

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 6290 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.26691/2021
2. For hearing of main case

10.12.2024

Mr. Naveed Anjum, advocate for the petitioner
Syed Zaeem Hyder Musavi, advocate for respondent
Ms.Rabia Khalid, Assistant Attorney General

It is jointly submitted that the controversy in this case is squarely covered by the Division Bench judgment of this Court dated 22.04.2021 in the case of Bilquees Khalid vs. Federation of Pakistan and another (**CP D 1546 of 2021 and another**). Pertinent content whereof is reproduced herein below :-

“The petitioners have assailed notices issued under section 68 of the Cantonment Act 1924 (“Act”), whereby assessment of house tax had been proposed, and demand notices, issued pursuant thereto.

2. *Per learned counsel, the petitioners preferred objections to the proposed assessments, per section 68 of the Act, and upon receiving no response also filed applications under section 71(c) of the Act, and therefore any demand during tenancy of such proceedings was unmerited in the very least.*

3. *Counsel for the cantonment board submitted that the present petitions were not maintainable since the petitioners ought to have assailed the notices / demands in appeal, per section 84¹ of the Act read with SRO 1293(I)/2008 dated 22.12.2008.*

Reliance in such regard was placed on Nisar², Aminullah³ and Fecto⁴, being judgments of learned Single Benches of the Lahore High Court wherein the exercise of writ jurisdiction was declined since the objections of the petitioners, to proposed assessments, had been rejected by the competent authority. Reliance was also placed on orders of honorable Division benches of this Court, in Ansar⁵, Shahnawaz⁶, Syed⁷ and an order of the honorable Supreme Court in Muhammad⁸, wherein either time for filing of appeal was extended, consensually, or directions were given to the competent authority to adjudicate the pertinent dues and render orders in accordance with the law. In either instance adverse action was restrained in the interim period

¹ 84. Appeals against assessment.-(1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Magistrate or to such other officer as may be empowered by the Federal Government in this behalf...

² Nisar Ahmed Siddiqui vs. Cantonment Board reported as 2012 MLD 1202 (“Nisar”).

³ Aminullah Khan vs. Executive Officer Cantonment Board Rawalpindi reported as 2002 YLR 1557 (“Aminullah”).

⁴ Fecto Sugar Mills Limited vs. Secretary Food Punjab reported as 2002 YLR 1559 (“Fecto”).

⁵ Muhammad Ansar vs. Cantonment Board Clifton (CP D 105 of 2010) dated 07.10.2011 (“Ansar”).

⁶ Muhammad Shahnawaz vs. Cantonment Board Faisal (CP D 3646 of 2011) dated 21.05.2013 (“Shahnawaz”).

⁷ Syed Ghulam Mustafa Shah vs. Cantonment Board Malir (CP D 4217 of 2011) dated 15.01.2011 (“Syed”).

⁸ Muhammad Luqman-ul-Haq vs. Cantonment Board Clifton (CP 646-K of 2013) dated 26.12.2013 (“Muhammad”).

4. We have heard the learned counsel and perused the record. It is considered expedient to initiate this deliberation by adverting to the pertinent provisions of the applicable law.

5. Sections 68⁹ 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 objections¹⁰. In addition thereto, the board retains the power to amend an assessment list, within the powers conferred thereupon under the Act¹¹.

6. Per petitioners' counsel the objections to the proposed assessment were never determined by the assessment committee, as required per section 68 of the Act. Respondent's learned counsel has articulated no *cavil* in respect of such assertion and nothing has been placed on record to demonstrate to the contrary either. In view hereof, it is *prima facie* manifest that the requirements of section 68 of the Act have not been satisfied, prior to issuance / enforcement of demand upon the petitioners.

7. The judgments of the honorable Lahore High Court, mentioned *supra*, are distinguishable in the present facts and circumstances as they uphold the remedy of statutory appeal, once the objections to the proposed assessments had already been determined by the competent authority. The same is admittedly not the case before us. The orders of this High Court and the august Supreme Court, cited by the respondent's counsel, lend credence to our view that the right of a person to be heard, prior to any assessment being finalised, cannot be abridged.

8. Petitioners' counsel has remained unable to assist us with regard to whether a person aggrieved was entitled to invoke section 71 of the Act, as of right, in place of recourse to an appeal under section 84 of the Act. However, no deliberation on this issue is merited in the present facts and circumstances as the law does not envisage authentication of an assessment unless an assessment committee has considered all objections and rendered its decision in such regard.

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

- i. The impugned demand notices are hereby set aside, *inter alia*, on account of being premature.
- ii. The competent authority (assessment committee) is directed to issue notice/s, to the petitioners, of hearing, to determine their objections to the assessments proposed.
- iii. The petitioners have the right to submit their replies 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 petitioners 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 in their respective applications per section 71 of the Act.
- v. The competent authority shall, by way of a reasoned order, issue a determination in accordance with the law with respect to each petitioner.

⁹ 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...

¹⁰ 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...

¹¹ 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...

- 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 assessments impugned before us, may be taken by the respondents against the petitioners.*
- 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.*

In view of the foregoing and in mutatis mutandis application of the ratio as aforesaid this petition is disposed of in the terms of paragraph 9 of the aforesaid judgment. The fate of the security shall be subject to the proceedings as directed.

Judge

Judge

Amjad