

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

CP No. D-1227 of 2009

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Khadim Hussain Soomro**

Petitioner Evacuee Trust Property
Board Larkana / Sukkur Region : Through Mr. Imdad Ali
Mashori, Advocate

Rustam Ali Respondent No.4 : Through Mr. Safdar Ali Ghouri,
Advocate

The State / Respondents Nos.
5 & 6 : Through Mr. Oshaq Ali Sanghi,
Assistant Attorney General for
Pakistan.

Dates of hearing : 19.12.2023

Date of Judgment : 03.01.2024

Date of Announcement : 10.01.2024

JUDGMENT

Muhammad Saleem Jessar, J.- By means of this constitution petition the petitioner has assailed the Order dated 29.06.2009 passed by Revising Authority/ Additional Secretary Incharge to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division) whereby the Revising Authority while setting aside the Order-in-Original passed by Chairman Evacuee Trust Property Board, Government of Pakistan, Lahore, accepted the Revision Petition to the extent of validation. The relevant portion of the impugned order is reproduced hereunder:

“After having heard the arguments of both the parties, the Revising Authority comes to the conclusion that the lower court rightly declared the disputed property as an evacuee trust property on the basis of Revenue Record and the petitioners could not rebut the findings of the lower court on the point of declaration of property as trust property. However, the Revising Authority observed that the allotment made by the Settlement Department in favour of Mohib Ahmed Khan is covered under Section 10 of the Act, as the transfer was made against the personal verified

claim and the PTD was issued on 19.06.1966, which is before the target date. In view of the discussion, the impugned Order-in-Original is set aside by accepting the Revision Petition to the extent of validation”.

2. Brief facts, as disclosed by the petitioner are that as per Section 2 (d) of the Evacuee Trust Properties (Management & Disposal) Act XIII of 1975 (hereafter referred to as ‘the Act’), City Survey No: A / 358 measuring (90.6) Sq. Yards, situated at Jilles Bazar Larkana is Tikano (Temple) attached to religious institution which is under the management and control of Evacuee Trust Property Board and forms Trust Pool constituted under the Act ETP (M&D) Act XIII of 1975. It was further stated that the abovesaid survey number is also entered in Form No.1 of Survey Register of Evacuee Trust Property Board. The said survey number was transferred by Settlement Department through auction proceedings in the name of Mohib Ahmed Khan son of Habib Ahmed Khan (Respondent No.1) and PTD No: 4733 dated: 20.05.1966 was issued in his favour. Thereafter, the City Survey record was changed in favour of Mohib Ahmed Khan S/o Habib Ahmed Khan i.e. Respondent No.1 herein on 15.03.1973. Subsequently, Respondent No.1 sold out the said Survey Number on 12.10.1974 to Respondent No.2 namely, Mohammad Khan S/o Ghulam Hyder and the City Survey record was accordingly changed in his favour. Thereafter, respondent No.2 also sold out said survey number on 29.03.1976 to Respondent No.3, Muhammad Yousaf S/o Muhammad Bux Mughal, and the city survey record was then changed in his favour. Thereafter, respondent No.4 namely, Rustam Ali Mughal S/o Muhammad Yousaf Mughal, purchased said C.S No. A/358 from Muhammad Yousaf and the City Survey record was accordingly mutated in his favour on 17.10.1978 and, according to the petitioner, presently respondent No.4 is in possession of the disputed property.

3. It is the case of the petitioner that above said property being Evacuee Trust Property was not available in compensation pool and was not legally transferable by the settlement authorities under the provision of Displaced Persons (Compensation and Rehabilitation) Act 1958 and scheme made thereunder, as such the initial transfer made in favour of Respondent No.1 was illegal and of no legal consequence. It was further asserted that as per law governing the Evacuee Trust Properties, a Reference under Sections 8 and 10 of said Act was filed by the Assistant

Administrator, ETP Larkana / Sukkur before the Chairman ETPB for deciding the status of disputed property, so also the validation and transfer of said CS No: A / 358, Jilles Bazar Larkana. According to the petitioner, the Chairman, ETPB after hearing both the parties and after perusal of the relevant record available before him, decided that since the disputed property, according to the extract to the property register card is Tikano (Temple) which is a Trust in nature as per Section 2 (d) of the Act XIII of 1975, therefore he declared the status of the disputed property to be Evacuee Trust Property. As regards validation of the transfer made by settlement department, it was held that the same did not fulfill the statutory conditions of allotment as the same had not been made against verified claim, but it was acquired through public auction, hence it is not protected under the law. Consequently, the transfer was cancelled, so also further alienation in favour of Respondents No. 2 to 4.

4. It was further stated by the petitioner that Respondent No:4 being aggrieved and dissatisfied with the aforesaid order, preferred a Revision Petition under Section 17 of the Act XIII, 1975 before Respondent No. 5. Respondent No.5, i.e. Revising Authority, after hearing both the parties maintained the order of the Chairman ETPB to the extent of declaration of disputed property as Evacuee Trust Property, but set-aside the order regarding not validating the transfer made on 19.06.1966 by the settlement authorities, for the reason that the allotment made by the settlement department in favour of Mohib Ahmed Khan was covered under Section 10 of the Act as the transfer was made against the personal verified claim and the PTD was issued on 19.06.1966 which is before the target date.

5. The petitioner has, therefore, challenged said order or the Revising Authority i.e. Respondent No.5 through instant petition.

6. Upon service of notices, only Respondent No.4 has filed Comments to the petition. In the comments, it is stated that at present the lawful owner of the said property is Asim Ali Mughal i.e. son of Respondent No.4, Rustam Ali Mughal, who purchased it from respondent No.4 through Registered Sale Deed dated 21.01.2012 and such Mutation Entry dated 07.6.2012 has been made in the relevant record. It is further stated that the property in question was being owned and possessed by respondent No.4, Rustam Ali, since 1978, who was bonafide purchaser

of said property for valuable consideration vide registered Sale Deed dated 23.07.1978 duly mutated in the City Survey record, having purchased the same from respondent No.3. It was further stated that, in fact, said property was originally private property belonging to one Dhooluram and the same was not Tikano (Temple), as shown in the Property Card vide Entry dated 04.04.1947 i.e. before partition. It was further averred that the statement of Dhooluram dated 04.04.1947 and the Order of City Survey Officer dated 02.04.1947 as well as Enquiry Register dated 19.03.1947, copies whereof have been filed alongwith comments to support such assertion. It was further stated in the comments that in the Municipal Record name of the property has been shown as Dola Ram Jagat Singh.

7. It is the further case of respondent No.4 that said property was obtained by respondent No.1 / claimant Mohib Ahmed in an open auction held on 17.01.1961 by Settlement & Rehabilitation authorities in accordance with the settlement scheme and duly approved by the competent authority in the year 1961 and then Permanent Transfer Deed (PTD) No. 4733, dated 19.05.1966 was issued and then pursuant to Circular No.1052/POL/71, dated 17.06.1971 issued by the Chief Settlement & Rehabilitation, Entry dated 15.04.1973 was kept in the Property Card in the name of Mohib Ahmed Khan and then respondent No.1 sold the same through Registered Sale Deed No. 1487, dated 17.06.1974 to respondent No.2, Mohammad Khan and the record was accordingly mutated vide Entry dated 12.10.1974 and all this was done before enactment of the Act. 1975. Thereafter, respondent No.3 namely, Mohammad Yousif, purchased said property through Registered Sale Deed and mutation was made vide Entry No./dated 19.05.1976 and then respondent No.4 purchased said property through Registered Sale Deed dated 23.07.1978 and accordingly Entry dated 17.10.1978 was recorded.

8. Respondent No.4 further stated in the Comments that respondent No.1 had purchased said property in auction from the Deputy Settlement Commissioner, Larkana which was held on 17.01.1961 and after its approval by the Additional Settlement & Rehabilitation Commissioner, Hyderabad, Khairpur, Quetta and Kalat Division, its price of Rs.2,400/- was paid and adjusted against verified claims. Plea of respondent No.4 is that; aforesaid property had been bonafidely transferred by the Deputy

Settlement Commissioner against satisfaction of verified claims / personal claim in favour of respondent No.1, Mohib Ahmed Khan. The price of said property was paid / adjusted by respondent No.1 under Compensation Books in accordance with the law. Thereafter, such Permanent Transfer Deed (PTD) had also been issued in his favour on 19.05.1966 vide entry No. 4733, dated 19.05.1966, before Target Date viz. 30.06.1968, thus same stood validated under section 10 (1) (b) of the Act 1975.

9. According to respondent No.4, impugned Order dated 29.06.2009 passed by Revising Authority is legal and lawful and not having been passed in violation of mandatory provisions of the Act 1975.

10. It is further stated in the Comment that it has been erroneously held in the order in original that as per Settlement Record the property was Tikano, as, in fact, nothing is available in the relevant record to support such assertion. According to respondent No.4, the original owner namely, Dola Ram, had given his statement on 04.04.1947 to the effect that said property was his personal Tikano and personal property and that the name of his brother Rattan Lal may be included, meaning thereby that it was not charitable property. In the Comments, reference has also been made to an Order of City Survey Officer, Larkana dated 02.04.1947, wherein it was observed that it was not a charitable property as shown in the record. Therefore, the word "charitable" may be scored out from the record and accordingly, in the Property Extract Card a note was endorsed by the City Survey Officer to the effect "The word charitable and Manager escored out as per C.S. Order dated 4.4.1947."

11. According to Respondent No.4, in view of above facts, the petitioner has not approached this Court with clean hands and has filed instant petition by suppression and misrepresentation of facts, therefore the petition may be dismissed with special costs.

12. We have heard learned counsel for the parties, as well as learned Assistant Attorney General, Pakistan and have perused the material available on the record.

13. Learned counsel for the petitioner submitted that respondent No.4 had filed Revision Petition, which was hopelessly time barred, therefore, the impugned order dated 29.06.2009 passed by the Revising Authority /

Additional Secretary Incharge to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division), available as Annexure "J" at page 61 of the Court file, is illegal besides the same is a non-speaking order. He further submitted that the property in question was a charitable property being Tikano; hence Revising Authority was not competent to declare validation of the same to be correct / legal. He further submitted that the Minorities Department was not owner of the property in question, hence was not competent to sell it out. He, therefore, prayed that by setting aside the impugned order, the property mentioned in prayer clause may be restored and declared to be Evacuee Trust Property as the allotment made by respondent No.6 was also illegal and in violation of mandatory provisions of ETP (M&D) Act XIII of 1975. He referred to Section 4 of Exemption of Evacuee Trust Properties from Compensation Pools and Rent Restriction Ordinance, 1958. In support of his contentions, he relied upon case law reported as *Fayyazuddin Khan Vs. Federal Government of Pakistan through Secretary to the Government of Pakistan, Minorities Affairs Division, Islamabad and others* (2009 SCMR 362) and *Muhammad Ibrahim Vs. Noor Bai and others* (1988 SCMR 751).

14. Learned counsel for the petitioner further submitted that the law relied upon and cited by learned counsel for respondent No.4 is in respect of the verified claims, whereas this is not the case of verified claims. He also referred to page 19 of the Court file and submitted that the property in dispute is the property of Evacuee Property Trust Board.

15. Learned Assistant Attorney General for Pakistan, who was present in Court in some other matters, waived notice of instant petition and while adopting arguments of learned counsel for the petitioner, placed reliance upon an unreported order dated 31.10.2022, passed by Apex Court in C.M.A.No.4821/2018 in S.M.C. No. 1/2014 and submitted that the impugned order is not maintainable, therefore by allowing this petition same may be set aside.

16. Conversely, learned counsel appearing for respondent No.4 opposed the petition and raised legal question regarding its maintainability on the ground that the petitioner had assailed the order of its own Revising Authority, therefore, the petition in hand is not maintainable. Besides, he

submitted that respondent No.1 was *bonafide* purchaser as he had purchased the disputed property through an open auction held on 17.01.1961, subsequently PTD was issued in his favour on 19.05.1966, therefore, he acquired vested right having purchased the property in dispute *bonafidely*. Subsequently, the property was transferred from respondents No.1 to respondent No.2, then from him to Respondent No.3 and lastly from Respondent No.3 to respondent No.4. He further submitted that the property in dispute was not Tikano, so as to be termed as “charitable property” as claimed by the petitioner. In support of his contention, he referred to the Comments filed by Respondent No.4 and drew attention of the Court to sub-para (b) of para-2 of the Office Memorandum dated 16.6.1971, issued by the then Chief Settlement Commissioner and Rehabilitation Commissioner (Policy), Pakistan, copy whereof is available at page 35 of the Comments. He, while rebutting the arguments advanced by learned counsel for the petitioner, also drew attention of the Court towards page-23 of his comments, which is an application moved by one Bhai Dholomal to the then Collector, who subsequently endorsed and forwarded it to City Survey Officer, Larkana. In above application said Dholomal had prayed that since the property in dispute was his personal property and not Tikano, therefore, its title as Tikano may be scored off. Learned counsel also referred to the reverse of said page-23 which contains Order dated 02.04.1947 passed by the then City Survey Officer, Larkana whereby he allowed aforesaid application. Learned counsel, therefore, submitted that the property in dispute had never been a charitable property and Respondents No. 1 to 4 being *bonafide* purchasers thereof, cannot be disturbed as their right of ownership is protected under Section 42 of the Transfer of Property Act, 1882. He also referred to Section 10(1)(b) of the Evacuee Trust Properties (Management & Disposal) Act, 1975, which reveals that where a question arises as to whether a transaction referred to in Section 1 sub-section (1) is bonafide or not?, same is to be decided by the Chairman. According to him, as the purchase of the property by the respondents was before the cutoff date of the Act viz. 30.06.1968; hence it had got protection. He also placed reliance upon a letter of the then Commissioner available at page-35 of the comments of Respondent No.4. He has also annexed copy of the record of permanent transfer, available at page-31 of the Comments and at page-33 there is a receipt to the effect that the respondents had paid

certain amount to the department concerned. Hence, learned counsel submitted that the petition is not maintainable, besides the respondents are *bonafide* purchasers and their rights are protected by law, therefore, he requested for dismissal of this petition and maintaining the order passed by the Revising Authority. In support of his contentions, he relied upon the cases reported in 1982 SCMR 575 (Khurshid Ahmed and others vs. Fajar Ali), NLR 1953 SCJ 499 and 1999 SCMR 1072 (Gatron (Industries) Limited vs. Government of Pakistan and others). Learned counsel has also rebutted the arguments advanced by learned Assistant Attorney General Pakistan on the ground that the case relied upon by Assistant Attorney General is on different footing and has no relevance with the facts and circumstances of the instant case.

17. From the pleadings of the parties, so also from perusal of the Order-in-original passed by the Chairman, ETPB and the impugned order passed by the Revising Authority, it seems that basically following two questions were required to be resolved:

- i) As to whether the property in question was a *Tikano* (Temple) attached to religious institution being under the management and control of Evacuee Trust Property Board and falls within the Trust Pool constituted under the Act ETP (M&D) Act XIII of 1975 or it was a personal property ?
- ii) As to whether the Settlement Authorities validly issued Permanent Transfer Deed dated 19.05.1966 in favour of respondent No.1, Mohib Ahmed Khan allegedly against verified claims through public / open auction in exercise of powers contemplated under Section 10 of the Act, 1975?

18. The Chairman, Evacuee Trust Property Board, Government of Pakistan, Lahore, while passing the Order-in-original decided both the aforesaid questions in favour of the petitioner i.e. Evacuee Trust Property Board holding as under:

“Arguments heard record perused. According to the extract from Property Register Card the impugned property is a Tikano (Temple) which makes it trust. On the basis of the record I have no hesitation to declare the property in question as an evacuee trust. Let a notification be published under the law. As regards validation of the transfer even though the P.T.D. was issued before the target date as laid down in the Act but the transfer does not fulfill the statutory conditions of allotment to have been made against verified claim. Instead it was acquired through public auction and hence is not protected under

the law and as such it is hereby cancelled. Further alienation in favour of respondent No.4 will meet the same fate.”

19. However, the Revising Authority decided first question in favour of the petitioner, while the second question was decided in favour of respondent No.4. The concluding para of the order of the Revising Authority has already been reproduced hereinabove.

20. Before dealing with aforesaid questions, it would be advantageous to reproduce hereunder the contents of Section 10 of the Act 1975 which is relevant for the purpose of deciding the issues involved herein:

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

(a) if situated in a rural area and utilised 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 utilised 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 canceling the allotment or transfer of such property.

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

21. So far as the first question is concerned, although the Revising Authority has declared the property in question to be an **Evacuee Trust Property**; however, from perusal of the order of the Revising Authority, it is apparent that there is no mention in the order that the property in question was declared to be a **religious/ charitable property** so as to exclude the same from the compensation pool. Respondent No.4, in support of his plea stated i.e. the property in question was not a *Takano*, as

claimed by the petitioner but the same was a personal property of the original owner Dhoolamal, has annexed with his Comments certain documents. From perusal of the document available at page 23 of the Comments, it seems that an application was moved by one Dholomal to the then Collector wherein he had prayed that since the property in dispute was his personal property and not *Tikano*, therefore, its title as *Tikano* may be scored off. The said application was subsequently forwarded to City Survey Officer, Larkana, who allowed said application vide his order dated 02.04.1947 which is available on the reverse of said page-23. The said order says, ***"The words of the decree No. 1036 of 1905 shows that the Tikano was awarded to him by partition as his exclusive property therefore it is not a charitable property as shown in the record. The word charitable may that be escored out from the record"***. It may be observed that although learned counsel for the petitioner has relied upon the Form No.1 of ETPB which is available at page 19 of the Court file in support of his plea that the property in question was a *Takino*; however, he has not been able to controvert the plea taken by respondent No.4 that said Dhoolamal, who has also been admitted to be owner of the property in question even by the petitioners themselves, had moved aforesaid application and that same was allowed by the City Survey Officer vide order dated 02.4.1947, as stated above.

22. In this view of the matter, it is apparent that although the property in question was an Evacuee Trust Property; however, its status was not of **religious or charitable** nature.

23. Now adverting to the aforesaid second question, from perusal of the record it appears that the Permanent Transfer Deed was issued in favour of respondent No.1 Mohib Ahmed Khan, on 19.05.1966, which fact has also been admitted by the petitioners themselves. Now, examining the contents of Section 10 of the Act. 1975, it seems that Section 2 (b) provides that if an immovable evacuee trust property, situated in an urban area and utilized *bonafide* 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. In this view of the matter, as the PTD was issued in

favour of Respondent No.1 before the target date i.e. 30.6.1968, therefore, apparently, as per section 10 of the Act, 1975, the property in question shall be deemed to have been validly transferred.

24. There are plethora of judgments of the Superior Courts on this point. In the case reported as **ASSISTANT ADMINISTRATOR Vs. SECRETARY, MINISTRY OF RELIGIOUS AFFAIRS AND MINORITY, ISLAMABAD and 4 others (2013 M L D 1695 [Sindh])**, a Division Bench of this Court held as under:

“4. The PTDs were issued by the Settlement Department on 30-12-1963, 10-1-1963 and 29-5-1967 in respect of the properties in C.Ps. Nos. D-822/2010, D-823/2010 and D-824/2010, respectively. Therefore, it is an admitted position that the validation process of all the properties had been completed and the PTDs were issued by the Settlement Department in respect thereof prior to the target date of June 1968, specified in the Act of 1975, against the verified claims of the displaced persons, after receiving the price of the properties from their respective personal Compensation Books. This important fact was noticed and mentioned by the Chairman in the orders passed by him. The main thrust of the arguments advanced by the learned counsel for the petitioner was that the properties, being Evacuee Trust properties, could not have been legally validated or transferred in favour of the displaced persons/private respondents, as the same were not available for transfer and did not form part of the Compensation Pool under section 4(2) of the Displaced Persons (Compensation and Rehabilitation) Act of 1958. Though the properties were declared as evacuee properties by the Chairman and it was noticed by him in his orders that the PTDs were issued before the target date, it was still held by him that the cases did not fall under Section 10 of the Act of 1975 as the properties were transferred through open auction and not on verified claims.....

5. A bare reading of the aforementioned Section 10 reveals that the provisions thereof were to apply to validation of transfers of only such immovable properties, situated in rural and urban areas, which belonged to the Evacuee Trust, and not to any other property, provided the transfers were bona fide. There is no such bar in the said section that said Evacuee Trust properties could not be transferred. It must be kept in mind that the Act of 1975 was/is a special Act which was enacted specifically with the preamble "Whereas it is expedient to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions ..". Moreover, 'Evacuee Trust property' has been defined in section 2(1)(d) of the Act of 1975 as "Evacuee trust property means the evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act." The Chairman was fully aware of the fact, which was noticed and mentioned by him in his orders, that the properties involved in C.Ps. Nos.822 of 2010 and 823 of 2010 belonged to Basant Singh Amal Dharmada Trust, and the property involved in C.P. No.824 of 2010 belonged to Swami

Gawalanand Prem Parkash Ashram. In view of the above, and after declaring that the properties were evacuee properties, the Chairman was not justified in holding that the transfers of the said evacuee properties was improper, or that the same did not fall within the ambit of section 10 of the Act of 1975.

6. *Regarding the applicability of section 10 of the Act of 1975, we have observed that, for validation of transfer of the Trust properties under the said section 10, it was necessary that (i) the property was an immovable property either in an urban or in a rural area ; (ii) the property was an Evacuee Trust property ; (iii) the property situated in a rural area was utilized bona fide under any Act prior to June, 1964 for allotment against the satisfaction of verified claims; and (iv) the property situated in an urban area was utilized bona fide under any Act for transfer against the satisfaction of verified claims in respect of which PTDs were issued prior to June, 1968. We have further observed that the said Section 10 provides that if all the above conditions were satisfied, the property shall be deemed to have been validly transferred to sale to the Chief Settlement Commissioner, and the sale proceeds thereof shall be reimbursed to ETPB and shall form part of the Trust Pool. In the present cases, all the conditions were met before the validation of the transfers by the Settlement Department, as all the properties in question are admittedly immovable Evacuee Trust properties (urban); the same were utilized bona fide for transfer against the satisfaction of verified claims; the PTDs in respect thereof were issued prior to June, 1968 ; and, the sale proceeds thereof were received by the Settlement Department from the transferees for reimbursement to ETPB so that the same may form part of the Trust Pool. There is no dispute as to whether the properties were utilized bona fide or not, as this question was never raised by the petitioner either before the Chairman or before respondent No.1. In view of the above, we are of the firm opinion that the transfers were validated in accordance with law, as the competent authority; namely, the Chief Settlement Commissioner, was bound under the Act of 1975 to validate the transfers on fulfilment of all the aforementioned conditions. The only case where the said authority could exercise his discretion was when the property had not been utilized bona fide in terms of the said section 10.”*

25. Honourable Supreme Court in the case of **KHALID MAHMOOD AND OTHERS Vs. Ch. GHULAM MUHAMMAD**, reported in **1982 SCMR 557**, while dealing with this point, held as under:

“Clause (b) of subsection (I) of section 10 of the Act contemplates that an immovable evacuee trust property 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 Revenue Trust Board and shall form part of the Trust pool. Thus the intention of the Parliament was clear that the transfers falling in this category were not to be disturbed even through the property was evacuee trust property and did not originally form part of the compensation pool. This position is not in any manner altered by sections 31 and 32 of

the Act, on the contrary, these two sections have the effect of ensuring that all orders made in respect of the transfer of evacuee trust property before the enactment of this Act shall have effect as if they had been made under this Act. It seems to us that the true position which obtains under these two sections is that the permanent transfer deed already issued in favour of the respondent before June, 1968 remains operative, as it was not cancelled by the Additional Settlement Commissioner who had passed only a conditional order. The High Court was therefore right in restoring the order of the learned Rent Controller.”

26. Besides, in another case reported as *Secretary, Ministry of Religious Affairs and Minorities etc. Vs Syed Abdul Majid* (NLR 1993 SCJ 499), Honourable Supreme Court has held that *bonafide utilization of properties under any Act up to cut off dates provided under it are to be treated validly transferred to Settlement Department and sale proceeds thereof are to be reimbursed to Evacuee Trust Property Board.* It was further held that *object of this provision under section 10 of the Act 1975 seems to be not to interfere with transfers of such trust properties which have been made by Settlement Authorities bonafide and also believing them to be evacuee properties.*

27. Yet in another case, decided by Honourable Lahore High Court reported as *Chairman, Evacuee Trust Property Trust Board Vs Munir Khan etc.* (NLR 1992 AC 204), it was held as under:

"7. Adverting now to the contention raised on behalf of the appellant that the case should be remanded to determine the nature of the property in dispute, I suffice by observing that the same is not tenable. The property already stands transferred by Settlement Department and PTD pertaining thereof has been admittedly issued. In the circumstances by virtue of Section 10 (1)(b) of the Evacuee Trust Properties (Management & Disposal) Act, 1975, the property shall be deemed to have been validly transferred to respondent No.1. Support if any need in respect of the above proposition can be found from the judgement of this Court in Mst. Farkhanda Akhtar and 3 others Vs. Chairman, Evacuee Trust Property Board, Lahore reported as PLD 1980 Lahore 804."

28. The petitioner has taken a plea that validation of the transfer made by settlement authorities does not fulfill the statutory conditions of allotment, as the same had not been made against verified claim, but it was acquired through **public auction**, therefore the same is not protected under the law. This point has also been discussed by the Division Bench of this Court in the case of *ASSISTANT ADMINISTRATOR Vs. SECRETARY, MINISTRY OF RELIGIOUS AFFAIRS AND*

MINORITY, ISLAMABAD and 4 others (supra) and it was held as under:

“7. The orders for the refusal of the validation of the transfers and cancellation of the PTDs were passed by the Chairman on the grounds that the properties were transferred through open auction and not on satisfaction of personal verified claims. This finding by the Chairman was contrary to the record before him, as the validation process of all the properties had been completed and the PTDs were issued in respect thereof prior to the target date of June 1968 by the Settlement Department against the verified claims of the displaced persons, after receiving the price of the properties from their respective personal Compensation Books. In the impugned orders, respondent No.1 has thoroughly discussed all the above aspects of these cases, and we feel that his observations and findings are based on sound reasoning and a correct interpretation of section 10 of the Act of 1975. The impugned orders, therefore, do not require any interference by this Court.”

29. In instant case too position is the same, as the validation process of the property in question had been completed and the PTD was issued in favour of Respondent No.1 by Settlement Authorities prior to the target date of June 1968 against the verified claim after receiving the price of the property from the respective personal Compensation Book.

30. Apart from this, respondent No.4 has also annexed alongwith his Comments copy of an Office Memorandum dated 16.06.1971 issued by the then Chief Settlement Commissioner and Rehabilitation Commissioner (Policy), Pakistan. In sub-para (b) of para 2 of the said Memorandum it has been specifically mentioned that **the transfers whereby evacuee urban trust properties have been transferred prior to June, 1968, would not be disturbed.**

31. So far as the case-law relied upon by learned counsel for the petitioner is concerned, in the case reported as *Fayyazuddin Khan Vs. Federal Government of Pakistan through Secretary to the Government of Pakistan, Minorities Affairs Division, Islamabad and others* (2009 SCMR 362), in said case the point under discussion was the bonafide erroneous transfer by the Settlement Authorities. However, in instant case this point is not under discussion that the Settlement Authorities had transferred the property in question in favour of Respondent No.1 **erroneously** but the plea of the petitioner from the very beginning has been that although the PTD was issued in favour of Respondent No.1

prior to target date i.e. June 1968; however, validation of the transfer made by settlement department did not fulfill the statutory conditions of allotment, as the same had not been made against verified claim but it was acquired through **public auction**, therefore, the same was not protected under the law. As stated above, such plea was also raised in the case of *ASSISTANT ADMINISTRATOR Vs. SECRETARY, MINISTRY OF RELIGIOUS AFFAIRS AND MINORITY, ISLAMABAD and 4 others* (supra), but the same was repelled in that case by a Division Bench of this Court. In this view of the matter, the case-law relied upon by the petitioner is distinguishable and not attracted to the factual and legal aspects of the case in hand.

32. The other case relied upon by the petitioners' counsel i.e. *Muhammad Ibrahim Vs. Noor Bai and others* (1988 SCMR 75) is also distinguishable as the point involved in that case has no nexus with the legal point involved in instant case i.e. validation of transfer under Section 10 of the Act, 1975.

33. The upshot of above discussion is that instant petition having no merits is hereby **dismissed** and the order dated 29.06.2009 passed by the Revising Authority / Additional Secretary Incharge to the Government of Pakistan, Ministry of Minorities (Minorities Affairs Division) hereby is maintained.

JUDGE

Larkana
Dated: 10-01-2024.

JUDGE