

ORDER SHEET

LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

W.P. No. 6368 of 2024

Muhammad Shakeel Vs. Deputy Commissioner, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
	30.05.2024	Mr. Muhammad Aurangzaib Khan, Advocate for petitioner. Rana Ghulam Hussain, Assistant Attorney General for Pakistan. Ms. Samina Mehmood Rana and Mr. Muhammad Bukhsh Khakhi, AAGs. Malik Mureed Hussain Makwal, Advocate/Legal Advisor for MEPCO.

Through this petition, petitioner has called in question the action of respondents whereby in compliance of notice dated 18.05.2024, father of petitioner has been detained by adopting procedure of Land Revenue Act, 1967 for recovery of outstanding amount without its determination by the court of competent jurisdiction.

2. The claim of the petitioner is that Electricity meter bearing Reference No. 29152630591500R was installed in the name of grandfather of the petitioner namely Allah Bakhsh s/o Ahmed Khan (who has passed away), regarding the said electricity meter an illegal amount as arrears amounting Rs.83,56,398/- was imposed by the respondents/MEPCO, the said act of the respondents was called in question by the legal heirs of the Allah Bakhsh through Writ Petition No.19439/2023 tilted as "Muhammad Ibrahim etc Versus WAPDA etc." before this Court, which is

still under adjudication. However, side by side, the respondent No.3 firstly issued notice Under Section 82(1) of the Land Revenue Act 1967 for recovery of aforementioned amount in the name of Allah Bakhsh s/o Ahmad Khan on 14.05.2024 and subsequently the respondent No.3 issued notice dated 16.05.2024 in the name of detenu (father of the petitioner namely Abdul Ghafoor) with the subject for detention of the defaulter of MEPCO Circle Dera Ghazi Khan, with the warning to the detenu for payment of aforementioned liability of MEPCO, furthermore, vide notice dated 18.05.2024 the detenu is being detained for 30-days. It is claimed that the impugned act of the respondents for initiating the recovery proceedings against the detenu/father of petitioner, the issuance of detention notice/order and all ancillary proceedings are illegal, against the law, facts, without lawful authority, without lawful justification and the same are nullity in the eye of law, hence, are liable to be set aside.

3. Notice was issued to respondents in response to which learned Legal Advisor for MEPCO has entered appearance to contest the case on behalf of MEPCO and WAPDA. Both the Assistant Attorney General and the Learned Law Officer have defended the order of arrest of father of petitioner in compliance of notice dated 18.05.2024 for recovery of WAPDA dues as arrears or Land Revenue.

4. The Learned counsel for the respondents have been confronted the question as to whether the afore-referred amount has been got determined from any court of competent jurisdiction, in

response to which learned Legal Advisor states that respondent authorities themselves are the final Authorities to determine the outstanding amount, against which notice was issued to father of the petitioner under Section 82(1) of Land Revenue Act, 1967 for recovery of said amount and on his failure to make payment of outstanding dues, father of petitioner has been arrested.

5. Needless to mention that the claim of the petitioner is that amount sought to be recovered from the father of the petitioner has not yet been determined and the electricity connection has not been installed in the name of father of the petitioner rather in the name of his grandfather and liability against the father has not been established in any case, hence recovery from his father is not sustainable.

6. The question of recovery of dues of electricity department as arrears of land revenue came up for hearing before courts in various cases.

7. In case titled Water and Power Development Authority versus Umaid Khan reported as [1988 CLC 501 (Lahore)] the question related to recovery of enhanced dues where demand notice had been issued by Authority to consumer having evaluated cost of material to be supplied to him for giving him electric connection when Authority had reserved no right that amount demanded through notice could be enhanced unilaterally or on account of enhancement in price of material. This Court held that the Authority would not be entitled to recover amount subsequently enhanced unilaterally by it on pretext that price of material supplied to consumer had

gone up as amount sought to be recovered from consumer was neither due from him nor outstanding against him, hence Authority would not be entitled to recover amount from consumer as arrears of land revenue under Section 54-A of Electricity Act, 1910.

8. In case titled *Shamim-ud-Din versus Federal Government of Pakistan through Chairman WAPDA, Lahore and 4 others* reported as [1995 CLC 299 (Lahore)], detention of the detenu was declared to be without lawful authority and detenu was set at liberty while holding that a Director of limited company could not be detained for recovery of charges of supply of energy recoverable as arrears of land revenue whereas the Company could be proceeded against in accordance with law.

9. In case titled *Pakistan Industrial Credit and Investment Corporation Ltd. versus Ali Gul Khan* reported as (1989 CLC 1774) the Peshawar High Court while considering a question of recovery of electricity dues as arrears of Land revenue held that Water and Power Development Authority is neither empowered to levy any cess nor falls within the definition of term ‘State’. Authority is empowered only to charge the consumers of electricity for the energy supplied to them and that is also the position under Section 54-A of Electricity Act, 1910. Authority’s charges for the supply of electricity do not come within the definition of a tax or a cess and amounts to be recovered by the Authority may be deemed to be the charges for services rendered. Charges of Authority were neither land revenue nor arrears of

land revenue but simply charges under the provisions of Section 54-A of Electricity Act, 1910. Such charges have been made recoverable as arrears of land revenue but mere fact that the charges of Authority have been made recoverable as arrears of land revenue does not mean that such sums have become land revenue or any Government dues.

10. The Sindh High Court in case titled Mst. Shanti versus Karachi Transport Corporation and others (2000 CLC 595), which considering the scope of provisions of Section 79 & 80 of West Pakistan Land Revenue Act, 1967 relating to Recovery of Government dues as arrears of land revenue observed that all the provisions of law which authorize any statutory authority to recover any amount as arrears of land revenue can be invoked only after determination of the amount of dues as fixed ascertained and determined sum of money.

11. This Court in case titled Muhammad Siddique versus Khawaja Maqbool Ahmad, Naib-Tehsildar (Revenue), Kot Adu and 3 others [2000 PCrLJ 17 (Lahore)] while considering the liability of a particular person to be liable to proceedings under Land Revenue Act, 1967 for recovery of dues held that no person other than the owner of the land was liable to pay Agricultural Income tax in his lifetime and detenue who was a tenant on the land could not be held liable to pay tax in default of the owner and was set at liberty especially when no proceedings for recovery as arrears of Land revenue started against the owners.

12. This Court in case titled *Muhammad Jamil Shahid versus Sub-Divisional Officer, Electricity WAPDA, Muridke* reported as [1997 PCrLJ 863 (Lahore)] in a Habeas corpus petition under section 491 of Criminal Procedure Code (Cr.P.C) challenging detention of detenu under Sections 81 and 82 of West Pakistan land revenue Act (XVII of 1967) for non-payment of arrears of electricity charges held that arrest and detention of any person under Section 82 of the West Pakistan land revenue Act, 1967 could not take place without having issued to him a prior notice in terms of Section 81 thereof. No such notice was issued to the detenu and even the amount regarding arrears of electricity charges due against him was not determined, Detention of detenu, in the circumstances, was illegal and he was directed to be set at liberty accordingly.

13. From the perusal of the aforementioned case law it is apparent that by now it is settled that unless an amount is determined by a court of competent jurisdiction, the same cannot be recovered as arrears of land revenue. Reliance in this behalf is also placed upon judgments reported as *"Mukhtar Ahmad Bhatti Vs. Deputy Director Food Bahawalpur, etc."* (2007 MLD 324), *"Muhammad Jamil Shahid Vs. Sub-Divisional Officer, etc."* (1997 P.Cr.L.J 863), *"Abdul Karim Vs. Province of Sindh through Secretary, Communication and Works and 03 others"* (2001 MLD 69), *"Messrs Pakistan Pipe and Construction Company Limited v. City Mukhtiarkar, Karachi East and others"* (PLD 1984 Kar. 28), *"Muhammad Akbar Cheema v.*

Province of West Pakistan and another (1984 SCMR 1047), Agricultural Development Bank of Pakistan v. Sanaullah Khan and others (PLD 1988 SC 67), Mumtaz Ahmed Silk Mills Limited v. District Sindh Employees' Social Security Institution and another (1987 CLC 2531), Province of Punjab v. Muhammad Azam, (1989 SCMR 1419) and Messrs Health Construction Company (Pvt.) Ltd. v, Faisalabad Development Authority, Faisalabad (1995 CLC 1877).

14. In the present case proceedings under Land Revenue Act for recovery of dues as arrears have been initiated without getting determination of liability from any forum of competent jurisdiction including court of law. Besides, the procedure envisaged under Section 81 and 82 of Land Revenue Act, 1967 has also not been properly adopted, therefore, this petition is *allowed* with the result that arrest and detention of father of petitioner in terms of Sections 81 and 82 of Land Revenue Act, 1967 without determination of outstanding amount from any court of competent jurisdiction is declared to be illegal and without any legal effect, consequently the same is *set aside*. Father of the petitioner shall be released forthwith.

(Muzamil Akhtar Shabir)
Judge

*Muzamil Mohsin**

Approved for reporting.