

P L D 2019 Lahore 729

Before Shahid Jamil Khan, J

NISHAT HOTEL AND PROPERTIES
LIMITED and others---Petitioners

versus

The PROVINCE OF PUNJAB
and others---Respondents

Writ Petition No.23657 of 2016, decided on 19th July, 2019.

(a) Punjab Revenue Authority Act (XLIII of 2012)---

---Ss. 2(j), 3(1), 5(4), 8, 36(a), 36(b) & 36(c) [as amended by the Punjab Revenue Authority (Amendment) Act (III of 2016) and Punjab Revenue Authority (Second Amendment) Act (XL of 2016)]---Punjab Sales Tax on Services Act (XLII of 2012), Preamble---Punjab Revenue Authority ('Revenue Authority')---Absence of notification under S.3(1) of the Punjab Revenue Authority Act, 2012 ('the Act') for establishment of the Revenue Authority---Omissions, discrepancies and defects in the Punjab Revenue Authority Act, 2012 highlighted in the case reported as Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab and others (PLD 2016 Lahore 321)---Validation of such omissions, discrepancies and defects through the Punjab Revenue Authority (Amendment) Act, 2016 (III of 2016) ['First Amendment Act'] and Punjab Revenue Authority (Second Amendment) Act, 2016 (XL of 2016) ['Second Amendment Act']---Vires of---Both the 'First Amendment Act' and 'Second Amendment Act' were made effective from 1st July 2012, however, retroactivity of the Revenue Authority was reiterated in S.36(c) of the Act to establish it by command of law, without issuance of notification under S. 3(1)---All actions taken by Chairperson, during the interregnum period were deemed, by fiction of law, to have been taken by the Revenue Authority and the sales tax and other amounts levied, charged, collected or realized were validated under the Act---Legislative competence to promulgate the impugned First and Second Amendment Acts was not in question---Since the Provincial Legislature was competent to enact the impugned First and Second Amendment Acts, therefore, S.36(c) of the Act had cured the lacuna of non-issuance of notification for establishment of the Revenue Authority---Absence of consequent amendment in S. 3(1) of the Act and other provisions, shall not affect the validation, which was to be treated as silenced or impliedly repealed---Protection in form of validity of proceedings under S. 8 of the Act was available for future, only in presence of a bona fide defect in constitution of the Revenue Authority

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or a vacancy---Such protection could not be allowed to be misused by the Executive by keeping the defect or not filling the vacancy without a justifiable excuse---After the judgment in Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab and others (PLD 2016 Lahore 321), charging and collection of tax levied under the Punjab Sales Tax on Services Act 2012, from 1st July, 2012 till the date of judgment was required to be validated for public welfare and in the interest of society---Since composition and establishment of the charging and collecting Revenue Authority was declared illegal, therefore, to achieve the purpose of validation, all actions, including framing of rules, defective appointments and constitution of Revenue Authority was required to be validated as well---Single handed performance of functions by Chairperson on behalf of the Revenue Authority were validated, by invoking doctrine of fiction, under S.36(b) of the Act---Purpose in favour of society existed and there was no prohibition under the Constitution, to pass a retrospective law to validate such actions and decisions, hence the provisions of Ss.36(a) & 36(b) of the Act were held to have been enacted competently---Constitutional petitions challenging the vires of the impugned First and Second Amendments Acts were dismissed accordingly. [pp. 739, 741, 745] A, B & L

Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab and others PLD 2016 Lah.321 and Lt. Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan, Karachi and others PLD 1962 SC 335 ref.

(b) Punjab Revenue Authority Act (XLIII of 2012)---

---Ss. 3(2), 3(4), 5(4), 36(a) & 36(b) [as amended by the Punjab Revenue Authority (Amendment) Act (III of 2016) and Punjab Revenue Authority (Second Amendment) Act (XL of 2016)]---Punjab Revenue Authority ('Revenue Authority')---Omissions, discrepancies and defects in the Punjab Revenue Authority Act, 2012 highlighted in the case reported as Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab and others (PLD 2016 Lahore 321)---Validation of such omissions, discrepancies and defects through the Punjab Revenue Authority (Amendment) Act, 2016 (III of 2016) ['First Amendment Act'] and Punjab Revenue Authority (Second Amendment) Act, 2016 (XL of 2016) ['Second Amendment Act']---Vires of---Legislative judgment---Scope---Actions, including framing of rules, and appointments, subject matter of the judgment reported as Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab and others (PLD 2016 Lahore 321), had been validated by inserting subsection (4) in S.5 and through clauses (a) and (b) to S. 36 of the Act---Under S.36(b), actions taken by the Chairperson till establishment of the Revenue Authority were validated, by legislative fiat, as if these were

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taken by Revenue Authority---However, S.5(4) gave power to the Chairperson to perform functions and discharge duty of the Revenue Authority till the time it was constituted under the Act---Provisions under S.5(4) of the Act, were susceptible to misuse---Instead of rectifying the defect in constitution of Revenue Authority, the executive might prefer that its functions be performed and duties be discharged by the Chairperson; it could defeat the intent of the Legislature, reflected in the S.3(2) & (4) of the Act---Revenue Authority, being a body corporate, should mandatorily consist of the Chairperson and not less than four members---Method of validation by inserting subsection (4) to S. 5, without amending S.3(2) and (4) of the Act, amounted to legislative judgment, therefore, was violative of the doctrine of 'Separation of Powers' entrenched in the Constitution, hence was declared to be ultra vires---Legislature could not assume role of an Appellate court by merely pronouncing in the statute that the decision shall not be binding, as was done by inserting subsection (4) to S. 5 of the Act [p. 741] C

Molasses Trading and Export (Pvt.) Limited v. Federation of Pakistan and others 1993 SCMR 1905 ref.

(c) Legislation---

---'Retroactive law' or 'Ex post facto law'---Scope---To validate any action or omission, declared not in accordance with law, retroactive laws were enacted to supply validity through Legislative fiat---Ex post facto law was one which operated upon a subject not liable to it at time the law was made---Ex post facto law or retroactive law was which retroactively changed the legal consequences of acts committed or the legal status of facts and relationships that existed prior to enactment of the law. [pp. 743, 744] D, H & I

Calder v. Bull [3 U.S. (3 Dall.) 386 (1798) ref.

(d) Words and phrases---

---'Retroactive'---Definition. [p. 743] E

Black's Law Dictionary 8th Edn. ref.

(e) Words and phrases---

---'Retroactivity'---Definition. [p. 743] F

Black's Law Dictionary 8th Edn. ref.

(f) Words and phrases---

---'Retroactive law'---Definition. [p. 743] G

Black's Law Dictionary 8th Edn. ref.

(g) Interpretation of statutes---

---Retrospective effect---Scope---General rule was that legislation shall be prospective, but there was no prohibition for the Legislature to change the consequences, under the law, of an act or omission, by giving it retrospective effect. [p. 744] J

(h) Legislation---

---Subordinate legislation, validation of---Legislative judgment---Scope---Subordinate legislation, which did not follow the relevant provisions and was so declared by a Court, could be validated by the same Legislature, which had delegated such powers, to be exercised in a particular manner under the relevant provisions---When a condition could be imposed by the Legislature for exercise of delegated power, it could also be waived by the same Legislature for a particular subordinate legislation, and such waiver could not said to be a Legislative judgment. [p. 744] K

Wijay Mills Company Limited v. State of Gujarat [(1993) 1 SCC 345 and Mehreen Zaibun Nisa v. Land Commissioner, Multan and others PLD 1975 SC 397 ref.

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