

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**(APPELLATE JURISDICTION)**

**High Court Appeal No.72 of 1990**

( *Mohamed Bana & Others v. The Province of Sindh & Others* )

**Before:**

Muhammad Faisal Kamal Alam J &  
Sana Akram Minhas J

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| <b>Appellants No.1 to 4:</b>               | 1. Mohamed Bana (since deceased)<br>2. Shah Sultan<br>3. Ismail Bana<br>4. Malek Bana (since deceased)<br>Through, Mr. Taha Abdus Samad, Ms. Vera Awais &<br>Ms. Alishba Khan, Advocates |
| <b>Official Respondents<br/>No.1 to 3:</b> | Through, Mr. Sandeep Malani, Barrister<br>Assistant Advocate General, Sindh  |
| <b>Private Respondents<br/>No.4 to 8:</b>  | None appeared  |
| <b><u>Date(s) of Hearing:</u></b>          | <b>5-11-2025, 20-11-2025 &amp; 10-12-2025</b>  |
| <b><u>Date of Decision:</u></b>            | <b>27-2-2026</b>   |

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**J U D G M E N T**

1. **Sana Akram Minhas, J:** This Appeal is directed against the Judgment and Decree dated 21.12.1989 (“**Impugned Judgment**”) passed by the learned Single Judge in Suit No.319/1971 (titled *Noorali Bana & Others v. The Province of Sindh & Others*) (“**Underlying Suit**”).
2. By virtue of the Impugned Judgment, the Underlying Suit – instituted on 26.11.1971 jointly by the private Respondents No.4 to 8 and Appellants (“**Original Plaintiffs**”) for “*Declaration of Title to Land and for Injunction*” on the basis of *Haq Qabza* (i.e. possession as opposed to ownership) – was dismissed with costs.
3. The present private Respondents No.4 to 8 were Original Plaintiffs No.2 to 6 in the Underlying Suit (and are also the legal heirs of deceased Original

Plaintiff No.1), whereas the present Appellants were Original Plaintiffs No.7 to 10 in the Underlying Suit.

**Overview Of Facts Leading To Underlying Suit**

4. The then Parsi landholders/sellers, through two separate registered Sale Deeds dated 10.2.1958<sup>1</sup> (“**Sale Deed No.1**”) and 8.7.1960<sup>2</sup> (“**Sale Deed No.2**”) conveyed to Original Plaintiffs No.2 and 9 (who are presently private Respondent No.4 and deceased Appellant No.1 in this Appeal) an area of land stated to measure 241-1 acres (“**Sale Deed Area of 241-1 Acres**”) – calculated on the basis of the Parsi Sellers’ undivided shares of 10 annas and 6 annas respectively. Both Sale Deeds referred to the same survey numbers. This land comprised unsurveyed *begoti agricultural khets* situated in Deh Lal Bakhar, Tapo Gabopat, Taluka Karachi, which is presently administratively located in Keamari District of Karachi, formerly District West (near the Hawks Bay Beach).

**Expanding Claim Five Times The Sale Deeds Area – Original Version Of Original Plaintiffs No.2 & 9 In Application Dated 28.12.1964**

5. Nearly 7 years after the execution of Sale Deed No.1 dated 10.2.1958, and more than 4 years after execution of Sale Deed No.2 dated 8.7.1960, the Original Plaintiffs No.2 and 9, for the first time, submitted an application dated 28.12.1964<sup>3</sup> to the then Deputy Commissioner and Mukhtiarkar, seeking to radically increase the area from the recorded Sale Deed Area of 241-1 Acres to an area of 1280 acres (“**Entire Claimed Area of 1280 Acres**”) – thereby claiming an excess/additional area of 1038-39 acres (“**Excess 1038-39 Acres**”) – and initiated proceedings to amend the Register of *Haq Qabza* accordingly. The total land now claimed by the Original Plaintiffs was (and is) as follows:

|                   |                                     |
|-------------------|-------------------------------------|
| 241-1 Acres       | (Area under Sale Deeds No.1 & No.2) |
| + 1038-39 Acres   | (Excess area)                       |
| <b>1280 Acres</b> | <b>(Entire claimed area)</b>        |

6. **In the said application, the Original Plaintiffs No.2 and 9 categorically admitted that:**

- i) In the aforesaid Sale Deeds No.1 and No.2, the area of unsurveyed *begoti khets* recorded in the name of M/s Sorabji and Dadabhoy (the

<sup>1</sup> Paper Book Pg. No.40 (Exhibit P-1)

<sup>2</sup> Paper Book Pg. No.51 (Exhibit P-2)

<sup>3</sup> Paper Book Pg. No.99 (Exhibit P-12)

Parsi Sellers under the two Sale Deeds) was only 241-1 Acres (i.e. the Sale Deed Area of 241-1 Acres), and that such area already stood entered in the Register of *Haq Qabza*.

- ii) However, they asserted that since the area allegedly leased on tenancy by the said Parsi Sellers to a private individual namely, Kaderbux son of Jowrak Khan – under a five (5) year tenancy lease registered on 15.11.1940<sup>4</sup> and renewed for a further five (5) years by a tenancy lease registered on 12.12.1945<sup>5</sup> – was 1280 acres, the Register of *Haq Qabza* ought to be amended to substitute the recorded Sale Deed Area of 241-1 Acres with the Entire Claimed Area of 1280 Acres, notwithstanding the express limitation contained in the Sale Deeds.
- iii) The Original Plaintiffs No.2 and 9 further asserted that they had obtained physical possession of the Entire Claimed Area of 1280 Acres from the said Kaderbux son of Jowrak Khan pursuant to a Compromise Decree dated 4.2.1963<sup>6</sup> (“**Compromise Decree**”) passed by the High Court of West Pakistan (Karachi Bench) in Suit No.186/1962 (titled *Mussamat Nabhat Khanoo & Another v. Kadirbux*) (“**1962 Compromise Suit**”) – which was a “*Suit for possession of agriculture lands valued at Rs.28,002.00 in Deh Lal Bakher, Tapo Gabopat, Taluka Karachi and for mesne profits valued at Rs.200.00*”.

#### Underlying Suit Instituted

- 7. Having failed in their prolonged attempt to secure the desired amendment in the Register of *Haq Qabza*, the Original Plaintiffs instituted the Underlying Suit seeking a declaration of “*possessory title*”<sup>7</sup> over the Entire Claimed Area of 1280 Acres.
- 8. Both the official Respondents and the Impugned Judgment noted that in terms of Sale Deeds No.1 and No.2, the Original Plaintiffs’ claim could, if at all, extend only to 241-1 acres (i.e. the Sale Deed Area of 241-1 Acres). The

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<sup>4</sup> Paper Book Pg. No.75 (Exhibit P-7)

<sup>5</sup> Paper Book Pg. No.85 (Exhibit P-8)

<sup>6</sup> Paper Book Pg. No.94 (Exhibit P-10)

<sup>7</sup> Paper Book Pg. No.1 – Prayer clause contained in paragraph 15 of the Amended Plaint: “*The Plaintiffs therefore pray for a decree declaring the Plaintiffs’ possessory title to 1280 acres of land described in para 1 of the Plaint and in the seven Sale Deeds collectively marked as annexure “M” to the plaint and declaring as null and void and of no legal effect the orders dated 3-8-1978 of the Board of Revenue, Sind and the order dated 12-12-1972 of the Deputy Commissioner, Karachi restored by the Board which deny the Plaintiffs possessory title to the said land; and for an injunction restraining the Defendants from interfering with the Plaintiffs’ possession of the said 1280 acres of land; and for costs of the suit and for such further or other relief/or reliefs as may deem just and proper to this Honourable Court*”.

Excess 1038-39 Acres sought by the Original Plaintiffs was claimed by the official Respondents to be government land, and the Original Plaintiffs were alleged to have unlawfully usurped/encroached the same.

**Non-Exercise Of Remedy Left Open Regarding 241-1 Acres**

9. While dismissing the Underlying Suit with costs and limiting the remedy, if any, to the Sale Deed Area of 241-1 Acres, the Original Plaintiffs have, to date, initiated no proceedings for that area and instead have persisted with the Underlying Suit in claiming the Entire Claimed Area of 1280 Acres on the basis of alleged possessory title.

**Contentions Of Parties**

10. The learned Counsel for the Appellants (who were Original Plaintiffs No.7 to 10 in Underlying Suit) asserts that although the land acquired by the Original Plaintiffs No.2 and 9 through the Sale Deeds No.1 and No.2 is restricted to 241-1 acres only (i.e. Sale Deed Area of 241-1 Acres), nevertheless by virtue of the Compromise Decree they are entitled to claim further the Excess 1038-39 Acres. He maintains that the Underlying Suit was filed seeking a declaration to “*possessory title*” to the Entire Claimed Area of 1280 Acres and the Impugned Judgment by dismissing the Underlying Suit is erroneous.
11. The Appellants’ Counsel next contended that the issuance of notices to the Original Plaintiffs under the *Land Acquisition Act, 1894 (“Act 1894”)* constituted recognition of their alleged title over the Entire Claimed Area of 1280 Acres. He further argued that the Deputy Commissioner’s order dated 12.12.1972<sup>8</sup> – passed prior to the remand proceedings – was in violation of the recent ruling of this Court (Circuit Court Mirpurkhas) rendered in 2026 CLC 40 (*Mir Mazhar Talpur v. Province of Sindh & Others*).
12. On the other hand, learned Additional Advocate General Sindh submitted that while ownership of 241-1 acres is claimed by the Original Plaintiffs No.2 and 9 on the basis of two registered transactions (i.e. Sale Deeds No.1 and No.2), their claim over the Excess 1038-39 Acres is not based on any lawful mode of transfer, but rests entirely upon a private compromise, the legality and effect of which is opposed as it is legally incapable of conferring title or interest in the absence of participation of the State i.e. official Respondents.

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<sup>8</sup> Paper Book Pg. No.206 (Exhibit P-71)

13. As regards *Haq Qabza*, he placed reliance on the Land Utilization Department, Government of Sindh's order dated 16.11.1992, which, due to widespread bogus claims of *Haq Qabza* in District East and West of Karachi, restrained mutation entries based on *Haq Qabza* leases and directed that such land be treated as State land, except where claims were supported by genuine, pre-1947 registered documents.

**Proceedings Before Board Of Revenue – Allegation Of Usurping Excess 1038-39 Acres (Out Of Entire Claimed Area of 1280 Acres)**

14. As stated above, on 28.12.1964<sup>9</sup>, Original Plaintiffs No.2 and 9 applied to have the area substantially increased from the Sale Deed Area of 241-1 Acres to the Entire Claimed Area of 1280 Acres, and to have the latter entered in the Register of *Haq Qabza*. On the basis of Mukhtiarkar's alleged report dated 2.3.1965<sup>10</sup>, the Deputy Commissioner accepted the said application in a mechanical manner, without any independent application of mind, vide his brief order dated 1.4.1965<sup>11</sup>.
15. Subsequently, another Deputy Commissioner, after obtaining the requisite permission and exercising suo motu powers, reviewed his predecessor's order dated 1.4.1965 and issued a show-cause notice dated 7.10.1971<sup>12</sup> to Original Plaintiffs No.2 and 9.
16. Upon receipt of the aforesaid show-cause notice, the Original Plaintiffs, instituted the Underlying Suit on 26.11.1971. Their attempt to restrain the proceedings before the Board of Revenue ("**BOR**") through an injunction application was, however, rejected by the learned Single Judge vide order dated 21.12.1971<sup>13</sup>. This rejection was subsequently upheld by the Division Bench and, finally, by the Supreme Court<sup>14</sup> (as explained in paragraphs 22 to 26 below).
17. Consequently, the succeeding Deputy Commissioner, vide order dated 12.12.1972<sup>15</sup>, set aside his predecessor's order dated 1.4.1965 and directed restoration of the area to 234-11 acres – calculated in accordance with the unsurveyed khet numbers recorded in the Collector's order dated 6.6.1954<sup>16</sup> (bearing No. Rev/-3263 of 1954) which was passed on the application of the

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<sup>9</sup> Paper Book Pg. No.99 (Exhibit P-12)

<sup>10</sup> Paper Book Pg. No.100 (alleged Exhibit No.P-13) – See paragraph 30 of this Judgment

<sup>11</sup> Paper Book Pg. No.104 (Exhibit P-14)

<sup>12</sup> Paper Book Pg. No.196 (Exhibit P-67)

<sup>13</sup> Paper Book Pg. No.314

<sup>14</sup> 1972 SCMR 100 (*Noor Ali Bana & Others v. The Province of Sindh & Others*)

<sup>15</sup> Paper Book Pg. No.206 (Exhibit P-71)

<sup>16</sup> Paper Book Pg. No.27

Parsi Sellers themselves – which had stood in the names of Original Plaintiffs No.2 and 9 in the Register of *Haq Qabza* prior to the Deputy Commissioner's order dated 1.4.1965.

18. On the appeal filed by the Original Plaintiffs No.2 and 9, the Additional Member, BOR, by order dated 13.5.1974<sup>17</sup>, set aside the succeeding Deputy Commissioner's suo motu order dated 12.12.1972 and remanded the matter to him.
19. Upon remand, the succeeding Deputy Commissioner, vide order dated 18.11.1975<sup>18</sup>, upheld the original order passed by his predecessor i.e. the order dated 1.4.1965.
20. Thereafter, the Full Board of BOR initiated suo motu revision proceedings and, vide a detailed, reasoned order dated 3.8.1978<sup>19</sup>, set aside the Deputy Commissioner's post-remand order dated 18.11.1975, while maintaining the Deputy Commissioner's pre-remand order dated 12.12.1972.
21. By way of the Amended Plaint<sup>20</sup> filed on 29.9.1979 in the Underlying Suit, the Original Plaintiffs challenged the aforesaid order of the Full Board of BOR dated 3.8.1978 as well as the order passed by the Deputy Commissioner on 12.12.1972, and impleaded Respondent No.3 (BOR) as a party to the Underlying Suit.

**Original Plaintiffs' Attempts To Halt Proceedings Before Board Of Revenue – Rejected By High Court & Supreme Court**

22. As mentioned in paragraph 16 above, the Original Plaintiffs filed a stay application (under Order 39 Rules 1 & 2 CPC) in the Underlying Suit on the ground that since the High Court was already seized of the matter by virtue of the institution of the Underlying Suit, the revenue authorities should not be permitted to examine the question of title, as the High Court was a superior forum. A learned Single Judge, by order dated 21.12.1971<sup>21</sup> dismissed the injunction application.
23. The Original Plaintiffs thereafter challenged the Single Judge's aforesaid order in LPA No.209/1971, which was dismissed in limine by a Division Bench of the High Court of Sindh & Baluchistan, Karachi on 5.1.1972.

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<sup>17</sup> Paper Book Pg. No.211 (Exhibit P-72)

<sup>18</sup> Paper Book Pg. No.217 (Exhibit P-73)

<sup>19</sup> Paper Book Pg. No.231 (Exhibit P-74)

<sup>20</sup> Paper Book Pg. No.287 (Application for amendment of Plaint)

<sup>21</sup> Paper Book Pg. No.314

24. The Original Plaintiffs subsequently sought permission from the Supreme Court to file an appeal against the Division Bench's order. The leave was refused by the Supreme Court vide order dated 9.2.1972, reported as **Noor Ali Bana & Others v. The Province of Sindh & Others** (1972 SCMR 100).
25. **It is significant that the Supreme Court has recorded the admission of the then Counsel for Original Plaintiffs that the Deputy Commissioner was vested with statutory power to review his predecessor's order.**
26. Although, only the Single Judge's order is available in the Paper Book, neither this order nor the subsequent proceedings before the Division Bench or the Supreme Court were brought to this Court's attention, and nor do they find any mention in the memo of Appeal filed in the present Appeal. These proceedings came to light only during our research, when we came across the reported Supreme Court's order of *Noor Ali Bana* referred to above.

#### **Question For Determination**

27. The issue for determination is whether, assuming any rights flow from Sale Deeds No.1 and No.2, the Original Plaintiffs can claim land beyond the Sale Deed Area of 241-1 Acres, and in particular whether such claim can extend to the alleged Excess Area of 1038-39 Acres (raising the claimed total to 1280 acres), despite the complete absence of any mention, description, or identification of such excess area in the said Sale Deeds.

#### **Opinion Of The Court**

28. We have considered the submissions of the parties and the record of the case.

#### **Two Divergent Versions Of Alleged Mukhtiarkar Report Dated 2.3.1965 Available In Underlying Suit File & Paper Book – Internal Evidence of Forgery In Paper Book Version Due To Impossible Timeline Contained Therein**

29. In an attempt to substantiate their claim over the Entire Claimed Area of 1280 Acres, the Original Plaintiffs, in paragraph 6 of the Amended Plaint in the Underlying Suit, placed reliance on an alleged report of the Mukhtiarkar dated 2.3.1965<sup>22</sup>, which was purportedly accepted by the Deputy Commissioner vide order dated 1.4.1965. This alleged Mukhtiarkar report is also referred to in the Impugned Judgment (at Typed Pg. 8 under Issue No.2).

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<sup>22</sup> Paper Book Pg. No.100 (alleged Exhibit No.P-13) – See paragraph 30 of this Judgment

30. The handwritten reproduction of **the alleged Mukhtiarkar report, however, is demonstrably a tampered and/or fabricated document**, as is evident from the following glaring discrepancies:

- i) The contents of the alleged Mukhtiarkar report (available in the Paper Book at Pg. 100 as alleged Exhibit No.P-13) are materially and significantly different from the handwritten English version of the Mukhtiarkar report annexed with the Underlying Suit file (commencing on the reverse side of handwritten Pg. 37 [which is a “Receipt”] and concluding on the reverse side of handwritten Pg. 41, with both said pages, as well as the intervening pages, written in red ink). The differences are evident from the following:
  - (a) By way of illustration, one major discrepancy may be noted: the Paper Book version of the Mukhtiarkar report repeatedly uses the term “*Haq Qabza*” (appearing three times therein). **In stark contrast, this term (which forms the very foundation of the Original Plaintiffs’ / Appellants’ whole case) does not appear even once in the entire version of the Mukhtiarkar report available in the Underlying Suit file.**
  - (b) The Paper Book version of the alleged Mukhtiarkar report consists of only four pages, whereas the version annexed with the Underlying Suit file comprises five pages.
  - (c) Since the version contained in the Underlying Suit file was already a handwritten English translation, there was no justification whatsoever for rewriting it afresh for inclusion in the Paper Book. Such unnecessary reproduction appears to have been undertaken with malafide intent, evidently to alter or tamper with its contents. The Appellants were only required to annex a true photocopy of the Mukhtiarkar report as it existed in the Underlying Suit file, rather than preparing a rewritten version for the Paper Book.
- ii) Without prejudice to the foregoing, the Paper Book version of the Mukhtiarkar report bears the date 2.3.1965, yet it astonishingly refers to the alleged handing over of possession to the Original Plaintiffs by Kaderbux son of Jowrak Khan on 10.1.1983<sup>23</sup>. **A document dated 2.3.1965 could not possibly refer to an event that allegedly took place nearly eighteen (18) years later.**

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<sup>23</sup> Paper Book Pg. No.103 (handwritten Pg. 4)

- iii) While the Paper Book version of report bears the date 2.3.1965 at the start (top), **the concluding portion of same document (handwritten Pg. 4) bears the date 23.2.1965**, reflecting an unexplained and irreconcilable inconsistency in the date of the report itself.
  - iv) In addition, the Paper Book version of Mukhtiarkar report bears an alleged “Exhibit No.P/13,” which itself appears to be fabricated for the following reasons:
    - (a) It does not bear the initials of the Evidence Commissioner;
    - (b) The words “Exhibit No.P/13” are clearly written in a handwriting different from that of the Evidence Commissioner, whose initials appear elsewhere on the record (i.e. Paper Book);
    - (c) All other exhibits initialled by the Evidence Commissioner are marked in the form “*Exhibit P/\_\_\_*” without the use of the abbreviated word “No.” after “Exhibit”. On the other hand, the alleged report uniquely bears the words “*Exhibit No.*”, reflecting a stylistic departure from the established pattern of exhibit markings used by the Evidence Commissioner on his initialled exhibits.
31. The foregoing series of glaring discrepancies – in the dates, in the handwriting, and in the manner of exhibit marking – unequivocally demonstrates that the alleged Paper Book version of Mukhtiarkar report dated 2.3.1965 has been tampered with and/or fabricated. These contradictions not only render the document wholly unreliable and unauthentic but also strike at the very foundation of the Original Plaintiffs’ claim, exposing a deliberate attempt to mislead the Court(s).

***Yet Another Series Of Tampered Documents – Predecessors’ Title To 1280 Acres Allegedly Derived From A Chain Of Seven Conveyance Deeds***

32. In paragraph 6 of the Amended Plaintiff in the Underlying Suit, the Entire Claimed Area of 1280 Acres is stated to have been derived by the predecessors of the Original Plaintiffs through seven (7) different conveyance deeds executed between various persons – four (4) of which were executed in the year 1919, while the remaining three (3) were executed in the year 1920. None of the Original Plaintiffs were parties in any of them. It is, however, pertinent to point out that though these seven (7) conveyance deeds are present in the Paper Book, they are not available in the Suit file of the Underlying Suit (despite the assertion in paragraph 6 of the Amended Plaintiff that that they have already been filed and collectively marked as “M”).

33. Astonishingly, although the aforesaid **seven (7) alleged conveyance deeds are stated to have been executed in 1919 and 1920 i.e. prior to the creation of Pakistan, yet they are all printed on stamp papers bearing the imprint “Pakistan”**. Moreover, three (3) of these deeds are **handwritten and in Sindhi language – both features being highly unusual for a formal conveyance deed of that period** – while another three (3) of the deeds **bear two different registration dates**. For instance:

- i) Conveyance Deed dated 15.4.1919<sup>24</sup>: Handwritten in the Sindhi language and bearing a registration date of 17.4.1919 (see Paper Book Pg. 152), it is nevertheless printed on stamp paper of Pakistan.
- ii) Conveyance Deed dated 31.7.1919<sup>25</sup>: Again, handwritten in the Sindhi language and showing a registration date of 11.8.1919 (see Paper Book Pg. 160), yet it is printed on a Pakistan stamp paper.
- iii) Conveyance Deed dated 19.8.1919<sup>26</sup>: Handwritten in the Sindhi language, **it bears two different registration dates**: 22.8.1919 (see Paper Book Pg. 166) and 20.8.1919 (see Paper Book Pg. 167), it is nonetheless executed on stamp paper of Pakistan.
- iv) Conveyance Deed dated 12.9.1919<sup>27</sup>: Handwritten in English, it bears registration date 19.9.1919 (see Paper Book Pg. 174) but is printed on stamp paper of Pakistan.
- v) Conveyance Deed dated 11.11.1919<sup>28</sup>: Handwritten in English, this too **bears two different registration dates**: 17.11.1919 (see Paper Book Pg. 177) and 25.11.1919 (see Paper Book Pg. 178), yet it is printed on stamp paper of Pakistan.
- vi) Conveyance Deed dated 16.3.1920<sup>29</sup>: It bears registration date 10.5.1920 (see Paper Book Pg. 183), but is printed on stamp paper of Pakistan.
- vii) Conveyance Deed dated 4.5.1920<sup>30</sup>: Handwritten in English, it **bears two different registration dates**: date 5.5.1920 (see Paper Book Pg. 186) and 13.6.1920 (see Paper Book Pg. 187), yet it is printed on stamp paper of Pakistan.

**Missing Plaintiff Of The 1962 Compromise Suit & Legal Effect Of Compromise Decree**

34. There are several striking and material aspects of the 1962 Compromise Suit, in which the Compromise Decree<sup>31</sup> was obtained. These are:

<sup>24</sup> Paper Book Pg. No.148 (alleged Exhibit P-58 – The handwriting and initials/signature of the Evidence Commissioner differ from those on other documents and also show signs of overwriting)

<sup>25</sup> Paper Book Pg. No.157 (alleged Exhibit P-59)

<sup>26</sup> Paper Book Pg. No.164 (alleged Exhibit P-60)

<sup>27</sup> Paper Book Pg. No.171 (alleged Exhibit P-61)

<sup>28</sup> Paper Book Pg. No.175 (alleged Exhibit P-62)

<sup>29</sup> Paper Book Pg. No.179 (alleged Exhibit P-63)

<sup>30</sup> Paper Book Pg. No.184 (alleged Exhibit P-64)

<sup>31</sup> Paper Book Pg. No.94 (Exhibit P-10)

- i) Firstly, and most significantly, **the plaint of 1962 Compromise Suit is not available on the record – a fact expressly admitted by the Appellants’ Counsel when twice questioned by this Court** – which by itself raises a serious red flag. In addition, notably:
- (a) The Original Plaintiffs’ claim to the Entire Claimed Area of 1280 Acres rests solely on the Compromise Decree. However, the Compromise Decree does not once mention the figure of 1280 acres, nor is there any evidence that the land conveyed by the sole defendant (Kaderbux son of Jowrak Khan) to Original Plaintiffs No.2 and 9 under the Compromise Decree measured 1280 acres.
  - (b) On the contrary, the Compromise Decree (in paragraph 2) expressly states that the land/property being transferred corresponds to that recorded by the Collector of Karachi in his order dated 6.6.1954<sup>32</sup> (bearing No.Rev/-3263 of 1954, issued on the application of the Parsi Sellers themselves), pursuant to which entries were made in the Register of *Haq Qabza* in favour of the Parsi Sellers, covering the same unsurveyed khet numbers as referenced in Sale Deeds No.1 and No.2.
  - (c) The said Compromise Decree merely reproduces the prayer clause, while the very plaint on the basis of which the 1962 Compromise Suit was instituted is absent from the record – which according to the title page of the Compromise Decree and the prayer clauses reproduced therein shows that it was only a suit for possession and mesne profits.
  - (d) Furthermore, **the prayer clause (a) reproduced in the Compromise Decree seeks eviction of sole defendant (Kaderbux son of Jowrak Khan) from the agricultural lands mentioned in paras 1 to 4 of the missing plaint** filed in the 1962 Compromise Suit and only the transfer of possession to Original Plaintiffs No.2 and 9. Similarly, the prayer clause (b), amongst others, clearly specifies that the Original Plaintiffs No.2 and 9 only had 10 anna and 6 anna interest respectively in the referred agricultural land.
  - (e) In the absence of this plaint – which constitutes the very foundation of the proceedings – this Court is left unaware of the facts pleaded, the size and location of agricultural land

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<sup>32</sup> Paper Book Pg. No.27

involved, the nature and extent of the claim asserted, or the basis upon which the Compromise Decree was sought and obtained in the 1962 Compromise Suit, rendering it impossible for this Court to meaningfully examine the legality, scope, or effect of the Compromise Decree.

- (f) This is sufficient reason to discard the Compromise Decree, rendering it unreliable, legally meaningless, and incapable of forming the basis of any lawful or enforceable claim, including for the determination of title or ownership rights.

Without prejudice to the foregoing:

- ii) Secondly and additionally, the said 1962 Compromise Suit was instituted only by Original Plaintiffs No.2 and 9 against Kaderbux son of Jowrak Khan as the sole defendant (from whom they claim to obtain possession in paragraph 4 of the Amended Plaintiff in Underlying Suit). This is despite the fact that the Amended Plaintiff in the Underlying Suit itself categorically asserts (in paragraphs 3(a) and 3(b))<sup>33</sup>, that the Entire Claimed Area of 1280 Acres was not leased exclusively to Kaderbux, but was jointly leased to and held by two other persons, namely Neck Muhammad son of Allahdad and Hasan son of Noker, in addition to Kaderbux.
- iii) Thirdly, the State, i.e. official Respondents, was not impleaded as a party to the 1962 Compromise Suit, notwithstanding the fact that the claim directly pertained to land asserted to vest in or affect the rights of the State.
- iv) Fourthly, the Plaintiffs' claim over the Excess 1038-39 Acres does not emanate from any lawful or legally recognized instrument of transfer, but is founded solely upon a compromise arrived at inter se between private parties, which neither created nor could legally create title in immovable property of such magnitude, particularly in the absence of and without participation of the lawful co-lessees (i.e. Neck Muhammad son of Allahdad and Hasan son of Noker) or the State (i.e. official Respondents).

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<sup>33</sup> As per paragraphs 3(a) & (b) of Amended Plaintiff in Underlying Suit, the Entire Claimed Area of 1280 Acres was subject matter of:

- Two separate lease agreements dated 23.3.1932 and 26.7.1933 executed in favour Neck Muhammad son of Allahdad and Hasan son of Noker respectively; and
- Five separate lease agreements executed in favour of Kaderbux son of Jowrak Khan dated 9.2.1934, 19.6.1935, 16.10.1940, 29.11.1945 and 24.10.1951.

- v) Fifthly, the two tenancy leases referred to in paragraph 2 of the Compromise Decree – executed by the Parsi Sellers in favour of Kaderbux son of Jowrak Khan – were limited five (5) year tenancy leases, initially registered on 15.11.1940<sup>34</sup> and subsequently renewed for a further five (5) years by a tenancy lease registered on 12.12.1945<sup>35</sup>. **Significantly, both these leases had already expired by the time Sale Deeds No.1 and No.2 (dated 10.2.1958 and 8.7.1960), were executed between the Parsi Sellers and Original Plaintiffs No.2 and 9. This implies that all the alleged 1280 acres of tenanted lands granted to Kaderbux if any, had already reverted to the Parsi Sellers, who, notwithstanding this, chose to convey only 241-1 acres to Original Plaintiffs No.2 and 9 under the two Sale Deeds.** This, in turn, underscores that the Original Plaintiffs could claim no more than the area actually conveyed under the Sale Deeds No.1 and No.2, and any assertion of entitlement over the entire 1280 acres is legally and factually untenable.
- vi) Sixthly, mere occupants of khet numbers do not possess proprietary rights over the land<sup>36</sup>, which was the status of Kaderbux son of Jowrak Khan. The reference to “*unsurveyed Khet numbers*” appears in paragraph 2 of the Compromise Decree. Moreover, according to the Original Plaintiffs’ own case, Kaderbux was merely an occupant, holding the land as a tenant of the Parsi Sellers under a lease, and was not its owner. A handwritten, undated receipt<sup>37</sup> allegedly issued by Kaderbux is on record, in which he himself states that he “*occupied the said land only as a so-called possessor*”. Since the tenant Kaderbux had no title to the Entire Claimed Area of 1280 Acres, he could not have conveyed any title to Original Plaintiffs No.2 and 9.
- vii) Lastly, **the alleged receipt purportedly issued by Kaderbux constitutes yet another example of document tampering.**
- (a) Similar to the existence of two divergent versions of the alleged Mukhtiarkar Report dated 2.3.1965 available in the Underlying Suit file and the Paper Book (as detailed in paragraphs 29 to 31 above), there also exist two materially different versions of the handwritten, undated receipt allegedly issued by Kaderbux.

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<sup>34</sup> Paper Book Pg. No.75 (Exhibit P-7)

<sup>35</sup> Paper Book Pg. No.85 (Exhibit P-8)

<sup>36</sup> 2022 PCrLJ 1032 (*Asadullah Solangi v. The State [NAB]*)

<sup>37</sup> Paper Book Pg. No.97 (allegedly bearing Exhibit No.P-11)

- (b) In the Paper Book version, on the first page, in the second-last line (Paper Book, Pg. 97, alleged Exhibit No.P-11), the document allegedly states: "... .., *I occupied the said land only as a so called possessor. **I sell** the same land today*". In stark contrast, the version of the receipt available in the Underlying Suit file (bearing handwritten Pg. No.37 in red ink) reads: "... .. *I had only a formal possession of this land, which **I hand over** today.*" This material variation goes to the root of the nature and character of the transaction purportedly evidenced by the document.
- (c) The Paper Book version of the receipt contains two signature segments (on left side and right side) on the last page – one for the alleged vendors and one for the alleged vendee – whereas the version in the Underlying Suit file has no such segments. This again underscores that the nature and character of the transaction purportedly evidenced by the two versions are materially different.
- (d) Since the version of receipt contained in the Underlying Suit file was already a handwritten English translation (from Urdu as stated on it), there was no excuse for reproducing it afresh in the Paper Book. The preparation of a rewritten version, instead of annexing a photocopy of the one already in Suit file, suggests malafide intent in an attempt to alter or tamper with its contents.

Further indications that the document is tampered with and/or fabricated include:

- (e) It does not bear the initials of the Evidence Commissioner;
- (f) The words "Ex: P/11" are written in a handwriting that is clearly different from that of the Evidence Commissioner, whose initials appear elsewhere in the record (i.e. Paper Book).
35. In view of the foregoing position, the institution of the 1962 Compromise Suit and the resultant Compromise Decree, having been procured without impleading the aforesaid two co-lessees<sup>38</sup> (namely, Neck Muhammad son of Allahdad and Hasan son of Noker) – who were necessary and indispensable parties to the proceedings – is legally ineffective, non-binding, and incapable of conferring any right, title, or interest in respect of the Entire Claimed Area

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<sup>38</sup> See Footnote 33 above

of 1280 Acres. This is particularly so as they were not afforded any opportunity of hearing.

36. Furthermore, the State (i.e. official Respondents) not having been a party to the 1962 Compromise Suit, the ensuing Compromise Decree cannot bind the State, or be invoked to prejudice, restrict, or diminish its rights, title, or interest in the subject land.
37. The Compromise Decree, being nothing more than the product of a private arrangement between private individuals, concluded behind the back of other admitted co-lessees and without the State's participation, is therefore wholly unenforceable, devoid of legal validity and legal consequence, non est in law, and cannot be relied upon for any purpose, including the determination of title or ownership rights.

*Identical Sale Consideration In Sale Deeds & Land Value In Title Of Compromise Decree – Conclusively Indicate The Area Of Land Conveyed*

38. The following is noted from the Sale Deeds No.1 and No.2:
  - i) While both the Sale Deeds refer to the same survey numbers of land situated in Deh Lal Bakhar, Tapo Gabopat, Taluka Karachi, the Parsi Sellers under Sale Deed No.1 conveyed only their undivided 10 annas share, whereas the Parsi Sellers under the Sale Deed No.2 conveyed only their undivided 6 annas share.
  - ii) Sale Deed No.1 records that the land described therein was conveyed at the rate of Rs.100/- per acre, with the total sale consideration stated as Rs.14,627/-. Similarly, Sale Deed No.2 records the conveyance of land specified therein for a total sale consideration of Rs.13,375/-.
  - iii) The total sale consideration under both Sale Deed No.1 and No.2 amounts to only Rs.28,002/- (Rs.14,627+Rs.13,375). Had the Entire Claimed Area of 1280 Acres of land truly been conveyed by the Parsi Sellers or purchased by Original Plaintiffs No.2 and 9 through these two Sale Deeds as claimed, the aggregate sale consideration for the Entire Claimed Area of 1280 Acres at Rs.100/- per acre would have been Rs.128,000/- (and not Rs.28,002/-).
  - iv) The sale considerations recorded in Sale Deeds No.1 and No.2, therefore, clearly contradict and falsify the Original Plaintiffs' claim of ownership over the Entire Claimed Area of 1280 Acres. The Original Plaintiffs, therefore, cannot be permitted to advance a case contrary to

the terms of these two Sale Deeds under which the Original Plaintiffs No.2 and 9 purchased the land.

- v) Similarly, yet significantly, despite the absence of the plaint of the 1962 Compromise Suit from the record – pursuant to which the Compromise Decree was passed – the Compromise Decree itself reproduces the title/heading of that plaint as:

*“Suit for possession of agricultural lands valued at **Rs.28,002.00** in Deh Lal Bakher, Tapo Gabopat, Taluka Karachi and for mesne profits valued at Rs.200.00.” [Emphasis added ]*

- vi) The exact repetition of this amount of Rs.28,002/- in the title/heading of the Compromise Decree – which is identical to the aggregate sale consideration of the two Sale Deeds (Rs.14,627+Rs.13,375 = Rs.28,002/-) – cannot be regarded as coincidental. Rather, it constitutes a clear internal indicator that the land forming the subject matter of the Compromise Decree was the very same land conveyed through the two Sale Deeds, namely the area measuring 241-1 acres (i.e. Sale Deed Area of 241 Acres) and not the Entire Claimed Area of 1280 Acres as alleged.

*Changing Versions Of Original Plaintiffs Regarding Their Claimed Source of Possession & Size Of Physical Area*

39. On the one hand, in their application dated 28.12.1964 addressed to the Deputy Commissioner and Mukhtiarkar<sup>39</sup>, the Original Plaintiffs No.2 and 9 expressly admitted that, under Sale Deeds No.1 and 2, the unsurveyed begoti khets recorded in the name of the Parsi Sellers measured only 241-1 acres and were already entered in the Register of *Haq Qabza*.
40. On the other hand, despite having admitted the above, the Original Plaintiffs No.2 and 9 (after stating in paragraph 1 of the Amended Plaint of the Underlying Suit that they are owners and in possession of the Entire Claimed Area of 1280 Acres), assert in paragraph 2 that they acquired the said 1280 acres from the Parsi Sellers through Sale Deed No.1 dated 10.2.1958 and Sale Deed No.2 dated 8.7.1960 – effectively expanding their claimed title almost fivefold.
41. Yet again, in paragraph 4 of the same Amended Plaint, the Original Plaintiffs No.2 and 9 contend that they obtained physical possession of the Entire Claimed Area of 1280 Acres pursuant to the Compromise Decree dated 4.2.1963 (passed in the 1962 Compromise Suit).

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<sup>39</sup> See paragraph 30 of this Judgment

42. These pleadings are mutually destructive, as a purchaser (in this case Original Plaintiffs No.2 and 9) claiming title through two registered Sale Deeds cannot, at the same time, assert that possession of the very same land was acquired years later through a Compromise Decree passed in a separate suit (i.e. the 1962 Compromise Suit), and that too from an entirely different person (namely, Kaderbux son of Jowrak Khan).
43. Their subsequent assertion that possession was obtained only in 1963 pursuant to the said Compromise Decree necessarily implies that either possession was never delivered under the alleged Sale Deeds or that the sale transactions themselves did not confer effective title and possession.
44. The two versions are legally irreconcilable and cannot coexist in law; their simultaneous assertion within the same Amended Plaint fundamentally undermines the credibility, legality, and internal consistency of the Original Plaintiffs' case.

*Effect of Land Acquisition Public Notice On The Original Plaintiffs' Title*

45. The Appellants' Counsel has referred to paragraph 7 of the Amended Plaint in Underlying Suit and has argued that a gazetted public notice<sup>40</sup> was issued to the Original Plaintiffs under Sections 9 and 10 of Act 1894 (for purpose of Pakistan Steel Mills) which in itself constituted an acknowledgment of the Original Plaintiffs' alleged title over the Entire Claimed Area of 1280 Acres. This contention is clearly erroneous.
46. As a preliminary point, Section 3(c) of Act 1894, defines "*person interested*" to include all persons claiming an interest in compensation on account of the acquisition of land, including those holding easements or other legal interests affecting the land. This explicitly extends beyond mere ownership to cover non-owners such as mortgagees, tenants, lessees, or persons with rights of way, water rights, or other encumbrances. In short, the term "*person interested*" is a broad legal concept encompassing anyone entitled to claim compensation under the Act, and not solely the owner of the land.
47. Under Section 9 of Act 1894, the Collector is under a statutory obligation to issue public as well as individual notices to all persons interested in the land including occupiers under Section 9(3), requiring them to appear and disclose the nature of their respective interests, submit claims for compensation, and raise objections, if any, prior to the commencement of proceedings under Section 11. A notice under Section 9, thus, constitutes the statutory

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<sup>40</sup> Paper Book Pg. No.190 (Exhibit P-66)

mechanism through which the State identifies rightful claimants and affords them an opportunity of hearing before proceeding further.

48. Section 10 of Act 1894 supplements Section 9 by empowering the Collector to compel disclosure of the names and nature of all persons having an interest in the acquired land, thereby ensuring correct and complete identification of claimants before the making of an award.
49. Read together, Sections 9 and 10 operate in tandem: while Section 9 invites claims from persons interested, Section 10 prevents concealment of interests by authorising the Collector to compel disclosure. These provisions collectively ensure that, prior to the making of an award under Section 11, all interested persons are identified and afforded due opportunity of participation in the acquisition proceedings.
50. Therefore, merely receiving or responding to notices under Sections 9 and 10 of the Act 1894, does not create, confer or establish ownership or legal title in favour of the recipients. Such notices simply identify persons who may be entitled to claim compensation for their interests in the land.

*Government Of Sindh's Order Dated 16.11.1992 Regarding "Haq Qabza"*

51. By Order dated 16.11.1992, the Land Utilization Department, Government of Sindh, while taking notice of the rampant land grabbing by way of bogus claims of *Haq Qabza* particularly in Districts East and West of Karachi (the latter being the same area where the Original Plaintiffs claim the Entire Claimed Area of 1280 Acres), prohibited all entries in Village Form VII on the basis of *Haq Qabza* and directed revenue officials to treat such land as State land, except where claims of *Haq Qabza* were substantiated by genuine documents registered as per Rules prior to the year 1947. Revenue officials were further specifically restrained from certifying any *Haq Qabza* claims. This Order has been judicially recognized and applied by both the learned Division Bench and the Single Bench of this Court in the cases of **Asadullah Solangi v. The State [NAB]**<sup>41</sup> and **Zain Khan v. Taj Roshan**<sup>42</sup>.
52. As stated in paragraph 20 above, the Full Board of BOR – under the Explanation to Section 7(2) of the *Board of Revenue Act, 1957*, the term “Full Board” means two or three Members of the Board, as may be determined by the rules – undertook suo motu revision of the Original Plaintiffs’ alleged claim and title and, through a reasoned order dated 3.8.1978<sup>43</sup>, invalidated the

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<sup>41</sup> 2022 PCrLJ 1032 (*Asadullah Solangi v. The State [NAB]*)

<sup>42</sup> 2018 CLCN 116 (*Zain Khan v. Taj Roshan*)

<sup>43</sup> Paper Book Pg. No.231 (Exhibit P-74)

Deputy Commissioner's post-remand order dated 18.11.1975<sup>44</sup> but sustained his pre-remand order dated 12.12.1972<sup>45</sup>. In doing so, the Full Board, inter alia, held that:

- i) The Parsi Sellers, in their applications dated 12.11.1953 and 11.1.1954, claimed rights in specifically identified survey numbers on the basis of conveyance deeds of the years 1920 and 1922. The area corresponding to those survey numbers amounted to only 234-11 acres, yet Sale Deeds No.1 and No.2, while referring to the very same survey numbers, recorded the area as 241-1 acres;
- ii) The rights of the Original Plaintiffs could not exceed those of their predecessors-in-interest (i.e. Parsi Sellers);
- iii) There was no entry in the revenue record showing that the Original Plaintiffs or their predecessors ever possessed land beyond the stated survey numbers;
- iv) The 1922 survey operations support the State's position that the Kabuli area in the deh was only 234-11 acres;
- v) The documents from 1919, 1920, and 1922 lacked full particulars, were executed between private parties, and were not binding on the Government, especially as they were unsupported by entries in the revenue record;
- vi) The Compromise Decree passed in the 1962 Compromise Suit, being between private parties, could not create any right against the Government, which was not a party to the said Compromise Suit;
- vii) The claim of the Original Plaintiffs over the Entire Claimed Area of 1280 Acres was, thus, not established.

53. Based on the above, no right, title, or interest in the Entire Claimed Area of 1280 Acres can be countenanced in favour of the Original Plaintiffs (i.e. Appellants and private Respondents No.4 to 8), and their claim is without merit. The findings of the Full Board of BOR, supported by the revenue record, survey operations, and applicable legal principles, conclusively demonstrate that the claims by the Original Plaintiffs seeking extension of rights beyond the area actually covered by the survey numbers i.e. 234-11 acres (as reflected in the pre-remand order of the Deputy Commissioner dated 12.12.1972) are legally unsustainable.

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<sup>44</sup> Paper Book Pg. No.217 (Exhibit P-73)

<sup>45</sup> Paper Book Pg. No.206 (Exhibit P-71)

54. The authority cited by the Appellants' Counsel (in paragraph 11 above) has no applicability to the present case, being clearly distinguishable on facts.

*Failure To Avail Remedy Expressly Left Open By Impugned Judgment For 241-1 Acres*

55. While dismissing the Underlying Suit with costs, the Impugned Judgment expressly left the Original Plaintiffs at liberty to pursue a remedy, if any, only in respect of the Sale Deed Area of 241-1 Acres. Notwithstanding this leave, the Original Plaintiffs have, to date, failed to initiate any independent proceedings to assert or enforce their alleged right and title over that area of 241-1 Acres (even though the area attributable to the Parsi Sellers was calculated at only 234-11 acres, as noted in paragraphs 17 and 52(i) above). Instead, they have continued to prosecute the Underlying Suit on the basis of an alleged "*possessory title*" over the Entire Claimed Area of 1280 Acres.
56. It has been 36 years since the passing of the Impugned Judgment dated 21.12.1989. Accordingly, the Original Plaintiffs have irrevocably lost the opportunity to assert any rights over the Sale Deed Area of 241-1 Acres, and the matter must now be brought to a final and conclusive closure. In view of the fact that the statutory period of limitation for instituting any proceedings with respect to the said 241-1 acres has long expired, claims, if any, by the Original Plaintiffs are now expressly time barred and cannot be entertained by a court under any circumstances.

*Absence of Joint Action Undermines the Appellants' Case*

57. In addition, it is noted that the present private Respondents No.4 to 8 were Original Plaintiffs No.2 to 6 in the Underlying Suit (and legal heirs of deceased Original Plaintiff No.1), whereas the present Appellants were Original Plaintiffs No.7 to 10. No explanation has been provided by the Appellants as to why the private Respondents No.4 to 8 have not joined this Appeal or pursued enforcement of their rights independently. This absence of coordinated or independent action reinforces that the Original Plaintiffs' claims are fragmented, unsubstantiated, and legally unsustainable, and accordingly, no relief can be granted in their favour.

**Conclusion**

58. In light of the foregoing, it is evident that the claim of the Original Plaintiffs (i.e. Appellants and the Respondents No.4 to 8) to the Entire Claimed Area of 1280 Acres is purportedly anchored upon a series of fabricated, tampered, and legally ineffective documents, including a tampered Mukhtiarkar report and

receipt, suspect pre-Partition conveyance deeds, and a Compromise Decree whose plaint is missing from the record and which, in any event, was incapable of conferring title, having been obtained without the participation of the admitted co-lessees or the official Respondents. The registered Sale Deed No.1 and Sale Deed No.2, their stated consideration, the Original Plaintiffs' contemporaneous admissions, the revenue record, survey data, and the findings of the Full Board of the BOR, Sindh establish that, if at all, only 241-1 acres (i.e. Sale Deed Area of 241-1 Acres) were ever conveyed, while the asserted expansion to 1280 acres is unsupported in law or fact. Having failed for decades to pursue even the limited remedy expressly left open in respect of the Sale Deed land (i.e. Sale Deed Area of 241-1 Acres), the claim of the Original Plaintiffs (i.e. Appellants and the Respondents No.4 to 8) are now barred by limitation. Accordingly, no right, title, or interest in the Entire Claimed Area of 1280 acres, or any part thereof, can be recognized in their favour.

59. As a result, the Impugned Judgment, as rendered on 21.12.1989, warrants no interference and is upheld. However, the liberty granted therein to pursue a remedy in respect of the Sale Deed Area of 241-1 Acres was never availed by the Original Plaintiffs (i.e. Appellants and the Respondents No.4 to 8) and, by efflux of time and operation of the law of limitation, has since become extinguished.
60. Consequently, this High Court Appeal is **dismissed with costs of Rs.2 lacs** (*Rupees Two Lacs*), to be deposited in the account of High Court Clinic within thirty (30) days from today. The office shall submit a **compliance report** confirming the deposit of costs within the stipulated period. Litigation founded upon tampered or fabricated documents constitutes a serious abuse of the judicial process, burdens the courts with avoidable proceedings, and diverts scarce judicial resources from genuine disputes. Such conduct cannot be condoned and must attract meaningful costs to deter similar misuse of the legal system in the future<sup>46</sup>.

**Direction For Digitization, Sealing & Preservation Of Record**

61. The Office is directed to **immediately** prepare a digitised version of the entire record and files. The digitisation process shall be carried out under the personal supervision of the head of the concerned branch. Once digitisation is complete, the Office is further directed to **instantly** place the entire record, including the Suit file of Underlying Suit No.319/1971, along with the two Paper Books, in a sealed envelope to ensure their proper preservation and to

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<sup>46</sup> 2023 SCMR 960 (*Zakir Mehmood v. Secretary Ministry of Defence*)

safeguard them against any tampering, physical damage, loss, or destruction. This direction is issued particularly in view of the possibility that any party may prefer an appeal before the Honourable Supreme Court of Pakistan, in which event the said Court may require production of the original record for examination.

**JUDGE**

**JUDGE**