

Order Sheet

HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 396 of 2020

[Evacuee Trust Property Board v. Federation of Pakistan & others]

Before :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Riazat Ali Sahar

Petitioner : Through Mr. Atta Hussain Gaddi Pathan, Advocate

Respondent-5 : Through Mr. Babar Ali Bohio, Advocate

Mr. Ghulam Abbas Sangi, Asst. Attorney General

Date of Hearing & Decision: 09.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the listed Constitutional Petition, the Petitioner has prayed as under:-

- (A) That this Hon'ble Court may be pleased to declare that the order dated 11.07.2009 passed by Respondent No.1 is illegal, unlawful, void ab initio, and without jurisdiction.
- (B) That this Hon'ble Court may be pleased to declare that all subsequent alienation of said property is illegal, unlawful, and without jurisdiction.
- (C) That this Hon'ble Court may be pleased to restore the entry on the name of Otak Common in favour of the Petitioner.
- (D) That any other relief this Hon'ble Court may deem fit and proper be granted to the petitioner.

2. Through this Constitutional Petition, the petitioner has challenged the order dated 11.07.2009 passed by the Revising Authority / Additional Secretary In-Charge to the Government of Pakistan in Revision Petition No. 3-79/2007 (Mst. Shahida Gazal v. The Chairman ETP Board Lahore & Others). By that order, the Revising Authority validated the PTD and set aside the order dated 03.02.2007 issued by the Chairman, ETPD Lahore, which had declared the property bearing C.S. No. B-1285, situated at Advani Lane, Hyderabad, to be evacuee trust property and had cancelled PTD No. 9530 dated 15.01.1964.

3. Brief facts of the case, as stated in the memo of the Petition are that, the property bearing City Survey No. B-1285, measuring 103-3 sq. yds. consisting of a house and two shops situated at Advani Line, Hyderabad, is an Evacuee Trust Property. It is

recorded in the record of rights as “Otak Common” and, under the law, is not transferable except in accordance with Section 10 of the Evacuee Trust Properties (Management & Disposal) Act, 1975. The petitioner filed Petition No. PB/HYD/269/04 before the Chairman, Evacuee Trust Property Board, Lahore seeking declaration of the said property as trust property. Respondent No.4 also submitted Petition No. PB/HYD/162/94 regarding the same property before the Chairman. Both petitions were consolidated and decided vide order dated 05.05.2006, whereby the property was declared to be Evacuee Trust Property and the petition filed by Respondent No.4 was dismissed. Respondent No.4 thereafter filed Revision Application under Section 17 of the Evacuee Trust Property (Management & Disposal) Act, 1975 before the Revising Authority / Additional Secretary In-Charge, Government of Pakistan, Ministry of Minorities Affairs. Vide order dated 09.08.2006, the matter was remanded to the Chairman. Subsequently, the Chairman again cancelled the transfer documents through order dated 03.02.2007 with certain reasoning. This order of the Chairman was once more challenged before the Federal Secretary by way of Revision Petition No. 379 of 2009, who, vide order dated 11.07.2009, validated the transfer document, and the impugned order in remand was modified to the aforesaid extent which order has now been assailed by the Petitioner.

4. Learned counsel for the petitioner contended that the impugned order passed by Respondent No.1 is contrary to law and facts; that Respondent No.1 failed to appreciate the legal position, particularly when the Property Extract relating to Survey No. B-1285, admeasuring 1033 sq.yds. situated at Advani Lane, Choti Ghatti, Hyderabad, clearly reflects its status as an “Otak Trust,” belonging to Evacuee Trust Property Board and non-transferable except under Section 10 of the Evacuee Trust Properties (Management & Disposal) Act, 1975; that Chairman, Evacuee Trust Property Board, Lahore, had rightly declared the property as Evacuee Trust Property vide order dated 05.05.2006; that City Survey Extract/Card confirms the status of the property as “OTAK COMMON,” managed by its trustees-namely Gulab Rai, Fateh Chand, Narain Das, Ghansham Das, Lohumal, Pretamdas, Karam Chand, Issardas, Tipu Mal and Chila Mal, who managed the trust for charitable purposes; that Chairman, District Committee, Evacuee Trust Property, had earlier issued demand notice to Respondent No.4 on 17.07.1996, whereupon Respondent No.4 approached Respondent No.3, who on 21.06.1965 observed that Respondent No.4 was the owner only until the competent authority decided the true status of the property. Respondent No.4 claimed ownership on the strength of C.H. Form No. HDR-13664 and PTO No. DSC-1-A/402 issued by the then Secretary, District Evacuee Trust Committee, Hyderabad, allegedly excluding the property from the trust pool; however, except the Chairman no one is competent to exclude the property from the evacuee pool and determine the status of the property; that Chairman again determined the status of the property under Sections 8 and 10 of the 1975 Act and cancelled PTD No. 9530; that after the Chairman’s earlier order dated

05.05.2006, the petitioner had let out two shops on a monthly rent basis, but following the impugned order dated 11.07.2009, the petitioner ceased to collect rent, and the tenants' possession was regularized by the competent authority. Respondent No.1, however, passed the impugned order in violation of the settled principles of law, causing monetary loss to the Evacuee Trust Property Board; that Respondent No.1 ignored the documentary evidence produced by the petitioner and passed an illegal, void, and without-jurisdiction order, failing to consider that Sections 8 and 10 of the 1975 Act exclusively empower the Chairman to decide the status of Evacuee Trust Property; that the property falls within Section 2(d) of the Act and Respondent No.1 lacked jurisdiction to entertain a time-barred revision petition, especially when no application for condonation of delay was filed; that delay in filing the present Constitutional Petition occurred because the petitioner department, being subordinate to Respondent No.1, had to obtain prior permission before challenging the order; that Secretary, District Evacuee Trust Committee, Hyderabad, had no authority to exclude any property from the trust pool, and that the Deputy Settlement Commissioner's order dated 21.06.1965 did not declare the property as simple evacuee property, but only stated that Respondent No.4 would remain owner until the competent authority determines otherwise which authority lies solely with the Chairman. Regarding validation, counsel submitted that Section 10 of the Act requires three conditions: (i) bona fide utilization, (ii) transfer against the satisfaction of a verified claim, and (iii) issuance of PTD before 30.06.1968. Although PTD No. 9530 was issued on 15.01.1964, the PTD incorrectly records Gulab Rai and others as evacuee owners, whereas they were only trustees of Otak Trust. This discrepancy shows that the transfer was made malafidely, in connivance with the Settlement Department, to usurp trust property despite the clear "Otak Common" entry. The presence of trustees' names on the PTD indicates that the charitable nature of the property was known to the authorities at the time of transfer; that Respondents 4 & 5 failed to satisfy the statutory prerequisites for validation under Section 10 and that the Chairman rightly cancelled PTD No. 9530 and its subsequent alienations. Despite Respondents 4 & 5 admitting that the property is Evacuee Trust Property, Respondent No.1 erroneously allowed the revision Petition; therefore, the impugned order is unlawful, lacks judicial reasoning, and is liable to be set aside. He prayed to allow this petition.

5. Counsel for Respondent No.5 supported the impugned order and submitted that the property in dispute is an evacuee trust property but it was bona fide transferred in favour of Zahooruddin against his verified claim. He further submitted that on CH Form dated 12.01.1959 the PTO dated 27.12.1959 was issued in favour of original transferee Zahooruddin and after making full payment through compensation book No.137236-HDR-1-2548, the PTD No.9530 was accordingly issued on 15.1.1964. He further submitted that this case fully covered under Section 10 of the Evacuee Trust Properties (Management and Disposal) Act 1975 and prayed that PTD being issued before the

target date of June 1968 against the verified claim may be declared as valid and prayed for dismissal of the petition. The aforesaid stance has again been refuted by the petitioner with narration that the record of property in question shows this evacuee trust property as admitted; however, the stance taken by the Petitioner and affirmed by the Revising Authority is against the law as the subject property was not available for allotment at the relevant target date of June 1968 as portrayed by the private respondent; therefore, the impugned order is sketchy without reasoning and lawful justification.

6. After hearing the counsel for respective parties and perusing the record, it transpires that the controversy revolves around the determination of true status of the property bearing C.S. No. B-1285, situated at Advani Lane, Hyderabad, and the legality of PTD No. 9530 dated 15.01.1964. The material placed before this Court, including the Property Extract and City Survey Record, unequivocally reflects that the property is entered as "Otak Common," a trust property managed by designated trustees for charitable purposes. No competent authority, other than the Chairman Evacuee Trust Property Board, who is empowered under Sections 8 and 10 of the Evacuee Trust Properties (Management & Disposal) Act, 1975 has ever lawfully excluded the said property from the trust pool or declared it otherwise. The record further demonstrates that the Chairman, in exercise of statutory powers, twice adjudicated upon the matter and declared the property to be Evacuee Trust Property, also cancelling PTD No. 9530 on the ground that the transfer was neither bona fide nor in accordance with Section 10 of the Act. The Revising Authority, however, validated the PTD without addressing material irregularities, without considering the trust nature of the property, and without determining the issue of limitation in entertaining a time-barred revision petition. The impugned order dated 11.07.2009 thus suffers from jurisdictional defect, misreading of record, and non-consideration of mandatory statutory provisions, thus liable to be set aside on the aforesaid analogy.

7. In view of above, this Court is of the considered view that the Revising Authority acted in excess of jurisdiction, failed to appreciate the legal framework governing evacuee trust properties, and passed the impugned order contrary to law. The findings of the Chairman Evacuee Trust Property Board regarding the status of the property are supported by the documentary record and statutory mandate and, therefore, deserve to be restored.

8. Resultantly, the impugned order dated 11.07.2009 passed by Respondent No.1 is hereby set-aside. The declaration issued by the Chairman, Evacuee Trust Property Board, vide order dated 03.02.2007 cancelling PTD No. 9530 and declaring the property as Evacuee Trust Property, is restored. All subsequent alienations based on the invalid PTD are of no legal effect. The concerned authorities shall restore the entry of

“Otak Common” in favour of petitioner in accordance with law. The listed Constitutional Petition stand allowed in the above terms. No order as to costs.

JUDGE

JUDGE

karar_hussain/PS*