

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-1201 of 2016

Date	Order with Signature of Judge(s)
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Nazar Akber

Priority

1. For hearing of CMA No. 5455/16.
 2. For hearing of Main Case.
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22 May, 2017.

Mr. S. Ehsan Raza, advocate for the petitioner.
Mr. Saifullah, AAG along with Manzoor H. Marri,
Deputy Controller, DTS, and SIP Abdul Sattar of
PS Nazimabad.

ORDER

Aqeel Ahmed Abbasi, J:-

Through instant petition, the petitioner has impugned the recovery proceedings and issuance of Notice under section 82 of Land Revenue Act, 1967, whereas following relief has been sought:

- a) *Declare that the Notice/Warrant of Arrest (impugned) dated 18.1.2016 vide No.ADC-II(C)/JB/Notice-2/89/2016, dated 18.1.2016 under sections 81 & 82 of the Land Revenue Act, 1967 issued by the respondents No.2 and 3 at the behest of the Respondent No.4 with caution "WARRANT OF ARREST" under section 82(1) of the Land Revenue Act, 1967 to the Petitioners with demand of an amount of Rs.61,15,000/- is illegal and without any justification but based on mala fide intention in order to hide their own laxity and negligence.*
- b) *That the Respondent No.6 may please be directed not to take any coercive measures against the Petitioners by detaining followed by the registration of FIR or taking signature on blank documents or compel to execute undertaking or any bond in this regard.*
- c) *Permanently and pending disposal of main petition, suspend the operation of the Notice / Warrant of Arrest under sections 81 & 82 of the Land Revenue Act, 1967 dated 18.1.2016 issued by the Respondents No.2 and 3, while restraining the Respondents especially the Respondent No.6, their officers and agents from taking any other action in any manner whatsoever."*

2. Learned counsel for the petitioner submits that the impugned Notice dated 18.1.2016, issued under section 82 of the Land Revenue Act 1967, by the Additional Deputy Commissioner-II, District Central Karachi, in respect of purported outstanding amount of Rs.61,15,000/- to be charged by Directorate of

Tourist Services, Government of Sindh, Karachi, has been issued without lawful authority as it does not contain the detail of the charge or the levy which is sought to be recovered from the petitioner. Per learned counsel, before issuance of the said notice, no notice or the impugned order of demand whatsoever, has ever been issued by the Tourist Department to the petitioner nor any opportunity has been provided to the petitioner to explain his position. Learned counsel further submits that petitioner's business of restaurant in the name of "La-rosh Restaurant", was eventually closed down on account of deteriorating law and order situation in the year 2008, whereas, such fact was duly conveyed to the concerned Commissioner of Income Tax, Enf. Division, RTO, Karachi vide letter dated 15th July, 2008, whereas during aforesaid period, the petitioner was never issued or served with any demand in respect of renewal of license fee from the respondent department. However, according to learned counsel, in spite of above facts, the respondents have issued the impugned notice for recovery of an exorbitant amount of Rs.61,15,000/- through the office of Additional Commissioner-II, District Central, whereas, police also raided the house of the petitioner whereby petitioner has been threatened for his arrest.

3. Notices were issued to the respondents pursuant to which Mr. Manzoor Husain Marri, Deputy Controller, Directorate of Tourist Services, has shown appearance along with learned AAG and has filed comments, along with annexures, which are taken on record, copy whereof has been supplied to the learned counsel for the petitioner.

4. Learned counsel for the petitioner after perusal of the Comments filed on behalf of respondents, submits that the petitioner was never confronted with any of the documents filed with the comments nor any opportunity whatsoever was ever provided to the petitioner to explain his position. Learned counsel has also drawn attention of this Court to the amount which has been calculated by the Tourist Department, vide their letter dated 8th May, 2017, attached with the comments as Annexure "Z", which shows that the amount of Rs.61,15,000/- as shown in the impugned notice under section 82 of the Land Revenue Act, 1967 was never outstanding against the petitioner, whereas, an amount of Rs. 63,000/- only was required to be paid by the petitioner towards license renewal fee for the period from the year 2005-2006 to the year 2015-2016, whereas, according to the learned counsel, the petitioner has never been confronted with such liability which has now been calculated by the respondent. Per learned counsel, the recovery proceedings initiated against the petitioner under Land Revenue Act, 1967 for the recovery of an amount of Rs.6,115,000/-, on the face of it, and as per admission by the respondent are without lawful authority and legal basis, hence, the impugned notice and the recovery proceedings against the petitioner may be quashed.

5. While confronted with such position, the officer present in Court (Manzoor Hussain Marri), duly assisted by learned AAG, could not deny such fact and have candidly conceded that the proceedings initiated against the petitioner for recovery of Rs.61,15,000/- was without any legal basis, whereas, the amount mentioned in the impugned notice was the result of an inadvertent error.

6. We have heard the learned counsel for the petitioner and the learned AAG and have perused the record.

7. Perusal of the record reflects that the impugned recovery proceedings against the petitioner for the recovery of the amount as detailed in the Notice dated 18.1.2016, issued under section 82 of the Land Revenue Act, 1967 by Additional Deputy Commissioner-II, Office of the Deputy Commissioner, District Central, Karachi, was without any lawful basis, whereas, the petitioner was never confronted with such liability nor provided any opportunity to explain his position before adverting to coercive proceedings through Additional Commissioner-II, District Central, Karachi under section 82 of the Land Revenue Act, 1967. Such proceedings included the threat of the petitioner's arrest for the recovery of an arbitrary and fictitious amount which was never outstanding against the petitioner towards renewal of license fee. Such casual approach demonstrated by the Government functionaries, while creating an exorbitant and illegal demand against the petitioner towards purported government dues, requires to be deprecated. The Officer from Directorate of Tourist Services, Government of Sindh, present in Court has acknowledged the illegality committed by the respondents in this regard and extends his unconditional apology for the inconvenience caused to the petitioner on account of illegality and the mistake of the respondents, however, assured that the respondents will be careful in future. In view of such unconditional apology tendered by the officer present in Court, we would abstain ourselves from drawing any adverse inference against official respondents in the instant case, however, would observe that respondents shall be careful in future, as fabricating false evidence or a document, including creating a demand without lawful authority and initiating frivolous proceedings for the recovery of such illegal demand to the injury of a person, attracts initiation of criminal proceedings against the delinquent public functionary.

8. The officer present in Court was asked to intimate the actual amount which according to respondents is outstanding towards renewal of license fee during the period the restaurant of the petitioner was operational, in response, he submits that, in view of the facts as stated by the petitioner to the effect that the restaurant of the petitioner was closed down in the year 2008, the respondents will not recover the amount of renewal fee for the period from 2008-2009 onwards, however, requests that the petitioner may be directed to make payment of renewal fee for the period

from 2005-2006 to 2007-2008, i.e. Rs.16,300/-, when the petitioner's restaurant was operational. Learned counsel for the petitioner undertakes to make payment of such amount provided the respondent may issue a challan to such effect.

9. Accordingly, impugned demand of Rs.61,15,000/- is declared to be illegal and without lawful authority, whereas, impugned notice under section 82 of the Land Revenue Act, 1967 and the proceedings thereto are equally illegal, whereas, instant petition is disposed by consent, with directions to the respondents to issue a challan in the sum of Rs.16,300/- to the petitioner in respect of renewal fee for the period from 2005-2006 to 2007-2008, within seven days from the date of this Order which shall be paid by the petitioner within seven days from the date of receipt of such challan.

10. Petition stands disposed of in the above terms along with listed application.

Judge

Judge