

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1691 of 2020

Ijaz Ahmad
Vs
Director Excise & Taxation Office, Islamabad & another

Date of Hearing: 06.08.2020

Petitioner By: M/s Ahmad Bashir & Aziz-ur-Rehman Farooqi Advocates

Respondent No.1 By: Ch.Zakki Rizwan Advocate.
Muhammad Akram Assistant
Excise & Taxation Office.

Respondent No.2 By: Ch. Abdul Salam Advocate

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“ It is most respectfully prayed that the impugned order dated 17.06.2020 passed by respondent No.1 may kindly be declared null and void and be set aside forthwith.

Any other relief, not specifically prayed for, but deemed appropriate by this Hon’ble Court in view of peculiar facts and circumstances of the case may also be granted.”

2. Briefly stated facts of the case are that in the month of April, 2016 the petitioner purchased a vehicle BMW having Chassis No. WBAFF020X0L294136, Engine No.Z4097335, Model 2010 from respondent No.2 (Dawood Ijaz) on payment of Rs.5,500,000/- in

Faisalabad and original file of the vehicle was not handed over to the petitioner despite repeated demands. The petitioner lodged FIR No. 519/2018 dated 13.06.2018 against respondent No.2 and another under sections 420/468/471 of PPC at Mansoor Abad Police Station, District Faisalabad. In the meantime, respondent No.2 after committing fraud got transferred the vehicle in his name from the Excise and Taxation Office, Islamabad on 10.12.2018. The vehicle is continuously in possession of the petitioner since 2015. After getting knowledge of transferring of vehicle, the petitioner filed an application before the Excise & Taxation Officer, Motor Registering Authority, ICT, Islamabad for cancellation of registration of the vehicle on 03.12.2019. The Excise & Taxation Officer/Motor Registration Authority ICT, Islamabad passed order dated 27.02.2020 upon the application of petitioner and suspended the fraudulent transfer of the vehicle. Respondent No.2 did not join the proceedings despite service of notices and challenged order dated 27.02.2020 before respondent No.1 (Appellate Authority). On 17.06.2020 respondent No.1 set aside the order dated 27.02.2020 and restored ownership of the vehicle in respondent No.2's name. Prior to passing of impugned order, the petitioner also filed civil suit for declaration of title and ownership of the vehicle against respondent No.2 after impleading Excise & Taxation Department as one of the defendants. The learned Civil Court passed an injunctive order by directing the parties to maintain status quo with regard to possession of the disputed vehicle till the next date of hearing and that civil suit is still pending before the learned Civil Court at Faisalabad. Despite pendency of civil suit, the respondent No.1 passed the impugned order in utter disregard of the law and natural justice which is totally against the applicable laws, principles of natural justice and being devoid of any legal basis, thus same is liable to be set aside.

3. Learned counsel for the petitioner has contended that it is mandatory under Section 27 of the Motor Vehicle Ordinance, 1965 to produce the vehicle in question at the time of its registration; that the vehicle was in possession of the petitioner since April 2016; that the vehicle was not produced at the time of registration and that it was wrongly registered in the name of respondent No.2; that admittedly the

vehicle is in possession of the petitioner and it cannot be registered on any other name. learned counsel for the petitioner next contended that due to pendency of civil suit before the learned Civil Court, the respondent No.1 had no authority to register the vehicle; that the transaction was done in presence of two witnesses namely Rana Naeem s/o Munir Ahmad and Mian Hammad s/o Tahir Masood. Lastly contended that the impugned order has been passed in haste without application of judicial mind and is liable to be set aside.

4. Conversely, learned counsel for the respondents has opposed the contention of learned counsel for the petitioner and contended that admittedly Excise & Taxation Officer vide order dated 27.02.2020 without hearing the respondent passed the order which was nullity in the eyes of law, therefore, the Appellate Authority keeping in view all the facts and circumstances accepted the appeal filed by the respondent No.2 and restored the ownership to him; that there is no evidence in black and white with the petitioner about sale and purchase of the vehicle in question; that the vehicle in question was managed and impounded by the police of Police Station Batala Colony, Faisalabad under section 550 Cr.P.C; that one Muhammad Hassan Javed filed an application for Superdari of the same vehicle before the Magistrate, Faisalabad mentioning therein that he was owner of the said vehicle and the original documents had been lost; that the said application was allowed vide order dated 23.06.2018 on submission of his own surety bond in the sum of Rs.3,500,000/-. Learned counsel for respondents further contended that the respondent filed a revision petition before the Court of Addl. Sessions Judge, Faisalabad which was partly allowed by setting aside the order dated 23.06.2018 passed by Magistrate, Faisalabad and remanded the case to the Judicial Magistrate with the direction to decide the case in accordance with law. Learned counsel for respondents further argued that the above said Hassan Javed appeared before the learned Magistrate on 15.01.2020 and recorded his statement stating therein that he has no concern with the said vehicle and he withdrew from the ownership of the same. Thereafter, the respondent filed an application for implementation of the order dated 29.11.2019 passed by learned Addl. Sessions Judge, Faisalabad, the

application was entertained by the Magistrate and SHO was directed for taking into possession the vehicle in question and for submission of report, but without fruitful result. It was further contended that after passing the order for taking into possession, the petitioner approached the Excise & Taxation Officer and fraudulently registered the vehicle on his name without fulfilling the legal formalities. Learned counsel for respondents also submitted that the petitioner has also filed a suit for permanent injunction against the respondent in the Court of learned Senior Civil Judge, Faisalabad and also has filed another suit for declaration and permanent injunction before the Court of learned Senior Civil Judge, Faisalabad against the respondent. Learned counsel for respondents lastly contended that a false FIR No. 519/2018 was also registered on the instance of petitioner against the respondent for commission of forgery at the Police Station, Mansoor Abad, Faisalabad. The police after investigation exonerated the respondents and have submitted final report in the said case. Learned counsel for the respondent urged for dismissal of the petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that the petitioner filed an application to the Excise & Taxation Office, Islamabad contending therein that he is owner of the vehicle in question BMW bearing chassis number WBAFF020X0L294136, Engine No.Z4097335 and is in possession of the same with the averments that he had purchased the vehicle from one Farhan Shaukat and Dawood Ahmad s/o Ijaz Ahmad, the respondent No.2 in consideration of Rs.5,500,000/-. In the said application, the petitioner had further contended that the original file of the vehicle was not handed over by the respondent to him despite repeated requests. It was further contention of the petitioner before the Excise & Taxation Officer that he lodged an FIR bearing No. 519/2018 under Section 420, 468, 471 PPC at the Police Station Mansoor Abad, District Faisalabad against the respondent and had prayed for registering the vehicle in question on his name.

7. Perusal of the order dated 27.02.2020 shows that the said order was passed without hearing of the respondent in hasty manner. It is

crystal clear from the order passed by Excise & Taxation Officer, Islamabad that no sale/purchase documents were placed before it, even then the vehicle was ordered to be registered in the name of petitioner. It was also observed that on one hand the petitioner himself mentions that the original file was not handed over to him despite repeated requests, then the Excise & Taxation Officer passed order for cancellation of registration of the vehicle from the name of the respondent No.2, which raises question that on the basis of what evidence the cancellation order was passed.

8. It is transpired from the record that the Excise & Taxation Officer had fixed the matter for hearing for 27.02.2020, though the notice had served upon the respondent No. 2, but when on one hearing the respondent No.2 could not attend the proceedings, the Excise & Taxation officer without affording any further opportunity of hearing to the respondent passed the order. Feeling aggrieved from the said order, the respondent No.2 filed an appeal before the Director Excise & Taxation Appellate Authority ICT, Islamabad. The Appellate Authority after hearing the parties observed that the vehicle in question was initially registered on 10.12.2018 in the name of respondent No.2 by setting aside the order dated 27.02.2020, the Excise & Taxation Officer, Islamabad restored the registration of the vehicle in question in the name of respondent No.2.

9. That the petitioner claims to be the owner of the vehicle in question. On the other hand, the respondent No.2 is the recorded owner of the said vehicle. Civil suit is also pending in between the parties for declaration of the ownership of the said vehicle. Since disputed questions of facts are involved in the matter and it is settled proposition of law that this Court has no jurisdiction to resolve the disputed question of facts in exercise of its constitutional jurisdiction as the same can only be done on the basis of evidence recorded by the learned Civil Court. Reliance in this regard is placed upon the judgment of the august Supreme Court reported as "*Col. Shah Sadiq Vs. Muhammad Ashiq and others*" [2006 SCMR 276] and "*Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others*" [2011 SCMR 279].

10. In view of the above, this writ petition having no force is hereby dismissed.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 11th day of August, 2020.

Judge

S.Akhtar