

6th December, 2021

2021/1206/1A

Honorable, Governor, Sindh,
Governor House,
Karachi

Sub: Allegation of Violation of Constitution of Pakistan, by the Sindh government to regularize illegal establishments through an Ordinance.

Dear Sir,

Transparency International Pakistan has received a complaint on the Allegation of Violation of Constitution of Pakistan, by the Sindh government to regularize illegal establishments through an Ordinance.

The complainant has made following allegations.

That,

1. All Illegal buildings will be regularised after Governor Sindh Imran Ismail ratifies an ordinance sent to him by the Sindh government.
2. As soon as the governor signs the ordinance, demolition works on illegal buildings will be stopped for a period of 90 days.
3. There shall be a moratorium or a temporary suspension on a demolition activity carried out by the relevant authority on the irregular construction/building for the period of ninety days after the commencement of this ordinance.
4. The promulgation will allow the government to form a commission — Sindh Commission for Regularization of Construction — to carry out the provisions of the ordinance.
5. A retired judge of the apex court or Sindh High Court will be the chairperson, and the secretary of Local Government and Housing Town Planning, Government of Sindh, its secretary.
6. The committee will have the following five members apart from the chairman and secretary:

Minister, advisor, or special assistant to the chief minister for law;
Chairman ABAD or a member nominated by him;
An architect/town planner with at least 20 years of experience;
An advocate or a legal expert with at least 20 years of experience in the applicable laws; and
Any other member or professional from the public or private sector.

7. The chief minister will name the members of the committee within 15 days after the promulgation of the ordinance.
8. Commission will take cognisance of any irregular construction on receipt of an application or through its own motion, Issue directions to a local government or the competent authority under the applicable laws for sustainable development of the area after taking into account the violation of planning standards in an irregular construction, Direct the local government or the competent authority on an application of a resident or owner in any unapproved construction to finalise long-pending applications and cases under applicable law within a stipulated period of time, Direct a local government or the competent authority or any other agency concerned to take punitive actions in accordance with the applicable laws including initiation of criminal proceedings under any other law against the sponsor for any illegality or violation of law which cannot be regularised under this ordinance or the sponsor fails to seek regularisation under this ordinance, Impose any penalty upon



sponsors under this ordinance, Recommend disciplinary action including initiation of criminal proceedings against the officers and officials responsible for illegal or irregular construction and for non-compliance of the directions of the commission, Warn public at large in respect of any illegal or irregular construction through print and electronic media; and Recommend amendments in the applicable laws and the rules and/or regulations made thereunder. And will decide each application preferably not later than 60 days from the date of initiation of proceedings.

9. Promulgation of this Ordinance is against the Supreme Court Order in 2020 SCMR 111, Abdul Karim Ansari Vs Nasir Salim Baig dated 22 January 2019, which states' Np amenity Plots meant for parks, playground, and other amenities, there conversion shall not be allowed for commercial use that of marriage hall, markets, shopping malls, apartments, marquees, petrol pumps/CNG stations etc. This complete ban in cessation of conversion of residential plots, amenity plots like that of parks, playgrounds and other amenities shall apply all across Karachi City including cantonment areas. SBCA nor any other authority shall approve any conversion including pending ones." **Exhibit-A**

Transparency International Pakistan has examined the complaint and following are TI Pakistan comments/recommendations.

A. Prima facia, this draft ordinance is against the Honorable Supreme Court Order in 2020 SCMR 111, Abdul Karim Ansari Vs Nasir Salim Baig dated 22 January 2019, and may amount to contempt of court, and may be out rightly strike down by the superior courts.

B. Article 189 of the Constitution of Pakistan, Decisions of Supreme Court binding on other Courts, states Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.

C. 190. Action in aid of Supreme Court, sates, All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court.

TI Pakistan is striving for across the board application of **Rule of Law**, which is the only way to stop corruption and achieve zero tolerance against Corruption,

Best Regards,

Ms. Yasmeen Lari
Sitara-e-Imtiaz, Hilal-e-Imtiaz, Fukuoka & Jane Drew
Prize Laureate,
Chairperson
Transparency International Pakistan

Justice (R) Nasira Iqbal
Vice Chair, Sitara-e-Imtiaz
Transparency International Pakistan

Encl: Exhibit-A,

Copies forwarded for the information with request to take action under their mandate,

1. PSPM, Prime Minister's House, Islamabad,
2. Chief Minister, Sindh, Karachi,
3. Registrar, Supreme Court of Pakistan, with request to consider this request along-with with CMA No. 391-K/2017 in CRP No.19-K of 2017

IN THE SUPREME COURT OF PAKISTAN
(Appellate jurisdiction)

Present:

Mr. Justice Gulzar Ahmed
Mr. Justice Sajjad Ali Shah

Civil Petition No. 815-K/2016. & C.R.P.19-K/2017

CMA No. 391-K/2017 in CRP No.19-K of 2017

Abdul Karim (In both cases)

Petitioner (s)

VERSUS

Nasir Salim Baig and others (In both cases)

Respondent (s)

Aslam and others (CMA No. 391-K of 2017 in C.R.P19-K/2017)

For the Petitioner (s) (in both cases) : Mr. Ghulam Rasool Mangi, AOR

For the Respondent : Raja Qasid Nawaz Khan, ASC

Mr. Mazhar Ali B. Chohan, AOR

On Court Notice

Mr. Kashif Paracha, DAG

Mr. Muhammad Sarwar Khan, Addl. Advocate General

Dr. Saeed A. Qureshi, Focal Person, Government of Sindh

Mr. Mehtab Hussain, Assistant Manager Legal, KE

Mr. Asadullah Khan, MD, KW&SB

Mr. Chanzeb, Law Officer, KW&SB

Mr. Muqadas Hyder, SSP City South

Mr. Akram Arain, SHO P.S. Baghdadi

Mr. Hizbullah Sheikh, DD Lyari, SBCA

Mr. Ejaz Malik, Deputy Director/Incharge, Lyari Town, SBCA

Mr. Iftikhar Ali-Kayani Khan, DG SBCA

Mr. Aqeel Ahmed chishti, Accounts Officer, A.G. Sindh

Syed Jamil Ahmed, ASC

Mr. Zia Arif Janjua, Law Officer, Pakistan Rangers

Mr. Shahid Jamil Khan, Principal Law Officer, SBCA

Date of Hearing : 22.01.2019

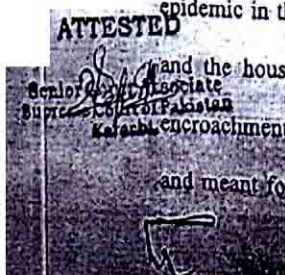
ATTESTED

Supreme Court of Pakistan
Karachi

ORDER

DG SBCA is present before the Court. He admits that much wrong has been done to the city and such wrong is still continuing in that, amenity plots meant for parks, playgrounds and other amenities are being allowed to be occupied, converted and used for commercial exploitation. One of the main example of it is Jam Sadiq Ali Park on which marriage halls, markets, shopping centers, apartments, petrol pumps and CNG stations have been constructed and it was observed earlier that all these activities on Jam Sadiq Ali Park shall be removed, demolished and park restored to its original condition. DG SBCA has made a statement that he will ensure that this is done but till date nothing has been done, rather an effort was made to justify the conversion of Jam Sadiq Ali Park into commercial plot for use of marriage halls, markets, shops, plazas, apartments, petrol pumps and CNG stations etc. DG SBCA states that he will ensure to restore the park to its original position that of a park and remove and demolish all construction on the site of Jam Sadiq Ali Park and restore it as a public park with all facilities to its green areas for the enjoyment of the general public. DG states that he needs four weeks time for doing this exercise and give a report to this Court.

Besides, Jam Sadiq-Ali Park, there are so many other amenity plots in the city meant for parks, playgrounds and other amenity use as per the original Master Plan of the city which have been allowed to be converted into commercial use. DG shall take steps to have all such plots which were originally meant for residential purposes amenity plots and playgrounds to restore them to original position and remove all illegal and unlawful construction on such plots. There seem to be an epidemic in the city of marriage halls, shopping malls, petrol pumps/CNG stations and the houses are being allowed to be converted for these purposes. Besides, DG shall take steps to remove all encroachments upon and change the use of amenity plots like playgrounds, parks and meant for other amenities. Henceforth, that is from today there is a complete



ban on Master Plan Department of SBCA or any other authority of the City Government or Government of Sindh of allowing change in the use of land. No such change of use of land shall be permitted. Conversion of residential houses and amenity plots meant for parks, playgrounds and other amenities, their conversion shall not be allowed for commercial use that of marriage halls, markets, shopping malls, apartments, marquees, petrol pumps/CNG stations etc. This complete ban in cessation of conversion of residential plots, amenity plots like that of parks, playgrounds and other amenities shall apply all across Karachi City including cantonment areas. SBCA nor any other authority shall approve any conversion including pending ones. All conversion allowed by these authorities shall be reviewed and all efforts shall be made to ensure that the land which was originally provided in the Master Plan of City of Karachi is restored to that status. SBCA shall not approve any multistoried building plan on residential plots meant for residential houses, amenity plots like play grounds, parks and other amenities and all such approval given by SBCA shall be reviewed and any building constructed in violation of original Master Plan in the city of Karachi shall be ensured to be restored to its original position. Environmental Department and all other Government Departments shall ensure that city of Karachi is restored to that of its original Master Plan and no deviation from it should be allowed to be made. MPGO of SBCA shall not convert or allow to be converted the use of plot or land from its original use to that of any other use. All constructions which are illegally and unlawfully made in the city of Karachi shall be reviewed by the SBCA within a period of one month and a report in this respect shall be submitted to this Court, which should recommend the solution as to how these illegal and unlawful constructed buildings can be demolished and the plot/land put to its original use and how the people, who are occupying such buildings, will be compensated and provided alternate accommodation by SBCA from the funds generated by its own

ATTESTED

Signature
Secretary
Karachi

staff. Accountant General Sindh shall discuss the issue with the DG SBCA as to how the payment of emoluments to the staff of SBCA is to be released.

Besides, Additional Advocate General Sindh has been asked to take instructions from Government of Sindh as to how the Government of Sindh can best address the situation more particularly of taking over the functions of SBCA including Master Planning of the cities all over Sindh and a response in this regard from Government of Sindh should be made available to this Court before the next date of hearing.

The Chief Secretary, Government of Sindh shall be present before the Court and make a statement in this regard. It is informed by the Director General, SBCA that in respect of illegal building constructed in Lyari area inquiries have been ensued against the officials and that these inquiries will be finalized for which he needs one month time. Such one month time is allowed to him. Besides, Lyari area, as noted earlier similar illegal buildings have been constructed all over the city of Karachi and DG states that he is also taking up this matter and will proceed against all officials of SBCA who have played havoc with the city in allowing illegal, unplanned and filthy buildings in the city to the builders who even do not care to ensure that the buildings are maintained after it is constructed and occupied as most of the buildings in the city are crumbling down with seepages and are without paint. All sort of additional constructions of work have been made in them and they give such an ugly and destructive look to the city. It is for the Government to ensure that reasonably safe and good living is provided to the people of the city with all amenities which are essential to be provided by the State by building and zoning the city in appropriate manner with playgrounds, schools, colleges, universities and hospitals easily accessible to the citizens with roads and transport.

ATTESTED
 Senior Counsel
 Supreme Court of Pakistan
 Karachi.

KW&SB have built an Officer Club and are running marriage halls on KW&SB land on Shakra-e-Faisal which is meant to be used for KW&SB for