

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

CONSTITUTION PETITION NO.D-132 OF 2019
and 126 other connected petitions as per annexure "A"

M/s Millennium Mall Management Co.

Versus

Pakistan & others

Dates of Hearing: 17.10.2023, 24.10.2023, 25.10.2023, 30.10.2023,
01.11.2023, 06.11.2023, 10.11.2023, 13.11.2023,
15.11.2023, 20.11.2023, 21.11.2023, 28.11.2023,
04.12.2023, 13.12.2023, and 14.12.2023.

Date of Short Order: 14.12.2023

Date of Reasons 06.01.2024

Messrs. Ayan Mustafa Memon assisted by Ali Zuberi, Habibullah Masood, Amna Khalil, Nawaz Khan and Shahreen Chughtai, (Khwaja Shamsul Islam along with Imran Taj, Imtiaz Ali Shah & Khalil Awan, in C.P. No. D- 2603/2023), (Ms. Naheed A. Shahid & Daniyal Ellahi in C.P. No. D- 71/2022 & 848/2023), (Ali John, Altamash Arab, Advocate in C.P. No. D- 6819/2022), Abdul Wajid Wyne, (M. Rafi Kamboh, in C.P. No. D- 6396 & 6397 of 2020), Arif Khan, (M. Saad Siddiqui and Sahibzada Mubeen in C.P. No. D- 840/2022, 5861/2021, 3246/2021, 2970/2020, 1494/2019), Farhan Zia Abrar, (Zain A. Jatoi, Muhammad Mustafa MumDani, Advocate in C.P. No. D- 2521/2022), (Ghulam Haider Shaikh in C.P. No. D- 1251/2021), (Abid Hussain and Zahid Mehmood in C.P. No. D- 3170 & 3171 of 2021), (Fahad Arif Khilji in C.P. No. D- 3763 and 3764/2021), Ahmed Mujtaba in C.P. No. D- 3803/2022, Naeem Suleman, Arshad Hussain Shehzad, Waseem Farooq, Tauqir Randhawa, Kashan Ahmed, (Mian Mushtaq Ahmed in C.P. No. D- 4306 to 4327 of 2017 and 3532/2018), Hanif Faisal Alam, (Hassan Khursheed Hashmi in C.P. No. D- 5521/2022), (Salman Mirza and Ahmed Magsi in C.P. No. D- 132/2019, 3135/2021 and 3359/2021), Abdul Qayoom Abbasi, Raja Muhammad Safeer (Syed Maqbool Hussain Shah in C.P. No. D- 2797/2021, Syed Noman Zahid Ali, Aرسال Rahat Ali, (Mehmood Ali for IBA and Behzad Haider in C.P. No. D- 5459/2022), (Ahmed Madni & Peer Ali in C.P. No. D- 446 of 2023), (Ms.Sadia Sumera in C.P. No. D- 4184/2022), (Ahmed Nizamani in C.P. No. D- 3246/2021), Dr. Rana Khan, (Rajesh Kumar in C.P. No. D- 5673/2021), (Malik Khushhal Khan in C.P. No. D- 3987/2018 & 946/2022), Muhammad Naved, (Fazal Mehmood Sherwani in C.P. No. D- 4159/2020), Masood Ali, Advocates for Petitioners.

Messrs. (Abdullah Munshi, Shajeeuddin Siddiqui and Imdad Ali Bhatti for Clifton Cantonment Board in C.P. No. D-4985/2018, 5391/2018, 3426/2018, 5166/2018, 5167/2018, 6506/2020 & 1251/2021), (Farooq Hamid Naek assisted by Syed Qaim A. Shah, G.Murtaza Bhanbhro and Saad H. Ammar in C.P. No. D- 132/2019 and 1220/2023 for Respondent No.2), Dr. Farogh Naseem, Ahmed Ali Hussain, S. Zaeem Hyder, Aman Aftab, M. Aizaz Ahmed, Syed Shohrat Hussain Rizvi for Karachi Cantonment Board, Aqib Hussain, (Afnan Saiduzzaman Siddiqui, Iftikhar Hussain, Zohra Ahmed for CBC in C.P. No. D- 1228/2019, 1949/2019 & 946/2022), (Dr. Shahab Imam & Syeda Abida Bukhari for CBC in C.P. No.

D- 1220 and 2603/2023), Ashraf Ali Butt, Rehmatunnisa, Sohail H.K. Rana, Ms.Huma F. Bhutto, Fahim Haider Moosvi, (Zain A. Soomro for Respondent No.2 in C.P. No. D- 1661 and 249 of 2021), Akhtar Hussain Shaikh, Syed M. Ghazen, Shahid Ahmed for KW&SC, K, A. Jahangir in C.P. No. D- 3100/2023 for CBC, (Muhammad Aqeel Qureshi in C.P. No. D- 4606/2020), (Shahid Hussain Korejo in C.P. No. D- 6803/2022 for respondent No.2), (Saqib Soomro and Ahmed Mujtaba in C.P. No. D- 6806/2022 for respondent No.2), (Ameer Ali Soomro in C.P. No. D- 6805/2022 for respondent No.2), (Asif Amin for Respondent No.2 in C.P. No. D- 1333/2021), Fozia M.Murad for Respondent in C.P. No. D- 132/2019, 3023, 3669, 7318, 7460 of 2015, (Mr.Talha Abbasi for DHA in C.P. No. D- 4985/2018), Advocates for Respondents.

M/s. Zeeshan Adhi Addl.AG, Saifullah and Sandeep Molani, Asst.AG
 Qazi Abdul Hameed Siddiqui, DAG, Khaleeq Ahmed DAG, Malik Sadaqat
 Khan Addl. Attorney General and Qazi Ayazuddin, Asst. Attorney General

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The subject matter of these petitions is Tax demand based on annual rental value of property by different Cantonment Boards from the petitioners. The petitioners' assertion is that it is a kind of tax and levy that taxes remain with the provinces only whereas the federal government and the cantonment boards claim such levy to be in their competence. In support of such questions raised, both sides counsel have assisted us and summarized their structural points as under:-

COUNSELS' BULLET POINT SUBMISSIONS

MR. AYAN MUSTAFA MEMON

Mr. Ayan Mustafa Memon, learned counsel for petitioner in C.P. No. D- 2603/2023) has made the following submissions:

- Post-18th Amendment, the subject of levying property tax rests with the Provinces. Placed reliance on Entry No.50 of the Fourth Schedule of the Constitution of Pakistan, 1973.
- Contended that after omission of the Seventh Schedule of the Constitution, which was protected for a period by the Presidential Order of 1979, levying of all property tax now rested with the Provincial Government.

- Argued that property tax had always been a provincial subject.
- Contended that Entry 2 of the Fourth Schedule relied upon by the petitioners was not a tax entry.
- Argued that after the 18th Amendment, with regard to tax entries, there was no provision for concurrent taxation. Placed reliance on PLD 1975 SC 37, PLD 1978 Karachi 500 and PLD 2022 Peshawar 46.
- Submitted that omission of 79 Order via P.O would not create any vacuum on account of the Sindh Urban Immovable Property Tax Act, 1958 via 18th Amendment to Constitution.
- Additionally, argued that any statute not in consonance with the Constitution of Pakistan is invalid and be held accordingly. Pleaded that Respondents' reliance on the Cantonment Act, 1924 was misconceived. Relied on PLD 1989 SC 416.
- Contended that the above case law had been followed and approved, cited by the Supreme Court in 1993 SCMR 1523.
- Further contended that as per the Benazir Bhutto case, the referred principles had been further expanded. Relied on pages 1528 page 1530 of the Benazir Bhutto case.
- Concluded that the Provinces had domain over property tax, and not the federal government, and relied on Freight Forwarder's case (2017 PTD 1).
- Relied heavily on the interpretation of Article 270A of Constitution of Islamic Republic of Pakistan in terms of Benazir's case.

MR. KHAWAJA SHAMSUL ISLAM, Learned Counsel For Petitioner in C.P. NO. D- 2603/2023).

- Mr. Khawaja Shamsul Islam was asked to address only those points which are not covered by other counsel to save the time. He then took us to the history of cantonment and their formation. It is claimed that these cantonment boards are essentially civil/housing societies and cannot be identified as cantonments.
- He claimed that under the garb of Cantonment board, the authority under the act are trespassing provincial land and federal land

abutting seashore and the geographical extension is not permissible in such way.

- Additionally he took us to the impugned notification in his petition which unilaterally enhanced the assessment to many folds thus rendering the mechanism of Section-60 to 64 of Cantonment Act as redundant.
- It is claimed that person issuing the said notification is not identified by Cantonment Act, 1924. He objected to the creation of new cantonment after urbanization and notification in this regard by Federal Government.

MR. ZEESHAN ADHI, LEARNED ADDITIONAL ADVOCATE GENERAL, SINDH

- Argued that property tax had always been a provincial subject. To illustrate this he took us through the several laws, starting from the Government Act of India of 1935, 1956 Constitution, the Constitution of 1962 and the Constitution of 1973.
- He argued that any statute not in consonance with the Constitution of Pakistan is invalid. Pleaded that Respondents' reliance on the Cantonment Act, 1924 was misconceived and also relied upon PLD 1989 SC 416 (relevant page 509 placitum AA, page 511, both paragraphs and 512 second paragraph).
- Contended that the above case law had been approved by the Supreme Court in 1993 SCMR 1523.
- Concluded that the Provinces had domain over property tax, and not the federal government.
- Also relied upon Benazir's case as far as application of Article 270A is concerned.

MR. ABDULLAH MUNSHI, learned counsel for Respondent/Clifton Cantonment Board (CP No.D-4985/2018, CP No.D-5166/2018, C.P No.D-5167/2018).

- Commenced submissions with the history of the cantonments in the Indian Subcontinent - pre-partition till present. Provided a backdrop of how the Cantonments came about in the Indian Subcontinent, starting from the Cantonment Act of 1864, Cantonment Codes of

1899, 1912 and finally, the Cantonments Act of 1924, which regulated the municipal functions of the Cantonment Boards.

- Argued that there was nothing in the Cantonments Act, 1924, which violated Articles 8 and 25 of the Constitution of Pakistan. Relied on *I.A. Sharwani and Others v, Government of Pakistan through Secretary, Finance Division, Islamabad and Others*, 1991 SCMR 1041 and *Lucky Cement Ltd. v. Khyber Pakhtunkhwa through Secretary Local Government and Rural Development, Peshawar*, 2022 SCMR 1994.
- Further, argued that if there was/is a difference of opinion with regard to the powers under Cantonments Act, 1924, between the Federal Government and the Provincial Governments, Article 184 of the Constitution of Pakistan should intervene. The private petitioners challenging the constitutionality of the federal government's powers under Article 199 of the Constitution of Pakistan were/are acting contrary to Article 184.
- Contended that in case of an action initiated by any of the Provincial Governments without adopting the procedure highlighted under the Articles of the Constitution of Pakistan, such matter is to be agitated before the Supreme Court of Pakistan only and not the High Courts. He relied on *Haider Mukhtar and Others v. Government of Punjab and Others*, PLD 2014 Lahore 214, and *Khalid Mahmood and Others v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and 74 Others*, PLD 2003 Lahore 629.
- As a corollary argued that the Petitions filed before us are malafide and he relied on *The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan, Rawalpindi v. Saeed Ahmad Khan and Others*, PLD 1974 SC 152.
- Further contended that under Article 270-A of the Constitution of Pakistan, the laws promulgated under the Seventh Schedule (Article 270-A (6)) were saved. The Seventh Schedule included the Cantonments (Urban Immovables Property and Entertainment Duty) Order 1979, which would remain in place. Contended that after Article 270-A, when the Eighth Amendment ratified the said provision, the Presidential Order, which included Cantonment's power

to tax, was protected and could not be assailed until and unless the Parliament enacted fresh legislation on the same subject.

- Additionally, argued that none of the Petitioners had challenged the validity of the Presidential Orders which continued to remain in place. He relied on *the Federation of Pakistan and Another v. Ghulam Mustafa Khar*, PLD 1989 SC 26, *Mehmood Khan Achakzai and Others, v. Federation of Pakistan and Others*, PLD 1997 SC 426, and *Sargodha Textile Mills v. Federation of Pakistan through Secretary Ministry of Defence, Rawalpindi and 3 Others*, PLD 2004 SC 743.
- Further submitted that section 14 of the Sindh Local Government Act, 2013, specifically excluded “Cantonments” and tax on annual rental value was also excluded under Schedule “V” of the said Act.
- Submitted that the Cantonments had the power to charge property tax and placed reliance on *Pakistan v. Province of Punjab and Others*, PLD 1975 SC 37, PLD 2022 Peshawar 46.
- Further submitted that for all practical purposes, the Government of Sindh has conceded that they will not administer the collection of tax on cantonment lands. To this end, he argued that in fact, by applying “de facto” doctrine, Cantonment had the powers to levy and collect tax impugned in the Petitions.
- Argued that the Cantonments were local municipal governments and Entry 2 of the Fourth Schedule to the Constitution of Pakistan would become redundant if the power to tax is taken away. Cantonment would be unable to render services.
- Lastly argued that if the Court concludes that there is no competency for Cantonments to levy tax, then equally, there is no legislation on the part of province to impose such tax. The Cantonments Act, 1924, has not been repealed after the 18th Amendment, and Cantonments being a strategic area require preservation, which can only be achieved by way of tax.

MR. FAROOQ HAMID NAEK

Mr. Farooq Naek, who was engaged subsequently, while cases were being heard, appeared for Faisal Cantonment Board. and argued in line with Mr. Munshi’s arguments and raised the following additional grounds:

- At the outset, Mr. Naek contended that Entry No.50 of the Fourth Schedule specifically referred to “taxes on immovable property” and no other genre of tax involved i.e tax on rented value of immovable property.
- Argued that taxes on immovable property were/are of four kinds classified as:
 - a) Capital value tax on assets;
 - b) Capital gain tax on property;
 - c) Income tax on property; and
 - d) Annual rental value.
- With regard to (a) Capital Value Tax on Assets, Mr. Naek referred to Section 4 of the Sindh Finance Act, 2010. He claimed that the capital value tax was payable by the owners of the property whereas capital gain is payable on sale of property. Next, he took the Court to Section 15 of Income Tax Ordinance, 2001 and contended that income tax from property income, triggered under Income Tax Ordinance, 2001 does not deal with value of property and it is in relation to rent received hence it was a tax on rent being collected on the rental income only and precisely includes the tax on annual rental value also.
- Contended that all these three categories of tax were not covered by Entry No.50 of the Fourth Schedule of the Constitution of Pakistan.
- Contended that the entry mentioned in Fourth Schedule did not expressly refer to annual rental value and that all entries were silent with regard to annual rental value.
- In the circumstances, he argued that Entry No.2 was relevant to the case at hand. He argued that Entry 2 has empowered the Cantonment/federal government to impose tax.
- He also argued the applicability of Article 7 to be read with entry 54 and Article 2 of Constitution of Islamic Republic of Pakistan.

BARRISTER DR. FAROGH NASEEM for Cantonment Board.

- Barrister Farogh Naseem argued that the tax being collected by Cantonments was, although being referred to as a tax, it was, in fact, not a tax. Therefore, argued that because it is not a tax, it

does not fall squarely within the tax entries in the Fourth Schedule of the Constitution relating to tax i.e, 43 to 53.

- Argued that the tax imposed by Cantonments was “something else” but not a tax. He relied upon the Workers Welfare Fund and GIDC cases to support his contention. The crux of his argument was that the “revenue” collected by the cantonment is for cantonment fund for a purpose and its place either in consolidated fund of Federation or province is not going to alter the status of revenue collected as “sums” for cantonment fund and not being tax.
- Argued that whatever was/is being collected goes to the Cantonment fund under section 106 for its application under section 109.
- He argued that if the collection by Cantonment was not a tax, then it was covered by entry 54 as a “Fee”. Thus, if it is, then Entries 54 and 2 would regulate the recovery of cantonment tax, which was/is a tax by name only. He argued that the taxing power is given under the Fourth Schedule between Entry 43 to 53 and that the collection by the Cantonments is not in the nature of a tax but closer to a fee in terms of its utility and application.
- Further submitted that the amount collected is used as an expenditure, and on this count too it is not a tax regardless of whatever name is used to describe it.
- Article 142 and Article 7 of the Constitution disclosed separate entities and Article 142 cannot be read in isolation.
- Seventh Schedule may not be available but the listed laws are still in force. Any item in Seventy Schedule is subject to amendment by simple majority.
- Article 279 - the laws listed in Seventh Schedule have not been replaced by appropriate legislation.
- Cantonment Boards are transprovincial - hence federal subject.

ATTORNEY-GENERAL/DEPUTY ATTORNEY GENERAL QAZI ABDUL HAMEED SIDDIQUI

Notices under Section 27A CPC were served and DAG addressed the Court.

- Adopted arguments of Dr. Farogh Naseem.
- Argue that Provincial Government is “sleeping on its right.”
- In CP D-2149, page 27, Government of Sindh has stated that they wish to claim tax on annual rental value but if this is so, then the Provincial Government must proceed to the Supreme Court.

2. Heard counsels and perused record.

3. For the sake of brevity, in response to some common arguments, the cumulative and required reasons are provided, whereas individual points raised have been responded to separately in the later part of judgment.

4. The primary object of concern in understanding the subject, i.e. tax on immovable property, is the legislative competence as restored by the restoration of the constitution via 14th Presidential Order 1985, followed by the 18th Amendment to the Constitution of the Islamic Republic of Pakistan, 1973. In order to understand its effect with clarity, a brief history of such legislative competence on the subject is needed.

5. Tax on immovable property has always been a provincial subject. If we trace history since 1935, i.e. from the date of promulgation of the Government of India Act, 1935 passed by the British Parliament, which received royal assent in August 1935, we understand that the subject always remained part of the provincial pool.

6. A comparative table of taxes on land and buildings is given below:-

| S.No. | Constitution of Pakistan/India Act | Entry No. | Subject of Tax |
|-------|--|--------------------------------|---|
| 1. | 1935 | Entry No.42 of Provincial List | Taxes on land and buildings, hearths and windows |
| 2. | 1956 | Entry No.70 of Provincial List | Taxes on lands and buildings |
| 3. | 1962 | No Entry in Third Schedule | No Entry in the list of Central Legislature i.e. Third Schedule under Article 132 |
| 4 | 1972 (Interim Constitution) | Entry 40 of Provincial List | Taxes on land and buildings |
| 5. | 1973 (Before 18 th Amendment) | No Entry in FLL and CLL | No Entry in FLL and CLL |
| 6. | 1973 (after 18 th Amendment) | No Entry in FLL (CLL omitted) | No entry in FLL (CLL omitted) |

7. Last horizontal column provides only the Federal Legislative List (FLL) whereas the Concurrent Legislative List (CLL) omitted and the subject was not available in the FLL, whereas second last horizontal column shows both FLL and CLL but the subject is not available.

8. The other constitutional history is of taxes on the capital value of the assets (covered by its limb of entry 50) and the table is as under:-

| S.No. | Constitution of Pakistan/India Act | Entry No. | Gist of Entry |
|-------|------------------------------------|-----------------------------|---|
| 1. | 1935 | Entry No.55 of Federal List | Taxes on capital value of the assets, exclusive of agricultural land of individual and companies; taxes on the capital of companies |
| 2. | 1956 | Entry No.25 of Federal List | Duties of customs (including export duties), duties of excise (including duties on salt, but excluding alcoholic liquor, opium and other narcotics), Corporation taxes and taxes on income other than agricultural income; estate and succession duties in respect of |

| | | | |
|----|--|--------------------------------|--|
| | | | property other than agricultural land; (taxes on capital value of assets exclusive of agricultural land; taxes on sales and purchases; stamp duties on negotiable instruments and insurance policies; terminal taxes on goods or passengers carried by railway, sea or air; taxes on their fares and freights; taxes on mineral oil and natural gas. (underlining is for emphasis. |
| 3. | 1962 | Entry No.42(e) of Central List | Taxes on capital value of assets not including taxes on capital gains on immovable property. |
| 4 | 1972 (Interim Constitution) | Entry 57 of Federal List | Taxes on capital value of assets, not including taxes on capital gains on immovable property. |
| 5. | 1973 (Before 18 th Amendment) | Entry No.50 of Federal List | Taxes on capital value of the assets, not including taxes on capital gains on immovable property. |
| 6. | 1973 (after 18 th Amendment) | Entry 50 of Federal List | Taxes on the capital value of the assets, not including taxes on immovable property. |

9. The constitutional history of the later subject, i.e. “taxes on the capital value of assets,” shows that this subject always remained within the domain of the Federal Legislature, as against taxes on the immovable property.

10. After examining the above history, it becomes clear that the subjects of “taxes on land and buildings” and “taxes on the capital value of the assets” are separate subjects/entries; the prior one primarily belongs to the provincial legislature, and the later subject belongs to the federal legislature, historically.

11. As of now, after the 18th Amendment, the Federal Legislature is not constitutionally empowered to levy, impose, charge and/or recover (directly or indirectly) any tax on immovable property, including a tax on the annual rental value of immovable property within a province, under a law legislated by Federation.

12. For a brief period, the subject identified above, i.e. tax on the immovable property, came into the basket of the federation during the Marshal Law period, and a brief history is required to understand such “reroute” of the legislature.

13. In 1958 (per constitution 1956), the provincial government enacted the law called West Pakistan Urban Immovable Property Tax Act, 1958, and the subject tax on land and buildings continued to vest in the province since the promulgation of the India Act, 1935.

14. This core issue of charge, levy and recovery of such taxes, identified above, came for consideration before Courts earlier when the cantonments intervened and consequently the issue decided by the Supreme Court of Pakistan in the case of Pakistan through Ministry of Defence v. Province of Punjab¹. The Supreme Court clarified that since the cantonment areas are located within the respective provinces, they were/are, therefore, part of the provinces and do not constitute a federal territory. The Supreme Court summed up that tax on immovable properties is a subject to be dealt with by the provincial statute of 1958 in cantonment areas in consonance with the 1956 constitution.

15. This judgment was then followed particularly in the case of Gulzar Cinema².

¹ Pakistan through Ministry of Defence v. Province of Punjab (PLD 1975 SC 37)

² M/s Gulzar Cinema v. Government of Pakistan (PLD 1978 Karachi 500)

16. The two judgments provide that imposition of tax, i.e. levy of property tax by the provincial government in areas lying within the limits of the cantonment board, is valid.

17. Now comes the period when martial law was imposed in Pakistan and Chief Martial Law Administrator acting as President of Pakistan, finding it as an alternate way, promulgated the “Cantonments (Urban Immovable Property Tax and Entertainment Duty) Order, 1979” commonly called Presidential Order 13 of 1979. This is based on 5 sections only, and purposely, by virtue of section 3, the effects of the Act of 1958 ibid ceased on properties within the cantonment areas, and the said order of 1979 was then applied to such properties.

18. Mr. Munshi emphasised that notwithstanding the 18th Amendment and revival of the constitution in 1985, the subject law of 1979 is in line with the Cantonment Act, 1924 read with Presidential Order 13 of 1979 and that cantonments are competent to levy and collect such taxes as the scheme of such statutes are not overshadowed either by restoration of constitution or assumption of a constitutional frame after 18th Amendment.

19. Per section 3 of the Presidential Order No.13 of 1979 the operation of The Urban Immovable Property Tax Act, 1958 was ceased to be given effect in the cantonment areas available in the provinces, apparently, to circumvent the two judgments of Supreme Court of 1975 and 1978, referred above; it was legislated that the cantonments could impose taxes to be assessed on the annual rental value of the building and lands as per provisions of Cantonment Act, 1924. The Said Order of 1979 was then given effect for a brief period as identified in the 8th Amendment to the Constitution of 1973 when it was introduced. The Presidential Order No.13 of 1979, amongst other Orders, laws etc. were

given protection (for a specified period), in terms of amendment in the Constitution, which is being identified as Article 270A and the 7th Schedule to the Constitution of Islamic Republic of Pakistan, 1973 where the Cantonments (Urban Immovable Property Tax and Entertainment Duty) Order, 1979 was placed and protected which then lost its effectiveness after the revival of constitution and 18th Amendment to the Constitution.

20. A reading of Article 270A as a whole provides that the protection was given to two types of laws: (a) those which were mentioned by reference to their date of promulgation in Article 270A and (b) those which were specifically mentioned in 7th Schedule. This particular Order, which now seems to be overlapping and transgressing the constitutional mandate and provincial law of 1958 after the restoration of the constitution and enactment of 18th Amendment, is mentioned in the 7th Schedule, now omitted.

21. Sub-clause 1 of Act 270A clarified the period of effectiveness of the law made available between July 1977 to 30th December 1985, i.e. when Article 270A was introduced in the constitution. Sub-clause 2 of Article 270A saved all actions orders, proceedings by any authority/any person “again clarifying” between July, 1977 to the date of Article 270(A). Sub-clause 3 emphasised that such Orders, Ordinances, Regulations, Martial Law Orders, Enactments, Notifications and Rules etc, which were in force immediately before the date of Article 270A shall continue until repealed, amended or altered by the competent authority, whereas sub-clause 6 requires clause 1 amendment by the appropriate legislature.

22. Article 270A of the Constitution of the Islamic Republic of Pakistan, 1973 and its effect came for consideration and interpretation

before the Supreme Court in the case of Benazir Bhutto³. Although the subject matter in the said judgment of the Supreme Court is to the extent of certain amendments which were made through Presidential Orders to the Political Parties Act in the year 1978-1979, during the period of Martial Law governing the country, however, the subject amendments were challenged (as are in this case in one of the petitions as far as 1979's Order is concerned) as it claimed to have been protected by Article 270A (as cantonments claimed now for 1979 Order), which amendments (under the Political Parties Act) deprived the citizens of one of their fundamental rights. The judgment distinguished the effect of the law promulgated during the period in two categories, i.e. (i) those laws that are protected by Article 270A as they fell within the time zone specifically mentioned therein and (ii) those laws that were specifically protected under the 7th Schedule. The said amendments in the Political Parties Act fell within the first category, referred above, and the Supreme Court held that future operation of all laws protected under Article 270A would be "subject to limitations contained in the Constitution" (emphasis applied), which include that not only can such laws be struck down for violation of fundamental rights, as enshrined in the Constitution, but also on the touchstone of constitutional competence i.e. no such laws could be deemed to have been valid, after the period, as identified, against constitutional mandate and frame, as it exist and existed on the day of restoration of Constitution and/or 18th Amendment, whatever the case may be.

23. The Hon'ble Mr. Justice Muhammad Haleem, Chief Justice of Pakistan (as he then was), extended the reasoning for the conclusion drawn by the Bench in the aforesaid Benazir case as under:-

The most important legal instrument which follows hereafter is the Revival of the Constitution of 1973 Order,

³ PLD 1988 SC 416 (Benazir Bhutto v. Federation of Pakistan)

1985 (P.O.14 of 1985), which was promulgated on 2nd of March, 1985. Although this Order came into force at once but by Article 4, its revival was deferred to such dates on which the President was authorised, by notification, to revive its different provisions. Again by Article 5 of this Order, the President was authorised to make such provisions and pass such orders in case any difficulty arose in giving effect to any of the provisions of this Order. However, by Article 2 of this Order extensive amendments were made in the 1973 Constitution, including the insertion of Article 270-A. By notification issued under Article 4 of the Order on 10th of March, 1985, provisions other than Articles 6, 8 to 28, clauses (2) and 2(A) of Article 101, Articles 199, 213 to 216 and 270-A were revived. By Constitution (Second Amendment) Order, 1985 (P.O.20 of 1985), promulgated on 17-3-1985, amongst certain other amendments clause (6) of Article 270-A was substituted for the following: "(6) The President's Orders referred to in clause (1) shall not be altered, repealed or amended without the previous sanction of the President." The earlier text of this clause was: "Any of the President's Orders referred to in clause (1) may be amended in the manner provided for amendment of the Constitution." On the 19th of March, 1985, Constitution (Third Amendment) Order, 1985 (President's Order 24 of 1985) was promulgated. Thereafter on 11th of November, 1985, Constitution (Eighth Amendment) Act, 1985, was promulgated which came into force at once except section 19 which was to take effect on the date on which the Proclamation of the fifth day of July, 1977, was revoked. This Article related to the substitution of Article 270-A of the Constitution as enacted by the Majlis-e-Shoora for that earlier inserted by the President in the Revival of the Constitution of 1973 Order, 1985 (President's Order 14 of 1985) and a new Schedule called the Seventh Schedule was added by section 20.....

.....

The constitutional validity given by Article 270-A(1) is retrospective as it achieves to give validity to laws enacted between a specified period. This validity is, therefore, of a pattern of a curative or validating statute and must be understood and be operative in that context. In *Black's Law Dictionary, Fifth Edn.*, p.1390, validating statute is stated to be: "A statute, purpose of which is to cure past errors and omissions and thus make valid what was invalid, but it grants no indulgence for the correction of future errors". In *Pandit Ram Parkash v. Smt. Savitri Devi (A I R 1958 Punjab 87)*, it was held that curative and validating statutes operate on conditions already existing and can have no prospective operation. In *Moti Ram v. Bakhwant Singh (A I R 1968 Punjab and Haryana 141)*, it was held: "A curative act is a statute passed to cure defect in a prior law and has prospective operation". In *Sutherland on Statutory Construction, Vo1.II, 3rd Edn.*, p.243. it is stated: "Retroactive operation will more readily be ascribed to legislation that is curative or legalising than to legislation which may be disadvantageously though legally,

(Emphasis applied)

affect past relations and transactions". In *Amalgamated Coalfields, Calcutta v. State* (A I R 1967 M.P. 56), it was held:

"An invalid Act can be validated by subsequent statute of the competent legislative authority, if the validating statute authorises the doing of the act at the time when it was done. In the absence of such authorisation, the validation will be futile as that will only amount to an attempt to exercise a power ex hypothesis, which does not exist."

Having regard to the purpose of validation, the defects in the legal measures when enacted during the specified dates had to be cured in the state of things as they existed which, of course, did not include any violation of a constitutional norm; and validity in this context could not be said to have achieved anything more than this. This is not all.

The learned Attorney-General relied on the non obstante expression "notwithstanding anything contained in the Constitution" to extend the validity to the covering of the violations of constitutional norms. This expression only occurs in Article 270-A(1), which I have already held to be referable to the ouster of the jurisdiction of the Court. It has not been used in sub-Article (3) nor can it be read into it as this would amount to re-writing the Constitution which is not the purport of interpretation. If the Legislature itself did not consider it appropriate to give protection to the existing laws against violations of Fundamental Rights then this cannot be achieved by taking aid of this expression from Article 270-A(1). This legislative intention is clear from the progress of the Bill of the Constitution (Eighth Amendment) Act, 1985 Bill (N.A. Bill No.13 of 1985) in the National Assembly until it become an Act of the Legislature:

.....

The language of this Order and that of para. 9 of President's Order No.26 of 1962 and para.7 of President's Order No.14 of 1972 is in pari materia. In his view, the words "the provisions of this Order shall have effect" meant that in spite of the repeal of Martial Law Regulations and Martial Law Orders, they continued to operate in future on being validated by Article 270-A(1). In other words they survived the repeal and were continued as laws under sub-Article (3) of the 1973 Constitution. This contention hits at the proviso to Article 270-A(1) which limits the power of the President and the Chief Martial Law Administrator to make only such Martial Law Regulations and Martial Law Orders after the thirtieth day of September, 1985, which would facilitate or were incidental to the revocation of the Proclamation of the fifth day of July, 1977. Therefore, the Legislature only gave validity to this extent and if they were to survive and operate as Martial Law Regulations and Martial Law Orders

(Emphasis applied)

it would be against the purpose of legislation for in that event it would entrench the Martial Law rather than to facilitate the revocation of the proclamation of the Martial Law. There is also the further reason that if the Martial Law Regulations and Martial Law Orders were to survive then they would be in conflict with some of the paragraphs of this Order and in particular paragraph 5 which could not be the intention of the maker.

In my view, in the expression "the provisions of this Order shall have effect", the key words are "shall have effect", which mean: "shall have legal effect." (See Venkataramaiya's Law Lexicon, Second Ed., Volume 3, p .2217) . The purport of using these words is to give legal protection to the several provisions of the Order as a result of the change-over from Martial Law to rule of law under the Constitution. This device was earlier adopted for the same purpose so as not to leave a vacuum. Accordingly, this submission of the learned Attorney-General is untenable.

Another Member of the Bench Mr. Justice Nasim Hasan Shah expressed himself as under:-

According to the learned Attorney-General, the effect of sub-Article (1) of Article 270-A is that not only are the laws made during the period 5th July, 1977 to 30th December, 1985 alongwith their contents deemed to have been competently made and enacted but also that the jurisdiction of all Courts has been taken away to question the validity of the said laws on any ground "whatsoever". This blanket validation and complete immunity, to any scrutiny thereof is further reinforced by the provisions of sub-Article (3) of Article 270-A, which saves their future operation and renders them immune from scrutiny in the like manner.

On the other hand, according to Mr. Yahya Bakhtiar what has been saved from all challenge by the provisions of Act 270-A is the entertainment of any plea to the effect that the laws made during this period were not made by a competent authority and the liability to be struck down on that ground. In any case, the jurisdiction of the Courts to see whether such a law, in its future continuance, constitutes a violation of any of the Fundamental Rights, which have now been restored is not ousted.

While considering the scope and effect of the provisions of Article 270-A it is not without interest to refer to the background and history of the enactment of this important provision. It will be recalled that this provision was inserted into the 1973-Constitution by the Constitution (Eighth Amendment) Act, 1985 which was passed into law on 11th November, 1985.

.....

On a careful consideration of the various provisions of Articles 270-A I have reached the conclusion that none of them has the effect of giving immunity to all the laws made between 5th June, 1977 to 30th December, 1985, from being tested on the touchstone of the inconsistency with the Fundamental Rights. Full reasons for this views have been given by my Lord the Chief Justice with which I respectfully agree. This interpretation moreover gets support from the history of the legislation noticed above. (Emphasis applied)

The next Member of the Bench Mr. Justice Shafiur Rahman framed questions, and the significant one being at serial No.2 is as under:-

(2) *The affirmance, the adoption, the declaration and the validation of laws specified in Article 270-A(1) of the Constitution coupled with the clause ousting sweepingly the jurisdiction of all the Courts has not the effect of either effacing, eclipsing or of subordinating the Fundamental Rights guaranteed by the Constitution to the citizens of the country.*

The next Member Mr. Justice Zaffar Hussain Mirza in relation to the question arising out of the matter before him, expressed as under:-

Even otherwise the extreme position taken by the learned Attorney-General does not stand the test of scrutiny if the consequences flowing therefrom are taken into account. In the first place it may be pointed out that clause (3) of the Article in question seeks to continue in force not only the existing laws but also notifications, rules, orders or bye-laws. Accepting the argument that the words "notwithstanding anything contained in the Constitution" would also govern clause (3), would result in giving the overriding effect to such notifications, rules, orders, or bye-laws as against the Fundamental Rights. This in my opinion could not be the intention of the legislature. Secondly clause (3) covers not only the legislative measures adopted during the Martial Law period as specified in clause (1), but even pre-existing laws and there appears no rational basis for imputing to the legislature the intention to continue such pre-existing laws free from all constitutional limitations in the future. It is, therefore, clear that the non obstante clause under consideration does not control clause (3) of Article 270-A. Apparently the object underlying clause (3), as in case of similar provisions in the earlier Constitutional instruments, was to maintain the continuity of laws and to prevent interruption in the legal force of the existing laws so that legal rights are not affected by the disappearance of the laws under which the rights and obligations accrued or were incurred. It may be pointed out again that clause (3) embraces all the existing laws including enactments which were in force at the relevant time. Such enactments and laws included some of the laws which were in existence at the time of the enactment of Article 268(1) or

even earlier. Therefore, it will be unreasonable to attribute to the legislature an intention to convert an existing law which was to continue in force subject to the Constitution, into a law which would override the Constitutional limitations, after being continued under Article 270-A. I find no good reason for adopting such a construction. (Emphasis applied).

This conclusion is further reinforced by another consideration. It will be observed that clause (3) of Article 270-A has the effect of continuing in force all the existing laws that were in force immediately before the date on which the proclamation of withdrawal of Martial Law was issued and all the provisions of the Constitution were revived. Accepting the argument of the learned Attorney-General will mean that all the existing laws en masse would achieve supra-Constitutional status free from every constitutional limitation or constraint. Such unbridled supremacy would mean the virtual continuation of the entire legal order existing on the date of withdrawal of Martial Law, over and above the Constitution which, in consonance with the settled principles of interpretation, is difficult to attribute to the legislature. (Emphasis applied).

24. In Benazir Bhutto case the Hon'ble Bench members have agreed that the future operation of laws protected under Article 270A would be subject to the limitations contained in the Constitution, which include that not only can such laws be struck down for violation of fundamental rights recognised by the Constitution but also on the touchstone of legislative competence identified in the Constitution. This view, as authored by Mr. Justice Zaffar Hussain Mirza, was agreed by other Members of the Bench as followed, such as Mr. Justice Abdul Kadir Shaikh, Mr. Justice Javid Iqbal, Mr. Justice Saad Saood Jan, Mr. Justice Hussain Qazilbash and Mr. Justice Usman Ali Shah.

25. Somehow, a similar view was taken by the Federal Shariat Court wherein Presidential Orders' protection vide Article 270A ousted the jurisdiction of the Federal Shariat Court in the FATA territory. A challenge to the Presidential Order was made not only on the basis of fundamental rights' infringement but also that the said Order was "violative of Constitutional frame", as restored when Marshall Law was

lifted. In terms of paragraph 19 and 21 of the judgment in the case of Sajjad Hussain case⁴, the Federal Shariat Court has relied upon the judgment of Benazir Bhutto to rule that the effect of laws protected under Article 270A cannot travel beyond the line that was drawn by Article 270A itself i.e. when it came into force and concluded its effectiveness could be equated as sunrise and sunset. Article 270A itself does not sanction the infinite applicability or continuity of the legal instrument beyond the date when the legislative pillars (assemblies/senate, etc.), through the restoration of the Constitution, resurrected and started functioning. Thus, the law developed by the Federal Shariat Court, as well as by the Supreme Court, was that the law that was enacted in a period where the Constitution was in abeyance cannot be given a sanction beyond the date when it was said to have been protected and that too to override the Constitutional frame. It is (79 Order P.O 13/79) nowhere a protected instrument in absolute sense, specially its section 3, and cannot be termed to have a sanction of the Constitution of Pakistan, as restored. Needless to mention that such findings of the Federal Shariat Court in the reported judgment identified above were upheld in appeal before the Supreme Court⁵.

26. Thus, it can be safely said that laws which were protected, for a period, by Article 270A and which cannot withstand the constitutional mandate and frame, when it was restored, have to fall and sink, and can be struck down by the Court if found to either overlapping or violating the fundamental rights protected/ guaranteed by the Constitution or violative of the Constitutional scheme itself and Article 270A cannot be read as if it had an effect of saving such laws even after the cut-off date of 1985 when constitution was restored via Presidential Order-14 of 1985.

⁴ PLD 1989 FST 50 (Sajjad Hussain v. the State)

⁵ 1993 SCMR 1523 (State v. Sajjad Hussain)

27. The supremacy of the Constitution has to be safeguarded. The laws which could not withstand the legislative competence must yield their way to parliamentary and constitutional supremacy, and laws after such scrutiny, if found transgressing such mandate, must be seen to have been melted down to the frame of the Constitution. Such laws made during the period mentioned in Article 270A it found violative, must be eclipsed by the supreme law, i.e. Constitution and it cannot be vice versa, and laws in derogation of such principle be held ultra vires, such as in the case of section 3 of P.O 13/79.

28. The 18th Amendment played a pivotal role in further understanding the legislative competence of federation and the provinces. The first impact created by the 18th Amendment was that Article 270A, which carved a new dimension along with the 7th Schedule and the special status as assigned to the laws of the 7th Schedule, was removed to save the protection. Consequently, for the purposes of present proceedings, the effect is such that the said entry 50 of FLL (the only list now available) of the 4th Schedule of the Constitution of the Islamic Republic of Pakistan, 1973 was amended. Entry 50, as seen before and after the 18th Amendment, is thus essential to be read for the purposes of their real application. A comparative statement is as follows:-

| Before 18 th Amendment | After 18 th Amendment |
|--|---|
| Taxes on the capital value of the assets, <u>not including taxes on capital gains on immovable property.</u> | Taxes on the capital value of the assets, <u>not including taxes on immovable property.</u> (Emphasis applied). |

29. Thus, as could be seen for the purposes of this subject i.e. taxes on immovable properties, that it has been excluded from the domain of the federation, the Federal Legislature, and consequently, the Cantonments cannot levy, impose, charge and/or recover such taxes as

levied by it, on immovable property, from the date of restoration of Constitution and more particularly after 18th Amendment, either under Cantonment Act, 1924 or under Cantonments Urban Immovable Property Tax and Entertainment Duty Order, 1979. Such levy (levies) by the Cantonment Board(s) seem to have been initiated in terms of the Cantonment Act, 1924.

30. The argument of Mr. Munshi insofar as the continuity of the Cantonment Act and the Presidential Order 13 of 1979 (to the extent of relevant sections), is concerned, is thus misconceived and devoid of any power/force within the frame of the Constitution of Islamic Republic of Pakistan, 1973 to impose a tax on immovable property located in cantonment areas which itself is part of a provincial territory.

31. The interpretation of Entry 50 recently came up for consideration before the learned Division Bench of this Court in CP No.D-4942 of 2022 and others which were disposed of vide judgment dated 30.12.2022, (which is not a reported judgment till date), and another judgment of Islamabad High Court in the case of Zaka Ud Din Malik⁶. The issue though, was not directly related to the issue in hand, it is in relation to capital value tax on foreign movable and immovable assets on residents/ individuals through Section 8(2)(b) of the Finance Act, 2022. The vires of the said law were impugned before the respective Courts on the ground that the federation did not have the power to impose a tax on foreign immovable properties located beyond the territory of the province. With slightly different reasoning, the two Benches disposed of the matter in above referred petitions. The Bench in CP No.4942/2022 observed that the word “not including” used in Entry 50 and the word “except” appearing in Entry 49 are different and do not give a complete exclusion and while discussing the impact of Article 142 of the Constitution of

⁶ Zaka Ud Din Malik v. Federation of Pakistan (2023 PTD 268)

Islamic Republic of Pakistan, 1973 and Entry 50, decided that the tax on immovable property (including tax on capital value on immovable property) is a provincial subject to the extent of territory of province and since the properties, which were subject matter of the said petitions were foreign immovable properties, i.e., beyond the territory of any particular province, the federal government was empowered to impose capital value tax on such properties/assets.

32. A similar view, with some altered reasoning, was taken by the Islamabad High Court, which observed that the tax in question is not a tax on immovable property but a tax on total assets of resident individuals. The Islamabad High Court further held that no reference was made to a particular immovable property while imposing the tax, but reference was made to the total value of assets of an individual. Therefore, tax could be levied by the federation under the first limb of Entry 50.

33. Per judgment, the total value of assets of an individual immovable property is a tax on the individual's property. The two limbs of Entry 50 of the 4th Schedule of the Constitution of Islamic Republic of Pakistan, 1973 was thus read disjunctively while dealing with immovable properties located and available in a province. The gist however of the two judgments could be narrowed down that under Entry 50 an immovable property located within the territory of a province can only be subjected to a tax under a provincial law and that already exists as Sindh Urban Immovable Property Tax Act, 1958 and the federation has no power to levy and consequently authorize Cantonment Boards to levy, charge and recover such tax under a federal statute. The present frame of the Constitution thus erodes the effect of Presidential Order 13 of 1979 to the extent of relevant provisions and is eclipsed by 18th Amendment carried out/introduced by the parliament and consequently

erodes the power of Federation to impose tax on immovable property under any federal law including but not limited to Act of 1924 and/or Cantonments (Urban Immovable Property Tax and Entertainment Duty) Order, 1979.

34. The Presidential Order 13 of 1979 (hereinafter means relevant section 3) thus cannot be visualized and conceived under the 18th Amendment, which has altered not only Entry 50 of the 4th Schedule but has also carried out certain other amendments, such as Article 142 of the Constitution of the Islamic Republic of Pakistan, 1973. The Presidential Order 13 of 1979 thus sinks in the frame of restored Constitution followed by 18th Amendment as it cannot withstand the legislative competence as recognized. In fact amended Article 142(a) provides that Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List, whereas 142(c) excludes Majlis-e-Shoora (Parliament) from legislating on the subjects not enumerated in the Federal Legislative List whereas provincial assembly shall have powers to make laws with respect to such matters not enumerated in the Federal Legislative List. The subject tax was being dealt with under the 1958 statute when in the Martial Law regime, the process intervened via the 1979 Order during abeyance of the Constitution and legislative competence rerouted, which routs of legislative competence stands restored on the revival of the Constitution and introduction of 18th Amendment to Constitution.

35. The subject in hand also came up for consideration before the Peshawar High Court in the case of the State Bank of Pakistan⁷, which read down the Presidential Order 13 of 1979. The principle laid down by the Peshawar High Court was that subject law, which was relied upon for the purpose of levying subject tax was promulgated when the

⁷ State Bank of Pakistan v. Federation of Pakistan (PLD 2022 Peshawar 46)

Constitution was in abeyance, whereas on the restoration the parliament, in particular after the 18th Amendment, the law ceased to enjoy its effect to impose any tax on immovable property.

36. On the touchstone of the Constitutional frame, the law on the basis of which the Cantonment Boards were recovering subject taxes is thus seen to have opposed the constitutional/legislative competence and beyond their legal powers and capacity, which could only be termed ultra vires under the present frame of the Constitution and we hold it accordingly, on legislative competence alone. There was neither any question of fresh legislation or validation since there were no such volume in presence of Act of 1958 which stood revived. Mr. Munshi's reliance on Ghulam Musfafa Khan's case⁸ is also not helpful as the said Bench also interpreted sub-clause 2 and 5 of Article 270A having main object of conferring validity upon acts, actions and proceedings, done or taken when Martial Law was in force (para-21).

37. On the count of discrimination, it is claimed that similar and identical properties are being taxed differently in other similar areas as well as within the respective cantonments itself. It is claimed that there is no clear distinction between different municipalities and cantonments within the city of Karachi as the areas are often territorially mixed up (overlapping) and well connected. Thus, the imposition of completely different rates of taxes is not only discriminatory but also violative of the rights of citizens to conduct trade and business.

38. Although this argument provides a very thin line of distinction as attempted to be drawn by Mr. Ayan Memon, as different properties within an area may have different values depending on their age, condition, suitability etc. but are to be taxed accordingly by the province specifying the categories/ zones and the rates which are

⁸ PLD 1989 SC 26

supposed to be common in terms of categorization and that could only be regulated by a province through a yardstick as a regulator. Different municipalities cannot carve out this distinction independently and differently for their benefit to impose taxes as individual municipalities as they required and desired. At times, only a street of 20 feet separates the municipalities, yet the applicable rates differ only on the count of a situation of the property in a known municipality/local body area although facilities may not be upto the mark. This test alone, at times, was not found to be good classification. If a classification is dependent upon improved facilities, it counts good, but the purpose could be achieved by one master/ regulator, i.e. province. If classification does not rest on good tests, then it is bound to collapse, which, of course, will create discrimination and there should be one parameter/yardstick to evaluate. However, one should understand that different properties in an area/common area may have different values notwithstanding the area itself is classified as a category but within that category the value of the property/building may vary, depending upon its characteristics to evaluate and measure and rental value it may fetch, hence the fact that property situated in a particular local body/municipality, itself, should not form the basis of classification. Hence it is all the more necessary that there should be one regulator to deal with their evaluation with common tools of evaluations.

39. “Notwithstanding above”, historically tax on annual rental value of an immovable property was being levied under Chapter 5 of the Cantonment Act 1924 in line with Section 60 onwards. This provision was varied and altered in August 2023. Before such amendment Section 60 read as under:-

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.”

40. It had three prerequisites i.e. (a) there must exist a valid tax i.e. being imposed in and by any municipality of a province (b) before levying such tax Cantonment Board must obtain previous sanction of federal government i.e. federal cabinet as per case of *Mustafa Impex*⁹ and (c) tax must be published in official gazette.

41. As regards the first hurdle that tax can only be imposed under section 60 by reference to any other valid subsisting law that imposes such tax in a municipality, it seems that this issue has already been set at rest by virtue of various pronouncements which ruled that in the absence of a pre-existing tax, cantonment boards have no power to impose a tax under section 60. The relied judgments in the case of (i) *Mst. Nargis Moeen*¹⁰ - upheld by Supreme Court as Civil Appeal No.2300-L/2023, (ii) *Sultan Jahan*¹¹ - upheld by Supreme Court as 2007 YLR 1547 and (iii) *Lahore Station Commander*¹², are in relation to imposition of “transfer tax” on immovable property and not the subject tax as under discussion.

42. As far as second prerequisite is concerned, the principle of *Mustafa Impex* (Supra) is fully attracted as previous sanction of federal cabinet had to be obtained prior to imposing tax. It not only stretches upon a tax being introduced by the Cantonment Board for the first time in line with other municipalities but also at the time of enhancement of rates¹³.

⁹ *Mustafa Impex v. Government of Pakistan* (2016 PTD 2269)

¹⁰ *Mst. Nargis Moeen Vs. Government of Pakistan* (PLD 2003 Lahore 730)

¹¹ *Mst. Sultan Jahan v. Cantonment Board Lahore Cantt.* (2007 YLR 1681)

¹² *Lahore Station Commander v. Col. (R) Muhammad Abbas Malik* (2006 CLC 1674)

¹³ *Continental Biscuits Ltd. v. Federation of Pakistan* (2011 MLD 1006) (relevant page 1011 paragraph 10)

43. Similarly, as far as the third prerequisite is concerned, it must be published in the official gazette.

44. The Act of 1958 can be taken up as a complete code and cap for its application for levying, charging and recovering such taxes. It covers the taxes, rates and the collection method depending upon a common umbrella for classification, and this classification must not be altered on the count that an area is being controlled or maintained by another municipality within the common area with the same facilities around and within.

45. Act of 1958 describes the rating area where the tax is being levied and the urban areas include areas within the boundaries of a cantonment board. Section 3 of Act 1958 is a charging section which allowed the provincial government to levy tax at the prescribed annual value of the building and lands which itself is defined in section 5. It provides a mechanism/procedure as to how such value is to be ascertained by estimating the gross annual rent at which such land or building, together with its appurtenances and furniture, could be rented out for its use or enjoyment. It also eliminates the exercise of different discriminatory methods (by different municipalities) and assess the same on the basis of a valuation table officially notified by the provincial government. It also empowers the local councils, including the Cantonment Board, to claim a share out of such taxes being levied by provincial legislation and recover.

46. Since the 18th Amendment has wiped out the requirement for an amendment under Article 270A(6) as the law already existed hence no vacuum, and the laws announced during the special regime (7th Schedule) were available for a specified period subject to their validity

in case of various other laws. Any requirement for an amendment under Act 270A(6) would only be meaningful if there was no pre-existing law on the subject by the competent legislation as now and was recognized by the Constitution of the relevant time. Presidential Order 13 of 1979 would yield its way to the effect of Presidential Order No.14 when the Constitution was restored to its frame, which has essentially restored the laws which were in existence prior to the Constitution being kept in abeyance i.e. from 1979 to 1985 and more importantly when 18th Amendment sets the fields of Federal and Provincial competence.

47. Further, in terms of the judgment of Benazir Bhutto³ (Supra), the Courts were competent to strike down laws whose competence is beyond the legislative frame and also any levy flowing through Presidential Order 13 of 1979 in disregard to the frame of the restored Constitution and as amended from time to time which we do and maintain accordingly.

48. We were privileged to hear three independent counsels appearing for different Cantonment Boards for their diversified views, and surprisingly, their arguments were found overlapping and opposing each other. Mr. Munshi insisted that subject levy is nothing but a tax and has relied upon Section 60 of the Cantonment Act 1924 read with Entry 2 of the Federal Legislative List, whereas Dr. Farogh Naseem, learned counsel appearing for some other Cantonment Boards, insisted that it may be anything but tax and hence cannot come in the clutches of Entry 50. Mr. Munshi relied upon Presidential Order 13 of 1979 and submitted that it is valid and continue to exist to protect the levy and imposition of tax on the annual rental value of immovable property. He added that Presidential Order 13 of 1979 does not violate any fundamental right and cannot be struck down or read down as the laws were protected under Article 270A whereas Dr. Farogh Naseem gave different dynamics as far

as levy and accumulation of funds are concerned. Mr. Munshi's above contention has been responded in the above part of the judgment. In adjudging such law (1979 Order) our observation would have an effect of exercise of such powers in rem.

49. Mr. Munshi claimed that since the taxes have been claimed and recovered for years, therefore, they cannot be challenged as of now, and the silence to such a challenge amounts to the acquiescence of such rights. Having examined this contention we find no force in it. These arguments are not confidence inspiring as it is a settled law that the constitutionality of any law on the touchstone of any provision of the Constitution being opposed, could always be challenged and only because such challenge had not been thrown earlier does not amount to a acquiescence and would not be immune from a challenge in future. In enforcing the constitutional frame, the concept of acquiescence is an alien object.

50. Entry 2 of IVth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973, which was commonly relied upon by Mr. Naek, Dr. Farogh Naseem and Mr. Munshi, is in fact a general legislative entry for internal objects and does not include power to tax. This is also a settled law that exhaustive taxing entries are between Entry 43 to 53¹⁴. Reliance can also be made on the recent pronouncement of the Supreme Court dated 13.10.2023 in the Cantonment Board's Civil Appeal No.1363 of 2018 wherein such arguments raised by the Cantonment Boards in paragraphs 2 and 3 were rejected in paragraph 12.

51. Mr. Munshi also argued that it is a dispute between the federation and the provinces and hence exclusive jurisdiction to adjudicate the

¹⁴ . Pakistan International Freight of Forwarders Association v. Province of Sindh (2017 PTD 1) and Pakistan Mobile Communications Ltd. v. Federation of Pakistan (2022 PTD 266)

same lies with the Supreme Court in its original jurisdiction under Article 184 of the Constitution of Islamic Republic of Pakistan, 1973. The argument again is not confidence inspiring as the dispute was raised by private individuals against such levy and its recovery and was not raised by any province or federation before us. In an issue of sale tax on services (supra), the individual consumer/ customer and aggrieved parties questioned the competence of the federation and the two governments, i.e. the federation and the provincial governments, strived for their competence, which was adjudicated upon by this Court competently.

52. Mr. Naek while treating the subject levy as tax submitted that on the basis of Article 7 of the Constitution of Islamic Republic of Pakistan, 1973 there was/is no need to rely on any Entry in Federal Legislative List. He asserted that the Cantonment Boards are local government and the tax is imposed by the Cantonment under Article 7 of the Constitution of Islamic Republic of Pakistan, 1973 being recognized a state.

53. Our response to it is that Article 7 is only a definition clause and provides the definition of State. It is neither an enabling nor self-executing provision of the Constitution. This article does not take us to a legislative competence. In giving a harmonious application, this Article is to be read with Article 142 of the Constitution which provides contours of law making pillars to split organs of state such as federation, senate and provinces etc. Article 7 of the Constitution of the Islamic Republic of Pakistan, 1973 itself ends up by saying that the Federal Government, (Majlis-e-Shoora/ Parliament), a Provincial Government (Provincial Assembly), and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess (emphasis applied). Such powers could only be drawn not through Article 7 but through Article 142, read with the 4th Schedule of the Constitution of the Islamic Republic of

Pakistan, 1973. No purpose could be achieved simply by relying on Article 7.

54. The argument of Mr. Naek that this genre of tax is not recognized in any of the Entries itself is fatal to the case of the Cantonment Board as in the absence of such identity by any of the entries, it would simply suggest that it is only available for provincial legislation as per Article 142 of the Constitution.

55. Mr. Naek also emphasized on the application of Article 140A, a newly inserted article in the Constitution, and submitted that Cantonment Boards, being local government are solely responsible for their political, administrative and financial responsibility and have the power to impose any tax on the basis of Article 140A read with Section 60 of Cantonment Act, 1924. First of all, financial responsibilities here do not mean that they could be construed as powers to levy tax. Financial responsibilities mean whatever funds are available at their disposal, its utility should be more transparent and it does not mean that they would acquire the competence to levy tax. The Supreme Court decided these arguments in its recent pronouncement dated 13.10.2023 in Cantonment Board's Civil Appeal No.1363 of 2018. The judgment provides that neither has Article 163 been made redundant nor has Article 140A empowered the Federation, including cantonment boards, to impose the professional taxes.

56. Reference was also made to the Sindh Local Government Act, 2013, that the annual rental value on immovable property is now devolved upon local government; hence, Cantonment Boards as well are empowered for the same being local government. Sindh Local Government Act 2013 specifically excludes Cantonment Boards under section 14 thereof, hence no power to levy such tax can be derived by

the Cantonment Boards from the said Act. No powers could be drawn from any federal law as it being a provincial subject. It would be contrary to the reasoning and conclusion drawn by the Supreme Court in the above referred judgment in the Civil Appeal. Furthermore, section 96 of the Act 2013 states that respective local councils may levy all such taxes mentioned in the 5th Schedule, which include tax on immovable property, however, in subsection (2) thereof, it is specifically provided that where such tax is also leviable by the province/provincial government, the rate of tax imposed by the council shall not be more than the rate of the government. Thus, the rate, as specified under the Sindh Local Government Act, 2013 could be the maximum cap. The necessity of giving this overview is only because Mr. Naek argued and relied upon the provisions of the Sindh Local Government Act, 2013, whereas the Federal entity has no role in levying, charging and recovering it.

57. The argument of the learned Counsels that it is not a tax on property but on annual rental value and therefore be deemed to be a tax on income from property, appears weak because this would violate their own submission as Section 80 of the Cantonment Act, 1924 suggests that non-payment of tax on annual rental value of immovable property is a charge created on the property itself. It is therefore clear that as per section 80 tax is imposed on immovable property and it runs on the property itself and not on the owner or occupier. Thus, it is a tax on the immovable property and not a tax on a person's income. Reliance is placed on the case of *Nirmaljit Singh Hoon*¹⁵ and *Jalkal*¹⁶.

58. Dr. Farogh Naseem took a different stance from the rest of the counsels appearing for other cantonment boards that impugned levy is

¹⁵ *Nirmaljit Singh Hoon v. The State of West Bengal* 95 1 SCC 707

¹⁶ *Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial & Investment Corporation* (AIR 2021 SC 5316)

not a tax. He submitted that it can be anything but tax and hence beyond the scope of Entry 50, and on this count alone, the petitions must fail. He further stretched his argument and submitted that it is a levy and most likely a fee and is imposed under section 60 of the Cantonment Act, 1924. He relied upon the case of Workers Welfare Funds¹⁷ and GIDC¹⁸ where a particular levy was adjudicated to be a fee on account of quid pro quo, and that since the amount so collected in the relied judgment was not liable to be subjected to federal consolidated fund, it is regarded as fee notwithstanding that it accumulated and pooled in the Federal consolidated fund. He submitted that in the same way, the levy is not meant for consolidated fund but the funds of Cantonment Boards itself. He further relied upon Entry 2, read with Entry 54, to submit that the case of annual rental value on immovable property is a fee in respect of municipal services; hence, there is constitutional competence to levy it as it is not within the frame of Entry 50.

59. In order to understand Dr. Naseem's contention, we first considered the argument to the extent of subject levy is a fee. Under the scheme of the Cantonment Act, 1924, levies are envisaged under two provisions, as stated above, i.e. Section 60 for levy and collection of tax and Section 200 for levy of fees. Firstly, if it is recognized as a fee under Section 200, Cantonment Boards cannot levy or collect such fee as there would be no statutory competence on the "subject" to levy such a fee. This has now been settled that for the imposition of any fee, services under the principle of quid pro quo must have been specified in the exhaustive list provided under section 200 of the Cantonment Act, 1924. It has been declared that if a particular fee being claimed for a

¹⁷ Workers' Welfare Funds, M/o Human Resources Development, Islamabad and others v. East Pakistan Chrome Tannery (Pvt.) Ltd. and others (PLD 2017 SC 28)

¹⁸ Messrs Cherat Cement Co. Ltd., Nowshera and others v. Federation of Pakistan through Ministry of Petroleum and Natural Resources and others (PLD 2021 SC 327)

service under the principle of quid pro quo is not provided for under section 200, such a fee cannot be imposed, whereas the scope of section 60 only deals with the imposition of taxes and not fee up until August, 2023 when an attempt was made to include fee in the said provision also.

60. The two subjects, i.e. tax and fee, have been differently carved out and explained/understood. There is no wisdom in saying that Section 200, which deals with an exhaustive list of different natures of fees, could also be visualized under Section 60. This would amount to challenge the wisdom of the legislature that they cannot distinguish between two baskets. Section 60 only deals with the imposition of taxes and not fees, and any insertion of any other levy would challenge the structure and composition of the frame of the Cantonment Act, and principles of interpretation would not permit such reading. The list, even otherwise, has to be drawn from the exhaustive list of fee charges available in the Act itself. In the case of Exide Pakistan Limited¹⁹ the Cantonment Boards were/are held to have no authority to impose shop and board fee from the commercial premises as no such power/subject exists under section 200 of the Cantonment Act. Similarly, in the recent pronouncement in the case of The Bank of Khyber,²⁰ it has been held that Section 200 allows Cantonment Boards to impose fees in limited circumstances, and Cantonment Boards cannot enlarge the scope of said section by imposing fees on advertisements, and the implied levies were struck down by the Court. In another case of Raj Kumar²¹ which is a judgment of the learned Division Bench of this Court, held that since parking fee was not identified under section 200 of the Cantonment Act, 1924, the Cantonment Boards had no power to charge such fee as

¹⁹ Exide Pakistan Limited v. Cantonment Board Clifton (2012 CLC 1124)

²⁰ The Bank of Khyber v. Municipal Corporation Gujrat (PLD 2021 Lahore 108)

²¹ Raj Kumar v. Hyderabad Cantonment Board (2006 MLD 549)

Section 200 of the Act does not confer such power. In the appeal before the Supreme Court in the said case reported as 2015 SCMR 1385, the Supreme Court upheld the judgment of the High Court.

61. The gist and conclusion that could be drawn is that under section 200, which is meant for levying the fee, provides an exhaustive list of all those levies against which by applying principle quid pro quo a fee could be levied and if any nature of service to claim fee is not mentioned therein then it cannot be imposed by the Cantonment Boards at all. A similar situation was dealt with by the Indian Court in the case of *Jalkal*¹⁶ (Supra), which provides the relevant law to impose a tax and, therefore, held therein that a fee could not be imposed thereunder.

62. In the instant case the Cantonment Act, 1924 does not identify such services against which a fee by applying the principle of quid pro quo could be claimed i.e. the annual rental value on immovable property or any fee on the immovable property as against it Section 60 does not allow the imposition of any fee or charges rather only allows for imposition of tax which levy the Constitution does not permit.

63. In August 2023, Section 60 of the Cantonment Act 1924, was amended, and the Cantonment Boards have been purportedly empowered to impose any or all taxes, fee, tolls or charges specified in Schedule 7. The subject, again, is not specified in Chapter 7. This would further not be of any gain to the Cantonment Boards as the list of fee under section 200 was/is exhaustive; the amendment rather goes on to suggest that previously before such amendment and insertion of the word “fee” the Cantonment Boards could have imposed only taxes under section 60 and not any other levy. This change alone would not be of any benefit to the Cantonment for the purposes of levying tax/fee on the annual rental value of the immovable property as it is separately being

charged by the provincial government as a tax on annual rental value under provincial law. The frame of Section 60, read with Schedule 7 and Section 200 separately, does not permit any such levy. We accordingly read down the two provisions discussed above, accordingly.

64. The exhaustive list has been provided under the amended section 60 under Schedule 7, and since it is so exhaustive, the same could not be stretched any further as the fiscal statute must be narrowly and strictly construed, and hence it does not necessitate such interpretation²². There is no fee on the annual rental value on the immovable property listed under the schedule provided under the amended Act. While such arguments were heard in the case of Civil Aviation Authority, the Supreme Court in its recent pronouncement dated 13.10.2023 in Civil Appeal No.1363 of 2018 has held in paragraph 7 the last sub-paragraph of paragraph 10 that:-

“...The aforesaid change (in Section 60) meant that, previously the sanction of the Federal Government was required to be obtained for cantonment boards to impose taxes but now it has been delegated to a Division. This downgrading the power of the Federal Government does not seem to conform to democratic principles, and obfuscates transparency”.

65. Thus, the effect of amended Section 60 could be visualized with the above observation.

66. It is claimed that all such sums collected are meant for cantonment funds constituted under section 106, and such sums are applied towards purposes mentioned under section 109 of the Cantonment Act 1924. It is further claimed that since the money is spent on the purposes mentioned in the statute therefore, it is a service, and

²² Cyrus Cowasjee v. KMC (PLD 2022 Sindh 106 - page 115 para 14), Commissioner Inland Revenue v. M/s Wi-Tribe Pakistan Ltd. (2020 SCMR 420 - paragraph 4) and Muhammad Ayaz Khan v. Federation of Pakistan (2020 PTD 2200 - paragraph 243)

the fee so collected is under the principle of quid pro quo, and levy cannot be named as tax.

67. Section 109 provides details which are neither specific nor exhaustive but rather general in nature. The principle of quid pro quo is applied when specific provision/facility as against such recovery of fee is made. The Cantonment Boards have several other services which they are rendering and are also recovering the amount which could have a specific purpose but this amount of tax being recovered as a tax on annual rental value could not be equated to have been meant for such a purpose. The purpose must be specific and must relate to a levy itself. There may not be requirement of arithmetic precision but there must be a direct co-relation in between for applying quid pro quo.

68. The cases that were heavily relied upon by Mr. Farogh are of GIDC and WWF (Supra), which perhaps are of no help to him. The two levies, which were adjudged as fee, are the prime example wherein specific purpose is defined in relation to the levy. In the case of Workers Welfare Fund¹⁷ (Supra) Supreme Court has held that the purpose must be specific and since it was, it ruled accordingly in the said case. A similar view was taken in the Durrani Ceramics case²³.

69. As far as the issue of the provincial consolidated fund is concerned, as the levy i.e. tax/amount so recovered was/is never routed towards consolidated funds is concerned is immaterial; to our understanding, this subject levy is meant for the provincial consolidated funds and if for any reason it was objected or fettered or not allowed to be routed toward provincial consolidated funds and allowed to make its way to cantonment funds, it will not change its status and only for this reason the levy cannot be identified as a fee; reliance can be placed on

²³ Federation of Pakistan v. Durrani Ceramics (2014 SCMR 1630)

AZGARD case²⁴, Workers Welfare Fund case (supra) and Durrani Ceramics's case (supra). Simply because the revenue goes into federal consolidated funds or is not pooled where it ought to, does not alter its status, and similarly, accumulation of funds in any pool or fund itself will not give that sum a desired status which is independent of the fact where it is kept. A similar view was expressed in the case of Khurshid Soap,²⁵ which ruled that it matters not if revenue collected forms part of consolidated funds.

70. The Indian Supreme Court in the case of Southern Pharmaceuticals²⁶ at paragraph 25 was pleased to "recognize" the aforesaid principle that the collection of services rendered does not increasingly rule that merely because collection for the services rendered or grant of privilege or license, are taken to the consolidated funds of the State and are not separately appropriated towards expenditure for running the service, is not by itself decisive i.e. because the Constitution did not contemplate it to be an essential element of fee that it should be credited to a separate fund and not the consolidated funds. This view was reiterated in another matter of Sreenivasa General Traders²⁷ in paragraph 32 while observing that the Constitution nowhere contemplates it to be an essential element of fee and that it should be credited to a separate fund and not the consolidated fund.

71. Another view in the case of water tax while dilating upon Section 52 of UP Water Supply & Sewerage Act, the Bench recognized it to be a tax and not a fee in provision of water service (case of Jalkal¹⁶ [Supra]). The argument, as raised in the said matter, was that since the tax is collected in separate funds, therefore, it is fee. As against it, it was

²⁴ Azgard Nine v. Government of Pakistan (2013 PTD 1030)

²⁵ Khurshid Soap and Chemical Industries (Pvt.) Ltd. v/ Federation of Pakistan (PLD 2020 SC 641)

²⁶ Southern Pharmaceuticals & Chemicals v. State of Kerala [(1981)4 SCC 391]

²⁷ Sreenivasa General Traders v. State of Andhra Pradesh [(1983)4 SCC 353]

observed that a levy was imposed for the general revenue of Jal Sansthan (Water Foundation) amongst other levies, and therefore, it was a general revenue measure for the performance of functions of the federation under the statute. It was held that the creation of a separate fund was to fulfil the general revenue requirement of the water foundation. Therefore the levy under section 52 was a tax and not a fee as the said levy along with another levy under the Statute were going to the same funds which was to be used by general functionality of the federation.

72. Somehow, the exact treatment was given to the subject levy, i.e. tax on the annual rental value of the immovable property, which was recovered and kept by the Cantonment Board. According to the Board, it was kept in the same funds as identified under section 106 of the Cantonment Act, 1924, which action could not alter the status of that levy. It is thus safely stated that crediting a levy/fee in a particular pool or account is not the determining factor, and similarly, crediting a tax in a different pool or funds, i.e. other than consolidated funds, will not alter or change the nature of the levy. Here the levy is recognized and identified as a tax and it will continue to be the same, notwithstanding that it was kept in a fund under section 106 of the Act 1924 and not allowed by the Cantonment Boards to have its place in the consolidated fund of province, from where the proportionate share, as and when required, could be claimed from the provincial government and/or only appropriate portion of share could be retained, however, the call for levy, charge, assessment/reassessment and rate and recovery, is to be made by the provincial government under the law.

73. In response to an argument of expenditure claimed under Income Tax Ordinance, 2001, we may sum-up that the statute i.e. Cantonment Act 1924 is a complete code and no alien process could be achieved

which is not recognized by the Cantonment Act. There is no special provision for a tax on the annual rental value of immovable property to be utilized as an “expenditure” under the Cantonment Act, 1924, and the general provisions of Income Tax Ordinance, 2001, thus could not be applied. Notwithstanding the above, under section 15-A of Income Tax Ordinance, 2001 even “tax” per se on immovable property can be utilized or adjusted as “expenditure”. This is a general provision for all levies on property and is not specific to any particular fee or tax; hence, a direct nexus of the subject tax could be a misapplication. If the argument is accepted this would mean that any tax which is utilized as an “expenditure” would automatically become a “fee”. Such argument, therefore, is non-conceivable. The arguments of Dr. Farogh Naseem was perhaps keeping the observation made by the Bench in the case of WWF, however, the position in the instant case is quite different as the statute is devoid of any special provision of tax on the annual rental value on immovable property and the reliance was made and applicable on the general provisions which also allows for tax to be utilized as “expenditure” generally. It is thus the requirement of the statute.

74. As an alternative argument, Dr. Farogh Naseem submitted that it may be seen as a tax on the capital value on the immovable property hence federal subject per Entry 50 first limb, in terms of the judgment of learned Single Judge of Lahore High Court in the case of Zaka Ud Din Malik⁶ (Supra). On the subject of foreign immovable property a learned Division Bench of this Court has also dilated upon interpreting Article 142 and Entry 50 of the 4th Schedule of the Constitution of the Islamic Republic of Pakistan, 1973 and held that Capital Value Tax on immovable property located within a province is a provincial subject (both discussed in the earlier part of the judgment). The Islamabad case did not hold capital value tax on immovable property located within a province to be

a federal subject. The two subjects, i.e. the capital value of assets and tax on immovable property, are different heads. The special tax in the referred judgment of Islamabad High Court was, in fact, held to be a tax imposed on individuals' total capital value of all assets and was not in reference to just a particular immovable property. The said judgment would not come to their rescue. Tax on the capital value of assets and tax on immovable property/annual rental value cannot be equated and thus was distinguished in Entry 50 itself. This point of Dr. Naseem cannot be conceived in view of the above understanding of law. The Province of Sindh has already introduced and imposed tax on capital value on immovable property under the Sindh Finance Act, 2010.

75. Each Cantonment Board forms an individual and independent entity, and hence, on this count also, the objection of trans-provincial organization is an incorrect application. Each Cantonment Board performs its functions according to the Cantonment Act of 1924 within its geographical location, and there is not "one" cantonment Board as being one entity that exists and operates in more than one province. Hence, the concept of trans-provincial entity is an alien concept in these proceedings. The performances of these Cantonment Boards are independently watched per Entry 2 which is a separate subject altogether, which does not embark upon the issue of levy such as in the instant case. This is now a provincial subject as recognized by the present frame of the Constitution. The functions of the Cantonment Boards, however, could not be hampered since law provides appropriate share subject to their expenditure and expenditure to be accounted.

76. Thus as far as the power to levy, charge, impose and recover any or all tax(es) separately on immovable property is concerned it is an alien object under cantonment laws in the present frame of the Constitution. The tax on the annual rental value of immovable property

is a tax and not a fee or any other genre of levy. The Cantonment Boards have no power to levy tax on immovable property including tax on annual rental value of immovable property. The Presidential Order 13 of 1979 has no effect on the subject after the revival of the Constitution and the 18th Amendment, and the subject law to the extent of provision of section 3 as applied, is no longer protected.

77. A specific challenge was raised by the petitioners' counsel specially in CP No.D-1330 of 2023 that the Cantonment Boards thus cannot make any assessment or re-assessment, levy, charge, and recover tax on the annual rental value of the immovable property under the Cantonment Act, 1924 being a provincial domain and competence being done under the uniform policy under Sindh Urban Immovable Property Tax Act, 1958. Thus, the collection, if any, could be on the basis of levy, charge and its assessment and re-assessment within the frame of the Sindh Urban Immovable Property Tax Act, 1958 which could be visualized, and not otherwise and the sharing formula could be applied for the performance of the municipal functions (which is not a question here), although the Cantonment Boards are recovering other sums as well as recognized under the Cantonment Act, 1924 and identified in section 200 and other relevant provisions of the Act; available in the funds for its expenditure. The amount recovered by cantonments during such period, in view of above reasoning, calls for a transparent account disclosure, which may be a call of provincial government.

78. Since the legislative competence is not with federation there is no necessity to discuss the flouted process required under section 60 and 64 of Cantonment Act, 1924.

79. Similarly, Article 279 of the Constitution of Islamic Republic of Pakistan, 1973 has no applicability as it relates to a period immediately before its commencement when the Constitution of Islamic Republic of Pakistan, 1973 come to force and not the law of 1979 i.e. Presidential Order 13 of 1979 which is under discussion.

80. Additional questions of Mr. Shams-ul-Islam which embarked upon creation of cantonments within urban area is an issue which we leave open for an appropriate case as it require further material and assistance.

81. These are the reasons for the short order dated 14.12.2023, which is reproduced as under for convenience:-

For the reasons to follow, the listed Petitions are disposed of in the following terms:

- I. The Eighteenth Amendment brought a change to and amended Entry 50 in the Fourth Schedule (Federal Legislative List) of the Constitution of the Islamic Republic of Pakistan. As a consequence thereof, the Federation and all Cantonment Boards lack competence, power, and jurisdiction to levy, charge, impose and recover any or all tax(es) on any immovable property, including, but not limited to, tax on the annual rental value of immovable property.*
- II. Further, the Eighteenth Amendment, consequently, restored the competence and jurisdiction of the Province to levy, charge, recover, and legislate on the subject identified above and to pursue it accordingly.*
- III. Finally, the amounts so recovered by the Cantonment Boards under the aforesaid subject of tax since the Eighteenth Amendment also call for an account.*

At the time of announcement of this short order, Mr. Farogh Naseem, learned counsel appearing for some of the Cantonment Boards has requested that since a short order has been passed in the above terms and the competence, power and jurisdiction of the Cantonment Boards could not be enforced for aforesaid subject, therefore, in terms of clause (iii) of the short order, the petitioners may not move applications in the next four weeks either for the adjustment or refund of the amount paid towards the

aforesaid subject i.e tax on the annual rental value of the property, as the Respondents intend to approach the Supreme Court. Order accordingly.

Dated: 06.01.2024

Judge

Judge

Annexure "A"

| S. No | Case No | Case Title |
|-------|---------------------|--|
| 1 | Const. P. 3023/2015 | Subak Majeed VS Fed. of Pakistan and Ors |
| 2 | Const. P. 5669/2015 | Muhammad Iqbal Siraj VS Fed of Pakistan & others |
| 3 | Const. P. 6505/2015 | Mrs. Shaheen Akhtar VS Fed. of Pakistan and Ors |
| 4 | Const. P. 7318/2015 | Mst. Tahira Bibi VS Fed. of Pakistan and Ors |
| 5 | Const. P. 7460/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and Ors |
| 6 | Const. P. 7461/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and others |
| 7 | Const. P. 7462/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and Ors |
| 8 | Const. P. 7463/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and Ors |
| 9 | Const. P. 7464/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and Ors |
| 10 | Const. P. 7465/2015 | Mrs. Tahira Bibi VS Fed. of Pakistan and Ors |
| 11 | Const. P. 7783/2015 | Mrs. Shama Aslam VS Federation of Pakistan & ors. |
| 12 | Const. P. 6444/2016 | Mrs. Najma Asif Sajan and Ors VS Fed. of Pakistan and Ors |
| 13 | Const. P. 3532/2017 | Gul Naz VS Faisal Cantonment Board and Ors |
| 14 | Const. P. 3538/2017 | M/s Trump Management VS Faisal Cantonment Board and Ors |
| 15 | Const. P. 4306/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 16 | Const. P. 4307/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 17 | Const. P. 4308/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 18 | Const. P. 4309/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 19 | Const. P. 4310/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 20 | Const. P. 4311/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 21 | Const. P. 4312/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 22 | Const. P. 4313/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 23 | Const. P. 4314/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 24 | Const. P. 4315/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 25 | Const. P. 4316/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 26 | Const. P. 4317/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 27 | Const. P. 4318/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 28 | Const. P. 4319/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and ors |
| 29 | Const. P. 4320/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |

| S. No | Case No | Case Title |
|-------|---------------------|--|
| 30 | Const. P. 4321/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 31 | Const. P. 4322/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 32 | Const. P. 4323/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 33 | Const. P. 4324/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and ORs |
| 34 | Const. P. 4325/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and ors |
| 35 | Const. P. 4326/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 36 | Const. P. 4327/2017 | State Life Insurance Corp. VS Karachi Cantonment Board and Ors |
| 37 | Const. P. 6854/2017 | M/s Samba Bank Ltd VS Karachi Cantonment Board and Ors |
| 38 | Const. P. 8387/2017 | M/s Global Educational Constulting Society VS Cantonmnet Board Korangi Creek and Ors |
| 39 | Const. P. 3426/2018 | M/s National Medical Centre (Pvt) Ltd VS Pakistan and Others |
| 40 | Const. P. 3532/2018 | Saeedullah Khan VS Clifton Cantonment Board and Ors |
| 41 | Const. P. 3987/2018 | M/s BBQ Delight VS Fed. of Pakistan and Others |
| 42 | Const. P. 4985/2018 | Ahsanullah Shaikh VS Pakistan and Others |
| 43 | Const. P. 5166/2018 | Muhammad Amin Chapal VS Pakistan and Others |
| 44 | Const. P. 5167/2018 | Muhammad Amin Chapal VS Pakistan and Others |
| 45 | Const. P. 5391/2018 | Muhammad Abdul Razzaq VS Pakistan and Others |
| 46 | Const. P. 8166/2018 | Abeer Shaikh VS Pakistan and Others |
| 47 | Const. P. 8375/2018 | M/s Fine Cotton VS Fed. of Pakistan and Others |
| 48 | Const. P. 1228/2019 | Meomoon Yousuf VS Pakistan and Others |
| 49 | Const. P. 131/2019 | Muhammad Saleem Butt VS Pakistan and Others |
| 50 | Const. P. 1494/2019 | Abdul Majeed VS Fed. of Pakistan and Others |
| 51 | Const. P. 5769/2019 | Muhammad Ashraf Khan VS Islamic Republic of Pakistan and Ors |
| 52 | Const. P. 7657/2019 | Inam Willayat Ali VS Govt. of Sindh & Others |
| 53 | Const. P. 7697/2019 | Mrs. Aliya Jafery VS Govt. of Pakistan & Others |
| 54 | Const. P. 7832/2019 | Muhammad Hashim and Ors VS Fed. of Pakistan and Others |
| 55 | Const. P. 8341/2019 | Shahida Salam VS Govt. of Sindh & Others |
| 56 | Const. P. 2970/2020 | Sana Hussain Merchant and Ors VS Fed. of Pakistan and Others |
| 57 | Const. P. 3847/2020 | Mrs. Gulzar Parveen VS Pakistan and Others |
| 58 | Const. P. 4159/2020 | Mairaj Begum VS Director M.E.O and Others |
| 59 | Const. P. 6396/2020 | Khawaja Muhammad Khan VS Pakistan and Others |
| 60 | Const. P. 6397/2020 | Khawaja Muhammad Khan VS Pakistan and Others |
| 61 | Const. P. 6506/2020 | Dilshad Ahmed VS Pakistan and Others |
| 62 | Const. P. 1251/2021 | Sadiq Rajani VS C.B.C and Others |
| 63 | Const. P. 1333/2021 | Rukhsana Zaffar & Ors VS Pakistan & Ors |

| S. No | Case No | Case Title |
|-------|---------------------|--|
| 64 | Const. P. 1661/2021 | Sheikh Muhammad Manzoor VS Fed. of Pakistan and Others |
| 65 | Const. P. 249/2021 | Mrs. Shehla Balal VS Fed. of Pakistan and Others |
| 66 | Const. P. 2797/2021 | Mir AKbar Askani VS Fed. of Pakistan and Others |
| 67 | Const. P. 3135/2021 | Millennium Mall Management Co. VS Fed. of Pakistan & Ors |
| 68 | Const. P. 3170/2021 | Karim Abdul Hameed and Others VS Fed. of Pakistan and Others |
| 69 | Const. P. 3171/2021 | Karim Abdul Hameed VS Fed. of Pakistan and Others |
| 70 | Const. P. 3246/2021 | Shahnaila Altaf & Others VS Fed. of Pakistan and Others |
| 71 | Const. P. 3341/2021 | Saeed uz Zaman Khan VS Fed. of Pakistan and Others |
| 72 | Const. P. 3359/2021 | Saad Rehman VS Fed. of Pakistan and Others |
| 73 | Const. P. 3763/2021 | Inayatullah Abbas VS Fed. of Pakistan & Ors |
| 74 | Const. P. 3764/2021 | Asadullah Khatri VS Fed. of Pakistan & Ors |
| 75 | Const. P. 4027/2021 | Mrs. Farzana Javed VS Fed. of Pakistan and Others |
| 76 | Const. P. 4028/2021 | Aslam Assi VS Fed. of Pakistan and Others |
| 77 | Const. P. 5293/2021 | Riffat Saeed Akhtar VS Islamic Republic of Pakistan and Others |
| 78 | Const. P. 5673/2021 | Syed Muhammad Afsar Shah and Others VS Fed. of Pakistan and Others |
| 79 | Const. P. 5811/2021 | Rehan Mansoor VS Fed. of Pakistan and Others |
| 80 | Const. P. 5861/2021 | Fouzia Owais Khan & Others VS Fed. of Pakistan and Others |
| 81 | Const. P. 7261/2021 | Azhar Iqbal Faruqui VS Fed. of Pakistan and Others |
| 82 | Const. P. 2521/2022 | Sarah Sohail Ali VS Fed. of Pakistan and Others |
| 83 | Const. P. 342/2022 | Nafees Ahmed Siddiqui VS Fed. of Pakistan and Others |
| 84 | Const. P. 4184/2022 | M/s Al-Baraka Apparel VS Fed. of Pakistan and Others |
| 85 | Const. P. 5459/2022 | IBA VS Fed. of Pakistan and Others |
| 86 | Const. P. 5521/2022 | Mst. Bilqis Khalid and Others VS Fed. of Pakistan and Others |
| 87 | Const. P. 5647/2022 | Ambreen Mansoor VS Fed. of Pakistan and Others |
| 88 | Const. P. 6653/2022 | Scilife Pharma Pvt Ltd VS Fed. of Pakistan and Others |
| 89 | Const. P. 6654/2022 | Jalil Packaging VS Fed. of Pakistan and Others |
| 90 | Const. P. 6655/2022 | Adamjee Automotive Pvt Ltd VS Fed. of Pakistan and Others |
| 91 | Const. P. 6656/2022 | Galaxy Pharma Pvt Ltd VS Fed. of Pakistan and Others |
| 92 | Const. P. 6657/2022 | Universal Packaging Co. Pvt Ltd VS Fed. of Pakistan and Others |
| 93 | Const. P. 6658/2022 | Serajsons Printers Pvt Ltd VS Fed. of Pakistan and Others |
| 94 | Const. P. 6659/2022 | Prince Art Packages Pvt Ltd VS Fed. of Pakistan and Others |
| 95 | Const. P. 6660/2022 | Mehrab Mercantile Co. VS Fed. of Pakistan and Others |
| 96 | Const. P. 6661/2022 | Mediplas Innovations Pvt Ltd VS Fed. of Pakistan and Others |
| 97 | Const. P. 6662/2022 | Najam Associates VS Fed. of Pakistan and Others |
| 98 | Const. P. 6663/2022 | Universal Brushware Pvt Ltd VS Fed. of Pakistan and Others |
| 99 | Const. P. 6802/2022 | Entree Food Pvt Ltd VS Fed. of Pakistan and Others |
| 100 | Const. P. 6803/2022 | Akkar Internatoinal VS Fed. of Pakistan and Others |
| 101 | Const. P. 6804/2022 | Alpino Food VS Fed. of Pakistan and Others |

| S. No | Case No | Case Title |
|-------|---------------------|---|
| 102 | Const. P. 6805/2022 | Active Apparel VS Fed. of Pakistan and Others |
| 103 | Const. P. 6806/2022 | Synergy Corp VS Fed. of Pakistan and Others |
| 104 | Const. P. 6807/2022 | Shan Industries VS Fed. of Pakistan and Others |
| 105 | Const. P. 6808/2022 | Noor Associates VS Fed. of Pakistan and Others |
| 106 | Const. P. 6809/2022 | M/s Khan Brothers VS Fed. of Pakistan and Others |
| 107 | Const. P. 6810/2022 | NKR Clothing Tower Pvt Ltd VS Fed. of Pakistan and Others |
| 108 | Const. P. 6811/2022 | Palpex Pharmaceuticals Pvt Ltd VS Fed. of Pakistan and Others |
| 109 | Const. P. 6812/2022 | Golden Sindh Cotton Ginning & Pressing Factory VS Federation of Pakistan & Others |
| 110 | Const. P. 6813/2022 | M/S Maskatiya Industries (Pvt) Ltd VS Federation of Pakistan & Others |
| 111 | Const. P. 6814/2022 | NKR Engineering (Pvt) Ltd VS Federation of Pakistan & Others |
| 112 | Const. P. 6815/2022 | Pinnacle Biotech Pvt Ltd VS Federation of Pakistan & Others |
| 113 | Const. P. 6816/2022 | Eternal Group of Industries VS Federation of Pakistan & Others |
| 114 | Const. P. 6817/2022 | Mulla Ebrahimji Kairimbhoy VS Fed. of Pakistan and Others |
| 115 | Const. P. 6818/2022 | c32 Pvt Ltd VS Fed. of Pakistan and Others |
| 116 | Const. P. 6819/2022 | Hoora Pharma VS Fed. of Pakistan and Others |
| 117 | Const. P. 6820/2022 | Unique Building Materials VS Fed. of Pakistan and Others |
| 118 | Const. P. 6821/2022 | Securpring VS Fed. of Pakistan and Others |
| 119 | Const. P. 71/2022 | National Bank of Pakistan VS Province of Sindh & Others |
| 120 | Const. P. 840/2022 | Fouzia Owais Kalia and another VS Fed. of Pakistan and Others |
| 121 | Const. P. 946/2022 | Muhammad Aslam Bajwa VS Fed. of Pakistan and Others |
| 122 | Const. P. 1220/2023 | Dilshad Ahmed VS Fed. of Pakistan and Others\ |
| 123 | Const. P. 2603/2023 | Faiza Saeed and Others VS DHA and Others |
| 124 | Const. P. 3137/2023 | Yasmeen Sheikh VS Fed. of Pakistan and Another |
| 125 | Const. P. 446/2023 | Muhammad Zakria and Another VS Fed. of Pakistan and Another |
| 126 | Const. P. 848/2023 | National Bank of Pakistan VS Province of Sindh & Others |