

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Junaid Ghaffar, J.

Agha Faisal, J.

CP D 77 of 2021 : Telenor Microfinance Bank Limited vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Faiz Ahmed, Advocate

For the Respondents : Mr. Akhtar Hussain Shaikh, Advocate

Mr. Muhammad Ahmer

Assistant Attorney General

Date of hearing : 18.02.2021

Date of announcement : 18.02.2021

JUDGMENT

Agha Faisal, J. This petitioner bank, in its capacity as a tenant, has assailed a demand notice dated 21.12.2020 issued by the Cantonment Board Clifton ("Impugned Notice"), for recovery of property and conservancy tax, issued in respect of the property under occupation.

2. At the very onset, learned counsel for the petitioner was confronted with the stipulation of section 65 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 and merely submitted that since the petitioner had paid rental, for the current tenure of its tenancy, in advance; hence, it would be difficult to recover the dues, if paid on account of the landlord / lessor.

3. It is considered illustrative to reproduce the relevant provision of the law herein below:

"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."

(Underline added for emphasis)

4. It is *prima facie* apparent from the statutory provision that the relevant 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 case the petitioner has demonstrated, from the rent agreement on file, that there is no contract to the contrary.

5. An earlier Division Bench of this court was seized of a similar matter in the case of *Asad Sajjad*¹, 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 a subsequent Division Bench of this Court in *Asif Khan*² 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 bench³.

6. 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 was dismissed vide short order announced in Court earlier today. These are the reasons for our short order.

7. The petitioner remains at liberty to seek the reimbursement of any amounts paid, in such regard, from its landlord.

JUDGE

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¹ 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).

² Judgment dated 08.12.2020 in *Muhammad Asif Khan vs. Cantonment Board Faisal and Another* (CP D 2178 of 2010).

³ 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.