

JUDGMENT SHEET
LAHORE HIGH COURT, MULTAN BENCH,
MULTAN

JUDICIAL DEPARTMENT

FAO No. 63 / 2022

Pir Syed Ghulam Samdani & another

Versus

Chief Administrator Auqaf & 03 others

JUDGMENT

Date of Hearing:	27.11.2024
Appellants By:	Mr. Kareem ud Din Khilji, Advocate
Respondents No. 1 & 2 By:	Ch. Muhammad Asif Karim, Advocate / Legal Advisor alongwith Muhammad Arshad, Manager Auqaf and Rana Tariq Ali, Zonal Administrator Auqaf, Multan.
Respondent No. 3 By:	Malik Muhammad Latif Khokhar, Advocate
Respondent No. 4 By:	Mr. Sikandar Nisar Saroya, Assistant Advocate General

ABID HUSSAIN CHATTHA, J: This Appeal is preferred under Section 12 of the Punjab *Waqf* Properties Ordinance, 1979 (the “**Ordinance**”) against the Judgment dated 31.03.2022 passed by District Judge, Khanewal, whereby, Petition of the Appellants under Section 11 of the Ordinance was dismissed.

2. The Appellants averred in their Petition that Appellant No. 1 is *Sajjada Nasheen* and Appellant No. 2 is *Majawar* / hereditary tenant of the Shrine of Hazrat Shah Habib Ullah Baghdadi (the “**Shrine**”) situated at Mauza Baghdad, Tehsil Mianchannu, District Khanewal. Impugning notification No. SOP-1(123)A/2014 dated 24.02.2016 (the “**Notification**”)

issued under Section 7 of the Ordinance by Respondent No. 1 and acted upon by Respondent No. 2 (the “*Auqaf Department*”), it is alleged that Respondent No. 3 unlawfully claiming himself as the *Sajjada Nasheen* of the Shrine initially instituted a civil suit against the Appellants and others praying that he along with others be declared as legal heirs of the Shrine and later, submitted an application for appointment of Receiver of the Shrine. The said application was accepted by the Civil Court vide order dated 29.06.2011 but the said decision was reversed by the Appellate Court on 27.07.2011. Further challenge thereto by Respondent No. 3 failed when C.R. No. 828 / 2011 was dismissed vide order dated 05.08.2015. By the same order, C. R. Nos. 1175 and 1368 of 2014 were disposed of as having become infructuous, whereas, W.P. No. 14770 / 2014 instituted by the Appellants was disposed of with a direction not to cause harassment to the Appellants. Finally, Respondent No. 3 filed C. P. No. 2833 / 2015 against the aforesaid order dated 05.08.2015 which is pending before the Supreme Court of Pakistan. Nevertheless, by concealing the aforesaid material facts regarding pending litigation between the parties as well as possession of the Appellants over the Shrine, Respondent No. 3 filed an application before the *Auqaf* Department for taking over possession of the Shrine. Acting upon the said application, impugned Notification was issued and in consequence thereof, the *Auqaf* Department assumed administration, control, management and maintenance of the Shrine including the adjacent personal properties and residences of the Appellants as described in the Schedule to the impugned Notification i.e.

- “1. An area measuring 25 Kanals, 02 Marlas, containing the said Shrine, Jamia Masjid, Graveyard, Mela ground, Musafir Khana and Mehl Sadat bearing Khewat No. 1131 min, Khatooni No. 508, according to the register Haqdaran-e-zameen for the year 2010-2011 of mauza Baghdad, Tehsil Mian Channu, District Khanewal.
2. An area measuring 30 Kanals, 12 Marlas agricultural land bearing khewat No. 1131 min, Khatooni No. 507, according to the register Haqdaran-e-zameen for the year

2010-11 of mauza Baghdad, Tehsil Mian Channu, District Khanewal.

3. Offerings & subscriptions made to said *Waqf*."

3. Hence, the impugned Notification is unlawful for the reasons that Appellants No. 1 & 2 as *Sajjada Nasheen* and *Mazara Moroosi* of the Shrine, respectively are owners-in-possession on the basis of mutations attested in their favour but notwithstanding the same, the entire land measuring 55 Kanals and 14 Marlas (the "**suit property**") including the Shrine was declared *Waqf* property and taken over without issuing prior notice and providing an opportunity of hearing to the Appellants.

4. The *Auqaf* Department and Respondent No. 3 filed separate but similar written statements raising a number of preliminary objections. On merits, it was claimed that an area of 25 Kanals and 02 Marlas of the suit property is shown in possession of *Ahl-e-Islam* in the Revenue record, whereas, an area of 30 Kanals and 12 Marlas of the suit property is declared as *Waqf* property in terms of the impugned Notification. The Appellants were not served before issuance of the impugned Notification for the reason that a survey was conducted in which Appellant No. 1 affixed his signatures and as such, the impugned Notification was in knowledge of the Appellants. The status of the Appellants as *Sajjada Nasheen* and *Mazara Moroosi* was denied with the counter stance that Respondent No. 3 is the *Sajjada Nasheen* of the Shrine on the premises that the Appellants and their predecessor-in-interests had filed civil suits regarding the Shrine in the years 1992, 1995 and 2015 which had been dismissed. The referred litigation by the Appellants was termed as irrelevant to the present proceedings since after issuance of the impugned Notification, Respondent No. 3 has withdrawn his civil suit and an appeal qua appointment of Receiver from the Supreme Court of Pakistan. Accordingly, it was asserted that the impugned Notification has been issued in accordance with law after fulfillment of all legal formalities.

5. It is pertinent to mention that initially Appellant No. 1 filed W. P. No. 12828 / 2016 challenging validity of the impugned Notification which was dismissed vide order dated 07.09.2016 on the ground that the Appellants can avail statutory remedy before the District Judge under Section 11 of the Ordinance. Meanwhile, the Appellants had instituted the titled Petition on 06.04.2016. However, the Petition was dismissed for non-prosecution on 29.04.2016 but vide order dated 19.04.2018 passed by this Court in FAO No. 80 / 2017, the same was restored. Later, the Petition was dismissed on the ground of limitation vide order dated 08.10.2018 but FAO No. 96 / 2018 preferred in this behalf was allowed vide order dated 07.12.2021 by this Court with a direction to the Trial Court to decide the same on merits in accordance with law. Thereafter, vide order dated 09.02.2022, the Trial Court converted nomenclature of the Petition which was in the nature of Appeal into a Petition under Section 11 of the Ordinance.

6. The Trial Court vide order dated 09.02.2022 dismissed an application under Section 151 of the Code of Civil Procedure, 1908 (the “**CPC**”) filed by the Appellants seeking restoration of possession over the suit property included in the impugned Notification and framed the following issues:-

- (i) Whether the impugned Notification issued by Respondent No. 1 under Section 7 of the Ordinance is illegal, void, against law and facts and the same is liable to be set aside on the grounds mentioned in the Petition? OPA;
- (ii) Whether the Petitioners have no cause of action to file this Petition? OPR; and
- (iii) Whether the instant Petition is false and frivolous and the same is liable to be dismissed and Respondents are entitled to get special costs under Section 35-A of the CPC? OPR

7. After recording evidence of the parties, the Trial Court proceeded to dismiss the Petition vide impugned Judgment dated 31.03.2022

by holding that the impugned Notification was issued in accordance with law based on the following reasons:-

- (i) Appellant No. 1 (AW-I) during cross examination admitted that the suit property is being used for public purposes from the time immemorial, thus, attracting Explanation 1 of Section 2(e) of the Ordinance and as such, the suit property is *Waqf* property;
- (ii) The Appellants have failed to prove through confidence inspiring evidence that suit property is a private property;
- (iii) The Appellants neither pleaded nor deposed that they were not served in accordance with law, whereas, it is on record that before issuance of the impugned Notification, a survey was conducted by the *Auqaf* Department and report in this behalf was duly signed by Appellant No. 1 as a witness bearing his CNIC, as such, proceedings of the *Auqaf* Department conducted before issuance of the impugned Notification were in knowledge of the Appellants;
- (iv) It was not mandatory upon the *Auqaf* Department to personally hear the Appellants before issuing the impugned Notification;
- (v) Appellant No. 1 also failed to prove through cogent and confidence inspiring evidence that he is the *Sajjada Nasheen* of the Shrine; and
- (vi) The contention that the impugned Notification issued on 24.02.2016 was published in the Official Gazette on 06.04.2016 but *Auqaf* Department got possession of the Shrine on 15.03.2016 cannot be considered as the said objection was not taken in the Petition, no issue was

framed thereon and as such, no evidence could be led or considered in this behalf.

8. Learned counsel for the Appellants submitted that the impugned Judgment is not only based on misreading and non-reading of evidence on record but result of misapplication of law. The Appellants proved that they are the *Sajjada Nasheen / Mutwalli* and *Mazara Moroosi* of the suit property consisting of the Shrine, Masjid, Graveyard and private land. These facts were also established in the previous round of litigation initiated by Respondent No. 3 qua appointment of Receiver. After withdrawal of C. P. No. 2833 / 2015 from the Supreme Court of Pakistan vide order dated 03.05.2016 by Respondent No. 3, the Judgment dated 05.08.2015 passed by this Court in C. R. No. 828 / 2011 attained finality, wherein, it was conclusively held in paragraph No. 10 that Respondent No. 3 failed to produce any document to show his possession over the suit property, whereas, record indicates that the Appellants were in possession of the suit property and Respondent No. 3 has admitted that the Appellants were administering the Shrine as *Mutwali* and *Mazara Moroosi* under condition No. 8 of *Wajab-ul-Arz* and under the customs.

9. Learned counsel for the Appellants vehemently contended that the impugned Notification under Section 7 of the Ordinance has been issued without lawful authority as the same was dispatched on 01.03.2016 to 11 officials by conspicuously omitting the Appellants which irrefutably proves that the Appellants being in possession of suit property were not served in gross violation of mandatory requirement of Section 7 of the Ordinance. Further, the impugned Notification was published in the official Gazette on 06.04.2016 while possession of suit property was forcibly taken over on 15.03.2016 in complete disregard of the provisions of Section 7 of the Ordinance. He placed reliance on cases titled, “Chief Administrator Auqaf v. Allah Bakhsh (decd) through LRs and another” (**2011 SCMR 235**); “Muhammad Ishaq v. Chief Administrator of Auqaf, Punjab” (**PLD 1977 Supreme Court 639**); and “Chief Administrator Auqaf and others v. Diwan

Sheikh Taj-ud-Din and others” (**PLD 2012 Supreme Court 897**). He emphasized that the Trial Court fell in error while holding that the Appellants did not mention in their Petition or in their examination-in-chief that the impugned Notification was not served upon them which is misreading and non-reading of record since the said fact was specifically asserted in the Petition and deposed in the examination-in-chief of the Appellants. There is nothing on record except the survey report signed by the Appellants qua their knowledge which cannot be regarded as substitute to a right of hearing or service of the impugned Notification under Section 7 of the Ordinance, particularly, when the survey report was conducted with reference to proceedings qua appointment of Receiver and the same could not be made basis for taking over the administration, control, management and maintenance of the suit property under Section 7 of the Ordinance without complying with the requirements and conditions laid therein. The fact of assailing *vires* of the impugned Notification is also evident from order dated 09.02.2022 passed by the Trial Court on the application of the Appellants under Section 151 of the CPC for restoration of possession over the suit property in which not only the said legal objections were specifically raised but after submission of contesting reply by the Respondents, the same was adjudicated upon by the Trial Court. Similarly, observation of the Trial Court based upon the alleged statement of AW-1 to the effect that the suit property was a *Waqf* property is misconceived since AW-1 had categorically deposed that private land is used once in a year temporarily on the occasion of *Urs*. As such, findings of the Trial Court are in contrast to record and the applicable law that the *Waqf* property must be used continuously and permanently for religious purposes. Reliance was placed on cases titled, “The Chief Administrator of Auqaf, Punjab v. Mst. Raj Bibi and others” (**2000 SCMR 961**); “Mubarik Ali Shah and 4 others v. Chief Administrative Auqaf” (**1988 CLC 348**); and “Khursheed Ahmad and 3 others v. Province of Punjab through Collector and 9 others” (**PLD 2023 Lahore 245**).

10. Learned counsels for the *Auqaf* Department and Respondent No. 3 defended the impugned Judgment on all fours stating the same is in

consonance with law addressing all the objections raised in this Appeal. It was vociferously contended that service of the impugned Notification under Section 7 of the Ordinance was dispensed with for the reason that the Appellants were associated with the survey report conducted by the *Auqaf* Department which fact is not denied by the Appellants. The suit property has rightly been declared as *Waqf* property and the same has been lawfully taken over by the *Auqaf* Department in exercise of powers conferred under the Ordinance.

11. Arguments heard. Record perused.

12. At the very outset, it is expedient to identify the applicable provisions of law under which the *Auqaf* Department issued the impugned Notification before applying it to the established facts of the case. *Waqf* property is defined in Section 2(e) of the Ordinance which reads as under:-

"Waqf Property" means property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable, but does not includes property of any such waqf as is described in section 3 of the Mussalman Waqf Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any member of his family or descendants.

Explanation 1– If a property has been used from time immemorial for any purpose recognized by Islam as religious, pious or charitable, then inspite of there being no evidence of express dedication, such property shall be deemed to be waqf property.

Explanation 2– Property allotted in lieu or in exchange of waqf property left in India shall be deemed to be waqf property.

Explanation 3– Property of any kind acquired with the sale proceeds or in exchange of or from the income arising out of waqf property or from subscriptions raised for any purpose recognized by Islam as religious, pious or charitable shall be deemed to be waqf property.

Explanation 4– The income from boxes placed at a shrine and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine, shall be deemed to be waqf property.

Explanation 5– Property permanently dedicated for the purposes of a mosque, takia, khankah, dargah or other shrine shall be deemed to be waqf property.

Explanation 6—Relief of the poor and the orphan, education, worship, medical relief, maintenance of shrines or the advancement of any other object of charitable, religious or pious nature or of general public utility shall be deemed to be charitable purposes.”

(Emphasis supplied)

- 13.** Section 7 of the Ordinance which allowed the *Auqaf* Department to take over *Waqf* property as existing at the relevant time reads as follows:-

“7. Chief Administrator may take over waqf property by notification.—(1) Notwithstanding anything to the contrary contained in section 22 of the Religious Endowments Act, 1863 (XX of 1863), or any other law for the time being in force, or in any custom or usage, or in any decree, judgment or order of any court or other authority, or in any proceedings pending before any court or other authority, the Chief Administrator may, by notification, take over and assume the administration, control, management and maintenance of a waqf property:

Provided that, during the life time of a person dedicating a waqf property, the Chief Administrator shall not take over and assume the administration, control, management and maintenance of such waqf property except with the consent of such person and on such terms and conditions as may be agreed upon between such person and the Chief Administrator:

Provided that the notification shall be served upon the management or the mutawalli and also affixed on some prominent part of the property which is sought to be taken over.

Explanation. For the purposes of this section “control and management” shall include control over the performance and management of religious, spiritual, cultural and other services and ceremonies (*Rasoomat*) at or in a waqf property.

(2) *No person shall perform services or ceremonies (*Rasoomat*) referred to in sub-section (1) except with the prior permission of the Chief Administrator and in accordance with such directions as may be given by him.”*

(Emphasis supplied)

- 14.** It is manifestly evident from conjunctive bare reading of the above provisions of law that powers conferred upon the Chief Administrator of the *Auqaf* Department are not unbridled but regulated in the manner that it can only take over and assume the administration, control, management and maintenance of a *Waqf* property which necessitates a prior declaration that

the property is actually a *Waqf* property in terms of Section 2(e) of the Ordinance if not already registered as *Waqf* property under Section 6 of the Ordinance. The act of declaring a property as *Waqf* property can only be exercised by issuance of a notification with a mandatory caveat to effect prior service of such notification upon the management or the *Mutawalli* and by affixing the same on some prominent part of the property sought to be taken over. The rationale of the mechanism prescribed by law is to afford a right of hearing to all concerned who may have an adverse interest to the proposed action. The process entails determination of objections and interests of all concerned to ensure that legitimate and lawful rights of any person are not compromised. Once such an exercise is complete, only then the issued notification is ripe for publication followed by its implementation. This is the minimum threshold for scrutiny regarding the powers exercised by the Chief Administrator of the *Auqaf* Department pursuant to Section 7 of the Ordinance in the wake of a legal challenge in the Court of law.

15. The case has a chequered history. It is apparent from record that there has been frequent litigation between different members of the family with respect to their claim qua *Sajjada Nasheeni* of the Shrine. The parties are at divergence in terms of their pleadings regarding claims of *Sajjada Nasheeni* of the Shrine, ownership, possession and status of the suit property including the Shrine and validity of the impugned Notification. Separate issues were not framed by the Trial Court in this respect but were adequately covered in the composite issue No. 1. There was no objection from any of the parties to the *lis*, as such, all the points in issue were within the contemplation of the parties who led evidence, accordingly. Therefore, the evidence tendered by the parties on the said points was not beyond pleadings.

16. The Appellants have specifically asserted in the Petition that Appellant No. 1 is the *Sajjada Nasheen* and Appellant No. 2 is *Mazara Moroosi* of the Shrine. They are owners in possession of the suit property and the proceedings culminating into the impugned Notification were carried out by the *Auqaf* Department behind their back in collusion with Respondent

No. 3 without their knowledge and in denial of their statutory right of hearing. As such, the impugned Notification is *ultra vires* the law and they were forcibly dispossessed in complete disregard of law under the garb of the impugned Notification. The Appellants as AW-1 and AW-2 along with AW-3 consistently deposed the aforesaid facts to prove that the suit property is not a *Waqf* property and the impugned Notification was issued in gross violation of law. None of the AWs deposed that the suit property was being used for time immemorial for any purpose recognized by *Islam* as religious, pious or charitable within the contemplation of Explanation 1 to Section 2(e) of the Ordinance attracted by the Trial Court. Rather, they time and again emphasized that the suit property including the Shrine is private though the same was used during *Urs* and special occasions to accommodate *Zaireen*. AW-4, the *Halqa Patwari* as an independent witness while exhibiting revenue record (Ex.A-1 to Ex.A-5) candidly deposed in his cross examination that Khewat No. 131, Khatooni No. 508, Khasra No. 21 / 29 measuring 01-Kanal is *Ghair Momkin Masjid* and Khasra No. 117 measuring 24-Kanals & 02 Marlas is *Ghair Mumkin Qabrustan* constituting land measuring 25-Kanals and 02 Marlas which is *Maqboza Ahl-e-Islam*, whereas, Khatooni No. 507 consists of cultivatable agricultural land in the name of different persons i.e. 30-Kanals and 12 Marlas of land and Appellant No. 1 is one of the co-sharer in Khewat No. 131 and owner of land measuring 08-Marlas & 07 Sarsai. Cultivation of *Auqaf* Department is from Kharif 2015 till today in Khasra Nos. 21 / 3, 4, 7, 8 / 1, 13 / 1 & 13 / 3. Revenue record (Ex.A-1 to Ex.A-5) confirms the aforesaid facts and establishes that 30-Kanals and 12 Marlas of land in the suit property was private land having several owners including Appellant No. 1 and has been in possession of private persons including Appellant No. 2 before it was taken over by the *Auqaf* Department. There is no evidence on record that the suit property was ever permanently dedicated as *Waqf* property.

17. Respondent No. 3 appeared as RW-1 and claimed *Sajjada Nasheeni* of the Shrine on the basis of alleged previous suits but could not prove his claim. He stated that the Appellants used to vex and harass him

due to which he filed an application before the *Auqaf* Department to take over charge of the Shrine upon which the *Auqaf* Department started legal proceedings. In his cross examination, he stated that he is an Advocate of this Court and never challenged entries of revenue record regarding possession of the Appellants, however, volunteered that Appellant No. 1 was not in possession of the suit property and denied the suggestion that his volunteered statement is false. RW-2, ex-District Manager *Auqaf*, Khanewal in his cross examination admitted that according to the report of revenue record, the word ‘*Waqf*’ is not written with respect to the suit property. He also admitted that signature of Appellant No. 1 is not available on record as he refused to put his signatures. He stated that he did not know who was in possession of the suit property prior to 15.03.2016 when the same was taken over by the *Auqaf* Department, the impugned Notification was published in the official Gazette on 06.04.2016 and that the Appellants were not associated with the proceedings prior to its issuance.

18. Undoubtedly, the present *lis* leading into issuance of the impugned Notification was triggered on the application of Respondent No. 3 to the *Auqaf* Department in which he had not specifically claimed possession of the Shrine or the suit property but urged the *Auqaf* Department to take over possession of the suit property including the Shrine claiming therein that it is *Waqf* property in order to avoid conflict and for its better management. Even in his written reply, Respondent No. 3 although claimed that he is *Sajjada Nasheen* of the Shrine but did not specifically claim ownership and possession of the Shrine or the suit property. Further, the *Auqaf* Department did not specifically controvert that the impugned Notification was not served upon the Appellants, rather, stated that it was dispensed with as Appellant No. 1 being signatory to the survey report dated 15.10.2014 (Mark-B) was aware of such proceedings.

19. It is vividly evident from record that Respondent No. 3 initially instituted a suit for declaration against the Appellants to the effect that he along with others be declared as legal heirs of the Shrine and during pendency of the suit procured order dated 29.06.2011 qua appointment of

Receiver from the Trial Court. The said order was set aside by the Appellate Court vide order dated 27.07.2011 in which it was held that as per copy of record of rights 2006-2007, Appellant No. 1 along with others is owner of the suit property and Appellant No. 2 along with others is in possession of the suit property as tenant who are also in possession of Kasra No. 28 regarding the Shrine and *Khasra Gardawari* dated 01.03.2011 qua the suit property also affirms their possession. As such, the Appellate Court confirmed the status of Appellant No. 1 and Appellant No. 2 as *Sajjada Nasheen* and *Mazara Moroosi* after repelling the rival claim of Respondent No. 3 qua *Sajjada Nasheeni* of the Shrine based on dismissal of prior suits allegedly filed by the predecessors-in-interest and / or the Appellants in this behalf by holding that such claim is not established on record. This Court while deciding C.R. No. 828 of 2011, C.R. 1175/2014, C.R. No. 1368/2014 and W.P. No. 14770/2014 vide order dated 05.08.2015 upheld the order dated 27.07.2011 of the Appellate Court which attained finality after Respondent No. 3 withdrew C.P. No. 2833/2015 on 03.05.2016 from the Supreme Court of Pakistan and his civil suit seeking to declare him and others as legal heirs of the Shrine. As such, it is established that the Appellants were in possession of the suit property before passing of the impugned Notification as *Sajjada Nasheen* and *Mazara Moroosi* of the suit property including the Shrine and that the suit property was not a *Waqf* property.

20. The survey report was conducted with reference to the aforesaid pending litigation qua Receiver between the parties. The perusal of survey report dated 15.10.2014 reveals that it is essentially regarding the income generated from the Shrine for two days i.e. 25th to 26th September, 2014 which carries the signature of Appellant No. 1 dated 26.09.2014. The same was apparently conducted pursuant to the application of Respondent No. 3 for appointment of Receiver and not in pursuance to his application seeking taking over of the administration, control, management and maintenance of the Shrine and the suit property by the *Auqaf* Department. Even otherwise,

the said survey report lacks any finding qua nature of the suit property including the Shrine. There is no express finding of the *Auqaf* Department as to how and on what basis the suit property or any part thereof was declared as *Waqf property*. The impugned Notification was issued on 24.02.2016 and dispatched on 01.03.2016 to 11 officials listed therein which conspicuously omitted the Appellants who were in possession of the suit property at the relevant time and were residing in the houses built thereon. The *Auqaf* Department took forcible possession of the suit property on 15.03.2016, whereas, the impugned Notification was admittedly published in the official Gazette on 06.04.2016. As such, the Appellants were never confronted to determination qua status of suit property. Hence, the survey report having the signature of Appellant No. 1 could not be made basis to circumvent the mandatory requirement of prior service of the impugned Notification upon the Appellants being in possession of the suit property before it was published in official Gazette. Consequently, the suit property measuring 55 Kanals and 14 Marlas including the Shrine was taken over by the *Auqaf* Department through the impugned Notification without providing an opportunity of hearing to the Appellants and without determining their rival claim of ownership and possession regarding the suit property. The impugned Notification was also not affixed on some prominent part of the suit property before it was taken over thus preventing any other concerned person to raise objections thereon. Hence, the Appellants were effectively denied the right of hearing to establish their case in derogation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 which guarantees the right of fair trial as well as in breach of the provisions of Section 7 of the Ordinance as noted above. The admission of the *Auqaf* Department that the impugned Notification was not served upon the Appellants vitiated its entire proceedings and as such, publication of the impugned Notification was illegal and without any lawful authority, thus ineffective qua rights and interests of the Appellants. For reference, see Allah Bakhsh and Diwan Sheikh Taj-ud-Din cases (*supra*).

21. In view of the above, this Appeal is **allowed**; and the impugned Judgment dated 31.03.2022 as well as the impugned Notification are set aside. Nevertheless, the *Auqaf* Department may initiate fresh proceedings in accordance with law within the mandate of Section 7 of the Ordinance.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in Open Court on 19.12.2024.

Judge

WaqaR

