

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Gulzar Ahmed

Suo Moto Case No. 9 of 2011

(Suo Motu action regarding illegal selling out the *Auqaf* Properties by the Chairman, Evacuee Trust Property Board)

And

Constitution Petition No. 93 of 2012

And

CrI. Original Petition No. 71 of 2013

(Contempt proceedings against Shirjeel Shah Muhammad, CE, Highland Living Concept)

For the applicant(s)	: Mr. Shehram Sarwar, ASC Mr. Zulfiqar Khalid Maluka, ASC
For Asif Akhtar Hashmi, ex Chairman ETPB	: Nemo
For the ETPB	: Hafiz S.A. Rehman, Sr. ASC Raja Abdul Ghafoor, AOR Mr. Junaid Iqbal, Secretary
For the FIA	: Mr. Muhammad Azam Khan, Addl. D.G. Mr. Qudratullah Khan, Director (Pb) Mr. Naveed Tareen Dy. Director, Crime Circle
For DHA, Lahore	: Mr. Asim Hafeez, ASC
For DHA Rwp/Islamabad	: Col (R) Ejaz Hussain, Secretary
For M/s Highland Living Concept	: Kh. Muhammad Farooq, Sr. ASC with Sharjeel Shah Muhammad, CE (in CrI.O.P No.71/2013)
For M/s Elysium Holdings Pakistan	: Mr. Tariq Hassan, ASC Mr. Atif Amin, ASC Raja Abdul Ghafoor, AOR With Mr. Hammad Arshad, CE
Date of Hearing	: 25.07.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ.— Instant case was initiated by exercising suo moto jurisdiction conferred upon this Court under Article 184(3) of the Constitution of Islamic Republic of Pakistan, on a letter sent by members of Sikh community stating therein that Mr. Asif Akhtar Hashmi, Chairman Evacuee Trust Property Board had been selling the evacuee property especially attached to their worship places. Copies of the news items published in daily "Jang" Rawalpindi, "The News" Islamabad dated 21.04.2010 and the Herald (March Edition) reporting the irregularities being committed by the Evacuee Trust Property Board (ETPB) were also attached with the letter. Initially, the matter was registered as HRC No.28464-K/2010 and report was called from Chief Secretary, Government of Punjab on the matter mentioned in the said letter. The report was received from the Secretary, Ministry of Minorities, Government of Pakistan, Islamabad stating therein "that the allegation in the application have already been probed into by Public Accounts Committee, special Public Accounts Committee, Prime Minister, Inspection Commission and Special Audit. The allegations are nothing but to spoil the name of the department as well as the image of Pakistan. Furthermore, the matter in issue was also challenged in the Honourable Lahore High Court wherein it was dismissed". On 16.04.2011, the matter was placed before one of us (Chief Justice of Pakistan) in Chambers for necessary orders, thus an order to the following effect was passed: -

"Put up in court as petition under Article 184(3) of the Constitution. Notice to the applicant and Chairman, Evacuee Trust Board of Pakistan be issued..."

Resultantly, the matter was registered as SMC No.09/2013 and fixed before the Court.

2. It is to be mentioned that Asif Akhtar Hashmi, former Chairman ETPB appeared in person on 7.5.2013 but on the next date of hearing i.e. 24.05.2013 his counsel appeared and when his attendance was required to be procured by passing a specific order, he did not appear on 7.06.2013. He engaged Mr. Hamid Khan, learned Sr. ASC to appear on his behalf, however, despite issuance of directions he failed to appear in person before the Court. Inasmuch as, his counsel submitted before the Court that the order of this Court, had been communicated to him. At one stage it was pointed out by his counsel that he could not manage to come back to Pakistan as he had deposited his passport in Dubai with the Saudi Embassy for performing Umra and sought adjournment enabling the latter to appear in Court. At his request, case was adjourned on different dates and ultimately on 14.06.2013 learned counsel stated that this Court accommodated him twice by adjourning the case with the observations to produce him but despite all his efforts he could not succeed, therefore, in principle it would not be fair for him to make any further request to the Court in this regard, hence, he would be allowed to withdraw from appearing before this Court on his behalf in this case. The request was allowed and at the same time DG, FIA was directed to effect service of the notice upon him. In the meantime, FIA submitted a report stating therein that Syed Asif Akhtar Hashmi was still abroad and the matter had also been referred to Interpol for the service of the notice upon him. Interpol authority in Pakistan, in reply, informed that he has

departed from UAE to UK on 14.06.2013, therefore, the matter was referred to Interpol UK and reply is awaited.

3. The background to the case is that in the Evacuee Trust Property Board's (ETP Board) meeting held on 14.05.2007, the then chairman brought to the knowledge of the Board the request of Defence Housing Authority (DHA), Lahore to acquire three pieces of Evacuee Trust land situated in *Mauza Lidhar* (75 acres, 2 kanals and 14 marlas), *Mauza Mota Singh Wala* (142 acres and 14 marlas) and *Mauza Dera Chahal* (26 acres, 1 kanal and 13 marlas), Lahore Cantonment falling in Phase-VI and VII of DHA. The options offered by DHA in this regard were: -

Option-I

Price of the aforementioned ETPB land be received by the Board.

Option-II

These ETPB lands be handed over to the DHA for development and in exchange developed plots as per laid down procedure will be given to ETPB.

Option-III

ETPB may exchange its aforesaid land with DHA land in mauza Halloki (84 acres, 4 kanals and 10 marlas) adjacent to Khayaban-e-Amin and Doctor's Colony, Kahna Road/ Defence Road, Lahore.

4. In the said meeting, the Chairman sought guidance of the Board for proceeding further with reference to the above proposal and he also apprised the Board about the estimated cost of land prevailing in market of ETPB and DHA. General practice of DHA, regarding allotment of two developed residential plots of one kanal each in lieu of

one acre land, was also discussed. The Board, after due deliberations and keeping in view the existing and future potential of the DHA land situated in *Mauza Halloki*, rejected Option-III. Moreover, after discussing pros and cons of the remaining two options, the Board considered Option-II as more workable due to increase in the cost of developed plots. However, the Board desired that instead of consenting to two developed plots measuring one kanal in return to land measuring one acre to be handed over to DHA (i.e. 25% of land), at least 33% land of developed plots to be claimed. It was further suggested that in addition to residential plots, commercial plots situated on the main roads/nearest to main roads preferably to be claimed.

5. Subsequent thereto, the ETPB vide letter dated 10.07.2007 issued by Deputy Secretary (P), informed the DHA, Lahore as regards approval of Option-II by the Board. The Option-II, mentioned in the said letter, reads as follows:

Option-II: ETPB lands to be given to DHA in exchange for developed plots. 33% land of developed plots to be given by DHA. (This means that instead of 2 x one kanal plots, 3xone kanal plots per acre of ETPB land). Besides, 10% of commercial plots to be offered to ETPB on the rates as for members of DHA.

6. It was further mentioned in the said letter that on 19.06.2007, the matter was discussed on a courtesy call by the Chairman, ETPB with the Commander 4 Corps and that the Corps Commander appreciated the proposal. It was, therefore, requested that the above proposal be confirmed in order to enable the ETPB to obtain formal approval of the Board and Federal Government, necessary for transfer of ETPB land.

7. In response to the above mentioned letter, the DHA sent a letter dated 20.07.2007 to the Chairman, ETPB which reads as under: -

"Subject: Acquisition of Evacuee Trust Land

Please refer to ETPB letter No. P(3)-DSP/530/ETPB/07LHR/7789 dated 10 July 07 on the above subject.

1. the management of DHA has approved following compensation in lieu of the valuable contribution by Evacuee Trust Property Board and your personal efforts: -

a. ETPB land will be acquired by DHA at 33% exemption as enunciated in Para 2 of ETPB letter quoted above. The detailed distribution will be as follows: -

(1) Total land 1946 Kanals (approx)

(2) Total residential plots to be carved on the land as per DHA standard town planning
973 Residential plots

(3) Share of Residential Plots

(a) ETPB 642 Plots

(b) DHA 331 Plots

2. The option of 10% commercial plots to be offered to ETPB on the rates as per members of DHA was analysed. It will be appreciated that DHA adds value to its property by maintaining highest standard of town planning thus maintaining a certain ration of open spaces to constructed areas. Similarly a ration in line with the international standards is maintained in residential area vs. commercial area. Being a welfare organization, DHA acquires the land and develops it for allotment to the landowners (who contribute the land) and a portion of it for armed forces personnel for whom the society is primarily functioning. In this case under consideration, total number of commercial plots being carved out is 194. it is submitted that as per

10% formula DHA is not left with a single plot, therefore, the matter may be reconsidered and an equitable distribution be agreed upon to facilitate early resolution of the issue. The suggested distribution is as following: -

- a. Total commercial plots to be carved on the land per DHA std town planning 194 Commercial Plots
- b. Recommended Share of Commercial Plots
 - (1) ETPB 100 Plots
 - (2) DHA 94 Plots

3. Foregoing in view, it is requested that above mentioned allotment may please be approved by ETP Board and kindly detail a representative to carry out necessary coordination with DHA at its earliest, please.

Lft. Col
For ADHA
(Amer Baig Mirza)"

8. Accordingly, the matter was discussed in the 263rd meeting of the ETP Board held on 23.07.2007 wherein following observation/directions were made: -

"The Board, after due deliberation, rejected Option-III keeping in view the existing and future potential of the DHA land situated in Mauza Halloki.

The Board after discussing pros and cons of the remaining two options, considered Option-II as more beneficial due to increasing trend in the cost of developed plots. However, the Board desired that instead of consenting to two developed one kanal plots for each acre of land to be handed over to DHA (i.e. 25% of land), 33% land of developed plots may be claimed. In addition to residential

plots, commercial plots may also be claimed on payment as for member of DHA.

The Board also stressed that as the matter was potentially beneficial to the Board, therefore, pursuing it should be done on priority basis.

The matter was discussed with DHA at various levels.

The DHA vide letter dated 20.07.2007 has intimated that the management of DHA has approved that ETP Board land will be acquired by DHA at 33% exemption of residential plots (measuring 1 kanal each). Thus for 1946 K of ETPB land, DHA would provide 642 residential plots. In addition, DHA has offered 100 commercial plots on payment as for DHA members i.e. 16% of residential plots instead of, 10%."

9. Later on, the ETPB vide letter dated 11.08.2007 informed the Ministry of Minorities (Minorities Affairs Division), Government of Pakistan through a letter captioned "Acquisition of Evacuee Trust Land by The Defence Housing Authority, Lahore Cantt." about the decision of ETP Board. Paragraph 7 therefrom, being relevant, is reproduced hereinbelow: -

"The matter was then placed before the Board vide Item No.10 of its 263rd Meeting held on 23.07.2007. The Board decided to proceed further with the arrangement agreed between ETPB and DHA as it was beneficial to the Board due to the increasing value of the developed plots in DHA. Photocopies of working paper and extract of minutes of Item No. 10 of Board's 263rd Meeting held on 23.07.2007 are attached as Annex 'D' & 'E'. Approval of the Federal Government to the aforementioned decision of the Board may be conveyed to this office to implement the arrangement with DHA".

10. The Ministry of Minorities responded to the above mentioned letter vide letter dated 28.08.2007 advising the ETPB to furnish information and not to initiate any further action in the matter without prior approval of the Federal Government. The said letter is reproduced hereinbelow: -

"Government of Pakistan
Ministry of Minorities
(MINORITIES AFFAIRS DIVISION)

No.F.4(11)/2007-P-II Islamabad, the 28th August, 2007

The Chairman,
Evacuee Trust Property Board,
9-Court Street,
Lahore

Subject: - ACQUISITION OF EVACUEE TRUST LAND BY
THE DEFENCE HOUSING AUTHORITY, LAHORE
CANTT.

Please refer to ETP Board's letter No. P(3)DSP/530/ETPB/07/LHR/8822 dated 11th August, 2007 on the above subject.

2. The matter is under process in the Ministry and ETP Board is advised to urgently furnish the following information for proceeding further in the matter: -

- i) The option of open auction has not been considered by the ETPB. The same may be considered and expected return/income so generated may be compared with the above mentioned option-II approved by the ETP Board.
- ii) The legal status about the lessees who are on extension and the procedure/terms & conditions to be adopted for settlement of such cases.
- iii) A copy of DHA's policy according to which developed plots will be given to ETPB.
- iv) Details of all the lessees clearly mentioning their history whether they are original lessees or changes of tenancy has taken place, subsequently.
- v). Minutes of the meetings between DHA and ETP Board for warranting the instant recommendations.

3. ETP Board is further advised that no action will be initiated without prior approval of the Federal Government.

4. This issues with the approval of the Secretary.

(Naeem Ahmad)
Section Officer (P-II)
Ph.9208487"

11. The ETPB vide letter dated 11.09.2007 addressed to the Ministry of Minorities Affairs furnished the requisite information. Paragraph 2(b) and (c) wherefrom are reproduced below: -

"2.

(a)

(b) Out of total land of 1964(sic.)-Kanals (approx.), 973 residential plots can be carved as per D.H.A Standard. ETPB share would be 642 plots (33% of 1946) and that of D.H.A 331 plots. When developed the value of 642 plots would be approximately Rs.6420 million (@ Rs.10.0 million per plot). This is much more than the price expected from open auction of raw land in its present state.

(c) It has been agreed by the D.H.A. that is will be their responsibility to get possession of aforesaid land from the lessees of ETPB. D.H.A. would use their resources for the purpose. ETPB would not be involved in this process.

3. You are requested to expedite approval of the plan as D.H.A. is pressing for an early decision.

4. This letter is issued with the approval of the Chairman.

(Ch.Riaz Ahmad)
Secretary"

12. The Ministry of Minorities Affairs vide letter dated 28.09.2007 again asked the ETPB to provide some further information and once again advised it not to initiate any action in this regard without prior approval of the Federal Government. The said letter reads as under: -

"Government of Pakistan
Ministry of Minorities
(MINORITIES AFFAIRS DIVISION)

No.F.4(11)/2007-P-II Islamabad, the 28th September, 2007

The Chairman,
Evacuee Trust Property Board,
9-Court Street,
Lahore

Subject: - ACQUISITION OF EVACUEE TRUST LAND BY
THE DEFENCE HOUSING AUTHORITY, LAHORE
CANTI.

Please refer to ETP Board's letter
No.P(3)DSP/530/ETPB/07/LHR/9806 dated 11th
September, 2007 on the above subject.

2. The matter is under process in the Ministry and ETP Board is again advised to urgently furnish the following information for proceeding further in matter: -

- i) The calculation of plots and expected value to be generated has not been calculated correctly, the same may be done accordingly.
- ii) Details of all the lessees clearly mentioning their history whether they are original lessees or changes of tenancy has taken place, subsequently.
- iii) The legal status about the lessees who are on extension and the procedure/terms & conditions to be adopted for settlement of such cases.
- iv) Minutes of the meetings between DHA and ETP Board for warranting the instant recommendations.

3. ETP Board is further advised that no action will be initiated without prior approval of the Federal Government.

4. This issues with the approval of the Secretary.

(Naeem Ahmad)
Section Officer (P-II)
Ph.9208487"

13. The requisite information was provided by the ETP Board vide letter dated 19.10.2007 addressed to the Ministry of Minorities,

wherein it was reiterated that "approval of the Federal Government to the decision of the Board taken vide item No.10 of its 263rd meeting held on 23.07.2007 may be conveyed to this office to implement the arrangement with DHA".

14. In the meanwhile, the ETP Board was reconstituted *vide* notification dated 14.11.2007 enlisting the following non-official members:

(b) Non-official Members

- (1) Brig (R) Ijaz Ahmad Shah
- (2) Mr. Muhammad Nawaz Tishna
- (3) Mr. Nayyar Ali Dada
- (4) Mian Yousuf Salauddin
- (5) Mr. M. Fazal Durrani
- (6) Col. (R) S.K. Tressler
- (7) Mr. M. Parkash, Advocate
- (8) Sardar Sham Singh
- (9) Prof. Sajida Haider Vandal
- (10) Mr. Ashraf Ali Khawaja
- (11) Ch. Bashir Ahmad.

15. Thereafter, the Ministry of Minorities vide letter dated 03.12.2007 advised the ETPB to place the matter in question before the newly constituted ETP Board for re-examination and to refer the matter subsequently to the Federal Government for consideration along with recommendations of the Board. The ETPB vide letter dated 26.12.2007 addressed to the Ministry of Minorities claimed that all the queries raised by the Federal Government had been addressed and recommendations were made by a duly constituted Board, hence, there was no justification or rationale for referring the matter back to

the Board. It was further averred in the letter that in case decisions of the previous Board were to be revisited merely on the ground of reconstitution of the Board, it would open a Pandora box; hence, the Ministry was requested to indicate illegality in the decisions of the Board, if any. The letter once again ended with a request that "approval of the Federal Government to the decision of the Board taken vide item No.10 of its 263rd meeting held on 23.07.2007 may please be conveyed to this office for implementation of arrangements with DHA".

16. The Ministry of Minorities Affairs vide letter dated 24.01.2008 informed the ETPB that the matter was examined in the Ministry and the orders of the Ministry already conveyed to the ETPB vide letter dated 03.12.2007 were reiterated. It was further ordered that "keeping in view the huge investment and expertise of the new ETP Board, the matter be placed before the new ETP Board under the Chairmanship of the new Chairman, ETPB and then referred to the Federal Government for consideration along with recommendations". Thereafter, vide notification dated 07.12.2008, Asif Akhtar Hashmi was appointed as Chairman, ETPB on honorary basis "with immediate effect and until further orders".

17. After appointment of the new Chairman, DHA vide letter dated 18.02.2009 addressed to the Chairman, ETPB on the subject "acquisition of Evacuee Trust Property Boards' Land" intimated that 33% exemption ration besides, 100 x commercial plots were agreed to by DHA but progress on acquisition of land was held up due to non-acceptance of handing over of clear possession of land by ETPB. It was

stated that acquisition of land comprised two aspects namely, handing over of clear possession of the land, and registration of mutation of the land in favour of the party acquiring the land.

18. It was further expressed that “during the meeting held on 23.09.2008, it was indicated by Chairman ETPB that possession of land to be obtained by DHA which was not agreed to, as it involved taking over of possession after payment of huge amount, besides inviting series of court cases. Hence, further discussion on the subject remained inconclusive. Moreover, delay in the development work has cost DHA huge amount of idling/escalation charges”. In addition, it was requested that “either land be transferred with clear possession to DHA against 33% exemption or 25% exemption without possession may please be agreed to”.

19. The board was once again reconstituted vide notification dated 10.04.2009 and the following persons were notified as non-official members: -

(b) Non-Official Members

(1)	Mr. Shahid sheikh	Lahore
(2)	Mr. Tayyab Rizvi	Lahore
(3)	Mian Muneer Ahmad	Lahore
(4)	Dr. S. M. Yaqoob	Lahore
(5)	Mr. Javed Akbar Butt	Lahore
(6)	Malik Sher Ali Bucha	Multan
(7)	Mr. Muhammad Aqeel Bhutta	Multan
(8)	Mr. Naveed Amir Jeeva	Multan
(9)	Rai Saleem-ur-Rehman	Nankana
(10)	Mr. Bishop Daniyal	Sahiwal
(11)	Mr. Ezra B. Shujaat	Sheikhupura
(12)	Sardar Sham Singh	Sindh
(13)	Mr. Parkash, Advocate	Sindh

(14) Mr. Manzoor Hussain Bhutto	Sindh
(15) Mr. Muhammad Nawaz Tishna	NWFP
(16) Mr. Fazal Durrani	Quetta

20. An important development in the matter took place when on 16.04.2009, 272nd meeting of the ETP Board was held and the Board approved the following additional Agenda as Item No. 8: -

MATTER RELATING TO ACQUISITION OF EVACUEE TRUST LAND SITUATED IN MAUZAS LIDHAR, MOTA SINGH WALA AND DERA CHAHAL ETC. TEHSIL CANTT LAHORE BY THE DEFENCE HOUSING AUTHORITY, LAHORE.

Discussion/decision	Action by
<p>The DHA's proposal was apprised to the Board that delay in the development work had cost DHA huge amount of idling/escalation charges, as such DHA's revised offer was restricted to their usual policy of 25% exemption of residential plots only. However with the hectic negotiations of the Chairman, ETP Board already held with the DHA authorities, they agreed to further negotiate on the provision of some commercial plots.</p> <p>The Board unanimously approved the revised offer of DHA for exemption of 25% residential plots with taking over the possession of the land to be the responsibility of the DHA. The Board authorized the Chairman to hold negotiations with the DHA to obtain at least some of the commercial plots in addition to the residential plots agreed to above.</p>	Secretary (P & L)/DS (L)

21. It is significant for our purposes to note that there was a visible difference in the offer approved by the ETP Board namely, 25% exemption of residential plots, instead of the 33% earlier offered by the DHA. The Decision of the Board was conveyed to the Ministry of Minorities Affairs by the ETPB through letter dated 25.04.2009.

22. The Ministry of Minorities Affairs, vide letter dated 28.04.2009 informed the Chairman, ETPB that the Federal Government has accorded concurrence to the decision of the ETP Board taken vide item No.8, in its 272nd meeting held on 16.04.2009, subject to observing all legal and codal requirements. Thereafter, ETPB vide letter dated 29.04.2009 intimated the DHA about the concurrence of the Federal Government to the decision of the Board dated 16.06.2009. The said letter is reproduced hereinbelow: -

**“EVACUEE TRUST PROPERTY BOARD
GOVERNMENT OF PAKISTAN**

“No.P(3)DSP/530/ETPB/07/LHR/3266

Dated 29/4/09

To

Col. (Retd) Mr. Muhammad Ashraf,
Director Acquisition,
Defence Housing Authority,
Y-Block Commercial Area Ph.III
Lahore Cantt.

Subject: - **ACQUISITION OF EVACUEE TRUST
PROPERTY BOARD'S LAND**

Pleas refer to your letter No.421/10/ETPB/Acq dated 18.02.2009, on the above subject.

2. The matter was placed before the Evacuee Trust Property Board in its 272nd Meeting held on 16.04.2009. the Board and subsequently the Federal Government in the Ministry of Minorities have given concurrence to the proposal put forward by the Defence Housing Authority, Lahore vide above referred letter and agreed to accept 25% exemption of the residential plots as the taking-over the possession of the land will be the responsibility of the DHA.

3. Besides, DHA's final proposal in Para-3 of the above referred letter is silent about the provision of commercial plots to ETPB on payment as for DHA members. The Board/Federal Government have authorized Chairman, ETPB negotiate the issue with DHA pertaining to the provision of commercial plots.

4. In view of the above, it is requested that DHA may expedite their process for acquisition of land

and coordinate with ETPB to hold negotiations regarding provision of commercial plots at an early date.

(Salim Masih)
Secretary (L & P)"

23. On the basis of the above mentioned concurrence, an agreement was concluded between ETPB and DHA on 08.05.2009 regarding land measuring 575 kanals and 13 marlas of Mauza Lidhar, comprising the following *Khasra* numbers: -

Khasra No.	Land	Khasra No.	Land	Khasra No.	Land
3065	80-00	3895	05-10	4403	08-00
3145	06-16	3933	05-10	4406	08-00
3146	07-08	3934	02-02	4407	07-16
3149	07-08	4250	04-13	4408	09-08
3687	09-11	4251	07-13	4409	08-00
3688	07-07	4252	08-00	4410	03-08
3689	07-07	4253	05-10	4411	08-00
3710	08-00	4254	08-02	4412	06-13
3711	08-00	4255	05-12	4413	03-04
3712	08-00	4276	08-00	4414	08-00
3713	04-12	4278	08-00	4415	03-02
3714	06-14	4279	03-12	4417	08-00
3715	08-00	4283	08-00	4418	08-00
3716	08-00	4284	08-00	4420	08-00
3717	08-00	4285	08-00	4421	08-00
3745	08-00	4287	08-00	4423	08-00
3746	08-00	4288	08-00	4425	08-00
3747	08-00	4289	09-06	4426	08-00
3748	08-16	4227	03-18	4428	02-16
3749	10-18	4329	06-00	4430	08-00
3750	08-00	4341	08-02	4431	08-00
3751	08-00	4342	10-04	4437	08-00
3752	08-00	4355	05-06	4438	08-00
3860	08-00	4356	04-01	4439	07-06
3861	08-00	4362	08-00	4443	07-07
3862	08-00	4370	08-00	4520	04-13
3894	05-04	4371	08-00	-	-

24. Moreover, a conveyance deed was executed by ETPB in favour of DHA on 30.05.2009 regarding land measuring 544 kanals and 06 marlas to the following effect: -

"NOW THEREFORE, THIS CONVEYANCE WITNESSES AS UNDER"

1. The Vendor has sold the said piece of land measuring 17 Kanals 18 Marlas vide Parcha Khatooni No.747/866 of Gurdawara Deh and land measuring 526 Kanals 08 Marlas vide Parcha Khatooni No.748/867 of Samahad Bhai Mann Singh of the year 1992 vide Halqa Patwari Parcha Khatooni Rapt No. 3090 dated 15 May 2009, total qittat 75 measuring 544 Kanals 06 Malras situated at Hadbast Mouza Lidhar Tehsil Cantt District Lahore, in consideration of Rs.653160000/- (Rupees Sixty Five Crore Thirty One Lac Sixty Thousand Only), which has been paid by the Vendee to the Vendor toward last and final consideration amount of the said land, receipt whereof is hereby acknowledged, and nothing will be paid before sub-registrar Aziz Bhatti Town, Lahore, at the time of registration of this sale deed. The value of land given in the conveyance deed is not the value paid to the land owner but given for the purpose of registration as the land is purchased on 25% exemption in the shape of 1 Kanal/10 Marla residential plots.

2. The Vendor hereby assures the Vendee of their legally valid title with powers to alienate and sell the said piece of land to the Vendee to consideration mentioned above. The Vendor also assures and hereby undertakes to indemnify and keep indemnifying the Vendee to its entire satisfaction, and any defect in the title against the claim of any third party."

25. Yet another agreement was executed on 09.06.2009 between ETPB and DHA regarding further 353 kanals and 07 marlas of land situated in Mauza Mota Singh Wala and 203 kanlas and 13 marlas in Mauza Dera Chahal, Lahore Cantt. A conveyance deed in respect to the land mentioned above was executed on 10.07.2009 by the ETPB in

favor of DHA. It was in this manner that 3 agreements were executed between the parties (ETPB and DHA) and the possession was delivered to the DHA.

26. It is to be noted that as per report of the Director, FIA, the ETPB land measuring 1240 kanals had been occupied by the DHA instead of 843 kanlas and 15 marlas mutated in favour of DHA by the ETPB. Moreover, the report concluded that "without considering the earlier recommendations of the Board, i.e. 33% exempted developed plots as per offer of DHA dated 20.07.2007 and without determining the terms and conditions, the haphazard approval granted by the Ministry of Minorities Affairs of 25% exempted residential plots/files instead of 33% also shows personal vested interests of DHA Lahore, ETPB and concerned Ministry especially payment of huge amount of Rs.657.77 million approximately to unauthorized persons and thereby caused loss to ETPB".

27. It was also noted in the said report that, though refunded to ETPB after one and half month, the registration fee amounting to Rs.39 million was paid by ETPB instead of DHA Lahore, being the purchaser, and that "this fact also creates doubts of personal vested interests of ETP Board and DHA Lahore". The report assesses the total loss caused by the DHA at Rs.1934.77 million.

28. On behalf of DHA, Lahore there is no denial of the transaction, however, an explanation has been offered that as per agreement DHA would acquire possession of the land at its own expense and cost, where said portion of the land was not in possession of ETPB and against the deal of 151.25 acres of land it could only get

the title of land measuring 843K-15M by different instrument, deeds, etc. According to DHA, the consideration of the said land was in the shape of exemption of plot files.

29. As far as balance of 288K-18M is concerned, both the DHA and ETPB after deliberation agreed as under: -

- a. Any land belonging to Gurdwara shall not be purchased and consequently land measuring 203K-13M of Dera Bebe Naniki Gurdwara was returned back to ETPB by DHA in May 2010. It is pertinent to mention that DHA had made a payment of Rs.18.800 Million to purchase possession of said land. ETPB has assured DHA to return this amount and the matter is being finalized.
- b. ETPB shall transfer 85K-5M of land situated in Mauza Lidhar (31K-07M) and Mauza Mota Sindh Wala (53K-5M) at the earliest.

It has further been explained that in pursuance of above arrangements ETPB was allocated following files in Phase-VI of DHA in consideration of the land acquired/transferred: -

- a. 140x 1 Kanal plot files
- b. 31x 10 Marla plot files
- c. 61x Marla plot files
- d. 10x 4 Marla Commercial plot files

It may be noted that in the report submitted by DHA, neither any agreement with ETPB has been brought on record to accept the liability of the payments of the development charges nor there is any acceptable document to substantiate that Rs.18.800 million has been spent by DHA for taking over the possession of the property. Except that ETPB paid Rs.657.77 million approximately to Nazir Hussain (late), Amer Saleh Abbasi, Shah Jehan, Kamran Baig and Imran Ali

Bhatti, without any plausible justification. Despite efforts, no justification was offered by the Secretary DHA, Lahore in this behalf.

30. From the material available on record one can, *prima facie*, conclude that without considering the earlier recommendations of the Board i.e. exemption of 33% of plots as per offer of DHA dated 20.07.2007, and without determining the terms & conditions by the Federal Government through Ministry of Minorities Affairs, agreed for accepting 25% exempted residential plots/files instead of 33%. Essentially, for such reasons colossal loss has been suffered by ETPB.

31. A comparative analysis of the loss incurred to the ETPB for entering into the deal is reproduced hereinbelow as per report of FIA dated 24.07.2013:

Sr.No.	Head/Description	Loss caused to the ETPB		
		Plot Nos.	Approx per plot price (Rs.)	Total Loss (Rs)
1.	Reeducation from 33% exemption developed to 25% exemption plot files only	108	9 million	972 millions
2.	Expenditures being claimed by DHA from ETPB for vacation of Dear Chahal Land	-	-	18 millions
3.	Developmental charges be claimed by DHA against exemption allotted plot files to ETPB @ 25 %	-	-	287 million
4.	Compensation paid by DHA to unauthorized persons instead of ETPB	59	9 millions	126.77+ 531=657.77 Million
			Total	1934.77 millions

Thus, the deal suffered from corruption and corrupt practices and was in violation of rules and regulations.

32. Learned counsel for DHA Mr. Asif Hafeez, however, has attempted to persuade us that the deal between DHA and ETPB is transparent as huge amount has to be spent by DHA for getting possession of the land from occupants and it so hampered on account of delay in concluding the deal on the part of ETPB, therefore, ETPB in its 272nd meeting held on 16.04.2009 accepted revised offer of DHA for exemption of 25% residential plot instead of 33% which was duly approved by the Ministry, as such, no illegality or irregularity has been committed by DHA.

33. Learned counsel for DHA, attempted to justify the delay, as it is evident from his arguments noted hereinabove, but without producing any document or material to substantiate its plea on both counts i.e. delay by ETP Board and spending of huge amount by DHA for taking over possession from occupants of the land under question.

34. It has been noticed that from time to time the Federal Government has constituted the Board. Whereas, under sub-section (5) of section 3 of the Act, 1975 three years tenure of the Members has been prescribed and before the expiry of the same, a Member would not be changed unless he earlier resigns from his office under sub-section (6) or is removed under sub-section (7) of section 3 *ibid*. The only inference is that the purpose of fixation of the tenure is to ensure consistency in the policies of the ETP Board for the purpose of achieving the objects for which the Act, 1975 has been

promulgated. Contrary to it, as far as Chairman of the Board is concerned, he is required to hold the office during the pleasure of the Federal Government.

35. In the instant case, we have noticed that during 263rd meeting of ETP Board held on 23.07.2007 a decision was taken to accept option No.2 offered by DHA, namely, ETPB land be handed over to DHA for development and in exchange the developed plots as per laid down procedure, would be given to ETPB. It was also decided that DHA would handover 33% developed plots to ETPB, besides 10% of the commercial plots to be offered to ETPB on the rates as for members of the DHA and this offer was also accepted by DHA on 20.07.2007, but before its final approval, the ETP Board was reconstituted on 14.11.2007. Names of the newly appointed members have also been mentioned hereinabove. As per the requirement of law, these non-official members had to perform their functions for a period of three years i.e. upto 13.11.2010. In the meanwhile, former Chairman ETPB, Mr. Asif Akhtar Hashmi was appointed on 7.12.2008, before expiry of the tenures of the members appointed on 14.11.2007 and the Board was again re-constituted on 10.04.2009. The issue of getting developed residential and commercial plots, decision in respect whereof had already taken place in 263rd meeting dated 23.07.2007, was again placed before the Board for discussion and decision. Surprisingly, instead of accepting the earlier better terms and conditions, fresh proposal was introduced after taking over of office by the newly appointed Chairman and DHA had revised its offer. Inasmuch as, the Federal Government without negotiation or determining viable terms and conditions gave approval on 16.04.2009.

36. It would be appropriate to mention that from very beginning the ETPB had been insisting that DHA should commit in writing, *inter alia*, that taking over of the possession of the Evacuee Trust land situated in *Mauza Lidhar, Mauza Mota Singh Wala* and *Mauza Dera Chahal* from its lessees will be sole responsibility of DHA and expenditures so incurred shall not be claimed from ETPB. Reference in this behalf may be made to the meeting of ETP Board dated 22.04.2008, relevant contents wherefrom are reproduced hereinbelow: -

“(vii) Deputy Secretary (Property), ETP Board, Lahore will prepare a draft letter to be sent to the DHA authorities indicating the points on which their confirmation is required particularly about the following: -

- (a) Taking over of possession of Evacuee Trust land situated in mauzas Lidhar, Mota Singwala and Dera Chahal from its lessess will be sole responsibility of DHa and expenditure so incurred shall not be claimed from ETPB.
- (b) Phase and sector, where residential and commercial plots will be allotted by DHA to ETPB (in lieu of Evacuee Trust land situated in after-mentioned mauzas).
- (c) All the plots to be allotted will be at one place in a compact block/form. In case it is not possible then what arrangement will be made by DHa.
- (d) Charges, if any, required to be paid by ETPB in respect of residential plots to be allotted.
- (e) Total cost to be charged in respect of each commercial plot to be allotted.”

37. In continuation of above letter, on 7.06.2008 the earlier stand taken by ETPB was reiterated; however, after appointment of former Chairman, Mr. Asif Akhtar Hashmi, on 18.02.2009 DHA intimated that 33% exemption ratio besides, 100 x commercial plots were agreed to by it but progress on acquisition of the land was held

up due to non-acceptance of handing over of clear possession of land by ETPB. It was further emphasized in this very letter that "either land be transferred with clear possession to DHA against 33% exemption or 25% exemption without possession may pleased be agreed to". Although, as it has been explained earlier, before appointment of the former Chairman, Mr. Asif Akhtar Hashmi, the DHA has agreed to grant 33% exemption of plots instead of 25% with 100 x commercial plots on the rates available for the members of DHA, but in such a situation when we asked the learned counsel for DHA to substantiate with documents the amount which has been spent by the DHA for taking over the possession, he could not do so. Therefore, it is held that in the 272nd meeting dated 16.04.2009 the decision was changed by the ETP Board intentionally, on account of which a huge loss has been caused as it has been analyzed in the FIA reports, referred to hereinabove. Such decision also adversely reflects the mala fide in the reconstitution of the Board on 10.04.2009 before expiry of three years' tenure of the members, who were appointed on 14.11.2009; therefore, for such reasons the Board should have not approved acceptance of formula of 25% exemption as it was against the interest of charitable institutions.

38. There is no denial of the fact that ETPB had powers to dispose of the properties but it must be in accordance with the law namely section 4(2) of the Act, 1975 as it has been held in the case of Pervaiz Oliver v. St. Gabriel School (PLD 1999 SC 26), relevant para therefrom is reproduced hereinbelow: -

"It is a known fact that the above portion of the property is extremely valuable. It is

anybody's guess as to what may have transpired in an underhand manner between the concerned individuals, particularly, Said Muhammad and the Evacuee Trust functionaries. Some of the staff has already been identified in this order. The Assistant Administrators, holding office from time to time in the Quetta region and the Administrator, who passed the orders dated 6-3-1996 and 31-12-1996, would now come to be identified and located. All of these shall be subjected to departmental proceedings, as reflected below. Pausing here, we consider it our bounden duty to observe that many of those in the administration, politicians and bureaucrats alike, virtually consider public property as their own to be appropriated or allocated at their whims or fancies. Nothing is further removed from legal realities. No public property, big or small, tangible or intangible, can be disposed of except in accordance with law. Those who transgress. Expose themselves to the severest of penalties under law, the cardinal principle being. the higher the functionary, the higher the responsibility and, for that reason. the, stricter the punishment."

Reference may also be made to the case of Action regarding joint venture agreement between CDA and Multi-Professional Cooperative Housing Society (PLD 2011 SC 619), relevant para therefrom is reproduced hereinbelow: -

"28. It is to be seen whether the CDA Board could have, in all fairness, agreed to terms and conditions, which were totally different from those mentioned in the advertisement and render the transaction bereft of the essential attributes of transparency and fairplay. The Governmental bodies are invested with powers to dispense and regulate special services by means of leases, licences,

contracts, quotas, etc., where they are expected to act fairly, justly and in a transparent manner and such powers cannot be exercised in an arbitrary or irrational manner. Transparency lies at the heart of every transaction entered into by, or on behalf of, a public body. To ensure transparency and fairness in contracts, inviting of open bids is a prerequisite. The reservations or restrictions, if any, in that behalf should not be arbitrary and must be justifiable on the basis of some policy or valid principles, which by themselves are reasonable and not discriminatory."

39. Now turning towards another deal entered upon by ETPB in 2009 by investing Rs.986.00 million in the project of "Elysium Ranches DHA, Islamabad and M/s HLC", it is to be noted that in pursuance whereof following proposals for the investment was made: -

"Proposal for EVACUEE Properties Investment

Elysium Holding Pakistan Limited has given us the mandate for the procurement of land and sale of Project File (Allotment Certificates) for the above mentioned project (copies of JV agreement between DHA Islamabad and Elysium Holding Pakistan Limited and MOU between Highland Living Concept & Elysium Holding Pakistan Limited is attached for reference.) We would like EVACUEE to join us as an institutional investor of Project Files (Allotment Certificates), it may be mentioned that a number of other prominent institutional investors have already joined hands to profit from this lacerative investment at this stage of the project. The mode of EVACUEE investment will be as follows: -

- Once each tranches of 32 kanals are procured 8 kanals of the project file (Allotment Certificate) will be PKR 600,000/- i.e. 600,000 x32=PKR 19,200,000/-
- Government Levies per kanal i.e. CT+Mutation Charges will be 7.2% of Government Declared Price Rs.120,000/- i.e. 120,000 X 7.2%=8640 X 32=PKR 276,480/-
- Out of Pocket Expenses will be PKR 10,000 X 32= PKR 320,000
- Total investment for each project file (Allotment Certificate) will be PKR 19,796,480/-
- Launch or reserved price with Buy Back guarantee by the sponsors of project will be PKR 30,000,000/- per project file / property with a total net profit of PKR 10,203,520/- which amounts to 34%, higher than any other investment opportunity in the market with negligible risk due to Buy Back Guarantee from sponsors. This ROI can be increased manifold if the files are sold and the amount reinvented

The above price is based on an institutional buying of at least 50 Project Files (Allotment Certificates) / Properties.

- Processing period of conversion of land into project files after al legal due diligence will be 7 working days. Furthermore issuance of project files (Allotment Certificates) will be 6 Working days from the date of mutation."

40. The ETP Board in its 272nd meeting held on 16.04.2009 considered the said proposal as additional agenda item 5 and decided as under: -

PROPOSAL FROM HIGHLAND LIVING CONCEPT FOR INVESTMENT/JOINT VENTURE IN ELYSIUM RANCHES DHA, ISLAMABAD

Discussion/Decision	Action by
The Board unanimously approved the proposal of Highland Living Concept for investment/joint venture with ETP Board in Elysium Ranches DHA, Islamabad subject to the condition that DHA, Islamabad will give guarantee for the 34% of	CAA

profit on the investment made by the ETP Board.	
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41. It is important to note that DHA Islamabad/Rawalpindi submitted a report before the Court on 27.04.2013 in which it was stated that "DHA Islamabad/Rawalpindi has not sold any property to ETPB through Mr. Asif Hashmi, nor Mr. Asif Hashmi has approached DHA Islamabad/Rawalpindi for any deal". Further, DHA Islamabad/Rawalpindi *vide* another report filed before the Court on 24.05.2013 submitted that Elysium Holdings Pakistan Ltd. (EHPL), previously, Elysium Pakistan Ltd. is a public limited company formed for acquiring by purchase or otherwise land and to develop the same in plots and sell or establish housing estates, construct houses, buildings etc. and to provide amenities and utility services to the schemes. The names of the directors of EHPL, at the time of signing of the agreement with DHA Islamabad/Rawalpindi are also provided in the report, which are as under: -

(a) At the time of signing of the Agreement:

- (1) Waseem Aslam (Director/CEO)
- (2) Ms. Ambreen Naz
- (3) Muhammad Usman Yousaf

(b) Present:

- (1) Muhammad Hammad Arshad (Director/CEO)
- (2) Muhammad Murad Arshad
- (3) Chaudhary Ahmed Aziz

42. With regard to the investment of ETPB in the project of Elysium Ranches DHA, Islamabad, it is further to be noted that on 10.07.2008 M/s Elysium Holding Pakistan Ltd. (EHPL) signed joint venture agreement with DHA for purchase of land in Zone-IV,

Islamabad, for development of Project and marketing/selling of the same. It seems that before implementation of the agreement another idea of investment was introduced by M/s Highland Living Concept (HLC) Lahore, which was approved in the ETP Board's meeting dated 16.04.2009 as well as by the Investment Advisory Committee of ETPB. In the meanwhile, respondent Mr. Asif Akhtar Hashmi had been appointed as Chairman, ETPB on 07.12.2008. In continuation of this development/project, on 08.7.2009 ETPB signed tri-partite agreement with M/s EHP and M/s HLC, according to which ETPB was to be provided with 50 project files/allotment certificates (each of 8-kanals plot-value of each plot mentioned in the proposal was Rs.19.72 million) of DHA as security, which were to be purchased by EHP after 30 months @ Rs.30.00 million each. Accordingly, from July to October, 2009 ETPB transferred an amount of Rs.986.00 million in the bank account of M/s HLC, out of which an amount of Rs.608.00 million was transferred to M/s EHP.

43. It was also stated in the above mentioned report that EHPL had approached DHA Islamabad representing to have rights in the lands situated in different mauzas of Islamabad and DHA agreed to the said proposal, consequent to which an agreement was executed between EHPL and DHA Islamabad on 10.07.2008 whereby EHP was obliged to transfer land measuring approx 30,000 kanals. EHP however could not fulfill its commitment to provide "initial land" within the specified time period. It was reiterated that ETPB or Mr. Asif Hashmi, ex-Chairman ETPB has neither approached DHA for any investment or sale/verification of any allotment certificates nor any funds from any such sale have been received by DHA Islamabad.

44. It is also pertinent to note in this regard that Finance Division (Budget Wing), Government of Pakistan vide Office Memorandum dated 02.07.2003 captioned "Deposit of Working Balances and Investment of Surplus Funds Belonging to Public Sector Enterprises and Local/Autonomous Bodies under Federal Government" issued consolidated instructions wherein it was mentioned that "before making any investment under this policy, it would be necessary for public sector entities to set up in-house professional treasury management functions. Specifically, they would need to have an investment Committee (IC) with defined investment approval authority. Transactions above the approval authority of the IC will be subject to approval of the Board of Directors or an equivalent forum. The IC should be assisted by an Investment Management Unit employing qualified staff with at least 3-5 years of experience of managing investment in debt/equity instruments. However, it will be necessary for public sector enterprises to use the service of professional fund managers approved by SCEP".

45. It must be highlighted that no permission was obtained for investment in DHA Islamabad under section 4(2)(c) and (m) of the Evacuee Trust Properties (Management and Disposal) Act, 1975 which provides that the function of the board shall be "to buy out of surplus income if any, or by, taking loan from any statutory corporation, with the approval of the Federal Government any other property which may be considered to be beneficial for promoting the objects of this Act or any scheme"; and "to invest money, with the prior approval of the Federal Government, for any other social welfare or charitable

purpose". Therefore, the law was violated by making payments to Highland Living Concepts.

46. It may not be out of context to note here that one Sharjeel Shah Muhammad, CEO represented to HLC whereas Hammad Arshad, CEO represented to EHP. However, it is reported by FIA that according to record maintained by Securities and Exchange Commission of Pakistan (SECP), M/s Kamran Kiani, Waseem Aslam and Aftab Zahoor were founding Directors of M/s EHP, whereas, according to information revealed to FIA by DHA, Waseem Aslam, Ambreen Naz and Muhammad Usman Yousaf were the Directors at the time of joint venture agreement dated 10.07.2008. Subsequent thereto, it was further revealed by SECP that M/s Kamran Kiani and Aftab Zahoor resigned on 13.06.2007 and 29.01.2008, respectively, before signing of the joint venture agreement noted hereinbefore. As far as Ambreen Naz is concerned, she also resigned from her position on 05.09.2008. Presently, Hamad Arshad is CEO of the Company because Waseem Aslam, who was holding the charge prior to him, had resigned on 04.01.2012.

47. Perusal of record/report filed by FIA reveals that for making this investment no approval of the Federal Government under section 4(2)(c) of the Evacuee Trust Properties (Management and Disposal) Act, 1975 was available on record, as such, FIA had to register a case because due to non-availability of relevant files the FIA could not conduct inquiry as per direction of this Court issued *vide* order dated 7.5.2013; therefore, against Faizan Shams, former Investment Management Officer of ETPB, a case was registered *vide*

FIR No.596 dated 9.05.2013 under section 409 PPC. As far as DHA, Islamabad is concerned, it has also not denied entering into agreement dated 10.07.2008 with EHP, in pursuance whereof EHP was under obligation to transfer land measuring approximately 30,000 kanals in favour of DHA, Islamabad and to plan, develop, market and sell the proposed mixed used project on the said land, etc. However, ETPB through its Chairman Asif Akhtar Hashmi has never approached DHA, Islamabad for investment or sale, etc. It is to be noted that Zone-IV of Islamabad is located within the domain of CDA and according to its record, in this Zone no project with name of 'Elysium Ranches, DHA, Islamabad' has ever been introduced by joint venture of DHA and EHP, therefore, the conclusion is that without verifying and examining the existence of 'Elysium Ranches DHA, Islamabad', ETPB made the investment and allowing the benefit of this investment to another party i.e. M/s HLC, as a tri-partite agreement was executed. Interestingly, M/s HLC received Rs.986.00 million from ETPB, out of which, statedly, it transferred Rs.608.00 million and balance of Rs.378.00 million is still lying with it. Reference is also necessary at this stage to the stand taken by Hamad Arshad, CEO EHP before this Court 14.06.2013, who stated that without prejudice to his constitutional and legal rights, he is depositing the amount of Rs.986.00 million towards full refund of the investment made by the ETPB. although directions were made on 07.06.2013 to both of them i.e. Sharjeel Shah Muhammad, CEO HLC and Hamad Arshad CEO of EHP. He also prayed that as per tripartite agreement, ETPB made investment on the basis of 50 files, which were provided to ETPB,

therefore, it would be just, fair and equitable that files be transferred back to him as he had already made the payment.

48. Khwaja M. Farooq, Sr. ASC appearing on behalf Sharjeel Shah Muhammad, CEO Highland Living Concepts submitted that a Memorandum of Understanding (MOU) was executed between EHPL and HLC on 07.11.2008 whereby HLC confirmed to purchase a minimum of 5000 kanals land at its sole cost and expense located in Zone-IV of Islamabad for the purpose of proposed project named "DHAI's Elysium Ranches Project" on behalf of the EHPL and that all such lands shall be mutated by the HLC in favor of DHA. It was asserted that HLC acting in the capacity of a property dealer/service had received its commission of 2% while the entire amount was then transferred to Elysium.

49. In view of the material collected during hearing of the petition through FIA, reference of which has been made hereiabove, arguments so advanced by the learned counsel on behalf of Sharjeel Shah Muhammad, CEO of HLC is not acceptable because he has received Rs.986.00 million from ETPB out of which Rs.608.00 million was transferred in the account of EHP being maintained by its CEO Hamad Arshad and balance of Rs.3.76 million is lying with HLC. However, as per our directions dated 07.06.2013 both of them were required to deposit this amount but he (Sharjeel Shah Muhammad) has failed to comply with the directions as a result whereof Hamad Arshad had also borne his financial burden.

50. Needless to say that ETPB's Chairman and Members of the Board in pursuance of the decision, which was taken as an additional Agenda No.5 in 272nd meeting held on 16.04.2009 made investment of

Rs.986.00 million but without settling the terms and conditions and realizing that there is absolutely no existence of 'Elysium Ranches DHA, Islamabad'. The recovery of principle amount has already been made under the order of this Court both Sharjeel Shah Muhammad, CEO HLC and Hamad Arshad CEO EHP were also bound to pay mark up on Rs.986.00 million from the date of its payment and passing the order of this Court as they had benefitted from this amount without extending any profit to ETPB and in the same manner, Chairman ETPB and Members as well Secretary of Ministry of Minorities Affairs, who endorsed such deal which was in fact non existent is liable to be dealt with according to law.

51. Thus, we are of the considered opinion that transaction of ETPB for making investment of Rs.986.00 million was contrary to the interest of ETPB and against the instructions of the Government as well as section 4(2) of the Act, 1975, in view of the law laid down in Pervaiz Oliver's case (*ibid*), reference of which has already been made hereinabove.

52. In view of the above discussion, instant petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan is allowed with the following declarations: -

DHA Lahore:

- (1) Matter relating to acquisition of Evacuee Trust land situated in *Mauza Lidhar, Mauza Mota Singh Wala* and *Mauza Dera Chahal Tehsil* Cantt. Lahore by the Defence Housing Authority Lahore, vide decision dated 16.04.2009 of ETPB taken in its 272nd meeting approving the revised offer of DHA for exemption of 25% residential plots is

unlawful, being contrary to section 4(2) of the Evacuee Trust Properties (Management & Disposal) Act, 1975, as the earlier decision taken on 23.07.2007 by ETP Board in its 263rd meeting was in accordance with the law as DHA in its letter has already agreed on 20.07.2007 that ETPB land would be acquired by DHA at 33% exemption of residential plots (measuring 1-Kanal each) as a result whereof DHA had to provide 642 residential plots on acquiring 1946-Kanals of ETPB land, in addition to DHA's offer of 100 x commercial plots on payment as for DHA members i.e. 16% of residential plots instead of 10%.

- (2) *Prima facie*, subject to determination by the investigation agencies, ETPB had to suffer accumulative loss on account of deal under review amounting to Rs.1934.77 million, analyses of which has been noted hereinabove based on report of FIA.
- (3) As the decision of the Board with regard to deal of ETPB and subsequent approval given by the Government vide letter No.P(3)/DSP/530/ETPB/07/LHR/3266 dated 29.04.2009 is void, and is of no legal consequences. Therefore, option is being given to DHA to accept the ETP Board's decision taken in 263rd meeting dated 23.07.2007 and handover the developed residential and commercial plots, details of which have been given hereinabove, to the ETPB.

Acceptance of this offer must be communicated to ETPB within 30 days after receipt hereof, failing which DHA shall

be bound to refund the land owned by ETPB situated in *Mauza Lidhar, Mauza Mota Singh Wala and Mauza Dera Chahal* etc.

- (4) It has also come on record that DHA has acquired more land than agreed upon, therefore, Senior Member Board of Revenue, Government of Punjab is directed to make arrangement for the demarcation of the properties owned by ETPB referred to hereinabove and ensure the restoration of the excess land; and on non acceptance of option noted above, total land so occupied/acquired shall be delivered back to ETPB by DHA by reversing the mutation entries and also cancelling the sale deeds, executed between the parties referred to in the judgment.
- (5) DHA, shall not be entitled to recover any compensation, if it has paid to obtain the possession from the lessee or on the development of land, as no evidence has been brought on record. However, to substantiate the same, if so advised, DHA has to resort to the Court of law to prove its claim by adducing evidence as it has been held in the matter of Action regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (PLD 2011 SC 619).

DHA Islamabad

- (6) The decision of 272nd meeting held on 16.04.2009 as a special agenda is contrary to section 4(2) of the Act, 1975, in view of the principle of law discussed hereinabove.

- (7) The Chairman of ETPB and Members of the Board handed over an amount of Rs.986.00 million *vide* tri-partite agreement dated 08.07.2009 to HLC and EHP. This amount has been recovered in pursuance of order of this Court dated 07.06.2013 and has been deposited in the account of Registrar of the Court, therefore, subject to Supreme Court Rules, 1980, the Registrar shall transfer this amount in the account of ETPB forthwith.
- (8) HCL and EPL have entered into a transaction in respect of a joint venture, which absolutely had no existence as despite of receiving the amount noted above the Ranches were not handed over as no land was acquired, however, HLC and EHP got benefit of the amount of Rs.986.00 million owned by ETPB unlawfully, therefore, they are under legal obligation to compensate the ETPB by paying profit/mark-up on this amount, subject to determination by the Court of law.
- (9) As far as 50 files of Islamabad Ranches, if have been handed over to the ETPB, same shall be returned to the persons/agency from whom these files were received.
- (10) We have noticed that in the transactions entered into by ETPB with DHA Lahore and Islamabad, numerous illegalities/irregularities and violations of financial instructions, have been committed along with violation of laws; therefore, in the public interest the Secretary, Ministry of Minorities Affairs is directed to arrange forensic audit of the ETPB for the last five years and on the receipt

of the report actions, both civil and criminal, should be taken against the delinquents, in accordance with law.

(11) It was informed that at present position of Chairman, Evacuee Trust Properties Board is lying vacant, therefore, the Federal Government is directed to take necessary measures for the appointment of Chairman, in terms of section 3(3) of the Act, 1975 as early as could be possible in the interest of the institution.

(12) In respect of both the transactions i.e. DHA, Lahore land acquiring of *Mauza Lidhar*, *Mauza Mota Singh Wala* and *Mauza Dera Chahal* etc. as well as DHA, Islamabad, call for civil and criminal proceedings against the former Chairman, Mr. Asif Akhtar Hashmi and all others, who were directly or indirectly responsible for the same. The inquiry already initiated by FIA shall be expedited to be concluded as early as could be possible and compliance report shall be sent to the Registrar for our perusal in Chambers for appropriate orders if need be.

53. Petitions stand disposed of in the above terms accordingly.

Chief Justice

Judge

Judge

Announced on 02.10.2013 at Islamabad

Chief Justice

Approved For Reporting