

THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4597 of 2015

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
MR. JUSTICE MAHMOOD A. KHAN

Petitioner : M/s. Rupali Polyesers Limited through
Mr. Malik Khushhal Khan, advocate

Respondents 1 to 4 : Government of Sindh and Others through
Mr. Saifullah, A.A.G.

Respondent No.5 : Port Qasim Authority through Mr. Umar
Hayyat Sandhu along with Hamza Khan
Gabol, Manager (Estate) Industrial
Management, Port Qasim Authority

Date of Order : 14th January, 2020

ORDER

Through instant petition, petitioner has impugned the assessment and recovery of property tax, imposition of penalty and issuance of warrant of arrest against petitioner, who claims to be a lessee of Port Qasim Authority, in respect of property Unit No.47-48 Edible Oil, Port Qasim (M/s. Rupali Polyesters Limited), whereas, following relief has been claimed:

- (i) Declare that the act of respondents No.1 to 4 to demand the property tax from the petitioner in respect of property bearing Plot No.47/48, Edible Oil and Molasses Area, Port Qasim, Karachi is illegal and unlawful.
- (ii) Declare that Plot No.47/48, Edible Oil & Molasses Area, Port Qasim, Karachi is not covered under the Provisions of Sindh Urban Immovable Property Tax, Act, 1958.
- (iii) Declare that the petitioner's plot is owned by Federal Government and vests in respondent No.5 and that the Provincial Legislature cannot legislate in respect thereof and or impose any property tax thereon.
- (iv) Direct the Respondents Nos.1 to 4 and all functionaries acting through or under them not to seek recovery of any amount by way of purported property tax in respect of Plot No.47/48, Edible Oil and Molasses Area, Port Qasim, Karachi until the determination of the matter in accordance with law and further restrain the Respondents Nos.1 to 4 and its functionaries from claiming, demanding or taking any coercive action with regard to purported property tax in respect of Plot No.47/48 Edible Oil and Molasses Area, Port Qasim, Karachi.
- (v) Grant any further, better or additional relief, as may be deemed fit and proper by this Hon'ble Court.

2. Notices were issued to respondents who filed comments, whereas, it was argued by learned counsel for respondents as well as by learned Additional Advocate General Sindh that the issue relating to liability of a lessee to pay property

tax in terms of Section 14 of the Sindh Urban Immovable Property Tax Act, 1958, has already been decided by a divisional bench of this Court in the case of Fauji Fertilizer vs. CDGK (C.P. No.D-737/2009), therefore, petitioner maybe directed to make payment of property tax in accordance with law, whereas, in terms of letter of allotment / lease in respect of subject property, the petitioner has agreed to pay such taxes.

3. On 11.12.2019, learned counsel for petitioner was confronted with above submissions of learned counsel for respondents, whereas, on 11.12.2019, following order was passed:

“After hearing the learned counsel for parties, except learned A.A.G., both the learned counsel are not in a position to assist the Court on the legal controversy involved in the instant case whereas requisite documents i.e. lease agreement/allotment letter or any other document whereby Port Qasim Authority has allotted/leased the subject property to the petitioner have not been placed on record so far inspite of repeated opportunities given in this regard. Let some responsible officer of Port Qasim Authority, dealing with the land matters shall be in attendance on the next date in order to provide assistance in this regard.

Office is directed to fix Suit No.194/2001 along with instant petition on the next date.

Adjourned to a date in office.”

4. Pursuant to order dated 11.12.2019, learned counsel for respondent No.5 has filed statement dated 14.01.2020 along with copy of judgment of a Divisional Bench of this Court in C.P. No.D-737 of 2009 (*Fauji Fertilizer Bin Qasim Limited Vs. City District Government Karachi and others*), and also letter No.PQA/ET-III/108/91 dated 25.09.1991, issued by Port Qasim Authority relating to allotment of land about 2 acres (*S.No.47 to 48 Berth No.1, across Railway Line, Operation zone of Port Qasim Area for the storage of Molasses and MFC Chemicals*) in respect of subject land, which are taken on record, copy whereof has been supplied to learned counsel for petitioner as well as learned Additional A.G. Learned counsel for Port Qasim Authority, under instructions, submits that petitioner is occupying the subject land of the Port Qasim Authority as a ‘Lessee’ in terms of aforesaid letter for 25 years from the date of issuance of allotment/lease, whereas, in terms of allotment/lease letter dated 25.09.1991, petitioner is under legal obligation to make payment of property tax in consonance with the provisions of Section 14 of the Sindh Urban Immovable Property Tax Act, 1958. Such contention is duly supported by learned A.A.G. who submits that identical controversy has already been decided by a divisional bench of this Court in above petition.

5. While confronted with the herein above factual and legal position, learned counsel for petitioner could not controvert the same, however, submits that since the respondents are not executing proper lease in favour of petitioner whereas, the petitioner has filed a Suit No.194/2001 to this effect, therefore, the amount of property tax was not paid by the petitioner. However, it has been candidly submitted that if the status of the petitioner is recognized as an Allottee/Lessee, the petitioner is willing to make payment of legitimate amount of property tax in terms of Section 14 of the Sindh Urban Immovable Property Tax Act, 1958, however, subject to petitioner's right to challenge the arbitrary assessment, its quantum and calculation of amount of property tax in accordance with law. It has been submitted that instant petition may be disposed of in terms of earlier order of divisional bench of this Court as referred to herein above, and the respondents may be directed to issue the renewal of lease in favour of the petitioner in respect of subject property at an early date. Such request of the petitioner cannot be entertained by this Court in the instant petition as it merely relates to liability of a lessee in possession of property to pay property tax in terms of Section 14 of the Sindh Urban Immovable Property Tax Act, 1958, whereas, petitioner has already filed Suit No.194/2001 for such purpose, which may be decided by the learned single Judge in accordance with law. However, in order to resolve the controversy relating to payment of property tax in terms of Section 14 of the Sindh Urban Immovable Property Tax Act, 1958, which has already been decided through a judgment of a divisional bench of this Court in C.P. No.D-737/2009 as referred to herein above, we do not find any substance in the instant petition which is hereby dismissed in terms of above decision of a divisional bench of this Court. Petitioner, however, would be at liberty to seek the appropriate remedy against the impugned demand, assessment proceedings and quantum of property tax by approaching the relevant forum in accordance with law. It is clarified that the Suit between the parties as referred to herein above may be decided on its own merits in accordance with law.

The petition stands disposed of in the above terms along with listed application.

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