



Insight

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MIRA's Authority to Initiate Legal Proceedings on Non-tax Amounts

Summary

Can the MIRA initiate legal proceedings for the recovery of amounts other than tax?

In the case of *Moosa Naseer v Maldives Inland Revenue Authority*,¹ the Supreme Court of the Maldives ('Supreme Court') on 22 June 2020, passed judgment in favour of Moosa Naseer in a case that, inter alia challenged the Maldives Inland Revenue Authority's ('MIRA') power to initiate legal proceedings for the recovery of unpaid land rent and fines pursuant to an agreement between the Ministry of Fisheries, Agriculture and Marine Resources ('MoFAMR') and Moosa Naseer.

In the initial case filed by the MIRA at the Civil Court, Moosa Naseer raised a procedural issue contending that the MIRA does not have the legal authority to initiate recovery proceedings for unpaid non-tax amounts. The Civil Court held in favour of the MIRA in both on the procedural, and substantive matters of the case². Moosa Naseer appealed to the High Court in an attempt to overturn the judgment at first instance³. However, the Civil Court's judgment was unanimously upheld by the High Court. The decision of the Supreme Court struck down part of the High Court's decision and held that the MIRA does not have the legal authority to initiate proceedings for the recovery of non-tax amounts.

¹ 2014/SC-A/41.

² *Maldives Inland Revenue Authority v Moosa Naseer* (1975/Cv-C/2011).

³ *Moosa Naseer v Maldives Inland Revenue Authority* (2014/-HC-A-83).

Background

Agricultural lease rent paid under an agreement with MoFAMR

Moosa Naseer entered into a commercial lease agreement with the MoFAMR in 2009 for the use of the island, N. Bandaidhidhoo for agricultural purposes. Scheduled lease rent payments under the agreement were to be paid to the MIRA - the State's revenue collector created under the Tax Administration Act. Prior to the creation of the MIRA in 2010, the Department of Inland Revenue ('DIR') - a department under the purview of the Ministry of Finance and Treasury ('MoFT'), was responsible for collection of land and lease rent owed to the State. Following the creation of the MIRA, the DIR was disbanded and the MoFT directed the MIRA to assume the responsibilities of the DIR, which included collection of land and lease rent.

When Moosa Naseer failed to meet lease rent payment obligations under the lease agreement, he was notified by the MoFAMR to settle all outstanding lease rent payments and accrued fines with the MIRA. As the State's revenue collector, the MIRA issued notices (first and final notice) prior to commencement of recovery actions under Chapter Four of the TAA⁴. Following the MIRA's final notice to settle outstanding lease rent and fines for N. Bandaidhidhoo, the MIRA initiated legal proceedings on 29 September 2011 against Moosa Naseer for the recovery of the outstanding amounts under the lease agreement.

Facts and Observations

Questions on the scope of Section 3(c) and 34(a) of the TAA

In the civil trial, the defendant Moosa Naseer raised a procedural issue, contending that the MIRA does not have the legal authority to initiate court proceedings for the recovery of non-tax amounts. Moosa Naseer argued that the amount in dispute does not fall within the scope of the term 'tax' as defined in the Constitution, and the MIRA is not party to the commercial lease agreement that the disputed amounts arose from.

The MIRA maintained that recovery of non-tax revenue was within the mandate of the MIRA on the grounds that Section 3(c) of the TAA required the MIRA to ensure that '... any tax, fees, or other monies payable are paid in full ...' and Section 34(a) of the TAA which provided that the MIRA can file a civil suit for the recovery of 'Any unpaid tax, fine, or any other amount ...' as a civil debt to the State. MIRA's argument was formed on the basis that the inclusion of the terms, 'other monies' under Section 3(c) and 'any other amount' under Section 34(a)⁵ meant

⁴ Law Number 3/2010.

⁵ Following the first amendment to the Tax Administration Act on 29 December 2011, Section 34(a) was renumbered as Section 49(a).

that Parliament clearly envisaged that the MIRA would have the legal authority to recover non-tax revenue owed to the State. The MIRA's position was further supported by a string of Civil Court cases⁶ initiated by the MIRA for the recovery of non-tax revenue in which judgments on procedural and substantive matters were held in favour of the MIRA. The Civil Court, in its decision in favour of the MIRA held that the defendant Moosa Naseer was to settle the outstanding lease rent and fines of MVR 9,061,442.50 within two months of the date of judgment⁷.

*Points of appeal dismissed
by the High Court*

On appeal, the appellant Moosa Naseer attempted to convince the High Court bench that the Civil Court erred in its procedural decision to grant leave to the MIRA to proceed with the original claim. The High Court, upheld the Civil Court's decision, citing that the subject matter of the case before them is similar to settled matters in cases⁸ already adjudicated by the appellate court. The principle of stare decisis - courts adhering to prior rulings on a settled matter - was upheld and the point of appeal was dismissed.

Another point of appeal raised by the appellant - that the judgement award in the civil trial was based on an incorrect calculation of the fines determined under Clause 44 and Clause 45 of the agreement - was also dismissed on the grounds that those arguments were not made at the lower court, and the appellant did not provide reasonable cause for the High Court bench to hear arguments on this appeal point. Citing Section 32 of the Judicature Act⁹ and Section 44(a) of the Maldives High Court Regulations, the Bench expounded that the evidence and defences provided in the lower courts must be taken as the basis in adjudicating cases before the Court. As such, this point of appeal was also dismissed.

⁶ See 1479/Cv-C/2011 (proc decision), 1974/Cv-C/2011 (decided 9 Jan 2012), 1976/Cv-C/2011 (decided 6 September 2012).

⁷ Judgement was passed on 24 November 2013.

⁸ See 2013/HC-A/06 and 2012/HC-A/150, 2014/HC-A/83, 6.

⁹ Law Number 22/2010.

The Supreme Court deliberated on the following two points of appeal submitted to the Court:

1. MIRA does not have the legal authority to pursue legal action for the recovery of non-tax revenue; and
2. The fine component of the disputed amount was not calculated in accordance with Clause 44 and Clause 45 of the commercial lease agreement between Moosa Naseer and MoFAMR

“Other monies” in Section 3(c) and “any other amount” in Section 34(a) of the TAA must be construed as referring to tax amounts

In an unprecedented decision, ruling in favour of the appellant Moosa Naseer, the Supreme Court unanimously struck down part of the High Court’s decision and held that the MIRA has no legal authority to initiate court proceedings for the recovery of non-tax revenue. In arriving at this crucial decision, Justice Mahaaz Ali Zahir, in his findings observed that Section 3(c) and Section 49(a) of the TAA must be interpreted with the view to achieve the aims and objectives set out in the TAA. With reference to Section 17 of the Interpretation Act of the Maldives¹⁰, Justice Mahaaz expounded his observations on functions of the MIRA based on careful examination of the TAA in its entirety, and the main purposes of the MIRA under Section 3 of the Act, noting that the MIRA was created for the administration and implementation of the tax system in the Maldives. It was further observed that Article 274 of the Constitution of the Maldives, which defines the term ‘tax’ does not include rent.

The Justices made a crucial observation regarding the interpretation of Section 3(c) and Section 49(a) of the TAA noting that the interpretation of a general term which is preceded by a list of specific terms, shall be restricted to the same type of things which were listed. In expounding on this observation, Justice Mahaaz held that, based on the construction and arrangement of Section 3(c) of the TAA, ‘other monies’ must be construed only to include taxes and associated fees and charges. Similarly, ‘any other amount’ specified in Section 49(a) of the TAA must be construed to include unpaid taxes, fines, and associated charges which fall within the scope of tax. The application of the interpretive maxim - ejusdem generis was further supported by the observations made by the Justices with respect to the MIRA’s legal authority, administrative¹¹, investigative¹², and enforcement¹³ functions, and its role in the administration of the tax system.

¹⁰ Law Number 4/2011.

¹¹ While the Act requires that information pertaining to taxpayers to be maintained with the MIRA as per the TAA, the Act does not make the MIRA responsible for maintaining information regarding various agreements signed between the State and other parties.

¹² Search and seizure of evidence, oral examinations, submitting tax related criminal offences to the Procurator General. All of the powers for investigation and subsequent criminal proceedings arise from tax related offences.

¹³ Section 34(a) (later Section 49(a)) of the TAA requires that the Commissioner General’s statement to be utilised in recovery of tax as a civil debt.

Section 50 of the TAA applies to amounts payable under an Act

The Justices also observed that the MIRA's legal authority under Section 50¹⁴ of the TAA - recovery of non-tax revenue such as fees, rent royalty, fine or any other money using powers under Chapter Four of the TAA - was restricted to the key condition that such amount be payable to the MIRA pursuant to an Act. In the case before the Supreme Court bench, the dispute between Moosa Naseer and the State originated due to non-payment of lease rent and fines under a commercial lease agreement formed between Moosa Naseer and MoFAMR in accordance with the Uninhabited Islands of the Maldives Act¹⁵. As the Uninhabited Islands of the Maldives Act does not obligate lease rent payments to be made to the MIRA, the MIRA has no legal basis under Section 50 of the TAA to execute any of the powers under Chapter Four of the TAA for the recovery of unpaid lease rent by Moosa Naseer.

Retrospective application of the law is in contravention to Article 59 of the Constitution

Justice Aisha Shujoon Mohamed, in her opinion observed that arguments raised by the MIRA regarding MIRA's legal authority to recover non-tax revenue under Section 50 of the TAA contravened the principles set out in Article 59 of the Constitution - no retrospective application of legislation after the fact. Justice Shujoon observed that the MIRA initiated legal proceedings against Moosa Naseer in the Civil Court, prior to the first amendment of the TAA on 29 December 2011, which introduced Section 50 - recovery of non-tax revenue. Justice Shujoon opined that the law cannot be retrospectively applied to an event that occurred prior to the assent of the First Amendment of the TAA.

Defences not raised at the trial cannot be raised on appeal

The Justices observed that defences submitted by Moosa Naseer regarding the fine calculation of the disputed amounts, were not raised in the original trial. Justices Mahaaz expounded that trial courts are courts of first instance and decisions made in the trial are based on the facts, submissions, defences and legal arguments submitted to the court. It was further observed that appellate level court proceedings should be based on evidence and defences submitted at the trial stage. Moosa Naseer argued before the Supreme Court bench that the principles set down in 2012/SC-A/27 gave leave to submit defences which he was unable to present at the trial stage. However, rebuking the principles in the decision of 2012/SC-A/27, the Justices observed that the scope of appeal provided in that Supreme Court decision contravenes Article 16 of the Constitution. Article 56 of the Constitution - the right of appeal - is a fundamental right which can only be restricted as per Article 16 to the extent prescribed under an enactment. Justice Mahaaz opined that he agreed with the High Court's decision - that Moosa Naseer had the opportunity to raise those defences at the trial stage and failed to do so and as such, this point of appeal was not accepted by the Supreme Court.

¹⁴ Section 50 of the TAA was introduced via the First Amendment to the TAA on 29 December 2011.

¹⁵ Law Number 20/98.

MIRA can only collect and enforce payment of amounts specified under the TAA

The Justices examined whether the MIRA had a duty or responsibility under the TAA with respect to collection and enforced payment of non-tax amounts, observing that obligation to pay non-tax amounts to the MIRA did not arise from any legal requirement under the TAA. In this case, the Justices observed that the amounts payable by Moosa Naseer to MoFAMR were to be paid to the MIRA in accordance with Clause 9 of the agreement - that payment must be made to the relevant authority designated by the Ministry. The collection, and subsequent actions for the enforced payment of the annual rent, however, was a duty outside the scope of the TAA.

MIRA has no locus standi to enforce the payment

The Justices observed that the agreement between Moosa Naseer and MoFAMR was formed under the Uninhabited Islands Act of the Maldives, which does not obligate lease payments and late payment fines payable in accordance with such agreement to be paid to the MIRA¹⁶. Further, the TAA explicitly states that the MIRA can only enforce payment of non-tax amounts which are payable to the MIRA under an Act. The Justices opined that, as the amount in dispute is not payable to the MIRA under a law, the case cannot be remanded. Justice Mahaaz, expounding on this point, noted that cases can only be remanded where parties to the dispute have locus standi. As the MIRA lacks legal standing, the parties to the agreement, Moosa Naseer and MoFAMR, are to avail judicial proceedings to resolve the issue.

Our Comments

End to a long-running dispute

The Supreme Court's unprecedented decision is sure to impact some of MIRA's key administrative functions as the State's revenue collector. Under arrangements between MIRA and government Ministries, and state institutions, the MIRA collects annual rents, fees, charges, fines and other amounts payable to the state. The Supreme Court effectively stripped the MIRA of its authority to carry out those functions in effect prohibiting the MIRA from collection of non-tax amounts which are not payable to the MIRA under an Act. In response to the apex court's decision, the Ministry of Finance and Treasury amended the Public Finance Regulations¹⁷ to obligate the MIRA to collect non-tax amounts payable to the state.

It remains, however, that the MIRA will be unable to initiate legal proceedings for the recovery of non-tax amounts. The Supreme Court's decision makes it unequivocally clear that the MIRA's power to initiate such proceedings is derived from Section 50 of the TAA, which explicitly states that the MIRA can only exercise powers under Chapter Four of the TAA if the non-tax amount is payable to the MIRA under an Act.

¹⁶ Additionally, the Court observed that no submissions were made by Moosa Naseer or the MIRA that showed that the agreement was amended to obligate lease rent payments to the MIRA.

¹⁷ Third Amendment to the Public Finance Regulation (Regulation No. 2017/R-20) published on 5 July 2020.

Similar decisions likely to follow

The ruling of the Supreme Court is certain to reverberate in similar cases before the Court. Currently, there are four other cases before the apex court, in which the MIRA had pursued legal action against the defaulting parties with respect to non-payment of annual rent and fines for islands leased out for agricultural purposes by the Ministry of Fisheries, Agriculture and Marine Resources. In each of these cases, during the civil trial, the defendants argued that the MIRA does not have the legal authority to initiate legal proceedings for the collection of non-tax amounts.

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About us

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