

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

WRIT PETITION NO.3630 of 2020

Raja Fida Hussain Hafeez.

VS

**Deputy Director-I, Estate Management Directorate-II, Capital Development
Authority, Islamabad and others.**

Petitioner : Ch. Naeem-ul-Haq, Advocate.

Respondent No. 1 to 5 : Ex-parte.

Respondent No. 6 : Mr. Ajmal Raza Bhatti, Advocate.

Date of hearing : 19.03.2021.

LUBNASALEEM PERVEZ J. The petitioner [Raja Fida Hussain Hafeez] invoked the constitutional jurisdiction of this Court, by way of filing instant writ petition under Article 199 of the Constitution of Pakistan 1973, assailing notice dated 22.10.2020 issued by Respondent No. 2 / Estate Management Office, Capital Development Authority, for payment of outstanding taxes and following prayers has been sought by the petitioner:-

- I. It is therefore, respectfully prayed that an appropriate writ may graciously be issued, directing Respondent No. 2 to withdraw the letters dated 22-10-2020, regarding payment of full amount of taxes which includes CVT and also restraining the Respondent No. 2 to continue the illegal and without lawful proceedings under reference or grant any other relief which is fit to compensate the Petitioner.*
- II. It is further prayed that an appropriate writ may graciously be issued by declaring the whole proceedings for recording of CVT initiated by Respondent No. 2 illegal, without lawful jurisdiction and void ab initio.*
- III. Respondent No. 2 may be directed to refrain from taking any action which is harmful to the smooth functioning of the business operation of the Petitioner.*
- IV. Operation of letter dated 22 Oct 2020 issued by Respondent No. 2 to the Petitioner may be held in abeyance till the decision of this writ petition.*
- V. It may be declared that CVT is not chargeable from the Petitioner under the provision of Finance Act 1989 read with Finance Act 2020.”.*

2. Brief facts of the case are that the petitioner purchased a commercial plot bearing No. 13-A, Sector D-12 Markaz, Islamabad, measuring 711.11 sq. yards from CDA through open auction on 14.11.2019 and as per terms and conditions paid all the installments on time according to schedule and also paid advance income tax under section 236-A of the Income Tax Ordinance, 2001 (*hereinafter referred to as Ordinance, 2001*), to the respondents CDA at the time of auction of the plot. The respondent was thus requested to transfer the plot in the name of the petitioner and in response thereof a notice dated 22.10.2020 was received from the Respondent No. 2 requiring the petitioner to pay the full tax of FBR and submit original receipt to proceed further in the case. Since, there was no detail of any FBR tax mentioned in the notice, the petitioner approached the concerned office where he was told that Capital Value Tax (CVT) amounting to Rs. 6,826,656/- is still outstanding and for transfer of the plot, the petitioner is required to pay the amount of CVT. The petitioner through various letters informed Respondent No. 2 that the CVT is no more applicable since, abolished w.e.f 17.04.2020, but neither any response is given to the letters of the petitioner nor the plot has been transferred in his name, hence, present petition.

3. Learned counsel for the petitioner submitted that the suit plot has been purchased by the petitioner in the open auction after accepting the bid price and thereafter all the dues have been cleared without any delay and dispute, to the respondent CDA along with all leviable federal and other taxes; that no tax of whatsoever nature is outstanding against the petitioner; that the CVT is not payable by petitioner since abolished w.e.f. 17.04.2020, therefore, it cannot be demanded by the Respondent No. 2 for transfer of plot in the name of the petitioner; that the impugned notice is vague ambiguous and unclear; that only income tax under section 263-A of the Ordinance, 2001, is applicable which has already been paid to the CDA along with cost of the plot and has been deposited in the government treasury by Respondent No. 2, vide computerized payment receipts dated 21.11.2019 & 26.11.2019. He submitted that impugned notice dated 22.10.2020 is liable to be declared illegal, unwarranted and void *ab initio*.

4. The notices of hearing of the instant petition have been duly served in the office of CDA (Respondents No. 1 to 4) on 05.12.2020 in response to which learned counsel filed power of attorney on 31.12.2020, however, no one on behalf of respondent CDA tendered appearance on 18.01.2021. Notices were

repeated through special messenger for hearing on 17.02.2021 which according to the report of the Process Server of this Court has been received by duty clerk on 25.01.2021. It has been noted that the copy of order dated 18.01.2021 has also been communicated to the respondents, wherein it has been categorically ordered that “in case of non-attendance on the next date of hearing the case would be proceeded against ex-parte”. Despite receiving of notice of hearing along with order dated 18.01.2021, no one put appearance to represent CDA on the date of final hearing thus, the Respondent Nos. 1 to 5 were proceeded against ex-parte and ex-parte arguments were heard.

5. Learned counsel appearing on behalf of Respondent No. 6 submitted that they are only proforma respondents and the main answering respondent is CDA which has issued the impugned notice, however, he submitted that the petition is not maintainable as the petitioner has no cause of action and *locus standi* to file present petition and prayed for its dismissal with cost.

6. Heard learned counsel for the petitioner as well as Respondent No. 6 and record appended with the petition has been perused.

7. The petitioner has purchased commercial Plot No. 13-A, Sector D-12 Markaz, Islamabad, measuring 711.11 sq. yards, in the open auction from CDA and through the impugned notice petitioner was directed to pay the outstanding FBR tax for transfer of plot in his name without specifying the amount and nature of tax due. The facts relating to the transaction of plot, its cost and sale consideration as well as full payment of the plot with tax under section 236-A of the Ordinance, 2001, seems not in dispute by the respondents. It transpired from record that the impugned notice dated 22.10.2020 was issued when the petitioner requested respondent to transfer the plot in his name as he has fulfilled all the requirements and has paid the cost / sale consideration of the plot as per installment schedule.

8. Record shows that after receipt of the impugned notice, the petitioner, vide letters dated 19.10.2020 & 16.11.2020 approached the respondent /CDA regarding transfer of the plot as no further tax was due on him on account of FBR dues, however, Rs. 6,826,656/- was verbally communicated as outstanding under the head CVT and payable for transfer of the subject plot. In response, the petitioner sought clarifications from the Learned Member (Tax Policy) FBR,

regarding applicability of CVT after it is abolished, vide Finance Act 2020, however, no reply was given to this letter by the FBR. The Petitioner is aggrieved of the treatment meted out by the respondent / CDA and FBR as despite making full payment of the subject plot, the CDA is not ready to transfer his lawfully purchased plot in his name for irrelevant reasons.

9. Capital Value Tax (CVT) was levied, vide Section 7 of the Finance Act, 1989 on certain assets including immovable properties. Liability of payment of CVT was on the purchaser, to be collected by the person/authority responsible for registering or attesting the transfer of the asset at the time of registration of the assets/property. However, vide 18th Constitutional Amendment, the Capital Value Tax became the provincial subject in view of the changes made in the federal legislative list and omission of concurrent list. The levy of CVT through section 7 of Finance Act, 1989 continued its operation in Islamabad as Federal Government is empowered to impose or levy tax or duty in Federal Capital Territory.

10. The payment of CVT to the extent of immovable property has been abolished w.e.f. 17.04.2020, vide section 4 of the Finance Act, 2020 promulgated vide Act XIX of 2020 dated 30.06.2020. Section 4 of Finance Act, is reproduced under:-

*“4. **Amendment of Finance Act, 1989.**—In the Finance Act, 1989 (V of 1989), in section 7, after sub-section (10), the following new sub-section shall be added, namely;*

“(11) Sub-section (1) shall cease to apply from the 17th day of April, 2020.”

11. It has been noted that while declaring the application of Capital Value Tax cease to apply, the legislature has not provided saving clause to protect pending transactions and has discontinued the application of CVT on immovable property, retrospectively, from 17.04.2020. Plain reading of the provision of Section 7 of Finance Act, 1989 clearly shows that CVT is paid by the purchaser at the time of transfer of property and the responsibility of collecting the same has been assigned to the registration authority in terms of Registration Act, 1908 and while repealing the provision no instruction, direction, or order for the transactions awaiting registration after 17.04.2020 has been provided in shape of saving clause which shows intention of legislature that levy of CVT is chargeable in respect of immovable properties transferred upto the specified date and not on

the properties transferred after the cutoff date i.e. 17.04.2020 on which date the levy of CVT ceased to exist. The Hon'ble Sindh High Court in its recent judgment titled as ***Yaqoob Ahmed, etc. versus Federation of Pakistan and others (Constitutional Petition No. 3757/2013, etc.)*** has discussed the repealing of Income support levy, vide Finance Act, 2014 with providing saving clause and it has been held as under:-

14. In view of hereinabove facts and circumstances of the instant case in respect of 2nd category of petitions, wherein, prior to repeal of Income Support Levy Act, 2013, through Finance Act, 2014, neither any notices were issued to the petitioners nor any proceedings of assessment were pending, therefore, provisions of General Clauses Act, 1897, would not be attracted on its repeal through Finance Act, 2014, particularly, when no saving or validation clause to the repealing Income Support Levy Act, 2013, has been provided in the repealing Act. The effect of repeal of Income Support Levy Act, 2013, is that it ceased to have its existence and became obligated for further proceedings under the repeal Act. Accordingly, all the Notices and the proceedings including assessment order(s) passed by the respondents after repeal of Income Support Levy Act, 2013 under clause 10 of the Finance Act, 2014, are hereby declared to be without jurisdiction and lawful authority.

Moreover, the step to withdraw the CVT from immovable properties has been taken by government in order to boost the construction industry in the country.

12. Furthermore perusal of the impugned notice dated 22.10.2020 also revealed that it is a vague notice which does not clearly indicate the nature and amount of tax liability and the law under which the tax is allegedly outstanding or require payment for transfer of the subject plot and that what sort of FBR / government dues which have not been paid or less paid by the petitioner. For reference the contents of impugned notice are reproduced below:-

Reminder-I

**Capital Development Authority
Estate Management Directorate-II**

No. CDA/EM-27(3105)/2011/2556

Islamabad, 22/10/2020

To,

**Raja Fida Hussain Hafeez S/o Raja Muhammad Abbas,
CNIC No. 37405-9897425-5
House No. 36-B, Satellite Town, Rawalpindi**

Subject:-

LESS GOVT APPLICABLE TAX PAID-PLOT NO. 13-A, MARKAZ D-12, ISLAMABAD

Reference your office letter dated: 08-9-2020, on the above subject.

2. It is to inform you that the Account Officer (EM-II) is revealed that you have paid less government applicable tax, you are here by advised to paid the full Tax of FBR and submitted the original receipt to proceed the case further.

(Jan Nisar)
Estate Management Officer

Copy to:-
Accounts Officer (EM-II), CDA.

Estate Management Officer

AD(OWO)
Dy. No 02020-12753
Dated 08-09-2020”.

13. It is now a well settled principle by the Hon’ble Apex Court of the country regarding fiscal laws that the tax shall be imposed on the subject with unambiguous and in clear terms. Reliance in this regard can be placed on the following case law:-

“Messrs Mehran Associates Limited versus The Commissioner of Income Tax, Karachi (1993 SCMR 274):

The cardinal principles of interpretation of a fiscal statute seem to be that all charges upon the subject arc to be imposed by clear and unambiguous words. There is no room for any intendment nor there is any equity or presumption as to a tax. A fiscal provision of a statute is to be construed liberally in favour of the tax-payer and in case of any substantial doubt the same is to be resolved in favour of the citizen.

Sheikh Muhammad Ilyas and others versus Federation of Pakistan through Ministry of Petroleum and Natural Resources and other (PLD 2020 Supreme Court 641):

The court cannot imply anything that is not expressed, it cannot import provisions in the statutes so as to supply an assumed deficiency. A taxing statues, if it professes to impose a charge, its intention must be expressed in clear, unequivocal and unambiguous language.”.

14. The contents of impugned notice reproduced above, when examined carefully showed that it is an unclear, defective and flawed notice which does not fulfill the requirements of communicating the unpaid government tax demand to the petitioner. Bare reading of the above notice further shows that it has been issued by the Officer who is not conversant with the case of the petitioner and uncertain about the taxes and duties levied under the statutory provision in respect of transaction of immovable property purchased by the petitioner and as to what tax is already paid by him and how much amount is payable under any particular law. The taxpayer/person has the right to know the unpaid / arrear tax demand or government dues levied under the law, which should be communicated to him by disclosing all the particulars of the alleged outstanding amounts and the provisions of law in clear and unambiguous terms. Thus, a

vague and blind notice whereby the petitioner is asked to pay full tax of FBR without disclosing the details and exact amount of tax and without reference to the provisions of statute covered under the domain of FBR, is patently arbitrary, *void ab initio* and without jurisdiction. The respondent / CDA has caused undue delay in transferring the lawfully purchased immovable property by the petitioner despite undeniable fact that full payment of due tax under section 236-A of the Ordinance, 2001, has already been collected by CDA at the time of auction of property.

15. In view of the above, the impugned notice dated 22.10.2019 is declared to be illegal, without lawful jurisdiction and is hereby set aside.

16. Petition is **allowed** accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____.

JUDGE