

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-12 of 2010  
&  
C.P. No.D-2684 of 2009

Before:

**Mr. Justice Irfan Saadat Khan &  
Mr. Justice Abdul Maalik Gaddi**

Date of Hearing: 17.04.2014.

Mr. Saadat Yar Khan, Advocate for the petitioner Asad Sajjad.

Mr. Ashraf Ali Butt, Advocate for the respondent No.1 Clifton Cantonment Board.

Mr. Dilawar Hussain, Standing Counsel.

## **ORDER**

**IRFAN SAADAT KHAN, J:-** These Constitutional Petitions have been filed

with the following prayer:

### C.P. No.D-12 of 2010

a) *Set-aside the impugned order dated 19-12-2009, passed by the Respondent No.2.*

b) *Declare that the Petitioner is not liable to pay the lapsed arrears of utility dues and property taxes and other dues if any payable prior to 19<sup>th</sup> June 2006 when the property was purchased acquired by the Petitioner and that the claim of Respondent No.1 from the Petitioner is illegal and unlawful.*

c) *Restrain the Respondent No.1, from interfering in peaceful occupation /possession of the Petitioner in two offices (Properties) situated at # 102 & 103 1<sup>st</sup> Floor, Plot # 1-D, Sunset Tower, Sunset Boulevard, Phase-II, DHA, Karachi premises till the final disposal of the Petition.*

d) *Compensatory and actual cost amounting to Rs.50,000/- of the Petition.*

e) *Any other relief(s) this Hon'ble Court may deem fit and proper under the circumstances of the case may be awarded.*

### C.P. No.D-2684 of 2009

a) *Set-aside the impugned order dated 09-12-2009, passed by the Respondent No.2.*

b) *Declare that the Petitioner is not liable to pay the arrears of taxes /dues recoverable prior to 19<sup>th</sup> June 2006 when the property was sold to the Petitioner and that the claim of Respondent No.1 from the Petitioner is illegal, unlawful and ab-initio void.*

*c) Restrain the Respondent No.1, from interfering in peaceful occupation /possession of the Petitioner in two offices (Properties) situated at # 102 & 103 1<sup>st</sup> Floor, Plot # 1-D, Sunset Tower, Sunset Boulevard, Phase-II, DHA, Karachi premises till the final disposal of the Petition.*

*d) Compensatory cost of the petition.*

*e) Any other relief(s) this Hon'ble Court may deem fit and proper under the circumstances of the case may be awarded.*

2. Briefly stated, the facts of the case are that the petitioner purchased two offices bearing No.102 & 103, situated at 1<sup>st</sup> floor, plot No.1-D, Sunset Tower, Sunset Boulevard, Phase-II, DHA, Karachi, from one Jahangir Rehman through a sale deed dated 19.06.2006 and thereafter got the said property registered in his name. On 23.12.2008, the respondent No.1 moved two applications bearing Nos.697 & 650 of 2008 for the recovery of dues pertaining to the period 01.01.1989 onwards. The petitioner approached the respondent No.1 with the request that since he has purchased the property only in the year 2006, the arrears of the property prior to that period pertains to the previous owner i.e. Mr. Jahangir Rehman and not to him and that he is willing to pay the due taxes subsequent to his acquiring the ownership rights of the property. However, when no response was given by the respondents No.1 & 2 thereafter the instant petitions have been filed.

3. Mr. Saadat Yar Khan, Advocate has appeared on behalf of the petitioner and has submitted that the respondent No.1 ought to have recovered the amount from the previous owner rather than from the petitioner, as the said arrears pertains to the previous owner, hence the petitioner is under no legal obligation to pay the said amount. He further stated that the demand of the said amount is illegal as per the provisions of Sections 89 to 92 of the Cantonments Act, 1924, (the Act). While elaborating his viewpoint, the learned counsel stated that it is a settled principle of law that a person is only liable to pay the amount pertaining to him and not to others. He further stated that in the instant petitions it is an admitted fact that the amounts were due from the previous owner hence the said demand of the amounts from the petitioner is illegal as per the provisions of the Act. He further stated that why the petitioner is being made liable for payment of

the amount which was not due from him is beyond imagination. He further stated that the said amount is payable on yearly basis and if the said amount was not paid by the previous owner, the Cantonment Board should have taken action against the previous owner rather than deferring the amount for over 18 years and making the petitioner liable to pay the said amount. He further stated that any action by the respondent No.1 to recover the said amount from by the petitioner is illegal and against the spirit of law. He further stated that it was the duty of the respondent No.1 to have recovered the said amount from the previous owner, which they have failed to do so and when they have failed to recover the said amount they cannot ask the petitioner to pay the said amount not belonging to him. He further stated that no action whatsoever has been taken by the respondent No.1 to recover the amounts from the previous owner by filing any suit or issuing any legal notice to him. He further stated that since the said amounts are not payable by the petitioner, the issuance of the notice by the respondent No.1 is illegal and is liable to be vacated. In support of his above contentions, the learned counsel has relied upon the decision in the case of Abdul Razzak Vs. Executive Officer, Cantonment Board of Clifton and others (2006 YLR 577).

4. Mr. Ashraf Ali Butt, Advocate has appeared on behalf of the respondent No.1 and stated that the charge is on the property and not upon a person hence, as per the relevant provisions of the Act, it is the petitioner who is liable to pay the said amounts. While elaborating his viewpoint, the learned counsel stated that it was incumbent duty of the petitioner that prior to purchase of the property he should have asked the previous owner to clear all the outstanding dues and when admittedly the said action was not done it is the petitioner who is liable to pay the said amounts. He has also drawn our attention to Sections 257 & 259 of the Act. He further stated that the petitioner has approached to this Court with unclean hand. Learned counsel stated that a remedy is provided under Section 84 of the Act, which remedy has not been availed and the petitioner has filed the instant petitions before this Court, which petitions, according to him, are not maintainable, since an adequate and efficacious remedy is available to the petitioner. He further stated that a Judicial Magistrate has been appointed and is

empowered under the provisions of Section 259 of the Act to deal with such type of matters and the petitioner never approached the said authority for redressal of his grievance rather the instant petitions have been filed, which on the face of it are not maintainable.

5. Mr. Dilawar Hussain, Standing Counsel has appeared on behalf of the State and has adopted the arguments of Mr. Ashraf Ali Butt and submitted that it was the prime duty of the petitioner that before taking possession of the said property he should have obtained clearance of arrear bills from the previous owner and when the petitioner has not done so, it is the petitioner who has to suffer in this behalf. He, therefore, stated that the petitions are not maintainable and are liable to be dismissed.

6. Mr. Saadat Yar Khan, Advocate for the petitioner, in his rebuttal, has invited our attention to the following decisions through which it is claimed that the petitioner can directly approach this Court and the petitions are maintainable:

1. *Multiline Associates Vs. Ardeshir Cowasjee and 2 others (PLD 1995 Supreme Court 423)*
2. *Mst. Nargis Moeen and another Vs. Government of Pakistan through Secretary Defence, Islamabad and another (PLD 2003 Lahore 730)*
3. *Secretary to the Government of the Punjab, Forest Department, Punjab, Lahore through Divisional Forest Officer Vs. Ghulam Nabi and 3 others (PLD 2001 Supreme Court 415)*
4. *Messrs Mehraj (Pvt.) Ltd. Vs. Miss Laima Saeed and others (2003 MLD 1033)*
5. *Mst. Nafees Akhtar and another Vs. Cantonment Board, Multan through Cantonment Executive Officer, Multan and 4 others (2005 MLD 1836)*
6. *Platinum Commercial Bank Ltd. Vs. Government of Sindh through the Secretary of Sindh through the Secretary, Sindh Secretariat, Karachi and another (2003 MLD 279)*
7. *Nisar Ahmad Siddiqui Vs. Cantonment Board (2012 MLD 1202)*
8. *Dr. Aman Ullah Khan Vs. Province of NWFP through Secretary, Finance, Government of N.W.F., Peshawar and 2 others (1994 MLD 2329)*
9. *Mst. Mobin Fatima Vs. Muhammad Yamin and 2 others (PLD 2006 Supreme Court 214)*

10. *Muhammad Essa Vs. Muhammad Siddique and 5 others* (2013 CLC 1254)
11. *Muhammad Yousaf Vs. Munawar Hussain and 5 others* (2000 SCMR 204)
12. *Rasheed Khan Vs. Muhammad Khan and others* (2012 CLC 1113)
13. *Mian Muhammad Ali Shah Vs. Sangeen Shah and others* (2012 CLC 709)
14. *Pakistan Steel Mills Corporation (Private) Limited through Corporate Secretary Vs. Karachi Water and Sewerage Board through Chief Executive and 2 others* (2012 CLC 577)
15. *Kerala Clays and Ceramic Products Ltd. Vs. Tax Recovery Officer* (2000 PTD 2049)
16. *Abdul Razak Vs. Executive Officer, Cantonment Board of Clifton* (2006 YLR 577)
17. *Cantonment Board, Lahore Cantt. through Executive Officer Vs. Mst. Sultan Jahan* (2007 YLR 1547)
18. *Dr. Shahzad Alam Vs. Beacon Light Academy* (2011 CLC 1866)

7. We have heard both the learned counsel at considerable length and have perused the record, the law and the decisions relied upon.

8. There is no denial to the fact that the property was purchased by the petitioner in the year 2006. From the perusal of the Act, it is evident that Chapter-V of the said Act deals with taxation and Section 60 of the said Chapter gives the Cantonment Board the power to any Cantonment to impose any tax like other municipal authorities on the annual value on the lands /building situated in its territorial jurisdiction, which tax among others is to be charged on the annual value of that property. The term “annual value” has been defined in Section 64 of the said Act. However, in the present petitions there is no dispute with regard to the amounts of tax but the dispute is only as to who is liable to pay the said amounts either the petitioner or the previous owner and if the Cantonment Board is required to recover the said tax then from whom i.e. the petitioner or the previous owner. Section 65 of the Act clearly states that the incidence of tax would be upon the annual value of buildings or lands, meaning thereby that the said levy /charge is on the property rather than a charge on a person occupying the said property. It is further provided under Section 84 of the Act that an appeal against the assessment or levy of, or against the refusal to refund, any tax under

the Act shall lie to the District Magistrate or to such other officer as may be empowered by the Federal Government, meaning thereby that if any person is aggrieved with the assessment or levy of any tax under the Act, an appeal lies with either District Magistrate or with any other officer empowered in this behalf. It is an admitted position that no appeal under Section 84 of the Act has been filed by the petitioner rather the petitioner has chosen to approach this Court directly by way of filing the instant petitions.

9. A specific question was asked from the learned counsel for the petitioner that whether the charge or the amount of tax is on a person or a property to which he candidly replied that the said charge is on the property. We specifically asked another question from the learned counsel for the petitioner that what action has been taken by the petitioner against the previous owner for recovery of the arrear bills, no plausible reply in this behalf was furnished by the learned counsel. We are of the view that before purchasing the property it was incumbent duty of the petitioner to have asked the previous owner about the payment of all the arrear bills etc. Moreover the petitioner could have approached the office of Cantonment Board to enquire whether any bills are outstanding, which admittedly was not done. It is a well settled principle of law Caveat Emptor (buyer be aware), hence had the petitioner done his homework properly with regard to obtaining the copies of all the arrear bills from the previous owner, the present position would not have arisen. In our view the petitioner could have initiated legal action against the previous owner if, according to him, the said previous owner has given an incorrect undertaking that the property is free from all encumbrances, which action admittedly has also not been done by the petitioner. We agree with the submission made by the learned counsel for the respondent No.1 that the matter of payment of taxes is a charge on a property and not upon a person and has to be paid by the owner of that property, which in the present circumstances is the petitioner. However, if the previous owner has, for one reason or the other, not paid the bills and has misguided the purchaser, then it is a matter pertaining to the seller and purchaser and the purchaser could initiate legal proceedings against the seller for making an incorrect statement in this behalf but a charge on the property

could not be deferred with regard to the ascertaining of fact as to who is responsible for making the payment, since a perusal of the Act clearly reveals that the charge is on the annual value of a property.

10. In view of what has been stated above, we without adverting to the question of maintainability of the petition are of the view that under the given circumstances the petitioner is liable to make the payment of the taxes. Hence, the instant petitions are dismissed alongwith the pending applications.

Above are the reasons of our short order dated 17.04.2014.

JUDGE

JUDGE

*Tahseen/PA.*