property vested in the Board which is not property vested in the Central Government.

The other properties of the Boards which are used for public, educational or charitable purposes will also be entitled to the exemption given by the Provincial Taxation Acts. The question as to whether a particular property is exempt under these Acts will be a question of fact to be considered by the Assessing Authority in each case. We regret, therefore, our inability to grant the declaration prayed for by the Central Government in the terms indicated. Since it would neither be possible nor desirable for this Court to go into each particular item of property and to determine its liability, this must be left to be done by the Assessing Authorities concerned with reference to the facts of each individual property in the light of the observations herein made.

In the circumstances, this suit must be dismissed; but, in view of the fact that the contesting parties are Governments, there will be no order as to costs.

K. B. A. *Suit dismissed.*

P L D 1975 Supreme Court 50

Present : Muhammad Yaqub Ali, Muhammad Gul and Abdul Kadir Shaikh, JJ

MESSRS MAMUKANJAN COTTON FACTORY—Petitioner

versus

THE PUNJAB PROVINCE AND OTHERS—Respondents

Civil Petitions for Special Leave to Appeal Nos. 746 and 749 of 1974, decided on 28th November 1974.

(On appeal from the judgment and orders of the Lahore High Court, Lahore dated 4th July 1974, in Letters Patent Appeals Nos. 15 and 16 of 1974).

Constitution of Pakistan (1962)—

—— Art. 98—West Punjab and Bahawalpur Cotton (Control) (West Pakistan Amendment) Ordinance (XII of 1961) and Punjab Cotton Control (Validation of Levy of Fees) Ordinance (Punjab Ordinance XIX of 1971)—Cotton-fee levied on ginning factories run by diesel engine in respect of period prior to 21-1-61 [*i.e.* coming into force of Ordinance XII of 1961] held by High Court in writ jurisdiction to be illegal—Promulgation, thereafter, of Ordinance XIX of 1973, to undo effect of judgments rendered by High Court—Contention that judgments were given by High Court in exercise of its jurisdiction conferred by Constitution itself while validating Ordinance XIX of 1973 was a Sub-Constitutional legislation which cannot undo or destroy the effect of judgments which were "end product" of Constitutional jurisdiction—Contention, *held*, to be without substance.

The counsel appearing in support of the petitions, frankly conceded, that he did not find it possible to question the *vires* of the validating Ordinance on the grounds canvassed in the High Court. With the permission of the Supreme Court, he however, attacked the *vires* of the Ordinance and the resultant action of the Provincial Government on a fresh ground. His argument in a nutshell was that the validating Ordinance

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purports to enable the Provincial Government to retain and claim, what according to the judgments of the High Court, the Government could not have, at the material time, levied and collected. These judgments are rendered by the High Court, in exercise of its jurisdiction conferred by the Constitution itself. The validating Ordinance on the other hand, is sub-constitutional Legislation, which according to counsel cannot undo or destroy, what he described as the "end product" of the Constitutional jurisdiction. [p. 53]*A*

Held: The argument is without substance and one which if accepted would indeed lead to startling results. It would strike at the very root of the power of Legislature, otherwise competent to legislate on a particular subject, to undertake any remedial or curative legislation after discovery of defect in an existing law as a result of the judgment of a superior Court in exercise of its constitutional jurisdiction. The argument overlooks the fact, that the remedial or curative legislation is also "the end product" of constitutional jurisdiction in the cognate field. The argument if accepted, would also seek to throw into serious disarray the pivotal arrangement in the Constitution regarding the division of soveriegn power of the State among its principal organs, namely, the executive, the Legislature and the judiciary, each being the master in its own assigned field under the Constitution. [p. 53]*B*

Hakimuddin v. *Chief Cotton Inspector* P L D 1960 Lah. 709 ; *Haji Dossa Ltd. Karachi* v. *The Province of Punjab* 1973 S C M R 2 ; *Commissioner of Sales Tax (West) Karachi* v. *Messrs Kruddsons Ltd.* P L D 1974 S C 180 ; *Province of East Pakistan* v. *Mehdi Ali Khan* P L D 1959 S C (Pak.) 387 and *Saeedur Rahman* v. *Chief Election Commissioner* P L D 1965 S C 157 *ref.*

A. K. Brohi, Senior Advocate Supreme Court instructed by *Iqbal Ahmad Qureshi*, Advocate-on-Record for Petitioners (in both Petitions).

Nemo for Respondents.

Date of hearing : 13th November 1974.

JUDGMENT

MUHAMMAD GUL, J.—This judgment deals with Civil Petitions for Leave to Appeal Nos. 746 and 749 of 1974, which proceed on similar facts and give rise to the same law point.

The petitioner in each case is owner of a cotton ginning factory run by diesel engine. At the relevant time, cotton ginning factories in the Province were chargeable with cotton fee under the West Punjab Cotton (Control) Act, 1949 and the rules framed thereunder. However, the expression "factory" as originally defined in the Act did not include ginning factory run by diesel engine. Nevertheless, the petitioner in each case was charged cotton fee purporting to be under the Act, notwithstanding the above lacuna in the law. The High Court, by judgment in *Hakimuddin* v. *Chief Cotton Inspector* (1), declared the collection of fee as aforesaid, to be *ultra vires* the statute.

An attempt was made to remove the defect in the law by the West Pakistan Ordinance XII of 1961, which by section 2 enlarged the definition

(1) P L D 1960 Lah. 709

of the expression "factory" to include a factory run by diesel engine. But the amendment fell short of validating the past recovery of the duty to relieve the Provincial Government of its liability to refund the amount unlawfully recovered prior to 27-6-1961, when the amending Ordinance came into force.

To force the Provincial Government to refund the cotton fee unlawfully collected prior to the coming into force of the amending Ordinance of 1961, the petitioners filed two writ petitions, which were accepted by the High Court on 15-11-1967.

In another writ petition, namely, *Messrs Chaudhri Brothers Cotton Ginning Factory* v. *E. A. D. A. Bahawalnagar* (W. P. No. 532 of 1969) on identical facts, the High Court ruled on 5-8-1970, that the cotton fee recovered in respect of ginning factory run on diesel during the period prior to 21-6-1961, shall be adjusted future liability as from that date under the amended law.

This led to the promulgation of yet another Ordinance, namely, the Punjab Cotton Control (Validation of Levy of Fees) Ordinance, 1971, (Punjab Ordinance XIX of 1971) to undo the effect of the aforesaid judgments of the High Court, with the plain object of enabling the Provincial Government to retain the exactions, which at the time they were made had no warrant in law. This is a short Ordinance which for the material purpose read :—

"Notwithstanding any omission or anything to the contrary contained in the West Punjab Cotton (Control) Act, 1949 or the Bahawalpur Cotton (Control) Act, 1949 (both since repealed), before their amendment by the West Punjab and the Bahawalpur Cotton (Control) (West Pakistan Amendment) Ordinance, 1961 (also since repealed) or the Rules made thereunder, or anything to the contrary contained in any decree, judgment or order of any Court, the fees levied, charged, collected or realised from the occupiers of cotton ginning factories run by diesel under the provisions of the West Punjab Cotton (Control) Act, 1949 or the Bahawalpur Cotton (Control) Act, 1949, before their amendment by the West Punjab and the Bahawalpur Cotton (Control) (West Pakistan Amendment) Ordinance, 1961, shall be deemed to have been validly levied, charged, collected or realized under the provisions of the West Punjab Cotton (Control) Act, 1949, or, as the case may be, under the Bahawalpur Cotton (Control) Act, 1949, as amended by the West Punjab and the Bahawalpur Cotton (Control) (West Pakistan Amendment) Ordinance, 1961.

(2) Where any fee referred to in subsection (1) has not been paid or realised before the coming into force of this Ordinance or if so paid or realised, has been refunded to or adjusted against other fees payable by the occupiers of the aforesaid factories, the same shall be recoverable in accordance with the provisions of the West Pakistan Cotton Control Ordinance, 1966."

In consequence of the new dispensation, the Provincial Government has declined to adjust the unwarranted recoveries of cotton fees *ab initio* and has also issued fresh notices of demand for fee that had become due in respect of the intervening period. It is not controverted that above

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provision is comprehensive enough and operates retrospectively, so as to provide statutory cover to the impugned action of the Government.

The petitioner in each case, was thus obliged to move yet another writ petition to call in question the *vires* of the validating Ordinance of 1971 and the consequential acts and omissions of the Provincial Government in the relevant field.

The writ petitions were heard by a learned Single Judge, who following judgment of this Court in *Haji Dossa Ltd., Karachi* v. *The Province of Punjab* (1) held the validating Ordinance of 1971 as *intra vires* and dismissed the writ petitions. That decision has been upheld in Letters Patent Appeals Nos. 15 and 16 of 1974 decided on 4-7-1974, against which the petitioner in each case now seeks leave to appeal.

Mr. A. K. Brohi, appearing in support of these two petitions, frankly conceded, that he did not find it possible to question the *vires* of the validating Ordinance on the grounds canvassed in the High Court. With the permission of this Court, learned counsel, however, attacked the *vires* of the Ordinance and the resultant action of the Provincial Government on a fresh ground. His argument in nutshell was that the validating Ordinance purports to enable the Provincial Government to retain and claim, what according to the judgments of the High Court, the Government could not have at the material time, levied and collected. These judgments are rendered by the High Court, in exercise of its jurisdiction conferred by the Constitution itself. The validating Ordinance on the other hand, is sub-constitutional legislation, which according to learned counsel cannot undo or destroy, what he described as the "end product" of the Constitutional jurisdiction.

The argument, in my opinion, is without substance and which if accepted would indeed lead to startling results. It would strike at the very root of the power of Legislature, otherwise competent to legislate on a particular subject, to undertake any remedial or curative legislation after discovery of defect in an existing law as a result of the judgment of a superior Court in exercise of its constitutional jurisdiction. The argument overlooks the fact, that the remedial or curative legislation is also "the end product" of constitutional jurisdiction in the cognate field. The argument if accepted, would also seek to throw into serious disarray the pivotal arrangement in the Constitution regarding the division of sovereign power of the State among its principal organs, namely, the executive, the Legislature and the judiciary, each being the master in its own assigned field under the Constitution.

The argument of learned counsel also conveniently overlooks string of cases, in which the *vires* of the remedial legislation, competently made, was upheld by this Court, notwithstanding the earlier judgments of the Superior Courts in exercise of their constitutional jurisdiction, to the contrary effect. The foremost and exactly in point among these cases is the judgment in *Dossa Ltd.* v. *The Province of the Punjab*, in which as in these cases, the *vires* of the validating Ordinance of 1971, was called in question. It was *inter alia* observed in that case :—

"The last contention, namely, that the Ordinance of 1971 could not validate something which was void *ab initio* in terms of the Act of

(1) 1973 S C M R 2

1949, loses sight of the fact that it is open to the Legislature to confer retrospective operation on the laws made by it. A reference to the provisions of this Ordinance leaves no doubt that the law maker expressly made its operation retrospective with the avowed object of conferring validity on a demand which was not valid under the original Act of 1949."

Commissioner of Sales-tax (West) Karachi v. *Messrs Kruddsons Ltd.* (1), is also to the same effect. In that case the *vires* of section 30-A of the Sales Tax Act, 1951 as inserted by the Finance Act, 1967 and which was subsequently amended by the Finance Act, 1968 to give it retrospective effect, came in for examination. The latter amendment was made during the pendency of appeal in this Court. Relying on its earlier judgments, in the *Province of East Pakistan* v. *Mehdi Ali Khan* (2), *Saeedur Rahman* v. *Chief Election Commissioner* (3), and a number of other precedents of high authority, this Court had had no hesitation to come to the conclusion, that the appeal must be decided under the latest dispensation. In all these cases, amendments in the law were made after the existing law was found defective by the Superior Courts.

For the foregoing reasons, the two petitions are hereby dismissed.

K. B. A. *Petitions dismissed.*

(1) P L D 1974 S C 180 (2) P L D 1959 S C (Pak.) 387
(3) P L D 1965 S C 157

P L D 1975 Supreme Court 54

Present : Hamoodur Rehman, C. J., Waheeduddin Ahmad, Anwarul Haq and Muhammad Gul, JJ

Sh. KHUSHI MUHAMMAD AND 30 OTHERS—Appellants

versus

ANJUMAN HIMAYAT-I-ISLAM, LAHORE—Respondent

Civil Appeals Nos. 51 to 81 of 1972, decided on 17th May 1974.

(On appeal from the judgments and orders of the Lahore High Court, Lahore, dated 24-3-1972 in R. S. A. No. 1108 and other connected Regular Second Appeals).

(a) **West Pakistan Urban Rent Restriction Ordinance (VI of 1959)—**

—— S. 3 read with West Pakistan Government Notification dated 19-11-1961 issued under S. 3 exempting respondent's properties from operation of Ordinance VI of 1959—*Vires of statutes—Object of* Notification : restoration of normal rights of ownership—Notification, *held*, does not deprive tenants of respondents' properties of any right inhering in them, hence not *ultra vires* main purpose of Ordinance.

The whole object of the impugned notification is to restore the normal rights of ownership to the respondent by doing away with the encumbrances created by the Ordinance against the full enjoyment of its property by the respondent. It is important to bear in mind, that these encumbrances in favour of the tenants are creation of the statute, which the statute itself abolishes or gives the executive the power to abolish in certain cases. On that view of the matter, therefore, the effect of the notification is not to deprive the appellants of any right inhering in them with reference to the property, but only to restore what is otherwise a normal incident of ownership under section 107 of the Transfer of Property Act, 1882. [p. 57]*A*

(b) **West Pakistan Urban Rent Restriction Ordinance (VI of 1959)—**

—— S. 3 and West Pakistan Government Notification dated 19-11-1961 issued under S. 3 read with S. 1 (3) and Cantonments Rent Restriction Act (XI of 1963), S. 3—*Vires* of statutes—Ownership of a property by a particular person or authority—Can be valid basis for its classification for relevant purpose—Contention that a building could be classified only with reference to its inherent character or attribute and not with reference to its ownership, *held*, not correct and properties rightly classified on basis of ownership.

Subsection (3) of section 1 of the Ordinance furnishes a complete answer to the argument. It exempts altogether the evacuee property from the application of the Ordinance. The evacuee character of the property is determined with reference to its ownership by a person who under the relevant law is an evacuee as distinguished from any inherent character of the property itself. Similarly section 3 of the Cantonments Rent Restriction Act, 1963 (Act XI of 1963) exempts from its purview, besides the evacuee property as defined in Act XIII of 1957; ".....any property owned by the Central Government, any Provincial Government Railway, Port-trust or Cantonment Board or any property owned, managed or controlled by any local authority under the administrative control of the Central Government or of any Provincial Government." This statute is in *pari materia* with the Ordinance under which the impugned notification has been issued. This is a clear legislative edict in favour of classification of property with reference to its ownership. [p. 57]*B*

Ownership of a property by a particular person or an authority can be valid basis for its classification for the relevant purpose. [p. 58]*C*

East & West Steamship Company v. *Pakistan* P L D 1958 S C (Pak.) 41 ; *Province of East Pakistan* v. *Sirajul Haq Patwari* P L D 1966 S C 854 and *Halsbury's* Laws of England, 3rd Edn., Vol. XXIII *ref.*

A. K. Brohi and *A. R. Shaukat*, Senior Advocates Supreme Court (*Ghulam Muhammad Bhatti* and *M. Bashir Rana*, Advocates Supreme Court with them) instructed by *Fazal Hussain*, Advocate-on-Record for Appellants (in all the Appeals).

Manzoor Qadir, Senior Advocate Supreme Court instructed by *Sh. Abdul Karim*, Advocate-on-Record for Respondent.

Date of hearing : 17th May 1974.

JUDGMENT

MUHAMMAD GUL, J.—These 31 appeals by special leave call in question the *vires* of section 3 of the West Pakistan Urban Rent Restriction Ordinance, 1959 (West Pakistan Ordinance VI of 1959) and Provincial Government Notification No. Jud. 1. II (14)/61 dated 19-11-1961 issued under the said section to exempt the properties owned by Anjuman Himayat-i-Islam, Lahore, from the application of the Ordinance.

Anjuman Himayat-i-Islam is a premier educational and charitable institution in the Punjab and is registered under the Societies Registration Act, 1860. It owns extensive immovable property, residential and non-