

SINDH GOVERNMENT GAZETTE, EXT: MARCH 3, 1979.

GOVERNMENT OF SINDH

LAW DEPARTMENT

NOTIFICATION

Karachi, MARCH 03, 1979

No.S.Legis. 1(5)/79.- The following Ordinance by the Governor of Sindh is here by published for general information:-

Sindh Building Control Ordinance, 1979.

SINDH ORDINANCE No. V of 1979.

AN ORDINANCE: - To provide for regulation of the planning, construction, control and demolition of buildings and disposal of buildings and plots in the Province of Sindh.

Preamble.-Whereas it is expedient to regulate the planning, quality of construction and buildings control, prices charged and publicity made for disposal of buildings and plots by builders and societies and demolition of dangerous and dilapidated buildings in the Province of Sindh;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977 and the Laws (Continuance in Force) Order, 1977, the Governor of Sindh is pleased to make and promulgate the following Ordinance:

1. Short title, (commencement and extended) This Ordinance may be called the Sindh Buildings Control Ordinance, 1979.

(2) It shall come into force from such date and in such area as Government may, by notification, specify.

(3) Government may, by notification, exclude any area from the operation of all or any of the provisions of this Ordinance.

Comments

Preamble - Object and Scope of Ordinance V of 1979.

The Sindh Building Control Ordinance, 1979 is a special statute enacted to regulate certain situations and serve public interest after applying certain norms. The substance and legislative intent behind this provision should be paramount rather than procedural trappings and formalities. There may be cases where the building should be demolished within minutes but to save human lives and property, would it still be necessary to resort to all the procedure prescribed by the regulations for exercise of this power? The determination that the building is dangerous has not been controverted by any evidence in rebuttal. No affidavit of any technical man and no opinion of any architect has been filed by the applicant/tenants to controvert the finding of the technical committee or for that matter the authority. The allegation of malafide which has been made remains un-substantiated and un-specified. As matter of fact neither in these proceedings nor indeed before the two lower Courts even a casual mention has been made to the allegation of mala fide which was the main plea in the written statement. Now, the arguments have switched over to find technical fault in the notice and make a fetish formality by pressing the regulations rather than substantiating the allegation of malafide against the authority. The regulations are framed to ensure proper implementation of the parent statute and restrict abuse of power and not to delay or defeat the very purpose for which the parent statute was enacted. A dangerous and shattered structure cannot be sustained on a challenge to the regulations, and the life and limb of persons occupying such a heap of bricks and mortar is more important than the procedural technicalities sought to be spelt out in the regulations.

(M/s. Pakistan Pharmaceutical Products Ltd. and 4 other V Karachi Building Contract Authority • 1986. CLC 581).

The Ordinance is very important one. as not only that it prevents the construction work in haphazard and mushroom like manner, but also encourages orderly and well planned development, but, above all keeps a hawkish eye on the quality construction of the buildings, which, needless to say is of utmost importance in the present pattern of living.

Application of Ordinance: The areas covered by this Ordinance are to be specified by the Government of Sindh through notification, and the provisions of the Ordinance shall be effective from the date of notification in the area specified in the notification. Similarly in the like manner, the Government may exclude any area from the application of the provisions of this Ordinance.

2. Non-application of a law.-Nothing contained in any other law for the time being in force shall apply to any matter regulated by this Ordinance.

Comments

The matters governed or regulated by this Ordinance are to be dealt with exclusively by the provisions of this Ordinance, and nothing contained in any other law for the time being in force shall apply to such matters.

Order declaring a building dangerous without lawful Authority:-

Building regulations not having been published in gazette. The buildings regulations No. 157 could not be pressed into service to fix opinion of committee or controller of buildings and Director General of Karachi Development Authority. The opinion of committee merely recommendatory in nature. Held, recommendations of committee and action proposed by controller of buildings, however could not be by passed by Director General K.D.A. without assigning cogent reasons. Order declaring a building dangerous passed by Director General K.D.A. after enforcement of Ordinance of 1979. Held, without lawful authority and of no legal effect.

(Amjad Mirza V Deputy Controller of Buildings, Zone III, Karachi • PLD • 1983 Kar-579).

' [3. Definitions.- (1) In this Ordinance, unless there is anything repugnant in the subject or context.-

- (a) "architect" means an architect who has been granted a licence under this Ordinance;
- (b) "authority" means the Authority appointed under Section 4;
- (c) "builder" means a person or body of persons, including a society engaged in construction of a building on contract, or, as owner or agent of the owner for the purpose of transferring such building on hire or by sale or on the basis of ownership, but does not include a person or persons engaged as masons or such other artisan;
- (d) "building" means a building or part thereof and includes all fittings, fixtures, installations, signs and display structures of the building, but. does not include any building notified by the Authority;
- (e) "building designer" means a building designer who has been granted a licence under this Ordinance;
- (f) "building supervisor" means a building supervisor who has been granted a licence under this Ordinance;

Section 3 substituted by the Sindh Building Control (Amendment) Ordinance, 1982, (Sindh Ord., III of 1982), dated 6-3-1982.

- (g) "developer" means a person or body of persons including a society, engaged in developing a plot, or plots for any kind of building activity, for transfer by allotment to the members if the developer be a society, or to other persons on basis of ownership or by sale;
- (h) "fund" means the fund of the Authority, constituted under Section 4-C;
- (i) "Government" means the Government of Sindh;
- (j) "inspecting architect" means an inspecting architect who has been granted a licence under this Ordinance;
- (k) "inspecting engineer" means an inspecting engineer who has been granted a licence under this Ordinance;
- (l) "prescribed" means prescribed by rules or regulations made under this Ordinance;
- (m) "private building" means a residential building of not more than three floors including ground floor constructed on a plot of any size or a commercial building of not more than three floors including ground

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- floor constructed on a plot not exceeding four hundred square yards, (367 sq. meters) not meant for transfer by sale or on the basis of ownership and does not include a building like a mosque, auditorium, cinema or such other building;
- (n) "proof engineer" means a structural engineer whose name is borne on the panel of proof engineers maintained by the Authority;
- (o) "public building" means a building other than a private building;
- (p) "quality control" means the standards fixed or any code of practice of quality control recognized by the Authority for construction of buildings or development of plots;
- (q) "regulations" means the regulations made under this Ordinance;
- (r) "rules" means rules made under this Ordinance;
- (s) "Society" means a society which directly or indirectly deals with providing plots to its members for housing, commercial or industrial purposes;
- (t) "structural engineer" means a structural engineer who has been
- (u) "town planner" means a town planner who has been granted a licence under this Ordinance.

(2) The expressions used but not defined, in this Ordinance shall have the meanings assigned to them in the Sindh Local Government Ordinance, 1979.]

Comments

It may be useful to elaborate certain terms/words used in this Ordinance as under:-

(c) "Builder" • In its plain dictionary meaning a builder is one who builds, or whose occupation is that of building, specifically, one who controls or directs the work of building construction in any capacity. A person whose business is to construct buildings, vessels, bridges, canals or railroads, by contract. "Builder", "Artisan", "Architect" — In the practice of civil architecture the builder comes between the architect who designs the work and the artisan who execute it. "Builder" and "Contractor" - The word "builder" has been used by lawyers. Judges, and courts a synonymous with "Contractor" when used in connection with building contracts (The Law Lexicon). However, the word "Builder" used in this Ordinance has been given specific meaning to serve the purpose of this Ordinance. Therefore, the definition of the word "builder" as given in this Ordinance is to qualify a person or a body of persons a "builder" under the provisions of this Ordinance.

(d) "Building" - what is a building, must always be a question of degree, and circumstances, its ordinary and usual meaning is a block of brick or stone work covered in by a roof - (M.R. Moir V Williams. (1892) 1 QB 264). The word "building" necessarily embraces the foundation on which it rests, and the cellar, if there be one under edifice, is also included in the term". (Benidict V Ocean ins.. Co., 31 N.Y. 389. 394). The erection of a mere fence or a boundary wall is not a building. But, where such a wall is built so as to enable the occupier of the main house to use the enclosed area as part of his habitation and not merely as a boundary or fence, it comes within the definition of building.

(73 I.E. 972 = 24 Gr. L.J. 732 = AIR - 1932 Rang - 65 (2).

Building generally indicates a structure with a roof. But the definition given in this Ordinance contemplates some thing more than that, which also includes all fittings, fixtures, installations, signs and display structures of the building. It further stipulates that the authority may exclude any building from its given meanings by giving due notification in this regard.

(m) "Private Building" • In its strict meanings private building means, a premises, or path which is neither public nor official but belonging to or concerning one or more individuals. However, for the purpose of this

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Ordinance, the expression "Private Building" carries a specific meaning which means a residential building of not more than three floors including ground floor constructed on a plot of any size or a commercial building of not more than three floors including ground floor constructed on a plot not exceeding four hundred square yards (367 sq. meters not meant for transfer by sale or on the basis of ownership and does not include a building like a mosque, auditorium, cinema or such other building.

(p) "Quality Control" It means the standards or criteria of quality control set and recognized by the building control authority in relation to the construction of buildings or developments of plots.

[4. Authority.-(1) Government may, by notification, appoint anybody corporate or council, or any department of such body corporate or council, or any Government department or functionary or any organization to act as Authority for such area as may be specified in notification.

(2) Where a body corporate, a council, or an organization, or any Government department or department of body corporate or council is appointed as Authority, the Chief Executive or in charge of such body corporate, or council or organization or department, as the case may be, shall act as the Chief Executive of the Authority.

(3) The Authority for any area shall be known after the name of that area and shall sue and be sued in such name.

Comments

The Authority appointed under Section 4 of the Ordinance is to be notified, also specifying the area under its control. The Authority so appointed shall be called and addressed after the name of the area within its jurisdiction, and shall sue or be sued by that name.

Demolition Notice without order of the Director General K.D.A. • without lawful Authority;- Notice for demolition of building issued by Deputy Controller of buildings without report of duly constituted inspection committee and without orders of Director General, Karachi Development Authority. Notice declared to have been issued without lawful authority and of no legal effect. (Furqan Ahmad V Deputy Controller of Buildings - 1984 CLC 2476)

The authority constituted under Section 4 of the Ordinance can rely on the opinion of the technical committee as well as on any other material, which it may have in its possession for forming an opinion that the building is dangerous. (1986 CLC 581).

'4-A. Officers and Servants of the Authority.-(l) The Authority may appoint such officers, advisers, experts, consultants, and employees for efficient performance of its functions and on such terms and conditions, as may be prescribed.

(2) All officers, advisers, experts, consultants and employees appointed under sub-section (1) shall be deemed to be public servants within the meaning of Section 21 of the Pakistan Penal Code (Act XLV of 1860) and shall be subject to such disciplinary action as may be prescribed.

` [4-B. Supervision over the Authority.-Government may appoint a Committee which may subject to the control and direction of Government oversee the functioning of an Authority.

4C - FUNDS

4-C. Fund.-(1) there shall be a fund of the Authority to be known after its name.

(2) The fund shall consist of-

(i) grant-in-aid made by Government or received from any other source including foreign aid;

(ii) loans raised or obtained by the Authority,

(iii) fees and other sums received by the Authority under this Ordinance.

(3) All the money in the fund shall be kept in a Bank approved by the Authority.

(4) The Authority may invest its funds in any security of the Federal Government or Provincial Government or any other security approved by Government.

(5) The fund shall be utilized for carrying out the purposes of this Ordinance.

(6) The Authority shall maintain or cause to be maintained complete and accurate accounts of the fund in such manner or form as may be prescribed by rules.

(7) The accounts of the Authority shall be audited at least once in every financial year by such auditors or accountants, as may be approved by Government.

5 - SALE OF PLOTS

[5. Sale of Plots.-(l) No developer shall transfer any plot or plots on the basis of ownership or by sale or advertise such transfer, without obtaining a no objection certificate from the Authority in the manner and on payment of such fee as may be prescribed.

(2) Where the Authority is satisfied that the development of the plots made or proposed to be made, is below the standard laid down by the Authority, it shall refuse to give no objection certificate under sub-section (1).

(3) Where the developer has failed to deliver the possession of the plot mentioned in sub-section (1) by the date specified in the agreement with the transferee, he shall, unless the date has, on his application, been extended by the Authority, pay such interest not exceeding the interest payable by a Scheduled Bank as may be prescribed on the amount paid by the transferee.

(4) The provisions contained in sub-sections (1), (2), (3), (4), (5) and (8) of Section 12 shall mutatis mutandis, be complied with by the developer in respect of the plot or plots mentioned in sub-section (1).

(5) The provisions contained in section 15 shall mutatis mutandis apply to the transferee of a plot or plots mentioned in sub-section (1).]

Comments

The section is meant to serve the purpose of controlling the developer of plots of land, under which they are bound to obtain No Objection Certificate from the Authority before offering such plots for sale. No Objection Certificate is an evidence of the fact, that a developer holding the same under sub-section (1), has fully complied with the required

Standard of the development of plot to the satisfaction of the Authority. Any developer of plots falling short of the required standard of the development of plots is not entitled for the required No Objection Certificate, and the authority shall refuse to issue the same. Under sub-section 3, the developer is compelled, on pain of the payment of interest on the amount received by him, in case he fails to deliver the plots to purchaser by the agreed date.

6 - APPROVAL OF PLAN

6. Approval of plan.-(13 No building shall be constructed before the Authority has, in the prescribed manner, approved 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 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. 5[Explanation.- The word "construct" with all its variations used in this section and hereafter shall include 'reconstruct' with all its variations and, additions or alterations,]

(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 No Objection Certificate has been issued under sub-section (1) but before the completion of building Government 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 in expedient 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 this sub- section means the completion of building in all respects according to approved plan and in respect whereof 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 such directions as may be given by Government.]

Comments

Construction of more than two storeys." Whether defendants can under law or conditions of their lease, construct more than two storeys on their plot in view of provisions of Ordinance. Question still to be decided by Court - Window on proposed second floor if closed and defendants put to terms to safeguard in an adequate manner claimed rights of plaintiff, construction of third storey of defendants neither likely to cause any irreparable harm nor prejudice to plaintiff. Order of High Court confirming interim injunction granted in plaintiff's favour restraining defendants from raising construction beyond two floors. Modified to extent that defendants will not carry out any construction above third storey till disposal of suit on specific un-conditional undertaking given by defendants that in case of final decision of suit going against them they will demolish third storey, that total height of building will not exceed 32 ft., and they will construct only one window in third storey on side facing plot of plaintiff but it will be kept closed till disposal of suit.- (Muhammad Munir V Ahmad Ally Memon and 2 other: 1981 CLC 414)

Ejectment of tenant on ground of Re-Construction:- Land lord failing to prove or bring on record sanction accorded by competent authority for reconstruction of premises although he claimed to have obtained the same. Approval of building control authority also not produced. Grounds for reconstruction of building, therefore, was not available to land lord. Ejectment case filed in 1974 while building plan approved in 1962. Case remanded to Rent Controller to allow opportunity to land lord to lead evidence to establish that on date he instituted application for ejectment he had in his possession a valid sanction for re-construction of premises which was from time to time renewed and that after enforcement of Ordinance V of 1979 they had obtained necessary approval of Building Control Authority.

(UmarDarazVFatima 1986 CLC 103) |

Un-authorized Construction - Rights of Easement - Violation of -Grant of Temporary Injunction:- In the facts and circumstances of the case prima facie it is clearly established that if the proposed construction is raised on the first floor it will affect the plaintiff's rights of light, air and privacy, The reliance was placed on two authorities viz 1981 CLC 414 and 1981 CLC 513 in which, according to the learned counsel, on undertaking being given, permission to raise the disputed construction was allowed on terms held – in those cases, facts were completely different, because, there the defendants were raising construction according to the approved plan. In both the cases, the plan were approved, but the plaintiff's were objecting that it will infringe right of privacy, light and air. In such disputes, if on such undertaking construction is allowed to be raised which is not according to the approved plan, then it is bound to create a very anomalous situation. It will amount to by passing the mandatory requirement of law of obtaining approved plan before raising construction and cloth it with legitimacy under the order of the Court. Such sanction though in the nature of a temporary order prolong for an indefinite period and experience has shown that' it leads to serious complications and legal ramifications and often third party's vested interest is created making it difficult to demolish the construction so raised. To lay down a rule to allow construction so raised, particularly unauthorised, on such undertaking as in the present case is likely to encourage raising of the planned structures and would amount to legal complications and multiplicity of litigation in which innocent third parties will be more affected if the construction has been raised on commercial basis. Such constructions are not beneficial to the parties and obstruct planned development of a locality. Therefore the undertaking offered by the defendant is not acceptable particularly as the plaintiff has opposed it. (Mst. Hawa Bai V Haji Ahmad and another 1987 CLC 558).

CONSTRUCTION SHOULD BE RAISED AFTER APPROVAL OF PLAN: Construction held, should be made after obtaining approved plan from Building Control Authority. Court would not permit construction not duly approved by Authority, because such permission would amount to by - passing mandatory requirement of law of obtaining approved plan before raising construction and cloth it with legitimacy under order of Court - (1987 CLC 558).

Disputed questions of fact could not be decided in Constitution Petition - such petition dismissed.-The

sole ground of attack is that till such time the property is not officially partitioned the respondent No.1 can not approve the plan as the petitioner has right in the plot of land jointly with other purchasers. This is a disputed question of fact and it can not be decided in this petition. (This contention is supported by cases reported in 1985 SCMR at P/1372 = 1983 SCMR 732 and 1979 SCMR at P/200). The contention has force. The dispute raised by the petitioner requires evidence to determine the extent of right of the purchasers and their interest in the property. The question will also arise whether the plot of land was privately divided and each purchaser had a separate share so far construction and plot of land is concerned. These disputed facts can be decided only after recording evidence of the parties. Even otherwise the petitioner before challenging the action of respondents No.1, and 2 should establish his right in the disputed land. Such question of fact can not be agitated and decided in a constitution petition.

(Benedict I De. Souza V. Karachi Building Control Authority and 3 others • 1988 CLC 1033). A neighbor likely to be affected by unauthorised construction has interest in ensuring that official discharged his official duty.-Construction of building in violation of approved building plan and building bye-laws. Statutory functionaries under Sindh Buildings Control Ordinance, have statutory duty to ensure the compliance of building bye-laws. Petitioner, a neighbor and likely to be affected by un - authorised construction of the building, cannot be said to have no interest in ensuring that official discharged his statutory duty. One of the prayers in the constitutional petition being that official respondent be directed to demolish the unauthorised construction put up by the private respondents, petitioner, prime facie had focus stand/ to maintain the constitutional petition. High Court, thus issued a prohibitory interim injunction to restrain the private respondent from raising any further constructions. (Abdul Waheed Butt. V Mrs. Asma and 4 others - 1989 CLC 1936)

Public at large being interested - case fell in category of public litigation: Public at large being interested to ensure that construction was not raised in violation of the building bye-laws or the Ordinance. Petitioner's case fell with the category of public litigation. Intervention of High Court, in exercise of constitutional jurisdiction, would discourage aforesaid illegal practice obtaining in the area. (Sardar Begum Faruqul V Rashida Khatoon • 1990 CLC 83)

Un-authorised construction local authority's obligations: Building as a rule, are to be raised on the basis of approved plans. Such plans, on principle, are to be in consonance with the relevant scheme spreading over a specific area, framed by or under the successive directions of the Karachi Metropolitan Corporation, the Karachi Improvement Trust, the Karachi Development Authority and finally, the Karachi Building Control Authority, as it is in such order that these powers have, from time to time, come to vest. Each such scheme has its peculiar features and construction, re-construction and even modifications or alterations are to be on the basis of approved plans calculated to fit into the requirements of a particular scheme or an area within which scheme operate or is enforced. Open spaces, covered areas, number of storeys and even nature or use of constructions may be duly regulated. Property holders within the perimeters of such schemes end even permanent residents come to have either vested rights or, at the very least, some interest in the observance of the necessary features of the relevant scheme. The local authority operating in such areas is obliged to ensure the observance and continuity of such schemes but always subject to law; Rights in such observance may

not. in many cases, be rights in strict sense or strict Juristic rights but could be rights or even interest of an inferior nature which, if not observed, could give rise to grievance for individuals. Where rights in strict legal sense are invoked, remedy for transgression may be through civil suits, or if necessary in constitutional jurisdiction, but where mere interests occasion a grievance, the aggrieved party may not qualify to successfully maintain a suit. Statutory bodies, which are required by law to give effect to such rights or interests by enforcing compliance of their rules and regulations may, however, be appropriately sued in constitutional jurisdiction by aggrieved persons since, for maintaining such constitutional remedies, existence of right strict sense is not necessary. Similar view was expressed by the Supreme Court of Pakistan in *Fazal Din V Lahore Improvement Trust - PLD 1969 SC. 223*, and was consistently followed. It was lastly re-iterated in this Court in *Abdul waheed Butt V Mrs. Asma 1989 CLC.1936*.

(*Suleman Mala V Karachi Building Control Authority and 3 others. - 1990 CLC. 448*).
Un-authorized Construction not allowed:- Respondent's prayer that he might be allowed to complete the building on under taking that he would demolish the same if held otherwise by the Court was not allowed because that would amount to permitting premium on wrong doing. Respondent was restrained from raising the building in violation of his approved plan.
(1990 CLC. 448)

Construction in derogation or without approved plan or in transgression of rights, interests or easements are the matters in which the concept of burden of proof is also somewhat differently applicable: When constructions are raised without an approved building plan or in derogation of a plan, where approved, or in transgression of rights, interests or easements such as those of privacy or light or air, these all are remediable and enforceable matters though in different degrees and in different modes. The concept of burden of proof is also somewhat differently applicable in these matters. Thus in relation to constructions involving lack of approved plans or transgressions of such plans or violations of the law, rules or regulations, issues are simple enough, as the same can be determined without involving any serious controversies as to facts and relief is not far to find. However, in relation to absolute, as distinguished from generic rights of an easementary nature such is of light or air or those based on customs etc. Such as of purdah or those guaranteed under the constitution such a privacy of home disputes may involve complicated controversies of facts, except where such rights are themselves taken due care of under the Rules Regulations of the Local Authority or the schemes relevant to an area. In the latter class of cases, observance of rules or adherence to the relevant schemes would ensure such rights as well. Remedies therefore, could be readily available.
(1990 CLC 448)

Sindh Building Control Ordinance operative only prospectively and not retrospectively: Building in dispute which was intended to be demolished for alleged violation of Section 6 of Ordinance, 1979, admittedly was constructed by owner thereof after obtaining approval of construction plan from Authority concerned much before promulgation of Ordinance, 1979, which was operative only prospectively and not retrospectively. No action could be taken against building or its owner under any provisions of said Ordinance as provisions of Ordinance were not applicable.
(*Muhammad Amin V Karachi Building Control Authority • 1992 CLC 691*)
Word "Commenced" Meaning of as used in Section 6(1). Sindh Buildings Control Ordinance, 1979 would refer to those Constructions which were in progress at the time of promulgation of the Ordinance

although construction work had started earlier. Provisions of Section 6(1), Sindh Buildings Control Ordinance, 1979, thus would not apply to the buildings already completed prior to the promulgation of the Ordinance V of 1979. (Noor Muhammad and another V Building Control Authority and 2 others-1992 CLC 729) Section-6 - Scope 81 Object - dilated upon by the Supreme Court of Pakistan. A perusal of Section-6 of the Ordinance indicates that its sub- section (1) prohibits the construction of any building before the Authority has, in the manner prescribed, approved the plan of such building and granted no objection. It also provides that No Objection Certificate shall be obtained not later than six months after the commencement of the Ordinance in respect of a building, the construction of which had commenced before the enforcement of the Ordinance. The explanation to the sub-section (1) explains the word "Construct" by providing that the same with all its variations used in this section and hereafter shall include "re- construct" with all its variations, additions and alterations. It may also be noticed that sub-section (2) to (4) thereof deal with the issuance of the occupancy certificate in the manner prescribed, prohibition of the use of the building other than that for which its plans were approved and granting permission under sub-section (3) for occupation of the building on such conditions and on payment of such fees as it may fix. (Karachi Building Control Authority and 3 others V Hashwani Sale and Service Ltd., and 3 others PLD 1993 Supreme Court 210). Sub-sections (5) and (6) of Section-6 of the Ordinance, and Regulation 16 of Karachi Building and Town Planning Regulations, 1979 - Chief Minister of Province not empowered to permit high rise construction in contravention of' regulations: Sub-section (5) of Section-6 of the Sindh Building Control Ordinance, in the first instance indicates that power to suspend or cancel a No Objection Certificate issued in respect of a high rise building can be exercised by the Government in case, it is satisfied that the construction of any type of building or buildings to any area is not in the public interest or is otherwise in expedient. Sub- section (5) therefore, nowhere indicates that it was inserted in the Sindh Building Control Ordinance with a view either to ensure compliance with the provisions of the said Regulation or to penalize the builders on account of violation of any such Regulation. Albeit, when the Government decides to Act under the said sub section public interest must be of Paramount Consideration. Sub-section (6) of Section-6 only indicates that after an order has been passed under sub-section (5) the matter is to be re-processed by the Authority in accordance with such directions as might have been given by the Government. Therefore, there has to be a direct nexus between the action that is taken under the said provisions and involvement of public interest or expediency. But neither of the said sub-sections to section-6 of the Ordinance indicates that the object behind them was enforcement of the said Regulations, notwithstanding, the fact that the order was purportedly issued by the Government of Sindh to prevent construction of high rise buildings. However, sub-section (5) and (6) can not be construed so as to authorise the Government either to permit compounding of violations of any of the provisions of the said Regulations or to permit deviation therefore, because no such intention can be spelled out therefrom. If the intention was to clothe the Government or the functionaries of the Karachi Buildings Control Authority with power to deviate from any provision of the said Regulations, the very purpose behind framing them would have been defeated. Such an intention in any case, could not be spelled out from the said provisions of the said Ordinance.

Consequently, the Chief Minister was not empowered to permit construction of a high rise building in contravention of the Regulations. The power exercised by the Chief Minister was under a provision of law which had no nexus to the contravention of the Regulations. No doubt, the restrictions imposed under the general order issued under the newly added provisions of the Sindh Buildings Control Ordinance were withdrawn by the order of the Chief Minister, but the same in no way could be construed to permit deviation from the Regulations which could only be done in accordance with the procedure provided in the Regulations themselves. Consequently, the Chief Minister's order could not override the Regulations. (Ardeshii Cowasjee and 4 others V M/s. Multiline Associates & 2 others - PLD 1993 Karachi 237). Sec. 6 - Competency of Constitutional Petition: - Petitioner having filed suit, his application for interim relief was rejected by Trial Court as also by the Appellate Court. Petitioner not filing revision against orders of Courts below, but seeking relief in constitutional petition on the same allegations as alleged in suit. There being a serious controversy with regard to facts and also civil suit still awaiting adjudication, constitutional petition on those very facts as averred in plaint was not maintainable. (Rab Nawaz V. Karachi Building Control Authority & 3 others • 1992 MLD1164).

6A - INFORMATION FOR NO OBJECTION CERTIFICATE

[6-A. Information for No Objection Certificate.-A builder developer shall for the purpose of obtaining No Objection Certificate under Section 5 or as the case may be, under Section 6 furnish full and true information as to the following duly attested in the manner as may be prescribed:-

(a) his own title, and title or interest of any other person or any encumbrance such as mortgage or lease or license in respect of the land on which a building is to be constructed or which it to be developed into plots;

(b) plans, specifications, design, and materials to be used, as approved by the Authority;

(c) all money payable under any law for the time being in force in respect of the building or plot as the case may be, which may include taxes, ground rent, revenue assessment, electricity and water charges;

(d) such other information and documents as may be specified by the Authority.

7 - PREPARATION OF PLANS

[7. Preparation of plans.-(1) The plan submitted to the Authority under Section 6 shall be prepared by and under the supervision of, and signed by, such person or persons referred to in sub-section (1) of Section 8 as may be, prescribed: Provided that a structural engineer shall be associated with the Architect to prepare the structural designs and drawings and sign them if the building:-

- (i) is sixteen meters or more in height from the plinth level;
- (ii) consists of five or more storeys, in addition to the ground floor;
- (iii) consist of two or more storeys, in addition to the ground floor situated in the coastal areas notified by the Authority;
- (iv) is considered by the Authority to be of special nature:

Provided further that a town planner shall, in addition to structural engineer, be associated to assist the Architect in preparation of the plan if the building is constructed on a plot of two acres or more and the Authority deems that association of town planner is necessary and in that case the plan shall be signed also by the town planner.

(2) An Inspecting Engineer shall be engaged for supervision of construction of a building other than a single or double storeyed building on an area not exceeding four hundred square yards the construction whereof may, instead of inspecting engineer, be entrusted to the supervision of a building supervisor, and the Inspection Engineer or as the case may be, the building supervisor shall sign the plan of the building.

(3) The builder and any person or persons associated in any manner with the building including its plan and construction shall be liable for the defects in the structure, plan and construction thereof to such extent and manner as may be determined by the Authority.

(4) The Authority may, for the reason of safe and sound construction, refer the structural design of any building for further examination to a Proof Engineer who shall scrutinize the design and, if necessary, modify it and the fees or any charges in connection therewith shall be borne by the builder.

Comments / Citations
 Section-7 lays down a certain conditions to be followed & fulfilled in the preparation of the plans before submitting it to the Authority under Section 6. Word "defect" used in Section 7, meaning of: Word "defect" as used in Section 7, postulates either an architectural or planning defect in construction of buildings itself. Meaning of words 'defect' as discernible from provision of Section 7 cannot lead to conclusion that word 'defective' used in Section 11(2) of this Ordinance would also mean or include a legal defect such as raising un-authorized construction of shop on residential plot. (M.S. Qadar Farooqui and 2 others. V the Master Plan Department and another • PLD • 1980 Karachi 486).

The plan deemed to be approved due to default and inaction on the part of Authority is not absolute: The plan for third and fourth floors were not approved in the normal manner, but the approval is alleged to have been obtained due to default and inaction on the part of the Building Control Authority. Such sanction is not absolute in all respects, because unless the plan submitted is in accordance with the Rules and Regulations, merely by inaction or silence of the Authority, the plan does not stand approved. Therefore, in such cases it should also be established that the plan meets the requirements of law. - (Vazir Ali and 5 others V Hanif 1990 CLC 1842).

7 - PREPARATION OF PLANS

Easement: It is well settled that a neighbor can object to the construction of the building in his neighborhood, provided he is able to establish that his right of privacy, light and air will be disturbed and infringed where any one makes any construction in violation of Rules and Regulations or without proper approval, then besides, the fact that he has acted illegally,

The presumption that such act is not likely to infringe the rights of the neighbors cannot be inferred -
(1990 - CLC - 1842).

Fee Paid-Plan stood approved legally: Approval of building plan subject to payment of composition fee and other prescribed fee. Such fees were deposited by petitioner. Approval of plan had thus taken legal effect and in pursuance thereof, certain rights had been created in favor of petitioner. Approved plan could not subsequently be withdrawn or rescinded to the detriment of plaintiff's rights by any Notification Circular or Executive Order. Any Notification, Circular or Executive order could not operate retrospectively to impair any existing right. Order cancelling approved plan declared to be without lawful authority and of no legal effect. (Newyork Polyclinic of Karachi (Pvt) Ltd., V Karachi Building Control Authority and another - 1993 CLC 717).

Sec. (7)—Sindh Building Control Ordinance, 1979— Karachi Building and Town Planning Regulations, 1979, paras 8, 10 and 11. Plot in question was admittedly situated in Cantonment Area. Provisions of Karachi Building and Town Planning Regulations would not apply to construction plan relating to such plot. As for construction plan, person who was lessee for long period can also apply for approval of construction plan.
(Abdul Ghani and others V. Govt. of Pakistan and others-- 1996 CLC 1914)

7A - VIOLATION OF CERTAIN PROVISIONS

[7-A. Violation of certain provisions.- Where the provisions of sub-section (1) of Section 6 are violated the building may without prejudice to any other action including sealing of the building or ejection of the occupants be ordered by the Authority or any officer of the Authority authorized in this behalf to be demolished, at the cost of the builder in the case of public buildings and the owner in other cases.

Comments / Rulings

The provisions of Section 7-A shows that the contemplated action in this section could be taken only in the case the provisions of Section 6(1) of the Ordinance are violated. If there is no violation of Section 6(1) of the Ordinance, no notice, for the contemplated action under Section 7-A, can be issued by the Authority, and such a notice is illegal, void, without jurisdiction, and violative of the Authority vested under Section 7-A of the Ordinance.

(Noor Muhammad & another V Building Control Authority and 2 others-1992 CLC 729).

Violation of approved building plan: Without prejudice to any action including sealing of building or ejection of occupants, would entail further penalty by demolition of un-authorized structure at the cost of builder or owner, but approval granted to building plan could not be cancelled.

(Asma Builders V Govt., of Sindh • 1993 CLC 326).

Order canceling approved plan set aside: Deviation made by builder from building plan approved by Authority, though could entail action against him including demolition of un-authorized structure yet approved building plan could not be cancelled. "Order of Cancellation of approved building plan of petitioner was set aside with option to the Authority to take action for violation of approved plan and if necessary to demolish un-authorized structure.

(1993 CLC 3261).

Sec. 7-A • Construction of building without approved building plan- penalty— Authority was empowered under provision of Section 7-A Sindh Building control Ordinance, 1979, to demolish construction at the cost of builder or owner where he had constructed a building without building plan approved in manner prescribed by rules framed under the Ordinance. (Dost Muhammad V. Mrs. Amina Bano and 2 others 1992 MLD 1727).

8 - GRANT OF LICENCE

[8. Grant of licence.-(1) No person or body of persons shall act as Architect, Building Designer, Inspecting Engineer, Inspecting Architect, Building Supervisor, Structural Engineer or Town Planner except with a licence granted by the Authority in the manner, and on the terms and conditions as may be prescribed: Provided that any licence granted under any other law for the time being in force shall expire after six months from the date of the coming into force of the Sindh Buildings Control (Amendment) Ordinance, 1982.

(2) No licence under sub-section (1) shall be granted unless an Architect, Building Designer, Inspecting Engineer, Inspecting Architect, Building Supervisor, Structural Engineer or Town Planner possesses such qualifications as may be prescribed.

(3) The functions of and remuneration payable to an Architect, Building Designer, Inspecting Engineer, Inspecting Architect, Building Supervisor, Structural Engineer or town planner shall be regulated in such manner as may be prescribed.

Comments	/	Rulings
<p>Any person or body of persons can act as Architect, Building Designer, Inspecting Engineer, Inspecting Architect, Building Engineer, Structural Engineer or Town Planner only after having obtained a licence for the respective job / work. The Sindh Building Control Authority has framed Building Control Licensing Regulations, for Karachi Division, and these are named as Karachi Building Control Licencing Regulations, 1982. The manner under which licences are granted has been fully explained vide Regulations 4 and 5 of the said Regulations.</p>		

"[9. Grant of licence to Builder or Developer.-No builder or developer shall engage in construction or transfer of a building or, as the case may be, development or transfer of a plot, or plots except with a licence granted by the Authority in the manner and on the terms and conditions including fees as may be prescribed.

Comments / Rulings
The terms and conditions of licence issued to Builders / Developers are also envisaged in part-IV of the Karachi Building Control Licencing Regulations, 1982.

Meaning of Licence;The meaning of "License" as defined in Karachi Building Control Licencing Regulations, 1982 is - "Licence" means sanction granted to any person to act as an Architect, Structural Engineer, Building Supervisor, Town Planner, Builder or Developer for the purposes of the Ordinance and the Rules, Regulations

10 - LICENSING BOARD

"[10. Licensing Board.-(l) Notwithstanding, any other provision this Ordinance, Government may by notification constitute a Licensing Board for the whole Province to grant licences to the persons referred to in sub-section (1) of Section 8.
(2) Where a Board has been constituted under sub-section (1), the Authority shall cease to exercise the powers under Section 8 and to frame regulations in respect of the matters specified therein and in that case all such matters shall be regulated in the manner prescribed by rules.

"[10-A. Appointment of Committees and Sub-Committees.-

The Authority may appoint committees or sub-committees which shall subject to control and direction of the Authority exercise such powers and perform such function as may be assigned to them by the Authority.

11 - INSPECTION OF BUILDING OR PLOT

11. Inspection of building or plot.-" The Authority may authorize any officer not below grade 17 of the national scales of pay to inspect any building under construction or any plot developed or being developed in any locality or localities or as may be assigned to such officer for the purpose of quality control.

(2) If in the opinion of the officer authorized under sub- section (1) the construction of any building is not in accordance with the plan or the specifications approved by the Authority or any material used in the construction is of sub-standard or is not of the quality or type mentioned in the advertisement under Section 12, such officer may, by order in writing issue any direction and it shall be the responsibility of the builder and all those concerned with the construction of the building to carry out such direction or he may require that the construction be suspended until any further direction is issued either by him or by the Authority or order that the construction which in his opinion is defective be demolished at the cost of the builder.

Comments

Section 11 sub-section (2) stipulates that if in the opinion of the Authorized Officer, the construction of any building is not in accordance with the plan or the specifications approved by the Authority or any material used in the construction is of sub- standard or is not of the quality or type mentioned in the advertisement under Section-12, he may by order in writing issue any direction to the builder or he may require that the construction be suspended until further direction is issued either by him or by the Authority or he may order that the construction, which in his opinion is defective be demolished at the cost of builder.

Words "any direction" in Section 11(2) cannot be widened so as to include power of issuing direction to demolish construction, power of demolition being specifically provided in Section 11 only when construction defective.

(M.A. Qadir Farooqui and 2 other V Master Plan Department and another PLD 1980 Karachi - 486.)

"Building" as defined in this Ordinance, means a building or part thereof and include word 'defect' used in Section 7 postulate either an architectural or planning defect in construction of building itself – Meaning word 'defective' is discernible from provision of Section 7 cannot lead conclusion that word 'defective' used in Section 11 (2) would also mean include a legal defect such as raising un-authorized construction of shop residential plot. -

(PLD - 1980 Karachi 486).

Authority to demolish under Sindh Building Control Ordinance under Article 7.2 of President's Order V of 1957 are two separate Distinct Authorities. Thus the notice under Section 11 sub- section (2) of Ordinance V of 1979 cannot be attributed to have been issued under Article 72 of KDA Order V of 1957, even if the Master Control Department of the Karachi Development Authority:- (PLD-1980 Karachi 486).

12 - SALE OF BUILDINGS

12. Sale of buildings:- [(1) No builder shall sell or, advertise for sale any building, through any Audio-Visual aids or any other means before he has obtained approval in writing of the Authority, and he shall mention such detail 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 of the builder, if any, and at the site of the building.

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

15 [(4) Where any application is made in response to the advertisement, a agreement shall be executed between the 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 on 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 specifications 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 unauthorised 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.

Comments

"Building" as defined in this Ordinance means a building or part thereof and includes all fittings, fixtures, installations, signs and display structures of the building, but does not include any building notified by the Authority. The expression "or a part thereof used in the definition includes the flat or shops premises, being the constituting parts of any building. In the modern life style, living in Flats or Apartments has become order of the day. The rapid growth in population and scarcity of land,

particularly in big cities, has given way to the construction of multi-storeyed buildings so as to accommodate maximum number of people, within the smallest possible space of land.

Obviously, the high rising phenomena emerging with the combination of Iron, Brick and Cement could not be let loose un-checked and unguarded of the most essential and the appropriate Rules and Regulations in this respect. Therefore, the primary object of the Sindh Building Control Ordinance, 1979, is to see that the structures raised and the planning of the plots is not in contravention of laws and rules prescribed in this regard and also to regulate the conduct of all those concerned with it. The Section 12 of the Ordinance meets with one of the very important requirements in this direction. It lays down the conditions for the sale of Buildings, Flats or Apartments etc. which shall be observed by the builder, not only before been imposed upon him of removing any defect in the structure of building that may be found within one year, and any defect in fixtures within six months from the date of physical possession to the transferee.

13 - INCREASE OF SALE PRICE

13. Increase of sale price.-(1) The sale price of a building advertised under Section 12, "[or agreed upon between the parties for sale before the commencement of this Ordinance shall not, after the advertisement or agreement be increased except with the approval of the Authority who may, after taking into consideration the rise in cost of building material and wages of the labor and such other expenditure, allow such increase as the Authority deems fit.

(2) Where a building cannot be completed by the date mentioned in the advertisement or offer the Authority may be on application made in this behalf, extend the period for completion of the building

(3) Where a building has not been completed by the date mentioned in the "[advertisement or offer] and the application under sub- section (2) has been] rejected, the builder shall be liable to pay interest at such rate not exceeding the rate charged by a Scheduled Bank and in such manner as may be prescribed, to the buyer of the building, on the amount of the sale price paid by such buyer for the period by which the completion of the building has been delayed. !

Comments

The Section 13, like Section 12 is again relatable to the matters of buildings, by virtue of which any increase in the agreed/advertised price of building is controlled by the Authority, who may allow increase in price, after having satisfied of the prevailing conditions, as to rise in cost, justifying, such increase in price.

Further, the Authority may reject application for extension, for want of any cogent or sufficient grounds, in the completion date of building. In such eventuality, the builder shall be required to pay interest at Bank Rate in the maximum, to the buyer of the building on the amount paid by him for the period by which the completion is delayed.

"[13-A. Formation of Co-operative Societies.- Where a building after its completion, is transferred to such number of persons who can form a Co-operative society under the Sindh Co-operative Societies Act, 1925, all such persons shall, for the purpose of maintenance of building, form such society.]

Comments:

Formation of Co-operative Societies, in so far as up-keep, maintenance, and proper management of building is concerned, are of utmost importance and in the best interest of the occupants/ buyers of building themselves. Because, once the building is complete and the possession thereof has been handed over to the respective purchasers, the builder has no more any kind of interest in it. Therefore, the purchasers/buyers, as soon as possible, should form Cooperative Society and take over the charge of the building from the builder. The very object of forming this society is to handover the management, maintenance and all other affairs pertaining to the building to the buyers of the building.

14 - DANGEROUS BUILDING

"[14. Dangerous Buildings.- (1) If it comes to the notice of the Authority that a building is likely to collapse, the Authority may, after such enquiry as it deems fit order for carrying out the specific repairs or demolition of the whole or part of the building. (2) Where the specific repairs are to be carried out, the Authority may, by notice, require the owner of building or in the event of his failure the occupier thereof to carry out such repairs within such period as may be specified in the notice and if the repairs are not carried out within the specified period, the Authority may, notwithstanding, any other law for the time being in force proceed to have the building demolished and the cost of demolition shall be recovered from the owner as arrears of land revenue. (3) Where the whole or a part of the building is to be demolished, the Authority may, by notice, require the occupier or occupiers thereof to vacate the building within the period specified in the notice and if the building has not been vacated within such period, the Authority may, notwithstanding, any other law for the time being in force order that occupier or occupiers of the building be ejected, if necessary, by force "[:]]

"[Provided that no action shall be taken under this section unless the person who is likely to be affected thereby is given an opportunity of being heard.]

Comments

Section 14 of the Ordinance, also authorises demolition of building, but as it is evident from its provisions, it gives the Authority for demolition on different grounds, which are related to the unstable condition of building It categorises a particular type of building which is likely to collapse or is dangerous as to cause harm to human life or property. The building may in that eventuality, be ordered to be demolished by the Authority, if the occupier fails to vacate the building within the period specified in the notice issued under Section 14 of the Ordinance. Building In occupation of Petitioner declared to be dangerous without hearing them-effect; In the absence of any express exclusion of the right of hearing of the affected persons, the inspection committee of the respondent Authority was bound to give notice inter alia to the occupiers, so that they might place their point of view before the opinion was formed as to the in condition of the building in question - (Abdul Aziz and 4 others V The Director General, Karachi Development Authority and 2 others 1990 CLC 119).

Inspection of Premises by Committee comprising of four members instead of seven: Effect - Objection as to incompetency of Inspection Committee was neither raised before appellate Authority nor before High Court in constitutional petition but the same was raised in the rejoinder, Objection however was found factually correct. Non-serving of notice to occupiers of building before inspection, having been admitted, it would not be just and proper to deny the petitioners the relief on that ground, Authorities were directed to ask the Inspection Committee to inspect the building with required number of members after notice to petitioners, Constitutional petition was thus disposed of by remanding the case to the Authority. (1990 CLC 199).

Notice for demolition without hearing opportunity to occupiers, held against law - (Furqan Ahmad V Deputy Controller of Buildings - 1984 CLC 2476I.

14 - DANGEROUS BUILDING

Demolition Notice of no legal effect: Notice for demolition of building issued by Deputy Controller of Buildings without report of duly constituted inspection committee and without orders of Director General, Karachi Development Authority. Notice declared to have been issued without law if Authority and of no legal effect. (1984 CLC 2476).

Petitioner in occupation were entitled to have notice from Inspection Committee: Premises in occupation of petitioners was declared to be dangerous on the report of inspection committee. Such premises were inspected by inspection committee without notice to petitioners. Effect in absence of express exclusion of the right of hearing, petitioners being in occupation of premises in question were entitled to have notice from inspection committee. Report of Inspection Committee on basis of which houses/premises in occupation of petitioners were declared to be dangerous having been prepared without notice to petitioners was declared to be without lawful Authority and of no legal effect. (Vincent and others V Karachi Development Authority • 1992 • CLC • 518). Ejectment of tenant on ground of reconstruction allowed by Rent Controller: Appeal against this order pending adjudication in the High Court - and land lord was seeking ejectment of tenants through the process of the Court in terms of provisions of Sindh Rented Premises Ordinance, 1979, and not with the aid of the Buildings Control Authority under Section 14 of the Sindh Buildings Control Authority under Section 14 of the Sindh Buildings Control Ordinance, 1979. Ejectment of tenant, if any, therefore, would take place through the process of the Court and not through the exercise of statutory power vested in the Building Control Authority under Section 14 of the Building Control Ordinance, 1979, and Regulations framed under Section 21A of the said Ordinance by the Authority purporting to impose conditions upon land lord/owner of a building which was to be demolished, to produce an agreement entered into between him and a tenant for alternate accommodation or for the payment of compensation, which concept was foreign to the object and scope of the relevant provision of the Ordinance.

(Karachi Building Control Authority and 3 others V Hashwani Sales and Services Ltd., and 3 others - PLD 1993 S.C. 210).

Regulation requiring land lord/owner to enter into agreement with tenant for providing alternate accommodation or compensation was oppressive: Validity of ejectment of tenants on grounds of reconstruction of building. Regulations framed by Building Control Authority under Section 21A would be in consonance with the object of the Sindh Building Control Ordinance, 1979 in as much as it provides safe guard against indiscriminately employing the approval of plan as a vehicle for initiating ejectment proceedings and depriving the tenants from their valuable right of tenancy. If any reasonable condition as imposed by the Building Control Authority at the time of granting approval of plan or its renewal which may in terms be as provided by Section 15-A Sindh Rented Premises Ordinance, 1979 or similar to it for giving protection to the tenants the same would not only be reasonable but within the powers conferred by the Sindh Buildings Control Ordinance, 1979. Regulation requiring the land lord/owner to enter into agreement with the tenant for providing alternate accommodation or compensation, though was oppressive but requiring a land lord/owner to induct the tenant in possession of such area in the new building as did not exceed the old building of

14 - DANGEROUS BUILDING

which he was in occupation at the time of approval or renewal of the plan or an undertaking to this effect by the land lord/owner would be reasonable.

The subject can be divided in two parts, one where the tenant did not have the protection of Section 15-A Sindh Rented Premises Ordinance, 1979 and the second where the tenant has such protection. In the former case the tenant is left without any remedy although it is on the approval of the plan by the Authority that the land lord initiates ejectment proceedings. In case of re-construction demolition of existing construction is implied. A land lord can demolish a building if he obtains an approved plan for re- construction of the building in its place. It is pertinent to note that in cases where a tenant has a right to be re-instated in the new premises obtaining possession on ground of re-construction does not ipso facto terminate the tenancy in respect of the premises which the tenant occupied at the time of passing of ejectment order. The land lord keeps the new building in trust for the benefit of the ousted tenant. If the land lord on the basis of the approved plan could seek ejectment and the tenants were left without any remedy of being re-instated in possession in the new building, as happened between November, 1979, to 30-4-1984, the Authority would have been justified in imposing reasonable conditions which may protect the occupant's right of tenant. Such protection can be ensured by imposing reasonable conditions which may be in the form of guarantee, security or under taking by the land lord or agreement with the tenant. Although Sindh Buildings Control Ordinance was in force from 1979, the Regulation was framed on 7th April, 1984, only in respect of plans approved for re-construction up to plots having building in occupation of the tenants at Karachi. Therefore, its operation and applicability was restricted to a category of plots, persons and places where interest of tenant was involved. Such regulation will be in consonance with the object of the Ordinance in as much as it provides safeguard against indiscriminately employing the approval of plan as a vehicle for initiating ejectment proceedings and depriving the tenants from their valuable right of tenancy. The problem has not to be considered from the point of the land lords alone but placing both the "iew points in juxtaposition and then decide which option will be just and fair and which' one will be oppressive and un-just. Whether any settlement, agreement or' compensation for saving the tenancy will be just or to allow the tenant to be' deprived of his tenancy rights without any remedy can be termed as fair and 4 reasonable. The reasonable character of a rule or regulation can not be| judged in isolation from the whole problem it intends to solve. In these circumstances if any reasonable condition is imposed by the Authority at the time of granting approval of plan or its renewal which, may in terms be as provided by Section 15-A of the Sindh Rented Premises Ordinance or similar to it for giving protection to the tenants, the same would not only be reasonable but within the powers conferred by the Buildings Control Ordinance. ,

(KBC Authority V Hashwani S and S Ltd., • PLD 1993 Supreme Court.

The Regulation requires the land lord owner to enter into agreement with the tenant for providing alternate accommodation or compensation. Such condition may be oppressive. However, requiring a land lord/owner to induct the tenant in possession of such area in the new building as does not exceed the old building of which he is in occupation at the time of approval or renewal of the plan or an undertaking to this effect by land lord/owner will be reasonable. (PLD 1993 Supreme Court 210).

14 - DANGEROUS BUILDING

Object and Scope of Section-14 Mode of ascertaining dangerous buildings: - Primary object of Section 14 is safety of the public, to secure which the Authority must necessarily be given very wide powers. Such powers, however, could not be exercised arbitrarily and without due consideration to provisions of Section 14 of the Sindh Building Control Ordinance, 1979 and the right of individuals. As a remedy for "Dangerous Buildings" and prescribing various precautionary measures to be taken to prevent injury resulting there from, first of all degree of danger must be ascertained, and then appropriate measures prescribed. For ascertaining whether particular structures are dangerous. Authority must appoint a competent persons for holding inquiry as to what structures are dangerous.

Repair of top floor building, however, would not fall within the meaning of "dangerous buildings". Authority in such case must be satisfied that particular building is dangerous and would endanger human life. Without such satisfaction. Authority cannot exercise powers conferred by Section 14 Sindh Buildings Control Ordinance, 1979. [S.M. Yusuf Baghpatee V Karachi Building control Authority 1993 CLC 2491 + NLR UC 576 (a)].

Section 14 Leave to appeal granted:- Leave to appeal was granted to consider - where Authority's action was malafide at the behest of other respondents, - what was the scope of Section 14 of the Sindh Building Control Ordinance, 1979 and whether after demolishing of structure by the Authority under Section 14 of the Ordinance, tenancy of tenant, who was in possession of structure, would come to an end or whether owner would have to file ejectment application against tenant under Sindh Rented Premises Ordinance, 1979.— (Gul Sarwar V Muhammad Hanif and 6 others - 1997 SCMR 1869)

15 - INTEREST ON UN-PAID INSTALLMENTS

15. Interest on un-paid installments.-Where a person has purchased a building on installments in response to the advertisement under Section 12, and has failed to pay any installment in time he shall be liable to pay interest on the amount of the un-paid installment at such rate not exceeding the rate charged by a scheduled bank, as may be prescribed.

Comments:

Under the provisions of Section 15 a builder is entitled to charge interest, not exceeding the rate charged by schedule bank, on any such amount/installments, remaining unpaid beyond the time for payment or the agreed schedule for payment as the case may be. The section should be read I with sub-section (4) of Section 12 of this Ordinance, which provides mutual bindings both on the builder and the purchaser under an agreement to be executed between them. Any builder, by virtue of an agreement can also be made liable to pay interest or damages if he fails to deliver the possession of the building within the agreed period of time.

16. Appeal. - An appeal from an order under this Ordinance may, in the prescribed manner, be preferred within thirty days of such order to:-
(a) Government in the case of the order made by the Authority; and
(b) the Authority, in other case.

Comments:

S. 16- Plan of building not duly approved by Building Control Authority - Effect - Court would not permit construction not duly approved by Building Control Authority for such permission was mandatory requirement of law before raising construction and clothing it with legitimacy under orders of Court. If construction was raised without any approved plan, same would not only create hurdles but would also increase menace of encroachment of lands and streets. Plan need not be approved within specified period.

(M/s. Qasimabad Enterprises V Province of Sindh and others, (199 7CLC 1246).

17. Disposal of application or appeal.-An application or appeal made under this Ordinance shall be disposed of within thirty days of the receipt thereof unless this time limit is extended from time to time by Government on the request of the Authority, "[Proved that no application or appeal shall be disposed unless the" applicant or appellant, as the case may be, is given an opportunity of being heard.

18 - DELEGATION OF POWERS

18. Delegation of powers. Government may, by notification, delegate any of powers vested in it or in the Authority to any officer or Authority.

19. Penalty.- [(1) Whoever contravenes any provision of this Ordinance, shall be punished with simple imprisonment for a term not exceeding two years or with fine not less than twenty thousand rupees or with both and if the offence is a continuing one, further fine not exceeding five hundred rupees for each day after the date of the first commission of the offence.

(1-A) The Authority or any person authorized by it in this behalf may compound any offence under this Ordinance or such terms and conditions as may be prescribed²¹ [;]
 21 [Provided that no offence relating to building works commenced or carried out in violation of the regulations framed or deemed to be framed under Section 21-A, shall be compounded.]

(2) No court shall take cognizance of an offence under this Ordinance except upon a complaint in writing made by the Authority or any person authorised by it.

Comments:

---S. 19—Karachi Building and Town Planning Regulations, 1969, RegIn. 16—Constitution of Pakistan (1973), Arts. 185 and 199—Appeal to Supreme Court—Unauthorised raising of the multi-storeyed structures on residential plots in violation of rules and laws—Constitutional petition before High Court—High Court, in an interlocutory order, directed that concerned Authorities would ensure that all encroachments in the area, by whatever means brought about, should be removed, sewerage leakages should be immediately attended to and removed, ditches should be filled by concrete, electric supply problems should be solved and sorted out and the water scarcity should be looked after—Nazir of High Court was also appointed as Commissioner to inspect the entire area after five days within which period needful should have been done—Building Control Authority on report of the Nazir of the Court, which affirmed the allegations, was also directed to inform the Authorities responsible to supply electricity, natural gas and water in relation to such unauthorised buildings to forthwith discontinue the amenities provided by these agencies to them—Building Authority was also authorised to seek due assistance from the Inspector-General of Police, Commissioner of the Division and District Magistrate concerned—Validity- Held, it was not a fit case in which Supreme Court should interfere with the interlocutory order, as admittedly unauthorised constructions had been raised—More appropriate for the appellants was to have approached the High Court by filing miscellaneous application in the pending Constitutional petition in the High Court in order to demonstrate that report of the Nazir of the High Court did not reflect the true position and that their amenities were ordered to be disconnected without hearing them—Contention of appellants that Supreme Court may order that the amenities, namely supply of water, electricity and gas should not be disconnected till the disposal of Constitutional petition by the High Court was repelled by Supreme Court with observation that Supreme Court could not pass any such interlocutory order, however, it will be open to the appellants to file appropriate application before High Court for such relief—Supreme Court deprecated the practice that some builders obtain approval of plans for residing buildings ground-plus-one, but actually they construct multi-storeyed high-rise buildings on the sites to the detriment of the neighbours in the locality concerned as same disturb the amenities besides creating environmental problems—Question as to whether factually appellants (who claimed to be; the occupants of the buildings; amenities of which were disconnected) were in possession of the premises on the relevant date, being not free from doubt. Supreme Court recalled the leave granting order and dismissed the appeals with no order as to costs.

(Mst. Zubaida A. Sattar and others V. Karachi Building Control: Authority and others, 1999 SCMR - 243)

--S. 19—Karachi Building and Town Planning Regulations, 1979, RegIns. 16, 20 and 25—Power to regularise contained in Sindh Buildings Control Ordinance, 1979 and Karachi Building and Town Planning Regulations, 1979 was intended and designed to be exercised when irregularity was of the nature which did not change the complexion or character of the originally proposed construction—Government or the Authority under Sindh Buildings Control Ordinance, 1979 did not enjoy unbridled or unfettered power to compound each and every breach of the Regulations—Regulations were to be applied for the benefit of the public and not for favouring an individual—Fact that on account of tremendous increase in the population in the city, situation demanded the raising of high-rise buildings, would not justify the conversion of residential plots originally intended to be used for building ground-plus-one and allowing of high-rise buildings thereon without providing for required water, electricity, gas, sewerage lines, streets and road etc. Multiline Associates V. Ardeshir Cowasjee and others PLD 1995 SC 423 = 1995 SCMR 362 to the extent of inconsistency to the judgment in Abdur Razak V. Karachi Building Control Authority PLD 1994 SC 512 was held to be not reflecting the correct legal position and was overruled to that extent—Multiline Associates V. Ardeshir Cowasjee and others PLD 1995 SC 423 partly overruled.

(Ardeshir Cowasjee V. Karachi Building control Authority, 1999, SCMR 2883)

Regulation-16 - Karachi Buildings and Town Planning Regulations, 1978, and expression "any Offence" in Section 19 of Sindh Building Control Ordinance nor Regulation 16 permits compounding of any offence when restrictions imposed by regulations on construction of high rise buildings have been contravened. Power conferred by Section 19 of the Ordinance and Regulation 16 is analogous to the power conferred by Section 345 Cr. PC. upon Courts to permit compounding of certain offences. Such power, however, cannot be synonymous with power to regularize erection of building in violation of the Regulations or that compounding of any offence would not ipso facto be construed as regularisation. A plain reading of sub-section (1) and (1-A) of Section 19 of the Sindh Buildings Control Ordinance, 1979 indicates that the Authority or any person authorised by it in this behalf has been permitted to compound any offence under the aforesaid Ordinance on such terms and conditions as may be prescribed. As sub-section (1-A) occurs after sub-section (1) in Section 19, the expression "any offence" clearly appears to be referring to the contravention of the provisions of the Ordinance as referred to in sub-section (1) in section-19 as any such contravention has been made punishable as an offence by the said sub-section, consequently power conferred on the Authority or any person authorized by it to compound an offence has reference to such offences as are referred to in sub-section (1). Therefore, sub- section (1-A) can not be construed as authorising the Authority to condone deviations from the said Regulations. But, such power referred to in the said sub-section is analogous to the power of the Court under Section 345 of the Criminal Procedure Code. Consequently, such process can only absolve the offender from being prosecuted and punished for such offences, but the said provisions in no manner can empower the Authority to condone or regularize section of a building in violation of the Regulations, However, perusal of Regulation-16 further indicates that if building work has been commenced or carried out contrary to the provisions of the Regulations, the Authority shall by a written notice require

the person who is carrying out such building works to forthwith stop all work thereon. If such person fails to show sufficient cause vis-a-vis the contravention, the Authority may require such person to demolish the whole construction or part thereof or to alter works so as to bring them into conformity with the said Regulations or to compound the offence after realisation of the composition fee. As the Regulations in contra distinction to the provisions of Section 19(1) of the Sindh Building Control Ordinance, do not refer to any offence which may be a crime or a felony or a misdemeanor or any other infraction subject to prosecution, the term "Offence" referred to therein obviously can not be construed as implying a crime. No doubt, the term "offence" generally implies a crime or a misdemeanor, but it can also be used for a transgression which may not amount to crime or an illegal Act. Consequently, the word "Offence" used in Regulation 16 can not be construed so as to have a meaning identical to the same expression used in Section 19 of the aforesaid Ordinance. In Section 19, of the aforesaid Ordinance. In Section 19, the said word clearly implies a crime whereas in Regulation 16, it appears to be implying a mere transgression of a regulation. Therefore, transgression indicated in Regulation 16 can also be compounded on realization of composition fee from the owner of the buildings. However, perusal of Regulation 16 further indicates that such composition is not permissible in certain cases enumerated in Clauses (i) to (vi) therein which occur at the end of the said Regulation. Clause (iii) in the said regulation further indicates that no offence can be compounded if the building work or part thereof exceed the maximum permissible height or number of storeys allowed under the Regulations. Consequently, although Regulation 16 permits compounding of certain transgressions or deviations made by the owner of a building, but the power of the Authority to permit composition is not an absolute power but the same is subject to restrictions placed by the said proviso to Regulation 16 refers to condonation of an offence, that is to say, it can be invoked only in case where the owner of the proposed building has already made deviations either from the approved building plan or the provisions of the Regulation, It is only in such cases that power has been conferred on that said Authority to compound the offence. But, the same in no way can be construed so as to permit contravention of any regulations otherwise than condonation. This is further indicated by the Regulations 20, 23, 24 and 25 Regulation 24 requires a person who has erected a building submit in completion plan of the building showing deviations made in the building, any, from the sanctioned building plan. Regulation 2? indicates that the concerned Authority may refuse permission to erect or re-erect building if the proposed building contravenes or is any manner inconsistent with building or Zoning Regulations or Restrictions. Consequently as is clear to the above provisions, neither Section 19 of the aforesaid Ordinance Regulation 16, permits compounding of an offence when restriction imposed by the regulation on construction of high rise buildings have contravened. Therefore, the Karachi Building Control Authority is not competent to grant permission in respect of construction of a high building in contravention of the provisions of the regulations.

Power conferred by Section 19 of the Ordinance an Regulation analogous to the power conferred by Section 345 of the Criminal Procedure Code upon Courts to permit compounding of certain offences and such power under the Ordinance or the Regulations can not be synonymous will power to regularize erection of building in violation of the regulations or the compounding of an offence would not ipso facto be construed in regularisation. (Ardeshire Cowasjes V Multiline Associates • PLD - 1993 Kar-2931).

S. 19-Compounding of Offence:- Section-19(1) Sindh Building Control Ordinance, 1979, has provided for punishing persons for contravention of any provisions of the Ordinance, while its sub-section 11-1 empowers Authority to compound any offence under the Ordinance in such terms and conditions as to be, prescribed. Such powers conferred on Authority or its authorized person were analogous to the right to compound offences and the power to permit compounding of an offence contained in Section 345 of Criminal Procedure Code, 1898— (Mst. Feroza Hajiani V Abdui Razzak-1922 MLD 527).

Power to Compound Offence • Connotation:- Compounding of an offence in its ordinary sense would mean that a person against whom an offence had been committed agreed with the accused that he would not prosecute him on the condition of the latter making reparation. It would simply be a composition reached on the basis of a compromise that the accused would not be prosecuted in a Court of law. This process would merely absolve the accused or the offender of being prosecuted and save him from the possible punishment on certain terms and conditions; but it could not absolve him from the other consequence, as provided in the Regulations or Contravention thereof. It cannot therefore, be said that the power to compound an offence was synonymous with power to "regularize" erection of a building in violation of the Regulations or that Compounding of an offence ipso facto would amount to such "regularisation".— (1992 MLD 527)

S. 19-Exercise of Discretion by Authority- In Regulation No. 16 para-2 of Karachi Building and Town Planning Regulations, 1979 the word "Or" appears twice between clauses (a) and (b) and clauses (b) and (c) and as sub-clauses (i) to (vi) of sub para (c) expressly provide the cases in which the offence cannot be compounded we are inclined to hold that the word "or" used between clauses (b) and (c) of para-2 of Regulation No. 16 is to be read as "or" and not as "and" as held by the High Courts. However this does not affect the result of the present case. The clauses (i) to (vi) of clause (c) of para-2 of Regulation No. 16 make it clear that in the cases covered by them, the offence can not be compounded namely, if the building works or part thereof violate any requirement of the provision of any sanctioned site development scheme, the building works obstruct any future road widening scheme of any concerned authority, or the building works or part thereof exceed the maximum permissible height and number of storeys allowed under the regulations, the building works extend the property limits except otherwise provided in Section No. 34 or the building works or part thereof violate or any other safety requirement or for any other violation of the master plan not falling in the above category. Similarly the word "may" used in Regulation No. 25 is to be construed as "may" and not "must" as has been held by the High Court. But it does not mean that discretion contained therein can be exercised by the Authority in derogation or violation of the provisions of the Ordinance and the Regulations.- (Abdul Razak V Karachi Building Control Authority and others • PLD • 1994 Supreme Court 512.)

Object of minimum space:* The object and consideration for the rule requiring minimum open spaces to be left in any building are thus, to ensure safe and hygienic conditions of living for the citizens in general. They do not concern any one individual. The Regulations contained in Chapters 7 and 8 relating drainage and sanitation and fire precautions are similarly intended to ensure healthy and safe living for the public

in general.-
(PLD 1994 Supreme Court 512).

Discretion to Compound:- Karachi Building and Town Planning Regulations 1979, Regulations 16, 20 and 25— Discretion given to the Authority under Section 19, Sindh Building Control Ordinance, 1979 and; Regulations No. 16, 20 and 25 Karachi Building and Town Planning Regulations. 1979 to compound an offence has to be exercised fairly and reasonably and not at the cost or prejudice of third parties.- (PLD 1994 Supreme Court 572).

S. 19- Distinction between Criminal and Civil Liability:- Authority may compound Criminal Liability but cannot regularize a breach of the Regulation which is of the nature which has changed the complexion or character of the structure which was originally intended to be erected or of the plot, Authority, in such cases has not discretion in fact and law • concept of modern city planning.

There is marked distinction between a criminal liability under Section 19 of the Sindh Building Control Ordinance, 1979 and a civil liability under the Karachi Building and Town Planning Regulations, 1979 to rectify irregularity/breaches. The Authority may compound criminal liability but It can not regularize a breach of the Regulations which is of the nature which has changed the complexion or character of the structure, which was originally intended to be erected or of the plot. In such cases, it can be said that the Authority has no discretion in fact and law. In the present case the plot in dispute was intended to have a residential bungalow, it was not earmarked for flat site. In the various Karachi Development Authority's Scheme the plots are categorized as Residential Plots, Flats, Sites, Commercial Plots and Industrial Plots. Even under Act, 52-A, Karachi Development Authority Order, 1957, the Karachi Development Authority is not authorized to change the use of any amenity plot without inviting objections and without obtaining the order of the Government.- (PLD 1994 Supreme Court 512).

Article • 52-A overlooked:- In spite of the Article 52-A in the Karachi Development Authority Order the successive provincial Governments overlooked the said Article and converted Amenity Plots into Commercial or Residential Plots and thereby denied to the residents of Karachi inter alia parks and play grounds which contributed towards environmental position in the city. A tendency has also developed to convert the use of a Residential Plot into Commercial or instead of constructing residential units in the form of bungalows to erect flats. In the instant case the Authority though had allegedly regularized the construction through its letter but has not stated any reason for doing so. It has not adverted to the question whether the irregularities/breaches were of the nature, which could have been regularized. The breaches' of the Regulations were such which were prejudicial to safe and hygienic conditions of living for the citizens and detrimental to health. In this view of the matter, latter is in violation of the spirit of the Ordinance and the Regulations is Intended and designed to be exercised when irregularity is of the nature which does not change the complexion or character of the original proposed construction or it does not adversely affect third parties rights/interests.- (PLD 1994 - Supreme Court 512).

Concept of Modern City Planning:- The concept of modern city planning, inter alia, envisages the orderly arrangements of parts of the city, residential, business, and industrial etc., so that each part could perform its functions with minimum cost and conflict. The paramount object of modern city planning seems to be to ensure maximum comforts for the residents of the city by providing maximum facilities referred to herein above. It must, therefore, follow that a public functionary entrusted with the work to achieve the above objective cannot act in a manner which may defeat the above objective. Deviation from the planned scheme will naturally result in discomfort and inconvenience to others.- (PLD - 1994 Supreme Court 512).

Framing and Alteration in Housing Schemes:- Framing of a Housing Scheme does not mean simpliciter, leveling of land and carving out of plots, but it also involves working out approximate requirements of Water, Electricity, Gas, Sewerage Lines, Streets and Road etc. If a Housing Scheme is framed on the assumption that it will have residential units 1 +1. But factually the allottees of 'he plots are allowed to raise multi-storeyed buildings having flats, the public utility services , will fall short of requirements, with the result that everyone living in the scheme will suffer. This is what has happened in Karachi. Without any planning and without expanding the provisions of the items of public utility services, the people were allowed to erect multi-storeyed buildings having shops and flats. In consequence thereof every one living in Karachi is suffering. There is scarcity of water; some people even do not get drinking water. The above other items of the public utility services are short of demand. Roads and streets are normally flooded with filthy and stinking water on account of choking and overflowing of Sewerage lines. To reduce the miseries of most of the Karachi Cities, it is imperative on the public functionaries like the Authority to ensure the adherence to the Regulations. However, it may be clarified that it may not be understood that once a scheme can be made for the good of the people at large, but not for the benefit of an individual for favoring him at the cost of other people.- (PLD - 1994Supreme Court 512).

20 - INDEMNITY

20. Indemnity. - No suit or legal proceedings shall lie against Government or the Authority or any person in respect of anything done or intended to be done in good faith under this Ordinance.
Comments

The provisions of Section 20 gives protection to the Authority and its officers against any litigation for the acts done by them in good faith in the discharge of their duties.

Contention that Karachi Development Authority acting as Authority under Ordinance having approved plan, any suit challenging same barred under Section 20 of Ordinance - Held, misconceived. Section only protects Government Authority, and its officers from being sued for acts done in good faith in discharge of their duties.

(R.G. Shewani Co-operative Housing Society Ltd. V Haji Ahmad. PLD 1983 Kar. 11).

"[20-A. Notice for Institution of Suit.-No suit shall be filed against the Authority or any of its employees in respect of anything done or purported to be done by the Authority or such employee under this Ordinance except after expiration of sixty days next after notice in writing has been delivered to or left the office of the Authority or employee as the case may be.

Comments:

The Section 20-A provides a period of 60 days, after notice, before the suit is filed against the Authority. In the case of Karachi Development Authority V Evacuee Trust Board, reported in PLD 1984 Kar. 34, High Court of Sindh laid down that notice required under Article 131, KDA Order, 1957, would be necessary before institution of the suit against KDA, if the suit is filed in respect of any Act purportedly to be done under the said Order or Rules or Regulations made there under. This principle is also applicable in present case, and the Section 20-A of the Sindh Building Control Ordinance, 1979, will be attracted only in respect of anything done or purported to be done by the Building Control Authority or its employees within the four corners of the said Ordinance and not otherwise, and so also it will not be attracted where any act is done with malafide intentions or in colorable exercise of the Authority vested.

S. 20-A "Act done under the Ordinance V of 1979 • Commotation - Notice was necessary requirement in case of filing of a suit to challenge anything done or purported to have been done by the Authority or its employees under the Ordinance. No order could be deemed to be an order passed under the Ordinance or any statute, if same was not passed in exercise of powers granted by the said Ordinance or statute, and therefore, would be without jurisdiction.

(Noor Muhammad V Building Control Authority - 1992 CLC 723).

21. Power to make rules.-Government may, make rules for the purpose of giving effect to provisions of this Ordinance.

Comments:

S. 21(3) Sindh Local Government Ordinance (XII of 1979) Section 35 Constitution of Pakistan (1973) Art. 4 - Allotment of Plot by Chief Minister - Validity - Applicants' argument that Chief Minister being Chief Executive of Province could allot plots was not warranted by the law. Constitution of Pakistan has specified field of activity of the executive and Government -being run by law and not by men, every action of executive must be backed bylaw and if any act of executive was not backed by law (as in allotment of plots) then guarantee given in Art. 4 of the Constitution that to be dealt with in accordance with law is an inalienable right of every citizen would become meaningless. Chief Minister being not authorized by the laws to allot plots, allotment of plot in question to applicant was not warranted in circumstances.

(M/s. Qasimabad Enterprises V Province of Sindh and others • 1997 CLC 1246)

"[21-A. Regulations.-(l) The Authority, may frame Regulations not in consistent with the provisions of this Ordinance and the rules made thereunder, for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) The recruitment, tenure of office, terms and conditions of service of the officers, advisers, experts, consultants and employees appointed by the Authority and disciplinary action against them;
 (b) the manner of approval, grant of no objection certificates to builders or developers and rates of fees therefore;

(c) the manner of grant of occupancy certificate and fees therefore;

(d) the manner of attestation of documents or information;

(e) the manner of preparation, supervision' and submission building plans;

(f) the qualifications, manner of grant and terms and conditions of a fees for licences to architects, building designers, inspecting engineers, inspecting architects, building supervisors, structural engineers, town planners and regulation of their functions and remuneration;

(e) the manner of grant and terms and conditions of licence builders or developers and fees for such licences;

(f) procedure for cancellation of transfer or sale;

(g) the details of the building or plot required to be mentioned in the advertisement for its sale by the builder or developer, as the case may be;

(h) rates of fees for supplying copies of any document of information

(i) terms and conditions of compounding of offences;

(j) rates of interest payable under this Ordinance.

(3) The Karachi Building and Town Planning Regulations, 1979, in the case of the Authority of Karachi and the bye-laws of the council concerned in other cases, duly published shall until the regulations are framed under the section, be deemed to be the regulations, not framed; provided that they are not inconsistent with the provisions of this Ordinance and the rules framed thereunder.]

Comments:

1.—Ss. 21-A(3) & 2—Karachi Development Authority Order (5 of 1957), Art. 85—Karachi Building and Town Planning Regulations, 1979; V(II—Karachi Building and Town Planning Regulations, 1979 having statutory force, Karachi Building Control Authority which was the Authority competent; under Sindh Building Control Ordinance, 1979 to grant approval of a building, plan was under statutory obligation to provide setback or outline or building; line of a proposed building as per Karachi Building and Town Planning Regulations, 1979 while according approval to its plan—Provision of Section 2, Sindh Buildings Control Ordinance, 1979 would override Art. 85 of the Karachi Development Authority Order, 1957 to the extent of inconsistency. (M/s. Excell Builders and others V. Ardeshir Cawasjee and others 1999 SCMR 2089).

2.—Preamble—Karachi Development Authority Order (5 of 1957), Preamble—Karachi Building and Town Planning Regulations, 1979, Preamble- Conversion of residential plot on a main road into a commercial plot on account of change in the situation and grant of permission for high-rise building having 17/18 floors—Conditions—Requirement—Need for minimum floors so as to cause minimum inconvenience to residents—Simpliciter the fact that the conversion of a residential plot on a main road into a commercial plot is warranted on account of the change in the situation, would not justify the violation of any provision of any law or building bye-laws or Regulations, nor it would warrant grant of permission for a high-rise building having 17/18 floors-- •Government or the Authority concerned was under obligation to decide the question of number of floors keeping in view the extent of availability of utility services like water, electricity, gas, sewerage lines, streets and roads in the locality involved and the permission for construction of a proposed building should be a minimum floors, which may cause minimum inconvenience and discomfort to the residents of the locality. (M/s. Excel Builders and others V Ardeshir Cawasjee and others •1999 SCMR 2089).

3.—Preamble—Karachi Development Authority Order (5 of 1957), Preamble—Karachi Building and Town Planning Regulations, 1979, Preamble- "Permission to building of high-rise buildings in violation of laws and Regulations—Conflict of views between two judgments of Supreme Court rendered in Multiline Associates V, Ardesher Cowasjee and other PLD 1995 SC 423 and in the case of Abdu! Razak V. Karachi Building Control Authority PLD 1994 SC 512 to the extent of inconsistency, view taken in the case of Abdul Razak V. Karachi Buidling Authority was correct. (1999 SCMR 2089)

4. The Authority, under Section 21-A, is conferred with powers to frame regulations. Such Regulations must be framed within the provisions of the Sindh Buildings Control Ordinance, 1979 and the Rules made thereunder. The object of framing regulation is to carry out the purposes of the Ordinance. Regulations framed by the Authority held un-reasonable by the Supreme Court. (PLD 1993 Supreme Court 210).

5. Regulations/Rules framed under statute: Once a Court finds that the regulations/rules framed under the statutory powers are within the ambit of relevant statute, it can not sit in in judgment over the wisdom and effectiveness or otherwise of the policy Said down by the regulations making body and it can not declare regulations to be ultravires merely because the court considers that the impugned regulations will not serve the object and the purpose of the Act. [Karachi Building Control Authority V Hashwani S. and Sons Ltd., (PLD 1993 Supreme Court 210)]

6. Regulations framed by Authority: Regulations framed by Authority under Section 21-A of the Ordinance have no rational nexus with the objects referred to in Sections 6, 7 and 21-A (2) (b) and (e) of the Ordinance and thus are ultravires on that account, (PLD - 1993 Supreme Court 210).

7. Regulations Un-reasonable: If a regulation is not workable, since it places one party in dominating position as to dictate its terms, it can not be said to be reasonable. Regulations framed by Building

Control Authority under Section 21-A of the Ordinance being unfair and impracticable were thus unreasonable.

Word "Reasonable" defined: The Concise Oxford Dictionary, Seventh Edition, defines the work "reasonable" as follows:-

"reasonable" (-Z-) a. 1. Having sound judgement sensible, moderate not expecting too much, ready to listen to reason. 2, in accordance with reason, not absurd, within limits of reason, no great loss or more that might be expected, inexpensive, not extortionate, tolerable, fair. 3 (arch) endowed with faculty of reason,

From the above quoted meaning of the word "reasonable" it is evident that the question whether a particular thing or regulation is reasonable or not will depend on various factors. If a regulation is not workable, it places one party in a dominating position as to dictate its terms, it can not be said to be reasonable.

(PLD 1993 Supreme Court 210).

8. Framing of Regulations: Initially, the regulations were framed by a committee of experts constituted by the Government of Sindh under notification No. SO (vi) 8 (27)/72 dated the 30th Oct., 1978. Obviously, these regulations were not framed under any rule making power derived from a statute. However, these regulations subsequently were adopted by the Sindh Building Control Ordinance, 1979, and thus have acquired a legal status after the promulgation of the said Ordinance. The Section 21-A empowers the Authority appointed under Section of the Sindh Building Control Ordinance to frame regulations and according to sub-section (3) of Section 21-A, until new regulations are framed, the Karachi Building and Town Planning Regulations, framed by the Committee of experts, shall be deemed to be the regulation framed under the said Ordinance. However, according to the proviso to sub-section (3) the regulations must not be inconsistent with the provisions of the Ordinance and the Rules framed thereunder. N.S. Bindra, in his book Interpretation of Statutes and General Clauses Act, 4th Edition, at page 731, while referring to deeming provisions used in legislation states: "when a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled to and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it must be carried to its logical conclusion". The said learned author in the said book, at page 5.61 has further observed, when an act enables an authority to make regulations, a regulation which is validly made under the act i.e. which is intra vires of the regulation making authority, should be regarded as though it were itself an enactment." Therefore, in our opinion, the said regulations in the present case have clearly been clothed with statutory authority by virtue of Section 21-A of the Ordinance. It is also pertinent to point out that new regulations have yet been framed under the Ordinance.

(Ardesire Cowasjee V Multiline Associates - PLD 1993 Karachi 237 at page 262 and 263).

SCHEDULE

24[* * * * *]

[Sindh Govt. Gazette. Ext., Part I-A]
 KARACHI BUILDING CONTROL AUTHORITY
 Dated April 8, 19
 (Master Plan & Environmental Control Department Authority under Sindh Building Control Ordinance, 1979)

No. 10. 1/PLA/MP & EC/82:- In exercise of the powers confer under Section 21 (A), of the Sindh Building Control Ordinance No. V of 19 (S.B.C.O. Amendment Ordinance of 1982) the Authority is pleased to make the following Regulations, namely:-

1. Short title and commencement and extent.-(1) The regulations may be called the Karachi Building Control Licencing Regulation 1982.

(2) These regulations shall come into force at once.

(3) These regulations shall extent to the whole Karachi Division.

2. Definitions.- In these regulations, unless the context otherwise requires, the following expressions shall have the meanings hereby respective assigned to them, that is to say:-

(a) "Form" means a form prescribed by the Authority for the grant licence.

(b) "Committee" means a Committee or Committees appointed under these regulations for the grant of licence.

(c) "Licence" means sanction granted to any person to act as a Architect, Building Designer, Inspecting Engineer, Inspecting Architect, Structural Engineer, Building Supervisor, Town Planner, Builder or Developer for the purposes of the Ordinance and the rules, regulations.

(d) "Licencees" means a person to whom a licence is granted or deemed to have been granted under these Regulations.

(e) "Ordinance" means Sindh Building Control Ordinance, 1979.

3. Eligibility to apply.- Any person who holds the qualifications and experience as prescribed in Part-1 of these regulations may apply for a licence on the prescribed form.

4. Manner of grant of Licence.- (1) Every application for licence shall be accompanied by such fee as prescribed in Part II, of these regulations.

(2) If the application is rejected, the fee shall be refunded.

5. Licencing Committees.- (1) Application for Licences of Architects, Building Designers and others shall be considered by a Committee consisting of:-

(a) Director, MP & EC. Chairman

(b) Controller of Buildings. Member

(c) Representative of Deputy Director, Military Member

Lands and Cantonments, Karachi.

(d) One representative each from:

(i) Federation of Architects and Engineers, Member Pakistan.

- (ii) Pakistan Engineering Council. Member
 (iii) Institute of Architects, Pakistan. Member
 (iv) Institute of Engineers, Pakistan. Member
 (v) Institute of City and Regional Planning Member (Karachi Chapter).
 (vi) Deputy Controller of Buildings, Secretary
 Incharge of Licencing.

2. Applications for licences of Builders and Developers shall be considered by a Committee consisting of:-

- (1) Director, Land Management, KDA. Convener
 (2) Controller of Buildings. Member

4) Add. Director (HQ) Resettlement Department, Member
 KDA.

(5) Superintending Engineer (Dev). KDA. Member

(6) Deputy Controller of Buildings, Incharge of Secretary
 Licencing.

(3) The Committee shall preferably hold its meeting once a month.

6. Function of the Committee.-(1) The Committee shall scrutinize all applications and inspect all documents and recommend to the Authority for the grant or reject of the licence in the light of these regulations.

(2) The Committee, before recommending or rejecting a licence, shall also see besides prescribed qualifications and experience, the capability of supervision" of construction work by the applicant and in case of builders and developers, the staff, equipment and other related matters.

(3) The Committee shall interview the applicants before the issue of a licence.

(4) On the recommendations of the Committee, Controller of Buildings or an Officer authorized shall issue a licence or inform the applicant of the rejection with reasons.

(5) The Committee shall hear the appeals against the suspension of licence order issued by Controller of Buildings and submit its findings to Director General, KDA for final decision or other guidance in the matter.

7. Period.- The licence granted under these regulations shall be valid for a calendar year ending 31" December.

8. Renewal.- The application for renewal of licence granted under these regulations accompanied by such fee as prescribed shall be made to the Authority at least 30 days before expiry of the existing licence.

9. Revocations.-Without prejudice to any other action that maybe authorised under the Ordinance or the Rules framed thereunder, the Authority may revoke or suspend the licence if the licensee violates any of the conditions of the grant of licence.

10. Appeal.-(1) Any person aggrieved by an Order of the Authority under these regulations may within thirty days of such order prefer an appeal to Director General, KDA.
 (2) Government in the case of the order made by the Director General KDA whose decision in the matter shall be final.

PART I

A - Architect:

(1) Degree or 5 years Diploma in Architecture or its equivalent from any recognized institution by the Government plus two years experience in Architectural Designing and Supervision of Building Construction.

OR

(2) Four years Diploma Course from the Karachi Government School of Architecture, Government of Pakistan completed not later than 1974, with eight years practical experience in Architectural Designing and Supervision of Building Construction.

OR

(3) Twelve years of continuous professional practice as a licensed architect from any local Authority. No fresh licence under this category shall be granted after 12 months of the enforcement of these regulations.

OR

(4) A Civil Engineer who has a degree in Civil Engineering or its equivalent from institutions recognized by the Government and is registered with Pakistan Engineering Council, plus ten years experience in Architectural Designing and Supervision. No fresh licence under the category shall be granted after 12 months from the date of enforcement of these regulations.

(5) Member of a National Institution or Association recognized by the Government or by an International Organisation of Architects, as may be prescribed by the Government.

B - Building Designer:

(1) Degree in Architecture or 5 years Diploma from any recognized institution.

OR

(2) Degree in Civil Engineering or its equivalent qualifications recognized by Pakistan Engineering Council with two years experience in Architectural Design and Supervision of Building Construction.

(3) Ten years experience in Architectural Designing and Supervision of Building Construction with a licenced Architect and five years practice under a licence granted by any local authority. No fresh licence shall be granted after 12 months of the enforcement of these regulations.

OR

(4) Diploma in Civil Engineering from any recognized Institution plus five years minimum experience in Architectural designing and construction and have licence of supervisor under the Ordinance.

C - Inspecting Engineer:

Degree in Civil Engineering or any other equivalent qualification\ recognized by the Government of Pakistan and Pakistan Engineering Council, with two years practical experience in building designing and supervision of building Construction and registered in the Civil Division of the Pakistan Engineering Council, as a Registered Engineer.

D - Inspecting Architect:

Same as A (1), (2), (3) and (4).
E - Building Supervisors:

(1) Three years Diploma in Civil Engineering from recognize Institution plus two years experience of supervision of building construction.

OR

(2) Three years certificate course in Civil Engineering from recognized Institution plus three years experience of supervision of building construction.

OR

(3) Two years certificate course in Civil Engineering from recognized Institutions plus four years experience of supervision of building construction.

OR

(4) One year certificate course in Civil Engineering from recognized institutions plus five years experience of supervision of building construction.

OR

5) Practical experience of supervision of building construction for more than fifteen years. No fresh licence under this category shall be granted after 12 months of the enforcement of these regulations.

F - Structural Engineer:

(1) Recognized post-graduate degree or equivalent qualifications in Structural Engineering and registered as Consulting Engineer, in the Civil Division of Pakistan Engineering Council plus practical experience of two years in Structural Designing of Buildings.

OR

(2) Degree in Civil Engineering or its equivalent and registered in the Civil Division of Pakistan Engineering Council, as Consulting Engineer, plus practical experience of five years in Structural designing.

G - Town Planner:

(1) Post graduate degree of Diploma, of at least 2 years duration in City, Town or Regional Planning, from a foreign institution recognized by the Government plus one year practical experience and an Associate member of Institute of City and Regional Planning, recognized by the Government.

OR

(2) Degree in City, Town or Regional Planning from any recognized institution of Pakistan and an Associate member of Institute of City and Regional Planning as recognized by the Government, with 2 year's practical experience.

OR

(3) Diploma in Ekistics from the centre of Elastics, Athens with 8 year's practical experience in City. Town or Regional Planning and an Associate Member of Institute of City and Regional Planning, as recognized by the Government.

OR

(4) Post graduate degree in any Social Science with a postgraduate diploma or certificate in City. Town or Regional Planning from any foreign institution recognized by the Government and a licentiate member

of Institute of City and Regional Planning as recognized by the Government, with 15 years practical experience in City, Town or Regional Planning, and may plan upto 10 (ten) acres.

PART - II

The fees shall be paid at the following rates:-

(1) Licence to:-

(a) Architect/Inspecting Architect Rs, 250.00 and for renewals Rs, 100.00 per annum

(b) Building Designer Rs. 150.00 and for renewals Rs. 75.00 per annum

(c) Inspecting Engineer Rs. 250.00 and for renewals Rs. 100.00 per annum

(d) Building Supervisor Rs. 150.00 and for renewals Rs. 75.00 per annum

(e) Structural Engineer Rs. 250.00 and for renewals Rs. 100.00 per annum

(f) Town Planner Rs. 250.00 and for renewals Rs. 100.00 per annum

(g) Developer Rs. 2,500.00 and for renewals Rs. 1000.00 per annum

(h) Builder Rs. 2,500.00 and for renewals Rs.1000.00 per annum

(2) No objection certificate Rs. 1000.00 per acre of the under Section 5 of the Sindh gross area Building Control Ordinance (Amending Ordinance) 1982.

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(Architect/Inspecting Architect, Building Designer, Inspecting Engineer, Building supervisor, Structural Engineer and Town Planner).

The Authority may suspend or cancel the licence in addition to the action under the relevant statute in case the licence:-

- (1) Disobeys or fails to comply with any regulation or directions issued by the Authority from time to time or any rules framed under the S.B.C.O. 1979 and the provisions of the Ordinance.
- (2) Executes or supervises any unauthorized work or any work which is being raised without approval of building plan or is not in accordance with the plans approved therefore by the Authority.
- (3) Does not inform in time the Authority for any unauthorized work carried out by his client, which is not in accordance with the plans approved therefore by the Authority.
- (4) Executes or supervises carelessly or negligently the work for which he has been employed.

- (5) Willfully misrepresents any facts or makes any false statement to the Authority or suppresses information of any material fact relating to the work for which is employed.
- (6) Disturbs, defies or breaks the discipline of any office of the Authority.
- (7) Proves to be incompetent or frequently prepares plans, which are liable to objection by the Authority, or prepares plans in grave disregard of the provisions of the relevant statute.
- (8) Shall not enter into a written contract with his client clearly specifying the work to be undertaken by him and fee and other charges for such works and approximate period for completion of such works.
- (9) Does not inform in writing the authority of his discontinuance of any works which were undertaken by him.
- (10) No Licence shall undertake 'IN HOUSE CONSULTANCY' for the projects of his own and shall engage independent professional for relevant works on such projects.

PART - IV
TERMS AND CONDITIONS OF LICENCE (BUILDERS/DEVELOPERS)

The Authority may suspend or cancel the license in addition to the action under the relevant statute in case the licensee do not fulfill the conditions mentioned hereinafter-

- (1) The licensee disobeys or fails to comply with any regulations and directions issued by the Authority or any rules framed under the S.B.C.O., 1979 and the provisions of the Ordinance.
- (2) The licensee willfully misrepresents any facts or makes any false statement to the Authority or suppresses the information of any material fact relating to the project.
- (3) The licensee either directly or through some agent advertises in any manner the sale of flats/houses/plots etc. without prior approval of the Authority or increases the prices once approved by the Authority.
- (4) The licensee shall be responsible for safe and sound construction of building and development of the project in addition to other professionals.
- (5) The licensee shall not engage in any 'IN HOUSE CONSULTANCY' for the projects of his own and shall engage for the planning and execution of work(s) an independent licensed Architect/Structural Engineer/Inspecting Engineer/Building Supervisor or Town Planner, as the case may be.
- (6) The licensee shall carry out the work(s) strictly according to the approved specifications and designs by the Authority.
- (7) The licensee in case of individual and in the case of a Registered company or a Co-operative Housing Society, its Directors shall be personally and severally be held responsible for the breach of any provision of the Ordinance and rules and regulations framed thereunder.
- (8) The licensee shall provide all assistance to the Authority and its Officers in carrying out their duties and provide all facilities in inspecting the building/site and shall furnish the required information from time to time.
- (9) The licensee shall follow all other terms and conditions imposed with the approved building or layout plans
- (10) The licensee shall inform the Authority, change of any status in the project, undertaken by him after its approval.