

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Const. P. Nos. D-964 to 979, 1084 to 1089 and 1161 of 2022

Mst. Ayesha and another
Muhammad Rafique
Muhammad Ali
Mst. Noor Bibi
Abdul Rasheed
Muhammad Hanif Malik
Fayyaz Ahmed
Farooque Ahmed
Muhammad Ashraf
Abdul Khalil Qureshi
Akhtar Hussain and another
Khalik Ahmed
Abdul Qadir and another
Muhammad Raees
Ghulam Rasool
Muhammad Naeem
Muhammad Asghar

**In Const. P. No. D-964 to
979 of 2022**

Moazzam Ali Taak

— **In Const. P. No. D-1084 to 1089
of 2022**

Muhd. Abid Abdullah
and another

— **In Const. P. No. D-1161 of 2022**

...Petitioners

Versus

Federation of Pakistan and others

...Respondents

For the Petitioners:

Mr. Aqeel Ahmed Siddiqui, Advocate.

For the Federation:

Mr. Shamsuddin Rajper, Deputy
Attorney General and Ms. Shamma
Mughal, Assistant Attorney General.

For the Respondents
No. 1 to 5:

Mr. Irfan Ali Bughio, Mr. Muhammad
Munsif Jan and Mr. Asad Ahmed,
Advocates.

Date of Hearing:

16-05-2025.

Date of Judgment:

30-05-2025.

JUDGMENT

Riazat Ali Sahar, J: These are some twenty-three (23) petitions under Art. 199 of the Constitution of the Islamic Republic of Pakistan, 1973¹, which have been filed in respect of different properties located in Sonar Gali, Islam Nagar, Phuleli, Hyderabad². The occupants of the said properties have received notices from the Respondent No. 5 regarding cancellation of the allotments of the said properties and their conversion into tenancies, which have been impugned before us. The details of the properties, their chain of titles until the present Petitioners and the notices impugned, as they appear from the petitions and their annexures, are as follows:

Sr. No.	Petitioner	Property #	Chain of Title	Notice issued and impugned
1.	Mst. Ayesha and Muhammad Fayyaz	G-2659	1. Moinuddin, original allottee 2. Ahmed Baig, PTD No. 2580 dated 15-08-1973 3. Mst. Shirin Bano, subsequent purchaser 4. Present Petitioners, Sale Deed dated 15-07-1979 5. M. Fayyaz (Petitioner No. 2), by way of Gift as per Property Register Card (Annex-G)	DA/ETP/HYD/43 dated 04-01-2022
2.	Muhammad Rafique	G-2655	1. M. Ramzan, original allottee as per PTD 2. Muhammad Yameen, transferee as per Extract from Property Register Card Extract 3. Present Petitioner through gift as per contents of the petition	DA/ETP/HYD/42 dated 04-01-2022
3.	Muhammad Ali	G-2651	1. Muneer, original allottee as per PTD 2. Muhammad Saeedullah by	ETP/HYD/2022/235 dated 21-02-2022

¹ “Constitution”
² “the properties”

			surrender deed 3. Present Petitioner by gift from Haji Ali Mohammad as per Extract from Property Register Card	
4.	Mst. Noor Bibi	G-2660	1. Muhammad Ramzan, original allottee as per PTD 2. Abdul Ghani, transferee by surrender deed 3. Khushi Muhammad, transferee through sale deed 4. Present Petitioner through sale deed dated 30-04-2007	ETP/HYD/2022/155 dated 27-01-2022
5.	Abdul Rasheed	2610	1. Mahmood Khan, original allottee vide PTO No. 76 dated 03-10-1959 2. No document in favour of Abdul Rasheed has been filed though it is pleaded in the petition that he is a transferee	ETP/HYD/2022/144 dated 27-01-2022 ETP/HYD/2022/270 dated 21-02-2022
6.	Muhammad Hanif Malik	2564/1	1. Jamaluddin, original allottee as per PTD 2. No document in favour of Muhammad Hanif Malik has been filed	DA/ETP/HYD/14 dated 04-01-2022 (not issued in the name of the Petitioner)
7.	Fayyaz Ahmed	2633	1. Ajmari, original allottee vide PTO No. DSC/1-4844 dated 13-11-1959 and PTD No. 23290 dated 06-04-1972 2. Muhammad Hussain and Abdul Khalid sons of Ajmeri, transferees 3. Present Petitioner vide Sale Deed dated 11-04-1996	DA/ETP/HYD/37 dated 04-01-2022
8.	Farooque Ahmed	2571	1. Chuttan son of Rahim Bux, original allottee, vide Transfer Order 2. Muhammad Ramzan, vide Transfer 3. Muhammad Arif and Mst. Najma, transferees. 4. Abdul Sami, vide Sale Deed from Muhammad Arif and Mst. Najma	DA/ETP/HYD/14 dated 04-01-2022 (not issued in respect of Property No. 2571)

			5. Present Petitioner, no document provided.	
9.	Muhammad Ashraf	2580/1	<p>1. Sharafuddin son of Babu Deen, through Gift from Mst. Shaheedan wife of Fazal Din, no document from original allottee provided</p> <p>2. Present petitioner, no document provided.</p>	ETP/HYD/2022/133 dated 27-01-2022 (not issued in respect of the corresponding property)
10.	Abdul Khalil Qureshi	2564/2 (Portion)	<p>1. Abdul Jalil son of Haji Bandan, through Transfer Order</p> <p>2. Present Petitioner, no document provided.</p>	DA/ETP/HYD/11 dated 04-01-2022 (not issued in respect of the corresponding property)
11.	Akhtar Hussain and Muhammad Yousuf	2604/5	<p>1. Muhammad Ismail, original allottee vide PTD No. 9969 dated 05-03-1969. This is in respect of property No. 2604/5 whereas the petition claims relief in respect of 2404/4.</p> <p>2. Present petitioners, no document provided</p>	DA/ETP/HYD/29 dated 04-01-2022
12.	Khalil Ahmed	2558/1 (Consisted of ground floor)	<p>1. Muhammad Sadiq, original allottee vide PTD No. 22518 dated 30-10-1971.</p> <p>2. Khan Muhammad, transferee by Gift Deed dated 19-08-1984</p> <p>3. Present Petitioner, through Sale Agreements attached with the petition</p>	DA/ETP/HYD/11 dated 04-01-2022
13.	Abdul Qadir Abdul Majid	2604/5	<p>1. Abdul Hakeem, original allottee through auction. The document filed is in respect of property No. 2604/5 while, in the petition, relief is sought for property No. 2604/G.</p> <p>2. Mehmooda Begum, transferee vide PTO No. DSE/Hyd/10323 dated 21-03-1966</p> <p>3. Shah Muhammad Ghous Qadri, transferee by Sale Deed dated 19-04-1975</p> <p>4. Abdul Rehman, transferee and father of both the Petitioners, vide Gift Deed</p>	Not annexed

			dated 15-03-1983	
14.	Muhammad Raees	2612/G	<ol style="list-style-type: none"> 1. Abdul Qadeer, original transferee vide Transfer Order dated 04-01-1975 2. Muhammad Ilyas, transferee vide Sale Agreement dated 20-08-1991 3. Eight (8) subsequent transferees 4. Present Petitioner, through Sale Agreement dated 06-03-2006 	ETP/HYD/2022/134 dated 27-01-2022
15.	Ghulam Rasool	2576	<ol style="list-style-type: none"> 1. Muhammad Bashir, original transferee vide Transfer Order dated 02-11-1974 2. Ghulam Rasool alias Ghulam Hussain Arain, transferee as by Gift Deed dated 16-01-1998 	DA/ETP/HYD/13 dated 04-01-2022
16.	Muhammad Naeem	2559	<ol style="list-style-type: none"> 1. Hyder, original transferee vide Transfer Order dated 01-04-1978 2. Present Petitioner, no document filed. 	DA/ETP/HYD/12 dated 04-01-2022
17.	Muhammad Asghar	2623	Documents filed by Muhammad Asghar along with his petition are reflecting conflicting property numbers, i.e. 2623, 2423 and 2596.	DA/ETP/HYD/44 dated 04-01-2022
18.	Moazzam Ali Taak	2602/2	<ol style="list-style-type: none"> 1. Muhammad Suleman, original allottee as per petition 2. Present Petitioner along with others, transferees through inheritance 	DA/ETP/HYD/25 dated 04-01-2022
19.	Moazzam Ali Taak	2603/2	Same as above	DA/ETP/HYD/26 dated 04-01-2022
20.	Moazzam Ali Taak	2604/11-A	Same as above	DA/ETP/HYD/27 dated 04-01-2022
21.	Moazzam Ali Taak	2582/1-1	Same as above	DA/ETP/HYD/23 dated 04-01-2022
22.	Moazzam Ali Taak	2602/1	Same as above	DA/ETP/HYD/24 dated 04-01-2022
23.	Muhammad Abid Abdullah	2661	<ol style="list-style-type: none"> 1. Muhammad Yaseen, original transferee through PTD No. 25790 dated 04-08-1973 2. Khushi Muhammad, transferee as son of 	ETP/HYD/2022/234 dated 21-02-2022

			<p>Muhammad Yaseen</p> <p>3. Present Petitioner vide Sale Deed dated 12-06-2007</p> <p>The document in this case reflects Property No. 2661 while relief is sought in respect of Property No. 2261.</p>	
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2. On 19-05-2022, notices were issued to respondents and Deputy Attorney General by an earlier Divisional Bench. Upon notices, the Respondents Nos. 1 to 5 filed similar objections in all these petitions. The crux of the objections of the Respondents Nos. 1 to 5 is that:

- The Respondent No. 2 (Chairman, Evacuee Trust Property Board) has declared the properties in question as **Evacuee Trust Property** vide his Order dated 16-04-1985 and cancelled the PTDs issued by the Settlement Department. The Order dated 16-04-1985 was challenged before the Respondent No. 4 (Secretary to the Government of Pakistan, Ministry of Religious Affairs) as revisional authority who passed Order dated 09-07-1985 and maintained the Respondent No. 2’s Order with certain directions which were not complied with by the then occupants of the properties.
- Thereafter, in CMA No. 4821 of 2018 in Suo Motu Case No. 01 of 2014, the matter was taken up by the Supreme Court of Pakistan who passed Order dated 15-02-2021 with certain directions to the Respondent No. 2. In supposed compliance of those directions, the Evacuee Trust Property Board³ decided in its 355th Meeting that the pending sale cases in which sale deeds were not

³ “ETPB”

executed would be treated as annulled and the occupants of those properties would be offered to become tenants of the ETPB. In the event that such occupants showed willing to become ETPB's tenants, the payments made by them would be adjusted towards rent. If the occupants were/are found not to be willing to enter into tenancy with the ETPB, proceedings would be initiated against them for retrieval of property.

- The Petitioners had complete knowledge of these proceedings but they failed to disclose this material information in their petitions.
- Any subsequent transactions in violation of the aforementioned Orders of the Respondents Nos. 2 and 4 are void and cannot be treated as valid.
- Any construction raised on the properties on the already existing structures is without approval of the Respondent No. 2 and does not confer ownership or other rights to the Petitioners.
- The Petitioners are not owners of the properties that they claim.
- The Petition involves controversial factual pleas which require evidence.
- The Petitioners are not entitled to the reliefs claimed and the petitions are liable to be dismissed with heavy costs.
- The Petitioners are attempting to claim relief through misrepresentation and fraud upon this Court.

3. We have heard the learned Counsel for the Petitioners and the Respondents Nos. 1 and 2 as well as the learned Deputy Attorney General for Pakistan and have also gone through the record of the case with their assistance.

4. Before proceeding further, we find it convenient to reproduce S. 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975⁴, which shall form a major chunk of our discussion below:

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

- (a) if situated in a rural area and utilized *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 utilized *bona fide* under any Act for transfer against the satisfaction of verified claims in respect of which Permanent Transfer Deeds were issued prior to June, 1968,

shall be deemed to have been validly transferred by sale to the Chief Settlement Commissioner, and the sale proceeds thereof shall be re-imbursed 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.”

In terms of S. 10, it is clear that legislative validation has been accorded to Permanent Transfer Deeds issued prior to June 1968. However, such protection has not been provided to transfers made thereafter. Similarly under S. 10(2) conclusive power to decide on

⁴“1975 Act”

whether a transaction under S. 10(1) is *bona fide* or not, i.e. it is to be validated or not, has been vested in the Chairman of the ETPB.

5. Two ancillary provisions which operate as ouster clauses within the 1975 Act are Sections 14 and 15, which read:

“14. Bar of jurisdiction. Save as otherwise provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Federal Government or an officer appointed under this Act is empowered under this Act to determine, and no injunction, process or order shall be granted or issued by any Court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act.

15. Protection of action taken in good faith. No suit prosecution or other legal proceeding shall lie against the Federal Government, the Board or any person appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this. Act or any rules, scheme or order made thereunder.”

6. The conclusiveness of the power of the Chairman of the ETPB under S. 10 is seen specifically from the specific words utilized in S. 10(2) by providing that the Chairman’s decision “shall not be called in question in any Court.” The language of S. 10(2) reads in a negative tone and it makes an ouster of the jurisdiction of every court generally, vesting jurisdiction only in the *quasi-judicial* hierarchy provided by the 1975 Act itself. We should first understand the treatment of ouster of jurisdiction clauses in terms of the settled principles of law in our jurisprudence.

7. In *Evacuee Trust Property Board v Ahmed*⁵, the Supreme Court was confronted with interpreting another ouster clause in the 1975 Act itself, namely S. 14, which excludes the jurisdiction of civil courts. As it appears, S. 14, too, is written in a negative tone and makes a clear and specific ouster. The Supreme Court was thus of the

⁵2004 SCMR 440

opinion that the decree of the civil court which had come to be impugned before it was *coram non judice* and could not hold field. It was set-aside.

8. Another identical issue came up before the Islamabad High Court in *Dr. Omar Masood v Sued Amir Hussain Naqvi*⁶. The question before his Lordship, Athar Minallah J., in that case was on interpreting the ouster of jurisdiction clause in S. 5(2) of the Companies Act, 2017, which is set out in a similar manner. We are guided by the principles enunciated in paragraph 26 of *Omar Masood*, which reads:

“26. The above principles and law regarding construing statutory provisions couched in language ousting the jurisdiction of the Courts may be summarized as follows:

- (i) The legislature is competent to oust or exclude the jurisdiction of courts.
- (ii) There is a presumption against the ouster of jurisdiction. Any law or statutory provision which denies access to the courts is to be construed very strictly and narrowly.
- (iii) Ouster or exclusion of jurisdiction must be expressly and clearly implied and not readily inferred. The language used by the legislature ought to show express and unequivocal manifestation of the legislative intent to exclude the jurisdiction of the courts.
- (iv) If the language is so clear and unmistakable that it leaves no room for doubt as to the intention of the legislature in ousting jurisdiction in all circumstances than that will be given effect to and even cases of mala fide and without jurisdiction would not be open to judicial review and the courts would not be concerned with the consequences.
- (v) Ordinarily, unless the intention of the legislature is so clear that no other meaning can be given to the language used, the jurisdiction of the courts will not be ousted in three categories of decisions/orders i.e. (a)

⁶2019 CLD 931 (Islamabad)

without jurisdiction, (b) coram non judice, and (c) tainted with mala fide.

- (vi) Ordinarily, when the legislature declares an order or decision to be final, it has reference to such orders/decisions which is within the powers of the authority making it, the authority should have been constituted in accordance with the statute, the person proceeded against should be subject to jurisdiction, the order passed or action taken should be such as could have been made under a statute and if these conditions are fulfilled then an omission or irregularity committed in the following of the statutory procedure will not be a sufficient ground to avoid giving effect to the exclusion of jurisdiction.”

9. In *Federation of Pakistan v Malik Ghulam Mustafa Khar*⁷, ten judges of the Supreme Court assembled to understand the meaning of Art. 270-A (1) of the Constitution as it then stood to oust the jurisdiction of courts to scrutinize the acts done during martial law. The Court held that the actions of martial law authorities were not entirely immune to judicial scrutiny, however, it was also held that:

“17. There is a presumption against the ouster of jurisdiction of the Superior Courts and any law which has the effect of denying access to them has to be narrowly construed for the reason that these are the for a created by the people for obtaining relief from oppression and redress for the infringement of their rights. But then where the ouster clause is clear and unequivocal, admitting of no other interpretation, the Courts unhesitatedly give effect to it...”

10. It can be gathered from the case law just discussed that there is a special form of treatment which is accorded to ouster of jurisdiction clauses in interpreting the same, in that such clauses must be given a narrow reading because they seek to deprive litigants of their access to courts. In the event that two different meanings of an

⁷PLD 1989 SC 26

ouster clause can be extracted, then the meaning which favours entertainment of the litigation is to be adopted so as to afford an opportunity to the litigant. In this sense, a Court must make its best endeavour to nip out a favourable meaning to an ouster clause and it will take a view of leniency towards the litigants. This is because superior courts, which are in ordinary usage taken to include this Court and the Supreme Court, are constitutional bodies which the people themselves have made and in their favour a special power, or rather a duty, is conferred by Art. 199 and 184(3) respectively to protect the fundamental rights of the sovereign citizens of Pakistan.

11. In our understanding, and for the present purposes, the Respondent No. 2 has not once or twice but rather thrice been provided immunity under the 1975 Act from the jurisdiction of courts—firstly under S. 10(2), secondly under S. 14 and thirdly under S. 15. The language in all these provisions is unambiguous in conveying the absolute intention of the legislature to close any room for litigation beyond the hierarchy set-up under the 1975 Act itself.

12. We are, nonetheless, mindful of the extraordinary nature of the jurisdiction vested in us under Art. 199 of the Constitution, which provides vast powers to a High Court to make sure that fundamental rights conferred by the Constitution to the sovereign citizens of Pakistan are protected, and that they are protected in full effect. All sub-articles of Art. 199 (1) deal with this Court's powers, *first*, to protect fundamental rights and, *second*, to hold accountable all persons⁸ for actions beyond lawful authority. Therefore, we believe that, even from the unambiguity of Sections 10(2), 14 and 15, room for interpretation is available in the light of Art. 199 being a superior provision and that there are exceptions with respect to provisions

⁸As defined by art. 199(5)

which oust the jurisdiction of a High Court in any statute or legislation. In our view, the underlying, even if unwritten, assumption carried by ouster clauses is that the forum exercising jurisdiction under the act in which such a provision is made will exercise its jurisdiction (a) *bona fide*, and (b) within the four corners of the law which gives that authority jurisdiction. The provisions of an ouster clause apply to the acts done under the statute, however, if an act is done by an authority beyond the authority conferred by the law (i.e. is *ultra vires*) or is done with *mala fide*, then we do not accept that legal cover must be provided, because to acts done beyond the statute itself, the ouster clause cannot apply. To say otherwise would be like applying S. 10(2) of the 1975 Act to an act purported to be done under some other law, which, with all due respect, we find to be absurd.

13. The foremost principle that must always be kept in mind is that the issue of jurisdiction is a root question in every judicial and official business, and an authority having no jurisdiction cannot be said to have performed an act legally and lawfully. Such an act of an authority, even if good on merits, cannot hold good in law and will have no value. In our view, and with due deference, there is no difference between an order by a court having no jurisdiction and an order by a random stranger, because both of them are not authorities under law to pass such orders. Therefore, for the same reason that we cannot legally recognize orders passed by a random stranger, we cannot also accord legal protection to orders passed by a court without lawful authority or jurisdiction. What we have said may be blunt, but it is true, and we have no hesitation to put it that way. As their Lordships have explained in ***Khyber Tractors v Pakistan***⁹:

⁹PLD 2005 SC 842

“19. ...the question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum, having no jurisdiction, even if found to be correct on merits, is not sustainable. The jurisdiction of a Court lays down a foundation stone for a judicial or quasi-judicial functionary to exercise its powers/authority and no sooner the question of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings, is bound to crumble down...”

14. In our deliberate view, the law laid down in *Khyber Tractors* is equally applicable to orders and acts of authorities who seek immunity under ouster clauses, because if they act beyond their authority or the provisions of the governing law, then their act must not be construed as valid and will not be afforded legal sanctimony. Therefore, an ouster clause in a particular legislation will apply only to orders and actions of authorities which are done under that particular legislation only, and it will apply with the specific assumption that such an act is done *bona fide* and within the jurisdiction conferred by the governing statute. It will not apply to acts or deeds done beyond or outside the scope and spirit of the governing statute or law.

15. We are guided in holding this opinion by the Supreme Court’s interpretation in ***Shaukat Aziz Siddiqui v Federation of Pakistan***¹⁰ of the ouster clauses concerning the jurisdiction of the Supreme Judicial Council. In that case, reference was also made to ***Justice Qazi Faez Isa v President of Pakistan***¹¹ and ***Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry v The President of Pakistan***¹² and it was held that the provisions of Art. 211 of the Constitution do not protect the Supreme Judicial Council’s orders from judicial review by the Supreme Court if such orders are without jurisdiction or tainted with *malice*. If the Constitution, through

¹⁰ PLD 2024 SC 746

¹¹PLD 2021 SC 1

¹²PLD 2010 SC 61

Art. 211, was unable provide a blanket ouster of jurisdiction to courts, then indeed Sections 10(2), 14 and 15 of the 1975 Act do not bear the character to have such an effect.

16. Our reading of S. 10(2) in harmony with Sections 14 and 15 of the 1975 Act suggests that the immunity to the actions and orders of the ETPB authorities is limited to their actions performed under the Act itself. However, if anything is purported to be done under S. 10(2), or in a broader context under the 1975 Act, but it is not according to the powers vested in the authorities, then such a thing cannot be treated to have been done under the 1975 Act, and it will not be considered as immune from judicial scrutiny under Art. 199 by this Court. That is of course subject to establishing an action to be without jurisdiction, and a simple plea of want of jurisdiction in a petition under Art. 199 will be insufficient for a case for interference to be made out.

17. Let us now turn to the various orders passed in the present case.

18. It would appear that, as pointed out by the Respondents Nos. 1 to 5, the Respondent No. 2 had indeed passed an Order dated 16-04-1985 in Case No. PB/SCH/86/68-II. That Order was passed upon a petition under S. 10 of the 1975 Act by the original allottees/claimants with the prayer to validate the allotments in their names. The Respondent No. 2 refused to do so in view of S. 10 of the 1975 Act itself. For reference, the operative part of the said Order which is self-explanatory reads:

“I have heard the arguments advanced by the parties and given my careful consideration to the facts of the case. The petitioner[s] have themselves admitted the trust character of the property therefore the properties in question are declared as

Evacuee Trust Properties which may be notified as such. The P.T.Ds Ex. P/1 to P/3 and P/5 as stated above have been issued before the target date of June 1968 but the property numbers as mentioned in P.T.Ds Ex.P/1 and P/3 had [been] tampered with. It was also noticed that the documents Ex. P/7, Ex. P/10 and Ex. P/23 produced by the attorney of the petitioners were not PTDs while Ex. P/7 and Ex. P/23 were P.T.Os. Ex. P/10 was merely an order of allotment. All these had also been issued beyond the target date of June, 1968. Since only four out of 47 PTDs in the case had been issued before the target date they are also not validated in accordance with the directions of the learned revisional authority that equal treatment should be accorded to all the PTD holders who should either be accepted as tenants of the Board or proprietary rights should be conferred on them. All the P.T.Ds issued in the case are therefore hereby cancelled. Assistant Administrator, ETP, Hyderabad should take over the entire property under his own management and control. The respondents shall be considered and accepted as tenants of the Board by him on usual terms and conditions.”

19. The Order dated 16-04-1985 was challenged by the original allottees/claimants of the properties in Revision Petition No. 3(132)/85-Rev. (132 of 1985) under S. 17 of the 1975 Act, which was heard by Joint Secretary, Government of Pakistan, Ministry of Religious Affairs, Islamabad. The revisional authority passed an Order dated 09-07-1985 whereby it validated four (04) PTDs which were issued prior to the cut-off date of June 1968, however, the Order dated 16-04-1985 to its remaining extent was maintained. For reference, paragraph 2 of the revisional authority’s Order is reproduced below:

“2. I have considered the arguments carefully and perused the record. The question of trust nature is not open to challenge now. The Will regarding the trust and its nature is beyond any doubt. That Will has been examined in the order of 1976. I agree with Mr. Masood Ali that the transfer documents in respect of revision petition No. 3(133)/85-Rev should have been validated because they were issued prior to the target date. This contention is correct and the Chairman took notice of it. **I will, therefore, order that PTDs issued in respect of property bearing Nos. 2558/2, G/2599/3, G-2600 and G-2652 in Phuleli Bazar, Hyderabad be**

validated. As regards other properties the transfer documents in their respect were rightly cancelled. It is stated that property consisted of land only and the old structure had disappeared and the construction now existing has been raised by the occupants/transferees, on which the ETP Board has no claim and if there is any, it is negligible. I will, therefore, order that these properties shall be transferred to the occupants/transferees on payment of the price of the land at the rate prevailing in 1976, the year in which the trust nature of the property was determined.”

(Emphasis added)

20. In terms of both the orders just reproduced by us, which were passed by hearing the original allottees/claimants of the properties, the transfers have already been invalidated by the Chairman of the ETPB under S. 10(2) of the 1975 Act as well as the revisional authority under S. 17. The Petitioners claim that they were not heard by the Respondents in passing the notices that have been impugned in the present case. It is, however, seen that the matter did not really begin at the impugned notices; it goes way back to at least the year 1985 when the aforementioned orders were passed by the Chairman of the ETPB and the revisional authority.

21. Indeed, the right to be heard is a valid and sacrosanct right conferred under the maxim *audi alteram partem*, the principles of natural justice and, above all, by Art. 10-A of the Constitution. Still, however, a party claiming that right must first establish that it was in fact entitled to be heard. In the present matter, since the original claimants were already heard at the relevant time, the question of the Petitioners being heard does not arise as the Petitioners are laying their claims as subsequent transferees on various bases as mentioned in the table above.

22. The PTDs in favour of the original allottees/claimants having been declared invalidated by the competent authorities under S. 10(2) and 17 of the 1975 Act long ago, no right to be heard would vest in the Petitioners, and a very well settled principle of law, that where the foundation of an action is void, the whole edifice standing thereon must fall down¹³, will kick in. The Petitioners pleaded before us that the notices impugned by them are illegal, but, unfortunate as it is, even if for argument's sake we accept their plea, the two orders mentioned above come in their way, and nothing is on record to show that the said orders are without jurisdiction or tainted with *mala fide*.

23. Many of the petitioners claim their rights on the basis of sale transactions. If that is the case, then such petitioners were under legal obligation to verify the perfectness of the title of their predecessors and in that context they ought to have verified from the ETPB if any encumbrance lied upon these properties. This obligation is entailed by the doctrine of *caveat emptor*, which literally means '**let the buyer beware**.' This doctrine is consistent with ordinary human practice to exercise care and caution in entering into transactions, and it emphasizes on the duty of every prospective buyer to satisfy themselves with regard to the background and title of a property. This doctrine entails a corresponding burden upon the buyer that he or she shall bear the responsibility for any defect found in the title of the property if they do not exercise the care and caution required of them.

24. For these reasons, all the petitions in hand cannot be sustained and are **dismissed** with no order as to costs. Since the Petitioners have been in longstanding occupation of the properties, we

¹³ E.g., *Rehmat Noor v Zulqarnain* 2023 SCMR 1645, *Talib Hussain v Member, Board of Revenue* 2003 SCMR 549, *Muhammad Iqbal v Muhammad Ahmed Ramzani* 2014 CLC 1392 (Karachi), *Faisal Jameel v State* 2007 MLD 355 (Karachi) and *Zahir Ansari v Karachi Development Authority* PLD 2000 Karachi 168.

direct that all the Petitioners shall within thirty (30) days of this Judgment be offered the option of tenancy afresh by the Respondents and, subject to their consent and acceptance in writing, the Respondents shall at the earliest execute tenancy agreements with the Petitioners as per the relevant law and rules. The Respondents are also advised to exercise leniency in setting quantum of rent to the Petitioners. The Respondents shall ensure compliance of this Judgment and submit a report accordingly to the Additional Registrar of this Court duly supported by the relevant documents and also containing the particulars of the petitioners who accept the option of tenancy and who do not.

25. Before parting, we note that all these petitions appear to have been filed in a haphazard manner with incomplete and improper annexures many of which carry overwriting and many are also crossed with ink; due to this, we faced great inconvenience in perusing the record of the case. We are aware of the difficulties of counsel in preparing cases, however, we as judges need proper and carefully filed pleadings documentation to ensure adequate dispensation of justice. Therefore, out of gravest of compulsions, we communicate the following directions for compliance by all concerned as well as the office of this Court:

- i. All parties must mandatorily file pleadings, applications and documents in a proper and legible manner. All documents must be properly sequenced, labelled and legible.
- ii. Where documents filed are illegible, clear and legible or true re-typed copies of the same must be filed by counsel and/or parties as the case may be.

- iii. Where documents filed are in Urdu or Sindhi or any other language, true translations of the same in English must accompany.
- iv. There should be no overwriting on documents. Where there is any overwriting, a fresh document may preferably be filed, or, if a fresh document is not available, the overwriting must be clearly initialed by counsel in a neat manner.

JUDGE

JUDGE