

## IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SUIT NO.438/1997

Plaintiff : Official Assignee, Karachi.  
through Mr. Muhammad Ikram Siddiqui, advocate.

Defendant : Karachi Metropolitan Corporation and another,  
Nemo present on their behalf.

Date of hearing : 26.04.2016.

Date of announcement : 26.04.2016.

### JUDGMENT

The Official Assignee Karachi filed the instant against Karachi Metropolitan Corporation and another for declaration, possession and permanent injunction.

2. Brief facts of the case are that plaintiff was appointed '**Administrator**' to administer the properties shown in preliminary decree dated 22.07.1986 passed in Suit No.274/1975 between legal heirs of late Syed Mohammad Ashrafuddin; such decree included plot of land bearing No.14/K-28, Trans Lyari admeasuring about 21800 sq. yards situated in PIB Colony, Karachi, that while administering the property, came to know that such plot is occupied by unauthorized persons who, having constructed pacca houses, living therein claiming that the KMC allotted them plots, as such plaintiff made a reference to this Court in Suit No.274/1975 and on notice KMC denied ownership of legal heirs of late Syed Mohammad Ashrafuddin and claimed that this plot was resumed by them under

resolution No.156 dated 18.02.1946; that parties to Suit No274/1975 challenged these averments of KMC by submitting a detailed reply. Plaintiff further stated that Plot No.14, Survey Sheet No.L-28, Trans Lyari is private property since 1939, per sale deed registered after 12.04.1939, between M/s. Hassan and other and M/s. Dattoo and others; this plot was again sold on 08.04.1941 vide registered sale deed on 20.10.1943 to Seth Ishwarlal Gulb Rai who sold it to Tara Chand Gehani vide registered sale deed dated 18.02.1946, who in turn entered into an agreement of exchange with late Syed Muhammad Ashrafuddin at Delhi on 08.03.1949, said Tara Chand migrated to India and the subject plot was declared as evacuee property by Additional Custodian (Judicial E.P) vide order dated 15.09.1955; that on order dated 22.12.1956 of Deputy Custodian Evacuee Property Karachi the plot was demarcated and became property of Central Government, that late Syed Ashrafuddin filed suit No.221/1956 for specific performance of agreement of exchange against Tourmal Genani and Tara Chand Tourmal Gehani, which was decreed on 24.07.1956 and Nazir of the court was directed to execute and get registered exchange deed before Sub Registrar Karachi; that on basis of order dated 15.9.1955 of Additional Custodian and decree passed in Suit No.221/1956, the Deputy Custodian directed the district Registrar to register the exchange deed in respect of the plot, in consequence of order passed by Sub-Judge and Deputy Custodian referred to above Nazir got registered exchange deed on 07.03.1968 in favour of Syed Mohammad Ashrafudin as owner who filed application before Excise and Taxation Officer concerned for mutation making defendants No.1 and 2 and occupants of Plot No.14/K-28 and after notice to all respondents application for mutation was allowed and his name was mutated as owner hence said plot, after the death of Syed Mohammad Ashrafuddin, is owned by his legal heirs who are party to Suit NO.275/1975 and defendant No.1 had no power or authority to transfer the

said plot to defendant; that due to illegal allotment/transfer of subject plot by defendant No.1 to defendant No.2, late Syed Mohammad Ashrafuddin and thereafter his legal heirs have been deprived of their valuable right to use and enjoy subject property, such legal heirs are entitled to alternate plot of same size in same locality by defendants as it is practically impossible to eject these persons occupying the land. Plaintiff prayed as under:-

A. Judgment and decree be passed declaring that the transfer of plot of land bearing No.14/K-28 Trans Lyari admeasuring about 21800 sq. yards by defendant No.1 in favour of defendant No.2 is illegal and without any authority which form part off evacuee pool and was legally exchanged vide exchange deed registered on 07.03.1968, by the Nazir of the Court in the office of Sub-Registrar Karachi in favour of Late Syed Mohammad Ashrafuddin.

B. Defendant No.2 be directed to allot alternate plot measuring 21800 square yards within the boundaries of defendant No.1 or in the alternate they may be directed to pay a sum of Rs.13,08,00,000/- (Rupees thirteen crores eight lacs) with interest/markup/profit/equalizer in money value at the rate of 18% per annum from the date of filing of the suit till its realization, being the market value of the plot bearing No.14/K-28, Trans Lyari admeasuring 21800 sq. yards to the legal heirs of late Syed Mohammad Ashrafuddin.

C. Cost of the suit be awarded.

3. Written Statement was filed by defendant No.1/KMC objecting that since scope of preliminary decree is limited to the extent of administering the properties hence present plaint is incompetently filed by Official Assignee; that preliminary decree is not binding upon KMC as they were not party in suit No.274/1975; they stated that subject plot was granted to PIB Cooperative Housing Society on 99 years lease by answering defendant vide resolution No.383, dated 22.09.1948 with approval of the Administrator Karachi and thereafter said Society sub leased plots to

occupants; that the plot was originally leased out to Ishwar Das and others for 20 years with effect from 01.08.1895 which was renewed for further 20 years, such lease was for agricultural purpose however owing to violation of terms and conditions of grant, the plot was resumed by KMC vide resolution No.156 dated 18.02.1946 and then by resolution No.383 dated 22.09.1948 granted this plot among other plots, to defendant No.2 on 99 years lease and the defendant No.2 then sub leased the plots, that said Ashrafuddin was of knowledge of lease proceedings and all factual position but he did not implead KMC as necessary party in any suit hence judgment and decree passed therein are not binding on KMC; that KMC has become functus officio after granting lease of the plot, that sale deed dated 20.10.1943 and 18.02.1946 and exchange deed dated 08.03.1948 are all bogus documents, that plaintiff is not entitled to the relief prayed for and suit is liable to be dismissed.

4. On 10.09.1998 following consent issues were framed:-

- 1) Whether the suit is time barred?
- 2) Whether the suit is bad for non-joinder of necessary party and proper parties?
- 3) Whether the judgment and decrees passed in Suit No221/1956 and 1274/1975 without impleading KMC as necessary party are binding on KMC ?
- 4) Whether the suit plot was legally exchanged by late Syed Mohammad Ashrafuddin from the previous owner?
- 5) Whether the suit plot formed part of evacuee pool?
- 6) Whether the defendant No.1 was legally entitled to resume the suit plot and grant its lease to defendant No.2 for 99 years?

- 7) Whether the legal heirs of late Mohammad Ashrafuddin are entitled to the relief claimed?
- 8) What should the decree be?

5. Evidence was recorded through Commissioner wherein plaintiff examined Shah Muhammad Junejo, Superintendent of Official Assignee who filed affidavit-in-evidence reiterating the facts as contained in plaint, as well produced certain documents at exhibits PW-4/1 to PW-4/14, cross examination was conducted by other side, however defendants failed.

6. Learned counsel for plaintiff inter alia contends that inspite of notices, defendants have failed to argue instant suit, Official Assignee was entrusted to protect the rights of late Syed Muhammad Ashrafuddin in Suit No.274/19715 and defendant No.1 illegally transferred that plot in favour of defendant No.2 for which defendant No.1 was not competent, such transfer was illegal.

**FINDINGS.**

Issue No.1	Negative.
Issue No.2	Negative.
Issue No.3	Affirmative
Issue No.4	Affirmative
Issue No.5	Affirmative
Issue No.6	Negative.
Issue No.7.	Affirmative
Issue No.8	Suit is decreed.

**ISSUE NO.1**

‘Whether the suit is time barred?.

7. The burden to prove this issue was upon the defendants to establish that suit filed by the plaintiff, was not within time period, prescribed by law. It is *worth* to add here that question of *limitation* is to be counted from the date when there is a denial or infringement to a legal right. It is not a matter of *dispute* that property in question was included in the *preliminary* decree; entrusted to the *plaintiff* for administration purpose. The instant suit has been filed by the ‘*administrator*’ himself under the authority, *vested* in him by the Court order which *still* holds the field. An *order* passed in the Suit No.274/1975 dated 15.12.1996 will help in answering the *issue*, in hand, hence operative part thereof is reproduced hereunder:-

‘... However, through a **preliminary decree**, Official Assignee was appointed administrator before whom all such questions are pending. It is stated by Mr. Yasin Kiyani that this plot was transferred through a registered document and that the deceased has no right on such property. Be that as it may, this application being misconceived, is rejected. However, **it would be open to the legal heirs of the deceased or to the Official Assignee/Administrator** to adopt any legal course available to them in order to challenge so called *malafide* and illegal acts of the K.M.C in allotting the above mentioned plot.’

The above order *itself* acknowledges the *legal status* of the *Official Assignee* in respect of the subject matter therefore, the objection towards legal character of the plaintiff is of no *help* as the Specific Relief Act in its Sections 8 and 42 addresses a ‘**person**’ not to ‘**owner**’ which shall stand clear from a referral thereto which is:

‘8. A **person** entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

**42. Any person entitled to any legal character**, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

The deliberate use of term '**a person or any person**' is *self explanatory* to the fact that *legislature* did not confine such right to a particular *status* but has subjected it to '*entitlement of such person*' for such relief hence *limitation* , prescribed by the law, is to be taken into consideration from right of such person and not from the stand taken by defence. Not only this, but it is well settled principle of law that while examining the question of application of proper Article of *limitation* the court is required to consider, advert and adhere to frame of suit and object thereof, taking *inter alia* the contents of *plaint itself* as has been held in the case of *Muhammad Javaid v. Rashid Arshad* (PLD 2015 SC 212, Rel. at Page 228) wherein it is held that:-

“ ..... Suffice it to say that this is not the absolute rule of law, rather legal aspect should be examined by taking into consideration the facts of each case and particularly the frame and object of the suit, taking *inter alia* further into account the contents of the *plaint itself*. And thus it should be determined what main reliefs are being sought by the plaintiff and whether the other remedies asked for (*may be carrying larger period of limitation* ) are ancillary, dependent and consequential to the main relief. The ratio of catena of judgments of the superior courts are to the effect, that in order to ascertain the application of correct Article of Limitation to a particular suit, the frame of the suit should be considered, adverted and adhered to (*as mentioned above.*”

If things are examined on said touchstone then from averments of the *plaint* and relief(s) and object thereof, show that claim of the Official Assignee (*plaintiff*) has been that legal right accrued to him from the moment the order was passed by the Court dressing the Official Assignee within legal clothes of '**administrator**' hence the question of limitation has to be taken from such

*moment*. The present plaintiff (*Official Assignee*) claims to have acquired knowledge of *claim* and *act* of defendant(s) after preliminary decree therefore, it cannot be said that suit is time barred. Be as it may, defendant No.1 had raised such claim hence burden shifted upon the defendant(s) but the defendant(s) neither examined any witness nor produced any document hence answer to this issue could be nothing but '**negative**'.

**ISSUE NO.2.**

'Whether the suit is bad for non-joinder of necessary party and proper parties?'

8. Regarding this issue, it would suffice to say that non-joinder of a party cannot result into dismissal of the suit. However, it is not a matter of *dispute* that the defendant No.1 *specifically* claimed to be '**lessor**' of the subject matter. A lessor cannot seek an exception to his obligations and liabilities only by taking a *plea* that lessor has leased *ahead* particularly where question of status of *lessor* is under *dispute* as in the instant case was/is. At this point, let's have *direct* reference of terms *lessor* and *lease* from Black's Law Dictionary which are:

**"lessor'**. One who conveys real or personal property to be **leased**; especially LANDLORD."

**"Lease'**. To grant the *possession* and *use* of (land, buildings, rooms, movable property , etc) to another in return for rent or other consideration."

From above meaning, it should not be *confusing* any more that a *lease* gives a right of *possession* and *use* of the thing, *leased* yet the **lessee** continues under the title and status of '**lessor**' which shall stand further clear and evident from meaning of '**lessee**' , as defined by Black's Law i.e:

**"Lessee'**. One who has a *possessory interest* in real or personal property under a *lease*."



hence, I can *safely* conclude that it was the lessor (*defendant No.1*) to have defended its status / claim under which all subsequent rights, interests and claims arose. In such eventuality, it shall not be the requirement of law to implead / sue hundreds or thousands of persons (*lessees*) because in the instant matter the *individual* rights and title of *lessee* is not involved but authority and status of **lessor**. Needless to add that two settled principles of law i.e. '**a wrong or series of wrongs does not make a right**' so also that 'one claiming under someone, shall have to sink and sail with such person' are fully applicable in the *peculiar* situation. In a case reported as *Muhammad Ashraf Butt vs. Muhammad Asif Butt* (PLD 2011 SC 905), it, *while addressing the principle of 'swim & sink with principal'*, was held that:

'The rule unambiguously prescribes that the rights of the party to the suit, who ultimately succeed in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis. Thus, the transferee of the suit property, even the purchaser for value; without notice of the pendency of suit, who in the ordinary judicial parlance is known as a bonafide purchasers in view of the rule / doctrine of lis pendens shall be bound by the result of the suit *stricto sensu* in all respects, as his transferor would be bound. The transferee therefore does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes he steps in for all intents and purposes **and has to swim and sink with his predecessor in interest.**'

*(Emphasis supplied)*

Therefore, I have no hesitation in responding the issue No.2 as '**negative**'.

### **ISSUE NO.3.**

'Whether the judgment and decrees passed in Suit No.221/1956 and 1274/1975 without impleading KMC as necessary party are binding on KMC ?'

9. Since, the defendant No.1 (KMC) had asserted such *plea* hence burden was upon the defendant No.1 (KMC). Accordingly, it would require no much debate that *impleading* of party in a suit would require its stand i.e a *denial* or *refusal* to right which shall require the conduct and attitude of such *party* itself. To appreciate *properly* the conduct and attitude of the defendant No.1 (KMC) let's have *direct* reference from document, *exhibited* by the plaintiff on record as Ex.4/13 i.e *an order of Excise & Taxation Officer, H.I.&N. Divisions, Karachi*'. The relevant portion thereof is reproduced hereunder:-

**'Second para'**. 'The notices on Form 13 were issued to the concerning parties viz. the occupants falling under the area of 21800 sq.yds. and the P.I.B. Colony Housing Society to file objections, if any, against the above applicant. Both the parties filed objections. The applicant, filed another application dated 25.7.1968 stating certain facts and enclosing 25 documents in support of his claim. A notice was also issued to K.M.C. subsequently on 10.7.1968 on which the representative of K.M.C appeared and filed objection against the claim of the applicant supported by 7 documents in support of their claim.'

From above, it is quite evident and patent that the defendant No.1 (KMC) had every knowledge and notice of the title, claim and status of the Molvi Muhammad Ashrafuddin hence defendant No.1 (KMC) legally cannot take any advantage or benefit of his own wrong or negligence when it stood matter of record that defendant No.1 (KMC) had every knowledge and notice of orders regarding its (KMC's) claim yet remained sleeping *perhaps* on the ground that *leases* were made in favour of society (occupants) although a *lessor*, as already discussed, should not act in such manner else shall have to face the consequences. The *suits*, referred in this issue, were not in respect of *claims* and *title* of defendant No.1 (KMC) hence it (KMC) was not a necessary party therein and for *its* (KMC's) claim it would suffice that since it (KMC) failed at proper forum and time to defend such claim hence in absence of its (KMC's) claim the judgments passed in said suit are binding

upon KMC (*defendant No.1*) and all *even* else. Let me insist at this point that a '*decree*' determines the right of parties and if recorded by a competent court it shall have a binding effect for all purposes and interest in respect of rights, determined by decree so also ancillary one else there shall be no purpose of a '*decree*'. Accordingly, I answer this issue in '*affirmative*'.

**ISSUE NOS.4, 5 & 6:**

'Whether the suit plot was legally exchanged by late Syed Mohammad Ashrafuddin from the previous owner?'

'Whether the suit plot formed part of evacuee pool?'

'Whether the defendant No.1 was legally entitled to resume the suit plot and grant its lease to defendant No.2 for 99 years?'

10. All these *issues* are strongly inter-linked with each other hence it would be in line of equity and good conscious to address the same *jointly*. The burden to prove all these *issues* was upon defendant No.1 (KMC) as it was defendant No.1 (KMC) which had taken such pleas but defendant No.1 (KMC) produced nothing on record. The plaintiff (*Official Assignee*) produced all the relevant documents but a *direct* referral to *Ex.4/13* shall make whole picture clear which are:-

*'Fourth para'*. After the agreement of Exchange mentioned above, Tara Chand became *an evacuee* and the property was declared an *evacuee property* by the order of Additional Custodian (Judicial E.P.), Karachi dated 15.9.1955 and then by the Deputy Custodian (Judicial E.P.), Karachi vide order 7.8.55. On 7.1.57 the Deputy Custodian, Evacuee Property, Karachi asked the Rehabilitation Department to demarcate the above evacuee plot of 21800 sq.yds. Various public Notices were published through the court in 'DAWN', 'JANG', 'EMROZ' and lastly in 'DAWN' again, on 22.3.50, 2.2.52, 24.4.55 and 10.4.56 respectively to the affect that Respondent or anybody else may file objection if he has any, but nobody appeared.

*'Para-3 at page-4 of Ex.4/13'*

*'No lease forms or deed to Ishwar Lal Gulab Rai prescribed under rules 32 clauses A), B), C), D), under Chapter II heading 'Forms of Leases' of Land Rules is produced by K.M.C, which lays down execution on prescribed forms bearing stamps, signature of*

Chief Officer, Chairman, with seal of Corporation and then registration of lease. Obviously this does not exist and the rules were not observed. When the land was transferred to P.I.B.C.H.S., the mutation of name should have been affected according to rule 33 and 34 under Chapter 12 heading 'Mutation of Names' of land Rules of K.M./C which lays down mutation of name in register of K.M.C for the purpose mentioned. But probably no mutation of name was affected according to law as no document for mutation of name of P.I.B.C.H.S was produced. Probably no lease deed in favour of P.I.B.C.H.S was executed as the allotment was not sanctioned by the Government and the P.I.B.C.H.S did not enter into an agreement with K.M.C and did not confirm to the conditions laid down in the allotment letter. No transfer to P.I.B.C.H.S can take place without execution of a lease deed under section 107 Transfer of Property Act. Thus the allotment or transfer of the said land to P.I.B.C.H.S is not legally affected and no valid title passes to P.I.B.C.H.S under section 49(a) Registration Act, 1908.

Besides this, according to the order of Additional Custodian Evacuee Property and Deputy Custodian E.P. Karachi, dated 15.9.55, 7.8.56, 22.12.56 the plot No.14 was treated as Evacuee Property and the K.M.C and P.I.B.C.H.S did not raise any objection with 60 days, prescribed under the rule 13(2) of Administration of Evacuee Property Rules 1950 after treatment of plot No.14 as Evacuee Property. After that time any objection of K.M.C and P.I.B.C.H.S are time barred. Hence the transfer made to P.I.B.C.H.S by K.M.C is a nullity in the eyes of law, as plot No.14 in dispute vests in Custodian since 1<sup>st</sup> March, 1947 according to section VII of Administration of Evacuee Property Act, 1950.'

**'Concluding para.'**

*'In view of the large numbers of registered sale deeds showing different persons as owner of plot No.14, Survey Sheet No.K-28, Translyari and its treatment of Evacuee Property, by the Deputy Custodian and Additional Custodian (E.P.) Karachi and approval of the agreement of Exchange Deed made by Additional Custodian and the suit filed in the civil Court and decree passed in Suit No.221 and in pursuance of that decrees No.221 of 1957, Nazir of the Court was ordered to execute the exchange deed with a plan which he executed and was registered on 9.3.68 in favour of the applicant and in the face of all these authentic documents, I hold that no fraud was committed in the case. All this matter was gone into various courts of law and prima facie applicant has proved his own case and claim. I cannot legally ignore the various registered sale deed, exchange deed, and the order of Deputy & Additional Custodian E.P. Karachi and the Civil Court and, prima facie, I have to accept them. Hence the mutation of ownership in the record from S.No.I/C-10 S 1 to U/C 239 (covering the area of 21800 sq.yds) is allowed in the name of Nawab Molvi Syed Muhammad Ashrafuddin s/o Nawab Molvi Syed Muhammad Hameeduddin, resident of 1, Effendi Manzil, Aram Bagh, Karachi-I.'*

Let me add that above order (Ex.4/13) not only provides complete picture of all the facts and the manner in which the title of 'Syed Muhammad Ashrafuddin' was earned coupled with declaration of status of subject matter as 'evacuee property'. At this point of time, it would be relevant to refer operative part of the judgment of honourable Supreme Court in the case of Member BOR Punjab v. Sioddiquan (2015 SCMR 1721), wherein it is held that:

**"2..... It is settled principle of law that where a property is rightly or wrongly treated to be an evacuee property, such treatment of the property, can only be assailed through proceedings before the appropriate forum.** In this case, the relevant law is the evacuee law and the competent forum created by such law namely is the Custodian or his successor the Notified Officer. Reference is made to *Azizuddin v. Muhammad Ismail* (1985 SCMR 666). ...besides the law laid down in *Muhammad Din and 8 others v. Province of the Punjab through Collector and others* (PLD 2003 Lah. 441), the relevant portion whereof reads as under:-

*'From the above, it stands settled that when there is a question about the evacuee nature and treatment of a property as such, the civil courts have no jurisdiction in the matter. In the instant case, not only that the property was treated as an evacuee property, but, the same had also been transferred and permanently settled in favour of the predecessor-in-interest of respondent No.3, and Nazim-ud-Din. The Civil Courts in the suit, filed by the respondents, seeking declaration of their title on the basis of PTD, issued in their favour, had no jurisdiction to hold such transfer as void, because the property was non-evacuee and, therefore, its treatment and transfer to the petitioners could not be made..... Even if the property had been erroneously treated and transferred as evacuee, their right in the property, stood extinguished and they had no legitimate title, which could be passed onto Abdul Rashid by way of gift, from whom, respondent Nos.2 and 3 could acquire a lawful title, by stepping into the shoes of the original owners..... It has been settled till now that, where the property had been treated and transferred as an evacuee property, even if erroneously, and the non-evacuee owners did not seek their remedy under the law in force at the relevant time, their title to such property stood extinguished and they could not assert their right of ownership before the Civil Court, after the repeal of the evacuee / settlement law, on account of lack of jurisdiction.'*

However, no challenge was thrown by the petitioner or Mst. Hafeezan Khanum either before the Custodian or before the Rehabilitation Department against the issuance of the allotment order of 1966 or issuance of RL-II to the respondent allottee. In

such circumstances the petitioner cannot take up the plea that the allotment made in favour of the respondents is invalid for any reason. Indeed, we are not convinced that the property was resumed because as mentioned above **there is neither any order of resumption available on record, nor are the terms and conditions of auction postulating that auction land could be resumed for non-payment of one installment.** Admittedly, only a small amount was payable by Pujara Ram etc; and without a clear legal basis, the presumption of cancellation of auction sale and resumption of auctioned land is a harsh measure that we cannot approve. Resultantly, we do not find this case to be fit for interference. Dismissed accordingly.

*(Emphasis supplied)*

In the instant case, it is a matter of record that there has been an order of the Settlement Department regarding declaration of the *property* to be 'evacuee', and admittedly there is no order of *cancellation* of the right *earned* by *Syed Muhammad Ashrafuddin* through a long series of litigation(s) before competent forum(s), including the Court(s) which even was never challenged by the defendant No.1 (KMC) therefore, these questions cannot be allowed to be reopened at such stage. Even otherwise, this Court is not competent to reopen a past and closed case particularly when jurisdiction of this case, *per above case*, does not permit so.

11. Thus, the above *picture* leaves nothing ambiguous that it was the K.M.C. (*defendant No.1*) or P.I.B.C.H.S whose status was declared as '*not legal*' hence they were to approach the Court of law within meaning of Sections 39 and 42 of the Specific Relief Act and not said '*Syed Muhammad Ashrafuddin*' hence defendant No.1 (KMC) *legally* cannot take such plea nor the plaintiff in suit (s) referred in this issue, were required to resort to the course, *provided* by Sections 39 and 42 of the Specific Relief Act, as was also observed in the case of *Muhammad Javaid* (*supra*), rel. at P.229 as :-

“In our candid view if an instrument is alleged to have been obtained by fraud, undue influence, coercion or misrepresentation, it is not a document which can be held to be void *ab initio* or on the face of it void, but it requires to be determined and adjudged by the court of law as voidable or void as the case may be and in such an eventuality, the matter shall squarely be covered by section 39 of the Specific Relief Act, which mandates:-

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

*(Emphasis supplied)*

Therefore, I have no hesitation in answering the issue Nos.4 and 5 as ‘*affirmative*’ while the issue No.6 as *negative*.

#### **ISSUE NO.7.**

‘Whether the legal heirs of late Mohammad Ashrafuddin are entitled to the relief claimed?’

12. In view of the discussions made in respect of the above issues, the instant issue needs no much debate particularly in deliberate absence of the defendants from appearing and defending their claims. Defendant No.1 (KMC) remained silent despite active knowledge and notice of number of *orders* whereby status of property was declared as ‘*evacuee*’ and entitlement of late Muhammad Ashrafuddin was declared therefore equity demands that a lawfully declared person should not suffer for an illegal act or omission of

an authority, as was held in the case of Province of Sindh v. Syed Kabir Bokhari (2016 SCMR 101) that:

‘The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, same is appropriately be compensated. **This is a fundamental rule and also principle of equity.**’

*(Emphasis supplied)*

The issue is accordingly answered in *affirmative*.

**ISSUE NO.8.**

13. In view of the discussions made above, the suit of the plaintiff is hereby decreed as prayed. Let such decree be drawn.

Imran/PA

**J U D G E**