

IN THE HIGH COURT OF SINDH, KARACHI

R. A. NO. 32 OF 2014

PRESENT:**MR. JUSTICE ARSHAD HUSSAIN KHAN***Shamim Akhtar and others*

vs.

The Chairman Evacuee Trust Property and others

Applicants: Through Mr. Shab Alam, Advocate

Respondents Through Mr. Shahid Iqbal Rana, Advocate
Nos.1 & 2 :

Date of 31.10.2016
Hearing:

Date of
Judgment: 11.01.2017

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The Applicants through the instant revision Application has challenged the order dated 06.02.2014 passed by learned court of Vth Additional District and Session Judge Karachi (South) in Civil Appeal No. 57 of 2013, upholding the Judgment and Decree passed by VIIIth Senior Civil Judge Karachi (South) in Civil Suit No.479 of 2012 dated 15.03.2013; dismissing the suit of the Applicants.

2. Brief facts leading to the present civil revision application as averred therein are that applicants are the sons and daughters of deceased Sardar Begum, who died on 20.12.1994. The said Sardar Begum was the original owner of the property bearing Survey No.79/1, Sheet No.RS-2 (Old S.No.P.O. 194 Sheet E/6) measuring 138 Sq. Yards, situated at Ram Swami Quarters, Karachi, herein after referred to as the "said property", having purchased the same from Lohar Halai Community by virtue of registered conveyance deed dated 30.12.1948 and subsequently mutated in the record of rights of respondent No.3

(Mukhtiarkar Saddar Town Karachi). The said Sardar Begum after execution of conveyance deed and mutation had applied to the Custodian Evacuee Property for confirmation of transaction/ownership, which was subsequently confirmed by then Additional Custodian (Judicial) Evacuee Property vide its order dated 24.06.1950. Prior to the said verification, Inspecting, Assistant Commissioner of Income-Tax, Karachi Range Karachi through its letter dated 09.06.1950 had also issued no objection certificate of confirmation of sale or transfer of the said property in the name of Sardar Begum. Upon the death of Sardar Begum the applicants approached to respondent No.3 for mutation of the property in their names being legal heirs of deceased Sardar Begum, however, the applicants were informed to obtain NOC for mutation from the Evacuee Property Trust Pakistan besides heirship certificate. In pursuance thereof, on 26.09.2011 the applicants filed application before respondent No.2 (Administrator Evacuee Trust Property) but no reply was received. Thereafter, the applicants filed application for mutation by way of inheritance in their names in the office of respondent No.3 who referred said application to respondent No.2 for necessary action. It is also averred that applicants on the very first time came to know the fact that said property was declared as Evacuee Trust Property vide Gazette of Pakistan dated 06.12.1963. Respondent No.2 in reply to the letter of respondent No.3, instructed to respondent No.3 not to mutate said property as it is in the list of Evacuee Trust Properties. The applicants were also advised to approach the Chairman of Evacuee Trust Property Lahore to get the said property excluded from the list of evacuee trust property. The applicants pursuant to the said advice had filed application under Section 8 of the Evacuee Trust Properties Act, 1975, but no reply was received from respondent No.1. Thereafter, on 13.02.2012 the applicants sent reminder of said application which too was not replied. Consequently, the applicants having no other option filed civil suit bearing No. 479 of 2012 for Declaration and Mandatory Injunction in respect of the said property in the Court of VIIIth Senior Civil Judge, Karachi (South) with following prayer:-

- a) *To declare that the plaintiffs mother Sardar Begum was / is the real owner of Property Survey bearing No.79/1, Sheet No.RS.2, (Old S.No. P.O. 194 Sheet E/6) measuring 138 Sq. yds., Ramswami quarters,*

Karachi and further declare that the keeping the property in question as Evacuee Trust Property in the Gazette Notification dated: 15/07/1963 and Gazette of Pakistan dated: 06/12/1963 shown at serial No.485 is illegal, unlawful as the ownership of the said property had already been confirmed by then Additional Custodian (Judicial) Evacuee Property (S.A.M. Jafry) by passing order dated: 24/06/1950.

- b) To declare that the above said property is non-evacuee property and applicants being the legal heirs of deceased Sardar Begum have full right to get the said property mutate in the record of respondent No.3 in the names of all legal heirs of deceased Sardar Begum without interference of respondents No. 1 & 2.*
- c) To direct the respondents No.1 & 2 to exclude the property in question from the list of evacuee trust property and further give direction to the respondent No.3 to mutate the said property in the names of plaintiffs as per application dated: 16/11/2011 filed by plaintiffs.*
- d) Any other equitable relief, which this Honourable Court may deem fit and proper in the circumstances of the case.*
- e) To award the cost.”*

It is also averred that the present respondent (the defendants in the suit) despite having notice of the said suit did not file any written statement and subsequently the respondents were declared ex-parte, thereafter, the applicants led their evidence and the learned trial Court dismissed the Suit No.479/2012 of the applicants vide judgment dated 15.03.2013. The relevant portion of the said judgment is reproduced herein below:-

“According to the case of the plaintiffs themselves suit property has been declared as Evacuee Trust property and applicants pray to declare the property as non-Evacuee property and further to direct the Respondents to exclude the property from the list of Evacuee properties and to mutate the same in the names of the applicants. It has been held in 2007 PSC SC (Pak) 787(d) that “---S. 8 --- Issue of Character of property in question-Determination---The Chairman Evacuee Trust Board has ample power to decide whether the property has a

character of evacuee or not while exercising power under said section. (Evacuee Trust properties Management and Disposal) Act, 1975 S. 14---Jurisdiction of Civil Court in evacuee matter (Decision of custodian on the status of property having binding effect over the Civil Court and the Civil Court has no jurisdiction to take the cognizance of the matter). "It has also been held in 2011 PSC SC(Pak) 22(a) that "---S. 14---Declaration about status of property---Dispute---Bar of Jurisdiction on Courts--- Notwithstanding whether a declaration in terms of Section-8 has been made or not by the Chairman, yet even if a question has arisen at any point of time about the status of the property, it shall be the Chairman along who under the said Act shall be competent an empowered to determine and decide the question and the Court in view of said bar shall have no jurisdiction in the matter.

In view of the foregoing reasons/discussion, suit of the plaintiff is hereby dismissed, with no order as to costs."

Against the said judgment and decree the applicants preferred Civil Appeal No.57 of 2013 before the learned Vth Additional District Judge, Karachi South, which appeal was also dismissed by the learned appellate Court vide its judgment dated 06.02.2014. The said judgment and decree have been challenged before this Court in the present civil revision application.

3. Upon notice of the present case, respondents No.1 and 2 have jointly filed their objections wherein it is stated, at the very outset, that the judgment passed by the learned lower appellate and trial Courts are entirely based on law as to maintainability and the facts pleaded by the applicants in para 11 of their plaint. Further stated that Section 14 of Evacuee Trust Properties (Management and Disposal) Act, 1975 debars jurisdiction of civil courts in respect of Evacuee Trust Properties in this regard the respondents also relied upon case law reported as 1992 SCMR 1313. It is also stated that the applicants have admitted this fact of first purchasing of property in question Lohar Halai Community which shows the connection of property with the charity/religion and the same has been confirmed from the list attached to the notification. It is also stated that the petition under Section 8 of the Evacuee Trust

Properties (Management and Disposal) Act, 1975, is also pending before the competent forum of law. Further no civil court shall have jurisdiction in respect of any matter which the Federal Government or an officer appointed under the Evacuee Trust Properties (Management and Disposal) Act, 1975 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. Lastly, stated that the learned trial Court and the learned lower appellate Court have rightly dismissed the suit and the appeal on the ground of maintainability.

4. Heard the learned counsel for the parties and with their assistance also perused the records and the relevant law on the point.

The learned counsel for the applicants during the course of his arguments has contended that the learned trial court as well as lower appellate court while passing the impugned judgments and decree have completely ignored the provisions of Evacuee Trust Property (Management and Disposal) Act, 1975. Further contended that in accordance with Section 7(b) and Section 8(1)(2) of Evacuee Trust Properties (management and Disposal) Act 1975, the Chairman can only decide the dispute in respect of an evacuee property whether the same is attached to a Charitable, religious or educational or institution or not, but Chairman cannot decide or declare a non-evacuee property as evacuee property. If such declaration is made that would be unauthorized and without jurisdiction which could always be checked by Civil Court. It is also contended that the learned courts below miserably failed to consider the fact that the respondents despite having notice failed to put appearance before the trial court and to lead evidence hence the stance of the applicants have remained un-rebutted. Further contended that the learned courts below also failed to apply their judicial mind that how come a non evacuee property came into Gazette as evacuee property when the said property had already been mutated in the name of Sardar Begum, the predecessor of the present applicants, by virtue of sale transaction, through a registered instrument, which transaction was duly verified by the custodian

judicial evacuee property in the year 1948. It is also contended that the impugned judgment and decree has been based on misreading and non-reading of evidence. Furthermore, the learned courts below have failed to mention and discuss the case law cited by the counsel for the applicants during the course of arguments. The learned trial Court as well as appellate court have totally ignored the very material piece of documentary evidence produced by the applicants and the legal aspect of the matter in passing the impugned judgments and decree and committed material irregularity, hence, failed to exercise the jurisdiction so vested in them and thus the impugned judgment and decree are liable to be set aside by this Court in the present proceedings. The learned counsel for the applicants in support of his stance in the case relied upon the following case law and relevant provisions of the law:-

- (i) Section 2(2)(ii), Section 2(3)(b) and Section 3(1)(20B) of the Pakistan (Administration of Evacuee Property) Act 1957.
- (ii) PLD 1961 (W.P.) Karachi 589
- (iii) PLD 1964 (W.P) Lahore 274
- (iv) PLD 1978 Karachi 27
- (v) 2008 CLJ 628
- (vi) Section 8 of Evacuee Trust Properties (Management and Disposal Act, 1975)
- (vii) 1992 PSC 1661
- (viii) PLJ 2000 Karachi 23
- (viii) 2003 PSC 801

5. The learned counsel for the respondents during the course of his arguments reiterated the objections filed in the case and relied upon the following case law and Gazette notification issued by Evacuee Property Trust Board Government of Pakistan dated 15.07.1963:

- (i) 1992 SCMR 1313
- (ii) 2007 SCMR 262
- (iii) 2011 PSC 22

6. Before dealing with issues involved in the present case, it would be advantageous to refer to the relevant provisions of law relating to the present case.

Section 2(a)(2)(ii), Section 2(3)(b) and Section 3(1)(2-B) of the Pakistan Administration of Evacuee Property Act 1957 read as under:

Pakistan Administration of Evacuee Property Act 1957---

Section 2(a) 'Evacuee' means any person – 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 outside those territories;

2(ii) 'evacuee' means any person---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.

Section--- 2(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 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 first day of March, 1947, until the transfer is confirmed by the Custodian:

Section ---2(6) 'Displaced person' mean a person who, having been ordinarily resident in any place in the territories now comprising India, or in any area occupied by India, 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, taken refuge in Pakistan.

Section--- 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 1st 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 property in respect of which any action has commenced or any proceedings are pending immediately before the date mentioned therein for 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-eight days of February 1947, has not been accepted or approved by the Custodian.

Section 2(2) of Evacuee Trust Properties (Management and Disposal) Act, 1975:

“2. Definitions.-(1) In this Act, unless there is anything repugnant in the subject or context,-

.....

.....

(2) All other words and expressions used but not defined in this Act shall have the same meaning as in the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956), the Pakistan Rehabilitation Act, 1956 (XLII of 1956), the Pakistan Administration of Evacuee Property Act, 1957 (XII of 1957) the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII, of 1958), or the Displaced Persons (Land Settlement) Act, 1958 (XLVII of 1958).”

Section 7(b) and Section 8 and Section 14 of Evacuee Trust Property (Management and Disposal) Act, 1975, which read as under:

“Section 7(b); any evacuee property declared under Section 8 to be evacuee trust property.

Section 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 cancelling the allotment if alienation, as the case may be taken possession and assume administrative control, management and maintenance thereof. Provided that no declaration under sub-section (2) or under sub-section (3) shall be made or passed in respect of any property without giving the persons having interest in the property a reasonable opportunity of being heard.”

[Underlining is to add emphasis]

7. The perusal of record of the present case reveals that though the evidence was recorded, however, the learned trial court without discussing and taking into consideration the said evidence, dismissed the suit of the applicants/ plaintiffs solely on the ground that under Section 14 of Act XIII, 1975, the jurisdiction of Civil Court is barred. The said order of the learned trial court was subsequently upheld by the learned lower appellate court and the appeal of the applicants/plaintiffs was dismissed. Both the above said orders are impugned in the present proceedings.

8. The case of applicants precisely is that the predecessor-in-interest of the applicants namely, Mst. Sardar Begum was the original owner of the said property, having purchased the same from Lohar Halai Community by virtue of registered conveyance deed dated 30.12.1948 [Exh. P/2] and her name was subsequently mutated in the record of rights of respondent No.3 (Mukhtiarkar Saddar Town Karachi). The said Sardar Begum after execution of conveyance deed and mutation had applied to the Custodian Evacuee Property for confirmation of transaction/ownership, which was subsequently confirmed by then Additional Custodian (Judicial) Evacuee Property vide its order dated 24.06.1950 [Exh. P/5]. Prior to the said verification, Inspecting, Assistant Commissioner of Income-Tax, Karachi Range Karachi through its letter dated 09.06.1950 had also issued no objection certificate of confirmation of sale or transfer of the said property in the name of Sardar Begum. However, upon the death of Sardar Begum when the applicants approached to respondent No.3 for mutation of the property in their names being legal heirs of deceased Sardar Begum, they were asked to obtain NOC for mutation from the Evacuee Property Trust Pakistan besides heir-ship certificate and from there the Applicants came to know that through some gazette notification the property of the applicants were treated as evacuee property. The Applicants were asked to get the said property declared as non-evacuee by applying to the Chairman, Evacuee Trust Property Board. Pursuant thereto the applicants filed application under section 8 of the Act. However, when no response in respect thereof was received the applicants filed the civil suit before the learned trial court.

9. Section 14 of Act XIII of 1975, which for the sake of convenience is reproduced 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.”

a Civil Court is debarred from having jurisdiction in respect of any matter which the Federal Government or any Officer appointed under the said Act is empowered to determine thereby in the present case the exclusive jurisdiction enjoyed by the Chairman, Evacuee Trust Property Board under section 8 of Act XIII of 1975. It is now well settled that determination of status of property, being Evacuee Trust Property or not is within exclusive domain of the Chairman Evacuee Trust Property Board [ETPB] and jurisdiction of Courts is barred.

In this context, I find support from the judgments pronounced by the Hon’ble Supreme Court in the cases of *Evacuee Trust Property Board v Mst. Zakia Begum and others (1992 SCMR 1313)*, *Evacuee Trust Property Board v. Mst. Sakina Bibi and others (2007 SCMR 262)* and *Evacuee Trust Property Board, through Deputy/Assistant Administrator, Evacuee Trust Property, Peshawar v. Ali Bahadur (2011 PSC 22)*, which squarely cover the facts and circumstances of the case in hand. The relevant portions of the said judgments of the Hon’ble Supreme Court are reproduced as under:

- (i) **1992 SCMR 1313**(*Evacuee Trust Property Board v Mst. Zakia Begum and others*). Relevant pages 1315, 1316 and 1317.

“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 subsection (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 subsection (2), the Chairman may pass an order cancelling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof:.

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

9. **Exemption of property in trust pool from process.** No evacuee trust property shall be liable to be proceeded against for any claim in any manner whatsoever in execution of any decree or order or by any other process of Court or other authority.

10. **Validation of certain transfers.** --(1) An immovable evacuee trust property ---

- (a) if situated in a rural area and utilized bona fide under any Act prior to June, 1964, for allotment against the satisfaction of verified claims; and
- (b) if situated in an urban area and utilized bona fide under any Act for transfer against the satisfaction of verified claims in respect of which Permanent Transfer Deeds were issued prior to June, 1968, shall be deemed to have been validly transferred by sale to the Chief Settlement Commissioner, and the sale proceeds thereof shall be reimbursed to the Board and shall form part of the Trust Pool.

- (2) If a question arises whether a transaction referred to in subsection (1) is bona fide or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any Court.

- (3) If it is decided that a transaction referred to in subsection (1) is not bona fide, the Chairman may pass an order cancelling the allotment or transfer of such property:

Provided that no decision under subsection (2) or order under subsection (3) shall be taken or passed in respect of any property without giving the person affected a reasonable opportunity of being heard.

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."

A perusal of the above would show that when a question arises whether a property is evacuee trust property the decision of the Chairman, Evacuee Trust Property Board shall be final S.8(1) and if it is so, the Chairman may cancel the allotment or alienation (S.8(3)), further, it shall be exempt from any process of Courts or other authority (S.9). Section 14 excludes jurisdiction of any Court in respect of any matter which is determinable by any authority under the Act.

However, section 10(1) provides that if an evacuee trust property has been utilized bona fide for transfer against satisfaction of claims in respect of which Permanent Transfer Deed was issued prior to June, that shall be deemed to have been validly transferred by sale to Chief Settlement Commissioner and the proceeds shall be reimbursed to the Board. In case, a question arises whether transfer is bona fide or not, it shall be the Chairman whose decision shall be final and shall not be called in question in any Court S.10(2).

6. From the above provisions it is quite clear and apparent that the Civil Courts did not have the jurisdiction in the matter. The appellant could have had recourse to the Chairman under section 8 of the Act. Similarly, respondent No.1 could/can apply under section 10 of the Act for relief. The proceedings before the Civil Courts were coram non judice. The appeals are, therefore, allowed and the decrees of the Courts below set aside, but the parties are left to bear their own costs."

[Underlining is to add emphasis]

(ii) **2007 SCMR 262** (*Evacuee Trust Property Board v Mst. Sakina Bibi and others*). Relevant pages 271 and 272.

"11. In case the aforesaid provisions of law are put in a juxtaposition along with the date of filing of the suit by the respondents on 9-2-1964 clearly shows that in view of aforesaid provisions of law the civil Court has no jurisdiction to take the cognizance of the matter in view of the exclusive bar in view of provisions of the special laws mentioned above. It is pertinent to mention here that in the earlier round of litigation in the first two appeals, the Deputy Custodian, Additional Custodian and Custodian had determined the status of the property in question as evacuee property which was upheld by the Division Bench of the Lahore High Court and finding of

the Tribunals below and the High Court were not disturbed by this Court. It is a settled law decision of Custodian on the status of the property in question having binding effect over the civil Court and the civil Court has no jurisdiction to take the cognizance of the matter as the law laid down by this Court in various pronouncement. Reference can be made to the following judgments:

(i) Muhammad Jamil Asghar's case PLD 1965 SC 698; (ii) S. Muhammad Hashim's case PLD 1970 SC 326; (iii) Begum Darab Sultana's case 1982 Pak. SC Cases 907; (iv) Nazir Ahmad's case 1988 SCMR 824; (v) Shaukat Hayat Jumani's case 1991 SCMR 580; (vi) Falak Sher's case 1987 SCMR 231; (vii) Muhammad Ramzan's case NLR 1995 UC 43 and (viii) Abdul Aziz Khan's case 2000 SCMR 1371.

12. It is pertinent to mention here that the aforesaid judgments were rendered by this Court while interpreting section 41 of the Pakistan Administration of Evacuee Properties Act, 1957, relevant provisions of Displaced Persons Compensation and Rehabilitation Act, 1958 and relevant provisions of Evacuee Property and Displaced Persons Laws Repealed Act, 1975. It is admitted fact that during the pendency of the litigation between the parties Deputy Administrator (U) Evacuee Property, Lahore has filed references under section 8 of the Evacuee Trust Property Management and Disposal Act XIII of 1975 for a declaration that property in question is an evacuee trust property and for an order to take over its possession and assume administrative control of the same and the respondents Nos.1 to 12 have also filed reply, controverting the allegations levelled in the petition along with preliminary objections. It is settled law that this Court has ample jurisdiction to take notice of subsequent events as the law laid down by this Court in Mst. Amina Begum and others v. Mehar Ghulam Dastagir PLD 1978 SC 220. In view of the pendency of the reference before the Chairman, the civil Court cannot proceed in the matter and assume the jurisdiction in view the section 14 of the Act, 1975 as the law laid down by this Court in the aforesaid judgments relied upon by the counsel for the appellants. It is an admitted fact that the property in question in case at Serial No.3 was taken over by the appellants vide Government Gazette Notification dated 16-1-1979. This notification cannot be challenged by the respondents before the civil Court in view of the aforesaid provisions of section 14 and the law laid down by this Court mentioned hereinabove. It is a settled law that order of Custodian cannot be interfered in constitutional jurisdiction unless it was passed without application of mind and without perusing the record or in violation of law. See Muhammad Munir's case 1993 CLC 478 and Mst. Safia Begum's case 1994 MLD 213. The

Chairman Evacuee Trust Board has ample power to decide whether the property has a character of evacuee or not while exercising power under section 8 of the Act, 1975 as the law laid down by this Court in Khurshid Zaman's case 1999 SCMR 1007.”

[Underlining is to add emphasis]

- (iii) **2011 PSC 22** Evacuee Trust Property Board, through Deputy/Assistant Administrator, Evacuee Trust Property, Peshawar v. Ali Bahadur Relevant pages 28 and 29.

“Analyzing Section 14 *ibid*, it is unambiguous that the jurisdiction of the Civil Court have been barred with respect to any matter..... which an officer appointed under the Act is empowered to determine: such jurisdiction is also ousted to grant and issue an injunction, process or order in respect of any action taken or to be taken by such officer in exercise of any power conferred by or under the Act. Undoubtedly, the Chairman of the Evacuee Trust Property Board is an officer within the contemplation of the Section. Therefore, in order to settle the question about the ouster of jurisdiction it seems expedient to examine, what was the proposition involved in the suit and whether such question was determinable by the Chairman or not. In this respect it is foundational to evaluate the claim of the respondent in his suit/plaint; on the perusal thereof it is vivid that the respondent is seeking a declaration that the suit property is his exclusive ownership and is not an evacuee trust property, consequently the appellant should be precluded from interfering into his ownership rights and apprentices thereto; the appellant in defence joined issue with the respondent on these factual aspects and claimed the suit property being an evacuee trust property and it is on this account that the jurisdiction of the Court was challenged. Therefore, the key issue before the Court would be whether the property is an evacuee trust property or otherwise? Now when the provisions of Section 8 of the Act are adverted to it specially mention “ if a question arises whether an evacuee property is attached to a charitable, religious or educational trust, or not it shall be decided by the Chairman” meaning thereby that notwithstanding whether a declaration in terms of Section 8 has been made or not by the Chairman, yet even if a question has arisen at any point of time about the status of the property it shall be the Chairman alone who under the Act shall be competent and empowered to determine and decide the question and the Court in view of the bar contained in Section 14 shall have no jurisdiction in the matter.”

[Underlining is to add emphasis]

10. In view of the above, the case law cited by the learned counsel for the applicants are not relevant to the case in hand as it is an admitted fact that the property in question was taken over by the respondents vide Government Gazette Notification dated 15.07.1963. This notification cannot be challenged by the applicants before the civil Court in view of the aforesaid provisions of Section 14 *ibid* and the law laid down by the Hon'ble Supreme Court mentioned hereinabove.

11. Consequently, in view of the law laid down by the Hon'ble Supreme Court in the above referred judgments the findings of both the courts below are on the correct proposition of law hence, I do not find any infirmity or material irregularity in the impugned judgments of the courts below, which could warrant interference in the revisional jurisdiction of this Court. Accordingly, the present Revision Application is dismissed.

JUDGE