



Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has.

—Margaret Mead

# SHEHRI

May - August, 2000 Vol. 10/No. 2

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## THE MYTHS ABOUT REGULARISATION OF ILLEGAL BUILDINGS

As pressure builds from vested interest groups to "regularise" the "irregular" buildings, **Roland de Souza** demolishes many myths and presents the real face behind these corrupt practices.

Everyone in Karachi is aware of the problem of unauthorised structures. Most citizens who do not live in Defence Housing Authority (and many who moved there owing to the problems in their previous residential areas) have been exposed to the creeping increase in densities in the inner city localities, especially areas like Garden West/East, Jamshed Quarters, PECHS, the KCHS Union Societies on either side of Shaheed-e-Millat Road, Saddar Bazar, Preedy Quarters, Clifton, and Karachi Cantonment. The "Disease" is now spreading outwards affecting Nazimabad, North Nazimabad, Federal "B" Area, and other suburbs.

The city is being silently converted into a vast concrete slum. Overloading of electricity, water/sewerage, and other utility/infrastructure systems causes load-shedding, breakdowns, low-voltages, garbage and sewage on the streets, kids playing cricket on the roads, and other familiar signs of civic collapse that we have come to silently accept in Karachi. Life just cannot be allowed to go on this way: *what legacy are we leaving for our future generations?*

The greedy builders mafia and their patrons in the government have generated a number of myths and fallacies about "regularisation". These myths are designed to elicit public sympathy, play with people's sentiments, and give crooked politicians and

bureaucrats the much needed excuses not to take mandated statutory action. The next "illogical" step would be to consider the mass and indiscriminate condoning of violations of the building and environmental laws.

Some of these myths are addressed below:

### Myth No. 1

Violations of the building and town-planning rules and regulations are "minor"



GLASS  
TOWERS:  
THE PROPER  
WAY OF  
DEALING  
WITH  
ILLEGAL  
BUILDINGS

**THEY ARE NOT.** Most illegal multi-storeys, consisting of six to eight-floor commercial-cum-flats buildings have been constructed on residential bungalow plots, where the building regulations and the plot-lease conditions allow

only G + 1 floors on one third of the plot. The over-building in many cases exceeds 1000%!!

### Myth No. 2

"Sealed" buildings are causing adverse economic effects to the city businesses

**NOT TRUE:** Most of the illegal structures, including the infamous "262 sealed buildings" of 1996, are actually no longer "sealed". They have been invaded by the builders mafia, completed, and have been occupied by fake and "rented" tenants. They have even



been subleased. As the builders are not able to get sale for these tainted flats/shops, they want them "regularised" and made kosher. The illegal builders are generally the only ones that are suffering the most. Some genuine buyers who made initial investments, stopped further payments when a hue-and-cry was raised, when court-cases were filed, and when illegal structures were sealed. The government must ensure that the builder makes restitution to such genuine parties.

#### Myth No. 3

**Citizens and NGOs complain after the buildings are completed**

**UNTRUE.** Most neighbours/local residents complain at the start when they observe that the foundations of the illegality are being excavated. Many writ petitions are filed in the courts at the incipient stages. Despite continuous complaints to the authorities over a period of years and notwithstanding court cases, prompt, effective and complete statutory action by the KDA/KBCA is not forthcoming. The government officers actually help the builder to complete the structure. In many cases, when only the outside shell is hurriedly finished, lunda-bazar clothes are hung on the balconies, and poor families from Kharadar are inducted to prove that the building is occupied, so as to thwart statutory action. This drama of "the widows and orphans who have invested their life's savings" game is played over and over again by the builders mafia.

#### Myth No. 4

**Occupants have been issued subleases by the district registrar**

**ABSOLUTELY MEANINGLESS.**

Merely another trick of the builders, in collusion with corrupt officials of the Sindh Board of Revenue. The High Court has recently ruled on two occasions that subleases issued for flats/shops/offices are invalid if a KBCA "NOC for Sale" and "Occupancy Certificate" have not been obtained. The government must stop the issuance of such invalid subleases which only tend to confuse the public. The government must also prohibit the provision of utilities by KESC, KWSB, and SSGCL to such potentially dangerous multi-storeyed buildings that do not have Cantonment Board/KBCA "Occupancy Certificates" attesting to their safety for occupation use.

#### Myth No. 5

**The builders who construct illegally are small fry**

**ABSOLUTELY NOT.** Illegal buildings are big business, vying with the drug racket for investment/profits. A 16-storey unauthorised commercial structure on Shahrah-e-Faisal promises an illicit return of Rs. 930 million to the builders consortium. An 8-storey residential-cum-commercial project behind the TV Station that was recently partially demolished was to generate a profit of Rs. 76 million (see calculation in box). Many members of the major builders' Association are into illegal construction in a big way, especially on Shahrah-e-Faisal, I. I. Chundrigar Road, and Clifton.

#### Myth No. 6

**The builders of the illegal structures have run away**

**NOT TRUE.** Their identities and present whereabouts are well known to the KBCA officials and

to the district administration police (after all, these builders are applying for "regularisation"), and even to the so-called "allottees". Effective prosecution of these criminals must be undertaken, and they must be made to pay restitution to the few genuine buyers. Additionally, lawful forfeiture of the plot by the lessors can provide some money to compensate people who have been defrauded. It is amazing that even the colluding KBCA officials (who have not run away) are not being taken to task: this is the level of apathy of the government.

#### Myth No. 7

**The illegal buildings have been constructed with citizens money**

**NOT ENTIRELY TRUE:** Most illegal construction ventures are organised by a group of investors who contribute towards the purchase of the plot and the seed capital. After the project is launched, purchasers make initial down-payments and further installments are paid over a period of 3 to 5 years. But when a hue-and-cry was raised in 1995/96 and hundreds of buildings were sealed or challenged in court cases, the purchasers wisely stopped making payments. The builders/investors consortiums violated the seals and were consequently compelled to pay for the completion of the illegal structure, so that fake occupants could be inducted to stave off demolition actions. Now, the builders need the illegalities "regularised" so that they can sell off their buildings and recover their monies.

#### Myth No. 8

**Existing building regulations/bye-laws are 'obsolete' and 'impractical'**





**RIDICULOUS:** As an analogy, don't habitual traffic violators find the traffic rules obsolete and impractical? They do not want to obey any rules. Majority of our laws acts are of pre-partition days, but they are still enforced whether obsolete or not. The upgraded Building Regulations presently being worked on will not make the existing illegal buildings "legal". The necessary infrastructure (parking, schools, playgrounds, police stations, roads, parks, garbage collection, etc.) and utilities (electricity, water, sewerage, etc.) are just not available in the inner city areas, and the lives of existing residents are being made miserable by illegal densifi-

cation of the residential areas with new multi-storeyed flats, offices flats, offices and shopping centres. The original area development schemes (like *Saddar Bazar Quarters*, *Garden East*, *PECHS*, etc.) catered for a certain number of inhabitants: additional unauthorised occupants and commercial activity cannot be accommodated in the same area without a severe reduction in the quality of life for all. Thus change of land-use, plot-ratios and densities cannot be increased without a massive town-planning exercise and a pre-augmentation of civic infrastructure and amenities.

#### Myth No 9

**"Regularisation" of all building violations except those under Regulation 16(2)(c) is permitted under the existing building laws.**

**FALSE:** The Sindh Building Control Ordinance 1979 (SBCO) has no provision for "regularization" of violations/breaches of its Regulations. In fact, Section (12)6 of the SBCO specifically forbids deviations from the approved plans. Section 19(1-A) provides that no offence relating to building works carried out in violation of the regulations shall be compounded. "Regularisation" is merely the con-

## THE PROFITS OF ILLEGAL CONSTRUCTION

**A** nine-floor (basement + ground + 7 floors, total covered area = 80,000 square feet) shops-cum-offices-cum-flats high-rise building has been illegally constructed on a 1100 square yard bungalow plot behind the PTV Station in the KCHS Union area.

The builder, with complete contempt for the law, did not even bother to obtain KDA/KBCA approval for the permissible G + 1 floor bungalow (total covered area = 6,630 square feet) on 1/3rd of the plot. The mandatory KBCA safety procedure for the proof-vetting of the structural stability/earthquake-resistance of the high-rise structure has been eliminated.

An approximation of the costs involved is:

Costs		Sale Income	
Plot/land	Rs. 15 million	42 flats@Rs 2m	Rs. 84 million
Construction	Rs. 28 million	Shops	Rs. 20 million
Miscellaneous	Rs. 05 million	Offices	Rs. 20 million
<b>Total</b>	<b>Rs. 48 million</b>	<b>Total</b>	<b>Rs. 124 million</b>

**Profit=Rs. 76 million**

The ABAD-proposed "regularisation" penalties of Rs. 10 million per illegal building will still leave the builder with an illicit tax-free profit of Rs. 66 million. The cost of damage to the built environment, which will be paid for by other non-involved citizens of Karachi, is beyond calculation! □



doning of not taking prior permission for constructing something that is actually and inherently lawful. Regulation 16(2)(c) of the Karachi Building and Town Planning regulations deals only with the compounding of the offenses. The regulations dealing with the regularization is Regulations 24 (and its accompanying Form 7 on page 136 of Vol. I of KBTPR) and Regulation 25, both of which forbid permission for a building constructed in violation of the regulations or in contravention of any building or zoning regulations or restrictions or covenant of lease.

The superior courts have upheld this view, and have given a number of decisions deploring the tendency of corrupt politicians and bureaucrats to misinterpret and misuse the law.

The Supreme Court has clarified that "...there is a marked distinction between a criminal liability under Section 19 of the (*Sindh Building Control*) Ordinance and a civil liability under the (*Karachi Building & Town Planning*) Regulations to rectify irregularity/breaches.

The (*KDA/Karachi Building Control*) Authority may compound criminal liability but it cannot regularize a breach of the Regulations (*emphasis added*)...". The Court has also stressed that "...the (*KDA/Karachi Building Control*) Authority has no discretion in fact and law."

Most of the so-called "regularisations" carried out in the past have been done in blatant violation of the law: the builders' mafia is now trying to misuse these old unlawful "regularisations" as precedents for new illegal "regularisations". Unfortunately, two wrongs do not make a right.

#### Myth No 10

**The punitive "regularisation" penalties will effectively discourage future illegal construction**

**RIDICULOUS:** Only a political and administrative will to implement the law can discourage violation of the law. One needs only to look at the Defence Housing area to observe the complete absence of blatantly illegal structures. In any case, the penalties will not come out of the pockets of the builders; rather they will be extracted from the purchasers; the very same orphans and widows that the Government is so adamant on looking after the interests of. The builders will not suffer. All that will be established conclusively is that crime does pay, that criminals are protected at all costs, and that what is illegal today becomes legal tomorrow – albeit a small fee and proper connections.

But undoubtedly, corrupt government officials will benefit personally. They made money to look the other way while the illegal construction went on. Now they will make money in the process of "regularisation" while ensuring that their patronised projects are not demolished.

#### Myth No 11.

**The "regularization" money will be used for development projects of the city.**

**NOT IF THE GOVERNMENT CAN HELP IT:** The KDA/KBCA presently does not have the money to pay the salaries and expenses of the bloated bureaucracy that it has acquired over years of political nepotism. The KDA has about 7500 people, when it could function with about 2000. The KBCA has about 950, when only 300 would probably be sufficient. Over the

past fifteen years, billions of rupees collected by KDA/KBCA in the name of "regularization", or "betterment", or "additional floors", or "commercialization" charges have been frittered away in paying salaries and other non-development expenses. Although the KDA Order 1957 ordains that only 15% of development charges (and "regularization" charges are a form of development charges to be used to reinforce the overloaded civic infrastructure/utilities system) may be used for overheads and salaries; the government violates this requirement with impunity. Additionally, the proceeds of "regularization" cannot even be used for any other kind of development work.

#### Myth No 12.

**If a cut-off date is fixed, builders will not construct illegally after that**

**CAN ANYONE BELIEVE THAT?** Builders regularly make appeals for a cut-off date. What prevents them from not constructing in violation of rules even before a cut-off date? If the government cannot enforce the Building Regulations today, how can they enforce them after the cut-off date? A cut-off date was implied in the 1994 amendment to the SBCO 1979 which did away the compounding of offenses: but unauthorised construction has not stopped, and it continues even today.

#### Myth No 13.

**"Regularisation" of buildings is no different to the other amnesty schemes allowed in Pakistan**

**INACCURATE:** Other "whitener" and amnesty schemes involving taxes, black money, illegal guns, smuggling, adhoc appointments, etc., while distasteful and detri-



mental to the promotion of respect for the law, are not only counter-productive but are also directly hazardous to the rest of the populace and a permanent violation of their fundamental rights to a peaceful life as guaranteed by the constitution. Such schemes have never proved successful for the simple reason that they encourage people to more brazenly violate the law. In the words of the High Court of Sindh *"It would tantamount to allowing premium on deviation from the rules and thus who chose to obey the rules would suffer and would be at a disadvantage as compared to these who do not to obey the rules"*. Illegal and potentially dangerous structures that are *"regularised"* will become a part of the built environment and a catastrophe waiting to happen.

The High Court has, over the past three years, given numerous judgments in suits and petitions dealing with around a hundred structures, directing the KDA/KBCA to take lawful action, including eviction of illegal occupants and demolition of unauthorised buildings. Aside from duly serving notices on the builders/occupants, the Authority has done virtually nothing to implement the law or the courts' orders.

Instead, the mafia is proposing a *"practical"*, *"compassionate"*, and *"compromise"* solution: *"regularise"* the illegal structures! It does not matter that the procedure smacks of the same corruption and cowardice that has dragged this nation down to its knees over the past 53 years. Nor does it seem to matter that these potentially dangerous structures may collapse in the next earthquake to hit Karachi.

We seem to have quickly forgotten the August 1999 lesson from Turkey: 100 thousand poorly constructed, illegal, and *"regularised"*

buildings collapsed, 20 thousand people died, and 600 thousand were left homeless. There, too, the greedy builders and their partners in the municipal building control authorities were to blame. How can anyone in the present government take personal responsibility for the thousands of lives that may be lost in earthquake disasters involving the destruction of illegal buildings that have been *"regularised"* in Karachi? It will be bad enough that illegal buildings will collapse, but how will the government members explain away the fact that the collapsed illegalities had been *"regularised"* by them?

In October 1999, the KDA Governing Body wisely cautioned the public through a KBCA notice published in newspapers of record that numerous unauthorised structures had been constructed in Karachi under the cover of court orders, and that the law did not permit the *"regularisation"* of such blatantly illegal and dangerous buildings. The KDA/KBCA went on to correctly clarify that *"condonation is only possible when the deviations from the approved plans are still within the Building Regulations"*.

The 21-8-2000 editorial of this newspaper entitled *"A strange proposal"* succinctly outlines the difficulties inherent in a similar policy of *"regularisation"* of encroachments: the violations are a public nuisance and an infringement of the citizens' fundamental rights, they overload the civic infrastructure, litigation would multiply, a green signal would be given to other encroaches, other avenues should be explored to raise funds including cutting back on redundant personnel, etc.

What then is to be done about this lingering problem of sealed and illegal buildings? Citizens groups

have suggested that the government adopts the following steps:

- 1) Immediately put a stop to presently ongoing unauthorised construction activity: enforce the law!
- 2) Prosecute the builders and make them pay restitution to persons defrauded.
- 3) Punish the conniving government and KBCA officers.
- 4) Stop issuance of invalid sub-leases and KESC/SSGCL/KWSB utilities without reference to Cantonment Board/KBCA *"Occupancy Certificates"*.
- 5) Run a continuous media campaign advising the public not to invest in buildings without obtaining prior clearance in writing from KBCA/Cantonment Boards.
- 6) Demolish those illegal structures so ordered by the High Court of Sindh, and forfeit the plot leases.
- 7) Defer lawful action (or ignore for the present) those completed illegal structures on which no court order has been received. No *"regularisation"* is to be carried out.
- 8) Eliminate political and bureaucratic interference in the lawful working of the building control authorities.
- 9) Develop and implement a proper Master Plan for the city, which will provide better housing, infrastructure, and transport in the suburban areas, and establish security of life to citizens in these locations. □

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