

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

S. M. A. No. 160 of 2002

Date _____ Order with signature of Judge _____

Present :

1. Chief Justice
2. Mr. Justice Nadeem Akhtar

1. For orders on CMA No.355/2013 (U/O XXXVIII Rule 6 CPC) :

For hearing of:

2. CMA No.14/2013 (U/S 383 of the Succession Act, 1925) :
3. CMA No.202/2011 (U/S 151 CPC) :
4. CMA No.238/2009 (U/O XXXIX Rules 1&2 CPC) :
5. CMA No.239/2009 (U/S 383 of the Succession Act, 1925) :
6. CMA No.1065/2011 (U/S 151 CPC R/W Section 383 of the Succession Act, 1925) :
7. CMA No.1095/2011 (U/O XXXIX Rules 1&2 CPC) :
8. CMA No.48/2010 (U/S 151 CPC) :
9. CMA No.630/2011 (U/S 12(2) CPC R/W Sections 264 & 266 of the Succession Act, 1925) :

Petitioner : Syed Mohsin Ali through Ms. Khadija Kulsoom
And Mr. Arif Khan, Advocates.

Applicant : Evacuee Trust Property Board through
Mr. Ashiq Ali Anwar Rana, Advocate.

Applicant : Syed Manzoor Ahmed through
Mr. Pervez Khan Tanoli, Advocate.

Applicants : Abdul Ghani Yousuf & Others through
Mr. Kashif Paracha, Advocate.

Objectors : Abdul Sattar through his L.Rs., Abdul Rasheed
and Abu Bakar, through Raja Aftab Ahmed Khan,
Advocate.

Date of hearing : 23.04.2013.

ORDER

Nadeem Akhtar, J. – Through this order, we intend to dispose of all the listed applications. This petition was filed by the petitioner in the testamentary and intestate jurisdiction of this Court under Section 278 of the Succession Act, 1925, for the grant of Letters of Administration in respect of four (04) immovable properties purportedly left by Ghulam Nasir Khan (**the deceased**), who passed away at Karachi on 28.07.1986. It was the case of the petitioner that the deceased died intestate and was issueless ; he was survived by a widow named Safia Begum and a sister Saira Begum ; the said widow and sister of the deceased also died in the years 1987 and 1998, respectively ; and, the sister of the deceased was survived by a son (the petitioner) and a daughter Shahida Begum, who were the only surviving legal heirs of the deceased. On the basis of the above averments, it was prayed by the petitioner that Letters of Administration be granted in his name having effect throughout the Province of Sindh in respect of the following four immovable properties purportedly left by the deceased :-

- (i) Plot No.182, A.M. (770 sq. yds.), situated at Nichalodas Vazirani Road, Off, Shahrah-e-Iraq, Karachi ;
- (ii) Plot No.183 A.M. (781 sq. yds.), situated at Nichalodas Vazirani Road, Off, Shahrah-e-Iraq, Karachi ;
- iii) Plot No.200 A.M. (772 sq. yds.), situated at Nichalodas Vazirani Road, Off, Shahrah-e-Iraq, Karachi ; and,
- (iv) Plot No.201 A.M. (770 sq. yds.), situated at Nichalodas Vazirani Road, Off, Shahrah-e-Iraq, Karachi.

2. The matter came up before a learned single Judge of this Court on 14.10.2002, when it was held that the petitioner's contention that he and his sister Shahida Begum were the only legal heirs of the deceased and were entitled to inherit the above properties, was not correct. It was observed that at the time of his demise, the deceased was survived by his widow who was entitled to 1/4th share in the estate of the deceased, and after her death, her share devolved upon her legal heirs. It was further observed that the petitioner and her sister were not the legal heirs of the widow of the deceased, therefore, they could not claim any interest in her share / estate. In view of the above, the Nazir of this Court was directed by the learned single Judge vide order dated

14.10.2002 to effect mutation in the name of the petitioner to the extent of 1/2 of the properties and in the name of his sister Shahida Begum to the extent of 1/4 of the properties. It was further ordered that the legal heirs of the widow of the deceased will be entitled to the remaining 1/4 of the properties, and in case no such heir was found, the same be escheated to the Government. With the above observations, findings and directions, this petition was disposed of on 14.10.2002. At the request of the petitioner, the Nazir was once again directed by another learned single Judge vide order dated 08.04.2008, to approach the Board of Revenue Sindh in accordance with law to effect the mutation of the properties in the names of the petitioner and his sister Shahida Begum.

3. Four (04) separate applications were filed for recalling / setting aside the aforementioned orders passed by the learned single Judges on 14.10.2002 and 08.04.2008, which are listed for hearing. The said four applications are CMA No.239/2009, filed by the Evacuee Trust Property Board ; CMA No.630/2011, filed by Abdul Ghani Yousuf and four others ; CMA No.1065/2011, filed by Syed Manzoor Ahmed ; and, CMA No.14/2013, filed by Abdul Sattar through his L.Rs. and two others. Since most of the grounds urged in these four applications are similar in nature and same relief has been sought therein, the same are being dealt with and disposed of together through this order. As the learned single Judges who had passed the impugned orders dated 14.10.2002 and 08.04.2008 were no more available in this Court, it was ordered on 18.10.2010 that this matter would be heard by a Division Bench of this Court.

4. **CMA No.239/2009** was filed by the Evacuee Trust Property Board (ETPB). Mr. Ashiq Ali Anwar Rana, the learned counsel for ETPB, submitted that all the four properties were leased out on 01.09.1967 by ETPB to M/s Ehsan Corporation through its Managing Director Mr. Ghulam Nasir Khan (the deceased), for 99 years under the Scheme prepared under Section 16(A) of the Displaced Persons (Compensation & Rehabilitation) Act, 1958 ; however, in *Shri Tikamdas Hiranand and 3 others V/S Divisional Evacuee Trust Committee, Karachi Zone, Karachi and 4 others, 1973 SCMR 315*, the Hon'ble Supreme Court was pleased to declare that ETPB was not competent to lease out properties for 99 years under the aforesaid Scheme ; in pursuance of the said judgment, all leases for 99 years, including the 99 years' lease of the four properties granted to M/s Ehsan Corporation, were cancelled / revoked by ETPB ; and, such cancellation / revocation was intimated to M/s Ehsan Corporation by ETPB vide its letter dated 26.09.1974, requiring them to surrender the revoked / cancelled leases. Regarding the four properties in question, the learned counsel submitted that it was declared by the Hon'ble Supreme Court in *The Evacuee Trust Property Board and others V/S Haji Ghulam Rasool Khokhar and others, 1990*

SCMR 725, that all the said properties were Evacuee Trust Properties as they were attached to religious, educational and charitable trust ; and, it was further held in 1990 SCMR 725 that such declaration would not have the effect of its own force to annul the transfer already made to the respondents / private parties in the said case, who were not the present petitioner, his sister and / or their predecessors.Regarding property No.AM-182, it was submitted by the learned counsel for ETPB that the transfer of the said property was validated in favour of Mistry Maqsood Ahmed and others by the ex-Chairman ETPB vide his judgment dated 30.01.1996. Similarly, the transfer of property No.AM-201 was validated by the ex-Chairman ETPB in favour of Sultan Ahmed Pakistani vide order dated 12.10.1994. According to the learned counsel, *suo moto* Revisions are pending in respect of properties No. AM-182 and AM-201, and the matter of property No.AM-182 is also pending with NAB. Regarding properties No.AM-183 and 200, it was stated that the same were under the management and control of ETPB with 32 tenants therein, who are paying rent regularly to ETPB.It was also contended that the fact about the grant of the Letters of Administration in this matter came to the knowledge of ETPB on 06.03.2009, when the Nazir approached the Board of Revenue Sindh to effect the mutation in favour of the petitioner and his sister in compliance of the impugned orders passed in this petition. The learned counsel submitted that neither the deceased nor the petitioner and his sister are entitled to any of the properties in question, and that the Letters of Administration obtained by the petitioner is liable to be revoked. **CMA No.238/2009** was also filed by ETPB praying that, till the disposal of their CMA No.239/2009, the petitioner be restrained from “using” the Letters of Administration obtained by him fraudulently ; and, the Nazir be restrained from effecting the mutation in the names of the petitioner and his sister.

5. **CMA No.1065/2011** was filed by Syed Manzoor Ahmed seeking the same relief, that is, for recalling / setting aside the orders passed in this petition on 14.10.2002 and 08.04.2008. Mr. Pervez Khan Tanoli, the learned counsel for Syed Manzoor Ahmed, adopted and supported the submissions made on behalf of ETPB. He further submitted that Plot No.182 was allotted in the year 1964 vide P.T.O. dated 03.07.1964 by the Government of Pakistan through the Ministry of Rehabilitation in favour of Abdul Sattar and Mistry Maqsood Ahmed ;and, ETPB remained in litigation with the allottees up to the level of Supreme Court, where the title of the allottees was finally decided whereafter the Chairman ETPB validated the transfer in favour of the said allottees vide order dated 30.01.1996. The learned counsel further submitted that Syed Manzoor Ahmed is the bonafide purchaser of an area of 620 sq. yds. out of PlotNo.182, which was purchased by him from one Abu Bakar, the successor-in-interest of the said allottees ; and, the said Abu Bakar and Syed Manzoor Ahmed jointly applied to KBCA for NOC for

construction of hotels and shopping centre, namely, Al-Meezan and Al-Saddam Hotels and Al-Sadat Shopping Centre, which was granted and the said projects were accordingly constructed. It was further contended that the deceased was not the owner of this plot, nor was the 99 years' lease in respect thereof subsisting when the impugned orders were passed in this petition ; the Nazir had reported in this matter that mutation in favour the petitioner and his sister could not effected as the properties had already been mutated in favour of other persons ; and, as per the letter dated 07.11.2009 issued by ETPB, there was no *suo moto* Revision and / or NAB inquiry in relation to Plot No.182. It was submitted by the learned counsel that Syed Manzoor Ahmed came to know about the impugned orders on 29.10.2009 through Suit No.1484/2009 filed by the present petitioner before this Court against him and several other persons. The learned counsel pointed out that vide order dated 30.01.2013, the plaint in the said Suit No.1484/2009 filed by the present petitioner has been rejected, a copy whereof has also been placed on record. It was prayed by Syed Manzoor Ahmed that both the impugned orders be recalled / set aside. **CMA No.1095/2009** was also filed by Syed Manzoor Ahmed praying that, till the disposal of his CMA No.1065/2009, the petitioner be restrained from implementing the impugned orders. **CMA No.48/2010** was filed by Syed Manzoor Ahmed seeking exemption from filing original documents, and **CMA No.202/2011** was filed by him to file the relevant record of Suit No.1484/2009 in order to establish the date of knowledge about the impugned orders.

6. **CMA No.630/2011** was filed by Abdul Ghani Yousuf and four others, under Section 12(2) CPC read with Sections 264 and 266 of the Succession Act, 1925, praying that the Letters of Administration granted vide impugned order dated 14.10.2002 may be revoked to the extent of property No.AM-201. Mr. Kashif Paracha, the learned counsel for these applicants, adopted and supported the submissions made on behalf of ETPB. He further submitted that Plot No.201 was allotted to Mst. Khilafat-un-Nisa, in whose name P.T.O. was issued by the Settlement Department on 15.08.1961 in consideration of the payment made by her on 14.06.1961 and 15.06.1963 through her Compensation Book, and the P.T.D. was issued in her name on 02.06.1981 ; after her demise, the said plot devolved upon her real son Sultan Ahmed Pakistani Qureshi, and Letters of Administrations to this effect were granted in his favour ; and, the first four applicants of this application purchased Plot No.201 from the said Sultan Ahmed Pakistani Qureshi, and the fifth applicant is the sub-lessee of shop / room Nos.416 to 420 (1,045.59 sq. ft.). The learned counsel also relied upon 1990 SCMR 725 (supra), wherein the said plot was declared by the Hon'ble Supreme Court as the Evacuee Trust Property. Regarding the date of knowledge, the learned counsel submitted that the applicants came to know about the

impugned orders in March 2011, when applicant No.1 went to the office of the Registrar for execution of a Sub-Lease. Specific allegations of misrepresentation and fraud were raised in this application against the petitioner that both the impugned orders were obtained by him by playing fraud upon and committing misrepresentation with this Court.

7. **CMA No.14/2013** was filed by Abdul Sattar through his L.Rs., Abdul Rasheed and Abu Bakar, with the same prayer, that is, for recalling / setting aside the orders passed in this petition on 14.10.2002 and 08.04.2008. Raja Aftab Ahmed Khan, the learned counsel for the above named applicants, adopted and supported the submissions made on behalf of ETPB and Syed Manzoor Ahmed. He supported the case of Syed Manzoor Ahmed, and confirmed that Syed Manzoor Ahmed was the bonafide purchaser of 620 sq. yds. out of Plot No.182, which was sold to him by Abu Bakar. It was submitted by the learned counsel that hotels and shopping centre do exist and are functioning on the said plot, wherein the present applicant and / or his sister have no right, title or interest whatsoever.

8. The learned counsel for the parties was heard by us at length, and the voluminous record of this case was also examined by us carefully. The applications filed by some of the applicants under Section 383 of the Succession Act, 1925 (the Act of 1925), have been treated by us as applications under Section 263 of the Act of 1925, as Section 383 (ibid) falling under Part-X of the Act of 1925 relates to revocation of Succession Certificates. Whereas, Section 263 of the Act of 1925 specifically deals with revocation or annulment of the grant of Probate or Letters of Administration. For the sake of convenience and ready reference, Section 263 (ibid) is reproduced here :-

“ 263. Revocation or annulment for just cause.

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. Just cause shall be deemed to exist where :--

- (a) the proceedings to obtain the grant were defective in substance; or*
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ; or*
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*
- (d) the grant has become useless and inoperative through circumstances; or*

(e) *the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.*
.....”

9. Ms. Khadija Kulsoom, the learned counsel for the petitioner conceded that the order passed by ETPB, whereby the 99 years' leases of the properties in question in favour of the deceased were revoked / cancelled by ETPB, was not challenged either by the deceased or by the petitioner and his sister. As such, not only was the said order of revocation / cancellation of the leases accepted by the deceased, but the same also attained finality 28 years prior to the filing of this petition. The learned counsel for the petitioner also conceded that the lease money under the said leases was never paid either by the deceased or by the petitioner and his sister, and they never came into possession of any of the properties in dispute. The record shows that the purported leases were revoked / cancelled by ETPB on 26.09.1974 in compliance of the declaration given by the Hon'ble Supreme Court in 1973 SCMR 315 (supra) that ETPB was not competent to lease out properties for 99 years under the Scheme prepared under Section 16(A) of the Displaced Persons (Compensation & Rehabilitation) Act, 1958. The record further shows that all four properties in dispute were declared as the Evacuee Trust Properties by the Hon'ble Supreme Court in 1990 SCMR 725 (supra). As a result of the declarations given by the Hon'ble Supreme Court in the authorities cited above, the 99 years' leases in favour of the deceased in respect of all the four properties in question stood revoked / cancelled on the one hand, and on the other hand, all the said properties were declared as the Evacuee Trust Properties.

10. In view of the above position, the deceased ceased to have any right, title or interest in any of the four properties as soon as the above declaration was given by the Hon'ble Supreme Court in 1973 SCMR 315 (supra). Therefore, none of the said properties were available as the estate of the deceased for distribution amongst his legal heirs. Due to this reason, this petition, or for that matter any proceeding, could not be filed in respect of any of the properties in dispute. As such, the petitioner had no *locus standi* to file this petition, or to seek Letters of Administration in respect of any of the said properties. In our opinion, the entire claim of the petitioner was based on misrepresentation of facts, and he deliberately committed fraud upon this Court by pleading such facts which were not correct even to his own knowledge, and also by concealing such facts which were true, but the same were not disclosed by him before this Court.

11. Section 263 of the Act of 1925 specifically deals with such cases wherein the grant of probate or Letters of Administration may be revoked or annulled, provided a just cause is shown for their revocation or annulment. It is to be noted that this Section shall apply to cases where probate or Letters of Administration had already been granted, as it pre-supposes such grant. "Just cause" has been enumerated in the Explanation contained in this Section. After examining the facts and circumstances of this case and appreciating the arguments advanced by the learned advocates for the parties, it is our considered opinion that this case squarely falls under Explanations (a), (b), (c) and (d) of Section 263 (ibid), as discussed below :

- (a) Under Explanation (a), it would be a just cause if the proceedings to obtain the grant were defective in substance. We have already held that none of the properties were available as the estate of the deceased for distribution amongst his legal heirs ; and, the petitioner had no *locus standi* to file this petition, or to seek Letters of Administration in respect of any of the said properties. Therefore, the proceedings were defective in substance from the very inception.
- (b) Explanation (b) provides that it would be a just cause if the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case. It has been held by us that the entire claim of the petitioner was based on misrepresentation of facts, and he deliberately committed fraud upon this Court by pleading such facts which were not correct even to his own knowledge, and also by concealing such facts which were true, but the same were not disclosed by him before this Court.
- (c) Under Explanation (c), if the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently, it would amount to a just cause. Our finding that the grant was obtained by the petitioner through misrepresentation and fraud, is sufficient to be just cause. However, if it is assumed that the petitioner had applied for the grant in ignorance or inadvertently, even then in view of the facts and circumstances of this case, it would be a just cause for revocation or annulment of the grant.
- (d) Finally, Explanation (d) provides that it would be a just cause if the grant has become useless and inoperative through circumstances. In view of the declarations given by the Hon'ble Supreme Court in 1973 SCMR

315 and 1990 SCMR 725 (supra), and the revocation / cancellation of the leases in favour of the deceased in pursuance of such declarations, the grant in favour of the petitioner has indeed become useless and inoperative.

12. An objection was raised on behalf of the petitioner that the applications for setting aside / recalling the impugned orders and revocation or annulment of the Letters of Administration, were barred by time. In this context, we would like to refer to the case of *Mt. Sheopati Kuer V/S Ramakant Dikshit and others*, AIR (34) 1947 Patna 434, wherein it was held by a learned Division Bench of the Patna High Court that mere delay in applying for revocation of grant of Letters of Administration is no bar to revocation in the absence of any finding of acquiescence or waiver. The petitioner has not alleged that the applicants / intervenors / objectors had acquiesced or waived their right to seek revocation or annulment of the grant. In any event, the applicants / intervenors / objectors have specifically mentioned the dates when the impugned orders and grant came to their knowledge. We have no doubt in our minds that Section 263 (ibid) vests a judicial discretion in the Court to revoke or annul a grant for just cause. Further, the words "*defective in substance*" appearing in Explanation (a) to Section 263 (ibid), undoubtedly imply that the defect must be of such a nature as to substantially affect the regularity, correctness and execution of the previous proceedings. We are of the firm opinion that the facts and circumstances of this case are of such nature that the Court can initiate proceedings *suo moto* for revocation or annulment of the grant, as it cannot be allowed to remain in the field in view of the declarations given by the Hon'ble Supreme Court in the authorities cited above. The applications filed by the applicants / intervenors / objectors therefore must succeed, and the Letters of Administration granted in favour of the petitioner is liable to be revoked / annulled by setting aside / recalling the impugned orders.

13. **CMA No.355/2013** has been filed by the petitioner, alleging that property No.182 is in occupation of illegal occupants. He has prayed that the said property be sold by the Court before announcement of judgment / order. Suffice it to say that this application is baseless, incompetent and malafide. Be that as it may, this application is liable to be dismissed in view of our above findings.

14. As a result of the above discussion, **CMA No.239/2009** filed by the Evacuee Trust Property Board, **CMA No.630/2011** filed by Abdul Ghani Yousuf and four others, **CMA No.1065/2011** filed by Syed Manzoor Ahmed, and, **CMA No.14/2013** filed by Abdul Sattar through his L.Rs. and two others, are allowed. Consequently, the orders passed in this petition on 14.10.2002 and

08.04.2008, are hereby set aside / recalled, and the grant of Letters of Administration in favour of the petitioner is hereby revoked / annulled. CMA No.238/2009 filed by ETPB, and CMA Nos.1095/2009, 48/2010 and 202/2011 filed by Syed Manzoor Ahmed, stand disposed of in view of this order. The petitioner's CMA No.355/2013 is hereby dismissed.

15. The petitioner is directed to surrender before the Nazir of this Court within fifteen (15) days hereof, the original as well as the certified copies of the revoked / annulled Letters of Administration, and all the original as well as the true copies of the title documents of all the properties in question, including the leases in respect thereof. Upon receipt of the above, the Nazir is directed to cancel / deface the same and to keep them in his safe custody. In case the petitioner fails to comply with this order, the Nazir shall refer the matter to the Court for further orders immediately upon expiration of the stipulated period of fifteen (15) days.

The office is directed to immediately send a copy of this order to the Nazir for compliance.

Chief Justice

Judge
