

*Order Sheet*  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO  
C.P. No. D-783 of 2024  
(*Fazal Ullah Alavi and others v/s.*  
*Federation of Pakistan through Secretary, Religious Affairs and others*)

Date	Order with signature of judge
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Before:  
***Mr. Justice Muhammad Saleem Jessar.***  
***Mr. Justice Nisar Ahmed Bhanbhro.***

Petitioners:	Fazal Ullah son of Ghulam Ali Alavi and others Through Mr. Muhammad Farooq, Advocate.
Respondents No.1-2:	Evacuee Trust Property Board Through Mr. Imdad Ali Mashori, Advocate.
Respondent No.3-7:	Deputy Commissioner Shikarpur and others Through Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.

Date of Hearing:	21.08.2025
Date of Order:	04.09.2025

**ORDER**

Nisar Ahmed Bhanbhro J.- Through this petition, the petitioners have claimed the following relief(s):

- (i). *To declare the impugned letter dated 25.10.2024 issued by Respondent No.2 as void, ab initio, illegal and without jurisdiction.*
- (ii). *To declare and direct that the survey numbers 359, 360, 362, 367, 368, 369, 373, 374, 376 and 381 total admeasuring 29-02 acres at Deh Bekari, Tapo Jano, District Shikarpur, Sindh are not evacuee trust property.*
- (iii). *To suspend the operation of the impugned letter dated 25-10-2024 (annexure P/17) issued by Respondent No.2 till the final decision of this petition.*
- (iv). To permanently restrain the Respondents, their agents, their employees, and/or anyone claiming under them from disturbing and/or taking over peaceful possession of the said land from the petitioners and their agents.

2. Mr. Mohammed Farooq, learned counsel for the petitioners contended that the predecessor in interest of the Petitioners namely Ahmed Ali Alvi purchased landed property bearing survey numbers 359, 360, 362, 367, 368, 369, 373, 374, 376 and 381 total admeasuring 29-02 acres of Deh Bekhari Tapo Jano District Shikarpur from Hindu owners Wehroo and others in year 1966 through Registered Sale Deed. He contended that the ownership rights in the property were transferred in the name of Mohammed Ali by way of inheritance. Subsequent owner Mohammed Ali gifted six acres and four ghuntas of land to her daughter Mst. Ghulam Fatima @ Abida; the wife of petitioner No.1 and mother of petitioner No.2 to 5. Muhammad Ali passed away in August, 1986, leaving behind two legal heirs, Aftab Ahmed Alavi (son) and Ghulam Fatima (daughter), who became owners of the property under right of inheritance. He argued that Ghulam Fatima purchased the land measuring 10-39 acres at Deh Bekhari on 18.06.1991 vide entry No.41 of Form-VII, from her brother Aftab Ahmed Alavi's share. He further argued that the Petitioners were peacefully enjoying the possession and cultivation of the land since year 1966, however, in year 2015 the Mukhtiarkar Revenue declared entry in record of rights suspicious and sent a reference to Board of Revenue, Sindh through Deputy Commissioner Shikarpur for cancellation of the entry in favor of the Petitioners. The Member Board of Revenue vide order dated 30.04.2024 dismissed the reference. He contended that the Assistant Commissioner Evacuee Trust Property Board (ETPB) Sukkur / Larkana (Respondent No 2) vide impugned letter dated 25-10-2024 sought assistance of the Deputy Commissioner Shikarpur for demarcation of the land under management and control of ETPB, which included the survey numbers 359, 360, 362, 367, 368, 369, 373, 374, 376 and 381 purchased by the elders of the Petitioners. He contended that the respondent No.2 has issued the impugned letter with mala fide intentions and ulterior motives in order to usurp the lands of the petitioners and the said impugned letter is liable to set aside. He contended that after the promulgation of Sindh Act No.XVII of 2021; the ETPB working under the setup of Federal Government had no power or authority to interfere into the Evacuee Trust Properties of Sindh Province. He contended that Revenue Department had furnished a report regarding the Hindu Trust Properties before Honorable Supreme Court, in the said report the survey numbers owned by the Petitioners were not mentioned as Evacuee Trust Property. He prayed for setting aside the impugned notices of demarcation.

3. Mr. Imdad Ali Mashori, learned counsel for the Respondents No.1 & 2 controverted the submissions of the Petitioners' Counsel, contended that the property under dispute was Evacuee Trust Property. He argued that the property was owned by Panchayat Goshala Chela Charasdas. The property was placed under Evacuee Trust Poll after partition and transferred into the management and Control of ETPB, vide Gazette Notification dated 16.01.1976. He argued that the Title Documents were managed by the Petitioners, were bogus. He contended that the owners of the adjoining land were trespassing into the ETPB

lands, therefore, a request was made to the Deputy Commissioner Shikarpur for demarcation. He contended that Petition was not maintainable under the law and liable to be dismissed.

4. Mr. Liaqat Ali Shar, Learned Additional Advocate General, Sindh contended that the Petitioners seek declaration as to the title in the property. He argued that the property under dispute was Evacuee Trust Property. Petitioners have disputed the ownership of ETPB through instant petition, which is a question of fact and cannot be resolved under writ jurisdiction of this Court. He contended that the Petition was not maintainable, and liable to be dismissed with costs.

5. Heard arguments of the learned counsel for the parties and perused the material made available before us on record.

6. Petitioners have challenged letter dated 25.10.2024 through which the ETPB has sought assistance of the Revenue Authority for demarcation of the lands of Evacuee Trust Property of Panchayat Chela Charasdas Goshal an Evacuee Trust Property. Per claim, the predecessor in interest of the Petitioners purchased the property from its Hindu Owner through registered sale deed in year 1966, which was mutated in their favor, therefore, the claim of the ownership by the Respondent ETPB was without any justification. Contrary to the claim of the Petitioners, the Respondents No 1 and 2 asserted that the property under dispute was Trust Property of Panchayat Goshala Chela Charasdas and transferred to their management and control by the Government of Pakistan Vide notification dated 19.01.1976.

7. Besides the challenge to the demarcation proceedings, the Petitioners seek declaration that the landed property subject matter of the present proceedings was not Evacuee Trust Property. For the purposes of demarcation, Revenue Officers have been authorized under the provisions of Sindh Land Revenue Act, 1967 (SLR Act) to define and fix the limits of a deh or any holding and for the purpose of indicating those limits erect the boundary mark. The demarcation of the land is carried out to determine the extent and boundaries of any portion of the land. The demarcation exercise may be undertaken on the request of any person interested in the lands. In case of mere fixation of boundaries, where there existed no dispute as to the title, Section 117 of the SLR Act, empowered the Revenue Officers to define the boundaries of any land by way of demarcation and erect boundary marks to define the limits of the deh, survey number as the case may be. While conducting demarcation proceedings the Revenue Officer cannot determine the rights of parties as to the ownership. Section 117 of SLR, Act reads as under:

**117. Power of Revenue Officers to define boundaries.**

(1) A Revenue Officer may, for the purpose of framing any record or making any assessment under this Act, or on the application of any person interested, define the limits of a deh, or of any holding, field or other

portion of a deh, and may, for the purpose of indicating those limits, require boundary marks to be erected or repaired.

(2) In defining the limits of any land under sub-section (1), the Revenue Officer may cause boundary marks to be erected on any boundary already determined by, or by order of, any Court or Revenue Officer or any Forest Settlement Officer appointed under the Forest Act, 1927 (Act XVI of 1927), or restore any boundary mark already set up by, or by order of, any Court or any such Officer

8. In case of demarcation, which was necessary to determine the rights of the parties to the extent of area in the respective lands, the Revenue Officer is obligated to issue notice to the parties having rights or interests in the land requiring their attendance to indicate the limits of their rights or interests, the Revenue Officer shall proceed to conduct the demarcation in presence of parties, as envisaged under section 118 of the SLR Act. Section 118 reads as under:

**118. Surveys for purposes of preparation of records.-**

(1) When any land is being surveyed in pursuance of rules under clause (c) of section 55 or under section 116, any Revenue Officer directing the survey may, by notice or proclamation, require all persons having rights or interest in the land to attend personally or through authorized agent, and indicate, within a specified time, by temporary marks of a kind to be described in the notice or proclamation, the limits of those rights or interests.

(2) If a person to whom the notice or proclamation is addressed fails to comply with the requisition, he shall be liable, at the discretion of the Revenue Officer, to a fine which may extend to fifty rupees.

9. Once the boundary of the land is settled, it shall be determinative of the rights of the land-owners to their respective holdings/ area, as enunciated under section 122 of the SLR, Act 1967, which reads as under:

**122. Effect of the settlement of boundary:-**

(1) The settlement of a boundary under any of the foregoing provisions of this Chapter shall, subject to the provisions of Chapter XIII, be determinative—

(a) of the proper position of the boundary line or boundary marks, and

(b) of the rights of the land-owners on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

(2) Where a boundary has been so fixed, the Collector may, under rules to be framed in this behalf by the Board of Revenue with the previous approval of Government, evict any land-owner who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

10. The order passed by Revenue Officer for the demarcation or fixation of the boundary of any land is appealable before higher Forum as articulated under section 161 of the SLR Act. Provisions of Section 122 of the SLR Act itself provided that the effects of the settlement of the boundary would be determinative subject to the provisions of Chapter XIII (Section 161 – 167) of SLR Act. Impliedly, in case of any order passed by the Revenue Officer regarding the demarcation of land, aggrieved party may avail the remedy of appeal provided under section 161 of the SLR Act, which reads as under:

**161. Appeals**

(1) Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely—

- (a) to the Assistant Collector of the first grade when the order is made by the Assistant Collector of the second grade; and
- (b) to the Collector when the order is made by an Assistant Collector of the first grade;
- (c) to the Commissioner, when the order is made by a Collector;
- (d) to the Board of Revenue only on a point of law, when the order is made by Commissioner:

provided that—

- (i) when an original order is confirmed on first appeal, a further appeal shall not lie;
- (ii) when any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him shall be final.

Explanation-

(1) [Omitted]

(2) An order shall not be confirmed, modified or reversed in appeal unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of or against the order appealed from.

(3) No Revenue Officer other than the Board of Revenue shall have power to remand any case in appeal to a lower authority.

11. Bare reading of the provisions of Section 117, 118 and 122 of SLR Act make it vivid and crystal clear that any order passed by the Revenue Officer authorized in that behalf for fixing boundaries of the land, will be appealable and such an order shall be effectuated in terms of the orders passed in appeal, review or revision as the case may be. The law clearly provides a remedy of appeal and revision to the aggrieved party, in such an eventuality, it is always appropriate that a person aggrieved of the demarcation proceedings should first prefer an appeal before the appellate authority instead of invoking the Constitutional jurisdiction of this Court. In the case of simple demarcation proceedings, the rights of the parties to the extent of holding (area) are determined, therefore, writ jurisdiction of this Court would not be available against the orders of the Revenue Authority.

12. The case of the Petitioner did not relate to ordinary demarcation proceedings, wherein claimants of different properties seek demarcation of holdings for identification of respective properties. The moot question involved in the present lis, is the ownership of the parties over the property. The Petitioners claim ownership rights over the land on the basis of Registered Sale Deeds evidencing that their predecessor in interest purchased the property under valid sale consideration in year 1966, through a registered sale deed. Contrary to the claim of Petitioners, the Respondent No 2 relied upon the Gazette Notification dated 19.01.1976, whereby the management and Control of the Property was transferred to ETPB being evacuee trust property of Goshala. In any event, the demarcation of the property will not finally determine the question of title. Essentially the bone of contention between the parties appeared to be ownership of the land, which to the admission of the parties is in occupation of Petitioners. The title of the petitioners has not been disputed by revenue authorities. It is also an admitted position that even after the institution of present proceedings none of the parties have challenged the ownership of either side before appropriate forum. The Petitioners, through prayer clause (b) of the Petition have sought declaration that the property under dispute was not ETPB property. This Court under its writ jurisdiction cannot decide the ownership rights of the properties, which involved factual controversy.

13. Under the scheme of law, the Evacuee Trust Property (Management & Disposal) Act, 1975 (ETP (M&D) Act), the evacuee trust properties are defined as the properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool, constituted under section 7 of the ETP (M&D) Act; which reads as under:

**7. Trust Pool.** For the purposes of management, maintenance and disposal of evacuee trust property a Trust Pool consisting of the following shall be constituted, namely:

- (a) all evacuee trust property which immediately before the commencement of this Act formed part of the Trust Pools constituted under the Acts;
- (b) any evacuee property declared under section 8 to be evacuee trust property;
- (c) Government property or any other property exchanged with any evacuee trust property;
- (d) any property purchased or constructed by the Board;
- (e) sale proceeds of any evacuee trust property;
- (f) all profits and income received or derived from any evacuee trust property;
- (g) all rents and other amounts received, realized or recoverable in respect of evacuee trust property.

14. The jurisdiction of civil Court has been ousted under section 14, in the matters concerning the ETP (M&D) Act for which an officer appointed under the act was empowered to determine. For the determination of the status of property as Evacuee Trust Property (ETP), the Chairman ETPB has been conferred exclusive jurisdiction. Section 14 reads as under:

**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. The Chairman ETPB has been conferred exclusive jurisdiction under section 8 of the ETP (M&D) Act to decide the question whether any property is a qabooli (private) land or evacuee trust property. Section 8 reads as under:

**8. Declaration of Property as evacuee trust property.**

(1) If a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any Court.

(2) If the decision of the Chairman under sub-section (1) is that an evacuee property is evacuee trust property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.

(3) If a property is declared to be evacuee trust property under sub-section (2), the Chairman may pass an order canceling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof:

Provided that no declaration under sub-section (2) or order under sub-section (3) shall be made or passed in respect of any property without giving the persons having interest in that property a reasonable opportunity of being heard.

16. Careful examination of record revealed that Respondent No 2 moved an application dated 25.10.2024 seeking demarcation of the ETPB property. The Respondent No 2 in the impugned letter asserted that property bearing survey number numbers 359, 360, 362, 367, 368, 369, 373, 374, 376, 381 and others of Deh Bekhari, Tapo Jano, District Shikarpur, was Evacuee Trust Property of Goshal Chela Charasdas and was under management and control of ETPB. The rights of the Petitioners were put at stake, as the demarcation proceedings aimed at ousting them from possession.

17. No record was made available before this Court to evince that property was part of the Trust Pool under any of the Act in force prior to the promulgation of ETP(M&D) Act. The Respondents have not placed on record any material to elicit that any proceedings were held under the provisions of section 8 for placing the party under Trust Pool. Contrary, the Petitioners have placed on record registered sale deeds of year 1966 and per revenue record the property was owned by the Petitioners. Therefore, it was incumbent upon the ETPB to first decide the question as to whether the property subject matter of the present petition was evacuee trust property or not then seek its demarcation. Learned Counsel for the Respondents No 1 & 2 when confronted, frankly conceded to the fact that no proceedings under section 8 of the ETP (M&D) Act ever took place before issuance of Gazette Notification dated 19.01.1976. This admission on the part of ETPB supported the stance of the Petitioners that the intended demarcation proceedings aimed at nothing but to deprive them of the right of ownership and lawful possession.

18. The Writ jurisdiction of this Court is an extraordinary remedy and cannot be invoked as panacea for all grievances, particularly when an equally efficacious, alternative, and adequate statutory remedy exists. The doctrine of exception of remedies operates as jurisdictional bar precluding litigant from resorting to Constitutional remedies under Article-199 of the Constitution without first availing remedy under a statutory mechanism expressly provided by the law. The underlying rationale of this doctrine is to prevent litigants from circumventing established statutory frameworks thereby ensuring that the extraordinary writ jurisdiction of the High Court is not diluted into an ordinary appellate forum.

19. The theory of an alternative remedy under Article-199 of the Constitution hinges upon two core considerations substantive sufficiency and comparative efficacy. A remedy cannot deem adequate if it fails to provide relief matching the nature and extent of the grievance. The doctrine of exception in constitutional intervention remains permissible in two scenarios, firstly; for the structural absence or substantive nullity of alternative remedies and secondly; the extraordinary circumstances where normally adequate remedies prove insufficient due to case specific factors.



20. We are conscious of the fact that mere filing of an application before a forum which is competent to entertain the matters pertaining to demarcation would not in any manner offend the rights of the Petitioners. If the Authorized Officer passed any order adverse to the interest of Petitioners they would have the right of appeal against such order. In the present proceedings the question of ordinary demarcation of lands is not involved, as the parties have conflict of interest in the same property. The root points involved in the matter are whether in absence of any proceedings under section 8 of the ETP (M&D) Act, the property could be placed under trust pool or not and whether the demarcation proceedings if conducted, would result in loss of the possession and ownership rights of the Petitioners. In such circumstances the exercise of demarcation without determination of the rights of the parties would be an exercise in futile and abuse of the process of law.

21. The exception doctrine operates as a narrowly tailored, requiring compelling justification to prevent abuse while ensuring access to justice when statutory channel fundamentally fails. Where the statutory procedure of obtaining relief proves unduly cumbersome, or where the attendant delay and expense would either render the alternative remedy inefficacious or defeat its very purpose then exercise of extraordinary jurisdiction under Article-199 of the Constitution can be invoked. Since the Respondents intended to carry out demarcation of a property whose status was yet not clear and if the demarcation proceedings were allowed to happen based upon the sole claim of proprietorship of the Respondents, the same might result in dispossession of the Petitioners, thus no adequate remedy would be available to the Petitioners to challenge the actions which posed potential threat to their rights and interests.

22. This principle has been inevitably affirmed by the Hon'ble Supreme Court in case of Dr. Sher Afgan Niazi v. Ali S Habib reported as 2011 SCMR 1813 wherein Learned Apex Court has laid down principles to invoke writ jurisdiction of this Court, it was held as under:

*“9. The learned High Court will have to consider in each case the following tests to be applied to determine the adequacy of the relief:--*

- (i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199.*
- (ii) If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that*

*relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.*

*(iii) In practice the following steps may be taken:-*

- (a) Formulate the grievance in the given case, as a generalized category;*
- (b) Formulate the relief that is necessary to redress that category of grievance;*
- (c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;*
- (d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;*
- (e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, and that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break clown under the strain;*
- (f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;*
- (g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199. If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due*

23. Learned Counsel for the Petitioners has raised another important question of law that on enactment of Sindh Evacuee Trust Properties (Management and Disposal) Act,

2019, the provisions of ETP (M&C) Act, 1975 to the extent of province of Sindh has been repealed. In the advent of the 18<sup>th</sup> amendment in the Constitution of Islamic Republic of Pakistan, 1973, the management and control of Evacuee Trust Property became a provincial subject. The Provincial Assembly of Sindh enacted The Sindh Evacuee Trust Properties (Management and Disposal) Act, 2019, whereby the provisions of the ETP (M&C) Act, 1975 are repealed to the extent of province of Sindh. The Repeal and Savings clause contained in section 32 of the Sindh Act reads as under:

**32. *Repeal and Savings.*** (1) *The provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975 (Act No XIII), to the extent of the Province of Sindh are hereby repealed.*

(2) *Notwithstanding the repeal under sub-section (1), anything done, action taken, appointment made, order passed, rule or scheme made, notification or instructions issued, or purporting to have been done, taken, made, passed or issued by or under the repealed Act, immediately before the commencement of this Act, shall be deemed to have been validly done, taken, made, passed or issued under this Act and shall have effect accordingly, unless altered, amended, modified or repealed by the competent authority*

24. We have been informed that though the legislation for management and control of evacuee trust properties was made, but the Federal Government has not yet transferred the management and control to the Provincial Government. We will not render our findings on the issue, same being purely a policy matter falls outside the domain of this Court. The perusal of the Sindh ETP (M&D) Act 2019 revealed that its provisions were pari materia to the provisions of the Federal Act, by virtue of section 8 of the Sindh Act powers to determine status of the property were vested with the Chairman ETPB and section 14 of the Sindh Act ousted the jurisdiction of Civil Court to adjudication the matters falling in the domain of the Sindh ETP Act.

25. In the instant case, both parties claimed a valid title of ownership against the same property, without prejudice to the rights of parties, which may be got adjudicated before the proper forum. Till the determination of the status of the property as Evacuee Trust Property or otherwise and due course of law may follow pursuant to the outcome of such proceedings, we are of the considered view that the demarcation proceedings in absence of proper and valid adjudication of rights of ownership would amount to abuse of the process of law.

26. Admittedly, the Petitioners were never heard before issuance of notification dated 19.01.1976, in particular when the record of right maintained by the Revenue Department supported the stance of petitioners, least, the same has offended the fundamental rights of the Petitioners as to the fair trial enshrined under article 10 – A, to be dealt in accordance with law articulated under article 4 and as to the property enshrined under article 23 of the Constitution of Islamic Republic of Pakistan of 1973. Since the Revenue Authority and ETPB were discharging its functions in connection with the affairs of the Province and Federation, therefore, any action offending the fundamental rights of the individuals was amenable to writ jurisdiction of this Court under article 199 of the Constitution for judicial review.

27. For what has been discussed herein above, we are of the candid consideration that the Petitioners have made out a case for indulgence of this Court for judicial review in its powers conferred under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973. Consequently, this Petition is partly allowed. The demarcation proceedings sought through letter dated 26.09.2024 to the extent of the property bearing survey numbers 359, 360, 362, 367, 368, 369, 373, 374, 376 and 381 total admeasuring 29-02 acres at Deh Bekhari, Tapo Jano, District Shikarpur, are declared to be without lawful authority, thus set at naught. The parties are left at liberty to get adjudication of the ownership rights before forum available under the law, if so advised and may proceed further in line with the outcome of such proceedings.  
The petition stands disposed of in above terms.

JUDGE

JUDGE

Manzoor

Larkana

Dated 04.09.2025

Approved for reporting