

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. **D – 985** of 2013

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Nazar Akbar.

Priority

1. For hearing of CMA No.4497/2013
2. For hearing of main case.

30.10.2017

Mr. Munir Ahmed, advocate for the petitioner.

Mr. Ashraf Ali Butt, advocate for the respondent
No.1/Cantonment Board Clifton (CBC).

O R D E R

1. Through instant petition, the petitioner, who is a widow of a retired employee of provincial government, has expressed her grievance against demand notice issued by the respondent No.1/CBC towards house tax, on the grounds that petitioner is entitled to exemption of 100% property tax pursuant to provisions of Cantonment Act, 1924 and the relevant SROs issued by the Federal Government to this effect.

2. From perusal of the record, it appears that petitioner, whose such status i.e. widow of a retired government employee, was duly recognized by the Cantonment Board, whereafter the petitioner had been granted exemption from payment of 100% house tax uptill 2011. However, a demand Notice for the year 2011-12 has been issued by the Cantonment Authorities, requiring the petitioner to pay an amount of Rs.577,463/- towards house tax, against which, the petitioner has filed a representation along with relevant documents as per SRO 20(1)/87 dated 07.01.1988, however, such request of the petitioner appears to have been declined, therefore, petitioner has approached this Court by filing instant petition. Learned counsel for the petitioner has vehemently argued that petitioner is a widow of a person who was in the service of provincial government is entitled to exemption from payment of house tax imposed under Section 68 of the Cantonment Act, 1924, in terms of SRO No.20(1)/87 read with SRO No.21(1)/87 dated 07.01.1988, whereas, such fact is already on record of the Cantonment Board, who have been never charged

the property tax from the petitioner upto the year 2011, however, for the year 2012, the respondents by mis-applying the provisions of SRO No.156(1)/2004 dated 13.03.2004 have demanded property tax from the petitioner. It has been contended by the learned counsel for the petitioner that petitioner being widow has already faced serious hardship and humiliation at the hands of respondents, who are not willing to act in accordance with law and have created an exorbitant illegal demand against the petitioner towards house tax inspite of the fact that the SRO granting the exemption to a widow of a government employee from payment of house tax is still enforce and has not been withdrawn.

3. Notices were issued to the respondents, pursuant to which, comments have been filed on behalf of the respondent. From perusal of the comments, it appears that status of the petitioner i.e. "being a widow of retired government employee", has not been disputed. However, it has been stated in the comments that petition is not maintainable as the petitioner has an alternate remedy of filing an appeal against such imposition of house tax by the respondent. Learned counsel for the respondent submits that the claim of the petitioner i.e. exemption from payment of house tax is not disputed, however, since the petitioner did not approach the respondent No.1/CBC for seeking such exemption from payment of house tax, therefore, the impugned demand has been created, which can be challenged by the petitioner by filing appeal before Director General, Military Lands and Cantonments, Government of Pakistan. Learned counsel for the respondent has also referred to SRO 156(1)/2004 dated 13.03.2004 issued in this regard by the Ministry of Defence and submits that the petitioner is entitled 60% exemption from payment of house tax, however, since she has not approached the respondent No.1/CBC for seeking exemption, therefore, such exemption was denied by the respondent.

4. We have heard the learned counsel for the parties, perused the record as well as the relevant SROs issued from time to time by the Ministry of Defence, Government of Pakistan. It is an admitted fact that petitioner is a widow of a government employee, namely, Faqir Muhammad Siyal, (Additional Commissioner, Karachi), who had submitted all the relevant documents before the Cantonment Board Clifton along with pension book and was never charged

house tax by the Cantonment Board uptill 2011. However, through impugned demand notice, the respondents have charged the petitioner of house tax on the pretext that SRO No. SRO No.20(1)/87 read with SRO No.21(1)/87 dated 07.01.1988 has been superseded by SRO 156(1)/2004 dated 13.03.2004, whereby, according to learned counsel for the respondent, 60% rebate in house tax is allowed. It is surprising to note that the respondent while filing their comments and during course of the hearing of instant petition have not placed the copy of SRO 156(1)/2004 dated 13.03.2004 nor appears to have confronted the petitioner with the aforesaid SRO, which has been applied in the case of petitioner. On the contrary, an extract of Cantonment Law (Annexure 'G') available at page 65 of the file, has been filed, the relevant portion of such extract is reproduced hereunder:-

"Cantonment Laws

General Information for Tax Payers

Tax payers claiming certain concessions in House Tax are requested to kindly note the following points for obtaining any Exemptions/Remission etc.

60% REBATE VIDE SRO NO.156(1)/2004 Dated 13.03.2004

Provision of claiming 60% Rebate in House Tax is allowed only for current financial year and not for previous years. It shall be applicable to those persons who are in the service of Federal or provincial Government. 60% Rebate in House Tax shall not be applicable to those persons who are employees of nationalized Banks, Corporations, Autonomous bodies etc. (please provide copy of pay slip / Service Card for proceeding the case).

100% REBATE VIDE SRO NO.156(1)/2004 Dated 13.03.2004.

Provision of claiming 100% Rebate in House Tax is allowed only for current financial year and not for previous years. It shall be applicable to those persons who are Retired (Pensioners of federal or provincial Government). 100% Rebate in House Tax shall not be applicable to those persons who are employees of nationalized Banks, Corporations, Autonomous bodies etc. (please provide copy of pension book and CNIC for processing the case for exemption).

EXEMPTION U/S 100 OF CANTONMENT ACT 1924

Exemption of House Tax U/S 100 shall only be allowed to recipients of Zakat and on grounds of poverty and that for current financial year and not for previous years.

EXEMPTION FOR WIDOWS OF GOVERNMENT SERVANTS

Exemption in House shall be allowed to widows of federal/provincial Government servants (REF; S.R.O.20(1)87 Dated 07.01.1988). This facility shall, however, not be applicable to widows of employees of nationalized banks, autonomous bodies and corporations."

5. From perusal of hereinabove extract of Cantonment Laws filed by learned counsel for the petitioner, it transpires that SRO 156(1)/2004 dated 13.03.2004 does not relate to exemption in respect of widow of a government servant. On the contrary, it provides for 100% rebate to a retired pensioner of Provincial/Federal Government. Learned counsel for the respondent was specifically confronted to assist this Court as to whether the SRO 20(1)/87 dated 07.01.1988 is still in force or the same has been withdrawn. In response to such query, learned counsel for the respondent candidly submits that SRO 20(1)/87 dated 07.01.1988 has not been withdrawn by the Ministry of Defence, Government of Pakistan and the same can be applied in the case of a widow of an employee of Federal/Provincial Government, provided that she may approach the respondents for seeking exemption each year.

6. It will be advantageous to reproduce SRO 20(1)/87 dated 07.01.1988, which provides for 100% exemption to a widow of a Federal/Provincial Government/Cantonment Board employee, from payment of House Tax in the following terms:-

“S.R.O.21(l)/87.---- In exercise of the powers conferred by section 99A of the Cantonments Act, 1924 (II of 1924), the Federal Government is pleased to exempt the widow of a person who has been in the service of the Federal Government or a Provincial Government or a Cantonment Board, from the payment of house tax imposed under section 60 of the aforesaid Act, in respect of one house in any Cantonment in Pakistan if such house is in occupation of such widow and is not rented out either wholly or in part.”

7. From perusal of hereinabove provisions of relevant SRO in respect of a widow, it is clear that in the case of **a widow of an employee of Federal/Provincial Government/Cantonment Board** 100% exemption from payment of house tax imposed under Section 60 of the Cantonment Act, 1924, has been granted in respect of one house in any Cantonment of Pakistan, if such house is in occupation of the widow and is not rented out either wholly or in part, whereas, such exemption shall remain available to a widow, unless the aforesaid exemption granting SRO is withdrawn by the Ministry of Defence, Government of Pakistan. Admittedly, such SRO has not been either superseded or withdrawn by the Federal Government, whereas, petitioner's status and the conditions attached therewith have duly been recognized by the respondents.

In view of hereinabove facts and circumstances of the case, we are of the opinion that impugned demand notice for recovery of house tax from the petitioner issued by the respondent is illegal, without lawful authority, which is hereby set-aside. Since there are no disputed facts involved in the instant case, and the matter requires interpretation and application of provisions of aforesaid SROs issued by Federal Government in the instant case, therefore, the objection raised by the learned counsel for the respondent as to maintainability of instant petition is groundless and has no legal force. More particularly, when the petitioner being a widow, has already faced hardship and agony of visiting the office of respondent/Cantonment Board again and again inspite of the fact that all the relevant documents and information has already been supplied by the petitioner to the respondents, who have acted malafidely, while invoking the provisions of an irrelevant SRO in the case of petitioner and have passed an illegal order by creating a demand against a widow, who is exempt from payment of house tax in terms of aforesaid SRO 20(I)/81 read with SRO 21(I)/87 dated 07.01.1988.

8. Accordingly, instant petition is allowed and the impugned demand notice is hereby quashed, and the respondents are directed to issue fresh demand notice to the petitioner for the year 2011-2012 by deleting the amount of house tax, within two weeks from the date of receipt of this order.

Petition stands allowed in the aforesaid terms alongwith listed application.

J U D G E

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Nadeem.