IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 431 of 2011

Plaintiffs:	**Pakistan State Oil.** **Through Mr. Omar Soomro a/w Mr. Danish Nayyer Advocate.**
Defendant No. 1 & 2:	**Province of Sindh & another** **Through Mr. Saifullah Additional Advocate General Sindh.**
Defendant No. 3:	**The Trustees of the Port of Karachi** **Through Mr. Aga Zafar Ahmed Advocate.**

1) For hearing of CMA No. 4892/2011.
2) For hearing of CMA No. 10323/2012.
3) For examination of parties and settlement of issues.
4) For orders on CMA No. 588/2020.
5) For orders on CMA No. 589/2020.

Date of hearing: **13.02.2020**

Date of judgment: **28.02.2020**

Muhammad Junaid Ghaffar, J. Through this Suit the Plaintiff has sought the following relief(s): -

"I) Direct the Defendant Nos. 1 and 2 and all the functionaries, acting under it not to impose any property tax under the Sindh Urban Immovable Property Tax Act, 1958, in respect of the Subject Terminals situated at Kemari, Port of Karachi;

II) Direct the Defendant Nos. 1 and 2 and all the other functionaries, of the Excise and Taxation Department to refund to the Plaintiff the amounts totaling Rs. 39,781,762/-, paid as property tax under the Sindh Urban Immovable Property Tax Act, 1958, in respect of the Subject Terminal situated at Kemari, Port of Karachi;

OR

III) In the alternative direct the Defendant No. 3 to refund to the Plaintiff the amounts totaling Rs. 39,781,762/-, paid as property tax under the Sindh Urban Immovable Property Tax Act, 1958, in respect of the subject Terminals situated at Kemari, Port of Karachi;

IV) Award markup / interest / reasonable rate of return at the rate of 18% or at any other reasonable rate on the aforesaid amount of Rs. 39,781,762/-, from the date of filing of this Suit till recovery.

V) Cost of the Suit;

VI) Pass any other, further or better order that this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

2. The precise case as pleaded through plaint in this Suit is to the effect that the Plaintiff is a tenant of Defendant No. 3 and is utilizing various lands against payment of rentals i.e. (i) 'Terminal A' (marked as BV-265, 265-A, 276 and 276-A) located on Plot Nos. 2, 10 and 11, West Wharf, Port of Karachi, (ii) 'Terminal B' (marked as BV-263 and 263-A) located on Plot Nos. 12, 59 and 61, West Wharf, Port of Karachi and (iii) 'Terminal C' (marked as BV-270 and 273) located on Plot Nos. 28, 29 and 30, West Wharf, Port of Karachi ("**Subject Land**"). It is the case of the Plaintiff that though for so many years property tax has been paid directly to Defendant No.2; but that was under a mistake of law; hence, instant Suit seeking the above prayers.

3. Mr. Omar Soomro, learned Counsel for the Plaintiff has contended that under the Sindh Urban Immovable Property Tax Act, 1958 ("**The Act**") the liability to pay the property tax in the first instance is that of the owner i.e. Defendant No. 3, whereas, it has been recovered from the Plaintiff without any lawful justification for so many years; that the Plaintiff being tenant can only be asked to make payment of the property tax after service of a notice under Section 14 of the Act and any such payment by the tenant shall operate as a statutory discharge of the rent payable by the tenant to the owner; that without prejudice to this, under the Act no tax is leviable on properties and land owned by the Federal Government as it would be in violation of Article 165 of the Constitution of Pakistan; that the land in question is vested in Defendant No.3 by virtue of a Federal law; hence, is exempt from any such tax, and if not, then tax if any, is to be paid by Defendant No.3; that no tax is leviable on the land in question, as it is exempt under Section 4 ibid; hence, the recovery of tax from the Plaintiff prior to the filing of this Suit as well as in future is illegal and liable to be refunded. He has also referred and relied upon the written statement of Defendant No.3 as to exemption from tax on the land in question. In support he has relied upon ***Sindh Revenue Board through Chairman Government of Sindh and another V. The Civil Aviation Authority***

of Pakistan though Airport Manager **(2017 SCMR 1344)**. [after the matter was reserved for judgment, learned Counsel has submitted a case note in respect of payment under a mistake of law and has relied upon cases reported as ***Pfizer Laboratories Limited V. Federation of Pakistan*** **(PLD 1998 SC 64),** ***Sales Tax Officer Piliphit V. Messrs Budh Prakash Jai Prakash*** **(AIR 1954 SC 459),** ***Kohinoor Industries V. Government of Pakistan*** **(1994 CLC 994),** ***Novatex Limited V. Sardar Muhammad Ashraf*** **(2002 YLR 1954),** ***The Commissioner of Sales, U.P V. Messrs Auriya Chamber of Commerce, Allahabad*** **(1986 (8) ECR 1 (S.C),** ***Woolwich Building Society V. Inland Revenue Commissioner (No. 2)*** **(1992 (3) Al ELR 737), and** ***Sales Tax Officer V. Kanhaiya Lal*** **(AIR 1959 SC 135).** Though ordinarily, it could not have been entertained as the opposing Counsel have not been confronted with it; however, since it is in respect of a legal point only and not on any facts; I have entertained the same and will respond to it in this judgment].

4. Learned Additional Advocate General Sindh has contended that the land in question does not belong to the Federal Government as contended, as it has been leased out for commercial purposes by Defendant No.3 / KPT; hence, it is not exempt under Section 4 of the Act; that as per Section 25 of the Karachi Port Trust Act, 1886 the property vests in the Board of Trustees of KPT and not in the Federal Government; that the controversy as raised in this matter regarding exemption or otherwise of the property owned by KPT already stands settled through various Judgments of this Court as well as by the Hon'ble Supreme Court reported as ***Karachi International Container Terminal Limited V. Government of Sindh and others*** **(2005 Y L R 66),** ***Trustees of Port of Karachi V. Secretary (Ex-Officio) and Director General, Excise and Taxation, Karachi and another*** **(1990 C L C 92),** ***Karachi International Container Terminal Ltd. V. Government of Sindh*** **(2005 S C M R 1183),** ***Pakistan through Secretary, Ministry of Defence V. Province of Punjab and others*** **(P L D 1975 SC 37);** that even otherwise, the Plaintiff had been regularly paying the property tax without any objection; hence, there was no need or occasion to demand the same from the Plaintiff in the capacity of a tenant under Section 14 of the Act; that instant Suit has been filed directly without availing the alternate remedy under Section 10 of the

Act; that after pronouncement of judgment by the Hon'ble Supreme Court in the case reported as ***Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444),*** the Suit is otherwise not maintainable without deposit / payment of the 50% of the disputed amount; hence, the Plaintiff has no case and the Suit is liable to be dismissed.

5. Learned Counsel for the Defendant No.3 has at the very outset submitted that insofar as the written statement filed by the Defendant No.3 to the effect that no tax is leviable on the properties of KPT being owned by the Federal Government is concerned, is incorrect in view of the dicta already laid down by the Courts in the judgments as relied upon by the learned AAG and he will not subscribe to that proposition; that the Plaintiff has not assisted the Court properly by concealing material documents including the lease of the land in question through which they have agreed to pay all taxes including the property tax; hence, the ground so taken for non-receiving / issuance of notice under Section 14 ibid is not maintainable; that the land in question does not fall within the port area; hence, there is no question of any exemption of tax on such land; that since long they have been regularly paying the property tax pursuant to the lease of the subject land, and the stance that it was done mistakenly is belied by the fact that in the lease agreement they have already agreed to pay the same. He has therefore prayed for dismissal of the Suit and the applications filed by the Plaintiff.

6. Mr. Danish Nayyer while exercising his right of rebuttal on behalf of the Plaintiff has contended that though the agreement of lease is not denied; but no notice has been issued under Section 14, whereas, the case law relied upon is distinguishable in facts as the Plaintiff's case is premised on the argument that they can only be asked for payment of property tax, if the owner is in default and as a tenant a notice under Section 14 is issued to them; which would then enable the Plaintiff to seek adjustment of the same from the rent being paid to Defendant No.3.

7. I have heard all the learned Counsel and perused the record. By consent of all, the entire Suit has been heard along with pending

applications and is being decided on legal issues in terms of Order 14 Rule 2 CPC as it only involves a legal controversy and neither requires; nor has anybody asked for, to lead evidence in support of their case. The following legal issues are settled for the purposes of adjudication of this Suit.

i) Whether the Suit is maintainable?

ii) Whether the Plaintiff is liable to pay property tax to Defendant No.2?

iii) Whether the property in question leased by Defendant No.3 to the Plaintiff is exempt from the levy of Property Tax in terms of Section 4 of the Sindh Urban Immoveable Property Tax Act, 1958?

iv) Whether Plaintiff was required to be served with a notice under s.14 of The Sindh Urban Immoveable Property Tax Act, 1958?

v) What should the decree be?

8. Except Issue No.(i), all other issues are interrelated and therefore are being dealt with together. Insofar as issue No.(i) is concerned, ordinarily the same ought to have been dealt with and decided first; however, since I am also deciding the other issues on merits, therefore, will deal with the issue of maintainability later on. Insofar as the facts of the case are concerned it appears to be an admitted position that the Plaintiff is in possession of subject land owned by Defendant No.3/KPT which has been leased out to the Plaintiff on rental / lease payments. Surprisingly, the Plaintiff at the time of filing instant Suit, has failed to place on record the lease agreements entered into with Defendant No.3, without any justification or lawful excuse. Such lease agreements have been placed on record on behalf of Defendant No.2 through miscellaneous application. The Plaintiffs entire case is set up on three grounds. First is, that the property in question is not liable to be taxed and is exempt under section 4 of the Act; and secondly, if not, then it is to be paid by Defendant No.3, and lastly, even otherwise, the Plaintiff has not been issued any notice in terms of s.14 ibid, to make payment of the said tax to Defendant No.2.

9. As to the first contention it needs to be appreciated that admittedly the subject land has been leased /rented to the Plaintiff for its commercial operations, including storage of oil etc. and is not in the use of KPT for its own Port operations. Without prejudice to the fact

that even then would it be an exempt property or not; for the present purposes, what is relevant is that KPT is earning income by way of such rentals / lease money and at the same time it is being used admittedly for commercial purposes by the Plaintiff. The applicability of property tax and or it being exempt under s.4 of the Act is now a settled issue. However, before proceeding further, it would be advantageous to refer to the relevant provision of s.4 ibid which reads as under;

> **4. Exemptions. —**The tax shall not be leviable in respect of the following properties, namely: -
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> (a) ***buildings and lands, other than those lease din perpetuity, vesting in the Federal Government;***
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> (b) buildings and lands other than those leased in perpetuity.
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> (i) Vesting in any provincial Government and not administered by a local authority;
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> (ii) Owned or administered by a local authority when used exclusively for public purposes and not used or intended to be used for purposes of profit;
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> (c) (i)-----
> (ii)-----
> (iii)-----;
> (d) ------
> (e) ------
> (f) ------
> (g) ------
> (h) ------

10. Perusal of the above provision [relevant being 4(a)] reflects that such buildings and lands, which are not leased in perpetuity and are vested in the Federal Government are exempt from the levy of Property Tax. In this matter the Plaintiff rests its case on this clause and it has been contended that since the land in question belongs to the Federal Government, KPT being as such, therefore, no property tax is leviable; hence, the Plaintiff is not liable to pay any such tax. This argument, on the face of it is not only contradictory; but so also entirely misconceived and not tenable. For the purposes of making the record straight, it is pivotal to note that KPT has not come forward in this regard with any such plea. Their Counsel has candidly conceded that KPT is not pressing this issue anymore in view of the earlier pronouncements in

this regard. Secondly, the Plaintiff has otherwise no locus standi to come forward in a Civil Suit under s.42 of the Specific Relief Act, and to say that a tax is not leviable on the property of KPT. It is for KPT to agitate the issue if so wanted, whereas, they have already made an agreement with Plaintiff to pay such tax. Then why would they be agitating the said issue anymore. Notwithstanding this, at least the Plaintiff has no case to plead on behalf of KPT as to the entitlement of exemption or otherwise.

11. Nonetheless, even otherwise, there is a series of judgments, wherein, either directly or indirectly this issue stands resolved. The first case is reported as ***Trustees of the Port of Karachi (Supra)***, wherein, the precise issue was in respect of claim of KPT being exempt from the levy of property tax in terms of s.4(b)(ii), being purportedly a public authority using the property exclusively for public purposes. The dispute arose after introduction of container service for which necessary area in dispute was the space being used by container yard operators for handling of the same within the port premises and for which KPT was charging certain amount so as to be compensated for the costs incurred on development of these yards. They approached the relevant authority seeking exemption from property tax as above, and after having failed to get any such exemption, approached the Court and a learned Division Bench was pleased to dismiss the said petition. The relevant findings are as under;

> [at pg:94] The learned counsel for the petitioners has contended that the container parks are just like warehouses and wharf kept and maintained by the petitioner for loading and unloading purposes for which no tax is charged. He further contended that the petitioners 'are local authority and the container parks are used for public purposes and not used for purposes of profit. In order to claim exemption from tax the petitioners must show that the building is owned or administered by them which are local authority and is used exclusively for public purposes and not for purposes of profit. All these three ingredients should be present and fully satisfied before any claim for exemption can be admitted. The petitioners are a local authority and there is no dispute about it. The only dispute seems to be whether the container parks are used exclusively for public purposes and further that they are not used for purposes of profit.
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> [at pg:95] Mr. Usmani the learned counsel for the petitioners has contended that as the cost for preparing and maintaining the parking lots is much higher than what the petitioners are realizing by way of fee they cannot be treated to have been used for the purposes of profit. The term `for purposes of profit' has not been used in the sense it is understood in accountancy for determining gains and profits. The moment income accrues from any investment it amounts, to employment of resources for purpose of profits. It is the accrual of income from property movable or immovable, investment, or development or resources which determines the purpose and nature of utilization of such property. Every advantage, benefit of productivity resulting from employment of resources

> or capital will amount to profit. The terms of licence establish that the container parks arc regular source of income to the petitioners and are thus used for purposes of profit."

12. The learned Division Bench in the above case was though dealing with another sub-section i.e. s.4(b)(ii); however, the precise reason which prevailed upon in arriving at a conclusion that no case is made out was to the effect that KPT had in fact let out the container parks to operators and cannot claim to use them for public purpose as they are not open for use by all the people on the basis of equality like other berths and wharves.

13. It needs to be appreciated that the exemption clause in the Act in question is for the land owned by the Federal Government. And once, KPT admits that this land has been leased out for commercial purposes and the tenant has agreed to pay the property tax, then in that eventuality, nothing is left for this Court to interpret for a Plaintiff who in fact has no justifiable cause to seek such an interpretation. Plaintiff has already agreed to pay the same in the lease agreement and now through this alternative argument intends to escape the liability. It appears that Plaintiff has made this attempt to wriggle out from its contractual obligation and take advantage if ultimately it is held that property tax is not leviable on the land in question. The same appears to be a very far-fetched attempt and nothing else. It is also a matter of record that this judgment as above was also maintained by the Hon'ble Supreme Court in Civil Appeal No.791-K of 1990 dated 18.12.1992.

14. The second judgment is reported as ***Karachi International Container Terminal Limited (Supra)*** wherein the controversy was agitated once again by a lessee of KPT against a notice under s.14 of the Act, whereby, a demand for payment of property tax in its capacity as a lessee of KPT, followed by an attachment notice were issued. The case of that petitioner was also more or less premised on the same footing as that of this Plaintiff, inasmuch as it was agitated that pursuant to certain agreements, though the petitioner was a lessee of KPT; but was not required to pay any lease or rent to KPT; hence, could not be asked to respond to a notice under s.14 ibid, and pay the property tax out of the rent / lease amount owed to KPT. Besides other various grounds it was also argued that KPT had already filed a Suit bearing No.1355/2003, through which an exemption was claimed in respect of

the land allotted to the petitioner for its terminal; hence, no notice could be issued for recovery of property tax under s.14 of the Act. The learned Division Bench came to the following conclusion:

> "9. From a plain reading of section 14 of the Act of 1958, it is evident that it does not absolve owner of the building or land from his liability towards the payment of property tax, but only empowers the concerned authority to enforce recovery of such arrears of property tax from the person paying rent in respect of that building or land, after service of notice in the prescribed form (Form PT-14) calling upon said person and requiring him to pay all future payment of rents to the concerned authority until such arrears of property tax have been duly paid. It further provides that service of such notice shall transfer to the prescribed authority the right to recover and receive such rent and that in case the person paying rent willfully fails and neglects to comply with the notice issued by the prescribed authority, after due opportunity, the prescribed authority can proceed against him in the same manner as against the owner of the building or land in respect of which tax is in arrears. It is significant to note that word "owner" has been defined under section 2(e) of the Act of 1958 by giving it very wide meaning but the word "rent" used under this section has not been defined under the Act of 1958. In Blacks Law Dictionary 7th Edition, word "rent" has been defined as consideration paid periodically for the use or occupancy of the property. Thus, it is evident that definition of word "rent" cannot be narrowly interpreted in favour of a lessee to absolve him of any action against him in terms of sections 14 and 16 of the Act of 1958 on the pretext that the payment of occupancy consideration to the owner of the property is under any other head though primarily attached to the letting out/leasing of the building/ plot of land, as referred above, and not for any other purpose, as admittedly respondent No.3 (KPT) has nothing to do with handling, marshalling and storage of cargo work undertaken by the petitioner.
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> 10. It will be pertinent to mention here that levy of property tax over the disputed property has not been disputed before us by the parties. Even otherwise, the issue whether the properties owned/vested with respondent No.3 (KPT) leased to private parties/companies; can be subjected to the levy of property tax, stands decided by this Court vide its judgment dated 15-8-1989 in the case of Trustees of Port of Karachi v. Secretary (Excise) Officio Director General, Excise and Taxation and another (C.P. No.D-1209 of 1986), which was also maintained by the Honourable Supreme Court of Pakistan in its judgment dated 18-12-1992 in Civil Appeal No.791-K of 1990. Thus, the only short point for consideration before us in this petition is that whether, in the given facts and circumstances, recovery of property tax can be enforced by respondents Nos.1 and 2 against the petitioner by invoking provisions of section 14 of the Act of 1958 or not.
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> [pg:73]……..In our view, such submission of the learned counsel is absolutely misdirected in the present case for the reason that apart from being lessee of the respondent No.3, the petitioner, in terms of Articles 14.3(c) and 18 of the implementation agreement and Clauses 2 and 3 of the indenture of, lease (supra), have undertaken payment of all such tax liabilities of the Federal or Provincial Government or any other autonomous body on their shoulder, besides payment of annual rent to the respondent NO. In such circumstances, the crucial issue i.e. whether in terms of such agreement between the petitioner and respondent No.3, the petitioner is liable to pay property tax to the respondents Nos.1 and 2, is to be adjudicated in the pending civil suit, after recording of evidence or in any other appropriate proceedings, but the fact remains that the claim of respondents Nos.1 and 2 against the petitioner in either of the two capacities of the petitioner is fully justified so also the impugned action taken under sections 14 and 16 of the Act 1958. The framing of questions of law in this Constitutional petition and seeking its adjudication through this petition is also I equally misdirected as the question of payment of property tax on the basis of mutual agreement between the parties cannot be summarily adjudged in these proceedings. To sum up, we are of the considered view that

> not only the B impugned action taken by the respondents Nos.1 and 2 against the petitioner is within the four corners of the relevant provisions of the Act of 1958, but this petition is frivolous and aimed to avoid liability of payment of legitimate claim of property tax to respondents Nos.1 and 2.

15. The above observation of the learned Division Bench does not leave any further effort or exercise to be carried out by this Single Bench on whom the said judgment is binding; inasmuch as all the arguments so raised by the present Plaintiff stands answered. It has come on record that rent is being paid by the Plaintiff to KPT, whereas, pursuant to lease agreement between them which has not been denied, the Plaintiff has already undertaken to pay the tax in question, which in fact is being paid by it since long, without any objection or reservations; therefore, in that case, now a plea for non-issuance of a notice under s.14 ibid is meaningless. Even if such a notice is issued, it has to be paid and honored by the Plaintiff, as it has already agreed to pay the same and the owner / KPT cannot be held to be in default for creating a situation to issue any notice under s.14. In para 10 as above the entire crux of the Plaintiffs argument has been answered by the learned Division Bench and need not be dilated any further. Moreover, this judgment was also impugned further before the Hon'ble Supreme Court but that too without any success. It is reported as ***Karachi International Container Terminal Limited v Government of Sindh*** (**2005 SCMR 1183**). The relevant observation of the Hon'ble Supreme Court is as under;

> 3. There is no denying the fact that petitioner is lessee of the Karachi Port Trust (hereinafter referred to as "K.P.T.") qua Container Terminal Berths Nos. 28-30 located at Dockyard Road, Karachi, for a period of twenty years. The dispute relates to the liability of property tax and according to the petitioner since no rent was being paid for the utilization of land, hence the question of levying and payment of property tax does not arise. In our considered view, the controversy can only be resolved by examining the Indenture of Lease and Implementation Agreement. After having perused the Indenture. of lease with the eminent assistance of learned counsel, we are of the view that the petitioner agreed to pay the average annual rent in the tune of Rs.61,430,189 to K.P.T., pursuant to clause 2 of the Indenture of Lease which is reproduced herein-below for ready reference:-
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> 4. A bare perusal of Indenture of Lease would reveal that an agreement has been executed qua "rent" which cannot be equated to that of "charges" for handling, marshalling and storage for the containers and other specified cargo. The said view is strictly in consonance with the provisions as contained in clause 2 of the Indenture of Lease which inter alia provides that "the KICT shall pay to K.P.T. as Handling, Marshaling and Storage charges for containers/other specified cargo (hereinafter referred to as HMS charges) at a unit rate of Rs.292 (Rupees Two hundred and ninety-two only) per square meter per annum payable within the first week of July each year. The HMS charges will

be subject to an indexation up to of 15% escalation every three years in accordance with Article 8.2.2 of the Implementation Agreement. The average annual rent comes to Rs.61,430,189." There can be no other interpretation of Article 14.3(c) and para. 18 of the Implementation Agreement and clauses 2 and 3 of the Indenture of Lease from whatever angle, it may be examined that the petitioner is liable for all taxes enumerated therein irrespective of the fact whether it is levied by the Provincial Government, Federal Government or any other Autonomous Body. It must not be lost sight of that "rent" & "tax" are neither interchangeable nor synonymous terms. Besides that, the petitioner has agreed to make payment of all taxes as well as rent who cannot be absolved from its responsibility under the garb of far-fetched interpretation of relevant clauses of the agreement having no reasoning or logic at all. It is worth-mentioning that pursuant to implementation agreement, Indenture of Lease was executed between the petitioner and that of respondents which clearly stipulates that all taxes, rates and cesses including the Municipal Taxes already in- existence or levied during the terms of this lease, the c lessee (petitioner) shall be liable to pay the same. In this regard reference can safely be made to clause 3 of the Indenture of Lease. There is no doubt that Terminal Berths Nos.28-30 are owned by K.P.T. and rented out for the purpose of income and profit on rent basis for handling, marshalling and storage in respect of site and commercial operation on different rates as enumerated in the Implementation Agreement executed between the petitioner and that of K.P.T., hence, as per the Indenture of Lease and Implementation Agreement, the petitioner is liable for the property tax to be assessed by the concerned department. The question as to whether particular property belongs to the Central Government and thus exempted from the property tax, cannot be decided by the High Court and such determination falls within the jurisdictional domain of the concerned "Assessing Authority" by whom the exemption from property tax being question of facts shall be determined on the basis of relevant documents and record. The question of exemption given by the Constitution of the Islamic Republic of Pakistan to the property of Central Government has been discussed in case titled Pakistan v. Province of Punjab (PLD 1975 SC 37).....

5. It is not the location of the property ipso facto which makes it entitled for exemption but it is the ownership which will be decisive factor for claiming such exemption as it cannot be decided in vacuum and it will have to be examined that how the ownership of such property was devolved upon the Central Government and whether such claim has any legal sanctity or otherwise? The competency to levy the tax by the Provincial Government cannot be questioned merely on the ground that it was received by some other authority. In this regard reference can be made to the case titled Ashfaq ur Rehman Khan v. The Government of the Punjab and others (PLD 1975 Lah. 23)".

7. We have carefully examined all the respective contentions agitated on behalf of the parties in the light of relevant provisions of Urban Immovable Property Tax Act, 1958 and record of the case. The case of petitioner in brief is that the Government of Sindh (respondent No.1) and the Director General, Excise and Taxation (respondent No.2) have no locus standi and competency for the issuance of notice, qua recovery of the property tax under section 14 of the Sindh Immovable Property Act, 1958, without having completed the prerequisite conditions as enumerated in section 16 of the said Act which are mandatory in nature and that such notice could not have been issued and more so, in view of Suit No.1355 of 2003 pending adjudication before the learned High Court involving the same question of facts and law preferred on behalf of K.P.T and the question of liability of property tax is yet to be determined. It is also the case of petitioner that the provisions as contained in section 14 of the Act cannot be made applicable in absence of the relationship of tenant and landlord between the parties and the Indenture of Lease does not provide for any rent and being lessee, the question of payment of property tax does not arise which is the exclusive responsibility of K.P.T being owner. The plea of the Government of Sindh and the Director General Excise and Taxation (Respondents Nos.1 & 2) is that the property tax was due and it could have been recovered by exercising powers as conferred upon them under sections 14 and 16 of the Act. It is also their case that every attempt has been made by the petitioner to avoid his

liability for payment of property tax by exploiting various provisions of the Act and for the last so many years, not a single penny has been paid which speaks a volume about their conduct.

11……..In fact a deliberate attempt appears to have been made by the petitioner for the evasion of property tax. It is amazing that the assessment being unfair was challenged under section 8 of the Act and without waiting for decision of the competent authority availing departmental remedies, the Constitutional jurisdiction of the learned High Court was invoked. It is really difficult to reconcile such a contradictory mechanism which was evolved to get itself absolved from the liability of payment of property tax. It does not depend upon the whims and wishes of the petitioner to seek relief in piece-meal from different forums simultaneously.

13. There is no doubt in our mind that being owner of the property till proved otherwise K.P.T is liable to make payment of property tax at first instance and in case of its failure undoubtedly notice for recovery of property tax could be issued under section 14 of the Act and further action for attachment can be taken pursuant to the provisions as enumerated in section 16 of the Act against the petitioner who is responsible to pay property tax in view of Clause 14.3(c) and Clause (18) of the Implementation Agreement dated 1-6-1996 and Clauses (2) and (3) of Indenture of Lease executed between the petitioner and K.P.T. Syed Sharifuddin Pirzada, learned Senior Advocate Supreme Court on behalf of petitioner has stated categorically that the petitioner is willing to make payment of property tax without prejudice to his legal rights to further pursue the matter subject to adjustment with K.P.T. The statement of Syed Sharifuddin Pirzada, learned Senior Advocate Supreme Court being genuine is accepted which otherwise is not opposed by the respondents. The property tax as assessed by the Assessing Authority be deposited within a period of sixty days subject to adjustment with K.P.T. and without prejudice to the legal rights of the petitioner to further pursue the matter before the forum concerned available under the hierarchy of Excise and Taxation Department to be approached first for the redressal of the grievance, if any, as such, the matter being ticklish, tedious and controversial cannot be set at naught by invocation of the Constitutional jurisdiction.

16. Perusal of the above findings and observations reflect that after being confronted by the Hon'ble Supreme Court, it appears that the petitioner in that case agreed to pay the tax as demanded in terms of s.14 of the Act; subject to its adjustment or settlement with KPT. In the present case since the Plaintiff has already agreed to pay the tax in question on behalf of KPT in its lease agreement, there is not room left for the Plaintiff now to agitate the same either on its very leviability, nor on the ground that no notice had been issued to it under s.14 of the Act. Lastly, the Hon'ble Supreme in identical facts has also raised serious doubts about the challenge to such levy directly before the Court, instead of agitating the same before the department. The same facts are prevalent in this matter as well.

17. For the sake of repetition, I may add that learned Counsel for KPT has candidly conceded to the fact that insofar as the land in question is concerned, it cannot be argued or agitated that it is exempt from any

property tax, notwithstanding the fact that in the written statement, they have taken a contrary stance; as according to him, as an officer of the Court he could not defend such written statement in the light of the law already settled by the Courts as above. Such conduct of the learned Counsel is really appreciable.

18. As to the other ground(s) is concerned, it may be observed that it is an admitted position that Plaintiff is paying this property tax to Defendant No.2 since long and has never objected to the said levy and its payment. And the same appears to have been for the reason that in the lease agreement with KPT it has been agreed upon by the Plaintiff that all such taxes would be paid by it. Never ever, any such objection was made. In fact, learned Counsel for the Plaintiff was confronted time and again to point out to any such document (which he has not been able to), either in respect of any objection with KPT not to pay any such tax; nor with Defendant No.2, asking or requesting any notice under s.14 ibid. In my view there wasn't any occasion for the Plaintiff to ask for issuance of any such notice under s.14; as all along the tax was being paid voluntarily. Though learned Counsel has argued that it was under a mistake of law; but then, even if it was so, first it had to be agitated with the department, at least to the extent that we are only tenants and not liable to pay the said tax directly from their pocket, and a proper notice be issued to the lessor for its payment; and if they do not pay, then a notice under s.14 be issued to them. Nothing of that sort has been done. They have come before this Court on their own suddenly, by taking a stance that they are not liable to make such payment. Such conduct does not in any manner support their case in respect of the position now taken by their Counsel.

19. As to the written note and case law about paying the tax under a purported "*mistake of law*", it would suffice to observe, that there isn't any cavil to such proposition. But for the present facts, this is not relevant at all. It is not a case of paying the tax in question under a "*mistake of law*"; nor it has been so set-up in the plaint or the prayer clause. The stance of KPT is clear and the levy of tax has not been challenged by them in any individual capacity. The Plaintiff has been paying this tax since long and this is on the basis of its agreement with Defendant No.3 / KPT. This in fact is an eye wash attempt to avoid paying the said tax.

It may also be noted that the tax is on the property and not on the person. Here KPT owns it and has entered into an agreement in clear terms that any such tax is to be paid by the tenant. Such is an admitted position, whereas, the Plaintiff has, in fact, concealed such agreement from the Court and has obtained ad-interim orders. As already observed, the Plaintiff under the garb of paying the tax under a "*mistake of law*" cannot get itself absolved from its contractual commitment with Defendant No.3, regarding paying such tax from its own resources. Hence, reliance on this doctrine is meaningless and is misconceived as well.

20. In view of the above discussion Issue Nos. (ii) to (v) are answered as follows;

Issue No.(ii)	affirmative
Issue No.(iii)	negative
Issue No.(iv)	negative
Issue No.(v)	Suit dismissed.

21. Insofar as issue No.1 regarding maintainability of this Suit is concerned, though after having come to the conclusion that on merits this Suits is to be dismissed, adjudication of this is not of much relevance; but nonetheless, this issue is also to be answered, as a Civil Suit in respect of a tax matter can now only be maintained before this Court if 50% of the disputed amount is paid to the department as laid down by the Hon'ble Supreme Court in the case reported as ***Searle IV Solution (Pvt.) Limited v Federation of Pakistan*** (**2018 SCMR 1444**). This is what has also been argued by the learned AAG. After passing of the above judgment by the Hon'ble Supreme Court, a notice was issued by the office to the Plaintiff to this effect and on 4.9.2018 the following order was passed.

04.09.2018.

Mr. Omer Soomro, Advocate for Plaintiff.
Mr. Obaid-ur-Rehman, Advocate for Defendant No.3.
Ms. Rukshanda Waheed, State Counsel.

In response to notice issued by the Office in compliance of the Judgment of Hon'ble Supreme Court in the case reported as ***Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others*** **(2018 S C M R 1444),** learned Counsel seeks time for instructions as according to him the amount in question is ultimately is to be paid by KPT and not by the Plaintiff who is a tenant. Whereas, Mr. Obaid-ur-Rehman submits that he is no more representing the Karachi Port Trust and seeks discharge of his Vakalatnama. In view of such position let a direct notice be issued to the Defendant No.3 for the next date.
To come up on 18.09.2018 for compliance. Interim order, passed earlier, to continue till the next date of hearing.

22. Subsequently on 2.10.2018 the following order was passed;

02.10.2018.

Mr. Umer Soomro, Advocate for the Plaintiff.
Mr. Agha Zafar Ahmed, Advocate for Defendant No.3/KPT.
Ms. Rakshanda Waheed, State Counsel.

Counsel for the plaintiff is directed to come prepared as to order dated 04.09.2018, whereas, State Counsel is also directed to come prepared on behalf of defendant No.2.

To come up on 16.10.2018. Interim order passed earlier to continue till the next date of hearing.

23. Now this Court has come to the conclusion that Plaintiff has no case on merits, was and is required to pay the tax in question, whereas, admittedly Plaintiff has not deposited any such amount; therefore, on this count also, this Suit and any further proceedings as well, are not maintainable in view of the aforesaid judgment of the Hon'ble Supreme Court. The issue is therefore, answered accordingly.

24. Suit stands dismissed along with pending applications of the Plaintiff, whereas, the applications of Defendants stand disposed of. Office to prepare decree accordingly.

Dated: 28.2.2020

J U D G E

Arshad