



HIGH COURT OF AUSTRALIA

8 December 2010

PORT OF PORTLAND PTY LTD v STATE OF VICTORIA [2010] HCA 44

In 1996, the State of Victoria entered into an agreement with two companies to sell the assets and business of the Port of Portland Authority. The appellant, in which each company owned a half-share, was nominated as the purchaser. Clause 11.4 of the agreement concerned the appellant's liability to pay land tax in respect of the land forming part of the purchase. Paragraph (a) of the clause provided that the State agreed to amend legislation governing the assessment and imposition of land tax to ensure that when the appellant was assessed for land tax the unimproved site value used as the basis for the assessment would not include the value of buildings, breakwaters, berths, wharfs, aprons, canals or associated works relating to a port. Paragraph (b) of the clause concerned the possibility that the legislative amendments did not become law and that the appellant was assessed to land tax at a higher rate than would have been the case if the amendments were law. In such a situation, the State would refund or allow to the appellant the difference between the two amounts.

Legislation was passed to amend the definition of "improvements" in the *Valuation of Land Act* 1960 (Vic). The amendments came into effect some months after the date of the agreement. The last general valuation of the land before the agreement was in June 1993, and no subsequent general valuation occurred until January 2000. Supplementary valuations were made in the intervening period. The general valuation made in 2000 was significantly less than the supplementary valuations. The appellant attributed the reduction to the proper exclusion of the works specified in cl 11.4. It considered that those works had not been excluded from the value of the land used by the Commissioner of State Revenue to calculate the amount of land tax payable between 1997 and 2001.

The appellant brought proceedings in the Supreme Court of Victoria seeking to enforce the agreement. The State successfully argued at trial and on appeal to the Court of Appeal that cl 11.4 constituted an executive act that purported to bind the Parliament and was thus beyond the State's power and void. On appeal to the High Court, the appellant placed its case on paragraph (b) of cl 11.4, which the High Court held was not a dispensation by the executive from the land tax legislation, as there was a statutory backing to its inclusion in the agreement. The appellant's principal argument was that the State had not ensured that the value of the land used to calculate the amount of land tax payable excluded the relevant works specified in paragraph (a) of cl 11.4 and was obliged by paragraph (b) to bear the extra land tax that the appellant claimed it had been assessed to pay.

The High Court accepted the appellant's argument, holding that the State's obligation under cl 11.4 was not fulfilled by the mere passage of the amending legislation. The Court considered that, to meet the State's obligation, the amendments had to have enabled the exclusion of the specified works from the valuation used to calculate the land tax payable between 1997 and 2001. The Court held that no supplementary valuation could take into account the amendments to the *Valuation of Land Act* effected in 1996. It also held that the objection procedures available to the appellant to challenge a land tax assessment could not have resulted in an adjustment to

the valuation to take into account those amendments. The State was therefore in breach of its obligation under cl 11.4.

The Court allowed the appeal and remitted the matter to the Supreme Court of Victoria to determine the amount the appellant is entitled to recover from the State.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*