

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:
Justice AAMER FAROOQ
Justice SYED ARSHAD HUSSAIN SHAH

C.P.L.A.815-K/2016

(Against order dated 02.11.2016, passed by the High Court of Sindh at Karachi
in C.P.No. D-789/2016)

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C.M.A.391-K/2017 in C.R.P.19-K/2017

(Application for Intervener on behalf of Aslam and others)

&

C.M.A.12528/2025 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Fatima Mehwish)

&

C.M.A.144-K/2019 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Association of Builders and Developers of Pakistan)

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C.M.A.403-K/2019 in C.P.L.A.815-K/2016 and C.R.P.19-K/2017

(Application for Intervener on behalf of Lachman Maheshwari)

&

C.M.A.629-K/2019 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Rafique Dawood)

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C.M.A.60-K/2020 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Tariq Bin Naseer and others)

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C.M.A.146-K/2020 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Abdullah Dashti)

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C.M.A.1232-K/2021 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Muhammad Easa Qureshi)

&

C.M.A.4205/2025 in C.P.L.A.815-K/2016

(Application for Intervener on behalf of Zafar Khan)

Abdul Karim ...Petitioner(s)
Versus

Nasir Salim Baig and others ...Respondent(s)

CrI.O.P.1-K/2019

Syed Mehmood Akhtar Naqvi ...Petitioner(s)
Versus

Saeed Ghani, Member Sindh Assembly ...Respondent(s)

For the Petitioner(s)/Applicant(s)	: Mr. Muneer A. Malik, Senior ASC (in C.M.A.144-K/2019) Mr. Zaheer-ul-Hassan Minhas, ASC (in C.P.L.A.815-K/2016) Mr. Arshad Mohsin Tayebaly, ASC Mr. Amal Kasi, ASC (in C.M.A.629-K/2019)
On Court's notice	: Ch. Aamir Rehman, Addl. AGP Mr. Ahsan Hameed Dogar, Assistant AG, Sindh Mr. Nadir Khan Burdi, ASC for SBCA

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Mr. Khursheed Javed, ASC for SMPA
and KDA along with Shakeel Siddiqui,
Senior Director, SMPA
Mr. Umer Ijaz Gillani, ASC
Muhammad Rashid Amin, Law
Officer, Director Cantonment Boards,
Karachi, CEO CB, Karachi, Malir,
Faisal Clifton, Korangi
Mr. Ibrahim Habib, Chairman Legal
Sub-Committee ABAD

For the Respondent(s) : Syed Rifaqat Hussain Shah, AOR
Date of Hearing : 12.05.2026

ORDER OF THE COURT**JUSTICE AAMER FAROOQ:**

1. The above-captioned petition was initially instituted before the Supreme Court seeking leave to appeal against the order of the Sindh High Court dated November 2nd, 2016 passed in C.P. No. D-789/2016. However, the proceedings subsequently took an unexpected turn when the Supreme Court expanded beyond the issues pending before it and proceeded to issue directions concerning the demolition of allegedly illegally constructed buildings in the city of Karachi. The above-captioned petition and applications which stood transferred to this Court are now accordingly disposed of in the terms as follows.

A**I**

2. The High Court of Sindh was seized of a matter concerning the legality of construction undertaken over Plot No. LY-10/82, Mussa Lane, near Pathan Masjid, Lyari Quarters, Karachi (the building) through a constitutional petition alleging that the building had been unlawfully erected upon evacuee property.

3. On November 2nd, 2016, the Court observed that the fifth floor of the building had already been removed/demolished by the Sindh

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Building Control Authority (SBCA). However, the remaining structure continued to stand as the premises remained occupied and utility connections from K-Electric and the Karachi Water and Sewerage Board (KWSB) had not been disconnected. Consequently, the High Court directed the demolition of the building.

4. This narrowly confined matter came before the Supreme Court under Article 185(3) of the Constitution of Pakistan, 1973, whereby the appellate jurisdiction of the Supreme Court was invoked in the year 2016. The Supreme Court initially proceeded to adjudicate upon the matter and the issues before it and, in furtherance of the order passed by the High Court, issued several directions concerning compliance therewith. The matter continued to be heard from 2017 onwards; however, in July 2018, the proceedings took a marked and unexpected turn, when Supreme Court ordered “to give full details and complete list of buildings with their status, which were constructed in Lyari Town without approval of building plan”. See, Order dated 05.07.2018 in *Abdul Karim v. Nasir Salim*, C.P.L.A. No. 815/K of 2016 p.2 (per GULZAR AHMED, J.).

II

5. Before delving into the gravamen of the case, it is noted that an application for adjournment has been filed on behalf of Mr. Badar Alam, ASC, in *Tariq Bin Naseer & others v. M/s Saima Builders*, CMA No. 60-K of 2020. However, as we intend to dispose of the main matter, we do not find it necessary to entertain the said application. Grant of adjournment being discretion of the Court, is hereby denied. See, e.g., *Abbas Ali Shah v. Misha Zeb Khan*, C.P. No. 245 of 2026 (Per YAHYA AFRIDI, CJ.) at p.15.

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III

6. Before setting out our reasons for disposing of these petitions and applications, it is necessary to briefly take note of certain interim orders passed during the course of proceedings.

7. On July 5th, 2018 the Supreme Court routinely adjudicating CPLA No. 815/K of 2016 passed an order which reflected that Additional Advocate General sought time to comply with the Courts orders as officials are busy in the then general elections due to take place in July, 2018. The Court further noted that the “Deputy Director SBCA stated that building in question was constructed in the year 2015-2016, when there was serious law and order situation in Lyari Town. He [was] asked to give full details and complete list of buildings with their status, which were constructed in Lyari Town without approval of building plan.” See, Ord. dated 05.07.2018 in *Abdul Karim, supra*.

8. The Supreme Court took up the matter again on December 21st, 2018 wherein it stated that “[w]e note that it is not just Lyari Town where such illegal construction activities have been carried out but such has been done all over Karachi and the DG, SBCA, is directed to take action against all the responsible officers/officials who are found to have indulged in and aided and abetted such illegal constructions. While such action is being taken against the officials of SBCA, the DG shall ensure and take measures in accordance with law to see that these illegally constructed buildings are removed by ensuring relocation of occupants of these illegally constructed buildings. The cost of reallocation of the people occupying such illegal buildings shall be taken from the officials of KBCA themselves from their emoluments and properties and in this respect the DG shall raise funds and such funds

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shall include contribution from the DG himself also”. See, Ord. dated 21.12.2018 in *Abdul Karim, supra* at p.2.

9. Then the Supreme Court on January 22nd, 2019 made an overarching order. We do not reproduce the same *para materia*, but the ethos of the order moved along the lines that various commercial activities are underway in Jam Sadiq Ali Park, and all these commercial activities in the form of marriage halls, markets, shopping centres etc are to be demolished. The Court noted that “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”. This ban was extended to the whole of Karachi and “Environmental Department and all other Government Departments shall ensure that city of Karahi is restored to that of its original Master Plan and no deviation from it should be allowed to be made”. The orders further expanded to include directions for the demolition of various other buildings on the ground that they had been illegally constructed.

10. Pursuant to these orders, extensive enforcement actions were undertaken across Karachi, resulting in proceedings against a wide range of allegedly illegal premises. What initially commenced as adjudication of the impugned order of the Sindh High Court gradually transformed into a broader anti-encroachment drive, accompanied by judicial proceedings concerning various allegedly illegally constructed buildings and houses, *inter alia*. While the proceedings were initially confined to examining the legality of the impugned order only, they gradually expanded into what may aptly be described as the realm of “continuous mandamus” wherein the Court began to exercise supervisory role.

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11. When a court is seized of a matter, it is trite law that it must remain confined to the issue at hand and ought not to undertake any inquiry that is unnecessary for the adjudication of the lis before it. As a general rule, “[t]he queries or directions emanating from the Court may travel beyond the pleas set out in the pleadings of the parties [if] their answers are *necessary to resolve a controversy pending before the Court.*” See, *Muhammad Hanif Abbasi v. Imran Khan Niazi*, 2018 PLD SC 189 (per CHIEF JUSTICE MIAN SAQIB NISAR) (emphasis supplied in italics) at p.106. This reflects the true essence of judicial decision-making as “[t]here is no duty cast on the Courts to enter upon purely academic exercises or to pronounce upon hypothetical questions. The Court's judicial function is to adjudicate upon a *real and present controversy* which is formally raised before it by a litigant. *If the litigant does not choose to raise a question, however, important it might be, it is not for the Court to raise it suo motu.*” See, *Asma Jillani v. Government of Punjab*, PLD 1972 SC 139 (per CHIEF JUSTICE HAMOODUR REHMAN) (emphasis supplied in italics) at page 166. Thus, the governing test is that only those queries and directions may be issued by the Court which are “necessary to resolve a controversy pending before the Court.”

12. When a case is pending, especially in its appellate jurisdiction, the Court’s duty is to focus on the issues in that case and work towards a clear and logical resolution. That is what judicial propriety requires. In the present case, the Supreme Court, while exercising its appellate jurisdiction over a narrowly framed controversy concerning whether a specific illegally constructed building in Lyari was liable to be demolished, proceeded to issue sweeping directions for the demolition of all “allegedly illegal” buildings across Karachi and even triggered a

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broader enforcement drive. The controlling principle, as articulated by the Court itself, is that judicial directions may extend beyond the pleadings only where they are “necessary to resolve a controversy pending before the Court”. This test is deliberately restrictive. It requires a close and rational nexus between the relief claimed and the direction to be issued that paves way towards effective adjudication of the specific dispute before the Court. The emphasis is on necessity, not convenience, policy preference, or broader regulatory concern. Measured against this standard, the expansion of relief from a single identified structure in Lyari to all illegal constructions in Karachi cannot be justified.

13. The tangent on which the Court proceeded was not correct. The broader directions issued by the Court, therefore, do not satisfy the requirement of being necessary for resolving the controversy actually pending adjudication. Accordingly, on a proper application of the test, the impugned directions go beyond the permissible judicial function of resolving the lis before the Court and instead amount to adjudication of matters not properly in issue. This renders them inconsistent with the settled principle that judicial power must remain confined to what is necessary for deciding the dispute before it.

14. Even assuming for a moment that the Supreme Court had invoked its jurisdiction under the erstwhile Article 184(3) of the Constitution, it could not have converted its appellate jurisdiction into original jurisdiction without first satisfying the constitutional requirements and limitations embedded in that provision at the relevant time. Likewise, even under the rubric of doing complete justice under the Article 187, such directions could not be justified merely on the basis that complete justice was required in relation to the matter

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already pending before the Court. The impugned orders make it clear that the lis before the Court was confined to the alleged illegal construction of a single building, and could not have been expanded to encompass all buildings across Karachi.

B

15. By no means does this Court by its Order today, seek to legalise illegality or confer any lawful cover upon unauthorised constructions within the city of Karachi. A comprehensive legal framework already exists, supported by rules and designated regulatory authorities tasked with addressing such violations. The Government of Sindh and other relevant departments are under a corresponding constitutional and statutory duty to supervise and regulate these matters. While the objective behind such actions ordered by the Supreme Court were well-intentioned and aimed at the improvement of the city, the enforcement of building laws remains primarily within the domain of the provincial government, not the judiciary. It is for the government and its agencies to take all necessary measures, strictly in accordance with law, ensuring that due process is duly observed in each case. This Court cannot, on the basis of some reports submitted by the SBCA alone, direct the demolition of dwellings without adherence to the requirements of due process. The right to due process is guaranteed to every individual under the law of this country. Accordingly, we hold that the law must take its due course, and all actions must be undertaken strictly within the framework of lawful authority and procedural safeguards. With regards to the main lis i.e., CPLA No. 815/K of 2016, we were informed that the matter is no longer a live issue, hence, it is also disposed of and law enforcement agencies are required to proceed in accordance with law.

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16. In light of our above reasoning contained in Part A-IV of this Order we recall the Orders of the Supreme Court passed in CPLA No. 815/K of 2016 dated 21.12.2018 & 22.01.2019. Resultantly, all directions issued and all consequential reports, proceedings, and actions taken or awaiting implementation pursuant thereto are hereby recalled. All concerned authorities are ordered to proceed in accordance with law. The petitions stand disposed of. Accordingly, all pending applications are also disposed of.

The Order is hereby made.

JUDGE

I have appended my additional note.

JUDGE

Islamabad
12.05.2026

Zawar/*

NOT APPROVED FOR REPORTING

Additional Note:

Syed Arshad Hussain Shah, J.— In addition to the reasons and directions recorded in the judgment authored by my learned brother Justice Aamer Farooq, whereby necessary directions have been issued to the Government of Sindh and all concerned authorities to act strictly in accordance with law, I deem it appropriate to emphasize that the protection and preservation of the fundamental rights of the citizens of Karachi must remain paramount. The citizens are entitled to enjoy public amenities and civic facilities that contribute to a healthy, safe, and dignified life. Such facilities include public parks, playgrounds, green belts, recreational spaces, libraries, community centres, footpaths, pedestrian walkways, public beaches, open spaces, sports facilities, healthcare and educational institutions and other civic amenities intended for public use and welfare. These public assets constitute an integral part of the citizens' right to life and human dignity and must be safeguarded from unlawful encroachment, arbitrary conversion, misuse or deprivation. No person or authority, under the guise of any, policy, executive instruction or administrative order may curtail or diminish the rights already existing and approved in master plans except in accordance with the Constitution and the law. All concerned departments, agencies, and local authorities are, therefore, expected to ensure the preservation, maintenance, and accessibility of such public amenities for the benefit of present and future generations.

(Syed Arshad Hussain Shah)
Judge