

*Judgment Sheet*

**IN THE HIGH COURT OF SINDH AT KARACHI**

Constitutional Petition No. D – 822 of 2010  
Constitutional Petition No. D – 823 of 2010  
Constitutional Petition No. D – 824 of 2010

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Date	Order with signature of Judge
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Present

1. Chief Justice
2. Mr. Justice Nadeem Akhtar

For Katcha Peshi :

Petitioner : Assistant Administrator, Evacuee Trust  
Property Board, through  
Mr. Iftikhar Jawed Qazi, Advocate.

Respondents : The Secretary to the Government of  
Pakistan, Ministry of Minorities (Minorities  
Affairs Division), and others.  
Official respondents through  
Mr. Muhammad Ashraf Khan Mughal, DAG.  
Private respondents, through  
Mr. Abdul Rehman, Advocate.

Date of hearing : 02.04.2013.

**J U D G M E N T**

**Nadeem Akhtar, J.** – The petitioner has impugned in these three Petitions three separate orders passed by respondent No.1 in respect of three different immovable properties. In C.P. Nos. D-822/2010 and D-823/2010, two separate orders both dated 02.08.2005 have been impugned, and in C.P. No.D-824/2010, the order dated 08.08.2006 has been impugned. By all the impugned orders, the orders passed by the Chairman, Evacuee Trust Property Board, Government of Pakistan, were set aside by respondent No.1, and the properties in question were held to be validly transferred in favour of the private respondents. Since the questions of law involved in these petitions are common and the same grounds and arguments were urged and advanced on behalf of the petitioner, the same are being disposed of through this common order.

2. The brief background of these cases is given below :

- A. C.P. No.D-822/2010 : The subject matter of this petition is a property bearing No. GRE – 440 measuring 1,000.00 sq. yds., Karachi. Vide order dated 11.01.2002, the Chairman, Evacuee Trust Property Board (ETPB) declared the said property to be an evacuee property, and cancelled PTD No.0032 dated 30.12.1963 issued in respect thereof by the Settlement Department in favour of Mr. Maqsood Ahmed, respondent No.3 in this petition, who is now being represented by his legal heirs. The said order was challenged by Mr. Maqsood Ahmed before this Court in Miscellaneous Application No.06/2002. The matter was remanded on 06.10.2004 by this Court to the Chairman ETPB for deciding the same afresh after hearing the parties. At the request of the parties, subsequent purchasers of the property were impleaded in the proceedings before the Chairman. Vide order dated 17.05.2005, PTD No.0032 dated 30.12.1963 issued by the Settlement Department in favour of Mr. Maqsood Ahmed, as well as the subsequent transfers in pursuance thereof, were cancelled by the Chairman, and the Deputy Administrator ETPB Karachi was directed to immediately take over management and control of the property, and to deal with the same as per the provisions of the Evacuee Properties (Management & Disposal) Act XIII of 1975 (**the Act of 1975**), and the Scheme prepared thereunder. The said order dated 17.05.2005 passed by the Chairman ETPB was assailed by Mr. Maqsood Ahmed before respondent No.1 through a revision petition. By the impugned order dated 02.08.2005, the Chairman's order dated 17.05.2005 was set aside by respondent No.1, the revision petition was allowed, and it was held that PTD No.0032 dated 30.12.1963 shall be deemed to have been validly issued by the settlement authorities.
- B. C. P. No. D-823/2010 : The subject matter of this petition is properties bearing Nos. GRE – 450 and 451, each measuring 1,000.00 sq. yds., Karachi. The Deputy Administrator ETPB filed Petition No. PB/KCY/75/2000 before the Chairman ETPB under Sections 8 and 10 of the Act of 1975, for declaring these properties as Evacuee Trust properties, and for cancelling PTD No.290 dated 10.01.1963 issued in respect thereof by the Settlement Department against the verified claim of Mr. Farhat Husain, the father of Mr. S. Hamid Husain (respondent No.3 in this petition). The property was

subsequently purchased from Mr. S. Hamid Husain by Mr. Abdul Aziz Qureshi (respondent No.4 in this petition), who is now being represented by his legal heirs. Vide order dated 01.04.2005, PTD No.290 dated 10.01.1963 issued by the Settlement Department, as well as the subsequent transfers in pursuance thereof, were cancelled by the Chairman, and the Deputy Administrator ETPB Karachi was directed to immediately take over the management and control of the property, and to deal with the same as per the provisions of the Act of 1975, and the Scheme prepared thereunder. The said order dated 01.04.2005 passed by the Chairman ETPB was assailed before respondent No.1 through a revision petition filed by the subsequent purchaser Mr. Abdul Aziz Qureshi through his legal heirs. By the impugned order dated 02.08.2005, the Chairman's order dated 17.05.2005 was set aside by respondent No.1, the revision petition was allowed, and it was held that PTD No.290 dated 10.01.1963 shall be deemed to have been validly issued by the settlement authorities.

- C. C. P. No. D-824 / 2010 : Property bearing No. JM-4/829-VIII-D (old No. JM-4/81) measuring 644.00 sq. yds., Jamshed Quarters, Karachi, is the subject matter of this petition. Petition No. PB/KCY/14/2000 was filed by the Deputy Administrator ETPB before the Chairman ETPB under Sections 8 and 10 of the Act of 1975, for declaring the said property as an Evacuee Trust property, and for cancelling PTD No.11738 dated 02.06.1967 issued in respect thereof by the Settlement Department against the verified claim of Mr.H. M. Kaleem(respondent No.2 in this petition), who is now being represented by his legal heirs. The said Mr. H. M. Kaleem sold the property to a third party, who in turn sold the same to Mst. Rukhsana and Mst. Zarina, respondents No.5 and 6 in this petition. Vide order dated 17.05.2005, though it was held by the Chairman that the property was an evacuee property, but PTD No.11738 dated 02.06.1967 issued by the Settlement Department, as well as the subsequent transfers in pursuance thereof, were cancelled by the Chairman, and the Deputy Administrator ETPB Karachi was directed to immediately take over the management and control of the property, and to deal with the same as per the provisions of the Act of 1975, and the Scheme prepared

thereunder. The said order dated 17.05.2005 passed by the Chairman ETPB was assailed before respondent No.1 through a revision petition filed by the subsequent purchasers Mst. Rukhsana and Mst. Zarina. By the impugned order dated 08.08.2006, respondent No.1 set aside the Chairman's order dated 17.05.2005 to the extent of the refusal of validation of the transfer, allowed the revision petition, and declared that the property was validly transferred under the law.

3. A perusal of the orders passed in all the three cases by the Chairman ETPB shows that all the properties in question were declared by him as Evacuee Trust properties, and after declaring so, the PTDs issued by the Settlement Department in respect of the said properties against verified claims were cancelled, and the Deputy Administrator ETPB Karachi was directed to immediately take over the management and control of the properties, and to deal with the same as per the provisions of the Act of 1975, and the Scheme prepared thereunder. It may be observed that the transferees were aggrieved with only that part of the orders passed by the Chairman, whereby their PTDs were cancelled, and as such only the said part of the orders was challenged by them before respondent No.1. By the impugned orders, the orders passed by the Chairman to the extent of cancellation of the PTDs have been set aside by respondent No.1, and it has been declared that the property was validly transferred under the law. Thus, the orders passed by the Chairman declaring the properties as Evacuee Trust properties, have attained finality. In these petitions, the petitioner has also admitted that the properties in question are Evacuee Trust properties.

4. The PTDs were issued by the Settlement Department on 30.12.1963, 10.01.1963 and 29.05.1967 in respect of the properties in C.P. Nos. D-822/2010, D-823/2010 and D-824/2010, respectively. Therefore, it is an admitted position that the validation process of all the properties had been completed and the PTDs were issued by the Settlement Department in respect thereof prior to the target date of June 1968, specified in the Act of 1975, against the verified claims of the displaced persons, after receiving the price of the properties from their respective personal Compensation Books. This important fact was noticed and mentioned by the Chairman in the orders passed by him. The main thrust of the arguments advanced by the learned counsel for the petitioner was that the properties, being Evacuee Trust properties, could not have been legally validated or transferred in favour of the displaced persons /

private respondents, as the same were not available for transfer and did not form part of the Compensation Pool under Section 4(2) of the Displaced Persons (Compensation & Rehabilitation) Act of 1958. Though the properties were declared as evacuee properties by the Chairman and it was noticed by him in his orders that the PTDs were issued before the target date, it was still held by him that the cases did not fall under Section 10 of the Act of 1975 as the properties were transferred through open auction and not on verified claims. In order to appreciate and understand the effect of Section 10 of the Act of 1975 on the transfers in dispute, the said Section is reproduced here for convenience and ready reference :

**“10. Validation of certain transfers. --- (1) An immovable evacuee trust property :--**

*(a) if situated in a rural area and utilised bona fide under any Act prior to June, 1964, for allotment against the satisfaction of verified claims; and*

***(b) if situated in an urban area and utilised under any Act for transfer against the satisfaction of verified claim in respect of which Permanent Transfer Deeds were issued prior to June, 1968, shall be deemed to have been validly transferred to sale to the Chief Settlement Commissioner, and the sale proceeds thereof shall be reimbursed to the Board and shall form part of the Trust Pool.***

*(2) If a question arises whether a transaction referred to in sub-section (1) is bona fide or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any Court.*

*(3) If it is decided that a transaction referred to in sub-section (1) is not bona fide the Chairman may pass an order cancelling the allotment or transfer of such property: Provided that no decision under sub-section (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.”*

(Emphasis added)

5. A bare reading of the aforementioned Section 10 reveals that the provisions thereof were to apply to validation of transfers of only such immovable properties, situated in rural and urban areas, which belonged to the Evacuee Trust, and not to any other property, provided the transfers were *bonafide*. There is no such bar in the said Section that says Evacuee Trust properties could not be transferred. It must be kept in mind that the Act of 1975 was / is a special Act which was enacted specifically with the preamble “*Whereas it is expedient to provide for the management and*

*disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.....*”. Moreover, ‘Evacuee Trust property’ has been defined in Section 2(1)(d) of the Act of 1975 as “*Evacuee trust property means the evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act.*” The Chairman was fully aware of the fact, which was noticed and mentioned by him in his orders, that the properties involved in C.P. Nos.822/2010 and 823/2010 belonged to Basant Singh Amal Dharmada Trust, and the property involved in C.P. No.824/2010 belonged to Swami Gawanand Prem Parkash Ashram. In view of the above, and after declaring that the properties were evacuee properties, the Chairman was not justified in holding that the transfers of the said evacuee properties was improper, or that the same did not fall within the ambit of Section 10 of the Act of 1975.

6. Regarding the applicability of Section 10 of the Act of 1975, we have observed that, for validation of transfer of the Trust properties under the said Section 10, it was necessary that (i) the property was an immovable property either in an urban or in a rural area ; (ii) the property was an Evacuee Trust property ; (iii) the property situated in a rural area was utilized *bonafide* under any Act prior to June, 1964 for allotment against the satisfaction of verified claims ; and (iv) the property situated in an urban area was utilized *bonafide* under any Act for transfer against the satisfaction of verified claims in respect of which PTDs were issued prior to June, 1968. We have further observed that the said Section 10 provides that if all the above conditions were satisfied, the property shall be deemed to have been validly transferred to sale to the Chief Settlement Commissioner, and the sale proceeds thereof shall be reimbursed to ETPB and shall form part of the Trust Pool. In the present cases, all the conditions were met before the validation of the transfers by the Settlement Department, as all the properties in question are admittedly immovable Evacuee Trust properties (urban) ; the same were utilized *bonafide* for transfer against the satisfaction of verified claims ; the PTDs in respect thereof were issued prior to June, 1968 ; and, the sale proceeds thereof were received by the Settlement Department from the transferees for reimbursement to ETPB so that the same may form part of the Trust Pool. There is no dispute as to whether the properties were utilized *bonafide* or not, as this question was never raised by the petitioner either before the Chairman or before respondent No.1. In view of the above, we are of the firm opinion that the transfers were validated in accordance with law, as the competent authority ; namely, the Chief Settlement

Commissioner, was bound under the Act of 1975 to validate the transfers on fulfilment of all the aforementioned conditions. The only case where the said authority could exercise his discretion was when the property had not been utilized *bonafide* in terms of the said Section 10.

7. The orders for the refusal of the validation of the transfers and cancellation of the PTDs were passed by the Chairman on the grounds that the properties were transferred through open auction and not on satisfaction of personal verified claims. This finding by the Chairman was contrary to the record before him, as the validation process of all the properties had been completed and the PTDs were issued in respect thereof prior to the target date of June 1968 by the Settlement Department against the verified claims of the displaced persons, after receiving the price of the properties from their respective personal Compensation Books. In the impugned orders, respondent No.1 has thoroughly discussed all the above aspects of these cases, and we feel that his observations and findings are based on sound reasoning and a correct interpretation of Section 10 of the Act of 1975. The impugned orders, therefore, do not require any interference by this Court.

8. Before parting with these petitions, we would like to briefly discuss a few reported cases and one unreported case. In Deputy Administrator, Evacuee Trust Property, Lahore V/S A. R. Chaudhry & 4 others, 1981 CLC 1006, the finding by the ETPB that a property was an Evacuee Trust property, was reversed by the Federal Government on a revision petition filed by the transferee of the property from the Settlement Department. The writ petition filed by the Deputy Administrator, Evacuee Trust Property, Lahore, was dismissed by a learned single Judge of the Lahore High Court by holding *inter alia* that the Deputy Administrator was neither personally interested in the property nor was he otherwise concerned with the general supervision or control of the same as against the ETPB ; the aggrieved person was the ETPB and not the Deputy Administrator ; and ETPB alone could file the writ petition. The decision of the Lahore High Court was maintained by the Hon'ble Supreme Court in Deputy Administrator, Evacuee Trust Property Board, Lahore V/S A. R. Chaudhry & others, 1983 SCMR 1240 and NLR 1984 Civil Law Judgments 109 (Supreme Court), by holding that, without there being compelling reasons for interference, the order was immune from interference in the Constitutional jurisdiction. In the case of Ch. Naseer Ahmad and 4 others V/S Government of Pakistan, through Joint Secretary, Ministry of Religious Affairs and Minorities, and 7 others, 1993 SCMR 1570, the

application filed on behalf of the Chairman ETPB for restoration of a Constitutional Petition, which was dismissed for non-prosecution, was dismissed by the Lahore High Court mainly on the grounds that the order of the Chairman was set aside by the Federal Government, therefore, prosecution of the case was not *bonafide*. It was held by the Hon'ble Supreme Court that in view of the order of the final authority, the petitioners had no right, and leave was refused. In an unreported case ; namely, C. P. No. D-331 of 2002, Chairman Evacuee Trust Property Board, Lahore V/S Federation of Pakistan and others, a learned Division Bench of this Court, by following the law laid down by the Hon'ble Supreme Court, rendered interesting and important findings that the petition by the Chairman against the Federation / his employer, was not competent ; a departmental authority whose order is reversed by a superior authority in the same hierarchy, can challenge such reversal only if specifically provided under a statute, and not otherwise ; and a contrary view would not only create chaos and cripple the working of the Government, but would ignite insubordination. All three petitions have been filed by the Assistant Administrator ETPB, and not by ETPB, against the orders passed by respondent No.1, the Secretary to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division). In addition to the reasons discussed in the preceding paragraphs, the petitions are liable to be dismissed on this ground also.

In view of the above discussion, all three petitions are dismissed with no order as to costs.

Chief Justice

Judge