

Stereo. HCJDA 38  
JUDGMENT SHEET  
**LAHORE HIGH COURT,  
BAHAWALPUR BENCH, BAHAWALPUR**  
JUDICIAL DEPARTMENT

**Writ Petition No. 7027/2022**

**Ghazanfar Amin**

**Vs.**

**Province of Punjab and others**

**JUDGMENT**

<b>Date of hearing:</b>	<b>26.10.2023</b>
<b>For the Petitioner:</b>	Mr. A.R. Aurangzeb, Advocate.
<b>For Respondents No.1 to 3:</b>	Hafiza Mehnaz Nadeem Abbasi, Assistant Advocate General.
<b>For Respondents No.4 &amp; 5:</b>	Ch. Muhammad Azhar, Advocate.
<b>For Respondent No.6:</b>	Mr. Mehmood Ahmad Bhatti, Advocate.
<b>Research assistance:</b>	Mr. Sher Hassan Pervez, Research Officer, LHCRC.

**Tariq Saleem Sheikh, J.** – Respondent No.4 (Muhammad Rizwan Sohail) owned a piece of land measuring 46 kanals in Khewat No.27/25, Khatooni No.79 (per Jamabandi for 2010-2011), in Chak No.13/G, Tehsil Chishtian, District Bahawalnagar. He appointed Respondent No.5 (Nauraiz Asif) as his General Attorney in respect of the said land through General Power of Attorney dated 22.6.2016, which was registered in the office of the Sub-Registrar, Chishtian, as Document No.70, Bahi No.4, Volume No.110 on 28.6.2016.

2. Asif Rasheed son of Rasheed Ahmad also owned two kanals of land in Chak No. 13/G. On 20.2.2020, he and Respondent No.4 collectively exchanged their lands, totalling 48 kanals, with the Petitioner's agricultural land of equal measurement and value in Mauza Mehmoodpur, District Bahawalnagar. The parties formalized this transaction through an Exchange Deed, registered in the Sub-Registrar's office, Bahawalnagar, as Document No. 554, Bahi No.1, Volume No. 521, dated 20.2.2020. Respondent No.4

personally executed this Exchange Deed rather than through his General Attorney (Respondent No.5). Consequent upon this exchange, the Petitioner became the owner of 48 kanals of land in Chak No. 13/G. The land was duly mutated in his favour in the revenue record.

3. The Petitioner and his associate, Hassan Shahzad, applied to the Municipal Committee for the approval of a housing scheme named *Mubarak Town* on the aforementioned land in Chak No. 13/G, which was granted vide Letter No. MC/CTN/MO(P)/2004 dated 28.5.2021, *inter alia*, subject to the condition that they would transfer 16 kanals 18 marlas reserved for roads in its favour free of cost. On 26.10.2021, the Petitioner executed Waqf Deed No.4461 in the Municipal Committee's name to fulfil that condition.

4. After the completion of development work, when the Petitioner decided to sell the plots in Mubarak Town, he required *Fard Malkiat* to execute sale deeds to transfer the plots to the purchasers. However, when he applied to the Halqa Patwari for it, he refused to issue the same on the grounds that the Audit Officer had pointed out that Respondent No.4 had not paid the Capital Value Tax (CVT) of Rs. 25,024,000/-, payable on General Power of Attorney No.70 dated 28.6.2016 executed by him in favour of Respondent No.5. The Patwari also told him that the Sub-Registrar, Chishtian, had issued notice dated 13.1.2021 (the "Notice") to Respondent No.4 for its recovery but he did not respond.

5. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has prayed that the District Collector, Bahawalnagar, be directed to issue him *Fard Malkiat* forthwith, questioning the vires of the Notice.

#### ***The submissions***

6. Mr. A.R. Aurangzeb, Advocate representing the Petitioner, contends that the Notice is time-barred. According to him, Respondents No.1 to 3 could not recover the purported unpaid CVT as more than seven years have elapsed. He further argues that the Petitioner acquired ownership of the subject land through the Exchange Deed dated 20.2.2020, without the involvement of General Power of Attorney No.70. Since that was an independent transaction, the authorities have acted without lawful authority by placing constraints on the issuance of *Fard Malkiyat* to the Petitioner.

7. The Assistant Advocate General has objected to the maintainability of this petition, arguing that the Petitioner is not an “aggrieved party” within the meaning of Article 199 of the Constitution. On merits, she contends that the Notice is legal and within time. According to her, the Supreme Court of Pakistan has already upheld the levy of CVT on power of attorney executed in favour of strangers by judgment dated 5.10.2017 passed in Civil Petition No.2926 of 2016 and other connected matters. The Law Officer has also defended the restriction on the issuance of *Fard Malkiyat*, arguing that the authorities are competent to take such action under section 80 of the Land Revenue Act, 1967.

8. Respondents No.4 and 5 have supported this petition for obvious reasons.

### ***Opinion***

9. I first take up the Assistant Advocate General’s objection relating to the maintainability of this petition.

10. The High Court’s power of judicial review under Article 199 of the Constitution is an original jurisdiction conferred by the Constitution. However this power is *inter alia* subject to the condition that no other adequate remedy is provided by law. Further, in respect of the matters mentioned in clauses (i) and (ii) of Article 199(1)(a), the High Court must be moved by an aggrieved party while any person may approach it for an order under clauses (i) and (ii) of Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. It is important to note that Article 199 has used two expressions: “aggrieved party” and “aggrieved person”. The rule of interpretation is that when the legislature uses two different terms, the intention is to convey distinct meanings.

11. James L.J. defined the term “person aggrieved” in *ex parte Sidebotham*, (1880) 14 Ch.D. 458, which is widely accepted. He wrote: “A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.” Lord Esher M.R. quoted this definition with approval in *ex parte Official Receiver* (1887) 19 QB 174,

and went on to expand upon it by observing that “it cannot mean wrongfully refusing him something unless it be a refusal of something for which he had a right to ask so that the definition of James L.J. would mean ‘a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand.’ ”

12. The interpretation of the term “aggrieved person” as mentioned in Article 199(1) of the Constitution by the Supreme Court of Pakistan aligns closely with the aforementioned explanation. In **Mian Fazal Din v. Lahore Improvement Trust and another** (PLD 1969 SC 223), the Supreme Court held that a person does not need to possess a right in the strict juristic sense to have *locus standi* for filing a writ petition. It is sufficient if he demonstrates a personal interest in the performance of a legal duty. If this duty is not fulfilled or carried out contrary to the law, it would lead to the loss of some personal benefit, advantage, or the curtailment of a privilege, liberty, or franchise. In **Hafiz Hamdullah v. Saifullah Khan and others** (PLD 2007 SC 52), the Supreme Court ruled that an “aggrieved person” refers to an individual who has suffered a legal grievance, against whom a decision has been wrongfully made which either deprived him of something he was legally entitled to or wrongfully denied him a rightful claim. Additionally, it emphasized that for a person to invoke constitutional jurisdiction under Article 199, he must establish the violation of his legal or fundamental rights guaranteed by the Constitution, leading to a legal loss.

13. In **Associated Cement Companies Ltd. v. Pakistan through the Commissioner of Income Tax, Lahore Range and others** (PLD 1978 SC 151), the Supreme Court considered the meaning of the expression “aggrieved party” as used in Article 98(2) of the Constitution of 1962. It ruled that to qualify as an “aggrieved party,” an individual must show that one of his proprietary or personal rights, recognized by the laws of the country, has been infringed or denied. The concepts of “right” and “remedy” are inherently interrelated because a right, whether tangible or intangible (such as the right to enjoy property or maintain a secure reputation), implies something valuable for an individual. Every civilized legal system provides a corresponding remedy to protect or realize such rights. Consequently, if a person cannot establish that his legally recognized

rights have been violated or denied, he would lack a cause of action to seek relief because he cannot legitimately claim to be “aggrieved”.

14. Justice Fazal Karim discusses the term “aggrieved party” in the context of Article 199 of the Constitution of 1973 as follows:<sup>1</sup>

“The word ‘party’ seems to assume that the action in question has arisen out of some previous proceeding, administrative or judicial, to which the judicial review petitioner was or might have been a party. The word ‘party’ can therefore assume importance in cases in which there had been proceedings under the relevant statute to which the applicant under Article 199 was not a party, as it did in *Haji Adam v. Settlement and Rehabilitation Commissioner* (PLD 1968 Kar. 245). But the word ‘party’ as used in Article 199, clause (1)(b) means one who is competent to maintain an action (*Anjuman Araian v. Abdur Rashid* (PLD 1973 Lah. 500, 511); and a person not a party to the proceeding under the relevant statute can seek relief under Article 199, if he shows that the decision is directed against him or his property in the sense that the enforcement of the decision would involve special, immediate and in its effect a direct injury to his interest. [*Tariq Transport Company case* (PLD 1958 SC (Pak) 437].”

15. The above discussion shows that the expressions “aggrieved person” and “aggrieved party” have specific legal meanings in Article 199 of the Constitution. The question of *locus standi* should not be considered in isolation but within the broader legal and factual context, particularly in situations where it is necessary to examine the legal powers and duties of those against whom relief is sought.<sup>2</sup>

16. In the present case, although the Sub-Registrar did not directly issue the Notice to the Petitioner, he instructed the Patwari concerned not to issue the *Fard Malkiat* to the Petitioner because of the tax demand mentioned in the Notice. This directive hinders the Petitioner from enjoying his property that is duly registered in his name. Considering the principles elucidated above, the Petitioner unmistakably qualifies as an “aggrieved party” as envisaged by Article 199 of the Constitution. Consequently, I hold that this petition is maintainable.

17. Let’s now turn to the merits of the case. Section 6 of the Punjab Finance Act, 2010 imposed CVT on immovable properties within the province. This provision underwent a substitution through the Punjab Finance Act, 2012 (the “2012 Act”), which came into force on 1.7.2012. Subsequently, CVT was abolished by section 3 of the Punjab Finance Act,

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<sup>1</sup> Fazal Karim, *Judicial Review of Public Actions*, Second Edition, Vol. 3, p. 1474

<sup>2</sup> *ibid.*, pp. 1479-80

2017 with effect from 1.7.2017. For ease of reference, the relevant portion of section 6, as amended by the 2012 Act, is provided in the Appendix accompanying this judgment. It is noteworthy that the Petitioner has not challenged the vires of section 6 of the 2012 Act in these proceedings.

18. Section 6 of the 2012 Act prescribes a comprehensive procedure for levying and collecting CVT on immovable properties in the Punjab. Sub-section (3) thereof is the charging provision. It stipulates that CVT shall be payable by a person who acquires an immovable property by purchase, gift, exchange or power of attorney, surrender or relinquishment of right by the owner or a right to use the property for twenty years or more by way of lease or otherwise at the rates specified in sub-section (5). Per sub-section (6), the tax shall be collected at the time of registering or attesting the transfer of the immovable property for which the tax is payable. Sub-section (4) exempts certain transactions. In *Sub-Registrar (Rural), Tehsil and District Rawalpindi, etc. v. Muhammad Ilyas* (C.P. No.2926 of 2016) and connected matters decided on 5.10.2017, the Supreme Court of Pakistan held:

“From the above amendment [made through the 2012 Act], it is clear that the category falling in sub-section 4(c) of section 6 (*ibid*) was statutorily exempted from the payment of CVT on the registration of Power of Attorney(s); however, the Power of Attorney(s) given to strangers still remain the subject of CVT.”

19. It is a settled principle of law that statutes imposing financial obligations should be strictly construed. Taxes must be imposed on the subject through clear and unambiguous language. In *Bisvil Spinners Ltd. v. Superintendent, Central Excise & Land Customs Circle, Sheikhpura and another* (PLD 1988 SC 370), the Supreme Court cited with approval the following excerpt from *Maxwell on Interpretation of Statutes*, 12th Edn. p. 256:

“Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because, in some degree, they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words. ‘In a taxing Act,’ said Rowlatt B J., ‘one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in; nothing is to be implied. One can only look fairly at the language used.’ But this strictness of interpretation may not always enure to the subject’s

benefit, for ‘if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be’.”

20. In *Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt) Ltd.* (2009 PTD 1392), the Supreme Court pointed out a crucial distinction between provisions that impose taxes and those that delineate the mechanisms for tax assessment and collection (the machinery provisions). Drawing on the Privy Council’s decision in *Mahaliram Ramjidas* and two other rulings,<sup>3</sup> the Supreme Court highlighted that provisions related to tax imposition should be strictly construed in favour of the taxpayer. In cases of substantial doubt, the interpretation should lean in favour of the taxpayer. However, the machinery sections should receive a more liberal interpretation. When the tax incidence is clear, the machinery sections should be construed to facilitate the proper realization of taxes. The Supreme Court emphasized that interpreting these provisions in a manner that obstructs legislative intent or impedes the collection of due taxes should be avoided.

21. As adumbrated, section 6(3) of the 2012 Act imposes CVT on a person when he *acquires* an immovable property. This provision enumerates various modes in which such acquisition can occur, including power of attorney. The question arises whether CVT is chargeable on every power of attorney.

22. *Noscitur a sociis* is a Latin legal principle that means “it is known by its associates” or “a word is known by the company it keeps.” This principle is employed in statutory interpretation to ascertain the meaning of a specific word or phrase in a statute or legal provision. It postulates that the meaning of a word in legislation should be derived from the context of the surrounding words. When a term is ambiguous or unclear, it can be better understood by considering its associated words in the same statutory context. The concept is that words or phrases used together in a statute are related and should be interpreted in a manner that harmonizes with the overall purpose and context of the law. *N.S. Bindra’s Interpretation of Statutes* states:

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<sup>3</sup> *Khan Bahadur Amiruddin v. West Punjab Province* (PLD 1956 FC 220) and *Muhammad Amir Khan v. Controller of Estate Duty* (PLD 1961 SC 119).

“The principle of *noscitur a sociis* applies to sections and sentences in a manner similar to the application of the doctrine of *in pari materia* to statutes covering the same subject matter. Likewise, the rule of *noscitur a sociis* and the rule of *ejusdem generis* operate identically in most situations. Due to this conflated application, some judges have not distinguished between the *ejusdem generis* doctrine and *noscitur a sociis*, applying them interchangeably and referring to them in the same vein. The distinction between the doctrines of construction is that *ejusdem generis* is applied where a general term follows the expression of narrower connotation preceding it. On the other hand, where two or more words which are susceptible of analogous meaning are compiled together i.e. *noscitur a sociis*, they are understood to be used in their cognate sense. At one time, no doubt, the rule of *ejusdem generis* was somewhat liberally applied, so as to construe general words as being cut down by the use of antecedent specific words. However, the distinction between both doctrines is well delineated and described in contemporary judgments.”<sup>4</sup>

23. In *State of Bombay and others v. The Hospital Mazdoor Sabha and others* (AIR1960 SC 610), Gajendragadkar J. stated:

“Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*. In fact, the latter maxim ‘is only an illustration or specific application of the broader maxim *noscitur a sociis*’.”

24. In section 6(3) of the 2012 Act, the legislature talks about the acquisition of immovable property and has used the term “power of attorney” alongside other methods such as purchase, gift, exchange, surrender, relinquishment, and lease. This suggests a shared context among these terms. By applying the *noscitur a sociis* principle, it can be inferred that the legislature intended to impose CVT specifically on a general power of attorney when an individual acquires immovable property through it and not otherwise. Traditionally, the transfer of ownership for immovable property involves a registered instrument, as mandated by the Registration Act of 1908. This instrument needs registration with the Registrar of Documents, requiring payment of stamp duty under the Stamp Act and a registration fee. While this process is generally straightforward, an alternative method has emerged in recent years, moving away from the Registrar of Documents. This alternative facilitates private property transfers using documents like transfer letters, agreements to sell, and power of attorneys. In this alternative approach, the buyer obtains possession of the property and uses it like an owner. This deviation aims to lower transactional costs and taxes, promoting a higher turnover of properties for investment.

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<sup>4</sup> N.S. Bindra’s Interpretation of Statutes, 11th Edn., p.316



Despite lacking formal legal recognition, this practice has been adopted by entities such as cooperative housing societies, statutory authorities, limited liability companies, and even private individuals, capitalizing on significant financial benefits and convenience.<sup>5</sup>

25. In view of the above, in my opinion, CVT may not always be chargeable under section 6(3) of the 2012 Act on every power of attorney. Consequently, an individual is entitled to show that he is not liable to pay the tax in a particular case.

26. In the present case, the Petitioner acquired the property from Respondent No.4 through Exchange Deed No.554 dated 20.2.2020, a transaction independent of and unrelated to General Power of Attorney No.70. On 13.1.2021, the Sub-Registrar, Chishtian, issued the Notice to Respondent No.4 requiring him to “immediately” pay Rs. 25,024,000/- due on account of non-payment of CVT as determined by an audit officer in respect of General Power of Attorney No.70 dated 28.6.2016. This Court held in *Abdul Hameed v. Province of Punjab and others* (2022 CLC 1083) that the liability for the CVT deficiency must be calculated after a hearing and determination in accordance with sections 6(3) and 6(5) of the 2012 Act, whichever is applicable. Furthermore, there should be a valid assessment order issued by the Collector under section 6(15). Notably, the Petitioner and Respondent No. 5, both necessary parties to the proceedings, were not engaged, and no opportunity for a hearing was extended to them. The absence of the Collector’s assessment order further compounds the issue. These shortcomings cast serious doubt on the legality of the recovery process initiated by Respondents No. 1 to 3.

27. Section 6(17) of the 2012 Act mandates that if CVT is not collected from the person liable to pay it, the outstanding amount may be recovered from him as arrears of land revenue following the procedure outlined in the Punjab Land Revenue Act, 1967. The Assistant Advocate General has not cited any legal provision that empowers the Sub-Registrar to prohibit the issuance of *Fard Malkiat* to the property owner without an injunctive or attachment order by a court or competent authority.

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<sup>5</sup> See: *Pak Gulf Construction Company (Pvt.) Ltd., Islamabad v. Federation of Pakistan and others* (2020 SCMR 146).

28. Mr. Aurangzeb maintains that section 6(16) of the 2012 Act stipulates a time limit of five years for the District Collector to conduct a CVT audit and assess tax based on the findings. He argues that the Notice dated 13.1.2021 has exceeded this timeframe and should be struck down. I have observed that the Notice was directed to Respondent No.4, so it would be more appropriate to address the issue of time limitation in any future proceedings initiated by Respondent No.4 to challenge it.

29. The impugned action of the Sub-Registrar prohibiting the issuance of *Fard Malkiat* to the Petitioner is not sustainable. Hence, this petition is **accepted**, and that restriction is declared to be without lawful authority. However, subject to law, this judgment shall not preclude Respondents No.1 to 3 from pursuing the recovery of the allegedly unpaid CVT from those responsible for paying it.

**(Tariq Saleem Sheikh)**  
**Judge**

Announced in open court on \_\_\_\_\_

Judge

*Naeem*

Approved for reporting

Judge

**Appendix**

The relevant part of section 6, after substitution by the Punjab Finance Act of 2012, reads as follows:

**6. Capital value tax on immovable property.**—(1) This section shall have effect notwithstanding anything contained in any other law.

(3) A tax on the capital value of an immovable property shall be payable by a person who acquires an immovable property by purchase, gift, exchange or power of attorney, surrender or relinquishment of right by the owner or a right to use thereof for twenty years or more or renewal of lease so that the total period of lease in favour of the same lessee is twenty years or more at the rates specified in sub-section (5).

(4) The tax shall not be payable if—

- (a) immovable property is acquired through inheritance; or
- (b) immovable property is acquired through gift between spouses, father, mother, son, daughter, grandparents and grandchildren, siblings, or from one wife or widow to another wife or widow of the same husband; or
- (c) power of attorney is executed between spouses or from one wife or widow to another wife or widow of the same husband, or father, mother, son, daughter, grandparents, grandchildren and siblings.

(6) The tax shall be collected at the time of registering or attesting the transfer by the person responsible for registering or attesting the transfer of the immovable property for which the tax is payable.

(9) The Collector of the district or any authority to whom he is subordinate, may himself or through a person or agent appointed by him for the purpose conduct or cause to be conducted the audit of the capital value tax including examination of accounts and records of that registration authority or any other person mentioned in sub-section (6) and may make an assessment of the tax on the basis of such audit.

(14) Where a registration authority or any other person mentioned in sub-section (6) fails to—

- (i) furnish prescribed monthly statement; or
- (ii) provide information or produce documents or record in terms of sub-section (10) within the stipulated time, Collector of the district may make an assessment of the tax on the basis of the information or material available to him.

(15) As soon as may be after making an assessment under sub-section (9) or sub-section (14), Collector of district shall issue the assessment order to the registration authority or any other person, stating—

- (i) the amount of tax due;
- (ii) the time, place and manner of filing an appeal against the assessment order.

(16) The powers under sub-section (9) or sub-section (14) shall not be exercised after the expiry of five years from the conclusion of the financial year to which the assessment relates.

(17) Where the tax is not collected from the person liable to pay it, the tax may be collected by an officer designated by the Board of Revenue in this behalf from the said person and the provisions of the Punjab Land

Revenue Act 1967 (*XVII of 1967*) shall, so far as may be, apply to the collection of the tax as they apply to the recovery of arrears of land revenue.

(18) Where any person fails to collect the tax or having collected fails to deposit the tax into the Government Treasury, he shall be personally liable to pay the tax along with default surcharge at the rate of fifteen percent per annum for the period for which such tax or part thereof remains unpaid, and the Collector may recover it from the said person as arrears of land revenue after giving him an opportunity of hearing.

(19) Where, at the time of recovery of tax under sub-section (18), it is established that the tax collected from the person has meanwhile been paid by the person liable to tax, no recovery shall be made from the person who had failed to collect the tax but the said person shall be liable to pay default surcharge at the rate of fifteen percent per annum from the date he failed to collect the tax to the date the tax was paid.

(20) A person personally liable for any amount of tax under sub-section (18) as a result of failing to collect the tax shall be entitled to recover the tax from the person from whom the tax should have been collected.

(21) The recovery of tax under sub-section (17) does not absolve a person who failed to collect the tax from any other legal action in relation to the failure or from a charge of default surcharge.

(22) The order passed by an officer under this section shall be deemed to be an order passed by a Revenue Officer under the Punjab Land Revenue Act, 1967 (*XVII of 1967*).

(23) The provisions of sections 13 and 14 of the Punjab Land Revenue Act 1967 (*XVII of 1967*), shall apply to the cases under this section.

(24) For purposes of appeal, review or revision, an order passed under this section shall be deemed to be an order of a Revenue Officer within the meanings of sections 161, 162, 163 and 164 of the Punjab Land Revenue Act 1967 (*XVII of 1967*).