

IN THE HIGH COURT OF SINDH,
Bench at Sukkur

C. P. No. D – 930 of 2020

(Amanullah & others V/S P.O. Sindh & others)

Hearing of Case(Priority)

- 1.For orders on office objection
- 2.For hearing of CMA 4409/2020
- 3.For hearing of CMA 4410/2020
- 4.For hearing of main case

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **08-03-2022**

Date of Decision: **08-03-2022**

Mr. Abdul Rasheed Kalwar, Advocate for the Petitioners.
Mr. Athar Iqbal Shaikh, Advocate for Respondent No.6.
Mr. Waryam Ali Kalhor, Advocate for Respondents No.7&8.
Mr. Ahmed Ali Shahani, Assistant A.G.

ORDER

Muhammad Junaid Ghaffar, J. – Through this Constitutional Petition, the Petitioners have prayed for the following relief(s):

“i). To declare, that; the proceedings of ROR appeal, (Mehrab versus Sanaullah and others), before the respondent No.3, are unjust, arbitrary, without backing of law, illegal, ***corum non-judice*** and without lawful authority, hence nullity in the eye of law.

ii). To grant writ of pro-hibitio against the respondent No.3, restraining him permanently from entertaining illegal ROR appeal (Mehrab versus Sanaullah and others), and refrain from passing any adverse order against the petitioners”.

2. Office has raised an objection as to the very maintainability of this Petition on the ground that appropriate remedy is available under the Land Revenue Act, 1967. While confronted, learned Counsel for the Petitioners submits that officer concerned, who has issued hearing notice and has entertained appeal filed on behalf of the Respondent No.6, has no jurisdiction in the matter inasmuch it is a past and closed transaction; whereas, revenue entries are based on a Gift executed by the father of the Respondent No.6 long time ago; hence, this Petition is maintainable.

3. We have heard Petitioners’ Counsel and perused the record.

4. Insofar as the Petitioners are concerned, admittedly in two appeals filed by the Respondent No.6 and thereafter by his father before the Assistant Commissioner concerned, the Petitioners have filed objections and perusal of one set of said objections clearly reflects that even merits of the case have also been objected on behalf of the Petitioners. Once the Petitioners have by themselves availed the departmental remedy by submitting to the jurisdiction of the Assistant Commissioner, notwithstanding their objection of jurisdiction, then irrespective of the fact that whether the said officer has jurisdiction or not, the Petitioners cannot abate such proceedings in between and come before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for seeking a writ from this Court. If the Petitioners' case was that the said Assistant Commissioner has no jurisdiction; then they ought not to have submitted to the jurisdiction by raising objection on merits as well as jurisdiction, and instead ought to have approached this Court at the very initial stage when a notice was issued to them. Once a reply was filed raising objections on merits; including an objection regarding jurisdiction, then the petitioner was required to pursue that remedy before the departmental hierarchy. In this context it would be advantageous to refer to the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax Vs. Hamdard Dawakhana (Waqf) Karachi*** reported in **PLD 1992 SC 847**, wherein the Hon'ble Supreme Court held that such practice, in cases when statute provides alternate and efficacious remedy up to the High Court, invoking Constitutional Jurisdiction of the Courts cannot be approved or encouraged. In the above judgment the Hon'ble Supreme Court had relied upon the following observation of the Court in C.A. NO. 79-K/1991 which was as follows:-

"We may now revert to the question, whether the appellant was justified to file above Constitution petition against the order of the Tribunal instead of invoking section 136 of the Ordinance for making a reference to the High Court. According to Mr. Rehan Naqvi, a reference under the above provision would not have been adequate and efficacious remedy as it would have taken years before it could have been heard. The same could be true for a Constitution Petition. The tendency to bypass the remedy provided under the relevant statute and to press into service Constitutional jurisdiction of the High Court has developed lately, which is to be discouraged. However, in certain cases invoking of Constitutional jurisdiction of the High Court instead of availing of remedy provided for under the relevant statute may be justified, for example when the impugned order/action is palpably without jurisdiction and/or mala fide. To force an aggrieved person in such a case to approach the forum provided under the relevant statute may not be just and proper.

In the present case, the appellant had opted to avail of the hierarchy of forums provided for under the Ordinance upto the stage of filing of appeal before the Tribunal and,

therefore, it would have been proper on the part of the appellant to have invoked section 136 of the Ordinance for making a reference to the High Court instead of filing a Constitutional petition. **In our view, once a party opts to invoke the remedies provided for under the relevant statute, he cannot at his sweet will switch over to Constitutional jurisdiction of the High Court in the mid of the proceeding in the absence of any compelling and justifiable reason.**”

5. Similarly, the same view has been followed by the Hon’ble Supreme Court in the case of ***The Commissioner of Income Tax Karachi and 2 others Vs. Messrs N.V. Philips Gloeilampenfabriaken*** reported in **PLD 1993 SC 434**. This Court in the case of ***Messrs Pak-Saudi Fertilizers Ltd. vs. Federation of Pakistan*** and others reported in **2002 PTD 679** after exhaustively examining the judgments of various Courts came to the conclusion, that a person cannot be permitted to pursue a petition before this Court and so also avail the alternate remedies at the same time. The relevant portion of the judgment is reproduced as under:-

“In the present case the petitioner has filed the petition after finalization of the assessment order. Even the first appeal was filed by it during the pendency of its petition. Pressing into service the principle of law enunciated in Banarsi Dass (cited supra) the petition is dismissed as not maintainable. As regards the challenge to framing of the main assessment order it is clarified that nothing in this judgment shall preclude the petitioner from pursuing his departmental remedies. The appellate authorities are directed to dispose of appeals strictly in accordance with law without any instructions or directions from any superior or other authority.”

6. The same view has been followed by a Division Bench of this Court in the case of ***Arshad Hussain Vs. Collector of Customs and 2 Others*** reported in **2010 PTD 104** and ***M/s Bilal International V/s Federation of Pakistan & others*** reported as **2014 PTD 465**.

7. In view of such position, this Petition is not maintainable. Therefore, by means of a short order, we had dismissed the same in the earlier part of the day and these are the reasons thereof; whereas, the concerned Assistant Commissioner shall proceed in accordance with law.

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