

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Omar Sial

1. C.P. No.D- 263 of 2006

Evacuee Trust Property Board  
Government of Pakistan

Petitioner

Versus

Wahabuddin and others

Respondents

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2. C.P. No.D- 264 of 2006

Evacuee Trust Property Board  
Government of Pakistan

Petitioner

Versus

Wahabuddin and others

Respondents

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3. C.P. No.D- 265 of 2006

Evacuee Trust Property Board  
Government of Pakistan

Petitioner

Versus

Wahabuddin and others

Respondents

Mr. Muhammad Saleem Hashmi Qureshi, Advocate for the petitioner in all captioned petitions.

Mr. Shamsuddin Memon, Advocate for private respondents in all petitions.

Mr. Muhammad Humayoon Khan, Deputy Attorney General for Pakistan.

Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh.

Date of hearing: 02.03.2022

Date of judgment: 17.03.2022

**JUDGMENT**

**Muhammad Saleem Jessar, J.**-Since all captioned petitions arise out of one and same order; the parties in all petitions are also same as well as the subject matter involving similar facts, evidence and the issue requires to be resolved,

hence the same are being decided by this single and common judgment.

2. All aforementioned petitions have been filed by petitioner Evacuee Trust Property Board through Assistant Administrator, Evacuee Trust Property, Hyderabad, assailing the order dated 14.03.2006, passed by Secretary to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division) (Camp at Karachi) in cases No.3-545/2005-REV (Re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others), 3-546/2005-REV (Re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others) and case No.3-547/2005-REV (Re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others), whereby he allowed the aforementioned appeals filed by the private respondents and set aside the order passed by Chairman, Evacuee Trust Board, Lahore dated 10.10.2005 whereby the Chairman, Evacuee Property Trust Board, Government of Pakistan, Lahore, declared the properties bearing survey Nos. D-2294, D-2387 and D-2293 situated at Sehwan Gali, Hyderabad, as evacuee trust property and cancelled their PTDs issued in favour of the private respondents.

3. Learned counsel for the petitioner submitted that impugned order dated 14.03.2006, passed by the Secretary to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division) (Camp at Karachi) in aforementioned cases Nos.3-545/2005-REV, (2) 3 546/2005-REV and (3) 3-547/2005-REV, is illegal as well as in violation of section 10 of Evacuee Trust Properties (Management and Disposal) Act, 1975. He next submitted that order dated 10.10.2005, passed by the Chairman, Evacuee Trust Property Board, Government of Pakistan, was final and the revisional authority had committed error while setting aside the said order. He further submitted that petitioner is competent to file instant petitions in view of the Notification dated 09.09.2000, issued by the Secretary, Evacuee Trust Property Board, Government of Pakistan. He further submitted that property in dispute was reserved for Panchayat (for amenity purpose of Hindu community), hence was not transferable, therefore, subsequent mutation made in favour of the private respondents was illegal and the order passed by Chairman, Evacuee Trust Property Board, being final may be maintained and the impugned order may be set aside. He also submitted that after promulgation of the Evacuee Trust Properties (Management & Disposal) Act, 1975, all the Orders/ transfers/ transactions made earlier became void as the act overrides all the general laws. In support of his contentions he places reliance upon the cases of **Miraj Din and 56 others V Evacuee Trust Property Board, Lahore and others** (PLD 2004 Supreme Court 430), **Muhammad Ilyas and 11 others Additional Deputy Commissioner-I Hyderabad and 8 others** (2005

CLC 317), **Chairman Evacuee Trust Property Board and another V Mst. Rubina Ibad and others** (2017 YLR 2125), **Secretary to the Government of Pakistan, Minorities affairs Division, Islamabad and 2 others V Mst. Shah Jehan Bano & others** (PLJ 2006 SC 338), **Deputy Administrator, Evacuee Trust Property, Karachi and others V Abdul Sattar and another** (2000 SCMR 1929), **Messrs Mustafa Impex, Karachi and others V The Government of Pakistan through Secretary Finance, Islamabad and others** (PLD 2016 Supreme Court 808) and an unreported judgment dated 30.05.2019, passed by this Court in **C.P. No.D 3270 of 2017**. He, therefore, submitted that by allowing the instant petitions impugned order may be set aside and the order dated 10.10.2005, passed by Chairman, ETP, may be maintained.

4. Learned counsel for private respondents while opposing instant petitions submitted that PTD was issued in favour of private respondents on 11.03.1965; later the claims issued in favour of private respondents were also verified. He next submitted that subject property is a residential one and situated in heart of the city, therefore, the private respondents are bona fide claimants and their claim(s) cannot be cancelled as the same were issued after completion of all codal formalities. He rebutted the contentions raised by learned counsel for the petitioners by stating that "after promulgation of the Act 1975 all the transactions made earlier had become final" and refers to section 3 of the Evacuee Trust Properties Act, 1974, where section 7 was provided and subsequently added in the Act of 1975 to save the transactions made earlier before promulgation of said Act. He further submitted that petitions are not maintainable as the revisional order passed by revisional Court/authority was to be challenged through miscellaneous application before this Court, as is embodied under sub-section (4) to section 4 of the Displaced Persons (Compensation and Rehabilitation) Act XXVIII of 1958. He further submitted that prior to these transactions, the Department had also filed Civil Miscellaneous Appeal No.3 of 1970 (re: District Evacuee Trust Property Committee, Hyderabad V Roshan and another) before High Court of West Pakistan, Karachi Bench at Karachi, where said appeal was dismissed through order dated 15.01.1970, and that order has attained finality as it was not challenged by the department/petitioner. He further submitted that Chairman, Evacuee Trust Property Board, Government of Pakistan, Lahore, while proceeding with the case had also recorded evidence of the parties (though this assertion is denied by counsel for the petitioner), hence the impugned order is final, therefore, prays for dismissal of the petitions. Mr. Shamsuddin Memon further argued that as far as the point of the trust or non-trust nature of the property is concerned, same has already been finalized up to the level of the High Court of West Pakistan when their Settlement Commissioner in exercise of his powers as Chief Settlement Commissioner had already declared the disputed

property as non-trust and treating it as an evacuee property confirmed the transfer through PTD vide its order dated 24.09.1969, which attained finality. He, therefore, submitted that the appeal filed by the Department having been rejected even by the High Court, the issue could not be reopened, particularly, when the order passed by the competent forum had been given protection under section 32 of the Act-VIII of 1975. He, therefore, was of the view that petitions are not maintainable, besides, having been filed wrongly.

5. Learned D.A.G as well as learned A.A.G also opposed the petitions and submitted that admittedly in the order passed by Chairman, Evacuee Trust Property Board dated 10.10.2005 it is categorically mentioned that statement of the Deputy Administrator, Evacuee Trust Property, Hyderabad, was recorded; therefore, submit that declaration made by the Chairman under his order dated 10.10.2005 was unjustified. Learned A.A.G also submitted that PTDs were issued in favour of private respondents in the year 1965, therefore, reliance made by the petitioner upon section 10(b) of Evacuee Trust Properties (Management & Disposal) Act, 1975 is not helpful to them, as cutoff date mentioned under section 10(b) is June 1968, whereas the PTDs in the present case were issued in favour of the private respondents in 1965; besides, section 32 of the Act is also very much clear in its term which apparently supports the impugned order.

6. The dispute in these petitions relates to properties bearing survey Nos. D-2294, D-2387 and D-2293 situated at Sehwan Gali, Hyderabad, whether these are evacuee properties or evacuee trust properties. The main thrust of argument of the learned counsel for the petitioner was that the property in dispute was reserved for Panchayat (for amenity purpose of Hindu community), hence was not transferable, therefore, subsequent mutation made in favour of the private respondents was illegal. He also submitted that after promulgation of the Evacuee Trust Properties (Management & Disposal) Act, 1975, all the orders/transfers/transactions made earlier became void as the act overrides all the general laws.

7. Taking up the second objection first, it may be observed that the submission of the learned counsel for the petitioner is not tenable in view of the fact that learned counsel was unable to refer to any provision in the said Act which can be construed to mean that all orders/transfers/transactions made earlier have become void after promulgation of the Evacuee Trust Properties (Management & Disposal) Act, 1975. Secondly, this would be an illogical position as it would result in cancellation of innumerable orders/transfers/transactions made prior to promulgation of the above Act. Furthermore, section 32 of the Evacuee Trust Properties (Management & Disposal) Act, 1975 clearly saves all such acts and orders passed earlier under the provisions of either Act. Therefore, we find no force in this submission of the learned counsel for the petitioner(s).

8. Now, adverting to the main submission of the learned counsel for the petitioner that the property in dispute was reserved for Panchayat (for amenity purpose of Hindu community), hence was a trust property and not transferable, therefore, subsequent mutation made in favour of the private respondents was illegal. We have examined the application filed before the Chairman, Evacuee Trust Property Board, Government of Pakistan, Lahore, under sections 8 and 10 of the Evacuee Trust Property (Management & Disposal) Act, 1975, which says that the subject property is an evacuee trust property beyond any doubt and that the respondent No.1 i.e. the private respondent, with the connivance of respondent No. 2 i.e. Executive District Officer (R)/Deputy Settlement Commissioner, Hyderabad, succeeded in obtaining PTO/PTD No.11652 dated 11.03.1965. Therefore, it was prayed that the property may be declared as evacuee trust property and the PTO/PTD No.11652 may be cancelled. The Chairman, Evacuee Trust Property Board, vide his order dated 10.10.2005, allowed the application of the petitioner and declared the disputed property as evacuee trust property and cancelled the PTO/PTD No.11652 of private respondent(s). The Chairman, Evacuee Trust Property Board, observed as under:

*“After hearing the arguments of the parties and going through relevant record produced by the parties I have come to the conclusion that the properties in question belonged to Panchayat of Jhagran. This fact has also been admitted by both the parties even otherwise this fact is obviously established from the Ruled Card as well as the PTD itself bears the name of aforesaid Panchayat. The learned counsel for the petitioner interpreted the word "Jhagran" as per definition given in the Dictionary that:-*

*“Jhagran” is a religious sect of Hindus who worship throughout the night.”*

*In the light of the definition given here above clearly establishes the trust nature of the said property which was used by the specific sect of Hindus as a whole and the property is not in the name or individual but in name of institution and attached to it. The said entry in the extract of City Survey record prima facie proves trust nature of property. The arguments of the petitioner are cogent and carry weight as well as well substantiated with the record. The respondents have miserably failed to produce any document in rebuttal of the contention of the petitioner qua evacuee trust nature of property. For what has been discussed above the evacuee trust nature of the properties in question is beyond any shadow of doubt. Therefore, I have no hesitation to declare the properties in question as evacuee trust.”*

9. Thus, the only ground which clinched the case in favour of the petitioner before the Chairman, Evacuee Trust Board was that the property in question belonged to **“Panchayat of Jhagran.”**, which was a sect of Hindu religion who worships throughout the night. Of course, this fact was not disputed by any of the parties to the petitions that the disputed property belonged to Panchayat.

However, what is disputed is the definition of “Jhagran” and the use of the property.

10. The Revisional Authority, while setting aside the order of the Chairman, Evacuee Trust Property Board, dilated upon the above issue as under:

“After having heard both sides and having perused the entire record carefully, I have come to the conclusion that there is no doubt about the fact that the impugned order is based on misreading of facts and record. All the documentary evidence produced and relied upon by both the parties as well as the learned lower court clearly indicate that the properties in dispute stand mentioned as Panchayat of Jhangam. Nowhere is it mentioned as Panchayat of Jhagran. By reading the word "Jhangam" as Jhangran, even research was made and depending upon the definition of Jhagran in the Hindu Dictionary, a conclusion was drawn in the impugned order that it is a trust property. Ex.P-1 to 3 will show that the word Jhangam has been misread as Jhagran. The extract from the Property Register Card, the documentary evidence produced by the petitioners before the lower court appears to have been overlooked, the correct reading of which will show clearly the property belonging to Panchayat of Jhangam, irrespective of the fact whether as the Jhangam was an individual owner or Jhagran was a sect of the Hindus, it has not been established that the property in dispute was ever attached to any institution or a trust or it has ever been used for religious, educational or charitable purposes. In the absence of unambiguous entry, there was a need for such determination particularly when it was claimed that even before its transfer, it was being used as residential accommodation.”

11. Before us, there are two orders, one passed by the Chairman, Evacuee Trust Property Board, who allowed the application of the Board vide order dated 10.10.2005 declaring the property in dispute as trust property, and the other passed by the Secretary to Government of Pakistan, Ministry of Minorities Affairs, being the Revisional Authority, who, vide impugned order dated 14.03.2006, set aside the above order of the Chairman, Evacuee Trust Property Board, declaring the property as evacuee property.

12. While Chairman, Evacuee Trust Property Board mainly relied on the fact that the disputed property originally belonged to Panchayat of Jhagran and that Jhagran is a sect of Hindu religion who worship all the night. However, this finding was found contrary to facts by the Revisional Authority, who noted that the dispute property belonged to Panchayat of Jhangam and not Jhagran. In this regard reliance was placed on Exh. P-1 to P-3 and observed that the word “Jhangam” has been misread as “Jhangran”. The Revisional Authority further observed that irrespective of the fact whether Jhangam was an individual owner or Jhagran was a sect of the Hindus, it has not been established that the property in dispute was ever attached to any institution or a trust or it has ever been used for religious, educational or charitable purposes.

13. In order to declare an evacuee property as an evacuee trust property it must be shown that the property was attached to a charitable, religious or

educational trust or institution. A “punchayat” may not fall in any of the above category.

14. Learned counsel for the petitioner also argued that the impugned order dated 14.03.2006 is illegal as well as in violation of section 10 of the Evacuee Trust Property (Management & Disposal) Act, 1975. Before discussing further, we would like to reproduce section 10(3) of EPT Act, which is relevant in the present case.

"10(3) If it is decided that a transaction referred to in sub-section (1) is not bona fide, the Chairman may pass an order canceling the allotment or transfer of such property: Provided that no decision under subsection (2) or order under sub-section (3) shall be taken or passed in respect of any property without giving the person affected a reasonable opportunity of being heard."

15. From the above provision of law, it is clear that the Chairman has jurisdiction in a case when the transaction is not bona fide. It is now well-settled that in case of any erroneous transfer in a bona fide manner, the protection under section 10 is available but in the case of deliberate and wanton transfer, the cover under section 10 is not available. In this respect, reference can be made to the case of **Fayyazuddin Khan v. Federal Government of Pakistan and others** (2009 SCMR 362), wherein it was observed as under:

“In the present case, only in one survey number, a well is described, for which the respondents claim that it was a charitable trust but there is no plea of deliberate and wanton transfer. Unless, respondent No.3 establishes that the issuance of PTO and PTD was not bona fide and the same is colored with malfeasance; the respondent No. 2 has no jurisdiction to pass the impugned order.”

16. In the present petitions, it was held by the Revisional Authority that the disputed property is not owned by a charitable trust and the finding of the Revisional Authority is based on cogent evidence i.e. Exh. P-1 to Exh. P-3, which has not been rebutted by learned counsel for the petitioner.

17. In the case of **Mst. Rehmat Bibi and others v. Federal Secretary, Government of Pakistan, Ministry of Minorities and others** (2020 MLD 440), the facts were that the petitioners were aggrieved by an order dated 01-03-2002 passed by the Chairman, Evacuee Trust Property Board on an application filed by the Assistant Administrator, Evacuee Trust Property Board, Hyderabad as well as order dated 09-08- 2006 passed by the Federal Secretary, Government of Pakistan, Ministry of Minorities, on a revision application filed by the petitioners. Through both the above orders, the property in question i.e. City Survey Nos. 649, 650 to 656, 665, 666 and 667, situated at Tando Allahyar were declared as Evacuee Trust Property and PTDs issued in favour of the petitioners were cancelled only because words “well charitable” were mentioned in the Extract of Property Register Card. A learned Division Bench of this Court held as under:

“9. In the instant matter, property in question is a chunk comprising as many as 11 survey numbers and amongst them; there is an entry in the Property Register Card of only one survey number showing the words 'well charitable'. On the basis of that entry only, the respondents unjustifiably declared the entire chunk i.e. the remaining survey numbers also as Evacuee Trust Property. Save to that entry, there is nothing on the record to favour the respondents regarding their plea that the subject property belongs to a trust set-up by the previous Hindu owner of the property. No doubt, previously the towns and cities depend upon the step-wells and bore-wells for their water requirements and there were so many privately owned bore-wells from where the neighboring people also get water for their daily need. It is very common amongst the people to share such natural resources being common, which actually under the 'doctrine of *ratione soli*' is otherwise the property of the owner of the land and such sharing amongst the residents of the locality has never deprived the owner of the property from his right of enjoyment from the same. In fact such act of the owner of the property was considered as a sacred gift for others while the owner of the property considered the same as an act of goodness. It is also a fact that nearly all our towns and cities are now not dependent upon the wells and baolies, as the same have been replaced by water supply schemes of municipal services providers as such, previous well system vanished. We are of the view that with any specific instrument, only under the usage especially after ceasure of such practice of providing water through wells is not sufficient to consider a creation of public charitable trust.”

18. As is evident from the above discussion, even the mention of words “well charitable” was held to be not sufficient to make it a charitable property as, apart from the words “well charitable”, there was nothing on the record to favour the respondents regarding their plea that the subject property belonged to a trust set-up by the previous Hindu owner of the property. The learned Division Bench finally held that”

“We are of the view that with[out] any specific instrument, only under the usage especially after ceasure of such practice of providing water through wells is not sufficient to consider a creation of public charitable, trust”

19. In the present petitions, neither the word “charitable” is mentioned anywhere in the Property Register Card nor is there any specific instrument which shows that the property was ever attached with charitable, religious or educational trust or institution, as envisaged under section 8 of the Evacuee Trust Property (M&D) Act, 1975. Accordingly, it cannot be said simply because the owner of the property in dispute was “Punchayat of Jhagran or Jhagam, therefore, the property was for charitable purpose.

20. It is also worth mentioning that the PTDs in the instant case were issued on 11.03.1965 i.e. well before the cutoff date of June, 1968 and, as discussed above, there was no mala fide involved in the issuance of the PTDs, therefore, the protection provided under section 10(1)(b) of the Act is attracted in the case in hand. Therefore, once it was found that the property in dispute was not a evacuee



trust property, the protection under section 10(1)(b) of the Act will come into play.

21. Learned counsel for the petitioner also argued that the order passed by the Chairman, Evacuee Trust Property Board was final. It is correct that any such order cannot be called in question before any Court; however, there is a revision provided under section 17 of the Act and the present proceeding arise out of such as evident from page 21 of the file.

22. Learned counsel for the petitioner relied on the cases of:

- (i) Miraj Din and 56 others V Evacuee Trust Property Board, Lahore and others (PLD 2004 Supreme Court 430), in which the case was remanded for fresh decision by the Chairman, Evacuee Property Trust Board since there was no prior determination as to the whether the property in dispute in that case was evacuee property or evacuee trust property. This case is not attracted to the facts of present case.
- (ii) Muhammad Ilyas and 11 others V. Additional Deputy Commissioner-I Hyderabad and 8 others (2005 CLC 317), in which case the facts are entirely different and, thus, of no help to the petitioner.
- (iii) Chairman Evacuee Trust Property Board and another V Mst. Rubina Ibad and others (2017 YLR 2125). In this case a learned Division Bench of the Peshawar High Court has firstly held that the Revision Jurisdiction of Federal Government through Secretary of Religious Affairs and Minorities Affairs as revisional authority was accepted. The property in dispute in that case was declared to be evacuee trust property, however, the facts of that case are entirely distinguishable. In para 11 of the cited judgment, the learned DB has observed that “*property pertaining to Khasra No.96, measuring 12 Kanal 08 marlas has been entered in column No.4 in the name of Trust Managed by Panj Teerath Committee, Peshawar.*” However, the property in dispute in these petitions has not been registered in the name of any Trust.
- (iv) Secretary to the Government of Pakistan, Minorities affairs Division, Islamabad and 2 others V Mst. Shah Jehan Bano & others (PLJ 2006 SC 338), in which the Hon'ble Supreme Court held that since PTD in this case was not issued prior to 1968, therefore, the same could be legally cancelled within the four corners of the provisions of the Act of 1975. Thus, this case is also not of any help to the petitioner.

- (v) Deputy Administrator, Evacuee Trust Property, Karachi and others V Abdul Sattar and another (2000 SCMR 1929), in which the Hon'ble Supreme Court held that mere entry in the sale deed was enough to establish existence of trust. In this case also the PTD was issued after the cutoff date of June, 1968.

23. We have also examined the order dated 15.01.1970, which was passed by Honourable High Court of West Pakistan, Karachi Bench at Karachi in Civil Mics. Appeal No. 03 of 1970 which was filed by District Evacuee Trust Property against Roshan S/o. Phoonda (the predecessor in interest of the private respondent) in respect of the property in dispute. The order dated 15.01.1970 reads as under:

“ORDER  
15.1.70

Mr. Syed Iqbal Hussain.

In this case although the property in question is entered in the name of a Panchayat, there is no evidence whatsoever into the nature of the Panchayat or its objects. Learned counsel for the petitioner would like to conclude that the object of the Panchayat were of a charitable nature merely from a construction of the term Panchayat. I am afraid this suggestion, if followed, will be doing violence to the term. A Panchayat may well be for a purpose which is neither religious/nor Charitable. It may be for a purpose which is purely Social.

“I have no reason to disagree with the learned S.C. on the above aspect and dismiss this appeal summarily.”

24. In view of the above, there is an authoritative pronouncement by the superior Court that the land in dispute in these petitions was not an evacuee trust property. Therefore, even otherwise it was not open for the Department to re-agitate the same question again.

25. In view of the above discussion, we find no merit in these petitions which are dismissed and the Order dated 14.03.2006, passed by Secretary to the Government of Pakistan, Ministry of Minorities Affairs, in cases Nos.3-545/2005-REV (re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others), 3-546/2005-REV (re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others) and case No.3-547/2005-REV (re: Wahabuddin and others V. Assistant Administrator, ETP, Hyderabad and others), is maintained.

26. Office is directed to place a copy of the judgment in each file.

Hyderabad, 17<sup>th</sup> March, 2022

JUDGE

JUDGE