

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

W.P.No.17384/2000

Evacuee Trust Property Board **VS.** Ghyas Ahmad Rana etc.
through its Secretary

Date of hearing	03.11.2023
Petitioner by	Mian Abdul Sattar Ejaz, Advocate
Respondent No.1	Ex-parte
Respondent No.2 by	Mr. Masood Arshad, Advocate
Respondent No.3 by	Mr. Tahir Mahmood Khokhar, Deputy Attorney General

Ch. Muhammad Iqbal, J:- Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Evacuee Trust Property Board [hereinafter referred to as the “petitioner-Board”] has challenged the validity of order dated 17.04.1986 passed by Wafaqi Mohtasib whereby the complaint filed by the respondent No.1 was accepted, the order dated 07.12.1991 passed by Wafaqi Mohtasib in a review application filed by respondent No.1, the order dated 27.09.1992 passed by Wafaqi Mohtasib whereby review petition filed by the petitioner-Board was rejected and order dated 21.01.1998 passed by the respondent No.3/Section Officer, Ministry of Law, Justice and Human Rights, Government of Pakistan, Islamabad who dismissed the representation of the petitioner-Board being barred by limitation.

2. Brief facts of the case are that the respondent No.1/Ghyas Ahmad Rana while serving as Deputy Controller of Branches Inspection and Audit Team ‘A’, Agricultural Development Bank of Pakistan, Lahore filed an application to the Minister, Evacuee & Trust Properties, Islamabad on 05.02.1977 for allotment of one plot measuring 02 Kanal in Lahore on the ground that he did not own any land or house. The Minister for Religious Affairs recommended for allotment of a plot measuring 01 Kanal situated at Elgen Road, Lahore Cantt on lease for a period of 99 years to the respondent No.1/Ghayyas Ahmad Rana. In compliance of the said order, a plot measuring 01 Kanal in Lahore Cantonment was leased out to respondent No.1 and possession was also handed over to him. However, the Federal Government as well as the petitioner-Board after examining the case of lease, came to the conclusion that the said lease was made contrary to the provision of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 and cancelled the lease vide letter dated 30.11.1978.

After a period of about six years, Ghayyas Ahmad Rana, respondent No.1 filed a complaint to the Wafaqi Mohtasib with the contention that lease of plot in question in his favour was illegally cancelled. Wafaqi Mohtasib vide order dated 17.04.1986 set aside the cancellation order dated 30.11.1978 and passed direction that plot on Elgan Road, Lahore should be re-leased to respondent No.1 and in case the said plot has already been leased to someone else than any other alternate plot in the same locality be leased to respondent No.1. By the dint of above order, the respondent No.1 approached the petitioner-Board on 02.08.1987 for implementation of order dated 17.04.1986 passed by Wafaqi Mohtasib. In compliance of order dated 17.04.1986, the petitioner-Board leased the plot to the respondent No.1 and

informed Wafaqi Mohtasib that possession has been delivered to the respondent No.1.

The respondent No.1 filed another application on 25.11.1990 before Wafaqi Mohtasib upon which direction was passed to the petitioner-Board for lease of another plot measuring 01 Kanal to the respondent No.1. A review application was filed by the respondent No.1 to the Wafaqi Mohtasib with the plea that the petitioner-Board has not complied with the order dated 17.04.1986 in letter and spirit. The said review application was allowed by the Wafaqi Mohtasib on 07.12.1991 and a direction was passed to the petitioner-Board for compliance of earlier orders. The petitioner-Board also filed review application which was dismissed by the Wafaqi Mohtasib on 27.09.1992. The petitioner-Board filed representation before the President, Islamic Republic of Pakistan who dismissed the said representation being time barred on 21.01.1998. The petitioner-Board has challenged the aforesaid orders through instant Writ Petition.

This writ petition was earlier dismissed by this Court vide judgment dated 24.11.2004. The petitioner-Board assailed the said judgment through Civil Petition No.365-L of 2011 which was allowed vide order dated 03.11.2016 by the Supreme Court of Pakistan and the case was remanded to this Court for decision afresh on merit in accordance with law.

3. I have heard learned counsels for the parties and have gone through the record.

4. The issue involved in this case can be formulated in the shape of following questions:

- i. Whether a Minister holds the authority to make recommendation/proposal to the Evacuee Trust Property Board to grant an evictee property to any specific person on lease without adopting the procedure laid down in law?

- ii. Whether Wafaqi Mohtasib has jurisdiction to pass direction to any department to comply with any recommendation made by a Minister?

Under Section 30 of the Evacuee Trust Properties (Management & Disposal) Act, 1975, “The Scheme for the Management & Disposal of Urban Evacuee Trust Properties, 1977” was approved by the Federal Government vide letter No.18-20/75-ETP, dated 17.07.1976 and as per Chapter III, Rule 7(i) of the said Scheme an open plot may be leased out by public auction or by inviting tender. For ready reference, aforesaid provision is reproduced as under:

“7. LEASE OF OPEN PLOTS

- (i) An open plot comprising an area not exceeding five kanal may be leased out by public auction or by inviting tender, after wide publicity through the press and local mushtary munadi for residential or commercial purpose by the Chairman and that exceeding five kanals by the Board initially for a period of 30 years renewable for a similar period of periods.

Provided that if no bid or offer is received in three consecutive public auctions or tenders or the response is not worth consideration or is below the reserve price, the Board may allow lease at the negotiated rate plus the amount of non-refundable security to be decided on case to case basis.

.....

- (iv) The auction of plots or sites shall be held by a committee comprising:-

- (a) A representation of the Board’s Headquarters not below the rank of Deputy Secretary, to be nominated by the Chairman;
- (b) Administrator of the concerned Zone.
- (c) Deputy Administrator/Assistant Administrator concerned; and
- (d) A representative of District Revenue Officer not below BPS-16 officer.

Provided that three members shall constitute the quorum of the Committee.

- (v) Lease exceeding 30 years shall be subject to the approval of the Federal Government.”

The respondent No.1 filed application for lease of plot measuring 01 Kanal to the Minister for Evacuee & Trust Properties,

Islamabad upon which following recommendations were made by him on 05.02.1977:

“One kanal plot on Elgan Road, Lahore Cantt. may be allotted on ninety nine years lease at the rate of Rs. One per square yard per annum, five thousand rupees may be charged as down payment.”

5. The Evacuee Trust Properties (Management & Disposal) Act, 1975 is a special law which provides mechanism for the management, lease and disposal of the evacuee trust properties. In the Act as well as Scheme ibid no provision is available whereby any authority is vested with the Minister to make recommendations to the petitioner-Board for lease of any plot to any individual. This Court in a similar controversy has elaborately discussed and settled this issue in a recent judgment which has been cited as Ch. Munir Ahmad Vs. Government of Punjab through Chief Secretary, Punjab Lahore and others (PLD 2022 Lahore 384), Province of Punjab through Secretary Revenue and others Vs. District Bar Association, Khanewal and others (2014 SCMR 1611), American International School System Vs. Mian Muhammad Ramzan and others (2015 SCMR 1449), wherein it is blatantly observed that a Minister is denuded of any power to issue, any such recommendations for lease of plot and if any recommendation is so made that would be patently illegal and without lawful authority, as it is settled law that any order passed by an authority without having jurisdiction that order would be void ab-initio. Reliance is placed on the cases reported as Raja Ali Zaman (decd.) through L.Rs. and another Vs. Evacuee Trust Property Board and another (PLD 2022 SC 726), Khuda Bakhsh Vs. Khushi Muhammad and 3 others (PLD 1976 SC 208), Bashir Ahmad Vs. Meer Aslam Jan (2007 CLC 1544), Messrs East-West Insurance Company Ltd. through Chairman & Another Vs. Messrs Muhammad Shafi & Company through Managing Partner & 2 Others (2009 CLD 960) and reliance is

also placed on an unreported judgment dated 18.04.2017 rendered by a learned Division Bench of this Court in case titled as *Sultan Vs. Federation of Pakistan and 4 others (Writ Petition No.28756 of 2014)* as well as on a recent pronouncement dated 08.11.2023 passed by the Hon'ble Supreme Court of Pakistan in **Civil Petition No.13-Q of 2020** titled as *Gul Zaman Vs. Deputy Commissioner/Collector Gwadar & others*, thus well considered resume of above is that any recommendation of the Minister for grant/ lease of the plot are liable to be quashed being void ab-initio and any superstructure built on the basis whereof shall also be dismantled automatically.

6. As regard the second question that *Whether Wafaqi Mohtasib has jurisdiction to pass direction to any department to comply with any recommendation made by a Minister?* is concerned, suffice it to say that the office of Wafaqi Mohtasib was created under the “Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983” dated 24.01.1983 whereby under Section 9 of the Order ibid, the jurisdiction, functions and powers of Mohtasib are provided, which are reproduced as under:

“9. Jurisdiction, functions and power of the Mohtasib.—(1) The Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees:

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:

(a) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or

(b) relate to the external affairs of Pakistan or the relations or dealing of Pakistan with any foreign state or government; or

(c) relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters

relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The Mohtasib may set up regional offices as, when and where required.”

The case for lease of plot owned by the petitioner-Board to the respondent No.1 does not fall within the jurisdiction of Wafaqi Mohtasib as provided in Section 9 of the Order ibid. There is no evidence brought on record by the respondent No.1 regarding any malpractice committed by the petitioner-Board and if any cancellation of the plot in question was made by the petitioner-Board, the respondent No.1 has remedy of filing Revision before the Federal Government under Section 17 of the Evacuee Trust Properties (Management & Disposal) Act, 1975. Reliance in this regard is placed on a case cited as Mster Chiragh Din Vs. Abdul Hakim and Another (PLD 1974 Lahore 370).

7. Admittedly all the affairs of the state are managed and run by the instrument of written constitution as well laws and functions/ business of each and every department is to be carried out under the well described manifest written jurisdiction and each portfolio has to exercise its powers with the described precincts of its jurisdiction and any transgression whereof would be considered as illegal. Moreover according to Section 23 of the Contract Act, 1872, if any order is passed by any authority beyond its jurisdiction and against the public policy, such order in its inception is nullity in the eyes of law and never convey any absolute title in favour of the beneficiary. For ready reference, Section 23 of the Act ibid is reproduced as under:

“23. What considerations and objects are lawful and what not. The consideration or object of an agreement is lawful, unless:--it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

(emphasis supplied)

With regard to contract against law and public policy, the Supreme Court of Pakistan in a case titled as *Hameedullah and 9 others Vs. Headmistress, Government Girls School Chokara, District Karak and 5 others (1997 SCMR 855)* held that:-

“From the aforestated observations it is clear that the agreement between the Government and the appellant was in the nature of sale of a public office, consideration being the transfer of land. Sale of public office cannot be a legal transaction. It is completely illegal and against public policy. Therefore, such an agreement is hit by section 23 of the Contract Act, which makes it void.”

(emphasis supplied)

The Supreme Court in a case titled as *Maulana Abdul Haque Baloch and others Vs. Government of Balochistan through Secretary Industries and Mineral Development and others (PLD 2013 SC 641)* has held as under:-

“The competent authority also failed to determine the terms and conditions to be fixed in granting the relaxations sought for. In this view of the matter, in absence of the requirements of rule 98 being fulfilled in the instant case, all relaxations were granted in excess of authority and were entirely beyond the scope of the provisions of law, and therefore, ultra vires the powers granted under rule 98 of BMCR 1970 read with section 5 of the Act of 1948, and thus void. Shorn of relaxations so grant, CHEJVA has no legal sanctity and consequently remains an agreement entered into against the provisions of law, hence not enforceable.

All the key provisions of CHEJVA were made subject to a reliance on relaxations that were illegal and void ab initio, the illegality of the agreement seeps to its root. As such, no operative part of the agreement survives to be independently enforceable and the principle of severability cannot be applied to save any part thereof. The agreement is, therefore, void and unenforceable in its entirety under the law.”

In another judgment titled as *Muhammad Arshad Khakwani Vs. I.U.B. and another (2011 MLD 322)* this Court has held that:-

“No doubt the Statutory bodies are governed under the Act, rules, regulations and statutes which are meant for the said purpose and no one is allowed to supersede the same. The University functionaries are presumed to act under the law and no one can exceed from its domain neither supersede nor deviate. If the provisions of the Act are not complied with then the Institutions cannot run smoothly as is required by the law and the guarantees provided by the Constitution of Islamic Republic of Pakistan, 1973.”

8. It is settled law when the basic order has been passed without jurisdiction and without lawful authority, then all the superstructure built on the said order shall automatically collapse/crumble down. Reliance is placed on the case of *Rehmatullah & Others Vs. Saleh Khan & Others (2007 SCMR 729)*.

9. The land in question is admittedly a public asset and the Courts of law are custodian of the public properties, public interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties. In this regard, reliance is placed on a judgment cited as *Provincial Government through Collector, Kohat and another Versus Shabbir Hussain (PLD 2005 SC 337)*, wherein the Supreme Court of the country has held as under:-

“12. Likewise, the learned Presiding Officers are also required to exercise caution when they are dealing with matters relating to public property and public interest of which the Courts of law are the final custodians. It is true that we have never leaned in favour of giving of preferential treatment to the

Government departments or agencies but then we are equally obliged, while granting relief, to ensure that public interest is not permitted to be jeopardized and public property is not allowed to be squandered through mere collusion of some representative of a Government agency”.

(emphasis supplied)

Further reliance is placed on cases cited as Al-shafique Housing Society Vs. P.M.A (PLD 1992 SC 113), Union Council Dhabeji Vs. Al-Noor Textile Mills Ltd (1993 SCMR 7), Multiline Associates Vs. Ardeshir Cowasjee (PLD 1995 SC 423), Abdul Haq Indher Vs. Province of Sindh (2007 SCMR 907), Taj Muhammad Vs. Town Committee (1994 CLC 2214) and Sindh Peoples Welfare Trust Vs. Government of Sindh (2005 CLC 713).

10. Resultantly, this writ petition is allowed and the impugned orders, mentioned in paragraph No.1 of this judgment, are hereby set aside. Consequently, the lease of the plots in question in favour of respondent No.1 is hereby cancelled being illegal and void ab-initio. The petitioner-Board is directed to proceed further in the matter strictly in accordance with law.

**(Ch. Muhammad Iqbal)
Judge**

Announced in open Court on 13.12.2023.

Approved for reporting.

Judge

Abdul Hafeez