IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-1043 of 2004

Before:
Mr. Justice Nadeem Akhtar &
Mr. Justice Muhammad Iqbal Kalhoro

Date of hearing : 22.10.2014.

Date of decision : .11.2014.

Petitioner, the Cantonment Board Clifton, through Mr. Sohail H.K. Rana, Advocate.

Respondent No.1, Sultan Ahmed Siddiqui, through Mr. Muhammad Ali Hakro, Advocate.

Mr. Abdul Qadir Laghari, Standing Counsel.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- The petitioner has assailed the order dated 29th May 2004 passed by the learned District Judge, Karachi South, in Civil Appeal No.26/2004 filed by the respondents No.1 & 2 against the petitioner, whereby the learned District Judge accepted the appeal.

2. Precisely the facts are that respondents No.1 & 2 filed the above stated appeal against the petitioner contending therein that Darakhsan Villa bearing No.D-54, DHA, Karachi was purchased by the respondent No.1 from its previous owner namely Major (Retd.) Muhammad Pervaiz Malik, arrayed as respondent No.2. In due course said property was transferred in his name by the DHA vide order dated 11.08.1998. He then paid the ground rent and the transfer fee directly to the DHA. When he approached the DHA for execution of the lease of the said villa in his favour, he was directed to obtain NOC from Clifton Cantonment Board

regarding payment of house tax, conservancy tax and water charges etc. hence he moved the applications before the Executive Officer of the Board requesting him to do the needful and issue bills regarding arrears of tax as well as current taxes in the name of the respondent No.2, who was a previous owner, and who being the retired army officer was entitled to claim rebate, to the extent of 60%, of the normal tax. However, his requests were not granted and the bills were yet being issued in the name of Dr. Bahir Ahmed Malik, who was not the owner of the villa. The Executive Officer of the Board instead of taking an action on the applications in accordance with law referred the matter to the IXth Judicial Magistrate (Magistrate Clifton Cantonment, Karachi South) for proceedings under Section 250 of the Cantonment Act, 1924 against the respondent No.1 and prior to it a similar complaint was also referred by him to the then Additional Deputy Commissioner and Cantonment Magistrate Karachi (South). Before both the forums the matters were duly pursued by the respondent No.1 but nothing came out and subsequently the learned Court verbally referred the matter back to the Executive Officer of the Board, who however did not resolve the issue and continuously insisted upon the respondents No.1 & 2 to pay the taxes in the name of Dr. Bashir Ahmed Malik. It is further alleged that the petitioner/ Cantonment Board instead of correcting the relevant record discontinued the water supply to the villa and notwithstanding the requests in writing nothing was done by it to restore the water supply. In the last the respondents prayed from the Court to call for the relevant record from the petitioner and to order for cancellation of previous bills issued in the name of Dr. Bashir Ahmed Malik from time to time and to direct the petitioner to issue fresh bills on their names on concessional rates of taxes as per rules applicable to a retired army officer and a

government servant of Grade 21. The directions for the restoration of water supply to the bungalow and rebate /concession in taxes on the basis of self occupation were also sought in the subject appeal.

3. The petitioner filed objections thereon wherein it raised some preliminary legal objections that inter alia, the appeal was not maintainable as there was no impugned order against which the same was preferred. On factual aspect, it was contended that 60% rebate in the house tax was allowed only when the subject house was in the name of a government officer and was in occupation of the claimant. Initially the subject property was allotted to Major Muhammad Pervaiz Malik but subsequently Dr. Malik Bashir Ahmed got it transferred in his name, who sold the same to the respondent No.1. The petitioner further claimed in its objection that the water supply was not within its domain as the same was subject matter of the DHA.

4. The learned District Judge after hearing the parties passed the impugned order whereby he accepted the prayers of the respondents and additionally gave directions to the petitioner to pass orders in such like cases within six months of the receipt of the application without fail.

5. It is under that background, the petitioner has invoked the constitutional jurisdiction, provided under Article 199 of the Constitution of Islamic Republic of Pakistan, before this Court.

6. It has been earnestly contended by the learned counsel for the petitioner that the procedure adopted by the learned District Court, arrayed as respondent No.3, while deciding the appeal, is alien to the law as the right of an appeal under Section 96 of the CPC is provided only against some judgment and decree passed in the original suit filed before a civil Court; in the present matter admittedly there was no

impugned judgment & decree passed by the civil Court, therefore, under the circumstances the civil appeal filed by the respondents was not maintainable; the respondent had no locus standi to apply to the petitioner for rebate in tax on the property unless the procedure stipulated under the law was followed by him to transfer his name in the record maintained by the petitioner for that purpose; the detailed objections were filed by the petitioner on the appeal but the same were not taken into consideration by the learned Court while deciding the said appeal. He lastly prayed for declaring the impugned order as illegal, void and passed without any lawful authority. He also sought directions for the respondents No.1 to adopt legal procedure to get his name entered in the record of the petitioner for taxation purpose by following proper procedure.

7. The learned counsel for the respondent No.1, while refuting the above contentions, vehemently argued that the appeal filed by the respondents before the learned District Court was maintainable in terms of Section 84(1) of the Cantonment Act and there was no need of any judgment and decree to be impugned as conceptualized under Section 96 of CPC. According to him the Cantonment Act, is a special law which provides for filing an appeal against the assessment or levy of, or against the refusal to refund any tax, before the District Court, therefore, the appeal preferred by the respondents was in line with the said provisions of law to which no exception can be taken. He in his arguments referred to the documents available in the file at page No.139 to 143 of the file as Annexure. I, I-A and I-M and stated emphatically that those documents were the assessment in terms of Section 84 of the Cantonment Act against which the appeal was competently filed by the respondents. He further contended that the respondent No.1 had moved

to the petitioner on various occasions for transferring his name in the record for taxation purpose but no heed was paid by him for a number of years, hence, the appeal was filed by them before the District Court.

8. We have given our due attention to the contentions made before us by the learned counsel for the parties in support of their respective claims and have also perused the material available on the record.

9. The controversy between the parties appears to be in respect of the locus standi of the respondent No.1 to apply to the petitioner to charge taxes on concessional rates over his property and to file appeal before the respondent No.3 and jurisdiction of the respondent No.3 to entertain the said appeal.

10. We take up the question regarding the jurisdiction of the Court to entertain the subject appeal first. Section 84 of the Cantonment Act, 1924 (for short, "the Act") contains provision for filing the appeal against the assessment or levy of or against the refusal to refund any tax being imposed under the Act, before the defunct District Magistrate (now before the District Court). The procedure of assessment in respect of the taxes levied on any building or lands situated within the precincts of cantonment area as per provisions of the Act is provided in Chapter V of the Act, according to which initially preliminary proposals are to be made by the Board through a public notice specifying wherein the tax which it is proposed to impose; the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstances in respect of which they are to be made liable and the rate at which the tax is to be levied. In case of an objection by any inhabitant of the cantonment area, the same has to be taken into consideration by the Board and pass orders thereon by the special resolution, whereafter if

the Board decides to modify its proposals or any of them it has to re-publish the modified proposals, indicating that the proposals are in modification of the proposals previously published. When a tax duly assessed is imposed on the annual value of the building or lands or both, the Cantonment Board has to cause an assessment list of all such buildings or lands or both within its jurisdiction to be prepared in the form prescribed by the Central Government, whereafter through a public notice the Board has to notify the place where every person claiming to be the owner /lessee or occupier of any property included in the said list could inspect and verify the same and he can obtain the extracts therefrom without any charge. After the verification and inspection of the list by the persons concerned, the Board has to fix a date through a public notice, not less than one month whereafter, to notify as to when it will proceed to consider the valuations and assessments provided in the said assessment list and in case any property is for the first time being assessed or an assessment already undertaken is increased, the Board has to give a written notice to the owner or to any lessee or occupier of the property in this respect with a view to invite objections thereon, if any. The objections to the valuation or assessment are required to be made in writing to the Board before the fixed date provided in the notice which shall also contain the detail as to in what respect the valuation or assessment was being taken exception to and all those objections have to be recorded in a register kept for such purpose by the Board, which shall then follow an enquiry into or investigation on those objections by the Assessment Committee appointed by the Board consisting not less than three members wherein the persons who have questioned the valuation or assessment of tax on the property mentioned in the assessment list have to be allowed an opportunity of being heard either in person or by

the authorized agent. After the disposal of all the disputed points and the revision of the valuation and assessment is complete, the assessment list has to be authenticated by the signatures of the Members of the Assessment Committee who are required at the same time to certify that they have considered all the objections so raised and have amended the list as is required by their decision on such objections. The said assessment list which has been so authenticated by the Members of the Committee has to be deposited in the office of the Board where it will be accessible and open to all the owners, lessees, the authorized agents and the occupiers of the property comprised therein, free of charge during office hours and the public notice that it is so open has to be published forthwith. The above discussed procedure is provided under Sections 6o to 69 of the Act, which further prescribes under Section 70 that subject to all the alterations made in the assessment list under the provisions of Chapter-V and to the result of any appeal preferred thereunder, the entries in the said list so authenticated and deposited under Section 69 shall be accepted as conclusive evidence firstly for the purpose of assessing any tax levied under the Act, of the annual value or other valuation of all the buildings and lands to which such entries respectively refer and secondly for the purpose of any tax imposed on the buildings or lands, or the amount of each such tax which is leviable thereon during the year to which such list belongs to. However, Section 71 of the Act empowers the Board to amend the assessment list under the circumstances enumerated therein which for ready reference are reproduced herewith.

> *[(1) The Board may amend the assessment list at any time-*
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> > *(a) by inserting or omitting the name of any person whose name ought to have been or ought to be inserted or omitted, or*

(b) by inserting or omitting any property which ought to have been or ought to be inserted or omitted, or

(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, or

(d) by revaluing or re-assessing any property the value of which has been increased, or

(e) in the case of a tax payable by an occupier, by changing the name of the occupier:

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made.

(I A) Before making any amendment under sub-section (1) the Board shall give to any person affected by the amendment notice of not less than one month that it proposes to make the amendment.

(2) Any person interested in any such amendment may tender an objection to the Board in writing before the time fixed in the notice, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent.

11. Seen in the backdrop of above mechanism provided under the Act, we have found that without going through such procedure, the respondents filed the appeal before the learned District Court. Admittedly no assessment list in respect of the taxes imposed upon the property purchased by the respondent No.1 has either been referred by the respondent to have been prepared nor are any objections thereto stated to be filed by him to revise any such assessment of the taxes concerning his property on concessional rates as agitated by him. The perusal of documents available at pages No.139 to 143 classified by the learned counsel as the final assessment of the taxes would tend to show that at page No.139 Annexure I, it is a notice of demand prepared under Section 91 of the Act, 1924, which is issued in the event of non-payment of the amount of tax within 30 days from the presentation of bill through which the tax was demanded, whereas at pages No.141 & 143 Annexures I-A and I-M, are the bills appertaining to the Cantonment tax for the years 2001 and 2003, respectively, issued to one Dr. Bashir

Ahmed Malik who, admittedly, does not happen to be the appellant before the Court. It is, therefore, crystal clear that these documents which have been referred to by the learned counsel for the respondent No.1 to establish jurisdiction of the respondent No.3 to entertain the appeal and pass orders thereon are irrelevant to the scheme provided under Section 84 of the Act, whereunder the appeal by an aggrieved person can be filed only against the final and authenticated assessment of taxes or against the refusal to refund any tax imposed under the Act. The respondents undoubtedly filed the subject appeal before the learned District Court /respondent No.3 without first conducting themselves in line with the process provided under the Act. We, therefore, hold that the respondent No.3 before determining his jurisdiction under the relevant law and satisfying himself about the maintainability and legality of the appeal had entertained the appeal on the facts and grounds obtaining at the relevant time which did not justify availability of such recourse to the respondents for setting right things going awry because of their own fault to engage themselves with the petitioner in accordance with law. It would not be impertinent to reproduce here a passage from the impugned order to show that the learned District Judge himself was of the view that the matter between the parties was still pending and had not been finalized so as to give him jurisdiction to take on the appeal provided under Section 84 of the Act:

> *"5. From the perusal of the case papers it appears that appellants are approaching time and again to the respondents to pass appropriate order in the matter. However, the respondent instead of doing the needful are delaying the matter on one pretext or the other and are not finalizing the case. Keeping a matter pending for an indefinite period for passing orders amounts to denial of justice as it is the right of the person aggrieved to get early decision.*
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> *6. From the material available on the record, it is clear that the property viz. Darakhshan Villa bearing No.D-54, DHA, Karachi was originally owned by Major (Retd.) Muhammad*

Pervez Malik who subsequently sold it away to the appellant No.1, therefore, the earlier owner being an Army Officer and the appellants being a government servants are entitled to 60% rebate as per relevant law for payment of taxes. The respondent are denying them this relief without any justification since long.

7. The contention of the learned counsel for the respondent that no final order has been passed in the matter, therefore, this court has no jurisdiction to entertain this appeal is without any substance. The appellants are approaching the respondent for doing the needful since 1998 but the respondent have failed to perform their legal duties of passing the order, as such, the only forum left to the appellants in the circumstances would be to approach the appellate authority and in the instant case to my vie the appellants have rightly approached this court."

12. The next contention of the learned counsel relating to the continuous approaches made by the respondent No.1 to mutate his name in the relevant register of the Board for the taxation purpose but without any success resulting in filing the subject appeal has been adverted to by us. We are afraid that even that argument is not helpful to the respondent in view of the relevant provisions of the Act which enjoin that whenever the title of any person who is liable for the payment of a tax on the assessment of annual value of the building or land is transferred, then the transferee and transferor have to give a notice of such transfer to the Executive Officer of the Board within three months after the execution of the instrument of transfer or after its registration, if it is registered or after its transfer is dually affected and in consequence of such notice, if so required, the transferee or any other person upon whom the title has devolved would be bound to produce before the Executive Officer any documents to prove the transfer or the devolution as the case may be. Failure to give such notice by the person who transfers his right in respect of any building or land would continuously make him liable to pay all the taxes on the property so transferred until he gives requisite notice or the transfer is so recorded in the relevant register of the Board. However, it would not absolve the transferee of his responsibility under

the law and nothing would be deemed to affect the liability of the transferee to pay the said tax. Such is the arrangement provided under section 73 of the Act which has to be mandatorily engaged by a person who wishes to substitute his name in the record of the Board for taxation after acquiring property within the limits whereof. Nothing has been brought on the record by the respondents to establish adherence to the above provisions by them. Admittedly Dr.Bashir Ahmed who has transferred his title in favour of the respondent No.1 has not given notice of transfer to the petitioner as provided under Section 73 of the Act and non-compliance whereof, infact, has rendered the applications of the respondent No. 1 moved for redressal of his grievance ineffectual and of no consequences, for a thing required to be done in a particular manner under the law has to be done in that manner otherwise it would be deemed illegal. No one can be allowed to plead ignorance of the relevant law to justify taking a course for alleviating his problems which is alien to the relevant law.

13. The upshot of above discussion is that the respondent No.1 had no locus standi to file the subject appeal before the Leaned District Judge, who assumed the jurisdiction in the matter improperly and wrongly, therefore, the impugned order is declared as coram non judice and is set aside. Resultantly we allow this petition. However before parting with order, we must direct the petitioner that it shall process the case of the respondents for transfer of the property for taxation purpose expeditiously after all the formalities as envisaged under the law are completed by him.

JUDGE

JUDGE