

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-2780 of 2013

Present:

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Muhammad Osman Ali Hadi,

1. M/S New Allied Electronics Industries (Private) Limited,
through its Chief Executive Officer,
Mian Perwaiz S/o Muhammad Rafique Anwar,
Muslim, adult, having office at 7th Floor Lakson Square,
Building No.1, Sarwar Shaheed Road, Karachi.

2. Mian Perwaiz son of Muhammad Rafique Anwar,
Muslim, adult, the Director/Shareholder of M/s New Allied Electronics
Industries (Private) Limited, having office at 7th Floor Lakson Square, Building
No.1, Sarwar Shaheed Road, Karachi.

....Petitioners.

Versus

1. Federation of Pakistan,
Through the Secretary to the Ministry of National Harmony,
Pakistan Secretariate, Islamabad.
2. The Secretary,
Ministry of Privatization Commission,
5-A, Constitutional Avenue, Islamabad.
3. The Chairman,
Evacuee Trust Property Board,
Government of Pakistan, 9-Court Street, Lahore.
4. The Assistant Administrator,
Evacuee Trust Property Board,
Government of Pakistan, Numaish Chowrangi,
M.A Jinnah Road, Karachi.
5. The Deputy Settlement Commissioner (Defunct),
through Deputy Secretary (RS & EP),
Board of Revenue, 79-Pakistan Secretariate, Karachi.
6. The Deputy District Officer (Revenue),
Saddar Town, Karachi.
7. M/s Pak Autos Limited,
16 Dock Yard, West Wharf, Karachi.

8. M/s Haroon Industries Limited,
16 Dock Yard, West Wharf, Karachi.
9. M/s Republic Motors Limited,
16 Dock Yard, West Wharf, Karachi.

....Respondents.

Date of Hearing: 14.05.2025.

Date of Decision: 11.08.2025.

M/s. Muhammad Nouman Jamali and Aqib Hussain, Advocates for the Petitioners.

Mr. Mr. Raja Qasit Nawaz, Advocate for respondents No.3 & 4.

Mr. Kazi Abdul Hameed Siddique, D.A.G.

J U D G M E N T

Muhammad Osman Ali Hadi, J.: The Petitioners (being private concerns) have challenged the decision of Respondent No.3 dated 12.07.2011 and Respondent No. 1 dated 29.05.2013 whereby the Respondent No. 3 was given Property being (Plots bearing Survey Nos. S-32/2 and 32/3 which were added to Plot No. 32/1 by CDC Order No. P.R. 2/32/1 and P.R. 2/32/3 dated: 19.02.1929, measuring 4408 square yards or thereabout, with a commercial building and construction standing thereon (hereinafter referred to as the **“PROPERTY”**), which was declared by a decision of Respondent No. 3 dated 12.07.2011 to be treated as Evacuee Trust Property, and upheld by Respondent No. 1 through decision dated 29.05.2013. The Petitioner being aggrieved by the said decision(s), has filed the instant Constitutional Petition.

ARGUMENTS OF THE COUNSELS

2. Learned Counsel for the Petitioner opened the arguments and submitted the Property originally belonged to Mr. Narain Das and others (such as his company M/S Narain Das and Co.), and was purchased by M/s Pak Autos Limited, for which a sale agreement was entered into by M/S Narain Das and Co (through Mr Narain Das) and M/S Pak Autos Limited in September 1948.

3. Learned Counsel then contended that Mr. Narain Das migrated to India before completion of transfer of the Property was concluded.

4. Learned Counsel submitted that at such time, certain evacuee property laws were promulgated, in light of the partition between Pakistan and India. First came the Pakistan Protection of Evacuee Property Ordinance 1948, which was repealed and replaced by the Pakistan Administrator of Evacuee Property Ordinance 1949 ("**1949 Ordinance**"), which was subsequently repealed by the Pakistan Administrator of Evacuee Property Act, 1957 ("**1957 Act**").

5. Learned Counsel submitted that in the year 1958, the Additional Custodian South Zone Karachi (Evacuee Property) gave permission to M/S Pak Autos Limited ("**PAL**") to file a suit seeking completion of the sale agreement with M/S Narain Das and Co., regarding the Property.

6. M/S Pak Autos Limited then filed Suit No.132/1958 for such purpose, before the High Court of West Pakistan, which was accordingly decreed in his favour, and completion of the initial sale deed and agreement dated 29.09.1948 between M/S Pak Autos Limited and M/S Narain Das and Co. was directed to be specifically performed.

7. Accordingly, a sale deed was executed in favour of M/S Pak Autos Limited in the year 1960. Learned Counsel stated that all the formalities were completed and the Property was then sold by M/S Pak Autos Limited to M/s Haroon Industries Limited in the year 1961.

8. Learned Counsel stated that it was pertinent to note that lease of the Property was also renewed for a period of 99 years from 01.08.1962, by the Deputy Commissioner.

9. Learned Counsel for the Petitioner next contended that the Property was forcefully taken over by the Government during the nationalization process, under the Economic Reforms Order 1972, vide SRO No.206(I)/1973, dated

19.02.1973. He submitted that at this point, the name of M/s Haroon Industries Limited (**“HIL”**, owners of the Property) was changed to M/s Republic Motors Limited, vide the same SRO.

10. Counsel continued that moving forward, the Federal Government had purchased all shares of M/s Haroon Industries Limited (since renamed M/s Republic Motors Limited) vide order dated 29.11.1973, and therefore the Property belonging to HIL was also transferred to the Federal Government.

11. Learned Counsel submitted that 29 years later, in the year 2002, the Government had introduced a policy to sell certain assets to the private sector. Once such asset was the Property. M/s Republic Motors Limited (the owner at such time) through the Privatization Commission of Pakistan (Respondent No.2), invited bids from perspective purchasers for the Property.

12. Petitioner No. 1 bid for the Property, and was declared the successful bidder, at the price of Rs.110,000,000/- (Rupees One Hundred and Ten Million Only). Upon completion of all formalities, a deed of conveyance dated 09.09.2002 was granted in his favour.¹

13. Since purchase of the Property in the year 2002, the Petitioners were enjoying peaceful possession of the same, until the year 2009, when the Respondent No. 4 filed a petition under Sections 8 and 10 of the Evacuee Trust Properties (Management & Disposal) Act 1975, before Chairman of Evacuee Trust Property Board (ETPB) / Respondent No. 3, vide which ETPB claimed that the Property was evacuee trust property and therefore belonged to the ETPB.²

14. Learned Counsel contended that the Petitioner filed his Written Statement and contested the matter, however, an impugned judgement was passed on 12.07.2011 (**“Impugned Judgement”**) vide which Chairman of

¹ The conveyance deed etc. are available at Page Nos. 19-55 of the File

² Copy of petition is available at Page No.675 of the File

Evacuee Trust Property Board (Respondent No.3) declared the Property to be evacuee trust property, and belong to the ETPB. He further directed that the same be taken over by the ETPB.

15. Against the same Impugned Judgement, the Petitioners filed a Revision Application³ before the Respondent No.1, in which they *inter alia* contended that the Impugned Judgment was erroneous in law and was liable to be set-aside. However, the Respondent No.1 heard the matter and passed an Impugned Order dated 03.06.2013⁴ (“**Impugned Order**”) upholding the earlier Impugned Judgment passed by the Respondent No. 3.

16. Learned Counsel then submitted that having no adequate alternate remedy available, they have approached this Court for redressal of their grievance.

17. Learned Counsel for the Petitioners argued that the Impugned Order and Judgment are bad in law, which have erroneously declared the Property to be Evacuee Trust Property. He further contended that a proper process under the Privatization Commission Ordinance 2000 (“**2000 Ordinance**”) was concluded and if there had been any irregularity, then the Government could have carried out an investigation within one year of the privatization sale (under section 27 of the 2000 Ordinance), which was not done. He further averred the Property was never treated as evacuee, and that post 1957 it could not be declared as such (as prohibited under section 3 of the 1957 Act). He stated the Respondents could not belatedly decide to take over the Property, which they had done in an entirely unlawful manner.

18. Learned Counsel contended that the Property was private Property, until it was taken over by the Federal Government under the Economic Reforms Order 1972 during the nationalization process. After which, it was again privatized and handed back to the Privatization Commission to facilitate sale of

³ Copy of Revision Application is available at Page No.139 of the File

⁴ Available at Page No. 221 of the File

the Property to private persons. He contended this was done and the Property was accordingly purchased by the Petitioners.

19. He next submitted that the Impugned Judgement / Order further erred by accepting ETPB / Respondent No. 3's submissions, which were without any reasoning, evidence or merit, but were mere baseless assertions.

20. Learned Counsel reiterated the Property was never declared as evacuee property, which is why when the Custodian was approached in the year 1958 for transfer of the Property (to PAL), the Custodian referred the matter to the civil court for adjudication, accepting that it did not fall under the (Evacuee) Custodian's jurisdiction. Therefore, it was evident that the said Property was never considered as evacuee property.

21. Learned Counsel concluded by saying the Impugned Judgement / Order are illegal, and therefore liable to overturned/set-aside. In support of his contentions, he relied upon various case laws.⁵

22. The contentions of the Petitioners were vehemently opposed by the Counsel for the Respondents No. 3 and 4 (ETPB).

23. Learned Counsel for the said Respondents stated that the Property was indeed a Trust Property, initially registered to "Rao Bahadur Naraindas Mulchand Dharmada Trust" vide trust deed dated 23.12.1941.⁶

24. Learned Counsel for the said Respondents next submitted that the Property was declared by the Government to be Evacuee Trust Property vide Gazette Notification dated 09.08.1963 at S. No. 251, and therefore, all the formalities were completed and the said Property being an Evacuee Trust Property could not have been given in such manner to the Petitioners.

⁵ 1993 SCMR 21; 1991 SCMR 580; 1985 SCMR 1354; 1990 SCMR 829; 1999 SCMR 2674; P 1994 Peshawar 74; P 1975 SC 331; 1999 SCMR 2674; 2021 SCMR 645; Civ. App. 1443/2019.

⁶ Stated in Para III of the Respondents' Comments @Pg. 633 of the File. A copy of the trust deed relied upon by the Counsel is available at Page Nos. 680-705 of the File

25. Counsel for the said Respondents further averred that even the earlier order passed by the High Court dated 02.02.1959 was without lawful authority, as the 1957 Act and prior statutes relating to Evacuee Property provide their own mechanisms for adjudication, which (as per Counsel) were not amenable to the jurisdiction of this Court. He further submitted that under the 1975 Act, the Evacuee Trust Property Board could not be proceeded against by the Court; as such, on this ground as well, the claim of the Petitioners fails.

26. Learned Counsel for the said Respondents stated that in the light of the foregoing, the Impugned Order and Judgment were entirely correct and the said Property belonged to the Evacuee Trust Property Board, and fell within the ambit of Respondents Nos. 3 and 4, and as such said Impugned Order and Judgment required no interference. Counsel concluded by submitting that even the prior suit and further transfer of the said Property by the Petitioners and their predecessor was done fraudulently with *mala fide* intentions, and all those transactions were void. In support of his contentions, he relied upon various case laws.⁷

27. The Privatization Commission (Respondent No.2) had also filed their comments, whereby they primarily supported the contentions put forth by the Petitioners.⁸

OPINION OF THE COURT

28. We have heard the exhaustive arguments put forth by the learned Counsels, and have also perused the File and documents available on record.

29. The first point we shall address concerns the initial status and transfer of the Property. The basic facts of the case as narrated by the Petitioners have not

⁷ P 1958 SC 104; P 1957 SC 83; 1992 SCMR 1313; P 2011 SC 126; 2009 SCMR 210; 2004 SCMR 440; 2004 MLD 376; Civ. App. No. 4-K/2011; Civ. App. No. 47K / 1977; 1995 SCMR 520; 1989 SCMR 1605; 1636; 1990 SCMR 25; P 2004 SC 140; P 1991 SC 586; 1990 SCMR 25; 1991 SCMR 2206; 1974 SCMR 519; P 1970 SC 139; P 2001 SC 415; P 1985 SC 131; 1984 SCMR 1255; 2006 SCMR 276; 2005 SCMR 37; SBLR 2005 Sindh 1158.

⁸ Available at Page No. 455 of the File

been disputed by the Respondents, nor were they disputed in the Impugned Judgement / Order. The only argument put forth by the Respondents is that the Property is an evacuee trust property, and hence all prior proceedings, including those of the Additional Custodian, High Court, Federal Government and Privatization Commission were all void in law.

30. There is no dispute that the Petitioners version of events state the Property was entered into a Sale Agreement dated 29.09.1948 between Mr. Nairaindas of M/s Narain Das & Co. with M/s Pak Autos Limited (“**PAL**”). Thereafter, due to Mr. Naraindas having left Pakistan for India (post-partition) in the year 1948, PAL approached the Office of the Custodian of properties to implement the Sale Agreement between Mr. Das and PAL. It is relevant to mention the governing law at the time pertaining to properties which could-be or were *evacuee* in nature, was the Pakistan (Administration of Evacuee Property) Ordinance 1949 (“**1949 Ordinance**”).⁹

31. The 1949 Ordinance provided an entire mechanism relating to dealing with evacuee properties, which was to be done through the office of the Custodian.¹⁰ All evacuee properties vested and remained in control of the Custodian, appointed under the 1949 Ordinance.¹¹

32. The Petitioners contended that an application was placed by PAL (who had already given a down-payment on the Property) before the Office of the Custodian (Evacuee) for implementation of the Sale Agreement, which was a requirement for any person claiming a right on evacuee property, under the 1949 Ordinance.¹² It is relevant to note at this stage neither the Custodian nor the Government had declared the Property to be *evacuee*. However, as per the 1949 Ordinance, no evacuee property could be transferred, nor could such immoveable property be registered without specific permissions / approvals of

⁹ Which repealed the Pakistan (Protection of Evacuee Property) Ordinance 1948

¹⁰ The term “Custodian” in the 1949 Ordinance includes “Additional, Deputy or Assistant Custodian”. Ref: Section 2(1)

¹¹ Section 6

¹² Section 18

the Custodian,¹³ and hence the application placed before the Office of the Custodian was deemed prudent and necessary, just to ensure (through opinion of the Custodian) the Property was not evacuee in nature. In essence, it was a safeguard relied upon by PAL to avoid any confusion at a later stage regarding status of the Property.

33. It remains unclear why there was a delay, but PAL's application was subsequently dealt with by the Office of the Custodian belatedly in the year 1958. It is relevant to mention that by this juncture, the Pakistan (Administration of Evacuee Property) Act 1957 ("**1957 Act**") had come into effect, and therefore the 1949 Ordinance was no more applicable to the Property, as the Property would now be governed under the 1957 Act.¹⁴

34. The Additional Custodian¹⁵ after perusing the application by PAL, referred the matter to the Civil Court for adjudication¹⁶. Section 25(2)(n) of the 1957 Act, grants the Custodian such powers of adjudication. For purposes of clarity, Section 25(2)(n) is hereby reproduced:

Section 25. Powers and the duties of the Custodian generally.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may:-

(n) Institute, defend or continue any legal proceeding in any Civil or Revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or to a Civil Court for adjudication or compromise any claims, debts or liabilities on behalf of the evacuee;

35. This would appear to be a clear indication that by referring the matter to be adjudicated by a Civil Court, the Custodian did not consider the Property to be evacuee in nature, else the powers for transfer etc. of immoveable evacuee

¹³ Sections 15, 16 & 17

¹⁴ Majority of the 1957 Act & 1949 Ordinance were analogous. Relevantly, the term "Custodian" held the same definition under Section 2(1) as the 1949 Ordinance

¹⁵ Empowered under the 1957 Act, Section 2(1)

¹⁶ Section 25(2)(n) provides the Custodian powers to refer the matter to a Civil Court, read with Section 22

property would've rested solely with the Custodian himself, under the 1957 Act.¹⁷ Moreover, Section 3 of the 1957 Act reads:

Section 3. Property not to be treated as evacuee property on or after 1st January, 1957. (1) Notwithstanding anything contained in this Act, no person or property not treated as evacuee or as evacuee property immediately before the first day of January, 1957, shall be treated in evacuee or, as the case may be, as evacuee property, on or after the said date.

(2) Nothing in subsection (1) shall apply:--

(a) to any person in respect of whom or to any property in respect of which any action has commenced or any proceedings are pending immediately before the date mentioned therein for treating such person as evacuee or such property as evacuee property; or

(b) to any property which is occupied, supervised or managed by a person whose authority or right so to do after the twenty-eighth day of February, 1947, has not been accepted or approved by the Custodian.

36. As it is an accepted position that prior to 1st January 1957, the Property had not been declared as evacuee, and therefore post 01.01.1957 it could not have been declared as such (per Section 3 of the 1957 Act *ibid*). The Custodian appeared to have made a correct decision by letting the matter be decided by the Court, as the Property was not evacuee and the time period (per the 1957 Act) for declaring the Property as evacuee, had also lapsed.

37. To further bolster our opinion, we find that had the Property even been considered as evacuee by the Custodian, he (i.e. the Custodian) still could have invoked Section 16(3) of the 1957 Act, which provided power to the Civil Court for ordering specific performance of any agreement to sell immoveable evacuee property, where such agreement has been approved by the Custodian. That is to say, the Custodian himself had the power to approve the Sale Agreement between PAL and Mr. Das, had the Property been evacuee in nature. Instead, the (Additional) Custodian simply directed to have the matter (not the Sale Agreement) referred to the Civil Court for adjudication on its own merits, which again illustrates the Office of the Custodian did not consider the Property to be evacuee, and hence referred its adjudication to be done by the Civil Court.

Section 16(3)(a) which provides such power reads:

¹⁷ Sections 7, 12, 19, 20 & 22

Section 16. Exemption from legal process.

(3) Nothing contained in the foregoing sub-sections shall,

(a) prevent a Civil Court from ordering specific performance of any agreement to sell or exchange immovable evacuee property where such agreement has been approved by the Custodian, or a Registering Officer from registering a deed of sale or exchange relating to such property where a certificate under section 20 has been granted by the Custodian; or

(b) affect any power conferred on the Central Government by or under any law for the time being in force to requisition or acquire property, and it is hereby declared that if by or under such law or any other law for the time being in force a like power is conferred upon or delegated to a Provincial Government, the Provincial Government may exercise the same in relation to evacuee property with and only with the previous approval of the Central Government and subject to such directions as the Central Government may at any time see fit to give.

38. A suit was then accordingly filed by PAL against Mr. Das etc., for Specific Performance of the Sale Agreement dated 29.09.1948 in the High Court of West Pakistan (Karachi Bench).¹⁸ The same was decreed in their favour vide order dated 02.12.1959, and the Sale Agreement was ordered to be specifically performed. PAL paid certain outstanding taxes on the Property, and the Nazir of the Court executed a sale deed in favour of PAL. All relevant formalities for the transfer of the Property were fulfilled. Once the matter was concluded and the Court Order attained finality, the Property stood duly transferred to PAL.

39. PAL then sold / transferred the Property to Messrs Haroon Industries Ltd. (“**HIL**”). In the year 1972, the Economic Reforms Order was promulgated, which nationalized several industries / businesses. HIL was also nationalized and taken over by the Federal Government in the year 1974, and was renamed Republic Motors (Pvt.) Ltd. (“**RML**”). Since HIL was taken over by the Federal Government, so were HIL’s assets, which included the Property. Therefore, the Property thenceforth belonged to the Federal Government.

40. Eventually, in or around the year 2000, an initiative for privatization of assets was established by the Federal Government, and a Privatization Commission was established vide the Privatization Commission Ordinance 2000

¹⁸ Suit No. 132 of 1958

(“**PC 2000**”), which was promulgated to ensure a proper and transparent process in privatizing certain government assets.

41. Subsequently, when it was decided to privatize certain properties under the PC 2000, the Property was also included for privatization. It was announced for open auction in the year 2002. The Petitioners bid in the open auction, and were declared the highest bidders, purchasing the Property from RML for Rs. 110,000,000/-. The sale was approved by the Privatization Commission,¹⁹ and the Property was transferred to the Petitioners vide a Conveyance Deed,²⁰ for which they paid the full sale amount and subsequently fulfilled all formalities.²¹ It is pertinent to mention the Privatization Commission had also sought (*post facto*) approval from the Council of Common Interests (CCI) for sale of the Property. Such approval was granted by the CCI.

42. Then it appears out of the blue, the Respondent No. 3 / ETPB filed a claim in the year 2009, stating the Property was evacuee trust property. The Respondent No. 4 being the Assistant Administrator of ETPB, filed a petition before Respondent No. 3 under sections 8 & 10 of the Evacuee Trust Properties (Management & Disposal) Act 1975 (“**1975 ETP Act**”) claiming the Property to be an evacuee trust property, and belonging to them (i.e. ETPB). Against that petition, the Respondent No. 3 heard the parties and passed the Impugned Judgement dated 12.07.2011.²²

43. The Petitioners then filed a Revision Application before Respondent No. 1²³ who upheld the Impugned Judgement by passing the Impugned Order dated 24.05.2013.²⁴

¹⁹ Privatization Commission letter dated 12.06.2002 approving sale of the Property is available at page 105 of the File

²⁰ Available at page 19 of the File

²¹ It is noteworthy the history of the Property is also narrated in the Conveyance Deed

²² Available at page 131 of the File

²³ Under Section 17 of the 1975 ETP Act

²⁴ At page 221 of the File

44. The above stated Impugned Judgement & Order have been challenged by the Petitioners in the instant Constitutional Petition, on the grounds stated in their arguments (*ibid*).²⁵

45. Our primary finding is that the initial transfers of the Property all the way from PAL up to RML were without fault. The various interested parties followed proper procedure from the onset, including approaching the Custodian of Evacuee Property, under the relevant applicable laws. Finally, a High Court Order dated 02.12.1959 was passed, directing the Sale Agreement to be performed in favour of PAL. After fulfilment of all formalities, the Property was duly transferred in favour of PAL. Even the Custodian, as it appears, did not deem the Property to be evacuee (as there is nothing on record to the contrary of this presumption), which is why he referred the then interested party (PAL) to the Court for adjudication of their claim, from which the Order dated 02.12.1959 was passed by the High Court. This process continued without glitch, and the Property stood legally transferred to PAL, who could manage or dispose of the Property in any manner of their choosing since they were the lawful owners at such time.

46. It is pointed that the Federal Government,²⁶ (and through them the ETPB) by having not (until such time) declared the Property to be treated as ‘*evacuee*’, and/or by not challenging the High Court Order dated 02.12.1959, created an estoppel from then seeking the Property to be evacuee trust property (especially belatedly in the year 2009).

47. Next, the Federal Government nationalized HIL (who had purchased the Property from PAL) under the 1972 Order. HIL was renamed Republic Motors (Pvt.) Ltd. (“**RML**”).

²⁵ We have already placed arguments put forth by the Parties in the First Part of this Judgement

²⁶ Then called ‘Central Government’

48. In the year 2002, Respondent No. 2 / Privatization Commission Pakistan (“**PCP**”), created under the Privatization Commission Ordinance 2000 (“**PC 2000**”) for implementation of the privatization policy being followed by the (then) Government, who were entrusted with the task to facilitate privatization of various entities / assets on behalf of the Government auctioned and sold the Property to the Petitioners, who were given possession and ownership of the Property.

49. Seven years later, in 2009, the ETPB appear to have unilaterally decided the Property was an evacuee trust property, and filed a petition through Respondent No. 4 to Respondent No. 3, for declaration of the same. The said Respondents relied entirely on an alleged Gazette Notification made in the year 1963 vide which they claim the Property was declared as evacuee trust property.²⁷ Furthermore, they stated the Karachi Metropolitan Corporation (“**KMC**”) record also substantiates the same. This in itself is a self-defeating argument, as there was a bar for declaring property to be considered as evacuee post 1st January 1957, under the (then) prevalent law (being Section 3 of the 1957 Act). Therefore, the Property could not have been declared as *evacuee* in the year 1963, when it had already been sold and transferred to private entities. Secondly, as per a letter dated 13.07.2015 issued by the KMC²⁸, it is clearly stated the Property belonged to Mr. Narindas Mulchand since 01.04.1942. This further negates the claim of ETPB that the Property belonged to a charitable trust called the “*Rao Bahadur Naraindas Mulchand Dharmada Trust*”, which formed the genesis of ETPB’s claim on the Property.

50. This second part mentioned above is fatal to the defence / case of ETPB. ETPB was established under the 1975 Act, to deal specifically only with evacuee trust property, meaning it cannot deal just with any evacuee property (which does not belong to an evacuee trust). In order to gain jurisdiction under the 1975 Act, the property being dealt with by ETPB must in nature also belong

²⁷ Para III of Respondents No. 3 & 4’s Para Wise Comments, at page 633 of the File

²⁸ Available at page 761 of the File

to an evacuee trust which is charitable / religious in nature. Whilst ETPB attached a handwritten unverified document which they claim to be an alleged trust deed, they have neither lead evidence on the same, nor does the Impugned Judgement provide any rationale of having followed due process or legal authority to support such stance put forth by the ETPB. Section 8 of the 1975 Act reads:

“S. 8. Declaration of property as evacuee trust property. (1) If a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any Court.

(2) If the decision of the Chairman under sub-section (1) is that an evacuee property is evacuee trust property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.

(3) If a property, is declared to be evacuee trust property under sub-section (2), the Chairman may pass an order cancelling the allotment or alienation, as the case may be taken possession and assume administrative control, management and maintenance thereof. Provided that no declaration under sub-section (2) or under sub section (3) shall be made or passed in respect of any property without giving the persons having interest in the property a reasonable opportunity of being heard.”

51. A perusal of the wordings of Section 8(1) of the 1975 Act show that the Chairman/Respondent No. 3 has the power to decide whether any evacuee property is attached to a charitable, religious trust or institution. Only then can it be declared an evacuee *trust* property. And if it is not an evacuee trust property, then ETPB would not hold any jurisdiction over the same. It is our opinion the Impugned Judgement has grossly erred in this regard. The operative part of the Impugned Judgement is between Para Nos. 10 - 12²⁹ vide which it appears Respondent No. 3 has accepted a mere statement of Respondent No. 4 (along with unverified documentation), upon which it formed its opinion and passed Judgement that the Property was an evacuee trust property. If Respondent No. 3 were to peruse the material (though for separate reasons mentioned further below we have found he would not have been legally capable), he should have invoked his powers under Section 21 of the 1975 Act and conducted a proper and full trial with evidence, only after which he could have reached a just

²⁹ Available at page 137 of the File

decision. This was not done by Respondent No. 3 in the Impugned Judgement. He simply accepted without question the submissions and documents put forth by Respondent No. 4, and without examining the law or authenticity, he passed his finding in ETPB's favour. It was incumbent upon both Respondents No. 1 & 3 respectively, to properly study the matter in depth, keeping in mind all the legal obstacles, such as those we have highlighted in this Judgement, before passing any orders for declaration or otherwise.

52. In the case of *Govt. of Pakistan v Nizamuddin*³⁰ it was held that at the time of hearing, before declaring a property to be evacuee trust property, it is incumbent upon the deciding authority to look into various aspects of the same. A relevant portion of the Apex Court Judgement reads:

"It is quite clear from the order passed by the Chairman of the Board that there was neither any trust deed available in respect of the property to show its nature nor any evidence was led in the case to show that the property was attached to any religious, charitable or educational trust or the income arising from the property was applied to a trust created for religious, charitable or educational purposes. There is nothing in the extract relied upon by the learned counsel for the appellants, to indicate that the suit property was either a religious or charitable or an educational trust or it was attached to any of the trust of such a nature. In the absence of any evidence to show the nature of the trust, or to prove the fact that the income arising from the suit property was being applied to charitable, religious or educational purposes, the order passed by the Chairman of the Board holding the property as an evacuee trust property was an arbitrary order based on no evidence.....In the present case, the entry relied by the appellants in the record of survey did not show that the suit property was either a religious or an educational or a charitable nature. These entries also do not show that the suit property was attached to a trust of religious, charitable or educational nature. In the circumstances, there was no evidence available on record before the Chairman of the Board to reach the conclusion that the suit property was an evacuee trust property. The learned Judges of the Division Bench, therefore, rightly quashed the orders passed by the Chairman of the Board and the Secretary respectively, holding the suit property as an evacuee trust property."

53. In the case of *Fed. Govt. of Pakistan v Khurshid Zaman Khan*³¹, the Supreme Court held:

"12.... In the Jamabandis, the property, subject-matter of these appeals, was throughout shown to be owned by individuals. It is not, a case where the properties were mutated in the name of a trust or charitable institution. The owners had perhaps used such property or parts thereof for some charitable purpose but such use by itself could not make the property a trust property. In the circumstances, the Chairman of the Evacuee Trust Property Board by his order, dated 28-7-1976 rightly held that the property was not trust property. However, in revision, the Federal Government by order, dated 6-8-1978 upset the order of the Chairman. From the order in revision, reproduced hereinabove, it is apparent that no weight at all was given there to the fact that, till Partition, the property, according to the records, was shown to be owned by individuals. In the circumstances, in the absence of any evidence that the owners had dedicated the property for charity, no ground was made out for setting aside the order of

³⁰ 1994 SCMR 1908

³¹ 1999 SCMR 1007

the Chairman. In the circumstances, the order of the Federal Government could not be sustained.”

54. The slipshod manner vide which Respondents No. 1 & 3 passed the Impugned Judgement / Order is not confidence inspiring. This is a dangerous precedent being set by Respondent No. 3 / ETPB, who are basically attempting to takeover property through misuse of power. The 1975 Act is a special law which breaks away from the norm, going against the maxim '*nemo iudex in causa sua*' meaning 'no person can be a judge in his own cause', which makes it all the more necessary for Respondent No. 3 to act prudently when dealing with matters put before him by the ETPB itself (e.g. by Respondent No. 4). In cases seeking declaration for evacuee trust property under the 1975 Act, the matter is brought before the Chairman ETPB.³² This means, even in matters where the ETPB itself has brought forward a claim for declaration (as has happened in the instant case), the matter is decided by the Chairman of ETPB itself. In essence, ETPB is both bringing forth the claim, as well as adjudicating it. It is for this reason, the Chairman has an extra sense of duty and care to ensure the matter is dealt with in a completely impartial, fair and just manner. After all, justice should not only be done, but it should also seem to be done.

55. Ironically, the Respondents No. 3 & 4 / ETPB have relied upon an ouster clause in the 1975 Act³³ while taking the position that the Civil Court does not have jurisdiction to adjudicate the matter pertaining to evacuee trust property, and therefore any Court decree / order with regard to the Property would be null and void. While conceptually this may hold weight, the said Respondents have failed to recognize that for any of the said Sections of the 1975 Act to come into effect, a property itself would first have to be evacuee trust property (which the Property in dispute is not).

³² Section 8

³³ Sections 14 and 8

56. Furthermore, this argument put forth would also conflict with provisions of the Privatisation Commission Ordinance 2000 (“**PC 2000**”), which are relevant as the PCP / Respondent No. 2³⁴ had passed its approval for the privatization sale of the Property. In PC 2000, Section 28 reads:

28. Jurisdiction of High Courts.- Notwithstanding anything contained in any other law for the time being in force, the High Court shall exercise exclusive civil and criminal jurisdiction,---

(a) to adjudicate and settle all matters related to, arising from or under or in connection with this Ordinance;

(b) to adjudicate and settle all matters transferred pursuant to section 31; and

(c) to try offences punishable under this Ordinance

57. As per the PC 2000, all matters arising from or connected with the PCP could only be adjudicated by the High Court. This was not followed, and the ETPB never approached the High Court against the PCP’s decision to auction the Property to the Petitioners. Had ETPB had any issue with the privatization of the Property, they should have challenged the same before the High Court (as mandated by the statute). Instead, the Chairman ETPB / Respondent No. 3 has bypassed statute and taken *suo moto* powers by overturning the PCP’s decision / process in auctioning the Property, in a complete conflict of law.

58. This would be the same obstacle faced by the Respondents 1 & 3 / ETPB vis-à-vis the order / decree dated 02.12.1959 passed in Suit No. 132 of 1958, vide which specific performance for sale of the Property (to private concerns) was ordered. That Suit was filed pursuant to a direction from the Addl. Custodian, and the Property was accordingly transferred, which was never challenged. Neither was the direction of the Addl. Custodian ever challenged, nor was the order / decree appealed, which therefore attained finality.

59. Once the order / decree attained finality, the same could not be displaced by Respondents No. 3 & 4. A further effect of the Impugned

³⁴ Established and governed by the PC Ordinance 2000

Judgement and Order passed by Respondents No. 1 & 3 was overturning the findings of the order / decree dated 01.12.1959, for which we find that the said Respondents neither have the statutory authority, nor the stature to do the same. It is trite law there must be an end to litigation, else people will lose faith in our systems.

60. In the case of *Muhammad Raqeeb V. Govt. of KPK & Ors.*,³⁵ the Hon'ble Supreme Court held:

"12. The doctrine of finality is primarily focused on a long-lasting and time-honored philosophy enshrined in the legal maxim 'Interest reipublicae ut sit finis litium' which recapitulates that 'in the interest of the society as a whole, the litigation must come to an end' or 'it is in the interest of the State that there should be an end to litigation'. Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of res judicata explicated under section 11 of the Code of Civil Procedure, 1908. The Latin maxim 'Re judicata pro veritate accipitur' expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court."

61. In *Secretary Local Govt. Election Rural Development, KPK & Ors V. Muhammad Tariq Khan & Ors.*³⁶ it was held:

"10. There is an old latin maxim 'res judicata pro veritate accipitur'. According to this maxim, a suit/dispute in which the matter directly or substantially in the issue has been directly/ substantially in issue in a former suit/proceeding between the same parties or between parties under whom they or any of them claim has been decided by a competent court shall not be tried again in the same matter in any other courts. In simple words, a decision once rendered by a competent court on a matter in issue between the parties after a full inquiry should not be permitted to be agitated again by the same court or some other court between the same parties in the same matter. The rule of estoppel by res judicata is a rule of evidence, which prevents any party to a suit/proceeding which has been adjudicated upon by the competent court from disputing or questioning the decision on merit in subsequent litigation. It is based on the concept of public policy and private justice which apply to all the judicial proceedings. According to this, public policy involves that the general interest of the litigation must come to an end or that the litigation must have its finality. Similarly, private justice requires that an individual should be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior power and resources may enable him to abuse the process of court. A

³⁵ 2023 SCMR 992

³⁶ 2021 SCMR 1433

decision by a competent court, which is final, should be binding and the same questions are sought to be controverted in the subsequent litigation for which this maxim applies.”

62. Due process under the applicable laws were followed by the private parties. A cautionary application was made to the Custodian (being the relevant Officer of evacuee property at the time), after which (with his consent) the matter was referred to the High Court (in its original jurisdiction). Thereafter an order / decree was passed for the sale of the Property to the private concerns. Subsequent to that, a chain of events occurred, and at no point did the ETPB or any of its predecessors file any objection to the previous transfer / sale of the Property, and nowhere did ETPB claim the Property belonged to them (i.e. ETPB). No appeal was filed against the High Court order / decree. No challenge was even made to the auction held by the PCP regarding the Property. It is pertinent to keep in mind the Property was constantly being shifted at the Federal Government's behest, but at no point was such Property declared or even mentioned to be 'evacuee' in status. It therefore follows that such process / litigation should have ended, and the ETPB / Respondents cannot be permitted to endlessly keep bringing forth settled and belated claims.

63. The ETPB could have filed a suit challenging the PCP's proceedings, or at some point challenging the directions of the Federal Government. They could have filed an application under section 12(2) Code of Civil Procedure, 1908, challenging the initial order / decree, but they did not avail any of those options.

64. Instead, the ETPB waited for over fifty years post the initial order / decree, after several ownership changes, and then made an approach to try and take over the Property. Even under the confines of limitation, the claim of ETPB would be time barred. If either article 14 or article 120 of the Limitation Act 1908 are observed (which would be applicable to the matter at hand), the limitation period for bringing forth a claim would be either 3 or 6 years. In both scenarios, such time has long elapsed. It would be unjust to dislodge vested

rights accrued to the Property owners. On this ground as well, we find the Impugned Judgement & Order have failed to properly address this issue, despite it being Respondent No. 3's responsibility to do so, whether or not such a contention was raised by either party.³⁷

65. The actions of the Respondents No. 1 & 3 whilst passing their respective Impugned Judgement / Order in our opinion (and based on the above) have also violated the Petitioner's fundamental rights, particularly under articles 4, 23, 24 & 25 of the Constitution of Pakistan 1973. The said provisions safeguard established property rights, which we find has been violated by the Respondents in the instant matter, by not following proper due process of law, resulting in dislodgment of the Petitioners from their Property.

66. The next consideration we shall deliberate upon is (as per ETPB's own statement) if the said Property was declared to be evacuee property vide a Gazette Notification dated 09.08.1963, would the declaration be valid, or would the bar under Section 3 of the 1957 Act be applicable?

67. Section 3 provides a clear bar to declare any property evacuee post 1st January 1957. As per Respondent No. 4 / ETPB's own assertions, the Property was allegedly gazetted as evacuee on 09.08.1963, i.e. post the cut-off date of 01.01.1957. In the case of *Abdul Khaliq v Kishanchand & Ors.*³⁸ the Apex Court held:

"The result of the order passed by the Custodian was clearly to relegate the property in dispute to the position of evacuee property. In the absence of a confirmation order by the Custodian's Department, by virtue of section 20 of the Act, the transactions which had taken place after the 1st day of March 1947, could not be effective so as to confer any right or remedy on the vendees. In law, therefore, it must be treated as the property of the evacuee transferor, till a fresh confirmation order was passed. Clearly, this would be tantamount to treating the property as evacuee property after the relevant date mentioned in section 3. This could only have been done if the property had been "treated" as evacuee property, immediately before the 1st day of January 1957, as required by subsection (1) of this section."

³⁷ 2000 SCMR 1

³⁸ PLD 1964 SC 74

68. We find that even on this count, the claim of the ETPB fails and the Impugned Judgement & Order has erred by not considering the same.

69. Another legal aspect is that the ETPB is constituted by the Federal Government. Their functions and all the evacuee trust property being managed by the ETPB, remains under the garb of the Federal Government (“GoP”). Section 6 of the 1975 Act, which governs Respondents No. 3 & 4 / ETPB, reads:

“S.6. Vesting of evacuee trust property. All evacuee trust property shall vest in the Federal Government.”

70. This section demonstrates that all *evacuee trust property* vests with the GoP. The Evacuee Trust Property Board (“ETPB”) created under the 1975 Act is also constituted by the GoP³⁹. It therefore appears absurd to think the GoP would not have adhered to all laws at the time the Property was transferred, first during the initial Suit hearing in 1958, and then during the nationalization process. And then again when the GoP themselves opted to privatize and sell the Property. Since the GoP themselves have repeatedly been part of and endorsed purchase / sale of the Property, never having declared it *evacuee*, it cannot be now considered that a subordinate arm of the GoP (being the ETPB) could override all those decisions taken / not-taken by the GoP, and at such a deeply belated stage declare the Property to belong to an evacuee trust. This would have the effect of undoing all prior actions of the GoP (such as nationalization, privatisation etc.), which we find impermissible.

CONCLUSION

71. In essence, the Respondents No. 1 & 3 have failed to address any of these vital issues highlighted in this Judgement, and have passed the Impugned Judgement & Order without any legal support. The effect has been (in our opinion) to unlawfully deprive the Petitioners of their Property. As such, we

³⁹ Sections 3 and 6 of the 1975 Act

hold the verdicts by Respondents No. 1 & 3 respectively, are *ultra vires*, contrary to law and due process, as well as being violative of the Petitioners' fundamental rights in safeguarding of their Property.

72. Accordingly, this Constitution Petition is **allowed** and the Impugned Order dated 24.05.2013 passed by Respondent No. 1 and consequently Impugned Judgement dated 12.07.2011 passed by Respondent No. 3 are both hereby set-aside.

JUDGE

JUDGE

Faisal