

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

CP No.D-4551 of 2019

Date	Order with signature of Judge(s)
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1. For order on CMA No.24524/2021
2. For order on CMA No.24525/2021
3. For order on office objection
4. For hearing of CMA No.19845/2019
5. For hearing of main case.

28.09.2021

Mr. Talha Makhdoom, Advocate for the Petitioner.
Mr. Ashraf Ali Butt, Advocate for Respondent No.2.
Mr. Kafeel Ahmed Abbasi Deputy Attorney General a/w
Mr. Hussain Bohra, Assistant Attorney General.

1 & 2. Notice.

3. Over ruled.

4 & 5. The petitioner has assailed a demand notice dated 13.03.2019 ("Impugned Notice") issued under the Cantonment Act 1924 ("Act"), and proceedings ancillary, connected and / or pursuant thereto.

It is demonstrated from the record that the petitioner remained current in payment of dues till 2019, as denoted from the paid *challans* available at pages 33, 35 and 45 of the Court file. It is demonstrated from the file that copies of documentation of entitlement / tenancy were sought from the petitioner vide letters dated 29.05.2017 and again on 13.10.2017 ("Documents") and per learned counsel that said direction was duly complied with. Notices under ss.68-71 of the Act dated 10.08.2018 and 07.09.2019 were served upon the petitioner proposing assessment afresh of the respective property. Thereafter, a meeting of the assessment committee was scheduled for 27.09.2018; however, the same was allegedly shelved without consideration of the matter. Once again on 05.03.2019 the same Documents were sought from the petitioner, as had been solicited vide notices dated 29.05.2017 and 13.10.2017. Per learned counsel, this was manifest proof that the entire exercise to be conducted remained at naught despite passage of almost two years. Objections to the proposed assessment were admittedly filed by the petitioner on 15.04.2019 and thereafter it is alleged that no re / assessment proceedings took place, however, the respondent is employing coercive measures to recover the impugned demand.

It is submitted that despite secured interim orders herein dated 12.07.2019, the respondents employed coercive measures to appropriate significant amounts unjustifiably and contumaciously from the petitioner. While recording this limb of the submissions, we deem it appropriate to address this issue subsequently in terms of the applications listed at serial nos. 1 and 2 supra.

Paragraph wise comments were filed by the respondent on 30.08.2019 and their entire thrust thereof was that the petitioner is required to submit to the statutory hierarchy; hence, the petition is misconceived. It is imperative to note that there was no suggestion and / or corroboration in the said comments to demonstrate whether any re / assessment had taken place in conformity with the law or otherwise.

In a belated move the respondent filed a statement (submissions of process) on 07.09.2021 with documentation annexed to suggest that the statutory requirements had been met. The petitioner's counsel categorically submitted that the documentation annexed was false, forged and fabricated as *inter alia* apparent from a purported assessment, filed at page 21 of the statement, apparently dated 02.10,2018; yet carrying a purported receipt annotation dated 03.10.2019. It also speaks volumes that if such a document existed on 03.10.2018 then why was it never annexed or even mentioned by the respondent in its paragraph wise comments filed herein on 30.08.2019. Even the Impugned Notice in itself makes no reference to any document dated 03.10.2018.

We have heard the respective learned counsel and carefully perused the record. It is considered illustrative to initiate this determination by advertng to the relevant law.

Sections 68¹ of the Act envisages revision of an assessment list, to be initiated *inter alia* by proposing of valuation / assessments by the board. The persons concerned are required to be given notice and they are eligible to file their objections to the proposed valuation / assessment. Once the objections have been disposed of, and the revision of the valuation and assessment has been completed, the assessment list is required to be authenticated by an assessment committee, which is mandated to certify that it has considered all objections and amended the list so far as is required by their decisions on such objections². In addition thereto, the board retains the power to amend an assessment list, within the powers conferred thereupon under the Act³.

It is manifest from the record before us that the objections to the proposed assessment were never determined by the assessment committee, as required per section 68 of the Act. The record is also silent with respect to any authentication by the assessment committee certifying that all the objections have been considered. Respondent's learned counsel has articulated no cavil in such regard and even the documents submitted belatedly do not demonstrate anything to the contrary. In view hereof, it is *prima facie* manifest that the requirements of section 68 and 69 of the Act have not been satisfied, prior to issuance / enforcement of demand upon the petitioners.

¹ 68. Revision of assessment list. (1) The Board shall, at the same time, give public notice of a date, not less than one month thereafter, when it will proceed to consider the valuations and assessments entered in the assessment list, and, in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give written notice thereof to the owner and to any lessee or occupier of the property. (2) Any objection to a valuation or assessment shall be made in writing to the Board before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed, and all objections so made shall be recorded in a register to be kept for the purpose by the Board. (3) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorised agent, by an Assessment Committee appointed by the Board...

² 69. Authentication of assessment list. (1) When all objections made under section 68 have been disposed of, and the revision of the valuation and assessment has been completed, the assessment list shall be authenticated by the signature of the members of the Assessment Committee who shall, at the same time, certify that they have considered all objections duly made and have amended the list so far as is required by their decisions on such objections...

³ 71. Amendment of assessment list. (1) The Board may amend the assessment list at any time ... (c) by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Board or of the Assessment Committee or of the assessee...

Respondent's counsel had relied upon orders in *Syed*⁴, *Shahnawaz*⁵ and *FPS*⁶ to support his submissions. The authority cited is distinguishable in the facts and circumstances and lends no credence to the respondent as *inter alia* as it recognizes the remedy of statutory appeal, however, once there was a manifest appealable order. Needless to state that the same could only be rendered post objections to the proposed assessments had already been determined by the competent authority. In the present case no such order was relied upon / referred to in the comments (and / or in the Impugned Notice) and even otherwise, notwithstanding the impugned veracity of the document filed belatedly, it is *prima facie* apparent that the mandate of ss. 68-71 has not been complied with by the respondent. It is paramount from the said orders that they categorically lend credence to our view that the right of a person to be heard, prior to any assessment being finalized, cannot be abridged.

In view of the reasoning and rationale herein contained, we do hereby dispose of the present petition in the following terms:

- i. The impugned demand notice, dated 13.03.2019, is hereby set aside, *inter alia*, on account of being premature.
- ii. The competent authority (assessment committee) is directed to issue notice/s, to the petitioner, of hearing, to determine his objections to the assessment proposed.
- iii. The petitioner has the right to submit his reply in writing, provided that the written submissions are received by the competent authority on or before the designated time / date upon which the hearing has been scheduled in respect thereof.
- iv. The petitioner shall remain entitled to rely upon such material, record and / or evidence as may be relevant, inclusive of without limitation the material pleaded before us and / or relied upon.
- v. The competent authority shall, by way of a reasoned order, issue a determination in accordance with the law.
- vi. It is expected that the competent authority shall conclude the proceedings expeditiously, preferably within one month hereof, however, until determination of the matter no coercive action, in respect of the proposed assessment impugned before us, may be taken by the respondents against the petitioner.
- vii. Any person aggrieved by any such determination, in whole or in part, may be entitled to seek such relief before such forum and in such proceedings as may be permissible in law.

JUDGE

JUDGE

Amjad/PA

⁴ *Syed Ghulam Mustafa Shah vs. Cantonment Board Malir (CP D 4217 of 2011)* dated 15.01.2011 ("Syed").

⁵ *Muhammad Shahnawaz vs. Cantonment Board Faisal (CP D 3646 of 2011)* dated 21.05.2013 ("Shahnawaz").

⁶ *Foundation Public School vs. Ministry of Railways (CP D 2411 of 2013)* dated 09.03.2016 ("FPS").