

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

CIVIL APPEALS NO.136/2011, 504 TO 506/2013 & 28/2014

(Against the judgments dated 30.11.2010, 29.01.2013 & 12.09.2013 of the Lahore High Court, Rawalpindi Bench, Rawalpindi & Peshawar High Court, Abbottabad Bench, Abbottabad passed in W.Ps.No.1525/2009, 275/2009, 610/2008, 544/2008 & 163-A/2008)

1. Chaklala Cantonment Board, Rawalpindi through its Executive Officer Vs. Ahmad Kamal Nasir & others In C.A.136/2011
2. Cantonment Board, Rawalpindi through its Executive Officer Vs. Zulfiqar Ali Bhatti & another In C.A.504/2013
3. Cantonment Board, Wah through its Executive Officer Vs. Malik Saleem Khan & another In C.A.505/2013
4. Chaklala Cantonment Board Rawalpindi through its Executive Officer Vs. Babar Mehmood & another In C.A.506/2013
5. Cantonment Executive Officer Cantonment Board Abbottabad Vs. Khanzada Gul Khan & others In C.A.28/2014

For the Appellant(s):

Sh. Waqar-ul-Haq, ASC  
Mr. Mehmood A. Sheikh, AOR  
Syed Rifaqat Hussain Shah, AOR  
(In C.As.136/2011 & 504 to 506/2013)

Agha Muhammad Ali, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In C.A.28/2014)

For the Respondent(s):

Raja Abdul Ghafoor, AOR  
(In C.A.136/2011)

Nemo  
(In C.As.504/2013 & 28/2014)

Ex-parte  
(In C.As.505 & 506/2013)

Date of Hearing:

12.03.2020

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**ORDER**

**UMAR ATA BANDIAL, J.-** These appeals are filed by four Cantonment Boards functioning in two Provinces of the country. The essential facts of the appellants' case are common. Transfer by sale of immovable property located, *inter alia*, in the territory of the appellant-Boards must be done by a registered sale deed. Such deed is subject to ad valorem charge of stamp duty, registration fee charged by the Provincial Government, capital value tax levied by the Federal Government and transfer of immovable property tax ("TIP Tax") imposed by the appellant-Cantonment Boards.

2. To understand the controversy it is beneficial to read the provisions of Section 27-A of the Stamp Act, 1899, incorporated by provincial amendment, which lays down as follows:

**"27-A Valuation of immovable property.—**

(1) Where any instrument chargeable with *ad valorem* duty under Articles 23, 31 or 33 of Schedule-I relates to an immovable property, the value of the immovable property shall be calculated according to the valuation table notified by the district collector in respect of immovable property situated in the locality.

(2) Where an instrument, mentioned in sub-section (1), relates to immovable property consisting of land and structure, it shall state the value of the land and structure separately and the value of the structure stated in the instrument shall, subject to the provisions of this Act, be accepted.

(3) Where the value of immovable property stated in an instrument to which sub-section (1) applies is more than the value fixed according to the valuation table, the value declared in the instrument shall be accepted as value for the purposes of stamp duty.

(4) Where the value given in the valuation table notified under sub-section (1), when applied to any immovable property, appears to be excessive, the deputy commissioner or commissioner (revenue) or any other person notified by the Government for this purpose may, on application made to him by the aggrieved person, determine its correct value and for that purpose the provisions of sections 31 and 32 shall apply as nearly as possible."

3. The foregoing statutory provision authorizes that for the purpose of collection of *ad valorem* stamp duty chargeable, *inter alia*, on a sale deed of immovable property, the value of the immovable property under sale is to be calculated according to the valuation table notified by the District Collector in respect of such property situated in its locality. Consequently irrespective of the value fixed by the parties in the sale deed, the operative value for the purposes of charging stamp duty, registration fee and taxes thereon is determined with reference to the notified value or the declared value, which ever is higher, of such immovable property. In the present cases, the relevant properties are situate within the limits of the Appellant-Cantonment Boards. It is the case of the appellant-Boards that for the purpose of assessing TIP tax, they have authority to determine the value of the immovable property under sale according to their own procedure notified pursuant to the power vested in them vide S.R.O.No.186(1)73 dated 26.12.1973. This notification was amended from time to time. Ultimately SRO 711(I)/90 dated 26.06.1996 in its paragraph 2 provides that:

"2. Where consideration money is not paid by the transferee or its payment is concealed or it is deliberately shown less in the sale deed than the actual price of the property, then, in such a case, the market value of the property as assessed by the Cantonment Board shall be taken to be the



consideration money for the purpose of assessment of the tax under this Notification."

4. When the learned counsel for the appellants was asked whether the Cantonment Boards have any statutory authorization to fix the value of immovable property for the purposes of TIP Tax, he referred us to the provisions of Section 60 of the Cantonments Act, 1924. That Section lays down as follows:

**"60. General power of taxation:** (1) The Board may, with the previous sanction of the Federal Government, impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the Province wherein such cantonment is situated;

(2) Any tax imposed under this section shall take effect from the date of its notification in the official Gazette."

5. We do not find any authorization in the afore-noted statutory provision allowing Cantonment Boards to unilaterally determine the value of the immovable property that is transacted by a sale deed. An authorization in terms similar to Section 27-A of the Stamp Act, 1899 would be necessary because the desired determination involves placing a financial burden on an assessee and affects the quantum of the tax chargeable from him. This is also the mandate of Article 77 of the Constitution of the Islamic Republic of Pakistan, 1973 which lays down the requirement that a tax can be levied only under authorization given by law. Secondly, upon Court's query, learned counsel for the appellants were not able to show the legal mechanism providing the procedure, basis and criteria on which the Cantonment Boards purportedly fix the market value of the property under sale for the purpose of assessing TIP Tax. There is also no dispensation for inviting objections from the public

or entertaining their representations. The notifications dated 26.12.1973 and 26.06.1990 also fail to address the foregoing factors.

6. Accordingly, the whole process of valuation is dependent upon the whim or surmise of the concerned authority. More importantly, the appellants purported to charge TIP Tax on the basis of a value fixed higher than the value of the immovable property under sale that is fixed by the respective District Collectors for the collection of provincial stamp duty, registration fee and Federal Capital Value Tax. Apart from the legal defect highlighted above, it is also anomalous from a governance point of view that without express sanction of the law, the appellant-Cantonment Boards that are statutory bodies, are assuming a sale value of immovable property which is divergent from its common/single sale value accepted by both the Provincial and the Federal authorities in respect of the same transaction. Such lack of coordination on a simple matter between the Cantonment Boards and the Provincial and Federal authorities creates public inconvenience apart from demonstrating executive disorder. Lack of consistency and reasonableness in public action is unsatisfactory and effort must be made to resolve the existing conflict at the earliest. No case for interference has been made out with the impugned judgments. These appeals are, therefore, dismissed.

Islamabad, the  
12<sup>th</sup> of March, 2020  
Approved for reporting  
Waqas Naeer/\*