

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

C.P. No. D - 7648 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGES
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Priority.

1. For hearing of Misc. No.33719 of 2019.
2. For hearing of Main Case.

17-02-2022

Mr. Muhammad Zeeshan Khan, Advocate for the Petitioner.
Mr. Ashraf Ali Butt, Advocate for Respondent No.2.

The Petitioner has challenged order dated 31.10.2019 read with order dated 03.10.2019, whereby the Petitioner's Appeal No.08/2019 under section 84 of the Cantonments Act, 1924 was dismissed in default by the Director, Military Land and Cantonment (Respondent No.3) for failing to comply with the condition of section 87(b) of the Act, which stipulates that no appeal shall be heard or determined if the amount in dispute is not deposited with the Cantonment Board. The amount in dispute is Rs.59,542,451/- demanded by the Cantonment Board Korangi Creek (Respondent No.2) as un-assessed house tax and conservancy charges on additional construction raised by the Petitioner for the period as far back as 1969 uptill 30.06.2019.

Learned counsel for the Petitioner submits that the requirement of deposit in section 87(b) of the Cantonments Act, 1924 as a condition to hearing the appeal is only directory and not mandatory, which could not have been imposed mechanically in circumstances where the impugned demand was *ex facie* malafide and unlawful. In support of that learned counsel relies on *Abdul Rahim v. United Bank Ltd.* (PLD 1997 Karachi 62). That case dealt with a similar proviso that existed in section 9 of the Banking Tribunals Ordinance, 1984 requiring deposit of the decretal amount as a condition to entertaining an appeal. The learned Division Bench relied on the judgment of the Supreme Court

in *Eastern Rice Syndicate v. CBR* (PLD 1959 SC (Pak) 354) to read-down the requirement of deposit by holding that such a provision was only directory, not mandatory; and that an appeal ought not to be dismissed on the sole ground of default of such deposit. The ratio of the case of *Abdul Rahim* is that where the legislature provides the remedy of an appeal but at the same time imposes a condition to such appeal, the intent of that condition is not to make the remedy of appeal illusory, and therefore before dismissing an appeal for default of that condition, regard should be had to the circumstances of the case. Since the condition to an appeal under section 9 of the Banking Tribunals Ordinance, 1984 is similar to the condition in section 87(b) of the Cantonments Act, 1924, we are inclined to hold that the ratio of *Abdul Rahim* holds good also for section 87(b) of the Cantonments Act, 1924, and thus the Respondent No.3 ought to have examined the circumstances of the case before dismissing the Petitioner's appeal for default of section 87(b).

Surprisingly, the demand of property tax from the Petitioner in 2019 is w.e.f. "1969". It is not the case of the Respondent No.2 that the demand includes arrears of tax going back to 1969. Rather the demand is on the premise, as argued by learned counsel for the Respondent No.2, that certain additional construction raised by the Plaintiff between 1969 to 2019 remained un-assessed by the Cantonment Board and thus the assessments made since 1969 could be amended under section 71(1)(c) of the Cantonments Act. However, that argument is oblivious to the proviso to section 71(1) which states that "no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made." Such provision of law has not been noticed by the Respondent No.3 in passing the impugned orders. In such circumstances, the dismissal of the Petitioner's appeal on the sole ground of default of section 87(b) of the Act was completely unwarranted.

We have also confronted learned counsel for the Respondent No.2 with section 72 of the Cantonments Act, 1924 and whether the procedure prescribed in sections 66 to 69 of the Act for making, publishing and authenticating an assessment list every three years had been followed, and if so, what would be the effect of section 70 of the Act on the impugned assessment. Learned counsel for the Respondent No.2 is however not in a position to state whether said procedure had been followed, and he conceded to remanding the matter to the Respondent No.3 for deciding the Petitioner's appeal on the merits.

In view of the foregoing, this petition is allowed by setting aside the impugned orders dated 31.10.2019 and 03.10.2019, and the matter is remanded to the Respondent No.3 to decide the Petitioner's Appeal No.08/2019 on the merits after providing a meaningful hearing and after considering the provisions of the Cantonments Act, 1924 noticed above. The amount deposited by the Petitioner with the Nazir pursuant to order dated 03-12-2019 shall be returned to the Petitioner along with profit accrued thereupon, if any.

JUDGE

JUDGE