

IN THE FEDERAL SHARIAT COURT.

(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE HAZIQU L KHAIRI, CHIEF JUSTICE.
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SALAHUDDIN MIRZA.**

SHARIAT PETITION NO.11/I/2002

Muhammad Saeedullah Khan
Chairman Senior Citizens Forum.
Hyatabad (Peshawar) Petitioner.

Versus

1. Secretary, Government of NWFP,
Excise & Taxation Department,
Peshawar.
2. N.W.F. Province, through the
Chief Secretary, Government of NWFP
Peshawar Respondents.

Counsel for the Petitioner	...	Mr. Attiqur Rehman Qazi, Advocate.
Counsel for the State	...	Sardar Abdul Majeed, Standing Counsel for Federal Government Mr. Shafqat Munir Malik, Addl. A.G. Punjab; Mr. Faridul Hassan, Assistant A.G. Sindh, Mr. Banaras Malik, Inspector Excise & Taxation Department, Government of N.W.F.P.

Date of Institution ... 09-12-2002

Date of final hearing 28-05-2008

Date of decision:

28.8.2008

JUDGMENT

SALAHUDDIN MIRZA, J: This petition, which was filed on or shortly after 9th November, 2002, has not so far been admitted for regular hearing.


2. Government of NWFP had amended the "West Pakistan Urban Immovable Property Tax Act, 1958 (West Pakistan Act V of 1958), through the North-West Frontier Province Urban Immovable Property Tax (Amendment) Ordinance, 2001 [N.W.F.P. Ordinance No. XV of 2001], which was notified in the Provincial Gazette of 13th. August, 2001, whereby property tax was for the first time levied even on the houses which were in the personal use of their owners or their families, with the concession that a rebate of 50 % would be allowed in case of such self-occupied houses. This was done by substituting new sub-section 2 to Section 3 of the Act in place of the old one. The Petitioner feels aggrieved from this amendment and prays that this part of the amending Ordinance be declared repugnant to Shariah on the following grounds, namely, that

firstly, this amendment is in violation of the verdict given by the Islamic Ideological Council in its 13th. Report issued in April 1984 which is to the effect that "there is no justification for levying/charging 'property tax' on self-occupied residential premises" and which verdict has already been accepted and acted upon **by** the Government of Baluchistan;

secondly, it is discriminatory, arbitrary and malafide;

thirdly, it is ultra vires of the Fundamental Rights guaranteed by the Constitution; and

fourthly, the impugned amendment is against the principles of equity and justice.



3. Both the respondents filed joint comments on 12.7.2007 (pages 21 – 24) whereafter Respondent No.1 filed further comments under the title 'Preliminary objections and parawise comments' (pages 67 – 77) and yet again filed 'parawise comments' (pages 79 – 82). The gist of the comments is that, **firstly**, the petitioner was estopped from challenging the impugned amendment because he had paid the impugned property tax; **secondly**, that the property tax was a provincial subject and each province was free to legislate in its respect and therefore NWFP was not bound to follow the precedent of

Baluchistan Government in exempting the self-occupied houses from taxation; **thirdly**, that the NWFP government vide Ordinance No. VI of 2004 had already exempted self-occupied houses built on plots of the area up to 5 marlas and that, **fourthly**, the impugned amendment had earlier been challenged in a host of writ petitions in the Peshawar High Court which were all dismissed vide judgement reported as PLD 2004 Peshawar 263 which was upheld in the Supreme Court (copies of both the judgements are on record).

4. After a great deal of delay, the petition was finally heard on 28.5.2008.

5. This Shariat petition purports to have been filed under Clause 1 of Article 203 D of the Constitution which is reproduced below:

Article 203 D (1): The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or a provision of law is repugnant to the *injunctions of Islam, as laid down in the holy*

Quran and Sunnah of the holy prophet, hereinafter referred to as 'the injunctions of Islam'

6. It is thus clear that this court has very limited jurisdiction under Article 203 D (1) of the Constitution and it is to decide the question as to whether any law or a provision of law is repugnant to the injunctions of Islam as laid down in Holy Quran and in the Sunnah of the Holy Prophet. However, the Petitioner does not want this court to decide the vires of the impugned amendment in the light of the injunctions of Islam 'as laid down in the Holy Quran and Sunnah' but in the light of injunctions of Islam 'as laid down in the 13th. Report of Islamic Ideology Council and in the light of the decision of the Baluchistan government and on the principles of equity and justice and this this court cannot do while exercising jurisdiction under Article 203 D (1) of the Constitution. The grounds pleaded by the Petitioner for seeking the annulment of the amendment whereunder even self-occupied residential buildings have been made subject to the levy of property tax seem to have some force but they can be agitated only

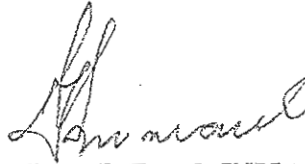
before a high court under Article 199 of the Constitution. This shariat petition is therefore not maintainable before this court under Article 203 D of the Constitution and is accordingly dismissed.



JUSTICE SALAHUDDIN MIRZA



JUSTICE HAZIQUL KHAIRI
CHIEF JUSTICE



JUSTICE DR. FIDA MUHAMMAD KHAN.

Announced on 28.8.2008

at Islamabad
Daud/**

Approved for reporting
JW
28.8.08