

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Muhammad Faisal Kamal Alam, J.**  
**Agha Faisal, J.**

CP D 2178 of 2010 : Muhammad Asif Khan vs.  
Cantonment Board Faisal & another

For the Petitioner : Raja Abdul Fatah, Advocate

For the Respondents : Mr. Muhammad Ahmer  
(Assistant Attorney General)

Mr. Muhammad Ashraf Butt  
Advocate

Date of hearing : 26.11.2020

Date of announcement : 08.12.2020

## JUDGMENT

**Agha Faisal, J.** This petitioner has impugned the imposition of property tax on the premise that the same can only be recovered from the petitioner in respect of the period when the subject property came into physical possession / custody of the petitioner and not for any period there before. It is considered illustrative to reproduce the prayer clause herein below:

1. Declare that the demand of property tax from respondent since 12-02-1993 to 30-06-2005 is null & void, ab-initio and without legal effect & liable to be set aside.
2. Direct the respondent that receives the property tax from petitioner since the period, when the physical possession came in the custody of petitioner.
3. Direct the respondent that return the paid amount after deducts the original property tax, which may be examine from the date of physical possession.
4. To grant permanent injunction restraining the respondent, their officers, attorneys, representatives, agents and employees from effect to the impugned demand of tax and also from creating any rights, interest and/ or third party interest in any manner whatsoever pending disposal of petition.
5. Restrain the respondent to create any harassment against the petitioner....

2. The petitioner's counsel submitted that the tax is to be levied upon the person and not upon the property, hence, no liability can be apportioned prior to the subject property having come into the petitioner's possession.

Learned counsel for respondent submitted that property tax is levied on the property itself as per sanction of the law; and the particulars,

stipulating the basis and the period of levy pertinent hereto, have already been placed on record vide statement dated 06.03.2015, hence, the present petition is misconceived and merits disposal forthwith.

3. We have considered the contentions of the learned counsel and have appreciated the law to which our attention was solicited. It is settled law that the factual controversies may not be determined in writ jurisdiction of this court<sup>1</sup>, therefore, the only question of law before us is whether property tax is to be levied upon the person or the property; and the said proposition appears to have already determined vide an earlier Division Bench judgment<sup>2</sup> of this Court.

4. Our attention was drawn to Section 65(3) & (4) of the Cantonment Act, 1924, which appears to be applicable on all fours for adjudication of the present controversy. It is considered appropriate to reproduce the statutory provisions herein below:

“(3) On failure to recover any sum due to account of such tax from the person primarily liable, there may be recovered from the occupier of any part of the buildings or lands in respect of which the tax is due such portion of the sum due as bears to the whole amount due the same ratio which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under this section shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable for the payment, and, if so entitled, may deduct the amount so paid from the amount of any rent from time to time becoming due from his to such person.”

5. Our attention was also drawn to an earlier Division Bench judgment of this court in the case of *Asad Sajjad*<sup>3</sup> wherein a similar controversy was considered. The findings of the learned Division Bench are reproduced herein below:

9. A specific question was asked from the learned counsel for the petitioner that whether the charge or the amount of tax is on a person or a property to which he candidly replied that the said charge is on the property. We specifically asked another question from the learned counsel for the petitioner that what action has been taken by the petitioner against the previous owner for recovery of the arrear bills, no plausible reply in this behalf was furnished by the learned counsel. We are of the view that before purchasing the property it was incumbent duty of the petitioner to have asked the previous owner about the payment of all the arrear bills etc. Moreover the petitioner could have approached the office of Cantonment Board to enquire whether any bills are outstanding, which admittedly was not done. It is a well settled principle of law Caveat Emptor (buyer be aware), hence had the petitioner done his homework properly with regard to obtaining the copies of all the arrear bills from the previous owner, the present position would not have arisen. In our view the petitioner could have initiated legal action against the previous owner if, according to him, the said previous owner has given an incorrect undertaking that the property is free from all encumbrances, which action admittedly has also not been done by the petitioner. We agree with the submission made by the learned counsel for the respondent NO.1 that the matter of payment of taxes is a charge on a property and not upon a person and has to be paid by the owner of that property, which in the present circumstances is the petitioner. However, if the previous owner has, for one reason or the other, not paid the bills and has misguided the purchaser, then it is a matter pertaining to the could not be deferred with regard to the

<sup>1</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

<sup>2</sup> Unreported judgment dated 21.04.2014 in *Asad Sajjad vs. Cantonment Clifton Board and Another* (CP D 12 of 2010 & CP D 2684 of 2009).

<sup>3</sup> Per *Irfan Saadat Khan J* in judgment dated 21.04.2014 in *Asad Sajjad vs. Cantonment Clifton Board and Another* (CP D 12 of 2010 & CP D 2684 of 2009).

ascertaining of fact as to who is responsible for making the payment, since a perusal of the Act clearly reveals that the charge is on the annual value of a property.

10. In view of what has been stated above, we without adverting to the question of maintainability of the petition are of the view that under the given circumstances the petitioner is liable to make the payment of the taxes. Hence, the instant petitions are dismissed alongwith the pending applications.

6. Learned counsel for the petitioner was specifically queried as to whether the stipulations of section 65 of the Cantonment Act, 1924, were attracted in the present facts and circumstances; however, he was unable to dispel the applicability thereof. Learned counsel also made no attempt to distinguish the Division Bench judgment, cited supra, which is binding<sup>4</sup> on successive Division Benches. Petitioner's reliance on *Asif Razzak*<sup>5</sup> is also misconceived as it is distinguishable in the facts and circumstances herein and even otherwise it has been observed therein that the contention that the relevant tax could not be recovered for more than three years could not be accepted.

7. In view of the reasoning and rational herein contained, we are of the considered view that the petitioner has been unable to set forth a fit case for the exercise of writ jurisdiction in the present facts and circumstances; hence, this petition is hereby dismissed.

JUDGE

JUDGE

Khuhro/PA

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<sup>4</sup> Per *Sajjad Ali Shah CJ.* in *Multiline Associates vs. Ardeshir Cowasjee & Others* reported as 1995 SCMR 362.

<sup>5</sup> *Asif Razak vs. Executive Officer Cantonment Board Clifton* reported as 2006 YLR 577.