IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MUSHIR ALAM

CIVIL APPEAL NO.1890 OF 2002
(Against the judgment dated 24.8.2001 of the High Court of Sindh, Karachi passed in Constitution Petition No.D-1807/1999)

Government of Sindh through Secretary & Director General, Excise & Taxation and another

...Appellant(s)

VERSUS

Muhammad Shafi etc.

...Respondent(s)

For the appellant(s): Mr. Qasim Mirjatt, Addl. A.G. Sindh

For respondent No.1: Mr. M. Bilal, Sr. ASC

For respondent No.3: Mian Qamar-uz-Zaman, ASC
Raja Abdul Ghafoor, AOR

Date of hearing: 16.03.2015

JUDGMENT

MIAN SAQIB NISAR, J.- This appeal, with the leave of the Court dated 23.12.2002, involves two primary propositions, namely:-

a) *Whether under Section 4(a) of the Urban Immovable Property Tax Act, 1958, the property owned by the Evacuee Trust Property Board which is in possession of respondent Muhammad Shafi, is exempted from the tax?*

b) *Whether the learned High Court had rightly applied the principle of law discussed by this Court in the case of Mehran Associates Ltd. Vs. Commissioner of Income Tax, Karachi {(1992) 66 Tax 246(S.C.Pak)}?*

2. Brief facts of the case are:- the property(ies) in question bearing Nos. RC 1/12 and RC 10/12 were admittedly owned by respondent No.3/Evacuee Trust Property Board *(The Board)*. The Board leased out these properties to respondent No.1, Muhammad Shafi, for a period of 30 years with the right to raise superstructure *(construction)* over the said land/plot and to let out the constructed property *(the property)*. And upon expiry of the lease period, such constructed property was to revert back to the Board, forming part of its ownership.

The appellant is the property tax department, which claims property tax on the property on the ground that as the property has been leased out by the Board, therefore it does not fall within the exemption category, as has been provided *(granted)* to the Federal Government properties under the law. This action/demand of the appellant when challenged by respondent No.1 has been declared contrary to law by the learned High Court *vide* impugned judgment dated 24.8.2001. Leave in this case was granted on the two points, referred to in the preceding part of this judgment.

3. In order to appreciate the arguments made before us, it is expedient to reproduce the provisions of Sections 3 and 4 of Urban Immovable Property Tax Act, 1958 *(The Act)* and the clauses 1, 2, 3, 9, 11, 13 and 16 of the lease agreement dated 30.7.1983 *(the lease deed)* which read as under:-

Relevant sections of the Act

"3. Levy of tax. (1) Government may by notification specify urban areas where tax shall be levied under this Act.

Provided that one urban area may be divided into two or more rating areas or several urban areas may be grouped as one rating area.

(2) The tax shall be charged, levied and collected at the rate of twenty percent of the annual value of the lands and buildings.

(3AA)The tax under sub-section (2) shall also be levied and collected on buildings and lands used partly or exclusively for industrial purposes in the industrial areas of Dhabeji Gharo and Kotri as are within urban area.

*[(3B)*****]*

*[(4) *****]*

(5) The tax shall be due from the owner of buildings and lands.

4. Exemptions.— The tax shall not be leviable in respect of the following properties, namely:—

(a) buildings and lands, other than those leased in perpetuity, vesting in the Federal Government;

(b) buildings and lands other than those leased in perpetuity.

(i) Vesting in any Provincial Government and not administered by a local authority;

(ii) Owned or administered by a local authority when used exclusively for public purposes and not used or intended to be used for purposes of profit;

(c) . . . . . .

(d) . . . . . .

(e) . . . . . .

(f) . . . . . .

(g) . . . . . .

Relevant clauses of the lease deed are:-

*(1) That the lease money payable by the Lessee has been fixed on the basis of assessment of rent made in the year 1964 at Rs. 4,000/- per month subject to enhancement by 25% after every five years. (**Increase in rent)***

(2) That the lease period is 30 years with effect from 30th July, 1983 after the expiry of this period the property alongwith the superstructure etc. shall vest in the Lessor and become the property of the Evacuee Trust Property Board without payment of any compensation whatsoever to the Lessee. The

period of lease can be extended by the Lessor for another period of 30 years on such terms and conditions as laid down by the Lessor and agreed upon by the Lessee. ***(fixed term and return of property)***

(3) That the Lessee shall pay the lease money at the rate of Rs.4,000/- per month with effect from 1.1.1964 and the arrears shall be paid by the Lessee in 36 monthly installments.

(9) That the Lessee shall be entitled to raise new construction (Commercial/residential, permissible) on the plot but only with the prior approval of the Chairman, Evacuee Trust Property Board, and the local competent authority.

(11) That the Lessee shall have no right to sublet or sublease the demised property or any portion thereof except with the prior approval of the Administrator concerned and the period of lease/tenancy so granted shall not exceed the period of lease specified in this Agreement i.e. 30 years. The Administrator shall decide the question of approval within seven days.

(13) That the Lessee shall have no right to mortgage, alienate or in any manner encumber the property except the right granted by the Agreement of Rent our or Lease out the premises.

(16) That in case of breach of any of the conditions as aforesaid the lease shall be liable to be cancelled by the Lessor and the eviction shall be caused under the provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975. ***(termination clause)***

4. It has been argued by the learned Additional Advocate General, Sindh that as the lease deeds, executed for an initial period of thirty years, could also have been extended for a further period of thirty years, the lease of the property to respondent No. 1 was, in fact, a lease in perpetuity and, therefore, the tax was leviable thereupon. It is submitted that the property vested in respondent No.1/lessee, who has raised his own superstructure, and consequently, the view set out

by the Courts below that it falls within the exempted properties is erroneous and illegal.

The learned counsel for respondent No. 3/Board, however, by making reference to Section 6 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 and also Article 165 of the Constitution of the Islamic Republic of Pakistan, 1973 has submitted that Provincial legislation cannot levy tax upon the properties owned by the Federal Government.

5. Heard. Before resolving the proposition(s) in hand, we may like to mention that the charging section in a fiscal statute, as per the settled law, demands its strict interpretation and application in so far as the revenue is concerned, but where it is susceptible to two possible interpretations, it should be liberally construed in favour of the tax payer/citizen; particularly, where there is substantial doubt about the true import and application of a charging section, it *(the doubt)* should be resolved in favour of the tax payer/citizen[1]. Anyhow, from the relevant provisions of the Act, provided above, there seems wee room for holding otherwise than that the properties which are owned by the Federal Government are exempted and thus cannot be subjected to property tax. In the instant case, it is not disputed by the appellant that the property is owned by the Board and if it was not leased out *(allegedly in perpetuity)*, it would fall within the ambit of the Federal Government properties and shall be exempted from property tax under Section 4 of the Act.

6. The ancillary proposition which would arise in the matter shall be, whether the properties in question have been leased out by respondent No.3 to respondent No.1 **in perpetuity** or not as it has

---

[1] (1992) 66 Tax 246 SC Pak

been specifically mandated in Section 4 that the exemption shall not be available to those property(ies) which have been given in perpetuity even by the Federal Government.

7. In order to explore whether the present lease is a lease in perpetuity, we have examined the provisions of the Act and find that neither it defines the same *(lease in perpetuity)* nor any other part of it throws some light on this subject. Therefore, in order to ascertain the meaning and the concept thereof, we have looked at the Transfer of Property Act, 1882 ***(TPA)***, which is the general law dealing with, *inter alia,* the subject of leases. In this law, lease has been defined in Section 105 of the TPA, which reads as:-

> *"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing or value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."*

With respect to how a lease is made, Section 107 of the TPA prescribes as below:-

> *"**107. Leases how made.** A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*
>
> *All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.*
>
> *Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:*
>
> *Provided that the Government may, from time to time, by notification in the [official Gazette], direct that leases of*

> *immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."*

8. In Section 105 *ibid,* though there is a mention of a *lease in perpetuity*, we feel handicapped and are unable to ascertain its true meaning as neither the exact connotation thereof, nor the concept, factually and/or legally, of such lease *(lease in perpetuity)* can be spelt out and unfolded therefrom. Thus for the purposes of elucidating and comprehending such a lease, it shall be appropriate to give the key word/expression **perpetuity**, its ordinary meaning. Franklin language master *(dictionary)* defines it as endless time, eternity, the quality or the state of being perpetual. According to Oxford Dictionary, perpetuity means, the State or quality of lasting forever. The expression *perpetuity* has been defined in the Black's Law Dictionary as "*the state of continuing forever; an inalienable interest; an interest that does not take effect or vest within the period prescribed by law*".

9. From the above, it is clear that the word *perpetuity*, without much difficulty and improvisation, can also be construed in the sense of permanence and therefore a lease in perpetuity can be held to be a transaction of immovable property which is irreversible or non-returnable. But the question is how it should be ascertained and adjudged if a particular lease is in perpetuity or otherwise. To our mind, in this regard, no precise criteria can be fixed. This is so especially for the period prior to the coming into force of the TPA and the Registration Act, 1908, because in those days *(prior to the two enactments)* leases were usually made orally and due effect was given in the revenue record in different expressions. The determination of the aforementioned question for leases executed during such time, thus,

would revolve around the terms and conditions orally settled between the parties and so proved, including the interpretations of the entries in the revenue record, the conduct of the parties while dealing with the property, the object and the nature of the lease including the entitlement of the lessee to raise structure over the property and also the terms relating to the payment of rent and its periodical enhancement thereof etc. Multiple factors would be relevant in this regard *(note: in view of and subject to the provisions of Section 117 of the TPA, this opinion should not be construed to relate to agricultural properties; even otherwise the subject matter of the present case is Urban Properties and, therefore, we are confining ourselves to that effect only)*.

After the enforcement of the two enactments referred to above, however, the question of determination of whether a lease is one in perpetuity or not stands **simplified**. Section 17 of the Registration Act *ibid* mandates certain instruments to be compulsorily registerable and Sub-Section (d) of Section 17 provides in the list of such documents *"a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent"*. The effect of non-registration of such instruments is provided by Section 49 of the Registration Act in the manner:-

> *"49. Effect of non-registration of documents required to be registered. No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall –*
>
> *(a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, to or in immovable property, or*
>
> *(b) confer any power to adopt, unless it has been registered."*

Similarly it is clear from Section 107 of TPA that a lease of any property beyond one year could only be effected by a registered instrument *(note:- subject to the exemption qua other leases orally made coupled with*

delivery of possession). **This is the express and unequivocal mandate of the law**. It is settled principle of law that where law requires an act to be done in a particular manner, it has to be done accordingly and not otherwise. At this point, we may also add that if an act is done in violation of law, the same shall have no legal value and sanctity, especially when the conditions/circumstances which may render such an act invalid have been expressly and positively specified in law *(see Section 49 ibid)*.

10. Be that as it may, to further shed light on the above proposition, we deem it proper to discuss relevant legal material and case law available on the subject and to start with, the comments made in the book titled Transfer of Property Act, 9th Edition by Mullah; *(a renowned law scholar and researcher of the Subcontinent)* may be referred to. The author while dealing with the subject opines:-

> *"Leases in perpetuity. – In India, such a lease is created either by an express grant or by a presumed grant. Such leases are generally agricultural leases or they are leases executed before the Transfer of Property Act. As s 107 of the Transfer of Property Act excludes the Agricultural lease from the operation of the Act.*
>
> *Express grant*
>
> *Words which suffice by themselves to import permanency are – miras or mirasdar; mourasi; mulgni; nirantar; patnr, so also, words indicative of a heritable grant such as Ba Farzandan or Naslan bad Naslan. The words istemari mourasi mokurari in a lease mean permanent and heritable. The tenancy created by a taluka putta is presumed to be permanent unless there are indications to the contrary in the surrounding circumstances.*
>
> *On the other hand, the following words are not per se sufficient to import permanency of tenure Paracudi and Ulavadi Mirasidar; Mokarari; Istemari Mokarari; Kyam and Saswatham Mukkaddami. But these words do not exclude the notion of permanency, and when they occur, their effect is a matter of construction having regard to the other terms of the instrument,*

> *the object of the lease, the circumstances under which it was granted and the subsequent conduct of the parties. Such considerations may show that a bemiadi lease, that is, a lease without, a term, is a permanent lease. Where a contract of lease provided that the tenant was to continue in possession as long as he paid rent, it was a tenancy for the lifetime of the tenant and not a permanent tenancy.*
>
> *But a tenancy, though permanent in its inception, ceases to be permanent, if the tenant executes rent deeds for a specified period and admits his ability to ejectment and enhancement of rent* (emphasis supplied by us)*."*

In the commentary on TPA by Shaukat Mehmood, while analyzing various case laws, mostly from Indian Jurisdiction, the author has remarked as under:-

> *"Where the terms of a lease showed that if was (a) a lease for building purposes; (b) it was to enure, in the first instance for a period of thirty years; (c) the lessee had a right to continue to enjoy all the rights under the lease even after the expiry of the initial period of thirty years; (d) the rent was fixed and the lessor had no right to increase it in any manner; (e) the rights of the lessee were heritable and transferable and the lessee was allowed to construct a pucca structure thereon and even after the death of the original lessee his heirs were allowed to continue without demur and rent was accepted from them. It was held that in view of the terms of the lease as a whole and taking into account the conduct of the parties, the lease was intended to be a permanent lease."*

In a case reported as **Lala Suraj Bhan and others Versus Hafiz Abdul Khaliq (AIR 1941 Lahore 195)** it has been held *"even if the tenancy is at its inception a permanent tenancy, it becomes no longer a permanent tenancy if the tenant or his predecessor-in-title executes rent deeds for specified periods of time and admits his liability to ejectment and enhancement of rent". (See also **AIR 1927 PC 102,** which has relevance to the point).*

In **Bejoy Gopal Mukherji Versus Pratul Chandra Gose (AIR 1953 SC 153)**, it has been held:-

> *"The question of permanency of the tenancy was not, therefore, directly or substantially in issue. We find ourselves in agreement with the High Court that the permanency of tenure does not necessarily imply both fixity of rent and fixity of occupation. The fact of enhancement of rent in 1859 may be a circumstance to be taken into consideration but it does not necessarily militate against the tenancy being a permanent one, as held by the Privy Council in the case of an agricultural tenancy in Shankarrao v. Sambhu, A.I.R. 1940 P.C. 192(B). The principle of that decision was applied also to non-agricultural tenancies in Jogendra Krishna v. Sm. Subashini Dassi, A.I.R. 1941 Cal. 541(C). In Probhas Chandra v. Debendra Nath, 43 Cal. W.N. 828 (D) also the same view was taken. We, therefore, hold that the plea of res judicata cannot be sustained.*
>
> *[4] Shri N. C. Chatterjee then contends, relying on the decisions in Rasamoy Purkait v. Srinath Moyra, 7 Cal. W. N. 132 (E); Digbijoy Roy v. Ata Rahman, 17 Cal. W. N. 156(F); Satyendra Nath v. Charu Sankar, A.I.R. 1956 Cal. 100(G) and Kamal Kumar v. Nanda Lal, A.I.R. 1929 Cal. 37(H) that the tenancy in this case cannot be regarded as a permanent one. The decisions in those cases have to be read in the light of the facts of those particular cases. The mere fact of rent having been received from a certain person may not, as held in 7 Cal. W. N. 132(E) (supra) and 17 Cal. W. N. 156 (F) (supra), amount to a recognition of that person as a tenant. Mere possession for generations at a uniform rent nor construction of permanent structure by itself may not be conclusive proof of a permanent right as held in A.R.P. 1929 Cal. 37 (H) (supra) but the cumulative effect of such fact coupled with several other facts may lead to the inference of a permanent tenancy as indicated even in the case of A.I.R. 1936 Cal. 100 (G) (supra) on which Shri N. C. Chatterjee relies."*

In **Bastacolla Colliery Co. Ltd. Versus Bandhu Beldar and another (AIR 1960 Patna 344)**, it was held that the mere fact that a building has been erected on a leased land and portions of the same

have been sold off to others who also have built structures thereupon will not enable Court to hold the lease to be one in perpetuity. In the same judgment, it was held that if the meaning of the words used in the deed is not ambiguous, the Court has to confine itself to the words used in the lease instrument for deciding in support or otherwise of a permanent lease.

From our jurisdiction, we have a judgment reported as **Abdul Hafeez alias Bacha Meah Versus Arshad Ali Chaudhry and others (PLD 1967 Dacca 145)**, in which it has been held:-

> *"It is evident from the terms of the lease, as stated above, that it is a lease for a fixed term and not a lease in perpetuity. A lease in perpetuity is unknown to English law. In this country a lease in perpetuity can be created by an express grant to that effect or by a necessary presumption raised by the terms of a grant and by an unambiguous and long possession. In this particular case there can be no manner of doubt that the lease was for a fixed period and not a lease in perpetuity within the meaning of the Transfer of Property Act."*

In **Dr. Aman Ullah Khan Versus Province of NWFP through Secretary, Finance, Government of NWFP Peshawar and 2 others (1994 MLD 2329)**, where a time had been fixed for the determination of lease, it was ordained that such *(lease)* cannot be said to be a lease in perpetuity in the following terms:-

> *A "lessee in perpetuity" in the light of the actual connotation of the word and also in light of Dictionary meaning of the word perpetuity, means and refers to a state of being perpetual; endless time: duration for an indefinite period; something lasting for ever; an agreement whereby property is tied up, or rendered inalienable, for all time or for a very long time. The petitioner-plaintiff seems to be intelligently advised when one looks at the rent deed or deeds on file which he executes with the Municipal Committee for a period of one year only. By no stretch of any*

> *possible imagination the rent deed executed by the petitioner can be termed as deeds of a "lease in perpetuity"……So far as his construction of the superstructure is concerned, this by itself does not make him an absolute owner. It was for the Municipal Committee to have made him, through writing a "lessee in perpetuity" of the land as well as the superstructure. Only then Dr. Amanullan petitioner would be or would have been liable to pay the tax of the land as well as the superstructure, being "lessee in perpetuity" and hence owner within the meanings of section 2(e) and 3(3) of the Act (Urban Immovable Property Tax Act, 1958)."*

11. From the analysis of the legal material on the subject and the case law, referred to above, we are of the considered view that no hard and fast rules can be laid down so as to determine what exactly is a lease in perpetuity and the answer to this question depends upon the facts and circumstances of each case. But we have conspicuously noticed one single most important factor in relation to this subject matter which is that in none of the materials/decisions have the provisions of the TPA or the Registration Act been adverted to or the effect of such mandate of law been considered. But these provisions unmistakably, in our opinion, are of great importance and relevance and are foundational for determining whether a lease is one in perpetuity or otherwise.

From the reproduced part of the two statutes above, it is abundantly and unequivocally clear that no lease in Pakistan *(note: subject to Section 117 of the TPA and leaving aside for the time being even Section 17 (d) of the Registration Act relating to agricultural properties)* can be effected beyond the period of one year except by a registered instrument and if any lease is not so accomplished, it has no legal validity and sanction beyond the period of one year and would neither create nor purport to create any lease for the period exceeding one year *(see Section 49 ibid)*. Therefore, on

account of this clear mandate and compulsion of law, no lease which is not in consonance with these imperative provisions can at all be said or held to be permanent in nature under any circumstances whatsoever. It shall be ridiculous and ludicrous to conceive and hold, on account of the said law, that a lease which is for a period of less than one year is one in perpetuity only for the reason that the instrument of lease or even verbal stipulation between the parties enables the lessee to raise some structure of permanent nature or the lease is capable of being renewed or could be further transferred to a third party.

12. Therefore, in our view, if the lease is through an unregistered instrument, there is no question at all about it being in perpetuity. But where it has been created by a registered lease document, determination of whether it is permanent in nature or not, will depend on the interpretation of the lease deed. Such interpretation shall obviously be done keeping in view the known rules for the interpretation of the statues as a contract between the parties is a piece of private legislation and the primary function of the law is facultative leaving the parties to make their own contract on terms of their choice. It is treated as a piece of private legislation and the function of the Court is merely to resolve a dispute arising between the parties for the actual operation of the contract[2].

Therefore from the language of the lease document, when it is clear that the tenancy is for a fixed period of time, even if it *(the deed)* contains a clause for renewal, but such renewal is left at the option of the lessor, the lease cannot be held to be permanent in nature. The fact that the lessee has been allowed to raise construction over the

---

[2] Interpretation of Contract, Second Edition by M.A. Sujan

property of a permanent nature and to even sub-let/sublease the same specifically where the same is subject to the consent/approval of the lessor, by itself shall not be a factor for holding a lease to be one in perpetuity.

It may be pertinent to mention here, that for construing a contract of lease in ascertaining its permanency or not, object for which the lease has been granted shall also be germane and important. Where a lease of the property has been given by the lessor to the lessee for a particular and a specific purpose, but no time is fixed, for all intents and purposes it shall be an object specific lease, which means that the purpose/object should be considered as the time/period fixed by the parties for the determination of the lease and thus the moment the purpose is achieved and accomplished, the purpose shall be held to have extinguished *(come to an end).* Therefore, the lease which at its very inception may have been perceived to have some overtones of permanency in its nature, regardless of whether a period has been fixed or not, such lease even if construed to be permanent on the basis of its object/purpose initially, shall automatically come to an end when the object of the lease is extinguished; even if the lessee under the terms of lease has raised the construction as such structure shall either be treated as an accretion to the original leased out property and would go to the lessor or the lessor has to compensate the lessee for such construction, but this depends upon the facts and circumstances of each case and on the basis of the terms and conditions settled between the parties.

The point which needs emphasis is:- that once the purpose of the lease is finally achieved and the purpose for which the property was leased out comes to an end, the lease which may at its inception

have some colors of perpetuity shall also end with it and the lease shall then be rendered to be that of *"holding over"* entitling the landlord to determine/terminate the lease and ask for the vacation of the leased property.

13. Now, reverting to the facts and circumstances of the present case, for the purposes of evaluating if the lease in question is perpetual or otherwise. We have conspicuously noticed that in clause 2 of the lease deed, the period of lease has been mentioned to be thirty years with effect from July, 1983 and on the expiry of the lease period the superstructure raised by the lessee *(respondent No.1)* shall vest with the Board without payment of any compensation whatsoever to the lessee. This condition is quite cardinal and pivotal for determination of the nature of the lease, in that, it is not perpetual, rather the return of the superstructure in the ownership of the Board makes the lease in the nature of a Build, Operate and Transfer *(BOT)* contract.

Besides, respondent No.1 is not free to raise construction at his own free will, but only with the prior approval of the Chairman. The subletting/sub-lease of the constructed property has also been subjected to the approval of the concerned Administrator and in any case, such sub-lease cannot travel beyond the period of thirty years i.e. the original lease period. The rights of the lessee have been restricted in that, he shall neither mortgage nor alienate or encumber the leased out property. Moreover, it is clearly and unequivocally stipulated that breach of any of the conditions of the lease shall make the lease liable to be cancelled at the prerogative of the lessor and the lessor shall have authority to evict the lessee under the provisions of Evacuee Trust Properties (Management and Disposal) Act, 1975.

When all these stipulations of the lease deed are read as a whole, these militate against the concept of lease in perpetuity. Only for the reason that there is a clause for renewal for a further period of thirty years, regardless of whether renewal has been factually granted or not, which otherwise seems to be the exclusive privilege of the Board and respondent No.1 cannot claim it as a matter of right, this lease cannot be held to be one in perpetuity. We are thus of the considered view that the instant lease *inter se* the Board and respondent No.1 is not in perpetuity and, therefore, the appellant has no lawful authority to demand/levy property tax from the said respondent in terms of the provisions *supra*.

Besides the judgment reported as Mehran Associates Ltd. *(supra)* is distinguishable on its own facts. It may be pertinent to mention here that in the same, the question of ownership of lease property was being considered, conceived and dilated upon in light of the law on income tax and not vis-à-vis the specific provisions of Section 4(a) and the concept of lease in perpetuity which has been now elucidated comprehensively in this opinion.

14. Before parting with this judgment, it may be mentioned that as we have decided this appeal on points having nexus to the leave granting order, we therefore deliberately refrained ourselves from making any comments regarding points raised by the learned counsel for the Board in relation to Section 6 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 and also Article 165 of the Constitution of the Islamic Republic of Pakistan, 1973 which *(points)* shall be considered in some other appropriate case. Moreover, this opinion shall also neither apply nor be relevant for the grants and the leases pertaining to and made in the cantonment areas, or border

areas etc., as we do not have the privilege and advantage of examining such transactions and the relevant law, the rules and the policies applicable thereto and under which those *(leases)* have been given.

15. In light of the law discussed above, we do not find any merit in this appeal, which is hereby dismissed.

JUDGE

JUDGE

JUDGE

Announced in open Court

on at

Approved for reporting

*Ghulam Raza/**