

IN THE HIGH COURT OF SINDH, KARACHI

Before:

*Mr. Justice Muhammad Saleem Jessar.*

*Mr. Justice Nisar Ahmed Bhanbhro.*

CPD NO 66 OF 2026

Karachi Metropolitan corporation V. Federation of Pakistan & Others

CPD NO 67 OF 2026

Karachi Metropolitan corporation V. Federation of Pakistan & Others

CPD NO 1907 OF 2026

Karachi Metropolitan corporation V. Federation of Pakistan & Others

CPD NO 1996 OF 2026

Muhammad Asif & others V. Evacuee Trust Property Board & others

CPD NO 214 OF 2026

Hassan Ali & Co Cotton Private Limited & others V. Federation of Pakistan & others

CPD No 2005 of 2026

Sharik Bashir & others V. Evacuee Trust Property Board & others

CPD No 1371 of 2026

Kamran Zafarullah Paracha & others V. Federation of Pakistan & others

CPD No 2006 of 2026

Karachi Cotton Association & others V. Evacuee Trust Property Board & others

CPD No 1904 of 2026

Karachi Cotton Association & others V. Evacuee Trust Property Board & others

CPD No 472 of 2026

Karachi Cotton Association & others V. Federation of Pakistan & others

**For Petitioners:**

Mr. Anwer Mansoor Khan, Mr. Haider Waheed, Mr. Muhammad Asad Ashfaq Tola, Mir Maula Bukhsh, Zain Azhar, Mr. Arshad M Tayyabally, Mr. Talha Javed & Zubair Hashim Advocates

**For Respondents**

Ms. Shazia Hanjrah Deputy Attorney General for Pakistan

Mr. Jawwad Dero, Advocate General Sindh along with Mr. Hakim Ali Shaikh & Sagheer Ahmed Abbasi Addl. A.G. Sindh & Mr. Saifullah Assistant Advocate General Sindh

M/s Muhammad Akram Tariq, Muhammad Munsif Jan, Asad Ahmed & Ubaidullah Noonari Advocate for ETPB

Mr. Asif Khan Deputy Administrator ETPB

Mr. Muhammad Faisal Deputy Director (law) FIA a/w Inspector Umair Shah FIA, ACC Karachi & SI Adnan Dilawar FIA, ACC Karachi

Date of Hearing: 02.06.2026

Date of judgment: 18.06.2026

**JUDGMENT**

**Nisar Ahmed Bhanbhro J.-** This common judgment will decide the fate of the captioned petitions, as they involve a common question of law and facts.

2. The controversy involved in all the captioned petitions related to a notification dated 9<sup>th</sup> August, 1963 (impugned notification) issued by Evacuee Trust Property Board (ETPB) (Defunct Evacuee Trust Committee) inviting objections from general public regarding declaration of certain properties located in Karachi including Karachi Cotton Association (KCA) as Evacuee Trust Properties, sealing notice of Cotton Exchange Building dated 12.12.2025 and eviction notice dated 02.01.2025 followed by sealing of the Cotton Exchange Building by ETPB and Federal Investigation Agency (FIA). The Petitioners have challenged the referred controversy in these petitions claiming that KCA is not an Evacuee Trust Property, therefore, the actions by the ETPB and FIA may be declared illegal and Cotton Exchange Building (CEB) may be de-sealed and its possession restored to KCA.

3. Mr. Haider Waheed Learned Council for Petitioner in CPD 66 of 2026 and other petitions contended that Petitioner Karachi Metropolitan Corporation (KMC) is a body corporate created under Sindh Local

Government Act, 2013. He submitted that initially Karachi Municipal Commission was established in year 1852, later elevated as Karachi Municipal Corporation in year 1933 and reorganized as Karachi Metropolitan Corporation in year 1976. He argued that under the provisions of Sindh Local Government Ordinance 2000, (SLGO) Karachi Metropolitan Corporation was succeeded by City District Government Karachi and on repeal of SLGO in year 2011 Karachi Metropolitan Corporation was restored. He contended that KMC is owner of the land where KCA has constructed Cotton Exchange Building. He contended that KCA is lessee of the property, which was initially leased out for a period of 99 years to one Mohammed Saleh Memon & Family who transferred its lease rights in favour of KCA through a duly registered deed dated 22.07.1936. He next contended that on expiry of lease on 19.11.1982 it was extended for another period of 99 years until 2081. He submitted that a dispute regarding renewal fees arose between KMC and KCA, therefore KCA filed suit No 293/2006 (new number 7608/2025) Re Karachi Cotton Association Limited V. City District Government Karachi, which is pending adjudication before Competent Court of law. He contended that ETPB while relying upon a notification issued in year 1963 has taken the punitive action of sealing CEB and FIA has registered an FIR No 37/2025, which prima facie are without any legal sanction and lawful authority. He contended that the impugned notification itself was bad under the law as no property can be declared as an evacuee property beyond the cut off date of January 1<sup>st</sup> 1957 per provisions of Pakistan Administration of Evacuee Trust Property Act, 1957 (PAETP Act). He contended that KMC was neither given a notice nor heard before issuance of the impugned notification. He next contended that at no point of time the CEB has remained under the possession or control of Custodian appointed under Evacuee Laws and since 1936 CEB has remained under the possession of KCA and the same is being used as a hub of cotton trade for Pakistan, it was neither an abandoned nor evacuee property. He further contended that if for the sake of arguments it is believed that the KCA is an Evacuee Trust Property, even then the ETPB and FIA have no authority or powers to interfere in the affairs of KCA as on passage of 18<sup>th</sup> amendment to the Constitution of Islamic Republic of Pakistan of 1973 (the Constitution), the concurrent list stands abolished and evacuee properties became a provincial subject. He contended that provincial Assembly of Sindh has enacted Sindh Evacuee Trust Property

(Management & Disposal) Act 2021, which excludes the operation of Federal Evacuee Trust Law in the province of Sindh. He contended that FIA issued final directions to the occupants of building through notice dated 02.01.2026 and thereafter on 04.01.2026 sealed the property by placing the logo of ETPB. He contended that Petitioner was owner of the property and no notice was issued to Petitioner before taking such adverse actions. He therefore prayed to allow the petition and set aside the impugned notification and notices dated 12.12.2025 and 02.01.2026.

4. Mr. Anwer Mansoor Khan Learned Counsel for Karachi Cotton Association (KCA) in CPD 472 of 2026 and other CPs contended that KCA is a company limited by Guarantee incorporated under the Indian Companies Act 1913 created on 20.04.1933; that on creation of Pakistan it was ratified under the Companies Ordinance 1984. He contended that KCA is a primary cotton association for whole of Pakistan and significant contributor to national economy. He contended that KCA was created in year 1933 and continues to play its role to date. He contended that at the time of its creation company had directors from British, Japan and Indian origin and on partition the Company's legacy was continued by election of directors and induction of new members. He contended that until 1950 company's directors were Muslims, Hindus, British and at no point of time the company was abandoned. He contended that KCA was not an evacuee company and ETPB under the garb of a notification issued in year 1963 cannot presume it an evacuee trust property as the said notification was issued beyond the cut off date viz. 01.01.1957. He contended that since 1936 till to date KCA was operating its business in Pakistan and it cannot be declared as an Evacuee mere for the reason that 16 of its directors left Pakistan. He contended that KCA is the owner of Cotton Exchange Building (CEB) and has rented out rooms to different business concerns that included banking companies. He contended that under the Evacuee Property Laws, a cut off date of 1<sup>st</sup> January 1957 was fixed and beyond the said date no property could be declared as an Evacuee Property, while ETPB was relying upon a Gazette Notification dated 9<sup>th</sup> August 1963, that too invites public objections. He contended that ETPB has failed to produce the notification whereby KCA was declared an Evacuee Trust Property. He contended that the actions of ETPB and FIA were without any legal justification thus liable to be set aside. He argued that FIA has acted with malice as ETPMD Act, 1975 did not fall under FIA

schedule, therefore, FIR under FIA Act cannot be registered. He argued that FIA intended to occupy the building for establishment of its own office which established mala fides and ulterior motives and set at naught all the actions taken by FIA. He contended that KCA was a hub of cotton business in country and abroad and by sealing the Cotton Exchange Building FIA & ETPB have caused loss of billions of Rupees to national exchequer. He contended that bias, malice and ulterior motives of the Respondents were evident from their actions. He placed reliance upon the case of All Pakistan Newspapers Society and others V. Federation of Pakistan and others (PLD 2012 SC 1), Asif Ali Zardari and another V. The State (PLD 2001 SC 568), Suo Moto Case No 04 of 2010 (PLD 2012 SC 553), The University of Dacca through its Vice Chancellor and the Registrar University of Dacca V. Zakir Ahmed (PLD 1965 SC 90), Pakistan Muslim League (N) through Khawaja Muhammad Asif MNA and others V. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642), District and Sessions Judge (Authority) Jhang and others V. Ghulam Shabbir (2026 SCMR 357), Ch. Muhammad Ashraf Gujjar and others V. Malik Riaz Hussain and others (2013 SCMR 161), Sh. Riaz ul Haq and another V. Federation of Pakistan through Ministry of Law and others (PLD 2013 SC 501), Central Government through Chairman Evacuee Trust Property Board and others V. Member (Judicial-IV) Board of Revenue Punjab, Lahore and others (PLD 2026 FCC 19), Sardar Balbir Singh Jaggi V. The Evacuee Trust Properties Board and 3 others (1995 CLC 941), Adamjee Insurance Company Limited V. Assistant Director Economic Enquiry Wing (1989 P.Cr.L.J 1921), Zafar Iqbal and 3 others V. Ghulam Abid and 2 others (1995 MLD 1285), Adamjee Insurance Company Limited through Attorney Syed Ziauddin Ahmed (2004 CLD 246), Hamza Khalid V. The State and another (2024 PCrLJ 422) and Mst Azra Sultana V. Ghulam Asghar Jatoti and others (2011 PCrLJ 434). He lastly prayed to allow this petition, set aside the impugned notices and quash the FIR.

5. Mr Arshad Tayyabali Learned Counsel for the Petitioners in CPD No 214 of 2026 and other CPs contended that Petitioners are lawful tenants of KCA and have remained in continuous and peaceful possession of offices in Cotton Exchange Building. He contended that impugned sealing and ejection actions were taken by referring to an order dated 31.03.2021 passed by Honorable Supreme Court of Pakistan in S.M.C No

01 of 2014 but Cotton Exchange Building was not mentioned in the said order. He contended that no property can be declared an evacuee property beyond the cut off date of 01.01.1957 in terms of section 3 of the Pakistan Administration of Evacuee Property Act, 1957. He further contended that proceedings to declare KCA as an evacuee trust property were initiated in year 1963 that were legally impermissible. He contended that property is owned by KMC and ETPB has never challenged such lease. He contended that impugned action was taken after about 63 years of notification issued by ETPB and 5 years after the judgment of Honorable Supreme Court as such was barred by limitation. He contended that after the passage of 18<sup>th</sup> amendment concurrent list did not exist and Evacuee Property was not listed in Federal List, therefore, ETPB and FIA had lacked jurisdiction to interfere in the instant matter. He contended that Cotton Exchange Building was a landmark heritage and hub of cotton trade nearly for a century, therefore, impugned actions offended the fundamental rights of Petitioners guaranteed under articles 4, 9, 10-A, 18 and 24 of the Constitution. He placed reliance upon the case of Mst. Rehmat Bibi and others V. Punnu Khan and others (1986 SCMR 962), Premier Cloth Mills Ltd. Lyallpur V. The Sales Tax Officer Investigation Circle II, Lahore and another (1972 SCMR 257), Dr Mrs. Nasim Qureshi V. Deputy Administrator, Evacuee Trust Property, Karachi and another (1987 CLC 213), Muhammad Akram V. Mst. Zainab Bibi (2007 SCMR 1086), Regional Police Officer Dera Ghazi Khan Region and others V. Riaz Hussain Bukhari (2024 SCMR 1021), Chief Commissioner Inland Revenue Corporate Tax Office-FBR through Assistant Commissioner V. Federal Secretary / Revisional Authority Ministry of Religious Affairs and Interfaith Harmony Islamabad and others (2025 CLC 1875), Evacuee Trust Property Board Government of Pakistan through Assistant Administrator V. Wahabuddin and others (2024 YLR 657), Mirza Muhammad Sharif and 2 others V. Mst. Nawab bibi and 4 others (1993 SCMR 462) and Messrs Mega Steel Mills Private Limited V. Government of Punjab through Secretary Environmental Protection Department, Punjab, Lahore and 6 others (2016 CLC 1095). He lastly prayed to allow this petition.

6. Mr. Jawwad Dero, Learned Advocate General Sindh supported the stance of Karachi Metropolitan Corporation and other petitioners and contended that the land of Cotton Exchange Building Karachi was

undisputedly owned by KMC. He contended that Cotton Exchange Building at the time of partition in 1947 was neither left abandoned or vacant by its lawful owners therefore cannot be declared as an Evacuee Property. He contended that in terms of sections 3 and 8 of the Evacuee Trust Properties (Management & Disposal) Act, 1975, KCA was never declared evacuee trust property prior to a cut off date of 1<sup>st</sup> January 1957. He contended that under the constitutional command there were three lists under the Constitution of 1956 viz. Federal Legislative List (FLL), Concurrent Legislative List (CLL) and Provincial Legislative List (PLL) and evacuee property was part of FLL at entry No 10. He further contended that 1973 Constitution contained two lists FLL and CLL and evacuee property was entered at entry No 36 of CLL, upon passage of 18<sup>th</sup> amendment CLL stood abolished therefore Evacuee Property became a provincial subject. He contended that Provincial Assembly of Sindh has enacted The Sindh Evacuee Trust Properties (Management & Disposal) Act 2021 and Sindh ETPB has been established to look after the evacuee trust properties. He contended that notification dated 09.08.1963 was flawed and cannot be relied upon as the same only invited public objections and did not declare KCA as Evacuee Trust Property. He prayed to allow the petitions.

7. Ms. Shazia Hanjrah Learned Deputy Attorney General for Pakistan assisted by Learned Counsel for ETPB and FIA contended that Petitions are not maintainable as they seek adjudication of a factual controversy which cannot be undertaken under writ jurisdiction of this Court. She contended that KCA relied upon a title document leased by KMC which is under inquiry and the initial probe has unearthed that the said lease deed is forged document, and result of fraud. She contended that fraud vitiates all the solemn acts. She contended that KCA had filed CPD No 6048 of 2025 on the same subject matter, which was latter withdrawn without any permission to file fresh, therefore, second petition on behalf of KCA was not maintainable. She contended that Gazette Notification dated 9<sup>th</sup> August 1963 has been challenged after almost six decades time and no explanation to such delayed litigation has been furnished. She contended that prior to partition KCA had 318 members of whom 306 were Hindus and they migrated from Pakistan post partition developments, therefore KCA collapsed. She further contended that KCA was an evacuee as contemplated under section 2(b) of the Pakistan (Protection of Evacuee

Property) Ordinance 1948. She contended that post 18<sup>th</sup> amendment in the constitution the status of ETPB has remained unchanged as the Honorable Supreme Court in SMC No 01 of 2014 has assigned the task of recovery of evacuee trust properties to ETPB and has directed FIA for its assistance. She contended that post partition KCA collapsed and for many years its elections were not held and present KCA was a new body. She further contended that since very lease documents of property were found forged therefore FIA recorded FIR. She rebutted vehemently the allegations of mala fides against FIA and contended that FIA was directed by Honorable Supreme Court to assist ETPB and FIA had got no personal interest in the property. She placed reliance upon the case of Karachi Panjrapur Association reported as PLD 1957 SC 83. she prayed to dismiss the petition.

8. Heard arguments of the parties at length and perused the material made available before us on record.

9. Firstly, we will take up the issue of maintainability of the Petitions. Learned Deputy Attorney General for Pakistan and Counsels for ETPB and FIA have argued that petition suffered from laches as the notification dating back to year 1963 is under challenge, petition involved factual controversy and jurisdiction of this Court to entertain petition against ETPB was barred under section 14 of the ETPMD Act and alternate remedy before ETP Board was available, therefore writ under article 199 of the Constitution cannot be maintained.

10. As regards laches, suffice it to say, that the KCA and other Petitioners have challenged three different actions by the Respondents that include impugned notification dated 09.08.1963, eviction notice dated 12.12.2025 and sealing order dated 02.01.2026. It is an undisputed fact that KCA is in possession of the CEB and using it as Cotton Exchange for trade and business of Cotton in Pakistan and abroad. Prima facie a public notice was given for information to all interested parties through Gazette notification dated 9<sup>th</sup> August, 1963 but no material has been placed on record to say that pursuant to said public notice an order under any of the Evacuee Laws was passed to declare KCA as an evacuee trust. The Petitioners got knowledge of impugned action when notices dated 12.12.2025 for eviction and sealing order dated 02.01.2026 were issued.

Laches per se were not in any way an absolute bar to non-suit party, in the present cases doctrine of laches would not be applicable as all along six decades KCA remained in possession of property and acted independently and was never ever taken over by the Custodian appointed under any of the Evacuee law, coupled with the subsequent actions taken in December 2025 and January 2026, it can be safely held that Petition did not suffer from laches and was filed within time.

**11.** Second objection that the jurisdiction of civil Court has been ousted under section 14 of the ETPMD Act and for adjudication of the matters concerning the disposal and management of Evacuee Trust Properties an officer was appointed under the Act.. To resolve a dispute arising regarding the status of any property as Evacuee Trust Property, the Chairman ETPB has been conferred exclusive jurisdiction under section 14 of the ETPMD Act, which 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*

**12.** Careful examination of record revealed that no material was made available before the Court to evince that KCA was made part of the Trust Pool under any of the Evacuee Law in force prior to the promulgation of ETPMD, Act. The Respondents have not placed on record any material to elicit that any proceedings were conducted to declare KCA as trust property or KCA & Cotton Exchange Building was kept under Trust Pool. Contrary, the Petitioners have placed on record registered lease deed of year 1933 to demonstrate that property was purchased by KCA. In the given circumstances, 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. Learned Counsel for the Respondents No 1 & 2 when confronted, frankly conceded to the fact that no proceedings under section 8 of the ETPMD, Act ever took place after

issuance of Gazette Notification dated 09.08.1963 or if any proceedings had taken place the same were not in their knowledge.

13. Counsel for ETPB and FIA have also attacked upon the jurisdiction of this Court to entertain the petition on the ground that the same involved factual controversy as to the title in property. 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 existed. 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. The theory of an alternative remedy under Article-199 of the Constitution hinges upon two core considerations viz-a-viz substantive sufficiency and comparative efficacy. A remedy cannot be deemed 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. The exception doctrine operates as 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 in-efficient or defeat its very purpose then exercise of extraordinary jurisdiction under Article-199 of the Constitution can be invoked. Since the Respondent ETP denied the ownership right of Petitioners on the ground that it was an evacuee trust property without its determination as required under the law, 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. The Petitioners had no other forum to challenge the sealing of CEB, FIR and eviction notices, hence, the proper forum available with the petitioners was to invoke the writ

jurisdiction of this Court. The Hon'ble Supreme Court of Pakistan in the case of **Dr. Sher Afgan Niazi v. Ali Habib reported as 2011 SCMR 1813** has laid down similar principles enumerated herein above to invoke writ jurisdiction of this Court and has held that 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 the High court should 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

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14. In the present case besides challenge to declaration of status of disputed property, the petitioners have also assailed the actions of ETPB sealing the building and recording an FIR for which the writ jurisdiction of this Court under article 199 of the Constitution is adequate and If the parties are left to adopt other procedure for obtaining the relief it would become too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless. Therefore, in such situations this Court unhesitatingly entertains writ petitions. The above discussion leads to the conclusion that writ petition is maintainable.

15. Learned Counsel for the Petitioners have raised another important question of law that on enactment of Sindh Evacuee Trust Properties (Management and Disposal) Act, 2021, the provisions of ETP (M&D) Act, 1975 to the extent of province of Sindh stand repealed. In the advent of the 18<sup>th</sup> amendment in the Constitution, 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, 2021, whereby the provisions of the ETP (M&D) 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*

16. We have been informed that though the legislation for management and control of evacuee trust properties was made by the province of Sindh, but the Federal Government has not yet transferred the management and control of Evacuee Trust Properties to the Provincial Government. We will not render our findings on the issue, same being dispute between two governments falls outside the domain of this Court and was under exclusive jurisdiction of Honorable Federal Constitutional Court to adjudicate. If the provincial government is aggrieved of the control of evacuee trust properties by Federal Government, it may approach the Honorable Federal Constitutional Court.

17. Adverting to the merits of case. As spelt out from the pleadings and arguments of the learned counsel on either side, the points for determination, are summarized below:--

**(i) Whether the KCAL was an Evacuee Trust Property by virtue of Notification dated 9<sup>th</sup> August 1963?**

**(ii) Whether the notification dated 9<sup>th</sup> August 1963 was issued beyond the target date of 1-1-1957 provided in section 3 of the Administration of Evacuee Property Act, 1957 (PEPA, Act) ?**

**(iii) Whether the proceedings initiated by the ETPB and FIA for eviction of Petitioners and registration of FIR were bad under the law and were tainted with malice and ulterior motives and FIR was liable to be quashed?**

18. To find answer to point No 1 and 2 being interconnected, that whether the KCAL was an evacuee trust property, it will be relevant to see what constitutes "evacuee", "evacuee property" and "evacuee trust property". Section 2 of the PAEP, Act defines "evacuee" and "evacuee property" as follows:

**2. Definitions.** *In this, Act, unless there is anything repugnant in the subject or context, --*

(1) *"Custodian" means a Custodian of Evacuee Property appointed under Section 6 and includes an Additional, Deputy or Assistant Custodian;*

(2) *"evacuee" means" any person, --*

*(a) who, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, on or after the first day of March, 1947, leaves or has left any place in the territories now comprising Pakistan for any place outside those territories;*

*or (b) who acquires or has acquired, on or after the aforesaid date, by way of allotment or lease or by means of unlawful occupation or other illegal means, any right to, interest in or benefit from any property which is treated as evacuee property under any law for the time being in force in India or in any area occupied by India; or*

*(c) who is resident in any place in the territories now comprising India or in any area occupied by India and, --*

*i. is unable to occupy, supervise or manage in person his property in Pakistan; or*

*ii. whose property in Pakistan has ceased to be occupied, supervised or managed by any person or is being occupied; supervised or managed by a person (whether duly empowered in this behalf by him or otherwise) whose authority or right so to do on or after the aforesaid date has not been accepted or approved by the Custodian; or*

*d. whose business or undertaking in Pakistan, in the case of a corporation, has on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances, or the fear of such disturbances, ceased to function, wholly or partially, or is being carried on by persons (whether duly empowered in this behalf by the corporation or its management or otherwise) whose*

*authority to do so on or after the first day of March, 1947, has not been accepted or approved by the Custodian; or*

*e) being a joint stock company, more than fifty per cent of the shares of which are held by persons who are evacuees;*

*(3) "evacuee property" means any property in which an evacuee has any right or interest (whether personally or as a trustee or a beneficiary or in any other capacity), and includes, --*

*a. any right or interest in joint Hindu family property which would accrue to the evacuee upon the partition of the same; or*

*b. property of an evacuee obtained by transfer on or after the first day of March, 1947, until the transfer is confirmed by the Custodian; but does not include*

*i. any ornaments or wearing apparel or any cooking vessels or other household effects in the immediate possession of an evacuee, or*

*ii. any property belonging to a joint stock company the registered office of which was situated, before the fifteenth day of August, 1947, in any place in the territories now comprising India and continues to be so situated after the said date;*

19. The evacuee trust property has been defined under section 2(1)(d) of the ETPMD, Act as follows:

*(d) "evacuee trust property" means the evacuee trust properties attached to Charitable, religious or educational trusts or institutions or any other property which form the part of Trust Pool constituted under this Act;*

20. From perusal of the above provisions of law, it is crystal clear that the evacuee trust properties included those properties that are attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool and are discernible from the evacuee properties. Under section 7 of the ETPMD, Act; Trust Pool has been created for the purpose of management and disposal of evacuee trust properties, 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.*

21. The core issue involved herein is whether the KCA had any relation or concern with a charitable, religious or educational institution and in absence of any proceedings under any evacuee law the KCA could be placed under trust pool and whether in absence of such determination the eviction of the petitioners nearly after 90 years time would be justified? It has surfaced from record that Karachi Cotton Association (KCA) was established on 20.04.1933 as a company limited by Guarantee incorporated under the Indian Companies Act 1913 with Niranjani Parsad as its First President and aimed at having 500 members. On creation of Pakistan it was incorporated under the Companies Ordinance 1984. KCA was created in year 1933 and continued to play its role to date in cotton trade in Pakistan and abroad. At the time of its creation, company had directors from British, Japan and Indian origin and on partition the Company's legacy was continued by election of directors and induction of new members. At the time of partition KCA had 318 members of whom 306 were Hindus and per contention of ETPB most of them migrated from Pakistan and such stance of ETPB has not been rebutted by Petitioners through concrete evidence. Since more than 50 per cent shares of the company were held by persons who became evacuees therefore KCA became an evacuee in terms of definition contained under section 2(2)(e) of PAEP, Act.

22. From careful examination of Memorandum and Article of Association of KCA, it can be deduced that KCA was a company

limited established for the purposes of cotton trade. No where under the memorandum of association it is mentioned that KCA worked as a charitable organization. However it transpired from notification dated 9<sup>th</sup> August 1963 that KCA was on the register of ETPB as public trust evacuee property, for the sake of convenience notification dated 9<sup>th</sup> August 1963 is reproduced below:

*The Gazette of Pakistan*

*Published by authority*

*Karachi, Friday, August 9, 1963*

*Part VII*

*Advertisements and Notices issued by Private Individuals and Corporation on payment*

*I(12)/63 -- Whereas the Divisional Evacuee Trust Committee Karachi, have the following properties on Registers as Evacuee Public Trusts, any person having lien or claim to it is required to submit the same to the Secretary Divisional Evacuee Trust Committee Panjrapure Compound, opposite Khalique Dino Hall Bunder Road Karachi within a month, failing which, the lien or claim if any will be deemed to have been waived.*

*M. KARAMAT ELLY*

*Secretary Evacuee Trust Committee, Karachi*

*Entry No:*

**355. *Karachi Cotton Association President Lala Naranjan Parsad***

23. Learned Counsel for the petitioners besides other grounds have also attacked upon the said notification having been issued beyond the cut off date of 1<sup>st</sup> January 1957 as envisaged under section 3 of the PAEP, Act. Before proceeding ahead it would be conducive to reproduce section 3 of the PAEP Act, that reads as follows:

***3. Property not to be treated as evacuee property on or after 1st January, 1957.***

*(1) Notwithstanding anything contained in this Act, no person or property not treated as evacuee or as evacuee property immediately before the first day of January, 1957 shall be treated as*

*evacuee or, as the case may be, as evacuee property, on or after the said date.*

*(2) Nothing in sub-section (1) shall apply, --*

*(a) to any person in respect of whom or to any immediately before the date mentioned therein for property in respect of which any action has commenced or any proceedings are pending treating such person as evacuee or such property as evacuee property; or*

*(b) to any property which is occupied, supervised, or managed by a person whose authority or right so to do after the twenty-eighth day of February, 1947, has not been accepted or approved by the Custodian.*

24. From the perusal of above provisions of law it is crystal clear that no person or property before the first day of January, 1957 shall be treated as evacuee or, as the case may be, as evacuee property, on or after the said date. But from bare reading of the notification dated 9<sup>th</sup> August 1963 it transpired that KCA was already on the register of Public Evacuee Trust Properties, but when it was placed on said register and declared as an evacuee trust was not clear. From the careful reading of the articles of Association of KCA, it can be safely held that KCA was a company limited by guarantee and it was neither a charitable or religious or educational institution, the governing factors to treat an evacuee property as an evacuee trust property, therefore, it could have been declared an evacuee property but not the evacuee trust property. Might be the name of the Company as Karachi Cotton Association would have justified the then Evacuee Trust Committee to place KCA on register of evacuee public trust property.

25. From in depth scanning of the record produced by ETPB and FIA no material evidence was found whatsoever to establish that the Custodian of Evacuee Property, constituted under Regulation I of 1950 or previous evacuee laws or under the subsequent Acts , the last being Act XII of 1957 (**THE PAKISTAN ADMINISTRATION OF EVACUEE PROPERTY ACT, 1957**), ever treated this property as evacuee property and took control of the same. As a matter of fact, ETPB could not possibly do so, the owners being legal entity (KCA) could not possibly be presumed to have migrated to India; rather, some of them were not only present in Pakistan but were Muslims and enjoyed the physical and

administrative control of the disputed property as well. ETPB and FIA only rely upon the notification dated 9<sup>th</sup> August 1963, which is not a sufficient proof to treat KCA as an evacuee trust property.

26. Learned DAG while insisting that KCA was an evacuee trust property relied upon the case Karachi Panjrapur Association Supra, wherein the Association was declared an evacuee trust property. There is huge distinction between Panjrapur Association and KCA. Panjrapur Association was established as a religious charitable organization whereas KCA was established as company limited. For the sake of reference the excerpts from the judgment reported as PLD 1957 Supreme Court 83 are reproduced below:

*MADHAVJI DHARASIBHAI and others-Petitioners*

*Versus*

*(1) THE KARACHI PANJRAPORE ASSOCIATION*

*(2) THE CUSTODIAN OF EVACUEE PROPERTY*

*(SOUTH ZONE), WEST PAKISTAN, KARACHI,*

*and others-Respondents*

*AND*

*KARACHI PANJRAPORE ASSOCIATION-Appellants*

*Versus*

*THE CUSTODIAN OF EVACUEE PROPERTY,*

*(SOUTH ZONE), KARACHI and*

*another----Respondent\*

*"But the conclusion that the Karachi Panjrapore Association is an "evacuee" does not dispose of the case entirely. From the very moment that proceedings were started against the appellant-Association to declare it "evacuee" and the property held by it as "evacuee property", it has been consistently maintained by the appellant-Association that it was registered for the purpose of promoting "religion, charity or any other useful object" and the objects of the Association have been to provide for the protection and preservation of the cattle and other animals and to arrange for their feeding etc., as described in the Memorandum of Association, but the effect of these objects and activities the Association has not at all been taken into consideration by the Custodian. Section 6 of Ordinance XV of 1949 casts some duty upon the Custodian in this behalf. Section 6 is as follows:?"*

*"(1) All evacuee property shall vest and shall be deemed always to have vested in the Custodian with effect from the first day of March 1947.*

*(2) Where any evacuee property is property held in trust for religious or charitable purposes, the property shall remain vested in the Custodian only till such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purposes of the trust,"*

27. More over, on the enforcement of The Evacuee Property and Displaced Persons Laws (Repeal) Act 1975, (Act No XIV of 1975), all evacuee laws stood repealed except ETPMD, Act. But on the repeal thereof the proceedings pending before the authorities appointed thereunder stood transferred for final disposal to such officers notified by the Provincial Government etc. Under section 3 of the said Act all properties, both urban and rural, including agricultural land, other than such properties attached to charitable, religious or educational trusts or institutions, whether occupied or unoccupied which may be available for disposal immediately before or after the repeal stood transferred to the Provincial Governments on payment of such price as was to be fixed by the Federal Government after consultation with the Provincial Government and the procedure for its disposal provided for therein. Section 4 provides for disposal of residual work. It is clear from the reading of the Repeal Laws statute that the Board of Revenue is practically the successor of the Chief Settlement Commissioner and empowered with the disposal of pending cases as well as transfer of available property. Obviously in the exercise of its duties, it has to find out whether any particular property is available for transfer or not. Evacuee properties attached to charitable, religious or educational trust have been excluded from its jurisdiction as available property for transfer.

28. It further transpires from the record that the Petitioners were not given an opportunity of hearing before placing the KCA on register of evacuee trust properties, issuance of eviction notices and sealing of the cotton exchange building. Due process is prerequisite that needs to be respected at all strata. The right to fair hearing and fair trial necessitates

that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he is given a fair chance to answer it and a fair opportunity to present and defend his case. To enjoy the protection of law and to be treated in accordance with the law is an inalienable right of every citizen. The purposefulness of Article 4 of the Constitution is to ascribe and integrate the doctrine of equality before law or equal protection of law, and no action detrimental to the life and liberty of any person can be taken without due process of law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain and contest before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken. In our Constitution, right to fair trial has also become a fundamental right under Article 10-A. The principle of natural justice is grounded on the astuteness and clear-sightedness of affording a right of audience before any prejudicial action is taken, therefore it is an inescapable obligation of all judicial, quasi-judicial and administrative authorities to ensure justice according to the sagacity of the law.

29. In the instant case, both parties claimed ownership against the same property, without prejudice to the rights of parties, which may be got adjudicated before the proper forum that the disputed property either being evacuee property or evacuee trust property or a property owned by KCA needs fresh adjudication for which an exclusive jurisdiction has been vested with Chairman ETPB as discussed supra. Though Learned Advocate General has insisted to refer this case to provincial ETPB but throughout proceedings provincial ETPB has not appeared before the Court to make such claim and Federal ETPB has vociferously contested this case. By operation of law all the properties declared as evacuee trust property remained under management and control of federal government, therefore, powers of adjudication in our view shall vest with Federal ETPB.

30. The Chairman ETPB has been conferred exclusive jurisdiction under section 8 of the ETPMD, Act to decide the question whether any evacuee property is a trust property or not, when a dispute as to the

status of property arises as is in the present case. 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.*

31. In the case of Mst. TAHIRA BEGUM and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Religious Affairs and Interfaith Harmony, Government of Pakistan and others reported as 2025 SCMR 1887 Honorable Supreme Court of Pakistan has been pleased to hold as under:

11. *The nucleus of the Order passed by the Chairman ETPB, dated 14.9.2020 for cancellation of lease is based on the perusal of record and documentary evidence, whereby, it was held that conversion of a 30 year lease to a 99 year lease and its approval was accorded as a result of fake documents which established fraudulent activity, mala fide and breach of trust causing loss to Government exchequer on the part of the*

*then Administrator ETP Karachi and District Officer Karachi. In view of the rigors and exactitudes of Section 14 of the ETP Act, wherein explicit bar has been imposed that neither civil Court has jurisdiction to try any matter covered or regulated under ETP Act nor can grant any injunction in respect of any action taken or to be taken in exercise of any power conferred by or under the said Act, therefore, in our view, if such bars are imposed through legislative instruments in any law/statute, then in such manifestations, more responsibilities and conscientiousness is attached to such authorities/offices to perform their functions with due diligence. It also commands an onerous responsibility to exercise special jurisdiction and powers under the special law with rationality and the existence of mental persuasion much higher than mere opinion. While Section 14 has created a specific bar but concomitantly, Section 21 of the ETP Act, conferred wide ranging powers vested in a civil Court under C.P.C., inter alia, summoning and enforcing the attendance of any person; examining him on oath and issuing commissions for the examination of witnesses.*

*12. On the face of it, the order of the Chairman ETPB depicts that the request for adjournment was made due to serious health issues of Mst. Tahira Begum which was declined for non-production of evidence and observation that the occupants are avoiding to appear/argue the case, hence, the Administrator South Zone Karachi was directed to submit parawise comments to decide the case on the basis of comments/reply and documentary evidence, which shows that without any further proceedings the order was reserved. The order does not reflect that the matter was fixed for recording of evidence in the enquiry which was necessary to reach a just and proper conclusion as to whether the lease was executed and registered on the basis of fraud or on a fake approval. All such issues could only be decided after recording evidence and providing fair opportunity to the occupant rather than deciding a serious matter of cancellation of*

*registered lease after much time merely on the basis of available documents without confronting it to the occupant. In judicial or quasi-judicial proceedings, not only adherence to the law but legal principles including relevant rules of procedure and evidence is ought to be considered for fair and just decisions. The bar of jurisdiction of civil Court under Section 14 of the ETP Act, neither, bestowed unbridled or unchecked jurisdiction, nor does it authorize the authority to decide the matters in cursory or slipshod manner. On the contrary, it is their obligation under law to decide matters with proper application of mind and pass judicious orders, which is lacking in this case. The High Court non-suited the petitioners on hyper technical grounds and failed to advert to that the order dated 14.09.2020 was passed behind the back of the petitioners and for the first time placed in the High Court during the hearing of Constitution Petition, hence, there was no occasion to file revision against the order which was not communicated to the petitioners and after declining adjournment, no date was fixed in the case for any purpose and order was reserved, which was otherwise a wrong exercise of powers, the Chairman ETPB should have given the exact date for announcing the order without keeping it in limbo.*

32. As far as the allegations of malice and ulterior motives against FIA are concerned, it reflected from the record that FIA was acting in aid of ETPB in compliance of Honorable supreme Court of Pakistan passed in SMC No 01 of 2014. Therefore, it cannot be said that FIA was acting beyond the bounds of law. However, from perusal of FIR No 37 of 2025 recorded by FIA it transpires that no case of fraud was made out and registration of FIR was a colorful exercise of powers by FIA, besides ETPB did not fall within the schedule under FIA Act 1974, therefore the FIA should not have recorded the FIR and this mistake stands admitted by FIA itself during proceedings of case.

33. The case laws relied upon by the parties are relevant to the facts and circumstances of the case thus need not be reproduced.

34. For the foregoing reasons this petition is disposed of in the following terms:

a) The notification dated 9<sup>th</sup> August 1963 is suspended and the matter is referred to the Chairman ETPB, Islamabad for fresh determination of status of KCA, whether it was an evacuee trust property or evacuee property. Since Cotton Exchange Building is owned by KCA, therefore, determination of status of KCA will automatically decide the fate of Cotton Exchange Building. The Chairman ETP shall decide the fate of the KCA within 90 days time from the date of receipt of this order and shall provide a fair opportunity of hearing to all the interested parties and if the need be, shall summon and examine the witnesses and procure the record. The Federal Government, Securities and Exchange Commission of Pakistan and Government of Sindh shall assist the Chairman ETPB in procuring the record and attendance of any witness as and when required.

b) The FIR recorded by FIA as discussed supra appears to be a colorful exercise of powers, as ETPB was neither on the schedule of FIA nor any element of fraud was spelt out from the record produced and relied upon by the parties. Moreover, the FIR was recorded in violation of FIA Rules 1975, hence the same stands quashed.

c) Till the determination of the status of the property as Evacuee Trust Property or otherwise and due course of law follows pursuant to the outcome of proceedings by Chairman ETPB, the KCA shall enjoy the possession of property and continue its business activities without any disturbance.

d) The Tenants of Cotton Exchange Building who deposited rent with KCA shall deposit the same with Nazir of this Court until the determination of the status of KCA and Cotton Exchange Building. Nazir of this Court shall invest the rent amount in profitable scheme and same shall be refundable subject to the outcome of the proceedings by Chairman ETPB.

e) The office shall send copy of this order to Chairman ETPB Islamabad and on receipt of the copy of order the Chairman ETPB shall initiate proceedings in the matter immediately and

shall communicate the date of hearing to the parties by all modes including publication.

35. The petition stands disposed of in above terms. Office is directed to send copy of this order to Respondents for compliance. Office to keep signed copy of the order in all the connected petitions.

JUDGE

JUDGE  
HEAD OF THE CONSTT BENCHES

Approved for reporting