

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P No.11802 of 2015

Expo Lahore (Private) Limited

Versus

Excise & Taxation Department, Government of the Punjab & others

J U D G M E N T

Date of Hearing.	24-5-2018
PETITIONERS BY:	M/s Syed Shahab Qutab, Mian Tariq Hassan and Ch. Amjad Iqbal Sandhu, Advocates.
RESPONDENTS BY:	M/s Waqar A. Sheikh and Mian Tahir Maqsood, Advocates for LDA. Barrister Khalid Waheed, Addl.A.G. along with Abid Zia, Law Officer. Mr. Tahir Mahmood Ahmad Khokhar, D.A.G.

Shahid Karim, J:- This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenges the demand for property tax from the petitioner. In the beginning the challenge was made to the demand of an amount of Rs.10,693,881/- for the year 2014-15. During the course of the proceedings in the instant constitutional petition, another show cause notice under Section 16 of the Punjab Urban Immovable Property Tax Act, 1958 (**Act, 1958**) dated 13.12.2017 was produced by the respondents wherein a sum of Rs.356,944,90/- has been alleged to be due from the petitioner on account of property tax and its arrears.

2. The petitioner, Pakistan Expo Centers (Pvt) Ltd. (**Expo**) is a company jointly owned by the Federal Government and Government of the Punjab. The

Federal Government approximately owns 98% shares whereas Government of the Punjab owns 2% shares. The scheme of investment in Expo envisioned that the Government of the Punjab would make available the land for the construction of an Expo Centre. The Punjab Government would periodically pay an amount equivalent to the lease money for the land to Expo Lahore as share subscription money against which shares would be issued to the Punjab government. In this manner, the shareholding of the Government of the Punjab would gradually increase in the company. This is encapsulated in the memorandum of association of Expo and the description of land to be leased out to Expo was also given in the memorandum of association. The primary purpose of company is to provide export oriented companies a facility to promote their products. It is the case of Expo that the company serves an important national purpose, that is, the promotion of exports and the following objects given in the memorandum of association lend actuality to the purpose of Expo:

- iv. *“to provide a platform on International standards to enable the exporting companies, foreign manufacturers and traders to effectively introduce and market their producers, services and business, particularly relating to, but not limited to exports from Pakistan.*
- v. *to contribute to the improvement of economic situation of the country in general and to improve export related initiative and activities in particular, by adopting and supporting different measures;*

- vi. *to essentially cater for the promotion of exports from Pakistan, inclusive of but not limited to goods and services originating in Pakistan or imported for export, with or without value addition and other related economic activities.”*

3. It is admitted on all hands that the land on which Expo is constructed is owned by the Lahore Development Authority (**LDA**) (approximately 400 Kanals). LDA has leased the said land to the Punjab Government and the Punjab Government has, in turn, sub-leased it to Expo. The agreement between the Industries Department, Government of the Punjab is dated 09.08.2005 whereas the prior agreement between LDA and the Industries Department, Government of the Punjab is also dated 09.08.2005 by which the land was leased by LDA to the Industries Department, Government of the Punjab. The cause of action for the instant petition arose out of the demand raised by Excise & Taxation Department with regard to the payment of property tax from Expo. The petition makes a reference to the controversy having been agitated and dilated upon at various forums from the period of the first demand till the filing of the present petition. On 4.10.2011, the issue was raised with the Punjab Government which constituted a high level committee to examine the issue. The summary of the committee has been attached with this petition. A meeting of the committee was held on 09.01.2012 and after detailed deliberations, it was decided that the property tax be paid by the Industries Department,

Government of the Punjab. Subsequently an amount was sanctioned in favour of the Industries Department for the payment of property tax and the payment of the tax was made by Industries Department and the proof of which has also been brought on record by Expo. Expo asserts that for the following years 2012-13, the demand of property tax was once again raised from Expo despite knowing that during the previous year, a decision had been taken for the payment of the property tax by the Industries Department.

4. The Act of 1958 is the statute at the heart of the controversy. Section 3 levies a tax upon urban areas which the government may notify. The tax shall be due from the owner of buildings and lands. In this case Expo is the owner of building on the leased land and in that capacity has been served with a demand regarding imposition of property tax. Expo takes refuge in the provisions of section 4 which relates to exemptions and which, so far as relevant, reads as under:-

*“4. Exemptions.—The tax shall not be leviable in respect of the following properties, namely:-
(a) buildings and lands other than those leased in perpetuity, owned by the Federal Government.”*

5. Thus, the Act of 1958 exempts from the levy of property tax on buildings and lands owned by the Federal Government. It is not the case of the either of the parties that the land on which the building has been constructed, has been leased in perpetuity. Therefore, the simple proposition which engages this Court is

whether the building in respect of which the property tax is being demanded, is a building owned by the Federal Government or not. In this regard Expo filed C.M No.1 of 2018 and attached certain documents in order to demonstrate that the building is indeed owned by the Federal Government. The first document to which a reference may be made is an office memorandum on 19.12.2006 and the following decision taken by the ECNEC in its meeting held on 30.11.2006:

“The undersigned is directed to refer to Ministry of Commerce, Government of Pakistan, vide their O.M No.14(2)/2006-ITO (PPC) dated 24th March, 2006 on the above subject and to say that the ECNEC in its meeting held on 30-11-2006 considered the subject project and took the following decision:

“The Executive Committee of the National Economic Council (ECNEC) considered the Summary dated 30th September, 2006 submitted by the Planning Commission / Planning and Development Division on “EXPO Centre Lahore” and approved the project at a total cost of Rs.1970.00 million without FEC.”

2. *It is requested that steps may kindly be taken for issuing necessary administrative approval as well as expenditure sanction in respect of the subject scheme in accordance with the above quoted decision of the ECNEC.*

3. *It is further stated that guidelines approved by the ECNEC (April, 2000) regarding implementation of the project may please be kept in view, while executing the project.”*

6. On 4.7.2011, the executive committee of the National Economic Council in its meeting dated 26.5.2014 granted an approval for the up-gradation and additional works of Expo Centre, Lahore. The decision was to the following effect:

“The Executive Committee of National Economic Council (ECNEC) considered the summary dated 17th March, 2011, submitted by the Planning Commission on “Up Gradation and Additional Works of Expo Centre, Lahore” and accorded ex-

post facto approval of the project at the revised/completed cost of Rs.3415.00 million..”

7. Expo further brought documents on record to show that the accounts of the company are audited by the Auditor General of Pakistan as per the mandate of Article 169 and 170(2) of the Constitution as also that the company has taken out an insurance policy from National Insurance Company Ltd. owned by the Government of Pakistan and which too is a requirement for all government companies under the Insurance Ordinance, 2000. Further that Board of Directors is headed by the Prime Minister of Pakistan and the entire composition of the Board of Directors is such that its members consist of nominees of Federal Government. The Board of Directors is also approved by the Prime Minister and this is evident from a document dated 08.11.2004 which is an office memorandum and relates to the formation of the company for Expo Centre Lahore. Additional documents have been placed on record which clearly show that the funds for Expo, not only for its initial construction but also up-gradation are being disbursed by the Federal Government as approved by ECNEC. All of these facts clearly bring forth the ineluctable conclusion that the building in respect of which the construction is being raised is owned by the Federal Government and this fact was not seriously disputed by the respondents. Moreover, no documents were brought on record which would rebut the stance of

Expo that not only that its Board of Directors is appointed by the Prime Minister but also that it is funded by the Federal Government. A reference may also be made to section 183(3) of the Companies Act, 2017 according to which the Board of Directors of a company shall not sell or otherwise dispose of the undertakings of a company unless the consent of the general meeting has been taken. This would also mean that Expo cannot deal with the property on its own and the consent of the Federal Government will have to be given. This aspect need not be dilated upon any further since the entire shareholding of Expo vests in the Federal Government and the Board of Directors is also chaired by the Prime Minister. For all intents and purposes, Expo is thus a Federal Government institution and its property vests in the Federal Government and by a necessary corollary therefore the building of Expo is owned by the Federal Government.

8. The Excise and Taxation Department of the Government of the Punjab primarily relies on the terms of the lease-deed and in particular section 6 which obliges the lessee to pay all taxes in respect of the demised premises. However, the reliance on this plea is clearly flawed as Expo does not argue that it should be paid by the lessor in its stead but denies its liability to pay property tax, in any case. No specific reply to the case of exemption set up by Expo has been made apart from the general contention that the building is being used for commercial purposes as if

that purpose by itself denudes Expo of its status of an exemptee.

9. The stance put forth by the Commerce Division, Government of Pakistan is an affirmation of Expo's defence that the building is owned by the Federal Government. The following paragraphs of its reply clear the cobwebs surrounding this aspect:

"1. That on of the key functions of the commerce Division under the Rules of Business, 1973 is promotion of foreign trade and export promotion. To enable the Federal Government to more effectively carry out this function, the Ministry of Commerce decided to develop Expo Centers in various cities in all provinces of Pakistan for the promotion of Pakistani exports and the enhancement of trade and commerce with foreign countries. It was decided that the Expo Center in Lahore would be developed through an instrumentality of the Federal Government i.e. a company owned and controlled by the Federal Government, in collaboration with the Provincial Government.

"4. That the share capital of the Company is to be provided by the Government of Pakistan represented through Ministry of Commerce and the Government of the Punjab represented through the Industries, Commerce and Investment Department. The initial share capital of the Company was provided by the Federal Government while the Punjab Government arranged for a piece of land (the "Expo Land") measuring 400 kanals (out of 1400 kanals already reserved for the Trade Centre) situated in Johar Town, Lahore for purposes of the construction of the Expo Centre building (hereinafter the "Expo Centre Building"). The Expo Land is in the ownership of the Lahore Development Authority that has leased the said land to the Government of the Punjab through Principle Lease Agreement dated 09.08.2005. The Government of the Punjab has further sub-leased the said land to the Company through sub-lease agreement dated 09.08.2005 for purposes of the construction of the Expo Centre Building."

"8. That it is the position of the Ministry of Commerce that Pakistan Expo Centers (Pvt.) Limited acts as an instrumentality of the Federal Government and the property of the Company vests in the Federal Government. It is worth mentioning that no property tax is payable on the Expo Center in Karachi. It is also significant that the Company performs an important state function in providing a platform of international standards for the promotion of Pakistani Exports and export related activities and initiatives. While the activities of the

Company, owing to its purpose and objects, are related to commerce, the entire revenue generated by the Company is re-utilized for the Company's objectives and as such the Company is not acting as a commercial profit oriented enterprise. Furthermore the Company does not compete with other private sector entities in the area of its operations since there are no other private entities providing the same facilities and services as Expo Centre. The Expo Centre Building was also constructed exclusively out of funds provided by the Federal Government and the Company cannot deal with the property (save in respect of its day to day operations) without prior approval and sanction of the Federal Government. As such the property of the Company vests in the Federal Government and is entitled to the inter-governmental immunity enshrined in Article 165 of the Constitution, which renders it exempt from Provincial taxation. Therefore the impugned demand raised by the Excise & Taxation Department, Government of the Punjab, under the Punjab Urban Immovable Property Tax Act, 1958 against the Expo Centre Building is unconstitutional and unlawful."

10. The above reply should be sufficient to put paid to any doubts as to the true ownership of the building in question. The Excise and Taxation Department invokes to its aid the holding in Union Council v. Associated Cement (Pvt.) Ltd. (1993 SCMR 468) in pressing its demand of property tax against Expo.

11. The *Associated Cement* case turned on the doctrine of lifting the veil of incorporation so as to conclude whether the property is owned by the Federal Government. That need does not arise in this case. This is because a resort to that doctrine is not required to be undertaken by this Court in the peculiar circumstances of this case. Piercing the veil of incorporation will only be done where doubts are raised regarding the real ownership of a corporate entity. In the instant case, Federal Government has stated that it owns the property of Expo and the

Government of Punjab or the Excise department do not quarrel that the Federal Government is the owner. At least no proof has been produced to discountenance that claim. There must be compelling circumstances to require the Court to invoke the doctrine in order to extend the benefit of an exemption. Moreover, a clarion call to the high constitutional enumeration is also not required as in this case we are concerned with more mundane challenge on the basis of section 4(a) of the Act, 1958. It clearly provides that the property tax shall not be leviable in respect of the properties (buildings) owned by the Federal Government. It is nobody's case that Federal Government cannot own property through a corporation incorporated as a separate juristic entity. Carrying out the executive functions of the Federal Government through a limited liability company is a modern phenomenon and has a sound constitutional basis. Neither the Constitution nor the Act, 1958 draws a line between property of the Federal Government held directly or through a private limited company. If both are properties of the Federal Government then it is otiose to create a distinction on that basis. The question that the benefit under Article 165 is not merely available to a property owned by the Federal Government but also extends to properties owned through corporations has been settled in National Bank of Pakistan v. Executive District Officer (Revenue), Multan (2015 CLC 1618).

12. Corporatisation of the Federal Government is a constitutional concept and entries in the fourth schedule attest to the fact that the Parliament is empowered to legislate on the subject of corporations, that is to say, the incorporation, regulation and winding-up of corporations, whether trading or not. Reference may be made to two entries in the fourth schedule which delineate such areas of legislation viz. entry 31 and entry 3 (of Part II): They read as follows:

“31. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.”

“3. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the Commencing day, including the ¹[Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation]; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.”

13. Thus corporations owned by the Federal Government have a constitutional basis. The Parliament may also enact laws in respect of *“all undertakings, projects and schemes of such.....corporations.... or by a corporation set up by the Federation”*. Doubtless, Expo is a corporation set up by the Federation to carry out a purpose given in entry 27 of the fourth schedule which provides that:

“27. Import and export across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan.”

14. Expo serves the purpose spelt out in entry 27 of trade and commerce with foreign countries as well as ensuring standard of quality of goods to be exported out of Pakistan. Federal Government achieves these objects through Expo and which are also mentioned in the Articles of Association which say that:

“(iv) to provide a platform on International standards to enable the exporting companies, foreign manufacturers and traders to effectively introduce and market their producers, services and businesses, particularly relating to, but not limited to exports from Pakistan;

(v) to contribute to the improvement of economic situation of the country in general and to improve export initiative and activities in particular, by adopting and supporting different measures;

(vi) to essentially cater for the promotion of exports from Pakistan, inclusive of but not limited to goods and services originating in Pakistan or imported for export, with or without value addition and other related economic activities.”

15. Thus Expo performs the sovereign functions of the State and is a virtual monopoly in the area of activity. It is also an extended department of the Federal Government and is covered by the test laid down in Central Board of Revenue and another v. S.I.T.E (PLD 1985 SC 97). Performance or otherwise of ‘constitutional functions’ was a key factor, according to the Supreme Court in *Associated Cement*, which ought to determine the outcome of the claim of exemption in respect of property of the Federal Government. As adumbrated, this factor is pre-eminently satisfied in the instant case and it is clear

that Expo performs a constitutional function so as to be entitled to exemption.

16. In a recent judgment of this Court reported as WAPDA v. Excise and Taxation Department (2017 PTD 517) the levy of property tax on WAPDA, a Federal Government instrumentality, was in question and WAPDA was held entitled to the exemption. The entire cluster of case-law was considered and some of the extracts, relevant to the instant case, are being reproduced:

“9. It can be seen from the conclusion made in the case of NBP above that the benefit of Article 165 is not limited to the property owned directly by the Federal Government but also extends to properties owned by the Federal Government through its instrumentalities and body corporate. On this touchstone, WAPDA ostensibly qualifies to the exemption under Article 165. This alone is not enough to extend the benefit of the exemption to WAPDA. The other qualification which was culled out in the case of NBP and which could be made use of by WAPDA is regarding the rule that a corporation or industry of the Federal Government having a monopoly in the area of its operation will be deemed a department of the Government and hence entitled to the exemption under Article 165 of the Constitution. The two judgments which expound these rules were Union Council Ali Wahan, Sukkur v. Associated Cement (Pvt.) Ltd. (1993 SCMR 468) and Province of NWFP through Secretary Local Government and Rural Development Peshawar etc. v. Pak Telecommunication through its Chairman and others (PLD 2005 SC 670). The discussion with regard to these two precedents in the judgment of NBP and reproduced above, brings forth ineluctably that these rules have been recognized to exist by the Supreme Court of Pakistan and if the test laid down with regard thereto in these precedents is fulfilled by a statutory corporation, the exemption under Article 165 must be extended to it and the property held by such statutory corporations

must be held to be owned by the Federal Government so as to be entitled for the benefit.”

“II. Therefore, although the shareholding of Associated Cement entirely vests in the Federal Government, this did not convince the Supreme Court of Pakistan in extending the benefit of Article 165 to the company. It refused to lift the veil of incorporation on the ground that doing so will unduly discriminate against other similarly placed corporations which were competing against Associated Cement and were engaged in a similar commercial activity. The Supreme Court held that this could not be countenanced and the corporation owned by the Federal Government could hardly claim any privilege or immunity to the utter disadvantage of its competitors. This was the basis on which the benefit of Article 165 was denied in the Associated Cement case. The observations of the Supreme Court of Pakistan which went to the heart of the matter were that a corporate entity owned by the Federal Government which was run as a commercial entity could not be equated with an instrumentality which carries on the sovereign functions of the State as that would place those companies in an elevated position to the detriment of similar companies. Therefore, a window was kept open by the Supreme Court of Pakistan in Associated Cement with regard to the instrumentalities which carry on sovereign functions of the State. Thus, the Supreme Court of Pakistan applied what can be termed as the functions test in the application of Article 165 and the determination of the question regarding the grant or refusal of exemption. The first test was whether the instrumentality was carrying on the sovereign functions of the State.”

“...It is also not in doubt that the Federal Government may either acquire an own a property directly or through its instrumentalities and this makes little or no difference. For the purposes of invoking Article 165, what has to be shown is that the instrumentality which owns the property performs functions of the Federal Government and is a virtual monopoly and a department of the Federal Government.”

“...We are in the twilight of the era of large government and lean and efficient government is the requirement of the day. It was precisely these considerations which prompted the Supreme Court of Pakistan to draw a line between

corporate entities of the Federal Government competing in the commercial arena and free market and the ones which are virtual departments of the Government and exercise functions which are exclusive and sovereign and which are not performed by private commercial entities. In my opinion, WAPDA still retains the character of a monopoly and a department of the Federal Government and undoubtedly exercises the sovereign functions of the Federal Government.”

17. Some of the tests like, performing sovereign/ constitutional functions, acting as a monopoly and ability to deal with property were applied to WAPDA. However, to reiterate, these tests are not required to be applied in each case and like the present one, if the grant of exemption is clear and unqualified, it must be extended without further ado and to insist that these tests be applied before doing so will be tantamount to nullifying the statutory scheme. This will mean that the executive can take away what the legislature has given. Certainly, this cannot be countenanced and tests credulity of the credulous. The shifting sands of modernity require Federal Government to hold property through corporations. By denying exemption, the Excise department is in fact creating, at its whim, two categories of properties belonging to Federal Government, that is, one held by the Federal Government directly and the other through corporations wholly owned by it. The central question is: does the law permit this categorization to be carved out? The answer is a resounding no.

18. Learned Addl. A.G relied upon the judgment of the Supreme Court of Pakistan reported as Central Board of Revenue Islamabad and another v. WAPDA and another (PLD 2014 SC 766) in support of the argument that Expo is not entitled to an exemption from payment of property tax. However, this judgment is utterly not applicable to the facts and circumstances of the instant case and is not a good precedent as far as the instant case is concerned. In the judgment cited by the learned Addl. A.G the question related to the imposition of excise duty under the Central Excise Act, 1944 on WAPDA. Excise duty is a Federal Government levy and the question relating to an exemption under the provincial law did not arise in the said judgment. Clearly the said precedent is inapt and cannot be relied upon.

19. In view of the above, this petition is allowed. The impugned notices issued by the respondents No.1, 2 and 3 for the payment of property tax by Expo on the building of Expo are without lawful authority and are struck down.

(SHAHID KARIM)
JUDGE

Announced in open Court on 05.06.2018

Approved for reporting.

JUDGE

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Rafaqat Ali