

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Iqbal Kalhoro, J.

Agha Faisal, J.

CP D 6131 of 2019 : M/s. DHL Pakistan (Pvt.) Ltd. vs.
Federation of Pakistan & Others

For the Petitioner : Syed Noman Zahid Ali, Advocate

For the Respondents : Mr. Irfan Ahmed Memon
Deputy Attorney General

Mr. Sohail H.K. Rana, Advocate

Date/s of hearing : 13.04.2022

Date of announcement : 13.04.2022

ORDER

Agha Faisal, J. The petitioner, being a tenant of the respondent no 3, has challenged the demand / challan dated 24.08.2019, issued by the respondent no 2, seeking recovery of conservancy charges / property tax, on the premise that its landlord should be considered exempt from such payment.

We have been advised that the landlord, respondent no 3, has preferred independent proceedings in such regard and the same are pending adjudication. This assertion has been confirmed by the learned counsel for the respondent no 3 present in Court.

At the very onset, learned counsel for the petitioner was confronted with the import of section 65¹ of the Cantonment Act 1924 ("Act") and queried as to how the petitioner was aggrieved. Learned counsel was specifically asked as to whether the stipulations of section 65 of the Act could be distinguished in the present facts and circumstances; however, he was unable to dispel the applicability thereof.

¹ 65. Incidence of taxation.(1) Save as otherwise expressly provided in the notification imposing the tax, every tax assessed on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease granted by or on behalf of the Government or the Board or on a building lease from any person.

(2) In any other case, the tax shall be primarily leviable as follows, namely: (a) if the property is let, upon the lessor; (b) if the property is sub-let, upon the superior lessor; (c) if the property is unlet, upon the person in whom the right to let the same vests.

(3) On failure to recover any sum due on 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 him to such person."

It is *prima facie* apparent from the statutory provision that the relevant charges / tax may be recovered from an occupier; however, the occupier was entitled to reimbursement, subject to the absence of a contract to the contrary. In the present matter it was never the petitioner's case that there is any agreement to the contrary.

An earlier Division Bench of this court was seized of a similar matter in the case of *Asad Sajjad*², wherein the primacy of section 65 of the Act was upheld and the Court maintained that the relevant tax could be recovered from the incumbent owner / occupier of the property. *Asad Sajjad* was followed by subsequent Division Benches of this Court in *Asif Khan*³ and *Telenor Microfinance Bank*⁴ and it is trite law that that earlier judgments of Division Bench/es of a High Court, on the same point, are binding upon a subsequent equal bench⁵.

The question of whether the respondent no 3 is entitled to exemption from payment of the relevant charges is admittedly pending before this Court in some other proceedings and the respondent no 3's counsel admits that the said question is not amenable for adjudication in these proceedings.

In view of the reasoning and rationale herein contained, we are of the considered view that the petitioner's counsel has failed to set forth a case for the exercise of extra ordinary writ jurisdiction by this Court, hence, this petition is hereby dismissed. The petitioner remains at liberty to seek the reimbursement of any amounts paid, in such regard, from its landlord.

JUDGE

JUDGE

² 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).

³ Judgment dated 08.12.2020 in *Muhammad Asif Khan vs. Cantonment Board Faisal and Another* (CP D 2178 of 2010).

⁴ Judgment dated 18.02.2021 in *Telenor Microfinance Bank Limited vs. Federation of Pakistan & Others* (CP D 77 of 2021).

⁵ Per *Sajjad Ali Shah CJ.* in *Multiline Associates vs. Ardeshir Cowasjee & Others* reported as 1995 SCMR 362; *Abdul Rauf Nizamani vs. ECP & Others* reported as 2020 CLC 2063.