

2010 C L C 897

[Peshawar]

Before Mazhar Alam Khan Miankhel, J

**Messrs FLYING KRAFT PAPER MILLS (PVT.) LIMITED, CHARSAADAH---
Petitioner**

Versus

**DISTRICT OFFICER, REVENUE AND ESTATE, CHARSAADAH and 2 others---
Respondents**

C.M. No.1 of 2010 (in C.C. No.1 of 2010), decided on 29th March, 2010.

West Pakistan Land Revenue Act (XVII of 1967)---

---S. 42---Sale of property through auction---Issuance of sale certificate and delivery of physical possession of auctioned property to auction-purchaser-Applicants had sought for issuance of a direction to the Authority to effect the change of ownership in record---Applicant purchased property in question through auction and after completion of auction process sale certificate was issued to the applicants and physical possession was also delivered to the applicant/auction purchaser---Applicant claimed that it was legal duty of the authorities to have given effect to the said sale certificate which amounted to sale-deed and incorporating the same in the Revenue Record---Claim of the authorities was that no doubt under the law authorities were bound to honour the sale certificate, but applicant/auction-purchaser, was required to pay the government dues/taxes etc., in the absence of which change of name/transfer was not possible---Validity---Government dues/taxes were levied by the Provincial Government through enactments/notifications etc.---While enacting such laws, the Government had the prerogative to

exempt Federal; Provincial Government Departments or sometimes other such bodies from levy of such taxes---Applicant in the absence of any such exemption, had to be burdened with the government dues/taxes---When the sale certificate issued by the court had to be registered/incorporated by the authorities, then the applicant in absence of any provision of exemption in that regard, would also be liable to pay the government taxes---Applicant would be liable to pay the government taxes/transfer fee etc., but the rate of such transfer should be the rate prevailing during the days of issuance of sale certificate.

1995 CLC 1922 and 2002 CLD 145 ref.

ORDER

MAZHAR ALAM KHAN MIANKHEL, J.---Through the instant petition, petitioner herein has sought for issuance of a direction to the respondent to effect the change of ownership in their record/correction of their record.

2. Brief facts of the case compelling the petitioner to move the present petition are that initially Pakistan Paper Corporation Charsadda went into liquidation and during the process, the said Mills was auctioned in the year 1992 and was purchased by M/S Flying Kraft Paper Mills Pvt. Ltd., the petitioner. After completion of auction process, accordingly a sale certificate was issued duly signed by the joint official liquidators and countersigned by the Company Judge of this Court and physical possession of the company along with its assets was accordingly delivered to the purchaser.

3. The learned counsel for the petitioner was of the view that after issuance of sale certificate, it was the bounden legal duty of the respondents to have given effect to the said sale certificate which amounts to a sale-deed, by registering the same in the name of petitioner and incorporating the same in the Revenue Record. The respondents failed to perform their duty and lastly they were compelled to file a separate application in this regard on 17-4-2007 but the same was not responded to by the respondents. He further submitted that the respondents are unlawfully demanding the taxes/duties on the prevailing rate for the registration of the sale certificate in the name of the petitioner. In support of his submission, the learned counsel for the petitioner placed reliance on 1995 CLC page 1922.

4. Whereas on the other hand, the learned A.A.-G. defending the cause of respondents submitted that no doubt, under the law, the respondents are bound to honour the sale certificate issued by Courts in accordance with law by registering the same in the name of a person in whose favour the same is issued but the person concerned is legally required to pay the Government dues/taxes etc. in the absence of which change of name/transfer is not possible and in support of his contention placed reliance on 2002 CLD 145.

5. Learned counsel for the parties were heard and record of the case was perused.

6. After having gone through the record of the case, it appears that during the winding up process of Pakistan Paper Corporation along with its assets, the petitioner purchased the same in open auction made by the joint official liquidators. The said auction was approved and accordingly sale certificate was issued by the joint official liquidators duly countersigned by the Company Judge of this Court. Under section 89(2) of the Registration Act, 1908, copy of the sale certificate issued by the Court should be sent to the registering officer who would be required to place said copy in his book No.1. Whereas, section 355 read with section 489 of the Company Ordinance, 1984 reveals that orders made by Court would be enforced in the manner as a decree made by Court is enforced.

7. No doubt, this sale certificate has to be registered/incorporated in the Revenue Record in the name of petitioner and no doubt that the sale certificate issued in the name of petitioner has to be honoured but the law on the subject is silent as to whether this transfer of ownership, as claimed by the petitioner, would be made without payment of Government taxes/dues or the petitioner would be required to pay the said taxes. Such dues/Government taxes are levied by the Provincial Government through enactments/notifications etc. While enacting such laws, the Government has the prerogative to exempt Federal/Provincial Government departments or sometimes other such bodies are also exempted from levy of such taxes. When the parties were asked regarding such exemption available to them on the basis of the decrees of Courts or orders of Company Court, there was no plausible answer to the question by either of the parties. If it is held that petitioner, in absence of any such exemption, has to be burdened with the Government dues/taxes, then question would be that as to what should be the rate of said taxes/duties. Whether the petitioner would be charged on the prevailing rates or he would be charged on the rates prevailing at the time of their purchase. Answer to the question about filing of application in the year 2007 for registration of the sale certificate in the name of the petitioner was not plausible that they were of the view that being a legal duty of the respondents, such transfer of property in the name of petitioner would be made by them, so they remained waiting for the same. The conduct of the respondents, on the other hand, reflects that they even did not respond to the belated application of the petitioner and they even failed to make any correspondence in

this regard with the petitioner. So, negligence and slackness lies on both ends. When the sale certificate issued by this Court has to be registered/incorporated by the respondents, then the petitioner in absence of any provision of exemption in this regard, would also be liable to pay the Government/taxes.

7. In this state of affairs, I have no hesitation to hold that the petitioner would be liable to pay the Government taxes/transfer fee etc. but the rate of such transfer should be the rate prevailing during the days of issuance of sale certificate. Needless to say that the registration/ Collector office is legally bound to ask in writing the concerned parties to pay the taxes for such transfers.

The present C.M. is disposed of accordingly.

H.B.T./82/P

Order accordingly.