

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Constitutional Jurisdiction)

C. P. No. D – 81 of 2021

a/w.

**C. Ps. No. D – 82, 83, 84, 85, 86, 87,
88, 89, 90, 91, 92, 93, 94, 95,
96, 97, 98, 99, 100, 101, 102,
103, 104, 105, 106, 107, 108,
109, 110, 111, 112, 113, 114,
115, 116, 117, 118, 119, 120,
121, 122, 123, 124, 125, 126,
127, 128, 129 & 130 of 2021**

Date	Order with signature of Judge
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Present:

**Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad.**

Date of hearing : 01.03.2021

Date of Order : 01.03.2021

Mr. Ashraf Ali Butt, Advocate for the petitioner.

ORDER

Aqeel Ahmed Abbasi, J: Above captioned petitions have been filed on behalf of Faisal Cantonment against an order passed by the Cantonment Magistrate, Karachi (East) under Section 21 of the General Clauses Act, whereby, an order dated 18.11.2020 and the Distress Warrant dated 02.12.2020 issued by the same Court, pursuant to order dated 18.09.2020, whereby, application of the petitioner filed under Section 259 of the Cantonment Act, 1924 was allowed, have been recalled keeping in view the restraining order passed by the High Court of Sindh on 25.09.2020 in Constitutional Petition No.D-132/2019.

2. Briefly facts as stated are that petitioner filed Application No.01/2020 in the Court of Cantonment Magistrate, Karachi East under Section 259 of the Cantonment Act, 1924, upon which, notice was issued to the respondents, who filed objections thereon, wherein, it was stated that the subject controversy relating to imposition of house tax and conservancy tax by the Cantonment Board after 18th Amendment of the Constitution, is pending before the High Court in various petitions, including C.P.No.D-132/2019, wherein, restraining orders are operating. Vide order dated 19.09.2019, the Cantonment Magistrate, Karachi (East) was allowed the application under Section 259 of the Cantonment Act, 1924, while observing that in the absence of any restraining order from Competent Court of jurisdiction, petitioner can proceed to recover the amount as claimed. Thereafter, on 18.12.2020, for non-compliance of order dated 18.09.2020, further order was passed for issuance Distress Warrant for the recovery of the conservancy tax, while observing that there is no direct restraining order against such recovery by the competent Court of jurisdiction. Such order was passed in view of a Statement dated 28.10.2020 filed by the petitioner before the Cantonment Magistrate Karachi (East), *wherein, it was stated that High Court of Sindh in C.P.No.D-132/2019 has passed another order dated 25.09.2020, wherein, Annexure B enclosed with the application has been suspended, but such order does not effect the recovery of conservancy tax upon the respondents.*

3. Learned counsel for the petitioner submits that inspite of above factual position, the impugned order passed under Section 21 of the General Clauses Act, whereby, Cantonment Magistrate, Karachi (East) has recalled the earlier orders as referred to hereinabove, while placing reliance on the order dated 25.09.2020

passed by the Hon'ble High Court of Sindh in C.P.No.D-132/2019, which authority, according to learned counsel for the petitioner, is not vested in the Cantonment Magistrate, Karachi (East). It has been contended by the learned counsel for the petitioner that once an order has been passed after hearing the parties by any Court or Authority, such Court or Authority becomes functus-officio and cannot recall or review its order. It has been further contended by the learned counsel for the petitioner that the restraining order passed by the Hon'ble High Court in the aforesaid petition, was not in respect of conservancy tax, therefore, impugned order may be set-aside.

4. We have heard the learned counsel for the petitioner, perused the impugned order passed by the Cantonment Magistrate, Karachi (East) and have also examined the earlier orders passed by the said Magistrate, as well as the order passed by this Court in C.P.No.D-132/2019 filed by the respondents. From perusal of the order dated 18.09.2020 and 18.11.2020, it appears that there is no mention of the relief sought by the respondents in the aforesaid petition and the restraining order passed on 25.09.2020 by this Court on the two Misc. Applications being M.A. No.19447 & 19448/2020 filed by the respondents, seeking restraining order against recovery of house tax and conservancy charges by the Cantonment Board. In the impugned order passed by the Cantonment Magistrate, Karachi (East), this fact has been duly acknowledged that neither the counsel for the petitioner nor the Legal Branch of the Cantonment Board placed on record the restraining order passed by this Court on 25.09.2020 on the above applications.

5. It will be advantageous to reproduce the 'Prayer Clause (C)' of C.P.No.D-132/2019, which reads as follows:-

“To permanently restrain the Respondent No.2, its officials/officers, agents authorized persons from demanding House Tax (Property Tax), Conservancy Tax and Surcharge from the petitioner in respect of bills enclosed with the memo of petition as Annexure B-1 to B-277 Millennium Mall, constructed on Plot No. 118-F, Rashid Minhas Road, Gulshan-e-Iqbal, Karachi.”

6. It will be further advantageous to reproduce the Order dated 25.09.2020 passed by this Court in the aforesaid petition, which reads as follows:-

“25.09.2020:

Mr. Abdul Majeed Khan, advocate for the petitioner.

1. *Urgency application is granted.*
- 2-3. *Learned counsel for the petitioner seeks urgency on the ground that the respondents, in spite of restraining order passed by this Court on 10.01.2019, whereby, they were restrained from taking any coercive action against the petitioner pursuant to impugned notices issued by the respondents in respect of house tax and conservancy charges, respondents are causing harassment and violating the Court’s order by issuing fresh notices and creating demand, whereas, the matter has been referred to XVIII Civil Judge & Judicial/Cantonment Magistrate at Karachi (East), for the recovery of disputed amount.*

Let notice be issued to the respondents as well as DAG for 12.10.2020, when comments shall be filed with advance copy to the learned counsel for petitioner. However, in the meanwhile, operation of the impugned demand notice attached with the listed application CMA No

19447/2020 as Annexure "B" shall remain suspended till next date of hearing."

7. From perusal of the order, it is clear that the Cantonment Board was restrained from seeking recovery of the house tax as well as conservancy charges as mentioned in first para of the said order, therefore, the Cantonment Magistrate Karachi was not only justified, but was under legal obligation to ensure compliance of the Court's order and has rightly recalled the earlier orders in obedience to the order passed by this Court in the aforesaid petition. It appears that Cantonment Board Faisal attempted to obtain an order from the Cantonment Magistrate, Karachi (East) through concealment of facts, and technical grounds to defeat the purpose restraining orders operating in the above constitutional petitions, involving substantial legal and constitutional grounds,

8. In view of above facts and circumstances of the case, we are of the opinion that the impugned order does not suffer from any factual error or legal infirmity, therefore, does not require any interference by this Court. Accordingly, instant petitions were dismissed in limine alongwith all listed applications vide our short order dated 01.03.2021 and above are the reasons for such short order.

JUDGE

JUDGE

A.S.