 1 to Defendant No. 2. Such forwarding establishes following facts; (i) that the Plaintiff is owner of the Property and, by extension, a member of Defendant No. 2; and (ii) that Defendant No. 1 is not aggrieved or in any manner opposed to the construction of the Project.

(Copies of the Initial Plan & Proposed Building Plan are attached herewith as Annexures 'P4' & 'P5' respectively)

5. That before receiving approval / sanctions from Defendant No. 2, the Plaintiff decided to revise the Initial Plan. It is her opinion that the Initial Plan did not permit maximization of the Property to its fullest utility. She, therefore, called upon Defendant No. 1 with a revised proposal and requested its office bearers to forward revisions proposed to Defendant No. 2. To specify, the revisions allude to a structure housing a ground and 14 additional floors; 6 more than originally proposed (**SUBSEQUENT PLAN**).

6. Upon being provided a copy of the Subsequent Plan, Defendant No. 1 claimed 'additional fee' for purposes of forwarding it to Defendant No. 2. The Plaintiff resisted such demand, since 'fee' initially paid was under duress and only to mitigate the nuisance value Defendant No. 1 could exclaim in the given circumstances. She was, therefore, adamant that (i) she did not owe 'fee' or any other form of payment to Defendant No. 1; and (ii) it was neither justified in asking nor authorized to claim 'fee' and / or 'additional fee'.

7. It is submitted that as the Plaintiff remains unwilling to 'coordinate resources' with Defendant No. 1 in response to its malicious, unlawful and illegal demand for 'additional fee'. She, therefore, directly approached Defendant No. 2 for the purposes of securing approval upon the Subsequent Plan. After complying with all necessary formalities and upon receiving all scheduled funds, Defendant No. 2 has approved the Subsequent Plan. In addition, the Plaintiff has also obtained ancillary approvals / permissions from related agencies.

(Copies of the Subsequent Plan, Approval Plan & NOC are attached herewith as Annexures 'P6' to 'P8' respectively)

III – SANCTIONS SOUGHT / GRANTED

8. That the Plaintiff filed an application before Defendant No. 2 whereby sought grant of an approval and associated ‘no objections’ for purposes of raising construction on the Property to fulfill requirement of law. The Plaintiff submits that Defendant No. 2 accepted the application and approved proposed construction on the Property for a structure comprising a ground and 14 additional floors. The Plaintiff invites attention to Defendant No. 2’s Letter dated 17.02.2020.

9. The Plaintiff submits that she subsequently applied with Defendant No. 2 for the purposes of securing a ‘No Objection Certificate’ in relation to sale and advertisement of the Project, which was duly sanctioned and issued on 27.02.2020. As stated, approvals granted by Defendant No. 2 are supplemented by approvals granted by related agencies, including the Pakistan Civil Aviation Authority (for height clearance). In consideration of submissions made, the Plaintiff contends that construction being raised by her is lawful and duly approved.

IV – PRESENT CONCERNS

10. Since the inception of construction of the Project, the Plaintiff has been subjected to unwarranted interference / hindrance by Defendant No. 1 and, at its behest, by officials representing Defendant No. 3. It is submitted that at present, the Plaintiff is undertaking construction works on the ground floor. The Plaintiff submits that such interference / hindrance is being faced by her despite procuring all required approvals / no objection certificates. The actions of the Defendants (concerned) are prejudicing the discharge of approvals granted and the expectations so vesting in the Plaintiff as a result thereof.

11. When confronted, Defendant No. 1 has cited lack of forwarding through its office as reason enough to deem the ongoing construction works unauthorized. When confronted with the approvals, it has exclaimed them as illegal for having been obtained without its involvement in the process. Its involvement, at most, is a trivial step in proceedings, whereby it is required to verify the title of the applicant before Defendant No. 2. This was done at the time of the Initial Plan. Beyond undertaking this ‘clerical task’, Defendant No. 1 has no role or nexus with the approval granting

process. There is nothing contained in the law which compels the Plaintiff to reinitiate the forwarding process or to remain qualified by Defendant No. 1's unwillingness to act upon a corresponding request.

12. To further its designs, Defendant No. 1 has 'engaged' services of officials of Defendant No. 3. Coalescing their resources, Defendants No. 1 and 3 have repeatedly obstructed the ongoing construction works. A most effective means devised by them for such purpose is the unlawful detention of the Plaintiff's workers deployed at the Property.

13. The Defendant No. 1 in its pursuit to interfere / hinder construction has addressed multiple notices to the Plaintiff, raising therein inquiries with regard approvals granted by Defendant No. 2. All notices have been duly responded. (Copies of correspondence are attached herewith & collectively marked as Annexure 'P9')

14. The Plaintiff submits that actions being taken against her interests by Defendants No. 1 and 3 are unlawful and unwarranted. The contention raised is premised on the fact that jurisdiction with regards granting approvals and regulating construction thereafter or otherwise vests exclusively with Defendant No. 2. Defendant No. 1 is neither a 'concerned authority' nor otherwise administered powers to enforce restrictive provisions of law in this regard.

15. That the Defendant No. 1 has attempted to assume powers that are not within its domain. It is submitted that the role of Defendant No. 1 is confined to the extent of forwarding a building proposal to Defendant No. 2. The Defendant No. 1 is not empowered to approve and / or disapprove any plan proposed to it and / or dispute approvals granted by Defendant No. 2. It is in no manner a part of the determination required to be made in this regard by Defendant No. 2.

16. For reasons as have been detailed hereinabove, the Plaintiff submits that Defendant No. 1 will, aided and abetted by Defendant No. 3, continue to hinder / interfere with ongoing construction works being executed at the Property. Hence, the Plaintiff is compelled to seek indulgences from this Hon'ble Court in order to protect her rights and interests in the Property. Hence, this Suit!

17. The cause of action, having accrued earlier, has matured in favor of the Plaintiff on 18.08.2022. The cause, however, is recurrent and shall subsist till such time relief(s) prayed for is granted accordingly.

18. The Property is situated and the cause compelling present proceedings has accrued within the territorial jurisdiction of this Hon'ble Court. Insofar as pecuniary limitations are concerned, the Plaintiff value relief(s) prayed for at the tune of Rs. 700,000,00/-- (Rupees Seventy Million Only). *Ad Valorem Court Fee Stamps* are, thus, affixed on and with the Plaintiff.

V – PRAYER(S)

In consideration of submissions made hereinbefore, and in the interest of justice, good conscience and equity, the Plaintiff pray for grant of Judgment and Decree in following terms:

- i. A declaration that Defendant No. 2 is the competent authority / regulator to the exclusion of all other agencies and / or persons;
- ii. A declaration that the Plaintiff is neither required nor compelled to seek assistance from Defendant No. 1 when seeking approvals for construction;
- iii. A declaration that Defendant No. 1 has no role or dominion in matters concerning grant of construction related approvals;
- iv. A declaration that the Plaintiff remains entitled to raise construction on Commercial Plot bearing No. Comm-3, admeasuring 1088 Square Yards, situated Sector No. 25A of Punjabi Saudagar Multipurpose Co-operative Housing Society Ltd., located in Scheme-33, located in Gulzar-e-Hijri, Karachi;
- v. A declaration that obstructions being suffered upon ongoing constructions works (as detailed) by Defendants No. 1 and 3 are illegal and unlawful;
- vi. A Permanent / Perpetual Injunction restraining the Defendants (including persons acting under them, through them and / or on their behalf) from taking any action(s) adverse or detrimental to the rights of the Plaintiff, such as interfering / hindering ongoing construction works in any manner whatsoever, including by way of proclaiming a sealing order there-against;

- vii. Grant of all other relief(s) deemed necessary and just in the given circumstances;
- viii. Grant of costs of proceedings.

Karachi

Dated: - 19.08.2022

PLAINTIF

(Through authorized representative)

ADVOCATE FOR THE PLAINTIFF

VERIFICATION

I, [REDACTED] son of [REDACTED], Muslim, adult, resident of [REDACTED], situated in [REDACTED], do hereby, on solemn oath and affirmation, submit that whatever has been stated above is true and correct to the best of my knowledge and belief.

DEPONENT

42201-2597194-5

0334-3956255

Solemnly affirmed before me on this 18th day of August 2022 at Karachi by the Deponent above named who is identified to me by [REDACTED] [REDACTED] whom I know personally

COMMISSIONER FOR TAKING AFFIDAVITS

DOCUMENTS FILED: Annexures 'P1' to 'P8'

DOCUMENTS RELIED

UPON: Annexures 'P1' to 'P8' & all other documents as may be deemed necessary in the context of present cause. The Plaintiff accordingly reserve right(s) to produce or seek production of documents referred and / or not filed herewith

ADDRESS FOR SERVICE

UPON PLAINTIFF: As detailed in the title

ADDRESS FOR SERVICE

UPON PLAINTIFF'S

COUNSEL: M.A.I. Lakhani & Co,
F-18/A, Block No. 4,

(Old) Clifton, Karachi

92-21-35293148

92-300-2317062

92-333-2520530

mammedali@lakhaniandco.net

mujtabaraja@outlook.com

DRAFTED BY ME

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.

/ 2022

Tamsila Naeem

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PLAINTIFF

VERSUS

Sindh Building Control Authority

& Others

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DEFENDANTS

UNDERTAKING AS PER
CIRCULAR DATED 21.07.2020

I, [REDACTED], son of [REDACTED], Muslim, adult, resident of [REDACTED], located in [REDACTED], situated in [REDACTED], do hereby, on solemn oath and affirmation, state and submit as under:

1. I say that I am the authorized representative for the Plaintiff. I say that subject matter of present proceedings is not *sub judice* in any other proceedings (including a Constitutional Petition) instituted by the Plaintiff before this Hon'ble Court and / or any other Court / Tribunal.

2. I say that whatever has been stated above is true and correct to the best of my knowledge and belief.

Karachi

Dated: - 18.08.2022

DEPONENT

42201-2597194-5

0334-3956255

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DEFENDANTS

LIST OF LEGAL HEIR(S)

In case of the unfortunate demise of the Plaintiff pending present proceedings, the legal heir named below shall cause necessary intimation to this Hon'ble Court:

████████████████████

-

Husband

Karachi

Dated: - 18.08.2022

ADVOCATE FOR THE PLAINTIFF

IN THE HIGH COURT OF SINDH AT KARACHI

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/ 2022

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DEFENDANTS

APPLICATION UNDER RULE 110 OF
THE SINDH CHIEF COURT RULES

In consideration of matters stated through the accompanying Affidavit, the Plaintiff prays for urgent hearing of present cause in Court / Chambers on 18.08.2022.

This prayer is made in the interest of justice.

Karachi

Dated: - 18.08.2022

ADVOCATE FOR THE PLAINTIFF

IN THE HIGH COURT OF SINDH AT KARACHI

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DEFENDANTS

AFFIDAVIT

I, [REDACTED], son of [REDACTED], Muslim, adult, resident of [REDACTED], located in [REDACTED], do hereby, on solemn oath and affirmation, state and submit as under:

1. I say that I am the authorized representative for the Plaintiff. I say that the accompanying Application has been drafted under instructions, contents whereof may be taken to be read hereinto as a part and parcel hereof.
2. I say that the Defendant No. 2 has attempted to invoke adverse action(s) against the Plaintiff, which is patently illegal and unlawful. I say that the Defendant No. 2 are not empowered or enabled by law to invite adversity as against construction raised by the Plaintiff.
3. I, therefore, say that until and unless the accompanying Application is allowed, the rights of the Plaintiff shall be prejudiced.
4. I say that whatever has been stated herein is true and correct to the best of my knowledge and belief.

Karachi

Dated: - 18.08.2022

DEPONENT

42201-2597194-5

0334-3956255

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DEFENDANTS

**APPLICATION UNDER ORDER XXXIX RULES I & II OF THE CODE OF
CIVIL PROCEDURE, 1908, READ WITH SECTION 151 THEREOF**

In consideration of matters stated through the Plaint, it is humbly prayed on behalf of the Plaintiff that this Hon'ble Court may be pleased to restrain the Defendant No. 2 (including persons acting under them, through them and / or on their behalf) from taking any action(s) adverse or detrimental to the rights of the Plaintiff, including by way of interfering / hindering in the construction being raised on Commercial Plot bearing No. Comm – 3, admeasuring 1088 Square Yards (One Thousand Eighty-Eight), Sector No. 25 – A, located in Punjabi Saudagar Multipurpose Co-operative Society Ltd, situated in Scheme – 33, Gulzar – e – Hijri, Karachi.

Ad Interim Orders in foregoing terms are, thus, solicited.

An Affidavit in support is affixed herewith.

Karachi

Dated: - 18.08.2022

ADVOCATE FOR THE PLAINTIFF

IN THE HIGH COURT OF SINDH AT KARACHI

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/ 2022

Tamsila Naeem

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PLAINTIFF

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Sindh Building Control Authority

& Others

...

DEFENDANTS

AFFIDAVIT

I, [REDACTED] son of [REDACTED], Muslim, adult, resident of [REDACTED] located in [REDACTED] situated in [REDACTED], do hereby, on solemn oath and affirmation, state and submit as under:

1. I say that I am the authorized representative for the Plaintiff. I say that the accompanying Application has been drafted under instructions, contents whereof may be taken to be read hereinto as a part and parcel hereof.
2. I say that contents of the Plaint may also be taken to be read hereinto as an integral part and parcel hereof.
3. I say that the Defendant No. 2 has conducted themselves illegally and unlawfully and in material disregard of law. I say that by attempting to interfere / hinder with works being carried out in accordance with law; Defendant No. 2 has demonstrated that they are acting in furtherance of malicious intent.
4. In view of submissions made through the Plaint, I am advised to say (which advice I verily believe to be true, correct and accurate) that the Plaintiff has made out a *prima facie case*, inasmuch as the balance of convenience / inconvenience rests in her favor and that in case relief(s) prayed for is declined, she shall suffer irreparable losses.
5. I say that until and unless the accompanying Application is allowed, the rights of the Plaintiff shall be prejudiced.

6. I say that whatever has been stated herein is true and correct to the best of my knowledge and belief.

Karachi

Dated: - 18.08.2022

DEPONENT

42201-2597194-5

0334-3956255