IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-6608 of 2020

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Chief Commissioner Inland Revenue Corporate Tax Office FBR V. Federal Secretary / Revisional Authority Ministry of Religious Affairs & Interfaith Harmony-Islamabad & others]

Date of hearing	:	29.04.2025
Date of decision	:	27.05.2025
Petitioners	:	Through Manzoor Ahmed Soomro, Advocate.
Respondents No. 2 & 3	:	Through Mr. Muhammad Akram Tariq, Advocate.
Respondent (Official)	:	Through Mr. R.D. Kalhoro, Assistant Attorney General for Pakistan.

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Constitutional Petition has been filed whereby the Petitioner has challenged Impugned Judgment dated 15.10.2020 issued by Respondent No. 1[1] and Impugned Notice dated 12.11.2020[2] issued by Respondent No. 3 in which property being Survey No. 229, Sheet No. JM (old No. 16-JM-2), Jamshed Quarters Karachi measuring approximately 1605 Sq. Yards (commonly known as the Guru Mandar Building) ("**the Building**") has been declared as evacuee trust property. The Petitioner claims the Building is owned by the Federal Government (Ministry of Finance), in which the Petitioner has held possession for over sixty years, i.e. since 04.07.1961.[3] The Petitioner is hence aggrieved by the Impugned Judgement and Notice.

2. The Petitioner is the Federal Board of Revenue (FBR), who is a representative of the Federal Government of Pakistan ("**GoP**") through the Ministry of Finance. The Petitioner is in-charge of revenue collection throughout the Country. The Petitioner / FBR claims to have occupied the premises of the Building since the year 1961, and at such time was functioning under the (then) applicable Central Board of Revenue Act 1924[4]. The

[1] Available at Page 23 of the File
[2] Available at Page 35 of the File
[3] Available at Page 69 of the File
[4] They currently function under the Federal Board of Revenue Act 2007

Petitioner contends that the Impugned Judgment passed by Respondent No. 1 has in effect voided the purchase of the Building by the GoP in the year 1961. The Petitioner alleges great distress, since their headquarters are located at the Building from where they have been functioning for over sixty (60) years. The Petitioner states the actions of the Respondents (i.e. Evacuee Trust Property Board) have violated the Petitioner's legal rights. Moreover, their entire functioning and management will suffer irreparably, which would greatly negatively impact the Country.

Brief Background:

3. The Building was initially owned by the Guru Mandir Association (**"GMA"**), which was granted to them by the Hyderabadi Amil Cooperative Housing Society on 04.02.1939. Subsequently, the Building was purchased from GMA by a private entity, namely, Fredrick Sidney Cotton ("**FSC**") vide Agreement dated 24.06.1948. The said Agreement was entered into on behalf of GMA by their duly authorized agent, namely Mr. Bhagwan Singh D. Advani[5].

4. A Certificate of Approval dated 11.01.1951[6] for such transfer of property was issued by the Evacuee Property Department, i.e., the predecessors of the current Respondents No. 2 & 3, in favour of the sale. The same was signed by the Additional Custodian (Judicial) Evacuee Property of the time, namely, Mr. S.A.M. Jafry.

5. It then transpires that FSC sold the Building to GoP (Ministry of Finance) vide Sale Deed dated 04.07.1961[7], since which time the GoP handed over possession to the Petitioner, who occupied the same and continue to use the same as an integral part of their offices, for conducting their work on behalf of the GoP (Ministry of Finance).

6. The Office of the Chief Commissioner also endorsed purchase of the Building by the GoP (Ministry of Finance), which was approved and later published vide Resolution No.793 dated 16.01.1958. The Building was to be used for governmental purposes.[8]

7. On 24.03.1998 the Respondent No. 2 passed an order (**"1998 Order"**) in which he declared the Building to be *evacuee trust property*, and stated

[5] Agreement is at Page 49 of the File
[6] Available at Page 51 of the File
[7] Available at Page 69 of the File
[8] Available at Pages 65-67 of the File

that any and all transactions / sales subsequent to ownership by the Guru Mandir Association were void and illegal. He directed that the Petitioner should be removed from the Building, and that possession and management of the Building should be taken over by Respondent No. 3.[9]

8. Against the said 1998 Order of Respondent No. 2, a Revision Application was filed in which the Impugned Judgment was passed by Respondent No. 1. Being aggrieved from the Impugned Judgement, the Petitioner has assailed the same vide the instant Constitutional Petition.

9. Learned Counsel for the Petitioner argued and provided a brief narrative of the facts (already summarized *ibid*). He submitted that the Building was previously owned by the Guru Mandir Association, who lawfully sold the same to a private entity, i.e. FSC. He next contended that the sale was endorsed by the relevant authorities, which included the Respondents themselves (through their predecessors). He referred to the Impugned Judgment and stated that it was a non-speaking order, and particularly referred to the last Para 9 of the Impugned Judgment, in which he specified that his arguments were not properly addressed. He further contended the Impugned Judgment failed to provide any detailed reasoning for arriving at its conclusion. He submitted the Impugned Judgement had very generically stated that the Petitioner's arguments were not persuasive, without explaining how Respondent No. 1 reached such conclusion. He next averred that Respondent No. 1 proceeded to dismiss the Revision Application without any basis, and that the Impugned Judgement was contrary to law and the principles of justice.

10. Learned Counsel for the Petitioner referred to an order passed by the DC (Judicial) Evacuee Property Karachi[10] in which the Evacuee Property Administration themselves have approved the sale of the Building by Mr. Advani to FSC. He referred to a Letter dated 22.07.1958[11] issued by the Chief Commissioner Secretariat through its Chief Officer Karachi Municipal Corporation, which further confirmed approval for sale of the Building in favour of GoP (Ministry of Finance). He next relied upon the Certificate dated 11.01.1951 issued by Additional Custodian Evacuee Trust Property which

[9] Available at Pages 79-87 of the File
[10] Available at Page 61 of the File
[11] Available at Page 65 of the File

stated the Building was an evacuee property belonging to Mr. Advani, who was permitted to transfer the same to FSC for consideration of Rs. 32,311/-.[12]

11. Learned Counsel for the Petitioner next argued that under the applicable law of the time, i.e. the Pakistan (Administration of Evacuee Property) Ordinance 1949 ("**the 1949 Ordinance**"), all due process was followed. The Petitioner was endorsed by the Respondents themselves, as well as all the relevant authorities. And as such, after such a prolonged period it would be unjust for the Building to be taken away from the Petitioner by the Respondents. Learned Counsel stated the same was also contrary to settled legal principles.

12. Learned Counsel for Petitioner concluded by asserting that the Impugned Judgment was vague and without consideration of relevant laws. He submitted the Impugned Judgement has simply blindly endorsed Respondent No. 2's initial 1998 Order, without applying a fair and independent judicial mind. He lastly contended that the said Impugned Judgment and 1998 Order, as well as the Impugned Notice dated 12.11.2020 issued by Respondent No. 3 in consequence of the Impugned Judgement, are all erroneous and liable to be set aside. In support of his assertions, he cited the Supreme Court judgment of *Pervaiz Oliver and others Versus St. Gabrial School through Principal and others.*[13]

13. Learned Counsel appearing for Respondent Nos. 2 & 3 opposed submissions made by the Petitioner. He commenced his arguments by submitting that the Impugned Judgment was detailed and correct, and did not require any interference. He referred to Para 6 of the Impugned Judgement[14] in which he highlighted that all pertinent points relating to the Building were settled and discussed therein.

14. He pointed to Section 6 of the 1949 Ordinance and said that all matters pertaining to evacuee properties at the time, such as the Building, would vest with the 'Custodian'. He next referenced Section 5(3) of the 1949 Ordinance and stated that the term *'Custodian'* would not include *'Additional, Deputy or Assistant Custodians'*. He submitted that since the approval orders being relied upon by the Petitioner were issued by the *Additional* Custodian and not the *'Custodian'* himself, they cannot be considered valid. He referred to

[12] Available at Page 51 of the File. It is also to be noted that there has been no dispute regarding payment of consideration by FSC
[13] PLD 1999 Supreme Court 26
[14] At Page 27 of the File

Section 17 of the 1949 Ordinance which requires that a certificate has to be issued by the Custodian before a property can be registered, which he stated was not obtained at the time, but was obtained later in the year 1951, and as such the requirement of this section was not fulfilled. He reiterated that since the certificate was in any event issued by the *Additional* Custodian, and not by the Custodian himself, the same was void.

15. He next referred to Section 8 of the Evacuee Trust Properties (Management & Disposal) Act, 1975 ("**the 1975 Act**") which states that the Chairman (i.e. Respondent No. 2) has power to decide which evacuee property is to be declared as evacuee trust property, and that the decision of the Chairman is final and cannot be called into question by any Court. He reiterated that the Impugned Judgment was validly passed in accordance with all laws. He submitted the Petitioner has been unable to show the validity of the documents upon which they rely, and that there is no infirmity with the findings of Respondent No. 2. He concluded by stating that since the Building was declared evacuee trust property by Respondent No. 2, the Building must be reverted back to them (i.e. Respondents No. 2 & 3). In support of his contentions, he has placed reliance on *2016 SCMR 679 & 2007 SCMR 262*.

16. Learned Assistant Attorney General adopted arguments of Counsel for Respondent No. 2 & 3 and further stated that the documents provided by the Petitioner have not been authenticated, and as such cannot be considered. He stated his support for the Impugned Judgment, which he submitted was passed in accordance with law.

17. We have heard all the learned Counsels.

18. There is no cavil with narration above, and accordingly we will proceed to consider the matter on the contentions raised by the parties.

19. The basic point of consideration between the parties is whether the initial transfer of the Building by Mr. Advani to FSC was legitimate or not? If it is held that the initial transfer was properly conducted, then the rest of the transactions would automatically stand validated. Conversely, if it is found that transfer of the Building was invalid, then the Petitioners' entire house of cards falls.

20. Originally, it appears the Building was granted to Hyderabadi Amil Cooperative Housing Society Ltd. (**"HACHSL"**). On 04.02.1939, Mr. Advani, being President / Authorized-Agent of Guru Mandar Association (**"GMA"**), had taken over the Building from the HACHSL. Post-partition of India and Pakistan, Mr. Advani re-located to India, and sold the Building to FSC, vide Sale Agreement dated 24.06.1948. After Mr. Advani crossed borders, the Building, at such stage would be treated as evacuee property.[15] The [then] law *de jure* governing evacuee property was the Pakistan (Administration of Evacuee Property) Ordinance 1949 (**"1949 Ordinance"**), which dealt all matters concerning evacuee properties (which would apparently also include the Building).

21. Mr. Advani and FSC appeared to have followed the due process provided in the 1949 Ordinance. Post the Sale Agreement (*ibid*) entered into between the parties, a Sale Deed dated 15.01.1951 was concluded between them. Subsequently, the parties filed an application under Section 16 of the 1949 Ordinance seeking confirmation / approval of transfer of the Building. Confirmation of transfer was ordered by the D.C (Judicial) Evacuee Property on 09.02.1951[16].

22. Under section 17 of the 1949 Ordinance, a Certificate of Registration (to be granted by the Custodian) was required before any document relating to immoveable evacuee property could be registered. This was also obtained by the parties, and such certificate was issued by the Additional Dy. Custodian (Judicial) Evacuee Property, showing further confirmation of the sale & transfer of the Building.[17]

23. We now turn to the text of the 1949 Ordinance, which is relevant for the instant purposes. The first major point of contention argued by the Respondents was that the word *'Custodian'* would specifically exclude, *Additional*, *Deputy* and *Assistant* Custodian. The learned Counsel for the Respondents contended that even under the 1949 Ordinance, proper process and approval was not obtained for transfer of the Building, as the documents relied upon by the Petitioner were issued by the *Additional* Custodian and not by the Custodian himself. The term "Custodian" is defined in Section 2(1) of the 1949 Ordinance, which reads:-.

> **"2. Definitions.-** In this Ordinance, unless there is anything repugnant in the subject or context-

[15] As per section 2(3) of the 1949 Ordinance
[16] Available at page 61 of the File.
[17] Available at page 51 of the File.

> **(1)** "Custodian" means a Custodian of Evacuee Property appointed under Section 5, and includes an Additional, Deputy or Assistant Custodian."

24. We next turn to Section 5(3) of the 1949 Ordinance, which provides

> **"5. Appointment of Custodians.- (1)** For the purpose of carrying this Ordinance into effect, the Central Government may, by notification in the Official Gazette, appoint one or more Custodians of Evacuee Property for such areas as may be specified in the notification.
>
> **(2)** No person shall be appointed Custodian unless he-
>
> **(a)** was at any time before the fifteenth day of August, 1947, a judge of a High Court in British India, or
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> **(b)** has, after the aforesaid date, been a judge of a High Court in India, or
>
> **(c)** is or has been a Judge of a High Court in Pakistan.
>
> **(3)** The term "Custodian" in subsection (2) shall not be deemed to include an Additional, Deputy or Assistant Custodian, or the Custodian in an Acceding State."

25. Learned Counsel for the Respondents has argued that Section 5(3) has specifically excluded the term *Additional / Deputy* Custodian from its definition, and as such, the approval for transfer of the Building issued by the Additional Custodian was void. We however tend to disagree with this interpretation for reasons explained.

26. Let's put the two above-mentioned sections, i.e. 2(1) & 5(3) in juxtaposition. Section 2(1) of the 1949 Ordinance is a definition clause, which clearly provides that the term *"Custodian"* includes both *"Additional / Deputy Custodian"* as well.

27. Section 5 relates to the **Appointment of Custodians**. Section 5(3) states the term 'Custodian' shall not include an 'Additional, Deputy or Assistant Custodian'. We find that Section 5(3) is only applicable to Section 5(2), which provides a qualification required for a person to be appointed as the *'Custodian'* himself, but the said qualification clause would not spill over to other parts of the Ordinance. In essence, the qualifications set under Section 5 of the 1949 Ordinance (reproduced in Para 24 *ibid.*) would provide that if a person was to be appointed as a "Custodian", he / she would need to fulfil the prerequisites such as having been a Judge of the High Court etc.[18] These prerequisite qualifications would not however be applicable for the appointment of *'Additional, Deputy or Assistant Custodians'*, by virtue of the ouster clause contained in Section 5(3) of the 1949 Ordinance. Nevertheless, the *'Additional, Deputy or Assistant Custodians'* who are conducting functions on

[18] Section 5(2) of the 1949 Ordinance

behalf of the Custodian and/or Office of the Custodian, shall be deemed to be Custodians, by virtue of the definition provided in Section 2(1) of the 1949 Ordinance (reproduced in Para 23 *ibid*).

28. A parallel example would be to look at Article 100 of the Constitution of Pakistan 1973, which prescribes the clear requirements necessary for a person to be appointed as the Attorney General for Pakistan.[19] Nevertheless the same requirement would not apply to other law officers (such as the *Additional* / *Deputy* / *Assistant* Attorney General) appointed in the office of the Attorney General.[20] Such other officers are entitled to act and appear on behalf of the Attorney General, and as such the prescribed requirements under Article 100 (which we hereby place in juxtaposition to section 5[3] for this particular given example) would only be applicable to the qualifications of the person being appointed as the Attorney General of Pakistan (**"AGP"**) him/her-self, and would not apply to the other law officers carrying out functions on the AGP's behalf.

29. Similarly, in our consideration, Section 5(3) of the 1949 Ordinance only relates to the requirement for persons to be appointed to the position of 'Custodian' itself, but will not extend to those functions under the 1949 Ordinance which can be carried out by his Office through other officers, such as the *Additional* / *Deputy* Custodians.

30. There is plethora of case law showing Additional/Deputy Custodians have certified transfer of *evacuee property* under the 1949 Ordinance. In fact, in certain other cases, the same person who approved the transfer of the Building, i.e. the *Additional* Custodian namely Mr. S.A.M Jafry, was also the authorizing officer from the office of the Custodian[21]. To undo prior transfers of evacuee property on this ground, would unduly upset a plethora of settled transactions.

31. Further reference in this regard is pointed to Section 36 of the 1949 Ordinance, which reads:-

> **"Section 36(1)** Any person aggrieved by a final order under section 16, section 18 or section 19 passed by a Deputy or Assistant Custodian may prefer an appeal to the Custodian.
>
> **Section 36(6)** Subject to the foregoing provisions of this section, any order made by the Custodian, or Additional, Deputy or Assistant Custodian shall be final and shall not be called in question in any Court."

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[19] Such person must be qualified to be appointed as a Judge of the Supreme Court
[20] Who have separate requirements vide the Central Law Officers Ordinance 1970
[21] 1985 CLC 142, PLD 1958 (WP) Karachi 307

32. A perusal of Section 36 unequivocally illustrates that the 1949 Ordinance empowers the *Additional*, *Deputy* or *Assistant Custodians* to pass various orders under the 1949 Ordinance[22].

33. We next turn to further relevant powers conferred on the Custodian under the 1949 Ordinance. Section 16 of the 1949 Ordinance reads:-

> **"Section 16(1)** No creation or transfer of any right or interest in or encumbrance upon any property made in any manner whatever by an evacuee or by any person in anticipation of his becoming an evacuee or on behalf of the evacuee or such person on or after the first day of March, 1947, shall be effective so as to confer any right or remedy on any party thereto or on any person claiming under any such party unless such creation or transfer is confirmed by the Custodian.
>
> **Section 16(2)** An application for confirmation of such creation of a right or encumbrance or transfer as aforesaid may be made to the Custodian within the prescribed period by any party thereto, or by any person claiming under or lawfully authorised by such party."

34. Section 17 of the 1949 Ordinance reads:

> **"Section 17(1)** Notwithstanding anything contained in the Registration Act, 1908 (XVI of 1908) or in any other enactment for the time being in force, no registering officers shall register or accept for registration any document relating to any immovable evacuee property unless a certificate by the Custodian permitting registration is produced, and such certificate may contain such conditions as the Custodian may see fit to impose and shall have effect subject to those conditions.
>
> **(2)** If any question arises whether any document presented for registration relates to immovable evacuee property or not, the registering officer shall direct the parties thereto to apply to the Custodian for a certificate that the document does not relate to any immovable evacuee property, and the registering officer shall not accept for registration or register such document without such certificate."

35. The above reading of relevant Sections 16 and 17 of the 1949 Ordinance clearly show that the *'Custodian'* (which term we have already held to included *'Additional/Deputy/Assistant Custodian'*) has ample powers under the 1949 Ordinance, to facilitate transfer of evacuee properties. As per the documents on record, this process was duly followed by the Appellant, and (insofar as we are aware) was never challenged at such time. Therefore, the process undertaken can be deemed to have attained finality.

36. Section 15 of the 1949 Ordinance fortifies the powers enjoyed by office of the Custodian relating to evacuee property. The said Section provides a prohibition on transfer of evacuee property, except with the approval of the

[22] Specifically under Sections 16, 18 & 19 of the 1949 Ordinance

Custodian. This further evidences the Custodian had ample power under law to transfer the Building at such time.

37. Section 34 of the 1949 Ordinance ousters jurisdiction of the civil court against any order passed by the Custodian. Section 36 of the 1949 Ordinance (already cited above) provides an appeal to the Custodian from any final order passed by a Deputy or Assistant Custodian. Section 20(2)(m) of the 1949 Ordinance provides the Custodian with the power to sell evacuee properties.

38. We refer to these provisions to illustrate the vast powers that were enjoyed by the Custodian in matters pertaining to evacuee properties at such time, to the exclusion of all other forums.

39. We find it beyond any doubt that the Custodian (including his officers) held the power to permit and facilitate transfer of evacuee property, including the Building, and in this regard we have found that no violation of law or process has been shown. Therefore, the Building can be considered to have been properly and lawfully transferred from Mr. Advani to FSC.

40. We now refer to the Impugned Judgement dated 15.10.2020 passed by Respondent No.1 and the prior Order dated 24.03.1998 ("**1998 Order**") which declared the Building as *evacuee trust property*.

41. We shall first deliberate upon the 1998 Order passed by Respondent No. 2,[23] and the path taken to get there. The 1998 Order was passed after several prior proceedings initiated by the Respondents, relating to the Building (the facts of which are also incorporated in the Impugned Order) were unsuccessful. The matter of declaring the Building as evacuee trust property was first brought to notice through a Writ Petition No. 265/1966 (**"WP"**) filed by a private person (Mr. Ali Mehdi) in the Sindh High Court. The said WP was dismissed as it was held a private individual could not file the WP, but with directions for the Chief Settlement Officer to determine the status of the Building.

42. Subsequently, another private person (Mr. Zafar Hussain brother of Ali Mehdi) then filed a suit under section 4(3) Displaced Persons (Compensation & Rehabilitation) Act 1958, with regard to the status of the Building, which was also dismissed by the Chairman on 22.04.1974.

[23] Available at page 79 of the File.

43. Thereafter, a Reference was filed by Respondent No. 3, which was dismissed by the Chairman of Evacuee Trust Property Board (i.e. Respondent No. 2) on 04.03.1979.

44. Against the dismissal, a Revision Application was filed to the Federal Secretary, who remanded the matter back vide order dated 16.09.1982. Respondent No. 2 / Chairman-ETPB re-heard the case, and dismissed the claim again on 01.01.1985. The same private individual, namely, Mr. Syed Zafar Hussain filed yet another Writ Petition, in which the Sindh High Court vide order dated 12.08.1992 remanded the matter back to Respondent No. 2 for adjudication. After such re-hearing, the 1998 Order was passed by Respondent No. 2 declaring the Building as evacuee trust property.[24]

45. We find the prelude to the proceedings was not properly deliberated in the 1998 Order or in the Impugned Judgement. The first point of consideration is to peruse Section 8 of the 1975 Act, through which the 1998 Order was passed. Section 8 reads:-

> **"S. 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 or 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."

46. A perusal of the wordings of Section 8(1) of the 1975 Act show that the Chairman/Respondent No. 2 has the power to decide whether any *evacuee property* is attached to a charitable, religious trust or institution. In the 1998 Order, Respondent No. 2 simply declared the Building to be evacuee trust property, but the said 1998 Order has failed to provide any cogent reasoning for reaching such a conclusion. Nor has the 1998 Order validly explained how the decision of the Custodian (who confirmed transfer of the Building) was legally overturned by the Chairman / Respondent No. 2?

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[24] These facts are admitted by the Respondent in their Para-Wise Comments, as well as the same narrated in the Impugned Judgement.

47. Another apparent flaw in the Impugned Judgement and 1998 Order is that the Respondents have presumed the Building was automatically *evacuee trust property*, by simply stating it was a *'Mandir'* property. No evidence was brought on record substantiating the same, particularly when the Petitioner, being an arm of the Government of Pakistan (**"GoP"**), has categorically denied the Building to fall within the definition of evacuee trust property.[25]

48. The Respondents have not cited or relied upon any authentic documentation such as a trust deed, registration certificate etc. of the Building, before they unilaterally declared the Building as a trust property.

49. In the case of *Govt. of Pakistan v Nizamuddin*[26] it was held that at the time of hearing, before declaring a property to be evacuee trust property, it is incumbent upon the deciding authority to look into various aspects of the same. A relevant portion of the Apex Court Judgement reads:

> "It is quite clear from the order passed by the Chairman of the Board that there was neither any trust deed available in respect of the property to show its nature nor any evidence was led in the case to show that the property was attached to any religious, charitable or educational trust or the income arising from the property was applied to a trust created for religious, charitable or educational purposes. There is nothing in the extract relied upon by the learned counsel for the appellants, to indicate that the suit property was either a religious or charitable or an educational trust or it was attached to any of the trust of such a nature. In the absence of any evidence to show the nature of the trust, or to prove the fact that the income arising from the suit property was being applied to charitable, religious or educational purposes, the order passed by the Chairman of the Board holding the property as an evacuee trust property was an arbitrary order based on no evidence……..In the present case, the entry relied by the appellants in the record of survey did not show that the suit property was either a religious or an educational or a charitable nature. These entries also do not show that the suit property was attached to a trust of religious, charitable or educational nature. In the circumstances, there was no evidence available on record before the Chairman of the Board to reach the conclusion that the suit property was an evacuee trust property. The learned Judges of the Division Bench, therefore, rightly quashed the orders passed by the Chairman of the Board and the Secretary respectively, holding the suit property as an evacuee trust property."

50. In the case of *Fed. Govt. of Pakistan v Khurshid Zaman Khan*[27], the Supreme Court held:

> "12…. In the Jamabandis, the property, subject-matter of these appeals, was throughout shown to be owned by individuals. It is not, a case where the properties were mutated in the name of a trust or charitable institution. The owners had perhaps used such property or parts thereof for some charitable purpose but such use

[25] As stated in their Memo of Petition
[26] 1994 SCMR 1908
[27] 1999 SCMR 1007

> by itself could not make the property a trust property. In the circumstances, the Chairman of the Evacuee Trust Property Board by his order, dated 28-7-1976 rightly held that the property was not trust property. However, in revision, the Federal Government by order, dated 6-8-1978 upset the order of the Chairman. From the order in revision, reproduced hereinabove, it is apparent that no weight at all was given there to the fact that, till Partition, the property, according to the records, was shown to be owned by individuals. In the circumstances, in the absence of any evidence that the owners had dedicated the property for charity, no ground was made out for setting aside the order of the Chairman. In the circumstances, the order of the Federal Government could not be sustained."

51. The Respondents were duty bound to deeply examine the facts and evidence, before dislodging the Petitioner.[28] And only upon being satisfied through concrete evidence that the Building fell within the definition of evacuee trust property, could the Impugned Judgement / 1998 Order have been passed. We find the same was not done.

52. Secondly, the Impugned Judgement and the 1998 Order state the Building was declared to be evacuee trust property vide item no. 438 dated 6.12.1967.[29] [30] The issue of belatedness in the alleged declaration of property into evacuee status was also not addressed by Respondents No. 1 & 2. The Impugned Judgement failed to question as to why the matter was first raised so tardily in the year 1966 (by a private individual namely Mr. Ali Mehdi Syed)?[31]

53. Thirdly, we find it strange as to why the 1998 Order did not question as to how Mr. Ali Mehdi Syed first approached the Court in the year 1966, when the Building (by the Respondents' own assertions) was only allegedly declared to be *'evacuee trust property'* in the year 1967?[32] This would surely show some form of *mala fide*, as the W.P. was filed a year prior to the Building being declared as evacuee.

54. We next address the fact that this matter was on several previous occasions already adjudicated upon, and therefore Respondents No. 1 & 2 ought to have considered the same before passing the Impugned Judgement and 1998 Order. Whilst we are aware that an order dated 12.08.1992 passed by the High Court in a Writ Petition referred the matter back to Respondent No. 2 for a decision, we are of the opinion it was incumbent upon Respondent No. 2 to properly adjudicate upon its legal merits.

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[28] Reference also to an unreported Supreme Court Judgement in Civil Appeal No. 1443 of 2019
[29] At typed pages 2 & 4 of the Order at pages 81 & 85 of the File
[30] This is also the position taken by Respondents No. 2 & 3 in Para 7 of their Comments
[31] As is ascertained by number of his Writ Petition No. 265/66, referenced at page 81 in the Order
[32] Typed page 2 of the 1998 Order

55. The legal doctrines of *'Interest reipublicae ut sit finis litium'* (it is in the interest of society as a whole that litigation must come to an end)*; 'Re judicata pro veritate occipitur'* (judicial decision must be accepted as correct) *& 'nemo debet bis vexari pro uno et eadem causa'* (no person shall be vexed twice) were not adhered. These doctrines have been long established by the Supreme Court,[33] and ought to have been considered by the Respondents when adjudicating the matter. We find the matter relating to the status of the Building was already competently dealt with by the Custodian, and was subsequently challenged on more than four occasions separate occasions before various courts and forums, all of whom held favorably towards the Petitioner. Even if the matter was referred back to the Chairman by the Court, the Chairman was duty bound to assess his own jurisdiction / authority to re-hear and re-decide the matter, which was not done. It has been held by the Hon'ble Supreme Court in the *Badshah Begum* case[34] [a case also pertaining to evacuee property] that if an authority did not have jurisdiction in the matter under law, such jurisdiction could not be conferred by an order of the Court.

56. Moreover, a vested right in the Building was created in favour of the GoP / Petitioner by virtue of having gone through the legal process of its purchase, and longstanding ownership / possession. Such rights of the Petitioner are to be safeguarded under articles 4, 8, 23 & 25 of the Constitution of Pakistan, 1973. It is trite law that there needs to be an end to litigation and the doctrine of finality followed. In the case of *Muhammad Raqeeb V. Govt. of KPK & Ors.*[35] it was held:

> "**12**. The doctrine of finality is primarily focused on a long-lasting and time-honored philosophy enshrined in the legal maxim *"Interest reipublicae ut sit finis litium"* which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation". Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of *res judicata* explicated under section 11 of the Code of Civil Procedure, 1908. The Latin maxim *"Re judicata pro veritate occipitur"* expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine

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[33] Reliance is placed upon *Muhammad Raqeeb V. Govt. of KPK & Ors.@ para 12* **[2023 SCMR 992]**; *Secretary Local Govt. Election Rural Development, KPK & Ors V. Muhammad Tariq Khan & Ors. @ para 10* **[2021 SCMR 1433]** & ***1987 SCMR 527***

[34] 2003 SCMR 629

[35] 2023 SCMR 992

> is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court."

57. In *Secretary Local Govt. Election Rural Development, KPK & Ors V. Muhammad Tariq Khan & Ors.*[36] it was held:

> "10. There is an old latin maxim '*res judicata pro veritate accipitur*'. According to this maxim, a suit/dispute in which the matter directly or substantially in the issue has been directly/ substantially in issue in a former suit/proceeding between the same parties or between parties under whom they or any of them claim has been decided by a competent court shall not be tried again in the same matter in any other courts. In simple words, a decision once rendered by a competent court on a matter in issue between the parties after a full inquiry should not be permitted to be agitated again by the same court or some other court between the same parties in the same matter. The rule of estoppel by *res judicata* is a rule of evidence, which prevents any party to a suit/proceeding which has been adjudicated upon by the competent court from disputing or questioning the decision on merit in subsequent litigation. It is based on the concept of public policy and private justice which apply to all the judicial proceedings. According to this, public policy involves that the general interest of the litigation must come to an end or that the litigation must have its finality. Similarly, private justice requires that an individual should be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior power and resources may enable him to abuse the process of court. A decision by a competent court, which is final, should be binding and the same questions are sought to be controverted in the subsequent litigation for which this maxim applies."

58. The above principles enunciated by the Apex Court establish that a person is protected against being repeatedly vexed on the same matter.[37] Once the claim against the Building was dismissed, it ought not to have been repeatedly regurgitated.

59. The Impugned Judgement and 1998 Order have further erred by not considering that the evacuee property legislation succeeding the 1949 Ordinance, was the Pakistan (Administration of Evacuee Property Act 1957 (**"1957 Act"**). Section 3 of the 1957 Act reads:

> **"3. Property not to be treated as evacuee property on or after Ist January, 1957**. (1) Notwithstanding anything contained in this Act, no person or property not treated as evacuee or as evacuee property immediately before the first day of January, 1957, shall be

[36] 2021 SCMR 1433

[37] As the proceedings before the Chairman / Settlement Authority may be considered judicial / quasi-judicial proceedings, since they hold the powers of a Civil Courts (Section 21 of the 1975 Act), and hence we find the principles of the case law cited would be applicable

> treated in evacuee or, as the case may be, as evacuee property, on or after the said date.
>
> (2) Nothing in subsection (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-eighth day of February, 1947, has not been accepted or approved by the Custodian.

60. This statute would in any event prohibit declaration of the Building to be treated as evacuee in the year 1967, as it clearly provided that any property prior to 1st January, 1957, could not be treated as evacuee property, if the same wasn't already so declared beforehand. As the Building (by the Respondents' own admissions) was allegedly declared evacuee trust property post 1957, the entire premise of the Respondents' rationale would be shattered. In the case of *Abdul Khaliq v Kishanchand & Ors.*[38] it was held:

> "The result of the order passed by the Custodian was clearly to relegate the property in dispute to the position of evacuee property. In the absence of a confirmation order by the Custodian's Department, by virtue of section 20 of the Act, the transactions which had taken place after the 1st day of March 1947, could not be effective so as to confer any right or remedy on the vendees. In law, therefore, it must be treated as the property of the evacuee transferor, till a fresh confirmation order was passed. Clearly, this would be tantamount to treating the property as evacuee property after the relevant date mentioned in section 3. This could only have been done if the property had been "treated" as evacuee property, immediately before the 1st day of January 1957, as required by subsection (1) of this section."

61. Furthermore, Section 43(4) of the 1957 Act was never invoked, which provided a mechanism by which any person could challenge any proceeding (pending or concluded) relating to administration of evacuee property. Even in this regard, transfer of the Building to FSC (and subsequently GoP) should be considered to have attained finality.

62. Since we hold the declaration status of the Building as *evacuee trust property* to be void, automatically vide operation of law, Respondent No. 2 (and subsequently Respondent No. 1) would not have power to adjudicate on the matter. Respondent No. 2's power is limited to deciding matters pertaining to *evacuee property*, which the Building was not when the matter was presented before Respondent No. 2. As such, the Impugned Judgement and 1998 Order are void and liable to be set-aside, as the Respondents were *coram non judice*.

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[38] PLD 1964 SC 74

63. Additionally, the Respondents No. 1 & 2 have assumed a correctional jurisdiction over the office of the Custodian created under the 1949 Ordinance. If the Impugned Judgement and 1998 Order are allowed to stand, the same would have effects of overriding provisions and powers held by the Custodian under the 1949 Ordinance, as well as over subsequent evacuee / settlement laws. The 1975 Act under which the Impugned Judgement and 1998 Order are derived does not provide any such powers in the nature of a correctional jurisdiction. The Impugned Judgement and 1998 Order are therefore *ultra vires* on this ground as well.

64. The ETPB fall within the ambit of GoP. Section 6 of the 1975 Act reads:

> **"S.6. Vesting of evacuee trust property.** All evacuee trust property shall vest in the Federal Government."

65. This Section demonstrates that all *evacuee trust property* vests with the GoP. The Evacuee Trust Property Board (**"ETPB"**) created under the 1975 Act is also constituted by the GoP[39]. It therefore beggars belief that the GoP would not have adhered to all laws at the time the Building was transferred from Mr. Advani to FSC, and then to the GoP themselves. If the Impugned Judgment is to be upheld, the same would have an implicit declaration that the GoP had entered into an illegal sale transaction for the Building, despite the same being endorsed by them, which defies logic.

66. Moreover, since all evacuee trust property vests with the GoP[40], it would appear preposterous to take away the Building from the Petitioner (operating under the GoP), and then give it to another branch of the GoP (i.e. the Respondents No. 2 & 3). Emphasis must also be given to the fact that it is the GoP (i.e. through the Petitioner) who themselves are claiming the Building, and who have stated the Building does not fall within the domain of evacuee property. In light of the aforementioned, we do not feel under law the Petitioners (operating under GoP) can be deprived of the property i.e. the Building. We find as the Building is being used by the GoP for their own purposes, even the shelter of Article 173 of the Constitution of Pakistan 1973 would offer protection to the Petitioner.

67. We find the Impugned Judgment and 1998 Order have erred under numerous provisions of law and have failed to consider key legal aspects (detailed above), resulting in violation of the Petitioner's fundamental rights,

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[39] Sections 3 and 6 of the 1975 Act
[40] Section 6 of the 1975 Act

particularly under articles 4, 8, 23, 24 & 25 of the Constitution of Pakistan 1973. Accordingly, we *set aside* the Impugned Judgment dated 15.10.2020 passed by Respondent No.1 in Revision Petition No.3-50/1999-Rev (which automatically *sets aside* order dated 24.03.1998 passed by Respondent No. 2) and Impugned Notice dated 12.11.2020, and we hereby allow this Constitution Petition.[41]

This Petition is accordingly disposed of.

JUDGE

JUDGE

M. Khan/B-K Soomro

[41] We would like to express our acknowledgement to the support provided by Mr. Waseem and Mr. Mansoor of the SHC Legal Research Team.