Form No: HCJD/C

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: F.A.O. No.142 of 2021

Administrator Islamabad Club
Vs.
Capital Development Authority etc.

Appellant by:	**Mr. Wasim Abid, Advocate.**
Respondents by:	**M/s. Syed Muhammad Ali Bukhari & Barrister Adeel Aftab, Advocates.**
Date of Decision:	**23.02.2022**

AAMER FAROOQ, J.- Administrator Islamabad Club (the appellant) challenged the demand notice issued by respondents No.1 and 3 demanding arrears of property tax by way of a civil suit for declaration as well as temporary injunction. The referred suit was partnered with an application for interim relief, seeking restraining the respondents from effecting recovery or taking coercive measures for recovery of the same. The said application was dismissed by the learned Trial Court vide order dated 14.10.2021 which order is subject matter of the instant appeal.

2. Learned counsel for the appellant, *inter alia,* contended that the act of recovering the property tax by Capital Development Authority is without jurisdiction inasmuch as under the Islamabad Capital Territory Local Government Act,

2015 (the Act) Municipal Corporation, Islamabad Capital Territory has the sole jurisdiction to recover the property tax. It was contended that in this behalf this Court has already handed down the judgment reported as ***Metropolitan Corporation Islamabad through Mayor v. Chairman C.D.A. (Capital Development Authority), Islamabad and another*** **(PLD 2021 Islamabad 144)**. It was contended that even otherwise, the appellant is not liable to pay the property tax as per the laws enforced. He drew attention of the Court towards Capital Development Authority Regulations/Laws to submit that the property is owned by the Capital Development Authority and is on lease granted to the appellant. Reliance was placed on S.R.O. 24(I)/2001 dated 11th January 2001. Mr. Wasim Abid, Advocate further argued that the reasons which prevailed with the learned Trial Court are erroneous inasmuch as where the act is without jurisdiction the questions of irreparable loss becomes insignificant as the said element required for granting the interim injunction merges into *prima facie* case. Reliance was placed on the case titled ***Jamil Ahmad v Provincial Government of West Pakistan and 4 others*** **(PLJ 1978 Lahore 513)** and ***Karachi Electric Supply Corporation v. Federal Board of Revenue etc.*** **(2013 PTD 851).**

3. Responding to the arguments of learned counsel for the appellant, Syed Muhammad Ali Bukhari, Advocate

representing the Capital Development Authority, *inter alia*, contended that the Islamabad Club is not exempted from payment of property tax in light of the decision of the Hon'ble Supreme Court of Pakistan in **Civil Appeal No.318 of 2009 titled *"Pakistan Television Corp. Ltd. v. Capital Development Authority etc.*** and **Civil Appeal No.309 of 2012 titled *"C.D.A. through its Chairman and another v. AIOU through its Registrar and another"***. It was also submitted that the question of irreparable loss is insignificant in monetary matters and the judgment impugned does not call for any interference.

4. Arguments addressed by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The crux of controversy has been mentioned in paragraph 1 of the instant judgment, hence repetition is not required. The primary reason which prevailed with the learned Trial Court in dismissal of the application for interim relief is that since demand notice has been challenged which is a monetary matter inasmuch as it requires the appellant to pay sum of Rs.51,173,898/- hence there is no question of irreparable loss. Stance of learned counsel for the appellant is two fold; firstly, that the Capital Development Authority has no jurisdiction to levy and collect the tax and without prejudice to the first argument secondly, the appellant is exempted therefrom.

After the enactment of the Act the levy and collection of property tax is the domain of Municipal Corporation, Islamabad Capital Territory. The provisions of the said act were exhaustively considered and deliberated by this Court in judgment reported as ***Metropolitan Corporation Islamabad through Mayor v. Chairman C.D.A. (Capital Development Authority), Islamabad and another*** **(PLD 2021 Islamabad 144)** wherein it was specifically held that the Capital Development Authority has no jurisdiction or authority to impose property tax or recover the same in any manner as it was the sole prerogative of Municipal Corporation, Islamabad Capital Territory. Though the said judgment is under challenge but still holds the field and I find no reason not to agree with the same especially when learned counsel for the respondents did not take much exception to the referred aspect of the argument. On behalf of the respondents, though resistance to the appeal was made to the extent of the Act stands repealed and the Ordinance has been promulgated but nothing was brought on record to show that by virtue of the said repeal Capital Development Authority has acquired the powers and jurisdiction to levy and collect the property tax. Insofar as the exemption from payment of property tax to the appellant is concerned, the core document on which reliance was placed by the learned counsel for the parties and interpretation rendered thereupon by the august Apex Court is

S.R.O. 24(I)/2001 dated 11th January 2001 titled "REVISION OF RATES OF PROPERTY TAX IN ISLAMABAD". In clause 4 of the said notification certain classes of properties have been exempted from payment of tax to the extent indicated against name/class. In this behalf at serial No.7 it is provided that building and land vesting in the Capital Development Authority are 100% exempted; however, the said exemption does not include land leased out to private individuals and corporation, companies and firms or to any group of individuals. On behalf of the appellant it was submitted that the appellant does not fall in any of the categories to which the exemption does not apply inasmuch as the appellant is creation of the Islamabad Club (Administration) Ordinance, 1978 (the Ordinance). It was contended that the company which originally ran the affairs of the Club stood dissolved and the administration vests with Administrator. While defending the said argument learned counsel for the respondents contended that the said argument did not find favour with the august Apex Court in the case of ***"Pakistan Television Corp. Ltd. v. Capital Development Authority etc.*** **(Civil Appeal No.318 of 2009)** and ***"C.D.A. through its Chairman and another v. AIOU through its Registrar and another"*** (**Civil Appeal No.309 of 2012).** The reading of the aforesaid judgments indicates that in the case of ***"Pakistan Television Corp. Ltd. v. Capital Development***

Authority etc. (**Civil Appeal No.318 of 2009)** the exemption was denied to Pakistan Television Corporation on the basis that it was a corporation and in the case of ***"C.D.A. through its Chairman and another v. AIOU through its Registrar and another"*** (**Civil Appeal No.309 of 2012)** due to the fact that it is not a charitable institution solely. The referred judgments do not help the cause of Capital Development Authority. As noted in the preceding paragraphs the learned Trial Court basically turned down the request for interim relief due to question in hand being of monetary consequences and absence of irreparable loss. The two judgments, cited on behalf of the appellant to support the contention that where the act is without jurisdiction irreparable loss is not material and merges into *prima facie* case, are ***Jamil Ahmad v Provincial Government of West Pakistan and 4 others*** **(PLJ 1978 Lahore 513)** and ***Karachi Electric Supply Corporation v. Federal Board of Revenue etc.*** **(2013 PTD 851).** In the former judgment the Hon'ble Lahore High Court held that balance of convenience is merged in condition of irreparable loss and order of Government proceeded against is *prima facie* ultra vires; likewise, in the latter judgment the Hon'ble Sindh High Court observed that in case of monetary issue the interim relief was allowed on the basis that balance of convenience was in favour of the plaintiff and also might result in irreparable loss and injury. Though the said

judgments as such are not binding on this Court but carry persuasion as the principle laid down in same are plausible. Reliance is also placed on ***Molasses Export Co. Ltd. v. Consolidated Sugar Mills Ltd.*** **(1990 CLC 609),** ***Shifa Laboratories Pvt. Ltd. through Chief Executive v. Lahore Development Authority, through Director General LDA Plaza and 3 others*** **(2004 MLD 1377) and** ***Retex Global Pvt. Ltd. through Chief Executive v. Export Processing Zones Authority through Chairman and another*** **(2009 CLC 676).**

6. The question of jurisdiction or the power of Capital Development Authority to collect property tax still remains to be resolved but *prima facie* it seems that appellant's version of interpretation of law is correct and the impugned demand notice is without lawful authority. In this view of the matter, the afore-noted precedents, cited at bar by the appellant, are noteworthy and balance of convenience and irreparable loss will merge in *prima facie* case tilting the balance in favour of the plaintiff entitling it to grant of interim relief.

7. For the above reasons, the instant appeal is allowed and the impugned order dated 14.10.2021 is set aside; consequently, the application filed by the appellant stands allowed and the respondents are restrained from taking any coercive measures for the recovery of property tax.

(AAMER FAROOQ)
JUDGE

M.Naveed

Approved for reporting