

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN

MR. JUSTICE UMAR ATA BANDIAL

**CIVIL APPEALS NO. 1540 and 2106 OF 2006.**

(On appeal from the order dated 27.06.2006 by the Lahore High Court, Lahore passed in C. R. Nos. 1325 of 2005 and 782 of 1998).

*Khurshid Ahmad and others.*

*Deputy Admin Evacuee Trust Property Board Faisalabad.*

**...Appellant(s)**

**Versus**

*Rana Mumtaz Ahmad and others.*

*Ghani and another.*

**...Respondent(s)**

For the Appellant(s): Syed Zafar Ali, Sr. ASC.  
(in CA.1540/2006)

Hafiz S. A. Rehman, Sr. ASC  
(in CA.2106/2006)

For the respondents: Malik Muhammad Qayyum, Sr. ASC.  
Hafiz S. A. Rehman, Sr. ASC.  
Mr. M. Munir Peracha, ASC.  
Hafiz M. Yousaf, ASC.  
(in CA.1540/2006)

Mr. M. Akram Sh., Sr. ASC.  
Hafiz M. Yousaf, ASC.  
Malik M. Qayyum, Sr. ASC.  
Mr. Naveed Akhtar, ASC.  
(in CA.2106/2006)

Date of Hearing: 11.12.2015. (Judgment Reserved).

**J U D G M E N T**

**EJAZ AFZAL KHAN, J.- Civil Appeal No.1540/06:** This

appeal with the leave of the Court has arisen out of the judgment dated 09.05.2006 of Lahore High Court whereby the learned Single Judge in its Chambers dismissed the revision petition filed by

the appellant. Facts of the case as narrated in para 2 of the leave granting order read as under:-

*"2. The brief facts for disposal of this petition of that petitioners and respondents No. 4 and 5 filed a suit against respondent Nos. 2 and 3 for specific performance of agreement dated 28.03.1995 in respect of land comprised in Killa Nos. 1, 2, 9, 10, 11, 20 and 21 of square No. 35, and killa No. 228, 13 to 18, 24 and 25 of square No. 36 measuring 187 kanals, 1 marla situated in Chak No. 124/JB Tehsil and District Faisalabad. The suit was decreed on conceding statements dated 18<sup>th</sup> December, 1995 and 21<sup>st</sup> January, 1996 whereby the suit was decreed to the extent of 15 kanal in favour of respondent No. 5 and the suit for the remaining area was decreed in favour of the petitioners and respondent No. 4 in equal-shares vide judgment and decree dated 25.1.1996. After a lapse of more than seven years on 28<sup>th</sup> July, 2003 respondent No. 1 Rana Mumtaz Ahmed filed an application under section 12(2) CPC in the Court of learned Civil Judge Faisalabad against the plaintiffs and defendants in the suit for setting aside of judgment and decree dated 25.1.1996 on the ground that it was obtained by misrepresentation and fraud. Learned Civil Judge, First Class, Faisalabad vide order dated 15.3.2005 set aside the judgment and decree of the Trial Court. At the same time learned Civil Judge ordered impleadment of*

*respondent No. 1 Rana Mumtaz Ahmed as a party in the said suit”.*

2. The points requiring consideration have been formulated in para 4 of the leave granting order which reads as under:-

*“4. We have heard the arguments of Syed Ali Zafar, ASC for the petitioners and have perused the record as well as the provisions of law applicable to the case and have come to the conclusion that the following questions require consideration and examination :*

- (i) whether the judgment and decree of the trial Court was obtained by way of fraud, mis-representation or want of jurisdiction making out a ground for entertainment of the application under Section 12(2) CPC;*
- (ii) whether in view of the provisions of section 27 of the Specific Relief Act the application under section 12(2) CPC was barred and ought not to have been entertained;*
- (iii) Whether the order passed by learned Civil Judge, Faisalabad allowing the application under section 12(2) CPC and setting aside the judgment and decree is not contrary to and in violation of section 27 of the Specific Relief Act;*

- (iv) *Whether in deciding an application under section 12(2) CPC the learned Civil Judge, First Class, Faisalabad acted within jurisdiction to allow impleadment of respondent No. 1 as a party in the suit;*
- (v) *whether by ordering impleadment of respondent No. 1 as a party in the suit, the learned Civil Judge, First Class revived the claim of respondent, Rana Mumtaz Ahmed to agitate his claim over the land in question which otherwise had become seemingly time barred; and*
- (vi) *whether the judgment of the High Court suffers from non-consideration of above material questions."*

3. **Civil Appeal No.2106/06:** This appeal has arisen out of the judgment dated 9.5.2006 of the Lahore High Court whereby the learned Single Judge in its Chambers dismissed the revision petition filed by the appellant. Points raised and noted at the time of leave read as under:-

*"After hearing the learned counsel for the petitioner at length, leave to appeal is granted to consider; inter alia, whether the jurisdiction of the Civil Courts was ousted in terms of Section 14 of the Evacuee Trust Property (Management and Disposal) Act No.Xiii of 1975, unless order of the Chairman*

*was shown to be patently void and without jurisdiction."*

4. The learned ASC appearing on behalf of the appellant in CA-1540/06 contended that where the application filed by respondent No.1 neither mentioned the source of knowledge nor explained the reasons of delay of each day in filing the petition, his application under Section 12(2) CPC was liable to be dismissed; that the respondent who also claimed to have entered into an agreement to sell with Ghani could not get anything out of the suit on reversal of the decree under Section 12(2) CPC when he never instituted a suit for specific performance of contract, the more so when it was not asserted that the appellants ever knew about the agreement dated 28.01.1990 and that in the absence of any allegation of fraud or misrepresentation or want of jurisdiction, application under Section 12(2) merited outright dismissal.

5. Learned ASC appearing on behalf of the respondents contended that where respondents were never served in accordance with the requirements of law any judgment and decree passed at their back could not stand, therefore, their application under Section 12(2) of the CPC was rightly allowed and that the judgment and decree of the High Court maintaining the same being free from any infirmity is not open to any exception.

6. Learned ASC appearing on behalf of the appellant in CA-2106/06 contended that where the property forming subject matter of the dispute was evacuee trust property, it could not have been allotted to anyone; that Ghani claimed this property on the basis of RL-II which appears to be bogus on the face of it. He next contended that if and when a question arises whether an evacuee property is attached to charitable, religious or educational trust or institution it shall be decided by the Chairman Evacuee Trust Property Board (ETPB) whose decision shall be final and shall not be called in question in any Court. He further contended that where the legislature has created a forum for deciding such question recourse must be had to that as jurisdiction of any other Court is expressly barred by Section 14 of Evacuee Trust Property (Management & Disposal) Act. The learned ASC argued further that where the Chairman Evacuee Trust Property Board after taking cognizance of the matter and recording evidence of the parties came to the conclusion that the property forming subject matter of dispute is an evacuee trust property, its judgment being final could not be called in question in a Civil Court. The respondent, the learned ASC maintained, in the first instance filed a revision before the Federal Government but for the reasons best known to him withdrew it; notwithstanding he could have pursued it and then filed a writ petition in the High Court if the decision of the Federal Government happened to be against him, but his failure to do so has blessed the judgment of the Chairman ETPB with finality. The decision of the Civil Court, the

learned ASC by concluding his arguments contended, being coram non judice has no effect altogether. The learned ASC in support of his contention placed reliance on the case of **Evacuee Trust Property Board. Vs. Mst. Zakia Begum and others (1992 SCMR 1313)**.

7. The learned ASC appearing on behalf of the respondents in Civil Appeal No. 2106 of 2006 contended that where the property being evacuee has been allotted to respondent No. 1 as back as 24.04.1960 vide RL-II No. 561 and at no stage has it been treated as evacuee trust property, claim of the Evacuee Trust Board was absolutely unjustified and so was its decision declaring it to be evacuee trust property vide judgment dated 03.01.1995. He next contended that inquiry was allegedly conducted as to the genuineness of the allotment of the property to the respondent but it being one sided has no effect that too when it has not been proved in accordance with law before any Court. The learned ASC by referring to the case of **Muhammad Jamil Asghar. Vs. The Improvement Trust, Rawalpindi (PLD 1965 SC 698)** contended that Evacuee Trust Board can only have assumed jurisdiction to decide if a question arises whether an evacuee property is attached to a charitable, religious or educational trust or institution or otherwise, but where there is no such question, the very jurisdiction of the Evacuee Trust Board to inquire into the matter becomes questionable. The learned ASC next contended that where the property in dispute has been in possession of the allottee ever since its allotment, claim of the Evacuee Trust Board would collapse like a house of cards. He next contended that

revision petition before the Federal Government or a writ petition could have been filed before the High Court but where in view of the judgment rendered in the case of **Federation of Pakistan through Secretary, Ministry of Religious Affairs/Minority Affairs, Government of Pakistan, Islamabad. Vs. Mufti Iftikhar-Ud-Din and another** (2000 SCMR 1) remedy of revision before the Federal Government has been held to be inadequate and the determination of disputed questions of fact without recording the evidence was not possible, recourse was rightly had to the Civil Court which being just and proper in the circumstances of the case cannot be looked askance at. He next contended that an isolated entry in the revenue papers showing the property to be Gaoshala Society Bar cannot make it charitable in the absence of any document showing its dedication to charitable, religious or educational purposes. The learned ASC by concluding his arguments contended that where there is no evidence much less conclusive on the record to show that the suit property being an evacuee property has ever been attached to charitable purposes etc., the judgment rendered by the Chairman Evacuee Trust Board cannot take precedence over the judgment of the Civil Court.

8. We have gone through the entire record carefully and considered the submissions of the learned ASCs for the parties.

9. Before we deal with the tug of war going on between the appellants and respondent of Civil Appeal No. 1540 of 2006



we would like to see as to what is the nature of the property; whether it is evacuee property simplicitor or Evacuee Trust Property; whether it has ever been allotted to Ghani, respondent No. 1 in Civil Appeal No. 2106 of 2006; and whether it could be treated as a property attached to charitable, religious or educational trust or institution.

10. A look at the extracts from the record of rights for the years 1938-1939 and onward would reveal that this property has been entered as Gaoshala Society Bar. These entries have been repeated till 1960-1961. After 1960-1961 the Auqaf Department took the control and management of this property and had been managing this property through lease to different persons as is evident from the entries made in the periodical records of 1964-1965, 1968-1969, 1980-1981, 1984-1985 and 1988-1989. Respondent No. 1 claims to be the allottee of this property through RL-II mentioned above but at no stage of time any entry of its allotment to the respondent figured in any of the periodical records ever since 1946-1947. The respondent alleged that this property was confirmed in his name but the entries in RL-II do not conform to his claim. He moved a petition under Sections 8 and 10 of the Evacuee Trust Property (Management & Disposal) Act No.XIII of 1975 in the Court of Chairman Evacuee Trust Board, Govt. of Pakistan but he could not substantiate his claim that the property in dispute was evacuee and that he was its lawful allottee. Even entries in *naqsha taqseem* do not support the contention that the property in dispute has ever been allotted to

the respondent. The evidence led in this behalf overwhelmingly proves that the property is Evacuee Trust Property ever since late 30s. The surprising part of the litigation is that the respondent himself invoked the jurisdiction of the Evacuee Trust Board for its verdict about the nature of the property but when the verdict given by the Board turned against him, he turned the table on the Board and proceeded to question its verdict through a revision petition. Somehow he withdrew it and instituted a civil suit questioning the verdict of the Chairman Evacuee Trust Board notwithstanding such verdict being amenable to the revisional jurisdiction of the Federal Government in the hierarchy established under the Act and then Constitutional jurisdiction of the High Court, could not have been challenged in the Civil Court especially when its jurisdiction was barred by Section 14 of the Evacuee Trust Properties (Management and Disposal) Act, 1975.

11. Now the question arises where jurisdiction of the Civil Court is expressly barred and the Court exercising jurisdiction under Section 8 of the Evacuee Trust Properties (Management and Disposal) Act is a Court of Plenary Jurisdiction in view of the provision contained in Section 21 of the Act, for the purposes of deciding the question, whether an evacuee property is attached to charitable, religious or educational trust or institution, how could a Civil Court sit in judgment over the judgment of the Chairman Trust Board when the law has blessed it with finality and made it immune from being questioned in any Court. In the case of **Evacuee Trust Property Board. Vs. Mst. Zakia Begum and others**

(supra) this Court after analyzing the relevant provision of the Evacuee Trust Properties (Management and Disposal) Act, held that the Chairman Evacuee Trust Property under Section 8 of the Act alone is competent to decide whenever any question arises as to whether an evacuee property is attached to charitable, religious or educational trust or institution or otherwise and that proceeding before the Civil Court shall be coram non judice. The same view was reiterated and reaffirmed in the case of Evacuee Trust Property Board through Deputy/Assistant Administrator, Evacuee Trust Property, Peshawar. Vs. Ali Bahadur (PLD 2011 SC 126) by holding as under :-

“Analyzing section 14 ibid, it is unambiguous that the jurisdiction of the civil Courts has been barred with respect to any matter which an officer appointed under the Act is empowered to determine; such jurisdiction is also ousted to grant and issue an injunction, process or order in respect of any action taken or to be taken by such officer in exercise of any power conferred by or under the Act. Undoubtedly, the Chairman of the Evacuee Trust Property Board is an officer within the contemplation of the section. Therefore, in order to settle the question about the ouster of jurisdiction it seems expedient to examine, what was the proposition involved in the suit and whether such a question was determinable by the Chairman or not: In this respect, it is foundational to evaluate the claim of the respondent in his suit/plaint; on the perusal thereof it is vivid that the respondent is seeking a declaration that the suit property is his exclusive

ownership and is not an evacuee trust property, consequently the appellant should be precluded from interfering into his ownership rights and appurtenances thereto; the appellant in defence joined issue with the respondent on these factual aspects and claimed the suit property being an evacuee trust property and it is on this account that the jurisdiction of the Court was challenged. Therefore, the key issue before the Court would be whether the property is an evacuee trust property otherwise? Now when the provisions of section 8 of the Act are adverted to, it specially mention "if a question arises whether an evacuee property is attached to a charitable, religious or educational trust, or not it shall be decided by the Chairman" meaning thereby that notwithstanding whether a declaration in terms of section 8 has been made or not by the Chairman, yet even if a question has arisen at any point of time about the status of the property it shall be the Chairman alone who under the Act shall be competent and empowered to determine and decide the question and the Court in view of the bar contained in Section 14 shall have no jurisdiction in the matter".

12. The argument that an isolated entry in the revenue papers showing it to be Gaoshala Society Bar cannot make it charitable in the absence of any document showing its dedication to charitable, religious or educational purposes is not correct as an argument of similar tenor was turned down by this Court in the

case of **Evacuee Trust Property Board. Vs. Rahim Khan and 3 others**

**(1989 SCMR 1605)**, by holding as under:-

*“The question of law noticed in the leave granting order ‘whether it is necessary to produce the deed of trust in order to show the real purpose of the trust’ has not been pressed as there is no representation from the side of the respondents. We may, however, observe that according to section 407 of the Principles of Hindu Law by D.F. Mulla (10<sup>th</sup> Edn.) no writing is necessary to create an endowment except where the endowment is created by a will, if the case is governed by the Indian Succession Act, 1925. The learned author in the commentary, has also referred to case law holding that the dedication of land for public temple is not a gift within the meaning of section 122 of the Transfer of Property Act, and, consequently, does not require to be effected by a registered instrument. We, are therefore, of the firm view that the evidence of extract from the Property Register showing the property to be in the name of the temple is sufficient for the purpose of holding that it is attached to a religious trust. It may be clarified, however, that while giving effect to this finding the relevant authorities will take into consideration the provisions of section 10 of the Evacuee Trust Property (Management and Disposal) Act, 1975 (Act XIII of 1975) under which property utilized bona fide against the satisfaction of verified claims in*

*respect of which P.T.D. were issued prior to June, 1968 have been validated and saved”.*

13. When we analyze this case in the light of the paragraph quoted above, it appears to be better than the case cited above, on the following grounds :-

- a) *that this property has been entered as Gaoshala Society Bar ever since 1938-1939 to 1960-1961;*
- b) *that nothing has been brought on the record to show that it has ever been individual property;*
- c) *that it has never been in possession of the respondents ever since its allotment; and*
- d) *that it has been under the control and management of the Auqaf Department ever since 1964-1965, which conclusively prove that the property being evacuee has been attached to charitable, religious and educational trust or institution.*

Above all else the declaration given by the Chairman Evacuee Trust Board which went unchallenged and thus attained finality prove that the property in dispute is evacuee trust property from whatever angle it is looked at. Reference to the case of **Muhammad Jamil Asghar. Vs. The Improvement Trust, Rawalpindi** (*supra*) has no application to the case in hand when the facts averred in the application moved by the respondent Ghani raised the question whether the property in dispute is attached to a charitable, religious or educational trust or institution etc., or not. A

reference to the case of Federation of Pakistan through Secretary, Ministry of Religious Affairs/Minority Affairs, Government of Pakistan, Islamabad. Vs. Mufti Iftikhar-Ud-Din and another (supra) too has no relevance to the case in hand as the provisions of Sections 8, 10 and 21 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 have not been held to have contained anything contrary to the injunctions of the Holy Quran and the Sunnah of the Holy Prophet (PBUH), and that the Courts already in place can continue, as final order so passed by the Federal Government is assailable before the High Court in exercise of its Constitutional Jurisdiction. The relevant paragraph is thus reproduced for the facility of the reference which reads as under :-

*“The providing of right of appeal against order of the Chairman passed under Section 8 of the Act XIII of 1975 should have been provided to comply with the requirements of principles of administration of justice in Islam as immunity sought to be granted to such an order by providing an inadequate remedy of revision would be repugnant to the injunctions of Islam. The appellant is accordingly directed to suitably amend the Evacuee Trust Properties (Management and Disposal Act, 1975 (Act XIII of 1975) by inserting a provision providing right of appeal against the order passed by the Chairman under Section 8 of the Act XIII of 1975. Such an appeal can be provided to lie before the High Court in line with the recourse adopted*

*in the Displaced Persons (Compensation and Rehabilitation) Act, 1958 and the Displaced Persons (Land Settlement) Act, 1958. If the declaration as to the nature of the property made by the Chief Settlement Commissioner and later by the Chairman could be made scrutable through an appeal to the High Court, no possible can be raised to the providing of the same remedy now under Act XIII of 1975. It is also to be noted that against the orders passed on other matter by the officers appointed by the Board, appeal has been provided to the higher officers of the hierarchy including the Chairman and against orders so passed the revision lies to the Federal Government. The said course of action can continue as before, as final order so passed is further assailable before the High Court by invoking the Constitutional jurisdiction vesting in it under Article 199 of the Constitution and a further petition for leave to appeal before the Supreme Court under Article 185 of the Constitution of Islamic Republic of Pakistan, 1973. The remedies, so provided, considering the nature of the legislature are in such matters sufficient and adequate. The amendment directed in the above terms shall be made in Act XIII of 1975 by the appellant by the 30<sup>th</sup> July, 1999".*

The paragraph reproduced above is clear and unambiguous.

Neither the judgment rendered in the case of **Federation of Pakistan through Secretary, Ministry of Religious Affairs/Minority**



**Affairs, Government of Pakistan, Islamabad. Vs. Mufti Iftikhar-Ud-Din and another (supra)** nor the paragraph reproduced above in any way leaves any scope for Civil Court to assume jurisdiction in the matters falling within the purview of Sections 8, 10 and 14 of the Act. The fora below as well as the High Court laboured under misconception to circumvent the application of the Act to justify assumption of jurisdiction which is clearly barred.

14. When preponderance of documentary as well as oral evidence on the record and verdict of the Chairman Evacuee Trust Board prove that the property in dispute is an evacuee trust property, the appellants and respondents in Civil Appeal No. 1540 of 2006 are left with no locus-standi much less a cause of action to lay their hand on its ownership in any form and in any forum.

15. As a sequel to what has been discussed above, appeal filed by the Evacuee Trust Board is allowed, the impugned judgments are set-aside while the suit pending in Civil Court in respect of property in question together with the application under Section 12(2) CPC is dismissed. Needless to say that where the basic order in favour of respondent No. 1 has been declared void *ab-initio*, entire superstructure raised thereon would automatically collapse.

**Judge**

**Judge**

Announced in Open Court at Islamabad on 13.01.2016.

**Judge**

'Not Approved For Reporting'

M. Azhar Malik\