

IN THE HIGH COURT OF SINDH, KARACHI

Misc. Appeal No.36 of 1991

[Khalifo Haji Muhammad Hanif since deceased through his legal representatives Mst. Dhanyani and others Vs. Chief Administrator Auqaf Sindh, at Hyderabad]

Misc. Appeal No.37 of 1991

[Khalifo Haji Muhammad Hanif since deceased through his legal representatives Mst. Dhanyani and others Vs. Chief Administrator Auqaf Sindh, at Hyderabad]

Misc. Appeal No.38 of 1991

[Khalifo Haji Muhammad Hanif (Appellant No.1) since deceased through his legal representatives Mst. Dhanyani and nine others and Appellants No.2 and four others Vs. Chief Administrator Auqaf Sindh, at Hyderabad]

Date of hearings : 15.05.2024, 22.05.2024, 27.05.2024 and 29.05.2024

Appellant No.1
(in Misc. Appeals No.36 and 37 of 1991)
[Khalifo Haji Muhammad Hanif (Appellant No.1) since deceased through his legal representatives_

- i) Mst. Dhanyani-Wife
- ii) Ahmed-Son
- iii) Ghulam Muhammad-Son
- iv) Umer Ali-Son
- v) Ali Mohammad-Son
- vi) Mst. Aisha-Daughter
- vii) Mst. Fatima-Daughter
- viii) Mst. Halima-Daughter
- ix) Mst. Basran-Daughter
- x) Mst. Hajran-Daughter]

Appellants No.2 to 4
(in Misc. Appeal No.38 of 1991)
[Abdul Rahim, Ahmad, Ghulam Muhammad, Umer Ali and Ali Muhammad]

: Through Mr. Ravi Kumar and Parshant Kumar, Advocates.

Respondent
[Chief Administrator Auqaf Sindh at Hyderabad]

: Through M/s. Khalid Javed, Munawar-uz-Zaman Juna and Yousuf Makda, Advocates.

: Mr. Ziauddin Junejo, A.A.G, Sindh along with M/s. Mumtaz Ali Channa, Chief Administrator, Auqaf Sindh and Ghulam Muhammad Shaikh, Manager Auqaf, Sindh.

J U D G M E N T

Muhammad Faisal Kamal Alam, J: The Title Miscellaneous Appeals are preferred against the Judgment dated 31.03.1991, handed down by the learned District Judge, Thatta, dismissing the Petitions preferred by Appellants and validated the taking over of different Properties by the Respondent-Waqf Department under separate Notifications, which are part of the Record. Earlier these Appeals were decided by a common Judgment (dated 19.02.1996) by this Court, accepting the Appeals of the Appellants, but when the same was challenged before the Hon'ble Supreme Court, the Decision of this Court was set-aside and the Apex Court remanded the matter with certain observations in particular to consider the Exhibits-48, 62, 71, 72, 95, 96, 97 and 98, so also the Declaration of 02.06.1959, made by the present Appellants.

2. In Miscellaneous Appeal No.36 of 1991, the Appellants have challenged the Notification dated 29.04.1977 (at page-95) of the Court File, whereby the Chief Administrator Auqaf, Sindh, while exercising the power under Section 6 of the Waqf Properties Ordinance, 1961, **(the Governing Law)**, took over and assumed the Administration, Control, Management and Maintenance of Dargah of Shah Yakik (Jia Shah), situated in Shah Bunder, Thatta, along with the attached Schedule Properties, viz_

“1. Dargah Shah Yakik alongwith one Hotel and Three Shops near Dargah, Agricultural Land 19-27 acres situated in Deh Kutcha Marhoo Taluka Shah Bunder.

(i) Langar Khana (ii) 3 Rooms (iii) 2 Mosques (iv) hand pumps 2 (v) Well 1 (vi) Wazoo Tank 2 (vii) Wall Clock 1 (viii) Tube Lights 2 (ix) Loud Speaker set 1 (x) atromax (xi) rooms for Zaireens.”

3. The relevant facts of Miscellaneous Appeal No.37 of 1991, the subject impugned Notification is of 18.08.1979, issued in respect of Survey No.133, Deh Katcho Marho, Tapo Chohar Jamali, Taluka Shah Bunder District Thatta, which is claimed to be owned by the Appellants and his

predecessor-in-interest, which built a Wooden Structure on the Old Grave of Saint Tillan Shah alia Abdullah Shah, and it is averred that it was never a Waqf Property, neither any Waqf was created at any time and thus it could not have been taken over by the Respondent.

4. The impugned Notification (dated 18.08.1979) is at page-93 of the Court File and relevant portion whereof is reproduced herein under for ease of reference_

“NOTIFICATION

No.AUQ(CAA)-MISC-79/850.---In exercise of the powers vested in me under Sub-Section (1) of Section 7 of the Sind Waqf Properties Ordinance, 1979, I, Karamullah A. Memon, Chief Administrator of Auqaf, Sind Hyderabad, do hereby assume the control, administration, maintenance and management of the Dargah Hazrat Abdullah Shah (Jalali) alias Tilan Shah, situated in Deh Katcho Marho, Tapo Chohar Jamali, Taluka Shah Bunder, District Thatta, alongwith the properties attached thereto, including the cash boxes and the credit balance, if any.”

5. It is stated by the Appellants’ Counsel that while the Petitions were *sub judice*, Respondents issued another illegal Notification dated 30.04.1979 (Subject matter of Miscellaneous Appeal No.38 of 1991), the relevant portion whereof is reproduced herein under_

“PART 1

**BY THE CHIEF ADMINISTRATOR OF AUQAF SIND
Hyderabad, the 28th April, 1979**

“NOTIFICATION

No. AUQ(CAA) MISC:/79-446.---In exercise of the power vested in me under sub-Section (1) of Section 70 of the Sind Waqf Properties Ordinance, 1979, I, Karamullah A. Memon, Chief Administrator of Auqaf Sindh, assume and take over the administration, control, superintendence and management of the Waqf Properties mentioned below along with easement and rights attached or appointment thereto. This will mean and deemed to include all the properties, with constructions including Shops, Cabins, Wells, Musafarkhanas, Langerkhanas, Hotels, Mosques, Graveyards and moveable fittings fixtures and cash boxes etc.

This Notification would supersede the previous notifications bearing No.AUQ(CAA) Misc./74-578 dated 25th April, 1977 and AUQ (CAA) Misc:/74-616 dated 5th May 1977.

SCHEDULE

<i>Survey Nos:</i>	<i>Area Area Chunta</i>	<i>Remarks</i>
<i>103</i>	<i>4-05</i>	<i>Deh Kacho Marho Tapo Chohar Jamali, Taluka Shah Bunder, District Thatta.</i>
<i>114</i>	<i>5-38</i>	
<i>115</i>	<i>5-02</i>	
<i>116</i>	<i>3-18</i>	
<i>118</i>	<i>2-35</i>	
<i>349</i>	<i>3-14</i>	
<i>398</i>	<i>7-11</i>	
<i>404</i>	<i>1-25</i>	
<i>113</i>	<i>3-10</i>	
<i>397</i>	<i>0-01</i>	
<i>399</i>	<i>2-12</i>	
<i>400</i>	<i>2-22</i>	
<i>401</i>	<i>1-11</i>	
<i>402</i>	<i>1-15</i>	

*and 1 ½ acre adjacent area to S.No.103 of Village
Shah Yakeek and following boundaries :-*

*North : S. No.103
South : Sikni Plots
East : Corners of S. Nos.398 and 103
West : S. No.399.”*

*KARAMULLAH A. MEMON
Chief Administrator of Auqaf Sind, Hyderabad”*

6. On 24.04.2024, the Legal Team of the Appellants have made a Statement that they are not pressing these Appeals to the extent of Dargah, Graveyard, Wazoo Khana and that portion of the Subject Property, which is exclusively used for religious purpose but will pursue their claim regarding other Part / Portion of the Subject Properties, including Agricultural Land, viz. at Shops, which do not fall within the ambit of Governing Law, viz. The Sindh Waqf Properties Ordinance, 1979.
7. The Appellants’ Counsel has also filed Written Synopsis along with the Case Law (dated 15.05.2024), which is part of the record. In Paragraph- 1-A of this Synopsis, it is stated that Dargah Shah Yakik and Dargah Tilan Shah / Abdullah Shah along with Mosque, Wazoo Khana, public Graveyard outside the compound wall and two other Mosques, one Eidgah, situated on the portions of Survey Nos.103 and 133, Deh Katcho Marho, Taluka Shah Bunder, District Thatta, are Waqf Properties as reiterated in their Statement

recorded in the above Order. It is mentioned in the Written Synopsis that now the Appellants are only agitating their claims in all these Appeals so also stated in the earlier Judgment of this Court (*of 19.02.1996, set-aside and remanded by the Hon'ble Supreme Court*), in respect of Properties, lands, structure, including Rice Mill, as mentioned in Paragraph (B) and (C) of the Written Synopsis, which for the clarity is reproduced herein under_

“(B) Agricultural land bearing S. No.113, 114, 115, 116, 118, 349, 397, 399, 400, 401 and 402 is agriculture land owned and possessed by Appellants since ancestors.

“(C) Non Agriculture land / Residential / Commercial land remaining portion of S. No.103 and 133, 398 and 404 and village of Shah Yakik admeasuring 1 and half acre over which hundreds of rooms shops, Musafarkhannas, Houses, Autaqs, one Rice Mill and one market are constructed. The Appellants are claiming to be owners of above Properties shown in (b) and (c).”

8. Following Points of determination are framed?
 - (i) Whether the Properties falling in above two categories (B) and (C) are not Waqf Properties?
 - (ii) Whether to the extent above, the impugned Notifications are illegal, void and *mala fide*?

9. Following Case Law cited by learned Counsel for the Appellants_

- 1) **2005 PLD 585 Karachi**
[*Mst. Mohsina Saeed Tauni vs. Muhammad Asif and others*]
- 2) **PLD 2012 Supreme Court 897**
[*Chief Administrator Auqaf and others vs. Diwan Sheikh Taj-ud-Din and others*]
- 3) **2005 SCMR 1859**
[*Arshad Khan vs. Mst. Resham Jan and others*]

10. Summary of the above **Case Law** is that if a party abstains from giving evidence in his own case about the facts concerning his personal knowledge, the presumption would be that the truth lay on the other side (this Case Law is relied upon to augment his argument that had the two further witnesses from Respondent's side been examined, the factual stance of the Respondent's would have been damaged).

The Hon'ble Supreme Court, in the case of **Tajuddin**, has maintained the Judgment of learned District Court and the Lahore High Court, setting-aside the Notification, issued by the Auqaf Department for taking over the Property attached with the Shrine, considering it to be a Waqf Property. After considering the ownership documents, it was held that the Property was a grant (Inam/Reward) to the Predecessor-in-interest of private Respondents by the Nawab of Bahawalpur, in view of the consideration that the said grantee would maintain the said Shrine. Since no Trust was created nor the said Property was dedicated for any of the purposes mentioned in the above Statute, therefore, it was held that the Notification was a nullity.

Presumption of the truth is attached with the Revenue Record, although it is rebuttable; mutation itself does not confer or extinguished any right or title, but is an evidence of such right.

11. Case Law cited by learned Counsel for the Respondent_

PLD 1991 Supreme Court 102

*[Chief Administrator of Auqaf vs. Muhammad Ramzan and others]-
Ramzan Case.*

Above **Ramzan Case** relied upon by the learned Counsel for Respondent (*ibid*), has a chequered history, because in the first round of litigation, the Respondent did not challenge the Notification, issued by the petitioner (of the reported Judgment), viz. the Chief Administrator Auqaf, in terms of the hierarchy mentioned in the West Pakistan Waqf Properties

Ordinance, 1961, and directly filed the Writ Petition, which was dismissed, and the Hon'ble Supreme Court remanded the case, whereafter the second round of litigation started from the Trial Court (before the learned District Judge), which after framing the Issues and considering the evidence, dismissed the Petition under Section 7 of the above Law, which was over turned in Appeal by the learned Lahore High Court and ultimately the Hon'ble Supreme Court decided the *Lis* by the majority of two and one. It is ruled that when a Petition is preferred against the Notification to administer and take over the Waqf Property, then the initial burden to prove that property is not a Waqf Property is on the person, who filed the Petition for Declaration to that effect. After considering the documentary evidence, including Khasra Girdawari, Jamabandi, it was concluded that the property in question was a Waqf Property attached with the Shrine/Khanqa.

12. Documents mentioned in the Remand Order of the Hon'ble Supreme Court, as mentioned in the foregoing Paragraphs are also considered along with the testimonies.

13. The predecessor-in-interest of the Appellant, Khalifo Haji Muhammad Hanif, testified in Petition/Civil Miscellaneous Applications. He has stated that Survey Nos.113, 114, 115, 116, 118, 349, 400, 401 and 402 of Deh Katcho Marho, Tapo Shah Bunder District Thatta, are his lands and they are in cultivating possession, whereas Survey No.397 is a Government Land, situated between the above Agriculture Lands; Survey No.404 (Deh Katcho Marho) is Government Land and there is a Graveyard in it. Survey No.398 (Deh Katcho Marho) was granted to the above Appellant by the Deputy Commissioner Thatta, which is in his possession, whereat a Rice Mill, Musafarkhannas (Traveller Inns), Shops, Hotels, Autaqs (Sitting places), have been constructed. Land of Survey No.399 is in the joint possession of Khalifo Haji Hanif and his Family Members, also

containing Houses, Sitting Places, Tube Wells. Has deposed that the Shrine of Shah Yakik is around 700 years old. Has asserted in his examination-in-chief that all the Properties are his and his families' personal properties purchased from their funds; categorically stated that these properties were never remained as Waqf Properties.

14. Exhibits-47 and 67 (pages-71 and 115 of R&P of M.A. 38 of 1991) are Forms-II dated 08.05.1976 and 22.12.1980 [respectively], although showing the Name of the Appellant, but, it is stated that an Area of Seven Acres and 11 Guntas from Survey No.398 as a Permanent Grant is given for 'the extension of the Goth [Village] Shah Yaqiq'. These Documents do not confer any ownership rights upon the Appellant, so also admitted in his cross-examination.

His cross-examination contained apparent contradictions, damaging his overall stance. With regard to the other Survey numbers (*ibid*), he has stated that most of them were gifted by his father, but to a further question, he states that he does not remember, as it was long time back; the Witness was not certain about possession of these properties. He has admitted that Graveyard is situated at Survey No.103. Admits that it is a public Graveyard. With regard to Survey No.397, he expressed his ignorance that whether it is his property or not. **Admits** that Survey No.398 whereat the Rice Mill exists and the Shrine of Shah Yaqiq are adjacent to each other and Survey No.398 is a **Government Land granted for the Village purpose**.

With regard to the Declaration (discussed in the foregoing paragraphs), to a question, the witness has replied, that he cannot say if the Subject Survey numbers were disclosed in the Declaration under Land Reforms Ordinance, as his and Family's Properties.

15. On behalf of the Appellant, his witness Allah Dino son of Jumo testified [Exhibit No.87, Page-191 of R & P of Civil Miscellaneous Application No.14 of 1979]. Mainly attempted to corroborate the evidence

of Appellant; *inter alia*, deposed about the surrounding area of the Shrine Shah Yaqiq, at Eastern side of which another Village Hanif is situated, whereat Rice Mill and Travelers Inns / Musafir khanas exist, besides agricultural lands, all belonging to the Appellants; although, as per the evidence of the Appellant, the Rice Mill is in Village Shah Yaqiq. In cross-examination, he contradicted himself by admitting that Musafarkhanas have been constructed after taking over the Properties by the Respondent Auqaf Department. Did not deny the suggestion that people attend Maila [Gatherings] at the Shrine after its taking over by the Respondent Department.

16. Mr. Irshad Ahmed, Manager Auqaf Department testified, as Exhibit-92. In his examinant-in-chief, he has stated that annual gathering is arranged at Survey Nos.113, 114, 115 and 116, and the House of present Appellant, although is in Village Shah Yaqiq, but are outside the above survey numbers. Produced number of Documents to show that the lands in question are the Government Lands and not of the Appellant.

Cross-examination of the Official Witness mainly revolved around the fact of taking over of the Shrines/Dargahs [*supra*] and adjacent properties, including Musafir khanas. To a question, he has replied, that he has no other documentary evidence other than those produced in the evidence, to show that the Properties/Lands in disputes are Public Waqf Properties. Admits that Musafarkhanas in Village Shah Yaqiq belong to brothers and relatives of the Appellant, namely, Haji Ismail, Ghulam Hyder, Mian Ahmed and others. Admits that 700 / 800 Musafirkhanas belong to the Appellant, whereas, 15/16 Shops are in possession of Ismail and other Shops are in possession of the Appellant.

However, the evidence of the official Witness could not be shaken regarding the relevant Documents [mentioned below] in his cross examination.

17. Exhibit-62 is the Permission of the Deputy Commissioner to Mukhtiarkar to allocate the Government Land falling in Survey No.398 admeasuring 7-11 Acres for the extension of Village Shah Yaqiq, as the population was increasing. Exhibits-71 and 72 are Khasra Girdawari Register for the years 1967 to 1980, that is, details of crops cultivated at the lands. In this regard, columns relating to the name of Farmers / Growers are mostly blank except on page-3 (of Exhibit-72), name of Abdul Raheem is mentioned, who had cultivated different portions of the above mentioned lands.

Exhibit-95 produced by the official witness of Respondent (Irshad Ahmed) is the Correspondence of Barrage Officer to Respondent Department, dated 22.01.1978, stating that Survey No.103 (4-5 Acres), 398 (7-11 Acres) and 404 (1-25 acres) is shown in the Official Record as a reserved land for Graveyard, whereas remaining Survey numbers, are not shown as Government Land in the Land Grant Register; the other Correspondence attached with this Exhibit, issued by the Office of the Assistant Commissioner (dated 01.04.1978), states that there is a fraudulent change in Survey Nos.115 to 175 and the matter was referred to the Deputy Commissioner.

Exhibit-96, produced by the official witness of Respondent, namely, Irshad Ahmed, is the record of Survey No.103, showing the status of a Government Land. Exhibit-97 is the Form VIII-A. Exhibit-98 is Form-VII of Deh Katcho Marho.

The Declaration of 02.06.1959 (No.L.R.1959) is Exhibit-99 [as mentioned in the Remand Judgment of the Hon'ble Apex Court, *ibid*]. This Document only contains a Declaration of the Appellant in respect of his

land-holding in District Thatta, viz. 923-37 Acres in Taluka Shah Bandar and 290-17 Acres in Taluka Ghorabari. It does not mention that whether survey numbers in question were owned by the Appellant at the relevant time, and thus, in my considered view, this Declaration does not advance the stance of the Appellant with regard to his land holding involved in the present Appeals.

Official Witness has also produced Exhibit-105, which is a Correspondence of Revenue Department in response to the query of Respondent, wherein it is stated that Survey Nos.109, 115, 105, 106, 107, 398 and 899 are questionable, as there are cuttings without authentication. **This assertion of witness could not be contradicted in his cross-examination.**

18. Since initial burden is on the Appellant to prove the stance in respect of the Waqf Property, as ruled by the Hon'ble Supreme Court in **Ramzan Case (*supra*)**, which onus the Appellant has failed to discharge. Conversely, the Case Law relied upon by the Appellant's Legal Team [*supra*], is distinguishable, from the facts of the present Appeals, *inter alia*, therefore, non-production of the two Official Witnesses, in view of the above documentary evidence, was not fatal to the case of Respondent and the best evidence rule as envisaged in Article 129 of the Qanun-e-Shahadat Order [1984], does not apply here.

19. Therefore, except for the above Musafir Khanas situated in Shah Yaqiq Village, belonging to the Appellant and Relatives, as **admitted** by the Official Witness, the other Lands in question and structure thereat cannot be held to be owned by the Appellant. To this extent Misc. Appeal No.38 of 1991 is accepted. **Whereas**, the ownership status of the SHOPS [*ibid*] is not available in the Evidence, regarding which is it admitted by the Official Witness, that these Shops are in possession of the Appellant and his Relatives. If these Shops are held by the Appellant and the Relatives

under some Valid entitlement, including, Lease or tenancy, then, these Shops are also excluded from the ambit of the impugned Notifications.

20. Conclusion of the Point for Determination, is that only the above Musafir Khanas and Shops [subject to what is decided above] are excluded from the impugned Notifications and the same are not the Waqf Property; consequently, Notification dated 30.04.1979, subject matter of Miscellaneous Appeal No.38 of 1991, to the extent of the above Two categories of the Properties, is illegal and set-aside.

21. Resultantly, the above Two Categories of the Properties be handed over back to the present Appellants [being Legal Heirs of Khalifo Haji Hanif]. Miscellaneous Appeal No.38 of 1991 is partly allowed.

22. Accordingly, Miscellaneous Appeals No.36 and 37 of 1991 are dismissed.

JUDGE

Karachi.

Dated: 08.08.2025.

M.Javid PA