

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 5413 of 2013
CP D 7735 of 2017
CPs D 1537, 2377 & 3991 of 2018
CPs D 2924, 6614 & 983 of 2019
CPs D 5176, 5954 & 6398 of 2020
CPs D 2127 & 5349 of 2022
CPs D 4457 & 4675 of 2023

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.33019/2013.
2. For hearing of main case.

16.01.2025

Advocates for the Petitioners

Ijaz Ahmed, Ali Almani, Ovais Ali Shah, Sami ur Rehman, Ghulam Mustafa Kolachi.

Advocates for the Respondents

Ms. Sara Malkani, Assistant Attorney General.
Mr. Muhammad Kamran Khan, Assistant Advocate General Sindh.
Malik Naeem Iqbal, Shahid Ali Qureshi, Rana Sakhawat Ali,
Summiya Kalwar, Fahad Hussain Arijio.

Per learned counsel, the representative facts herein are that the petitioners have assailed respective show cause / notices issued by the Sindh Revenue Board The overarching plea articulated is that the notices are unwarranted.

The impugned notices are represented to have been issued 2011 onwards; *ad interim* orders were obtained in 2013 (and ever since in the subsequent petitions), halting the entire process and restraining the impugned notices from being concluded, and subsisted till date. Irrespective of the merit of the petitioners' case and / or the fate of the impugned notices, proceedings in such regard remained frozen for more than a decade (in instances) vide *ad interim* orders rendered herein; articulated to have been rendered having the effect of suspending a law.

The Supreme Court has deprecated the tendency to render interim orders having the effect of suspending a law. It has been consistently maintained, especially in revenue matters, that interim orders, having the effect of suspending a law, ought not to be passed. There is a plethora of authority to such effect, including PLD 1989 SC 61, 1993 SCMR 2350 and AIR 1985 SC 330; and recently the same has been emphasized in the order dated 29.02.2024, passed in the case of Commissioner Inland Revenue, Large Taxpayers Office vs. Pakistan Oilfields Ltd. Rawalpindi & Others (Civil Petitions No.3472 to 3475 of 2023).

An objection was raised as to the jurisdiction of the Constitutional Bench to hear these matters, however, perusal of the order sheet demonstrates that vide order dated 29.11.2024 these matters were directed by the learned Division Bench of this Court to be placed before the Constitutional Bench.

The impugned notices provide an opportunity and forum to the petitioners to state their case, however, the petitioners have unjustifiably

elected to abjure the opportunity / forum provided and approach this Court directly. No case has been set out as to why the any reservation with regard to the impugned notices could not have been taken before the issuing authority. Default by the petitioners in seeking recourse before the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Therefore, no case could be articulated for direct recourse to writ jurisdiction in the presence of adequate remedy having been provided under the law.¹

A Division Bench of this Court had sieved a myriad of commonwealth authority, in *Dr. Seema Irfan*², and maintained that a show-cause notice may not be justiciable in writ jurisdiction; unless it is manifest *inter alia* that the same suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. The Supreme Court also had occasion to consider this question in *Jahangir Khan Tareen*³, approved in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*, and while maintaining the ratio as aforesaid deprecated the tendency to shun the dispute resolution mechanism provided by statute. The aforementioned ratio is squarely applicable to the present facts and circumstances. It is pertinent to observe that no case of abuse of process and / or want of jurisdiction is manifest before us. Furthermore, no case has been articulated before us to consider the impugned notices to be *mala fide*, unjust and / or prejudicial towards the petitioners.

In summation, no case has been set forth before us to merit the invocation of the discretionary⁴ writ jurisdiction of this Court; therefore, these petitions are hereby dismissed.

The petitioners remain at liberty to place their case, including without limitation the grounds taken herein, before the forum denoted vide the impugned notices. The respondent department is expected to conduct the proceedings, envisaged vide the impugned notices, expeditiously and after providing an opportunity of hearing to the petitioners conclude the same vide reasoned speaking order/s. The petitioners shall remain at liberty to assail the findings, if aggrieved, before the forum of appropriate jurisdiction.

The office is instructed to place a copy hereof in each connected file.

Judge

Judge

¹ Reliance is placed upon PLD 2016 Sindh 168.

² Per Muhammad Ali Mazhar J. in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as PLD 2019 Sindh 516; *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as 2007 PTD 1347.

³ Per Muhammad Ali Mazhar J. in *CIR vs. Jahangir Khan Tareen* reported as 2022 SCMR 92.

⁴ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.