

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. D-1327 of 2023

Before:

Mr. Justice Amjad Ali Bohio

Mr. Justice Khalid Hussain Shahani

Petitioners : 1. Ameet Kumar Shayam Lal s/o Shri Om Parkash Shri Jairamdas
2. Ambresh Lal Vishest s/o Shri Om Parkash Shri Jairamdas
3. Shadani Darbar Hayat Pitafi, through its incharge Shri Om Parkash Shri Jairamdas
Through Mr. Mukesh Kumar G. Karara, Advocate

versus

Respondents 1,4 & 5 : 1) The Chairman Evacuee Trust Property, Board Court Street Lahore
4) Deputy Administrator Evacuee Trust Property, near Latif Park Old Sukkur
5) Assistant Administrator, Evacuee Trust Property, near Latif Park Old Sukkur
Through Mr. Moizuddin Qureshi, Advocate

The State : Through M/s Nisar Ahmed Abro DAG & Ghulam Abbas Kubar, AAG

Date of hearing : 11.11.2025
Date of order : 11.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Through this writ petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioners assail the order dated 10.03.2023 passed by the learned Chairman, Evacuee Trust Property Board, whereby the reference filed by the petitioners for a declaration that the land bearing Revenue Survey No.538 (2.14) acres, and Survey No.539 (1-17) acres, situated in Deh Hayat Pitafi, Taluka Mathelo, District Ghotki, is non-Evacuee Trust Property, was disposed of with the consent of the parties. The said order was subsequently upheld by the learned Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad, in Revision Petition No. 3-50/2023-Rev, vide order dated 03.08.2023. Both these orders have been impugned in the present petition, with a prayer that the same be set aside and it be declared that the property in question is not Evacuee Trust Property and that all the notifications, notices, and actions issued after the passing of the impugned orders be declared illegal, unlawful, and unconstitutional, and that the respondents be restrained from auctioning, disposing of, selling, or parting with the possession of the petitioners' property in any manner.

2. The genesis of the present controversy dates back to an indefinite period when the agricultural land bearing Revenue Survey Nos. 538 and 539, measuring (2-14) acres and (1-17) acres respectively, situated at Deh Hayat Pitafi, Taluka Mirpur Mathelo, District Ghotki, was originally held by Saint Rajaram Chelo of Saint Mangla Das, who served as the Gadi Nashin (custodian) of the Shadani Darbar Hayat Pitafi, a religious institution dedicated to the Hindu community. Saint Rajaram Chelo maintained complete residence within the territorial boundaries of Pakistan and never at any point in time prior to or subsequent to the cut-off date of 1st January, 1957 migrated to India or any other foreign territory. According to the revenue records of 1936-37 to 1951-52, the property was duly recorded in the name of Saint Rajaram Chelo, and this historical position was consistently maintained in the field books and revenue documents of the period. Upon the death of Saint Rajaram Chelo on 20th March, 1960 at Hayat Pitafi, the property, in accordance with the law of succession applicable to such matters, devolved upon and was inherited by his two legal heirs, namely his wife Shrimati Radhi Bai and his son Bhai Gobind Ram, who subsequently became the successor Gadi Nashin of Shadani Darbar Hayat Pitafi. Each heir received an equal share of fifty percent in the respective revenue survey numbers, and this succession was duly recorded in the mutation registers and revenue records maintained by the revenue department of Taluka Mirpur Mathelo. Subsequently, Shrimati Radhi Bai, widow of Saint Rajaram, being the owner of her undivided one-half share in the aforementioned survey numbers, executed a statement of sale before the Mukhtiarkar of Taluka Mirpur Mathelo on 21st March, 1969, whereby she transferred her entire fifty percent share in Revenue Survey Nos. 538 and 539 in favour of Bhai Gobind Ram. The consequence of this transaction was that the revenue record of rights was mutated in Form XV, thereby consolidating the entire ownership of the property in the sole name of Bhai Gobind Ram.

3. From the year 1976 onwards and continuing until the inception of the present legal controversy, the petitioners contend that the property remained under

the exclusive ownership and control of Bhai Gobind Ram and was utilised, managed, and maintained exclusively for the religious purposes and cultural affairs of the Shadani Darbar Hayat Pitafi, the Hindu community of the locality, and the pilgrimage requirements of the religious institution. However, it is alleged that in a manner wholly inconsistent with the established revenue record and without any lawful authority, the respondent authorities, notwithstanding the documentary evidence on record, illegally caused the property to be shown in the revenue records as property of the Central Government in 1976. In the aforesaid year, the respondents are alleged to have allotted the property to one Sher Muhammad son of Noor Muhammad Arain against what the petitioners describe as an alleged and spurious claim bearing No.1169 dated 26th June, 1976. The petitioners assert that such allotment was made without any basis in law or fact, as the original owner, Saint Rajaram Chelo, had never evacuated from Pakistan, and consequently the property could not, in any conceivable circumstance, be classified as evacuee property or trust property of the Evacuee Trust Property Board.

4. Confronted with the sudden transformation of the character and status of their property, and fearing the loss of their valuable asset, a disciple and adherent of Shadani Darbar named Mr. Sundar Das approached Sher Muhammad with a commercial proposal. Upon mutual agreement, Mr. Sundar Das purchased the property from Sher Muhammad for a consideration of rupees twenty-seven thousand only, and this transaction was formalised through Registered Sale Deed No.137 dated 7th October, 1976 before the Sub-Registrar, Sukkur. The revenue records were subsequently mutated in the name of Mr. Sundar Das vide entry dated 9th October, 1976. The property remained in the ownership of Mr. Sundar Das, who maintained it for religious purposes, until his death in the year 1980. Upon his demise, the property passed to his nine surviving legal heirs in accordance with the law of succession, as reflected in entry No. 36 in the revenue records.

5. The present petitioners, being disciples and close relatives of Saint Rajaram and adherents of the Shadani Darbar, subsequently acquired the property

from the legal heirs of late Mr. Sundar Das through two separate Registered Sale Deeds No.2213 dated 26th June, 2009 and No.3081 dated 7th October, 2009, executed before the Sub-Registrar, Mirpur Mathelo, District Ghotki. The revenue records were thereafter mutated in their respective names vide entries No.201 and 87, thereby establishing their legal title to the property. From the date of their acquisition and continuously thereafter until the present, the petitioners have utilized the property for the exclusive purposes of the Shadani Darbar and the religious and cultural activities of the Hindu community. Since 1984, the property has witnessed annual pilgrimages, visitations from governmental and departmental officials, including representatives of the Evacuee Trust Property Board, and the organization of religious and cultural events, all undertaken at the private expense and by the personal effort of the petitioners and the community. The maintenance, repair, and upkeep of the property have been undertaken exclusively by the petitioners at their own cost, and the property has been managed with utmost devotion and care for religious purposes.

6. The controversy assumed a critical and urgent dimension when, on 25th April, 2020, the respondent authorities caused to be published a proclamation notice in the daily newspaper Ausaf Karachi announcing a public auction of evacuee trust properties located in various cities and districts throughout the country. To the profound dismay and legal injury of the petitioners, their property bearing Revenue Survey Nos.538 and 539 was included in the list of properties proposed for auction and sale. The petitioners, upon learning of this action, immediately approached the respondent authorities and filed applications requesting that the auction proceedings relating to their property be suspended and cancelled. Following consideration of these applications, the respondent authorities acceded to the petitioners' request and suspended the auction proceedings. However, the respondent authorities advised the petitioners that in order to obtain a permanent declaration regarding the status of the property and to seek relief from the threatened auction, the petitioners were required to prefer a reference under Sections 8 and 10 of the Evacuee Trust Property

(Management and Disposal) Act, 1975, before the Chairman, Evacuee Trust Property Board.

7. Pursuant to this advice, the petitioners, on a date prior to the reference proceedings, preferred a reference before the respondent No. 1, Chairman, Evacuee Trust Property Board, bearing Case No.PB/SUK/46/2020, wherein they sought a declaration that the property bearing Revenue Survey Nos.538 and 539 did not fall within the definition or ambit of evacuee trust property and consequently ought not to be treated, managed, or disposed of as such. In their petition before the Chairman, the petitioners advanced detailed factual submissions, setting forth the complete lineage and succession history of the property, the death of Saint Rajaram Chelo in Pakistan and not in India, the inheritance by his legal heirs, the transactions effected on 21st March, 1969 and 7th October, 1976, and their own acquisition through registered sale deeds dated 2009. The petitioners relied upon the argument that since Saint Rajaram Chelo had never migrated to India at any time prior to or after the partition of the subcontinent and the cut-off date of 1st January, 1957, neither he nor his property could be classified as evacuee or evacuee trust property. Furthermore, the petitioners asserted that in the absence of any express trust deed or documentary evidence establishing that the property had been explicitly devoted to charitable, religious, or educational purposes, the mere fact that the property was used for religious purposes by the community could not result in its transformation from private property into evacuee trust property. The petitioners also argued that the revenue records, contemporaneous documents, and the continuous usage by the community established unequivocally that the property had always remained the private property of their predecessors and subsequently their own property.

8. On the other hand, the respondent authorities, represented by the Deputy Administrator and Assistant Administrator of the Evacuee Trust Property, advanced their counter-arguments with considerable emphasis. The respondents contended that the property, as a matter of established fact, had been recorded in the revenue documents and official records of the Evacuee Trust Property Board as

evacuee trust property. The respondents relied upon the entry of the property in the revenue records as constituting the best evidence of its classification as evacuee property. The respondents further contended that the property, having been devolved from a spiritual preceptor (*Guru*) in the person of Saint Rajaram Chelo to his spiritual successor (*Chela*) in the person of Bhai Gobind Ram, and thereafter continuing to be held by successive Gadi Nashins of the Shadani Darbar, necessarily acquired the character of trust property by virtue of such succession. The respondents argued that the provisions of Section 8 of the Evacuee Trust Property (Management and Disposal) Act, 1975 vested in the respondent authorities the jurisdiction and power to determine the status of property as evacuee trust property, and that the entry in the revenue records gave rise to a legal presumption of continuity of such possession and ownership by the Evacuee Trust Property Board from the point of its entry into the revenue record. The respondents further invoked Article 115 of the *Qanun-e-Shahadat* Order, 1984, which provides that no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property, contending thereby that the petitioners, by virtue of their occupation and use of the property, had admitted the title of the Evacuee Trust Property Board over the property and were therefore estopped from challenging such title. The respondents further submitted that during the course of the hearing dated 4th February, 2023, they had proposed and the petitioners had agreed to a settlement whereby the petitioners would be granted a tenancy of the property for the purpose of religious use and activity against a nominal rental, subject to the condition that the property would be used exclusively for religious purposes and that any deviation from such use would result in the reversion of the property to the Evacuee Trust Property Board. According to the respondents, this settlement had been accepted by the petitioners, and the reference should accordingly be disposed of on the basis of such agreed settlement.

9. When the matter came up for hearing before the Chairman, Evacuee Trust Property Board on 4th February, 2023, the learned counsel for the petitioners strenuously contended that the property had never at any point in time been evacuee property or evacuee trust property, as the original owner had not migrated from Pakistan. The counsel for the petitioners argued that the revenue record, while containing an entry relating to the property, could not in itself create or establish the character of the property as evacuee trust property without the concurrent presence of other material evidence establishing the evacuee nature of the property or the owner. The counsel further submitted that the entry in the revenue record, in the present case, appeared to have been made pursuant to an alleged and unlawful allotment to Sher Muhammad in 1976, and that this entry could not therefore be relied upon as a basis for the classification of the property as evacuee trust property. The counsel for the petitioners further submitted that the provisions of Article 115 of the *Qanun-e-Shahadat* Order, 1984 were inapplicable to the circumstances of the case, as the petitioners had never voluntarily admitted the title or tenancy of the respondents, nor had they acquired the property from any tenant of the respondents, but rather had acquired it from the successors of Mr. Sundar Das, who himself had acquired it from Sher Muhammad in circumstances of duress and practical compulsion to protect the property from third-party interests.

10. The counsel for the petitioners also advanced arguments based on precedent, relying upon the Privy Council decisions in *Parma Nand v. Nihal Chand and another* (25 AIR 1938 Privy Council 195) and *Baba Kartar Singh Bedi v. Dayal Das and others* (26 AIR 1939 Privy Council 201), wherein it was held that the mere fact that property had descended from a Guru to his spiritual successor or Chela did not necessarily carry with it the legal consequence that such property had acquired or partook of a religious or trust character, but retained its inherently secular and private character unless and until such property had been explicitly devoted to religious, charitable, or educational purposes through an express trust deed or conclusive documentary evidence. The counsel for the petitioners submitted that the

law applicable in the jurisdiction was settled and established to the effect that in the absence of any express trust deed or documentary evidence evidencing an intention to attach the property to a religious charitable or educational institution or trust, evacuee property could not be held, treated, or declared as evacuee trust property merely on the basis of an entry in revenue or settlement record or on the basis of its usage for religious purposes. The counsel for the petitioners argued that the treatment of the property as evacuee trust property by the respondents was therefore a clear violation and abuse of the powers vested in the respondent authorities and consequently ought to be quashed and set aside.

11. The counsel for the respondents reiterated the arguments advanced in the written reply and submitted that the property, by virtue of its entry in the revenue record and the historical usage by the Gadi Nashins of the Shadani Darbar, must necessarily be treated as evacuee trust property. The counsel argued that any attempt by the petitioners to challenge or rebut the presumption arising from the entry in the revenue record required evidence of an exceptional, conclusive, and overwhelming character. The counsel submitted that the documentary evidence provided by the petitioners, while voluminous, did not attain the threshold of being sufficiently conclusive to rebut the presumption, and that therefore the classification of the property as evacuee trust property ought to be maintained. The counsel further submitted that the respondent authorities, in their benevolence and recognition of the religious usage of the property, had proposed a settlement whereby the petitioners would retain the use and occupation of the property for religious purposes against a nominal rental, and that such a settlement represented a fair and just resolution of the dispute.

12. At this stage, during the hearing held in open court, this Court intervened and offered guidance to both the parties. We observed that a critical and fundamental issue lay at the heart of the controversy which required resolution before any substantive determination could be made regarding the status of the property. The Court noted that the record clearly reflected that the petitioners,

throughout the course of the proceedings before the Chairman and during the hearing held on 4th February, 2023, had not voluntarily given their consent to the settlement proposal nor had they expressly admitted the evacuee or trust nature of the property. We observed that in the absence of the voluntary, informed, and unambiguous consent of the petitioners, it would be manifestly unjust, procedurally irregular, and contrary to the principles of natural justice and fairness to impose any arrangement upon them whereby the property would be treated as evacuee trust property or whereby they would be relegated to the status of licensees or tenants of the property. We also observed that a determination regarding the status of a property and the consequential implications arising therefrom could not be made without the full participation, hearing, and express consent of all parties interested in the property.

13. Recognising the justice and equity inherent in the observations and guidance offered by this Court, and upon careful reflection of the factual and legal dimensions of the controversy, both the petitioners and the respondents have signified, at the conclusion of the hearing and subsequent thereto, their mutual and voluntary consent to refer the entire matter back to the Chairman, Evacuee Trust Property Board for a fresh and de novo hearing and determination of the matter in accordance with the applicable statutory provisions, the rules framed thereunder, and the principles of natural justice. Both parties have acknowledged that such a course would permit a thorough, impartial, and comprehensive examination of all the factual and legal issues at stake in the matter, unfettered by any prior orders or determinations, and would ensure that the final determination is made with the full participation and informed consent of both parties. The petitioners have explicitly communicated that they have not given consent to any settlement or to the treatment of the property as evacuee trust property, and the respondents have acknowledged the necessity and propriety of permitting a fresh determination of the matter before the Chairman.

14. In view of the substantial agreement between the parties and the mutual desire to obtain a just and equitable resolution of the dispute through a de novo determination, this Court deems it appropriate, proper, and in the best interests of justice that the impugned order dated 10th March, 2023 passed by the Chairman, Evacuee Trust Property Board and the impugned order dated 3rd August, 2023 passed by the Secretary, Ministry of Religious Affairs and Interfaith Harmony be set aside and rendered wholly of no legal effect or consequence. Both the said orders and judgments are hereby quashed, set aside, and declared to be void and of no legal worth. The constitutional petition is accordingly disposed of with the following directions and orders.

15. *Firstly*, both the petitioners and the respondents shall appear and present themselves afresh before the Chairman, Evacuee Trust Property Board within a period of thirty days from the date of the pronouncement of this order for a de novo hearing and determination of the matter in strict accordance with the applicable statutory provisions of the Evacuee Trust Property (Management and Disposal) Act, 1975, the rules framed thereunder, and the principles of natural justice and fair dealing. *Secondly*, the Chairman, Evacuee Trust Property Board shall conduct the de novo hearing with an open and unbiased mind, wholly uninfluenced and unfettered by the previously set-aside orders passed by the Chairman on 10th March, 2023 and by the Secretary on 3rd August, 2023. *Thirdly*, during the course of the said de novo hearing, the Chairman shall afford both the petitioners and the respondents full, fair, and equal opportunity to present their respective cases, produce all relevant documentary evidence, advance their legal arguments and submissions as they deem fit and proper, and to be heard in full. *Fourthly*, the Chairman shall conduct a detailed and thorough examination of all material placed on record, including but not limited to the revenue documents, field books, mutation registers, registered sale deeds, certificates of death, the historical record of the property, the entries in the revenue records from 1936 to the present date, and all the submissions, pleadings, and arguments of both parties. *Fifthly*, the determination to be made by the

Chairman shall be based solely and exclusively on the merits of the case as revealed and substantiated by credible evidence, applicable law, and equitable principles, and shall not be influenced by any extraneous considerations or prior determinations. Sixthly, the Chairman shall issue a detailed reasoned judgment and order embodying the findings of fact, conclusions of law, and the ultimate determination regarding the status of the property. The said judgment and order shall be communicated to both parties in writing within a reasonable time following the conclusion of the hearing, not exceeding a period of ninety days. Seventhly, both parties shall be afforded the right of appeal or revision in accordance with law against the determination to be made by the Chairman in the de novo proceedings.

16. In the premises, the constitutional petition is allowed and disposed of in the terms aforesaid, and both the order dated 10th March, 2023 passed by the Chairman, Evacuee Trust Property Board and the order dated 3rd August, 2023 passed by the Secretary, Ministry of Religious Affairs and Interfaith Harmony, stand set aside and quashed in their entirety.

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