

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

CONSTITUTION PETITION NO. D- 5974 OF 2024

Petitioners

(1) Shahla Omer : through M/s. Abid S. Zuberi, Sana Q. Valika &
(2) Muhammad Riaz : Muhammad Umer Lakhani, Advocates

CONSTITUTION PETITION NO. D- 1242 OF 2026

Petitioners

Mehboob Ellahi : through Mr. Haq Nawaz Talpur &
& others : Najam Nek, Advocates

Respondents

(1) Province of Sindh : Through M/s. Faizan Hussain Memon
Addl. A. G. Sindh
NAB : Through Ms. Hina Ashraf & Syed Manzoor Ali,
Special Prosecutor NAB

Date of hearing : 16.04.2026

Date of Judgment : 18.06.2026

ORDER

Nisar Ahmed Bhanbhro, J.- We propose to decide the fate of captioned petitions through this common order as they involve a common question of law and facts.

2. In nut shell, the Petitioners have challenged a cancellation note dated 09.10.2024 on entry No 277 and others in revenue record made by Assistant Commissioner Revenue Korangi in compliance to a letter dated 27.09.2024 issued by Additional Director (Staff) National Accountability Bureau Karachi without giving a right of hearing to the Petitioners.

3. Mr. Abid S. Zuberi, Learned counsel for the petitioners appearing in C.P. No.D-5974 of 2024 submits that the Petitioners are owners of 1 Acre

and 20 Ghuntas in Survey Nos. 337 and 337/1, Deh Dih, Taluka Korangi, Karachi, deriving title through a chain of registered conveyances originating from Abdul Rehman, the original allottee; that Abdul Rehman was allotted 27 acres, including the Subject Land, through an Allotment Order dated 10.10.1996 issued by the Secretary (RS&EP) under the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. The Allotment Order has never been challenged or set aside. Pursuant to a consent order dated 07.07.1997 passed in C.P. No. 1315 of 1997, the allotment was implemented and Entry No. 277 dated 14.07.1997 was recorded in favour of Abdul Rehman. On 19.03.1998, Abdul Rehman created third-party rights by executing a sale agreement in favour of M/s Rupali Builders for 26.20 acres before any restraint order was passed. During subsequent proceedings, the existence of these third-party rights was disclosed and acknowledged. Thereafter, in C.P.L.A. No. 1841 of 2001, the Hon'ble Supreme Court directed protection and implementation of the disclosed third-party interests, pursuant to which the Subject Land was demarcated, assigned Survey No. 337, and corresponding revenue entries were recorded. The Subject Land thereafter passed through a series of registered transactions and mutations, ultimately vesting in the Petitioners. The Petitioners' title was also recognized in Suit No. 611 of 2006, which was decreed in their favour on 06.04.2012. The Subject Land was subsequently regularized on 06.04.2016 under Section 5 of the Sindh Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001, after payment of the assessed amount. He further contended that although the consent order dated 07.07.1997 was recalled on 12.12.2001 in proceedings under Section 12(2) CPC, the Petitioners maintain that the recall affected only the implementation order and not the independent Allotment Order or the rights subsequently recognized and implemented pursuant to the Supreme Court's directions. In September and October 2024, the Respondents issued impugned letters and recorded a Cancellation Note, on Entry No. 277 and all subsequent revenue entries on the premise that the recall of the order dated 07.07.1997 extinguished the Petitioners' title. The Petitioners contend that the impugned action is without jurisdiction, was undertaken without notice or hearing, and is based on the erroneous assumption that their title originated solely from the recalled order of 07.07.1997, whereas their rights flow from the subsisting Allotment Order, Supreme Court directions, registered conveyances, judicial recognition, and statutory regularization. He

therefore prayed to set aside the cancellation note put on entry No 277 and subsequent entries.

4. Mr. Haq Nawaz Talpur, learned counsel for the petitioner in CPD No. 1242 of 2026 submits that the Petitioners are lawful owners of land measuring 1 Acre and 20 Ghuntas in Survey Nos. 337 and 337/1, Deh Dih Tappo Ibrahim Haideri, Korangi, Karachi ("Subject Property"), deriving title through a documented chain originating from Abdul Rehman s/o Muhammad Suleman. In September–October 2024, the revenue authorities, acting on communications from NAB, canceled Entry No. 277 and subsequent revenue entries relating to the Subject Property without notice, hearing, or a reasoned order. The Subject Property formed part of a larger tract allotted to Abdul Rehman under the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through an allotment order dated 10.10.1996, which remains valid and unchallenged. The allotment was implemented pursuant to a High Court consent order dated 07.07.1997, resulting in Entry No. 277 dated 14.07.1997 in favour of Abdul Rehman. On 19.03.1998, Abdul Rehman lawfully transferred rights in the allotted land to M/s Rupali Builders, creating protected third-party interests through which the Petitioners subsequently acquired title. The High Court and Supreme Court, in proceedings arising from C.P. No. 1315 of 1997 and C.P.L.A. No. 1841 of 2001, recognized and protected the pre-existing third-party interests created before the restraining order of 20.10.1998. Pursuant to Supreme Court directions, the Subject Property was demarcated, assigned Survey No. 337, and ownership was recorded in the official revenue record. Through registered sale deeds, sanctioned mutations, and lawful subdivisions, the property was subsequently recorded as Survey Nos. 337 and 337/1. Although the consent order dated 07.07.1997 was recalled on 12.12.2001, the recall order remained suspended by the Supreme Court and never attained operative finality. The title of the Subject Property was judicially affirmed in Suit No. 611 of 2006, which was decreed on 06.04.2012, and the judgment remains final and unchallenged. The Subject Property was also processed under the Sindh Urban Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001, and the prescribed dues were duly paid. He therefore prayed to set aside the impugned cancellation note by allowing instant petition.

5. Learned Additional Advocate General assisted by learned Special Prosecutor for the respondent National Accountability Bureau contended that this Petition is not maintainable as the Petitioners allegedly obtained title through fraud, misrepresentation, concealment of material facts, and transactions carried out in violation of court orders. Consequently, no enforceable rights can arise from such transactions. The proprietary rights claimed by the Petitioners originate from proceedings in C.P. No. D-1315 of 1997, the consent order whereof was recalled on 12.12.2001. Therefore, all subsequent claims based upon that order lack legal foundation. The land in question is State land, and the Petitioners have no lawful ownership or proprietary rights therein. The revenue entries and mutations relied upon by the Petitioners are alleged to be unlawful and liable to cancellation. The Petitioners' chain of title is claimed to be tainted by illegality, rendering all subsequent transactions, transfers, mutations, and subdivisions ineffective in law. Reliance is placed upon judicial proceedings, including Suit No. 889 of 1998 and related litigation, to contend that the allotment and subsequent transfers do not confer valid title upon private persons. That the actions taken by NAB and the revenue authorities to cancel the impugned revenue entries were lawful and justified, being aimed at restoring State land and rectifying illegal entries in the revenue record. It is further argued that the Petitioners are not entitled to relief under Article 199 of the Constitution as disputed questions of title, fraud, and ownership are involved, requiring determination through appropriate proceedings. Accordingly, the Respondents seek dismissal of the Petition and uphold the impugned actions taken against the revenue record of the subject property.

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

7. This case has a checkered history. Petitioners in both petitions have purchased land from Abdul Rehman who was allotted land against claim under Displaced Persons Rehabilitation and Compensation scheme by the Board of Revenue Sindh in year 1996. Upon allotment of land, the Secretary to Government of Sindh, Land Utilization Department vide its order dated 28.10.1996 directed the Deputy Commissioner East to implement the allotment orders. Deputy Commissioner East did not implement the allotment orders, therefore, Constitution Petition No 1315 of 1997 Re Mirza

Mehboob Baig Vs. The Deputy Settlement Commissioner & others was maintained. The Petition was disposed of by a Learned Division Bench of this Court vide a consent order dated 07.07.1997 on the statement made by learned law officer on behalf of the Government of Sindh that direction dated 28.10.1996 of the Secretary to Government of Sindh, Land Utilization Department, would be implemented within 15 days. For the sake of convenience order dated 07.07.1997 is reproduced below:

Mr. Muhammad Saleem A.A.G undertakes on behalf of respondents that the direction issued by the Secretary to Government of Sindh; Land Utilization Department on 28.10.1996 to the Deputy Commissioner, Karachi East, directing the implementation of the seven order mentioned therein would be implemented within a period of 15 days from today. This statement satisfies the Petitioners' Counsel. Accordingly, by consent this petition is disposed off in the manner that seven orders mentioned in the aforesaid direction dated 28.10.1996 of the Secretary to Government of Sindh, Land Utilization Department, would be implemented within 15 days from today. Any breach of the undertaking given by the Learned A.A.G would be a breach of this order.

8. It transpires from record that pursuant to Court orders entry No 277 dated 14.07.1997 was incorporated in record of rights in favor of allottees and one of the allottee namely Abdul Rehman transferred ownership rights of land to different persons which ultimately were purchased by Petitioners Shehla Omer and Muhammad Riaz through registered sale deed.

9. The Government of Sindh filed an application under section 12(2) C.P.C against the order dated 07.07.1997 pleading fraud and misrepresentation. Learned Division Bench of this Court entertained the application, issued notices to the Petitioners in the petition and vide its order dated 20.10.1998 restrained the petitioners from creating third party interest in the property. It also transpires from record that besides Government of Sindh one Muhammad Nawaz had also filed an application under section 12(2) C.P.C. It is also pertinent to mention here that the said

Muhammad Nawaz was represented by Mr. Abid S. Zuberi Learned Counsel for the Petitioners in CPD No 5974 of 2024. It further transpired from the record that during the intervening period third party interest was created in favor of Umar Ahmed, Mohammad Arif, Zakaria Moosa, Mohammad Qasim, Mohammad Usman, Wimbeldon International, Taloo Builders, Ropali Builders, Soneri Builders, I.B.B.T and A.M Associates and such statement was filed before the Court during proceedings of application under section 12(2) C.P.C.

10. Learned Division Bench seized with the matter framed following points for determination on application under section 12(2) C.P.C.

(i) Upon the enforcement of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 all properties other than those attached to charitable, religious or educational trusts stood transferred to the Provincial Government and were no longer available for allotment to displaced persons, as such the allotments effected after the enforcement of the Act were void and ab initio.

(ii) That at the time of the enforcement of the aforesaid repealed Act, 1975, no proceedings under the laws pertaining to evacuee properties or displaced persons were pending before any Court or Authority which could be subsequently decided by Officers notified by the Provincial Government under section 2(2), of the Act.

(iii) That in any event even if it be assumed that the verified claims of the petitioners could be treated as pending proceedings in terms of section 2(2) of the Repealed Act 1975, the officers passing the orders in favour of the petitioners was not competent to do so in terms of the Notification dated 15-9-1985 conferring authority for deciding pending proceedings.

(iv) That in any event since no specific allotment of property had been made in favour of the petitioners at the time of enforcement of the Repealed Act, 1975 they could at-best only be granted cash compensation against their verified claims.

(v) That the properties allotted to the petitioners are building sites within tote urban area of Karachi, which could under no circumstances be disposed of except through public auction.

11. The parties in earlier CPD 1315/1997 were heard at length, the application under section 12(2) C.P.C was allowed vide order dated

12.12.2001 (reported as **Mirza MEHBOOB BAIG and others versus DEPUTY SETTLEMENT COMMISSIONER (LAND) and others 2002 MLD 1512**). The order dated 07.07.1997 was set aside, the operative part of the order reads as under:

22. Indeed there could be no cavil with the legal proposition and there is great force in the contention of the learned counsel that fraud per se could be discerned from the impugned order. He is also right in contending that the alleged fraud must relate to the proceedings before this Court and not in obtaining orders from other functionaries. Nevertheless, section 12(2), C.P.C. also enables this Court to recall an order on ground of absence of jurisdiction. What needs to be considered here is that whether this Court was vested with the jurisdiction to pass an impugned order. The jurisdiction of this Court under Article 199 of the Constitution in the present context is confined to issuance of directions to public functionaries to do what the law requires them to do. Since we have come to the conclusion that the unutilized produce index units available with petitioners could not in law be treated a spending proceedings in view of the authoritative pronouncements of the Honourable Supreme Court, no directions to give effect to an order purporting to treat them as such could be given. We are, therefore, of the view that the order dated 7-7-1997 passed by this Court was without jurisdiction and as such we constrained to allow this application and recall the same order. However, since Mr. Memon wishes to approach the Hon'ble Supreme Court and seek interim relief, we will order that this order shall take effect after three weeks from today.

12. Petitioners challenged the order dated 12.12.2001 before Honorable Supreme Court of Pakistan through C.P.L.A No 1030 - K of 2001. On 01.01.2002 when CPLA was taken up before Honorable Supreme Court, the operation of this Court's order dated 12.12.2001 was suspended. Parties failed to pursue the matter before Supreme Court therefore CPLA was dismissed for want of instructions and stay order was vacated vide order dated 22.02.2011 thus the order dated 12.12.2001 passed by this Court attained finality.

13. It further transpired from record that National Accountability Bureau Karachi (NAB) initiated an inquiry into allotment of lands in District Malir Karachi and came across the revenue entry incorporated in record of rights on the basis of allotment order and order dated 07.07.1997 passed by Learned Bench of this Court. NAB through its letter dated 27.09.2024 invited attention of Commissioner Karachi regarding the entries in record of rights despite of the orders passed by this Court and sought implementation of Court's Orders. For the sake of convenience letter dated 27.09.2024 is reproduced below:

GOVERNMENT OF PAKISTAN

NATIONAL ACCOUNTABILITY BUREAU KARACHI

No. NABK20180220114212/MAB-C/GHC-E-272/IW-I/NAB(K)/2243

Dated: 27 September 2024

To

The Commissioner

Karachi Division

Subject: Investigation against Gul Hassan Channa and Abdul Razzaq Qureshi, Ex- Secretaries Revenue Stamps and Evacuee Properties (RS&EP) Govt of Sindh Karachi & others - Illegal Allotment of 769 Acres of Government Land in Karachi

Reference: i. Hon'ble SHC order dated 12.12.2001 in CP No

1315/1997 (copy enclosed)

ii. Member LU (BOR) letter No PS/MBR/(LU)/1057/2006 BOR, Sindh CAMP at Karachi dated 31.12.2001 (copy enclosed)

iii. Hon'ble SCP Order dated 22.02.2011 (copy enclosed)

1. Reference above mentioned order of Hon'ble Sindh High Court in CPD 1315/1997 at Serial No (i) Member (LU) BOR Sindh issued order referred at Serial (ii) for further implementation of SHC orders to Member (RS&EP) thereby declaring the 24Xorders issued by the then Secretary (RS&EP) BOR Sindh (copy enclosed), without jurisdiction whereby the state land was allotted to the claimants.

2. The necessary action of implementation by setting aside the illegal orders by the SMBR (BOR) Sindh in the matter as issued by the Member LU (BOR) Sindh is since pending despite the

Hon'ble Supreme Court Order dated 22.02.2011, referred at S.No (iii).

3. In view of the above, it is intimated that despite lapse of considerable time implementation is still awaited. Hence, it is requested to take appropriate action for the correction in the record of rights and any entry in the record of rights and any entries thereof under intimation to this Bureau, at the earliest please.

Sd/

Additional Director (Staff)

For Director General

(Innas Saleem)

14. From perusal of above letter it transpired that NAB reminded revenue authority of its duty to implement court orders. Since the entry No 277 was recorded in compliance to Order dated 07.07.1997 which stood reversed through order dated 12.12.2001 which attained finality on dismissal of CPLA by Supreme Court, therefore, the said entry was rendered invalid, and cancellation note was rightly put on it by the Assistant Commissioner. Even otherwise an entry in the revenue record is presumed to be correct until the contrary is proved, as envisaged under section 53 of the Sindh Land Revenue Act, 1967.

15. Argument of Learned Counsel for Petitioners that the entries were canceled without affording an opportunity of hearing to the Petitioners. The long standing entries in the record of rights cannot be canceled unless the contrary is proved through recording evidence. The entries were canceled mala fidely on under NAB's pressure. Inquiry into the record does not support stance of the Petitioners. No doubt Revenue Department is an independent entity and NAB cannot interfere into its administrative affairs, but from the letter dated 27.09.2024, inference cannot be drawn that NAB exerted pressure upon revenue authorities to do an act which they were not required to do under the law. On the contrary NAB only reminded Revenue Department of this Court's Orders and such is a routine correspondence in between the government departments. As discussed supra the entries were incorporated in compliance to the Court orders and were canceled pursuant to the orders passed by the same Court.

Petitioners were heard by the court on both occasions, therefore, Petitioners were not required to be heard by the Revenue Authority as it implemented the Court orders.

16. At this point, Learned Counsel for the Petitioners contended that Court's orders set at naught revenue entries but the allotment orders in favor of allottees were still intact, therefore punitive action cannot be taken. The contention so raised has been answered by the Learned Division Bench in Para 6 to 8 of the judgment dated 12.12.2001 which reads as under:

6. To appreciate the respective contention of the learned counsel, it may be proper to refer to certain established facts and the relevant legal background. The petitioners were displaced persons in terms of the Registration of Claims (Displaced Persons) Act, 1956 (since repealed by the Act of 1975) and had submitted their claims under section 5 of the Act. Such claims in respect of urban properties and agricultural lands were verified by the concerned authorities while the Act was still in force. Nevertheless, no transfer of evacuee property in their favour had taken place either under section 12 of the Displaced Persons (Land Settlement) Act, 1958 or under section 10 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 till both these Statutes were repealed in 1975. It may also be pertinent to mention that under sections 4 and 5 of the Land Settlement Act, the Government was enabled to acquire any evacuee land which hitherto vested in the Custodian of Evacuee Properties and to create compensation pools for the purpose of compensating displaced persons whose claims have been verified. Under section 12, it could inter alia transfer such land to displaced persons. Likewise under section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, evacuee property other than agricultural land could be acquired, by the Government and compensation pool was established under section 4 wherefrom properties could be transferred under section 10 according to various settlement schemes. In the instant case no transfer under either of the two laws had taken place before above Statutes were repealed.

7. It may now be pertinent to briefly examine the provisions of the Repealing Act of 1975. Under section 2(1) a number of laws including three Statutes mentioned above stand repealed. Section 2(2), however, which appears to protect pending proceedings and stipulated that all proceedings which may be pending before the Authorities appointed under the repealed Statutes or such cases which would have been remanded to such Authorities by the Supreme Court or High Court in the absence of such repeal will be decided by such officers as may be notified by the Provincial Government. Section 3(1) provides that all properties other than those attached to charitable, religious, or educational trusts or institutions which were available for disposal immediately before the repeal of the Statutes or may become so available as consequences of an order passed by the notified officer shall stand transferred to the Provincial Government on payment of such price as may be fixed by the Federal Government in consultation with the Provincial Government. It further stipulates that such urban properties may be disposed of by the Provincial Government under a scheme to be prepared by it and rural properties by the Board of Revenue of a Province under a scheme to be prepared by the Provincial Government. The proviso to section 3(1), however, requires that agricultural land occupied by any person continuously for four harvests immediately preceding Kharif 1973, shall first be offered for sale to such persons unless an order of ejectment has been passed against him in respect of such land. Section 4 deals with residual and provides that work regarding documentation, recovery of outstanding transfer price or mortgage money of such property already disposed of shall stand transferred to the Board of Revenue.

8. Against the above background the first important question to be decided is whether any proceedings were pending in terms of section 2 of the repealing Act in respect of which orders of allotment could be passed by Secretary (R.S. & E.P.) Board of Revenue. Mr. Pirzada referred to the words that "this case shall be deemed to be a case pending in the department", contained in the orders passed by this officer. He argued that the word "deemed" as has been held in a number of pronouncements of the superior Courts presupposes that a state of the affairs does not actually exist,

but it is assumed to exist through a legal fiction. Such legal fiction according to learned counsel could only be created by statutory intendment and not an executive fiat. The legal position is indeed well-founded but we are not inclined to attach much importance to it inasmuch as the opinion of an executive officer neither lays down the law nor creates an estoppel. It must, therefore, be independently examined whether in the circumstances of the case any proceedings could be deemed to be pending in accordance with the requirements of section 2(2) of the 1975 Act. The admitted factual position appears to be that the petitioner claims submitted before a competent Authority under the Registration of Claims (Displaced Persons) Act, 1956 and upon verification thereof entitlement certificates were issued prior to coming in force of the Act. However, there is nothing on record to indicate that appropriate applications for allotment of land or urban immovable properties were actually submitted under the Land Settlement or Compensation and Rehabilitation Act of 1958.

17. The original allotment orders under displaced persons rehabilitation and compensation scheme were issued in favor of Mirza Abdul Sattar, Mirza Mehboob Baig, Mst. Faizunnisa Begum, Muneer Ahmed, Iqbal Ahmed, Abdul Rehman and Haji Moosa in year 1996 and Petitioners in the instant petition are subsequent beneficiaries. Such orders cannot be given effect, as no proceedings were pending before the settlement authorities so as to seek protection of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. In the said Act all properties other than those attached to charitable, religious or educational trusts stood transferred to the Provincial Governments and were no longer available for allotment to displaced persons, as such the allotments effected after the enforcement of the Act were void and ab initio. In the case of petitioners the allotment was done in year 1996 and there being no pending proceedings as such allotments were void ab iniito.

18. It is well settled proposition of law that the mutation entry is not a document of title, which by itself does not confer any right, title or interest, and the burden of proof lies upon the person, in whose favour it was mutated to establish the validity and genuineness of transfer in his/her favour. It is also well settled law that if the foundation is illegal

and defective then entire structure built on such foundation, would fall on the ground. It is also worthwhile to mention here that it is incumbent upon the petitioners exhausting remedy under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 to establish that they have legal right over the subject property and that such right is so clear that leaves no room of doubt or any controversy.

19. The exercise of extraordinary constitutional jurisdiction under Article 199 of the Constitution is intended primarily for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority is floating on the surface, which can be established without any elaborate enquiry into the questions involved in the matter; moreover, the writ jurisdiction is undoubtedly discretionary and extraordinary in nature which being equitable relief is available even otherwise to a party who he comes in Court with clean hands, in the case of Petitioners they insist for a relief on the basis of an order which stood reversed and was no more in the field. Since the petitioners are subsequent beneficiaries and they have acquired title in the property by way of transfer, therefore, instead of pressing the rights in property, they should sue the transferor for compensation and damages, if so advised.

20. For the foregoing reasons, We find no illegality in the action taken by Assistant Commissioner Revenue for cancellation of the entry based upon an order which stood set aside and was no more in the field. These petitions therefore fail and are accordingly dismissed with no order as to the cost.

Office is directed to send copy of this order to Respondents for information and keep signed copy of the order in the connected petition.

J U D G E

JUDGE

HEAD OF CONST. BENCHES

Approved for reporting