

Research Note in Shariat petition No.5/L/2006,1/L/2009

Malik Muhammad Rab Nawaz Khan filed this petition wherein he has challenged section 3 of the THE URBAN IMMOVABLE PROPERTY TAX ACT 1958 for its being repugnant to the Injunctions of Islam. It is pertinent to reproduce the Impugned law

Section 3. Levy of Tax: Government may by notification specify urban areas where the tax shall be levied under this Act

Provided that urban areas may be divided into two or more rating areas or several urban areas may be grouped as one rating area

2 There shall be charged levied and paid as on the annual value of building in rating area the rate of ten percent of such annual value

Provided that where the building is occupied [for residential purpose by the owner himself] the tax shall be levied at one half of the value of such building, if the owner or any member of his family does own any other property in that rating area:

Provided further that Government may, by notification remit for the reason to be recorded in whole or in part, the payment of tax by any class or class of person in respect of any category of property

Explanation: The annual value for the purpose of this section shall be aggregate annual value of all buildings and lands owned by the same person in a rating area

3. That tax shall be due from the owner or building or lands.

PUNJAB AMENDMENT

[In section 3 sub section (4) shall be deleted AND SUB SECTIONS (5), (6), (7) and (8) shall be renumbered as (3), (4), (5) and (6) respectively,

And]

[3. Levy of tax: (1) Government may by notification specify urban areas where the tax shall be levied under this Act

Provided the urban areas may be divided into two or more rating areas or several urban areas may be grouped as one rating area

2 Subject to the provision of sub section (3) and (4) there shall be levied charged and paid, a tax on annual value of buildings and lands in rating area at the rate of 25 percent of such annual value

Proviso: Deleted by the Punjab Urban Ordinance, IV of 1982

3. Deleted by the Punjab Urban Immovable Property Tax (Amendment) Act V of 1977

4 In case of property of the annual value not exceeding twelve thousand rupees, other than the property referred to in sub-section (3) a deduction of two hundred and seventy rupees from the annual value shall be allowed

5 Government may be notification, for reason to be recorded, remit in whole or part, the payment of tax by any class of persons in respect of any category of property

2 Another shariat petition was filed by Mian Hammad Murtaza wherein the same section was challenged These two petitions were clubbed through Court Order dated 10 02 2009

3 These petitions were fixed for hearing in Lahore and transferred to principle seat at Islamabad on 17 10 2017 During the course of hearing on 6 3 2018 the Hon Court has been pleased to observe that various similar cases were also decided by this Court in respect of other matters relating to other Taxes besides Zakat.

4. It is pertinent to mentioned here that the issue whether the State is empowered in shariah to impose taxes besides Zakat on its citizen This issue was firstly discussed in a judgment cited as Fazlur Rahman Vs Fedration of Pakistan where in Income Tax ordinance, 1979 (XXXI of 1979) was challenged as being repugnant to the injunctions of Islam The petitioner claimed that levy of tax except Zakat is not permissible in Islam This Hon Court after hearing arguments of the parties, considering opinion of jurisconsults dismissed this petition The Court held

5- 42 چنانچہ مذکورہ بالا دلائل کی بناء پر ہم یہ سمجھتے ہیں کہ اسلامی حکومت کو یہ حق حاصل ہے کہ وہ بنیادی فراتض سے متعلق امور کے سلسلے میں ہونے والے جانر احراجات کی تکمیل کے لیے شوریٰ کے دریعہ لوگوں پر بقدر امر ضرورت بقدر استطاعت ٹیکس عائد کر سکتی ہے۔ اور اس طرح فاصل درخواست دہندہ کا یہ موقف کہ رکوة اور عشر کے علاوہ اور کوئی ٹیکس عائد نہیں کیا جاسکتا صحیح نہیں ہے ان وجوہات کی بناء پر ہم اس شرعی درخواست کو مسترد کرتے ہیں۔ تاہم فاصل درخواست دہندہ اگر چاہے تو انکم ٹیکس آرڈیننس محریمہ 1979ء کی جن مخصوص دفعات کو رخ خلاف اسلام سمجھتے ہیں ان کی نشاندہی کرتے ہوئے دوسری درخواست دائر کر سکتا ہے۔

شرعی درخواست مسترد کی گئی۔ (PLD1992 FSC 329)

6. This issue was once again raised in various shariat petitions particularly in shariat petition No 11/1/2002 In these petitions, amendment made in West Pakistan Urban Immovable Property tax 1958 through NWFP Ordinance No XV of 2001 by substituting new sub section 2 to section 3 of the Act

7. This Hon Court dismissed these petitions on the basis of the plea of the petitioners that they do 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 of the Holy prophet(SAWS) as mentioned in article 203 D(1) of the Constitution but in the light of the injunctions of Islam as laid down in the 13th report of the Islamic Ideology Council and in the light of the decision of the Baluchistan government and on the principle of equity and justice. This judgment was announced on 28 08 2008, published in FEDERAL SHARIAT COURT SELECTED JUDGMENTS 2008-2009 at Page 141-144



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