

**IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD**

R.A. No. 264 of 2019

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA 2204/2019.
2. For hearing of main case.

Date of hearing: 30.05.2022.  
Date of order: 30.05.2022.

Mr. Shamsuddin Memon, Advocate for applicants.  
Mr. Ghulam Sarwar Qureshi, Advocate for respondent No.1.  
Mr. Atta Hussain Gaddi Pathan, Advocate for respondent No.2  
alongwith Rasheed Ahmed, Deputy Administrator Evacuee  
Trust Property, Hyderabad.

**ORDER**

**ZULFIQAR AHMAD KHAN, J.** This Revision Application challenges the judgments and decrees passed by the courts below where the dispute between the parties started when the applicants filed F.C. Suit No.38 of 2010 against the respondent Muhammad Usman for possession, occupation charges, damages and permanent injunction which was decided by the judgment dated 16<sup>th</sup> March, 2016 by the court of IVth Senior Civil Judge, Hyderabad.

2. In the Plaint, the applicants alleged that the property bearing No.D/2273 & 2283 Resham Bazar, Hyderabad was owned by the Hindu owners and after partition in the year 1947, by the operation of law it was declared as Evacuee Property and its occupants were treated as tenants of the Settlement Department. The father of applicants / plaintiff being in occupation of a portion of the said building applied for and became tenant of the Settlement Department, who thereafter under the Settlement Scheme applied for transfer of the said property which was allowed upon payment of cost / fee as per assessment of Settlement Department, however due to dispute of Trust Department, the Final Transfer Order could not be issued and lastly the Additional Settlement Commissioner on 20.6.1969 decided that

above property is not Trust Property, accordingly, Final Transfer Order was issued in favour of the applicants / plaintiffs. It is stated that Trust Department was continuing its efforts to get the above property still declared as a Trust Property with the connivance of respondent / defendant No.1 inspite of decision by Additional Settlement Commissioner and the Final Transfer Order issued in favour of the father of applicants / plaintiffs and in respect of other portions in the occupation of other families residing in the said property. Trust Department after long slumber approached the Chairman Evacuee Trust, who on 29.1.2000 passed an order treating the above property as Trust Property with observation **“as regards their joint request to the purchase of the properties in question, cases for sale should be processed under the law, as the properties in question have been under litigation for the last about 22 years.”** Copy of order is found attached with the original plaint.

Background of the controversy as stated by the applicant is that the respondent / defendant No.1 was known to the father of plaintiffs who was also a displaced person from the same area in India and he was in great trouble of accommodation alongwith his mother and was roaming here and there without shelter. The respondent / defendant No.1 requested father of applicants / plaintiffs for shelter and father of applicants / plaintiffs taking mercy on the respondent / defendant No.1 allowed a room as shelter to them till the time they make their own arrangements. The applicants / plaintiffs and other transferees were putting efforts to Trust Department to process their case for sale of their portions to them as per order dated 29.1.2000 of Chairman Evacuee Trust Board and their case was under consideration but without any success. The respondent / defendant No.1 taking undue advantage of grace of father of applicants / plaintiffs secretly behind the back approached the office of defendant No.2 and illegally, collusively and fraudulently in 1989 deposited rent from 1977 to 1989 for property No.D/2275 in order to show that he is tenant of the Trust Department though property in question by a luring the occupants was declared Trust Property in 2000 and

Trust Department while in the year 1989 had no authority to recover the rent from respondent / defendant No.1 nor the latter transferred any portion of the said property. The respondent / defendant No.2 in collusion with respondent / defendant No.1 himself approached the Court to join as a party though above suit was a private dispute between two parties where no relief was sought against the government or respondent / defendant No.2 still an application U/O 1 (10) CPC was filed by respondent / defendant No.2. It was alleged that respondent / defendant No.1 after illegally depositing rent in Trust Department started moving false applications to Trust Department that applicants / plaintiffs have raised illegal construction and has also encroached his area. The respondent / defendant No.2 in collusion with respondent / defendant No.1 inspite of fact that they had no jurisdiction illegally ordered to demolish old constructed room and ordered ejectment of applicants / plaintiffs from the premises in question. The applicants / plaintiffs challenged illegal order of respondent / defendant No.2 and the Administrator before Chairman & Secretary but they too in collusion of respondent / defendant No.1 illegally dismissed the appeals and Revision of applicants / plaintiffs and against it, applicants / plaintiff filed C.P.No.D/429 of 2005 before this Court, in which Trust Department considering their orders were against the law and authority, made statement that they are not ejecting the plaintiffs from the property in question, accordingly, this Court on 18.12.2009 set-aside the impugned orders of ejectment and demolition. It is stated that presently respondent / defendant No.1 is not residing in the said room and he has shifted alongwith his family to Bhai Khan Chari House but he is storing his shop articles in the disputed room. That the respondent / defendant No.1 has refused to vacate the disputed room or pay damaged and occupation charges illegally, on the contrary he is putting efforts to give possession of disputed room to third party for monitory consideration. The applicants / plaintiffs claimed damages of Rs.100,000/- from respondent / defendant No.1 for defending false applications of defendant No.2 against applicants / plaintiffs before Trust Department and this Court and mental torture to

applicants / plaintiffs and Rs.1000/- occupation charges for one month March 2010 after termination of licence and vacant possession which was illegally refused by respondent / defendant No.1, hence, this suit filed by the applicants / plaintiffs with the following prayers:-

- (a) That defendant No.1 to vacate and handover vacant possession of a room of plaintiffs situated in property No.D/2273 & 2283 Resham Bazar, Hyderabad;**
- (b) That defendant No.1 to pay Rs.1,00,000/- damages caused to plaintiffs for filing false and futile applications and litigation against the plaintiffs;**
- (c) That defendant No.1 to pay Rs.1000/- occupation charges of room of plaintiffs for March 2010 and continue to pay at same rate till possession is delivered to plaintiffs;**
- (d) That defendant No.1 be restrained permanently from giving possession of room in question of property of plaintiffs No.D/2273 & 2283 Resham Bazar, Hyderabad to any third party excepting plaintiffs in any manner whatsoever;**
- (e) Any other relief as Honourable Court deems fit and proper may also be granted to plaintiffs;**
- (f) Costs of the suit be borne by defendants.**

3. Whereupon defendants filed their written statements and accordingly trial court framed the following issues:-

1. "Whether the suit is not maintainable and barred by any law?
2. Whether defendant No.1 was shown in occupation in the suit property by Chairman Evacuee Trust Board in proceedings before him?
3. Whether the plaintiffs have constructed a room in the courtyard of the defendant?
4. Whether the defendant No.1 is in occupation of the portion of the suit property as tenant of Evacuee Trust Board as licensee of the plaintiff?
5. Whether the defendant No.1 is in unlawful possession after termination of licensee by the plaintiff in respect of suit property No.D/2273 & 283 Resham Bazar, Hyderabad?
6. Whether plaintiffs are entitled for mesne profits and damages as claimed?  
Whether the plaintiffs are entitled for the relief claimed?  
What should the decree be?"

4. Which were primarily decided against the plaintiffs and suit of the plaintiffs was dismissed. Plaintiffs claimed that the respondent No.1 was given a room for his shelter by the predecessor of plaintiffs in respect of the property which was duly transferred in their names through P.T.D. Perusal of

the judgment of the said Senior Civil Judge, Hyderabad suggests that the said court has placed reliance on the order passed by Chairman Evacuee Trust Property Board dated 29.01.2000. Full text of the same is reproduced hereunder:-

***“The brief facts of the case are that the Assistant Administrator, ETP, Hyderabad filed a petition under Sections 8 & 10 of Act No.XIII of 1975 for the Management and Disposal of Evacuee Trust Properties for declaration of properties bearing City Survey Nos. D-2272 to D-2275 situated in Resham Gali, Hyderabad and for cancellation of their transfers made by the Settlement Department in favour of the respondents.***

***The respondents put their appearance and filed written statements refuting the contention of the petitioner.***

***Mr. Ghulam Muhammad, City Surveyor appeared as representative of the Settlement Department Hyderabad and got his statement recorded. In his statement he placed on record copies of City Survey record Ex.2/1 to 2/4. He further stated that the impugned properties stand entered in the property register as Mandir.***

***M/s. Fayyazuddin, Mohammad Kamran sons of Mohammad Samiullah, Haji Abdul Shakoor, Naseeruddin Khan son of Bhooray Khan, Tanveer Ahmed son of Akhlaque Ahmed, Nizamuddin son of Shamasuddin in their joint statements have admitted the trust character of the property in question. They have further stated that they do not want to prolong litigation in respect of the impugned properties which is going on for the last about 22- years. They have prayed that the properties may be sold out to them at suitable rates.***

***Mr. Aftab Ahmed Shakri, Assistant Administrator, ETP Hyderabad appeared on behalf of the Board and stated that he does not want to bring on record any evidence as the respondents have already admitted the trust character of the property in question.***

***Arguments heard record perused. The respondents have admitted the trust character of the properties in question. Even otherwise according to the City Survey Record the properties in question are religious properties attached to Mandir which have been under the managerial control of the Evacuee Trust Property Board. On these premises I have no hesitation to declare the impugned properties as evacuee trust. Let a notification be published under the law.***

***As regards validation of transfers is concerned, all the P.T.Ds issued by the Settlement Department in favour of the respondents are much after the target date as indicated in Section 10 of the ibid Act and as such these cannot be validated & hence are hereby cancelled. Subsequent sale is also cancelled.***

***As regards their joint request for the purchase of the properties in question, cases for sale should be processed under the law as the properties in question have been under litigation for the last about 22-years.”***

5. Seeming this order convinced the trial court that the respondent had rightly acquired a right in the property after passing of the said order by the Chairman E.T.P. The appellate court also relied upon the said order and dismissed the appeal.

6. Since both the courts below have based their judgments on the order of Chairman E.T.P dated 29.01.2000, the notices were issued in this matter, parties were heard and record was even called from the concerned officer of E.T.P. Learned counsel for the respondent No.1 has placed reliance on the case law reported as 2005 SCMR 907 and has supported both the judgments.

7. Perusal of the above order ipso facto suggests that the respondent Muhammad Usman was not even a party to that case so what benefit he can draw from the said order is highly questionable. It appears that the Chairman who was required to convince himself on the facts of the case and detailed records of property in question, passed the said order mere on the submission made by the Administrator E.T.P, Hyderabad where the land in question was declared as “Mandir” (where there was no trace of any such construction) and offered the respondents if they accepted sovereignty of the Trust Department, they would be sold out portions in the said land. Taking benefit of the order, the respondent No.1 managed a rental agreement in his favour since the Hon’ble Supreme Court in the meanwhile had passed orders that no sale of P.T.D property could be made out.

8. Since the said order has passed under Section 8 / 10 of the Evacuee Trust Property Management and Disposal Act, 1975, perusal of the said statute in general and the said Sections in particular shows that law requires that a property to be put a Trust Pool (under Section 7) before any such order is to be placed, which compliance is missing, and whereas superior

Courts have held that in order to give a finding (under Section 8) that a property was an Evacuee Trust Property (“ETP”), such determination has to be supported by an overwhelming evidence on record (NLR 1993 CLJ 715). In the circumstances at hand, I had the opportunity to go through the R&P and seen that the said order is not supported by any evidence that the property was a “Mandir” except a hand written note submitted before this Court as Annexure ‘A’ in respect of Survey No.2275/1. No pictures, landscapes, religious claims, correspondence etc was available. Usually religious properties are highly cherished places of worship and it was noted that no claim or objection from Hindu community was on the file seeking restoration of the said Mandir. A study of archives of Mandirs in the city of Hyderabad also does not list or make mention of the said Mandir. When this Court queried that what convinced the Chairman to believe in the said hand written note without any overwhelming evidence, and where the respondents were lured to accept the title of the Department in order to sale out respective portions of the property to them as booty, how the said order is maintainable. The answer in that regard came in the form of Section 14 of the said Act which bars the Civil Court jurisdiction in the matter and in the case of 2005 SCMR 902 as relied upon by the counsel for the respondent No.1, where it has been held that Court cannot assume jurisdiction as the Chairman had ample powers to decide whether a property was an ETP or not under the said Section. It is well settled principle of law that when a statute provides powers to an authority, those powers must not be exercised arbitrarily, but strictly in accordance with law following due process, which lack in the case at hand.

9. In the present case, the judgments of both the Courts were given on the basis of the order of Chairman dated 29.01.2000, which in my humble view has been passed without considering any evidence, except by luring respondents that if they accepted sovereignty of the Department, they will be given booty. The language of the order does not inspire any confidence of this Court. The process of declaring the property an ETP has not been

followed, resultantly such an arbitrary and malice-infested order cannot be considered valid.

10. In the circumstances, the instant Revision Application is allowed. The impugned judgments and decrees of both the Courts below are set aside. Let F. C. Suit No.38/2010 be decided on merit without being prejudiced by the presence of the order dated 29.01.2000 passed by Chairman ETP.

JUDGE

Tufail