

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Zulfiqar Ali Sangi.

C.P.No.D-240/2005.

1. For hearing of MA 9156/2013.
2. For orders on MA 2086/2011.
3. For hearing of MA 785/2005.
4. For hearing of MA 2411/2008.
5. For hearing of MA 604/2009.
6. For orders on MA 103/2016.
7. For hearing of main case.

M/s Fahad Construction Company
through its Managing Partner
Muhammad Samuel ShaikhPetitioner

V/S

The Province of Sindh through Secretary,
Revenue Department and othersRespondents

Mr. Jagdish R. Mullani, Advocate for petitioner.
Mr. Jhamat Jethanad, Advocate for respondent No.3.
Mr. Imran Qureshi, Advocate for respondent No.11.
Mr. Allah Bachayo Soomro, Additional A.G. alongwith Faheem
Zuhaib Mangi, Mukhtiarkar Taluka Latifabad.

Dates of hearing: 05.09.2019, and 24.09.2019.
Date of judgment: 03.10.2019.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J: Petitioner is a construction company and has filed this petition through its Managing Partener alleging that Urban Evacuee Survey No.322, Deh Giddu Bunder, Taluka Latifabad District Hyderabad comprising 3-24 acres was owned by Tirathdas Manghamal s/o Maghan Mal as reflected in Form VI of Patwari Register for the year 1937-1948. Out of which, an area of 1-00 acre was carved out and allotted to Mst. Sharifan widow of Liaquat Ali vide a Parchi Taqseem Khathuni on 23.10.1971 against her URV Entitlement Certificate dated

11.04.1970. She died and was succeeded by Zafar-ul-Islam and his family members arrayed as respondents 5 to 9 in whose favour mutation in respect of said land in revenue certificate No.ARM/1247 dated 01.02.1971 was shown. Then vide entry No.7 dated 12.10.1974 mutation in B.V. XV (Dakhal Kharaj Register) was recorded in favour of M/s Zafar-ul-Islam and possession was delivered to them under a mashirnama (memo) as per location plan / sketch on 26.10.1974. Later on, they leased out said land for 99 years through their attorney to M/s Shabbir Ahmed Khan and Nazar Muhammad vide a registered sale deed dated 17.10.1988 and handed them over possession as well. These new owners after forming a firm in the name and style of M/s Hi-Tech International Industries (Pvt) Limited (M/s Hi-Tech) started development work on the land but their rivals in league with the revenue officials and others succeeded in stopping work and tried to dispossess them from the land. Faced with such a situation, M/s Hi-Tech filed a civil suit for declaration and injunction against relevant government functionaries. But before any relief could be granted, Additional Deputy Commissioner-I Hyderabad passed an order dated 08.03.1989 u/s 164(2) of Sindh Land Revenue Act, 1967 (Land Revenue Act) cancelling the allotment of said land in favour of M/s Zafar-ul-Islam and further by an order dated 12.03.1989 reserved the property for construction of the officers' residence. M/s Zafar-ul-Islam filed a C.P.No.D-69 of 1989 (New No.316/1992) challenging the said orders before this court which was allowed vide a judgment dated 24.11.1994 and the orders were declared to have been passed without lawful authority and of no legal effect. The Government of Sindh disputed the said judgment before the Honourable Supreme Court of Pakistan in a Civil Petition No.106-K of 1995 which was decided vide a judgment dated 02.05.1997, whereby leave to appeal was refused however it was observed that if the petitioner i.e. Government of Sindh has any other remedy against the private respondents, they may resort to such remedy which will be dealt with and disposed of in accordance with the applicable law.

2. Meanwhile, M/s Hi-Tech through its Managing Director entered into a deed of Partnership with the petitioner on 06.05.1996 and their partnership came to be called as "Garden View Enterprises". On next date viz. 07.05.1996 M/s Hi-Tech sold out an area of 18779 square feet, 50% of the total area, to the petitioner and handed over its possession to it. Subsequently the petitioner purchased the remaining area of the land from M/s Hi-Tech through a sale agreement dated 21.01.1998 and became its sole and exclusive owner.

3. On the other hand in respect of the said property the Commissioner Hyderabad initiated suo-motu proceedings u/s 164(2) of Land Revenue Act and cancelled relevant entry in favour of M/s Zafar-ul-Islam on the grounds of being illegal and fraudulent vide order dated 10.04.2000. They challenged this order in Revenue Appeal No.SROA-107/ 2000 before Member (Judicial) Board of Revenue Sindh, Hyderabad but he dismissed it vide order dated 30.04.2003 against which a review petition filed by M/s Zafar-ul-Islam was dismissed too by an order dated 10.01.2005 hence this petition.

4. Learned counsel for the petitioner has contended that impugned orders are illegal, void *ab initio* and have been passed in violation of judgment of this court in C.P.No.D-316/1992 and order of Honourable Supreme Court in CPLA No.106-K of 1995; that after such decisions, the Commissioner Hyderabad had no jurisdiction to initiate suo motu proceedings u/s 164 (2) of Land Revenue Act and cancel the entry in favour of predecessor in interest of the petitioner; that jurisdiction exercised by him is illegal, arbitrary, capricious and based on *mala fide* intentions; that after the decision of Honourable Supreme Court, the Government of Sindh had referred the matter to the Solicitor, Government of Sindh for seeking his advice who had opined that there was no legal remedy to Sindh Government to take any action against private respondents, yet suo motu powers were exercised and the entry was cancelled; that in the first round of litigation the order cancelling allotment in favour M/s Zafar-ul-Islam was set aside by this court on merits and such decision was upheld by the Honourable Supreme Court, yet the Commissioner Hyderabad embarked on exercising suo motu powers which is illegal and result of *mala fide* motives aimed at depriving the petitioner of its legal right to the land; that Honourable Supreme Court had allowed the Government of Sindh to avail a remedy in accordance with law; that Sindh Government did not avail any remedy and instead the Commissioner, Hyderabad who is not Sindh Government proceeded to upset effect of the judgment of this court and that of Honorable Supreme Court; that the allotment of subject property in favour of the predecessor in interest of the petitioners was made under the Rehabilitation and Settlement laws and which in view of Evacuee Property and Displaced Persons Laws (Repeal Act) of 1975 was a past and closed transaction and therefore not open for cancellation; that only a notified officer u/s 2 of *ibid* law is competent to deal with such cases; that the Commissioner Hyderabad was not a notified officer and thus had no jurisdiction to entertain the matter and cancel the entry; that learned Member Board of Revenue has mis-appreciated facts of the case and further misinterpreted judgment of

Honorable Supreme Court viz-a-viz remedy available to the Sindh Government. Regarding maintainability of the petition questioned by the respondents, he submitted that petitioner is an unregistered firm and has not filed this petition to enforce a right arising from a contract for benefit of partnership as such the provisions of section 69 of Partnership Act, 1932 are not applicable. He further emphasized that as managing partner Muhammad Samuel Shaikh who filed this petition has died, his un-rebutted application (M.A. 9156/2013) for bringing remaining partners on record may be allowed. In support of his contentions, learned counsel has placed reliance on the case law reported as **PLD 1961 W.PK. 335, 1978 K 387, PLD 1981 K 143, 2002 SCMR 829, , 2000 SCMR 1172 PLD 2003 K 314, 2006 SCMR 1287, 2010 CLC 1100, 2015 SCMR 1721 and PLD 2017 SC 121.**

5. Mr. Rafi Ahmed advocate for respondent No.10 supported the case of the petitioner and relied upon the case law reported in 2002 SCMR 1470 to emphasize that after repeal of Evacuee and Settlement Laws in the year 1975 by Repealing Act, 1975, the subject transaction has become past and closed which the Commissioner Hyderabad was not authorized to deal with and pass the impugned order.

6. On the other hand, Mr. Jhamat Jethanad, Advocate for respondent No.3, learned AAG and Mr. Imaran Qureshi advocate for respondent No.11 contended that the petition is not maintainable; that the petitioner is not aggrieved and it has no locus standi to file this petition; that M/s Zafurl Islam whose allotment has been cancelled thorough the impugned orders have not challenged the same; that the claim of the petitioner to the land is based on sale agreements which do not confer any right or title upon it; that through fraud the land was mutated in the name of M/s Zafurl Islam who are not the legal heirs of Mst. Sharifan, the alleged allottee; that the land had already been acquired and placed at the disposal of Sindh Government vide a notification dated 28.11.9151, and was not available as such in compensation pool to be allotted to any displaced person under rehabilitation and settlement laws. In support, the case law reported in **PLD 1971 SC 550, 1983 CLC 248, 1996 MLD 1409, 1991 SCMR 398, 1994 SCMR 744, 1994 CLC 2413 and SBLR 2005 SINDH 58** were relied upon by them.

7. We have heard learned counsel for the parties and perused the material available on record and taken guidance from the case law cited at bar. Relevant facts germinating controversy between the parties have been

highlighted in preceding paragraphs and need not reiterate here. As the respondents have strongly agitated locus standi of the petitioner to maintain this petition, we have opted to look into this aspect of the case first. Petitioner's alleged right to the land is based upon its claim of its possession and two sale agreements dated 7.05.1996 and 21.01.1998 whereby it purportedly purchased the land from M/s Hi-Tec, which had bought the land statedly from M/s Zafur ul Isam, the alleged legal heirs of allottee Mst. Sharifa. It is interesting to note that M/s Hi-Tec had filed a suit No.34/1988 for declaration and permanent injunction in respect of subject land against Province of Sindh and other government officials, and through an application under order 39 rule 1 & 2 CPC therein sought protection against dispossession therefrom. The learned trial court dismissed that application through an exhaustive order dated 19.2.1989 holding that plaintiff has failed to establish possession of the land through any documentary evidence or that alleged one acre of the land has been demarcated by metes and bounds to lend credence to the claim of its possession by the plaintiff. The said order was challenged by M/s Hi-Tec in miscellaneous civil appeal No.10/89 but it was withdrawn by it on 24.5.1989 through a statement filed in the wake of its application before the trial court withdrawing the original suit with permission to file a fresh one. However the record is silent as to any suit brought thereafter by M/s Hi-Tec on the subject matter. Instead managing director of the petitioner namely Mohammad Samuil Shikoooh filed a suit No.36/2010 for declaration and permanent injunction against M/s Hi-Tec and others; and in Para No.14 thereof itself has shown uncertainty relating to title and ownership of defendant No.1 (M/s Hi-Tec) over the land. In the suit the petitioner has mainly sought protection against a prospective sale of the land by M/s Hi-Tec to a third party with a further prayer that after clearance of all clouds over the title, M/s Hi-Tec shall be bound to perform its obligation under aforesaid sale agreements. The plaint was rejected under order 7 rule 11 CPC vide order dated 29.11.2012. The appeal filed against it was withdrawn by the petitioner on 19.01.2013. Thereafter no proceedings before a civil court have ever been instituted either by M/s Hi-Tec or by the petitioner to safeguard their purported rights over the land and get the relief(s) as prayed by them in their respective suits. The observations of the civil courts disparaging claim of possession of the land by M/s Hi-Tec, and locus standi of the petitioner to claim any right to the land on the basis of sale agreements have remained unquestioned since then.

8. Yet another aspect of the case is that in the proceedings before the Commissioner Hyderabad, who passed the impugned order dated 10.04.2000, the petitioner, M/s Hi-Tec and M/s Zafurul Islam have been cited as respondents. But only M/s Zafurul Islam filed appeal against the said order and after its dismissal vide order dated 30.04.2003 filed a review application u/s 8 of W.P. Board of Revenue Act, 1957 and lost. The petitioner did not dispute the original order nor the order on appeal before any forum in any proceedings, and has invoked constitutional jurisdiction of this court by means of this petition only after M/s Zafurul Islam lost the review application vide order 10.01.2005 passed by Member (RS&ESP) Board of Revenue Sindh. In such facts and circumstances, when the claim of the petitioner over the land is based on sale agreements, which do not confer any title; the title plus possession of the land of purported predecessor in interest (M/s Hi-Tec) of the petitioner are neither clear nor supported by any reliable document as has been recorded by learned Sr. Civil Judge in his order dated 19.2.1989 on application under order 39 rule 1 & 2 CPC in suit No.34/1988 filed by M/s Hi-Tec; and the petitioner having opted to not challenge the original order of the Commissioner Hyderabad or the order on appeal, we are profusely skeptical about locus standi of the petitioner to maintain this petition.

9. Notwithstanding, in an effort to settle the dust, we have examined the case of petitioner on the basis of material available on record. First time when allotment of Mst. Sharifan predecessor in interest of the petitioner was cancelled by ADC-1 Hyderabad vide an order dated 08.03.1989 and the land was reserved for official use by a subsequent order dated 21.03.1989 passed by the same Authority, this court while deciding a constitution petition preferred by M/s Zafarul Islam against such orders declared them to have been passed without lawful authority and of no legal effect vide a judgment dated 24.11.1994. In rendering such a decision, this court while replying to first of three points formulated to resolve controversy, which was to determine jurisdiction of ADC-1 Hyderabad under subsection (2) of 164 of Land Revenue Act to pass such orders, has observed that ADC-1 Hyderabad had completely ignored sub-section (3) of 164 of Land Revenue Act which lays down that if in the opinion of the Collector, who has called for a record, the proceedings taken or order made by any revenue officer under his authority should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner. But in the case, ADC-1 Hyderabad himself assumed jurisdiction illegally and declared all the documents in favour of predecessor in interest as forged in a summary inquiry

which was not only perverse but against the record. Next while replying to second point which was to determine jurisdiction of ADC-1 Hyderabad to reopen a past and closed transaction in view of Repealing Act, 1975, it has been observed that ADC-1 Hyderabad was not a notified officer under section 2 of said Act and before whom no proceedings in respect of any dispute under evacuee and rehabilitation law was pending, as such he was not competent to act suo motu and pass the impugned orders. And in discussing third point, which was to see whether ADC-1 Hyderabad could have passed the orders without hearing the persons likely to be affected and therefore whether would it be justified to remand the case to him for rehearing, has observed that the impugned orders on the face of it are passed without jurisdiction, are void ab initio and illegal, without hearing the petitioners and are passed on an inquiry which would reflect mal-administration in the offices of official respondents. The above summary testifies that the decision was not on merits of the case but was affected by the fact that ADC-1 Hyderabad had no jurisdiction in the matter, that he should have reported the matter to the Commissioner for his order, that it was a past and closed transaction and ADC-1 Hyderabad was not a notified officer, and that the petitioners were not heard.

10. In a civil appeal preferred by Sindh government against the said judgment, Honourable Supreme Court refused to grant leave and maintained the judgment of this court vide an order dated 02.05.1997. However, at the same time it was observed that if the petitioner (Sindh Government) has any other remedy against the private respondents, they may resort to it which will be dealt with and disposed of in accordance with the applicable law. Meaning thereby Sindh Government was not rendered remedy less and was allowed to meet the situation under the applicable law. It is to be noted that such window was left open by the Honourable Supreme Court despite a judgment of this court setting aside the orders cancelling allotment in favour of predecessor-in-interest of petitioner and its own order whereby the judgment of this court was upheld, and despite the fact the subject entry in view of repeal of rehabilitation and settlement laws was deemed to be a past and closed transaction. In such back drop, the words that the petitioner may resort to any other remedy which will be dealt with and disposed of in accordance with the applicable law are of importance and would essentially mean that notwithstanding the judgment of this court or decision of Honourable Supreme Court, the issue can still be approached through applicable law and decided accordingly and that any such decision would be independent of what has already been decided by this court in constitution petition or observed by the Honourable Supreme Court in its

very order. It would seem as if the Commissioner Hyderabad started suo motu proceedings u/s 164 (2) of Land Revenue Act in the matter keeping in view such leeway left open to Sindh Government. But a careful reading of impugned order would reveal that his action was not simply influenced by it, but there was another justification, not noticed in earlier round of litigation, in addition to petitioner itself approaching him through applications for implementing aforesaid decisions after dismissal of its contempt application filed for this purpose in C.P.No.D-316/1992, which mainly affected his discretion to initiate suo motu action and pass the impugned order. This unnoticed reason prompting him to assume jurisdiction is a notification No.F/16(41)/51-P dated 28.11.1951 (reproduced herein under) whereby not only S.No.322, out of which the disputed land was carved out, but others as many as 26 survey numbers (detailed in the schedule) in deh Gidu Bunder, Hyderabad were requisitioned and acquired by the Central Government under section 9 (1) and (2) of the Pakistan Rehabilitation Ordinance, 1948 and placed at the disposal of the Government of Sindh. Consequently, all such survey numbers including S.No.322 were transferred to Sindh Government, and earmarked it for development of Satellite Town Latifabad Scheme. The land thereby ceased to be agricultural land, such 'Ghat Wadh' form prepared by Director Settlement Survey and Land Records, Hyderabad was also issued in the same year i.e. 1951. Then deh map excluding all 27 acquired survey numbers including S.No.322 was duly drawn and made part of the record. This all was done in the year 1951 much prior to alleged allotment of one acre to Mst. Sharfian in the year 1971 when admittedly neither S.No.322 nor the land therein was available for allotment.

11. The above fact alone would cast a serious doubt over genuineness of documents relied upon by the petitioner here to establish its claim. Needless to say that once documents of transfer come under clouds or the transfer seems to have been obtained through fraud, mis-representation, maneuvering, manipulating facts, or in connivance with the officials of Settlement Authorities, the same would always remain open to scrutiny by the relevant forums, and on their failure, would be subject to judicial review by the courts of law. Blanket protection would not extend to the orders of transfers, etc. made in excess of power or without jurisdiction, or in violation of law. If it is seen that the Settlement Authorities have transferred a property otherwise than in due course of law or in ignorance of relevant facts and laws or in excess of their authority without determining its availability for allotment, their actions can be set at naught by the competent forums. For such a view reliance can be

placed on PLD 2004 SC 801. It may be said that question of jurisdiction of notified officer in terms of section 2 of the Repealing Act, 1975 would not arise in the present case because his jurisdiction is meant to extend to only those proceedings which, immediately before such repeal, were pending before the authorities concerned. Where no proceedings were pending at the time of repeal of Evacuee laws, like in the present case, he will have no jurisdiction and the relevant forums or the courts of law would be competent to entertain the matters about a dispute regarding such property and adjudicate its status. But at the same time, it may be added, keeping in view context of present case, that when the land already stood acquired and was not available for allotment, its transfer to Mst. Sharifan or her alleged legal heirs was conspicuously not a result of conscious application of mind by the Settlement Authorities and in such circumstances, not only the Notified Officer but the provincial government was fully competent to deal with such land. Apparently in this case the Commissioner Hyderabad assumed jurisdiction to determine status of the subject land in such a backdrop with a realization that it had already been acquired and earmarked for development of housing scheme and was not available in compensation pool for allotment to any displaced person including Mst. Sharifan. Therefore, assumption of jurisdiction by him u/s 164 (2) of Land Revenue Act does not seem to suffer from any illegality and objection of learned defense counsel in this regard is held to be unsustainable.

12. Relevant to discussion in preceding paragraph is the judgment of Honourable Supreme Court in the case of Dooley Hassan and 2 others Vs. Province of Sindh through D.C. Hyderabad and 2 others (1994 SCMR 744), where it has been held that the land already acquired and placed at the disposal of Sindh Government was not available in the compensation pool, and therefore its transfer in favour of the claimant (Nabi Jan) through Khatauni issued in the year 1965 was not legal. Before setting out relevant facts, and findings in the said case, it may be reiterated that apart from option allowed to Sindh Government by Honourable Supreme Court in its leave refusing order dated 02.05.1997 (Civil petition No. 106-K of 1995) for availing a remedy, if any, against the private respondents. It was mainly this judgment and decision of this court in C.P.No.D-135/90 dated 4.08.1993 maintaining cancellation of allotment in favour of the claimant in view of notification dated 28.11.1951, which, among others, as noted above, paved the way for the Commissioner Hyderabad to start examining legality, correctness, and propriety of allotment of the land in favour of alleged successors of Mst. Sharifan vide entry No.7 dated 12.10.1974. His finding in the impugned order that the land was not

available for allotment in view of notification dated 28.11.1951 is in complete conformity to the decision of Honorable Supreme Court. His observations based on examination of the relevant record and detailed in paragraph 8 that entry No.7 is not genuine, and his reservation over M/s Zafrul Islam being successors of Mst. Sharifan in paragraph 9 of his order are not irrelevant either, as nothing has been said or produced in disproof of the same by the petitioner here.

13. Now a look at relevant facts cited in Dooley Hassan's case (*supra*). One Nabi Jan, a displaced person from India, was allotted land measuring 1.8 Acres and 2.7 Acres out of Survey Nos. 61 and 62 respectively belonging to Hindu evacuee namely Keval Ram Shamdas in Hyderabad District. This allotment was confirmed under the Displaced Persons (Land Settlement) Act, 1958 by issuance of Khatauni No.9/12/252/4 dated 24-6-1965. On the basis thereof name of Nabi Jan was entered in the Revenue Record as owner of the said land. After the death of Nabi Jan, the names of M/s Dooley Hassan claiming to be his legal heirs were brought on record as the owners of the said land. The Municipal Commissioner, Hyderabad by his letter dated 24-1-1982 protested against such mutation in respect of abovementioned 2 survey numbers on the ground that the said land was acquired by the Central Government for Satellite Town. The Additional Deputy Commissioner on the basis of the letter of Commissioner, Hyderabad, took up the dispute and held by order dated 6-2-1986 that the above mentioned survey numbers were transferred vide Notification No.F.16 (41)/51-P to Sindh Government, after the same were acquired by the Government of Pakistan. Therefore, the said survey numbers did not form part of compensation pool constituted under Section 4 of the Act and as such their transfer in favour of M/s Dooley Hassan was void. The said order was challenged by the petitioners in Constitution Petition No. D-45 of 1986 which was accepted by a Division Bench of this court by order dated 30-5-1989 on the ground that the affected parties were not heard by the Additional Deputy Commissioner before passing the impugned order. However it was left open to the said officer to pass a fresh order in accordance with the law after serving notice and hearing legal heirs of the original allottee in the case. Thereafter, the legal heirs themselves approached the Additional Deputy Commissioner with the request that the entry with regard to their names as owners of the above survey numbers be restored in the Revenue Record. On the said application, Additional Deputy Commissioner after hearing all the necessary parties in the case by his order dated 13-10-1990 held that the land in dispute was acquired by the Central

Government and transferred to the Provincial Government for utilizing for Satellite Town, Latifabad, in the year 1951, and that when it was transferred in favour of the petitioner under the provisions of the Act, was not available in the compensation pool and as such its transfer in favour of Nabi Jan was void. The decision of the Additional Deputy Commissioner was once again challenged in Constitution Petition No. D-135 of 1990 but it was dismissed by this court vide judgment dated 04.8.1993. The matter ultimately landed in the Honorable Supreme Court and was dismissed by a judgment reported in 1994 SCMR 744. The relevant part thereof is as under:-

Mr. Akhlaq A. Siddiqui, the learned counsel for the petitioners contended before us that the suit land being an evacuee property could not be acquired by the Government and as such when a Notification under Section 4 of the Act was issued acquiring all the agricultural land in the Province of West Pakistan, the suit land also became part of compensation pool and was, therefore, rightly transferred to the petitioners' predecessor Nabi Jan. The contention of the learned counsel for the petitioners has no merit. The petitioners have filed a copy of Notification by which the land was acquired by the Central Government, at page 38 of the Paper Book, which reads as follows:

"No.F.16(41)/51-P: -In exercise of the powers conferred by Section 9 of the Pakistan Rehabilitation Ordinance, 1948 (XIX of 1948), the Central Government is pleased to requisition under subsection (1) and acquire under subsection (2) of the said section the property a description of which is given in the schedule appended below.

It is further ordered that with effect from the date of issue of this Order the said land shall be placed at the disposal of the Government of Sindh.

Schedule

Land covered by Survey Nos. 7, 13, 14, 15, 17, 18, 25, 26, 59, 6-K, 62, 66, 67, 68, 131, 246, 258, 259, 260, 261, 282, 287, 292, 312, 322 and 331 situated in Deh Gidu Bunder, Hyderabad (Sindh)."

Section 9 of the Pakistan Rehabilitation Ordinance, 1948 (hereinafter to be referred to as 'the Ordinance' only), under which above Notification was issued, reads as follows:---

"9. (1) If in the opinion of the Central Government it is necessary or expedient so to do for the purposes of this Ordinance, it may by order in writing requisition any property movable or immovable, and may make such further orders not inconsistent with this Ordinance as appear to it to be necessary or expedient in connection with the requisition:

Provided that no property used for the purpose of religious worship shall be requisitioned under this subsection.

(2) The Central Government may use or deal with any property requisitioned under subsection (1), in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Central Government has decided to acquire the property in pursuance of this subsection.

(3) Where a notice of acquisition is served on the owner of the property or published in the official Gazette under subsection (2), then at the beginning of the day on which the notice is so served or published, the property shall vest in the Central Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

(4) Whenever in pursuance of subsection (1) or subsection (2) the Central Government requisitions or acquires any property, the owner thereof and any person having a charge, pledge or lien or other encumbrances on such property shall be paid such compensation as the Government may determine (and the compensation so determined shall not be called in question in any Court).

(5) The Central Government may, with a view to requisitioning any property under subsection (1) or determining the compensation payable under subsection (4), by order---

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of the Central Government dispose of it, or where the property is a building, structurally alter it, till the expiry of such period as may be specified in the order.

(6) Without prejudice to any powers otherwise conferred by this Ordinance, any person authorised in this behalf by the Central Government may enter any premises and inspect such premises and any property therein or thereon, for the purpose of determining whether, and, if so, in what manner, an order under this section shall be made in relation to such premises or property, or with a view to securing compliance with any order under this section."

Section 9(1) of the Ordinance authorised the Central Government to requisition any property except a place/property used for religious worship, through an order in writing, for the purposes of the Ordinance, if in its opinion it was necessary and expedient to do so. Under subsection (2) *ibid*, the Central Government could use a requisitioned property in such manner as it deemed fit and may also acquire the same by serving a notice on the owner of the property or where owner is not traceable or the ownership of the property is in dispute, by publishing a notice in the official Gazette stating that the Central Government has decided to acquire the property. Upon publication of notice under

subsection (2) *ibid*, the property stood vested in the Central Government free from any mortgage, pledge, lien or similar other encumbrance and the period of requisition also stood terminated in term of subsection (3) *ibid*. The only right which the owner of such property possessed after the acquisition, was to receive compensation as may be determined by the Government and apart from that no other right of the owner existed in respect of that property. It is, therefore, quite clear that after issuance of the Notification by the Central Government in 1951, the suit property stood acquired free from all encumbrances and the same was later placed at the disposal of the Provincial Government for the purpose of Satellite Town Scheme. In these circumstances, the land in suit neither formed part of compensation pool constituted under section 4, subsection (2) of the said Act nor it was available for transfer under the provisions of the Act. The property not being available in the compensation pool, its transfer in favour of Nabi Jan through Khatauni issued in the year 1965 was, therefore, not legal. The learned High Court in the these circumstances, rightly reached the conclusion that the allotment in favour of Nabi Jan was of no legal effect. There is no merit in this petition, which is accordingly, dismissed and leave to appeal is refused.

14. The above judgment fully covers controversy in hand in which same notification No.F/16(41)/51-P dated 28.11.1951 on identical facts and grounds involving however different survey numbers mentioned in the schedule therein and respecting some other claimant has come under discussion, and it has been held that after issuance of the Notification by the Central Government in 1951, the suit property stood acquired free from all encumbrances and the same was later placed at the disposal of the Provincial Government for the purpose of Satellite Town Scheme. Therefore, the land in suit neither formed part of compensation pool constituted under section 4 subsection (2) of Displaced Persons (Land Settlement) Act, 1958 nor it was available for transfer under the provisions of the said Act. The property not being available in the compensation pool, its transfer in favour of claimant through Khatauni issued later on in the year 1965 was, therefore, not legal. In view of said judgment and foregoing discussion, we find no merits in this petition and dismiss it accordingly. All pending applications including M.A.9156/2013 filed for bringing remaining directors of Petitioner Company on record as the managing director who filed the petition has died since stand disposed of in the above terms. There is however no order as to costs.

JUDGE

JUDGE