

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

C.P. No.D-109 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(s)
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For orders on office objections.
For hearing of M.A. No.582/2022.
For hearing of main case.

11-09-2023

Mr. Muhammad Arshad S. Pathan and Mr. Safdar Hussain Laghari advocates for the petitioners.

Mr. Atta Hussain Gaddi Pathan, advocate for respondents No.2 to 4.

Mr. Shamas Din Rajper, Deputy Attorney General for Pakistan.

Mr. Muhammad Yousif Rahpoto, Assistant Advocate General, Sindh.

This matter was heard at some length earlier and R&Ps called. Record revealed that neither the Assistant Administrator, Evacuee Trust Property Board, who filed reference for declaring property as “evacuee trust property”, recorded evidence in support of his Reference nor the respondent/ petitioner was allowed to record evidence in support of his defence that it was not trust property and that Permanent Transfer Deed (PTD) is saved by virtue of Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975, which provides a cut-off date for all bonafide transfers.

The Chairman Evacuee Trust Property Board though, on the strength of only Reference and reply thereto, concluded that it was an evacuee trust property. Entries made in revenue record, constituting main reason for impugned decisions, which entry allegedly caused on the basis of a Will. Admittedly, no Will in support of such contention that it was attached to any religious, educational or charitable purpose was attached and produced/proved to establish its nature, let alone mere entry in revenue khata. Similarly, the petitioners’ case that it was acquired by way of public auction is also of importance as the savings, provided in Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 is for bonafide transfers. It only prima facie saved transfers (PTDs) made

by authority against “verified claims” whereas, petitioner’s case is of acquisition by public auction.

Be that as it may, we would not comment much at this stage since both the learned counsels namely Mr. Muhammad Arshad S. Pathan and Mr. Atta Hussain Gaddi Pathan have agreed that in all fairness an opportunity ought to have been provided to both the litigants to establish their respective stance that it either is an evacuee trust property or an evacuee property, notwithstanding the grounds they respectively raised. In view of the above and as agreed we set-aside the two orders: one passed by the Secretary Ministry of Religious Affairs and Interfaith Harmony Islamabad dated 15.12.2021 and the order of the Chairman Evacuee Trust Property Board dated 04.02.2021 and remand the case to the Chairman Evacuee Trust Property Board having camp office at Karachi to decide the issues involved in the matter, preferably in three months’ time.

R&Ps be sent back to the Chairman ETPB as well as to the appellate/revisional authority respectively, in two (02) days’ time.

JUDGE

JUDGE

Irfan Ali