

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE FAISAL ARAB

**CIVIL APPEALS NO.2215 TO 2222 OF 2006**

*(On appeal from the judgment dated 2.12.2003 of the High Court of Sindh, Karachi passed in Const.Ps.No.D-680/1989, 8-D/1991, D-452/1991 and D-2474/1995)*

**AND**

**CRL. ORIGINAL PETITION NO.31 OF 2008**

*(Contempt matter/disobedience of the Court order)*

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|----|---|-------------------|
| 1. | Younus Habib etc. <b>Vs.</b> Imranur Rashid etc.  | In C.A.2215/2006  |
| 2. | Mst. Zaibun Nisa Yaqoob etc. <b>Vs.</b> Zulfiqar Ali Agha etc.  | In C.A.2216/2006  |
| 3. | Muhammad Younus Habib etc. <b>Vs.</b> M.A. Baig Ghazi (decd.) through L.Rs. etc.                          | In C.A.2217/2006  |
| 4. | Mst. Zaib-un-Nisa etc. <b>Vs.</b> Ali Ahmed etc.  | In C.A.2218/2006  |
| 5. | Evacuee Trust Property Board through its Chairman <b>Vs.</b> Imranur Rasheed (decd.) through L.Rs. etc.   | In C.A.2219/2006  |
| 6. | Evacuee Trust Property Board through its Chairman <b>Vs.</b> Zulfiqar Ali Agha (decd.) through L.Rs. etc. | In C.A.2220/2006  |
| 7. | Evacuee Trust Property Board through its Chairman <b>Vs.</b> M.A. Baig Ghazi (decd.) through L.Rs. etc.   | In C.A.2221/2006  |
| 8. | Evacuee Trust Property Board through its Chairman <b>Vs.</b> Ali Ahmad etc.                               | In C.A.2222/2006  |
| 9. | Ali Ahmed etc. <b>Vs.</b> NAB through its Chairman etc.   | In Cr.O.P.31/2008 |

For the Appellant(s):  
(In CAs 2215-2218/06)

Mr. Khalid Anwar, Sr. ASC  
Mr. M. Afzal Siddique, ASC  
Mr. Mehmood A. Sheikh, AOR

Assisted by:

Mr. Yousaf Nasim, Advocate  
Mr. Hamid Ahmed, Advocate  
Raja Ikramullah, Advocate

	Mr. A.I. Chundrigar, ASC Mr. Mehr Khan Malik, AOR Mr. Shehzad Sarwar, Manager Litigation, HBL
(In CAs 2219-2222/06)	Hafiz S. A. Rehman, Sr. ASC Raja Abdul Ghafoor, AOR  Assisted by: Sheikh Rizwan Nawaz, Advocate
(In Cr.O.P.31/08)	Ch. Aitzaz Ahsan, Sr. ASC Mr. Gohar Ali Khan, ASC. Syed Feisal Hussain Naqvi, ASC  Assisted by: Ms. Zonaira Fayyaz, Advocate
For the Respondent(s): For private Respondents i.e. members of WCHS	Ch. Aitzaz Ahsan, Sr. ASC Mr. Gohar Ali Khan, ASC Syed Feisal Hussain Naqvi, ASC Syed Rifaqat Hussain Shah, AOR
For WCHS:	Mr. I. H. Zaidi, ASC
For KDA:	Syed Jamil Ahmed, ASC
For ETPB:	Hafiz S. A. Rehman, Sr. ASC Raja Abdul Ghafoor, AOR
For NAB:	Mr. Imran-ul-Haq Khan, Special Prosecutor NAB
For Govt. of Sindh:	Mr. Shehryar Qazi, Addl. A.G.
For the Federal Govt.:	Mr. Aamir Rehman, Addl. A.G.P.
Other respondents in CAs:	Ex-parte
Dates of Hearing:	18.10.2017, 19.10.2017, 23.10.2017, 24.10.2017, 08.11.2017, 09.11.2017 and 14 to 16.11.2017

### **JUDGMENT**

**MIAN SAQIB NISAR, CJ.-** These appeals are with the leave of the Court dated 6.11.2006. The dispute *inter se* the parties is in relation to the land measuring 32 acres and 30 ghuntas situated in the prime location of Deh Okewari, District Karachi East (*Okewari*), falling in Survey No.37 (*18 acres and 3 ghuntas*), Survey No. 160 (*10 acres and 25 ghuntas*) and Survey No. 161 (*4 acres and 2*

*ghuntas*). There appears to be no dispute that the aforesaid land was part of land originally owned by the Karachi Panjrapore Association (*the Association*). The land originally owned by the Association was registered on 25.04.1938 under Section 26 of the Companies Act, 1913, for the 'protection and preservation of the cattle and other animals and to arrange for their feeding etc.'. The dispute before us is regarding the proprietary title of the disputed land. The appellants on the one hand are the purchasers from the *haris* (*Haris*) of the said land to whom certain leasehold rights have been granted by the Evacuee Trust Property Board (*ETPB*), whereas the contesting respondents i.e. allottees of the Works Cooperative Housing Society (*WCHS*) claim that the land has been transferred to WCHS by the Karachi Development Authority (*KDA*). The key questions involved in this matter are:

- (a) what was the status of the Association after the partition of the subcontinent; whether it remained active or did it become an evacuee;
- (b) whether the property in question was evacuee trust property or not;
- (c) whether the property had been validly acquired by the Federal Government for the purposes of establishing a police line, if so, to what extent and whether after shifting the Capital from Karachi to Islamabad such acquired land, which had validly vested with the Federal Government, had been lawfully given to the KDA and subsequently transferred by the KDA to WCHS; and
- (d) whether the land was factually and validly leased to the *Haris* by the Association or the ETPB, and they had validly transferred it to the appellants; and what is the status of the appellants.

2. To address these questions, it is expedient to consider the relevant facts, which can be categorized into four transactions which are pivotal to the required determination; namely, (1) the acquisition proceedings with regard to the 8 acres of the disputed land in the year 1954, (2) the decision of this Court in **Madhavji Dharasibhai vs. Karachi Panjrapore Association (PLD 1957 SC 83)** declaring the Association to be ‘evacuee’ under Section 2(2)(d) of the Pakistan (Administration of Evacuee Property) Ordinance 1949 as amended in 1951 (*Ordinance of 1949*) and directions to determine whether the land owned by it was ‘evacuee trust property’, (3) the issuance of the Martial Law Regulation No.57 (*MLR 57*) in the year 1983, the application of which was limited to encroachments of ‘evacuee trust property’ under the ETPB, and (4) the issuance of lease dated 27.7.1990 (*Lease Deed*) for 99 years. Though the impugned judgment addresses these events, a brief overview of the same is given for further clarity.

3. The partition of the sub-continent in 1947, marked the creation of a unique category of ‘evacuee’ persons and entities who needed to be adequately and justly dealt with under the law of the country. While ‘evacuee property’ has over the years been allotted to immigrants from the other side of the border or otherwise, the administration of ‘evacuee trust property’ i.e., the properties formerly owned by trusts was and remains an ongoing obligation of the government. The Ordinance of 1949 (*later amended in the year 1951*) was introduced to cater to both these categories of properties. Section 6 of the Ordinance draws a fine distinction between the treatment of the two types of property *ibid*: while subsection (1) of Section 6 provides that ‘evacuee property’ is to completely vest in

the Custodian, subsection (2) thereof provides that ‘evacuee **trust** property’ will only temporarily vest in the Custodian who was duty-bound to appoint fresh trustees for the same and till such time that new trustees were appointed, he was to ensure that such property was utilized for the original purposes of the relevant trust. The Association was indeed a trust but it was only declared ‘evacuee’ a decade after partition by this Court in **Madhavji Dharasibhai’s case** (*supra*). The Association owned huge chunks of property in the city of Karachi, which was at that time the Federal Capital of the Country; the disputed land was allegedly being utilized for agricultural purposes by the *Haris* (*originally as lessees of the Association*) who claim to be in possession of the same till date. Interestingly, 8 acres of the same land was also part of acquisition proceedings initiated by the Federal Government in the year 1954 for the purpose of construction of Police Lines. Notifications under Sections 4, 6, 9 and 17 of the Land Acquisition Act, 1894 (*the Acquisition Act*) have been placed on the record in this regard.

4. Mr. Khalid Anwar, learned Sr. ASC appearing on behalf of the appellants (*in CAs No. 2215-2218/2006*) commenced his arguments with a brief summary of facts. Placing his reliance on the judgment in **Madhavji Dharasibhai’s case** (*supra*), he submitted that the Association was conclusively declared ‘evacuee’ and thus the lands belonging to it including the disputed land was ‘evacuee trust property’. In this context, he read out the definition of ‘evacuee’ in Section 2(2)(d) of the Ordinance of 1949. He further submitted that as per Section 8 of the ETP Act 1975, the Chairman is the ultimate authority for determining whether a property is evacuee trust property and the fact that the ETPB has time and

time again referred to the disputed land as 'evacuee trust property' meant that the Chairman (*under Section 8 of the ETP Act 1975*) had made such determination with regard to the disputed land. He submitted that the *Haris*, the predecessors of the appellants were tenants of the Association from pre-partition days and they had been cultivating the land and paying *dhal* to the Association. Thus, after partition in 1947 and once the property of the Association was declared evacuee trust property, which also included the disputed property, the *Haris* retained their rights of tenancy. Such rights, he stated, attained finality when suit No. 3611/1978 filed by the *Haris* was decreed in their favor on 30.5.1984 and on the basis of which through filing of execution No.5 of 1984, the executing court ordered the execution of a lease deed of 33 years on payment of Rs.769.56/- per acre. The *Haris* made the said payment and this had validly resulted in the extension of the lease to 99 years in favor of the *Haris*, who for sufficient consideration transferred the same in favor of the appellants. Learned counsel unequivocally submitted that MLR 57 would not apply to the disputed land as the acquisition of leasehold rights by the appellants and their predecessors was legal and valid for all purposes and the said MLR only applied to encroachments on 'evacuee trust property'. On this basis he stated that the order of the Chairman, as authority, dated 10.6.1985 was not applicable to the disputed land which had been validly transferred to his clients. He added that it was precisely to nullify this order that paragraph 6A was incorporated in MLR 57 through an amendment in the year 1989 as clause (4) read with clause (1) of the said para specifically provides that the tribunal established thereunder will determine the scope of the application

of MLR 57, and evacuee trust properties falling outside it shall remain unaffected by MLR 57. Regarding the claim of the WCHS which rests on the acquisition proceedings in the year 1954, he submitted that there were certain insurmountable hurdles in the success of such a claim which were based on some critical aspects of these land acquisition proceedings which could not be ignored;

- (i) that the land acquisition proceedings of 1954 were initiated for the benefit of the Federal Government whereas the disputed land was evacuee trust property as confirmed by judgment in **Madhavji Dharasibhai's case** (*supra*); since evacuee trust property already vests with the Federal Government hence the Federal Government could not acquire its own land for a public purpose.;
- (ii) that the purpose of these land acquisition proceedings was the construction of the Police Lines which was abandoned after Karachi was no longer the Federal Capital past the year 1960, thereafter the land could not be transferred to KDA and subsequently the WCHS **unless** prior approval of the Federal Government was obtained since the purpose for acquisition did not remain the same. He added that the transfer of said land to the WCHS for purposes of a housing society did not satisfy the test of a public purpose;
- (iii) subsequently, these acquisition proceedings were illegally continued by the Provincial Government and culminated in an award of compensation which was also invalid;
- (iv) each of the two notifications in the year 1954 under Sections 4 and 6 of the Acquisition Act which were produced on the record related to only 8 acres out of Survey No.37 and the rest of the disputed land could not be covered under the same land acquisition

proceedings: in fact even to this extent he submitted that it was not a valid acquisition since evacuee trust land cannot be acquired. The notifications dated 12.1.1956 regarding Survey No. 161 were not produced and hence cannot be relied on without examining the contents thereof;

- (v) the entire land acquisition proceedings of 1954 are based on the false assumption that the disputed land was non-evacuee;
- (vi) the acquisition proceedings can only be concluded if the steps of such acquisition have been completed in accordance with the provisions of the Acquisition Act, and since the respondents have been unable to produce any evidence to the effect that any payment of award was made with regard to the land acquired, nor can possession be said to have transferred to them as per Section 16 of the said Act, thus these proceedings were incomplete and cannot be relied on.

5. He explained that as notices under Sections 9 and 10 of the Acquisition Act were sent to the Association instead of the Custodian Evacuee Property therefore this adds another lacuna to the 1954 land acquisition proceedings. Elaborating on his argument, he submitted that the ETPB was constituted for the first time by virtue of Section 3 and 4 of the ETP Act 1975 and on 03.05.1978 the Deputy Administrator, ETPB wrote to the KDA categorically pointing out that evacuee trust lands can neither be compulsorily nor unilaterally acquired for any Scheme sanctioned by the KDA and that the alleged acquisition by the KDA of the same had no legal validity. This letter also provided that under the ETP Act 1975, there is no statutory bar on the sale of evacuee trust lands provided that such sale is made with the prior approval of



the Federal Government. He clarified that the notification dated 15.06.1964 cannot be deemed to be an approval of the Federal Government for the transfer of acquired land since the said notification was merely sanctioning the approval of the KDA Scheme No.24/Town Expansion Scheme. He pointed out that although an offer was made by the Deputy Administrator for the KDA to approach the ETPB and agree on sale at the prevailing market rates, KDA failed to avail this gracious offer. Learned counsel also stated that although various other illegal acquisitions by the KDA were retrospectively validated by the ETPB but such validation expressly excluded the property/lands of the Association. He further stated that once the purpose of the land acquisition proceedings is abandoned, as was the case in these 1954 acquisition proceedings, they inevitably become void. In support of this the learned counsel relied on **Union of India v. Nand Kishore** (AIR 1982 Dehli 462) and **Industrial Development & Investment Corp. v. State of Maharashtra** (IR 1989 Bombay 156). With regard to his contention that the fact that possession is taken by the Government as per Section 16 of the Acquisition Act is essential to the conclusion of acquisition proceedings, he relied on the judgments of **Saradar Begum v. Lahore Improvement Trust** (PLD 1972 Lah 458) and **Nand Kishore's case** (*supra*). He stressed that it is admitted by the KDA that the possession till date remains with the *Haris* who are the predecessors of the appellants and in this regard he referred to the letter of the KDA dated 4.6.1989.

6. The learned counsel clarified that even if the award for compensation and the 1954 acquisition proceedings with regard to

8 acres of the disputed land are assumed to be legally valid, there is still the hurdle of illegality of the transfer of the said land by the Central Government to the KDA, sanctioning of town expansion Scheme No. 24 of the KDA [President Order No. 5 of 1957] vide notification dated 15.06.1964 wherein the KDA is directed to honor the commitments made by it *inter alia* to the WCHS with regard to “Block 8 & 9 of the land originally reserved for the Police Headquarters”. He continued that it is pertinent to note that neither can such sanctioning by the Federal/Central Government be seen as an approval by the Federal Government for the transfer of the land acquired by it for the Police Lines to the KDA, nor can it be used to conclusively determine the right of the WCHS to the disputed land since the said commitment was to be honored “as far as practicable” and hence no obligation was created on the KDA. He submitted that soon thereafter when the KDA attempted to resile from this commitment, the WCHS and KDA went into litigation which was settled in the two judgments of **Works Cooperative Housing Society v. Karachi Development Authority (PLD 1969 SC 391)** and **Karachi Development Authority v. Works Cooperative Housing Society (1978 SCMR 307)**. He further pointed out that in both the aforementioned judgments of 1969 and 1978, neither the Evacuee Custodian nor the ETPB were ever made party to the proceedings and therefore the judgements cannot be binding on them and must be disregarded completely to the extent of the present matter. Learned counsel pointed out that yet another critical point to note was that the WCHS itself later abandoned the prospect of claiming any land in Blocks No. 8 and 9 of KDA’s Scheme no.24 and instead accepted

alternative land. In this backdrop, learned counsel concluded his arguments by pointing out the irregularities in the impugned judgment which *inter alia* included the irregularity that a writ petition in the Sindh High Court cannot lie against a consent order or against an order in a revision petition which was itself decided by the Sindh High Court. In support of this contention he relied on **Muhammad Baksh v. Ghulam Hussain (1989 SCMR 443)**, **Muhammad Khan v. Mst. Ghulam Fatima (1991 SCMR 970)**, and **Faizur Rehman v. Rahman-ud-Din (1997 SCMR 1301)**. Another irregularity was that the appellants in the impugned judgment were allottees of the WCHS who derive their title from the KDA, however the KDA itself had never challenged the decision of the revision petition, neither did the WCHS, and these appellants-allottees therefore could not have challenged the same. Regarding the legality of the Chairman's order dated 10.6.1985, he referred to the decision of the tribunal which the KDA had approached for the ratification of the Chairman's order, whereby the tribunal categorically held that the Chairman had gone beyond his powers in issuance of the said order in its judgment dated 28.8.1989.

7. Mr. Aitzaz Ahsan, Sr. ASC for respondents No.1 and 6 (*respondents*), submitted that he represents the allottees of WCHS. He commenced his arguments by submitting that the WCHS derives its title to the entirety of the disputed land (*Surveys No. 37, 160 and 161*) through the KDA who admittedly allotted the said land to the WCHS; while 8 acres of the Survey No. 37 were validly acquired by the Government through the land acquisition proceedings in 1954 which were later validly transferred to the KDA, the rest of the 24 acres and 3 ghuntas of the disputed land were also validly

acquired by the KDA as this remaining land was notified to be part of the KDA Scheme No.24 and later the ETPB, through negotiations with the KDA, regularized this land in favor of the KDA as evidenced in various minutes of meetings of the ETPB. Regarding the 8 acres of land acquired through the 1954 acquisition proceedings, learned counsel for the respondents submitted that in the year 1954, the land acquisition proceedings for acquisition of evacuee trust property land were in accordance with Section 12 of the Ordinance, 1949 (as amended by Act of XXXI of 1951), clause (b) of subsection (3) of which specifically provides that nothing contained in the provisions of the Ordinance of 1949 shall affect the powers of the Central (*Federal*) and Provincial Government to requisition or acquire evacuee property, provided that the consent of the Federal Government is acquired prior to exercise of such powers. In response to the contention of the appellants' counsel that evacuee trust property cannot be acquired, he referred to **A.R. Niazi v. Pakistan (PLD 1968 SC 119)** wherein it was clarified that evacuee trust property is only a sub-specie of evacuee property. Elaborating on the said contention he submitted that these 8 acres of the disputed land were acquired by the Federal Government for the purposes of construction of the Police Lines. In this regard, he referred to the following notifications which fulfilled the requirement of a valid acquisition for public purpose under the Acquisition Act:

- Notification dated 21.5.1954 under Section 4 of the Acquisition Act (*pg. 25 of CMA No. 2659/2007*);
- Notification dated 21.5.1954 under Section 9 of the Acquisition Act (*pg. 28 of CMA No. 2659/2007*);

- Notification dated 8.6.1954 under Section 6 of the Acquisition Act (*pg. 36 of CMA No.2659/2007*); and
- Notification dated 8.6.1954, and 21.5.1954 under Section 17 of the Acquisition Act (*pgs 25 and 36 respectively of CMA No.2659/2007*) which according to the learned counsel directs the taking over of possession.

He submitted that in pursuance of the abovementioned direction regarding possession, possession was taken over by the Police and an award was made by DC, Karachi, for the compensation of the acquired land; as such Rs. 16,06,559.20/- was paid by the KDA. Thus, he submitted, the acquisition of 8 acres of the disputed land in Survey No.37 had been validly completed and acquired by the Federal Government which had subsequently been transferred to the KDA for Scheme N.24.

8. Regarding the remaining 24 acres and 3 ghuntas of the disputed land, he candidly conceded both in his written as well as oral arguments that no separate acquisition proceedings were ever carried out under the Acquisition Act, however the ETPB had accepted the KDA's request for acquisition of evacuee trust land falling within the boundaries of Scheme No.24.

9. Furthermore, he submitted that the Chairman's Order on 10.6.1985 in his capacity as Authority under MLR 1957 was conclusive in determining the fate of the disputed land and it was never challenged in this regard and it is settled law that even a void order must be challenged on a timely basis as per the law laid down in the judgment of **Pervaiz Musharaf v. Nadeem Ahmed (PLD 2014 SC 585)**. Hence the said order has now attained finality. He also vehemently asserted that the appellants' counsel's

claim that the WCHS had abandoned its claim to the disputed land is absolutely incorrect and such claim has never been abandoned by the WCHS. Further added, that in all, the KDA Scheme No.24 constitutes 2662 acres in Karachi, and hence setting it aside now will adversely affect tens and thousands of land allottees/owners. On the other hand, he submitted that the entire claim of the appellants stems from a Lease Deed dated 27.7.1990 which lacks any legal standing as determined by the Chairman's order dated 10.6.1985.

10. The learned counsel for the KDA and the ETPB appeared before this Court and chose to adopt the arguments of Mr. Aitzaz Ahsan, the learned counsel for the allottees of the WCHS.

11. We have heard the learned counsel for the parties and perused the record. The claim of the appellants is that on account of the judgment in **Madhavji Dharasibhai's case** (*supra*) declaring the Association as 'evacuee', all the properties belonging to the Association became evacuee properties and thus acquisition proceedings were *void ab initio*, having no bearing on the determination of the title of the disputed land. The respondents on the other hand claim that the said acquisition proceedings are valid and conclusive. In order to determine the status of the Association and ultimately the status of the land owned by it and also the status of the *Haris* and the appellants, it would be advantageous to consider the background and functioning of the Association prior to and post partition, which has been highlighted in detail in **Madhavji Dharasibhai's case** (*supra*). Around the year 1866, some of the Hindu citizens of Karachi formed the Association for the protection and preservation of cattle and, on 25.4.1938,

under a licence granted by the Central Government, it was registered under the Indian Companies Act, 1913 in conformity with section 26 thereof. The Association continued to work, but during the 1947 partition the Hindus migrated in large numbers from Karachi. In 1949, an application was made to declare the property belonging to the Association as “evacuee property”, which was so declared on 28.1.1950, by the Additional Custodian (Judicial) Evacuee Property, Sind and Federal Capital, Karachi. The Association went in revision to the Custodian of Evacuee Property Sind and Federal Capital Karachi, which was allowed by the order dated 18.7.1950, holding that: *“The fact that the bulk of the members of the Managing Committee are now evacuees, does not affect the character of the property because they have ceased to have any right or interest in the property”*. The result was that the Association was not an “evacuee” and the property belonging to it was not “evacuee property”. On account of amendments made in the Evacuee law by the Act of 1951, another application was presented in which it was alleged that the Association had become a defunct body and, therefore, the property owned by it should be declared “evacuee property”. The enquiries made by the Assistant Rehabilitation Commissioner in regard to the working and management of the Association revealed that the whole Association had collapsed and the management was being carried on by persons who had no authority to manage and supervise the affairs of the Association, nor was any general meeting of the Association held since 1947. The Association was given an opportunity to rebut the facts ascertained during the enquiry and the allegations made in the application. In this connection the statement of Seth

Jethanand Biranand, President of the Association, was recorded on 21.1.1950. It was stated that out of the members of the Managing Committee mentioned in the report of 1946, only 5 remained in Pakistan. The last annual meeting of the Association was said to have been held on 27.10.1947. Its minutes were recorded in the Proceedings Book, but they had not been confirmed or signed. In 1948, there was no annual general meeting. There was no record of the proceedings of the meeting claimed to have been held since 1947. In view of these facts, the Deputy Custodian (Judicial), Evacuee Property, Karachi, by order dated 18.8.1953, came to the conclusion that the Association had become defunct and by reason of the definition of "evacuee" given in Section 2(2)(d) of the Ordinance of 1949, the Association was declared an "evacuee" and its property "evacuee property". A revision petition filed by the Association was dismissed on 19.4.1956 by the Custodian, with the observation that the Association had ample opportunity to produce evidence before the Deputy Custodian in support of its plea that it had not ceased to function wholly or partially, but no such evidence was produced and on the evidence on the record, the conclusion was inescapable that the Association had at least partially ceased to function and the Association must, therefore, be held to be an "evacuee". On 22.5.1956, a petition under Article 170 of the Constitution of Pakistan, 1956 for the issuance of a writ was filed in the High Court of West Pakistan, Karachi Bench. It was prayed therein that the order of the Custodian be quashed and the Association be declared as "non-evacuee" and its properties be restored. The said petition was dismissed *vide* order dated 12.11.1956, wherein the finding of the Custodian was upheld. It



was also held that there was no doubt that the authority of the persons who were managing the Association at that time had not been approved by the Custodian. The said order was challenged through a petition for special leave to appeal by the Association which was allowed. Another petition for the issuance of a writ was also made to this Court by Madhavji Dharasibai and others (*for themselves and on behalf of the members of the Hindu community who had made endowments and paid contributions for the objects of the Association*) under Article 22 of the Constitution of Pakistan, 1956. It was alleged that the Fundamental Rights guaranteed by Article 15 thereof with respect to the protection of property rights and Article 18 thereof with respect to their right to establish, maintain and manage their religious institutions had been violated by the order of the Custodian. This Court while declaring the Association as an “evacuee” observed that “*As a matter of fact, under section 76 of the Companies Act, a company is under a statutory obligation to convene a general meeting once at least in every calendar year and not more than 15 months after the holding of the last preceding general meeting, and Associations, like the appellant-Association registered under section 26 of the Companies Act, are also subject to the same obligation under subsection (3) of section 26. This could not be done for a number of years and the Association has, therefore, ceased to function, wholly or partially, as mentioned in clause (d) of subsection (2) of section 2 of the Pakistan (Administration of Evacuee Property) Ordinance, 1949. At this point, it might conveniently be mentioned that the alleged, functioning of the Association, after it ceased to function in accordance with the Companies Act, and its Articles of Association, was clearly under the*

*control of persons, who could not derive their authority from the aforesaid instruments, and whose authority therefore required the approval of the Custodian, if the Association were not to fall within the definition of "evacuee" cited above. It is quite clear that the approval of the Custodian was neither sought nor recorded at any time."* However, after observing that "no step was ever taken to find out that property was held in trust; for religious or charitable purposes; for according to subsection (2) of section 6, the custody of the Custodian over such property is only a temporary one and the income has to be applied for carrying on the purposes of the trust. It appears that this aspect of the case was not pressed before the High Court, Karachi Bench, nor is there anything to show that at any stage did the Custodian ever apply his mind to it, though in view of the allegations of the appellants such a determination was necessary", the High Court was directed to issue a writ of mandamus to the Custodian to take such action as is provided by section 6 (2) aforesaid in respect of any property or properties of the Association which he may find, after enquiry, to be "property held in trust for religious or charitable purposes".

12. From the above it is clear that after independence, the Association became evacuee and as such its properties also became evacuee property. Now we come to the second question whether the properties of the Association were held in trust for religious or charitable purposes. In this regard it is to be noted that no specific order of the Custodian in this regard has been produced by either of the parties, before this Court or before the forums below, thus, we have to consider other material available on the record. In this regard it is to be noted that in the Schedule

appended with MLR 57 in terms of Paragraph 1 thereof the property of the Association was mentioned as the evacuee trust property under the Evacuee Trust Property Board. For reference, Paragraph 1 alongwith the relevant portions of the Schedule is reproduced below:

1. Martial Law Administrator Zone ‘C’ or any other person or authority, authorised by the Chief Martial Law Administrator in this behalf, may, if he or it is of the opinion that any part of the agricultural land specified in the Schedule to this Regulation and belonging to the defunct Evacuee Trusts so specified and now vesting in the Evacuee Trust Property Board has been acquired, entered upon, or taken possession of by any person illegally or by any person illegally or by fraud, misrepresentation or otherwise by order cancel such acquisition or as the case may be, order the ejectment of such person and further order that the said property shall forthwith be restored to the Evacuee Trust Property Board free from all encumbrances.

THE SCHEDULE		
[See Paragraph 1]		
Name of Deh	Area of land	Survey No. & Area
(1) Pinjrapur Trust	Acres, Ghuntas	
....		
2. Deh Okewari Distt	608, 02	..... $\frac{37}{18-03}$ , $\frac{160}{10-25}$
		..... $\frac{161}{4-02}$

A perusal whereof makes it clear that the property in issue was mentioned as the property belonging to the defunct Association and its supervision was vesting in the ETPB.

13. With regard to the validity of the acquisition proceedings of the 8 acres of the then evacuee land, reliance may be placed upon Section 12 of the Pakistan (Administration of Evacuee Property) Ordinance, 1949 (as amended by Act of XXXI of 1951) which is reproduced hereunder:

Chapter II

Appointment of Custodians and Vesting and Possession of Evacuee Property

12. Exemption from legal process.- (1) Property which has vested in, or of which possession has been taken by, the Custodian shall be exempt from all legal process, including seizure, distress,

ejectment, attachment or sale by any officer of a Court, and no injunction or other order of whatever kind in respect of such property shall be granted by the Court or any other authority.

(2) Upon the commencement of this Ordinance, any such legal process as aforesaid subsisting immediately before such commencement shall cease to have effect, and all evacuee property in custody of any Court, or receiver, guardian or other officer or person appointed by it, shall, upon delivery of the same being called by the Custodian, be delivered to the Custodian.

(3) Nothing contained in the foregoing sub-sections shall—

- a) prevent a Registering Officer from ordering registering of a deed of sale or exchange relating to evacuee immovable, or a Civil Court from ordering specific performance of a contract of sale or exchange of any such property where the sale or exchange or contract of the same has been duly confirmed or approved by the Custodian and the required certificate has been granted by him; or
- b) affect any power conferred on the Central Government or by or under any law for the time being in force to requisition or acquire property, and it is hereby declared that if by or under such law or any other law for the time being in force, a like power is conferred upon or delegated to a Provincial Government the Provincial Government may exercise the same in relation to evacuee property with and only with the previous approval of the Central Government and subject to such direction as the Central Government may at any time see fit to give.

Hence in light of Section 12(3)(b) *ibid*, an exemption was granted to the Federal Government for the acquiring of evacuee land and hence the acquisition of the 8 acres of Survey No.37 of the disputed land by the Federal Government was in accordance with the law and hence the acquisition proceedings were validly initiated.

14. In view of the above, the dispute remained that whether the disputed land being evacuee trust property could be acquired by the government under the land acquisition proceedings. It is an undisputed fact by the parties concerned that prior to the **Madhavji Dharasibhai** judgment in 1957, the lands/properties of the Association had not been declared as evacuee trust property and thus the notifications made under

Section 4 and 6 of the Acquisition Act in this regard were valid. For purposes of convenience, relevant portions of these notifications are reproduced hereunder:

Notification under Section 4 of the Acquisition Act;

The Gazette of Pakistan  
May 21, 1954

Karachi 15 May, 1954

**No. 25/10/Rev 53.**- Whereas it appears to me that land specified in the Schedule hereto are likely to be needed/to be taken by Government at the expenses of the Government of Pakistan, and for the purpose specified against it in the Schedule.

It is hereby notified under the provisions of Section 4 of the Land Acquisition Act 1 of 1984, as amended by Act XXXVIII of 1923 that the said lands are likely to be needed for the public purpose specified in the Schedule.

Any person hereby interested in the said lands are hereby warned not to obstruct or interfere with any surveyors or any other persons employed on the said land for the purpose of the said acquisition. Any contract for the disposal of the said lands by sale, lease, mortgage, assignment, exchange or otherwise on any improvements made therein without the sanction of the Collector after the date of this Notification will under Section 24 (Seventhly) of the said Act be disregarded by the officer assessing compensation for such parts of the said land as may be finally acquired.

.....If the acquisition is in part or wholly abandoned, the facts will be duly notified on the Pakistan Government Gazette.

I further direct under Sub-Section (4) of Section 17 of the said Act that as the acquisition of the said land is urgently necessary, the provisions of Section 5-A of the said Act shall not apply in respect of the lands.

\*\*\*\*\*

Schedule

Taluka: Karachi – District: Karachi

Taluka	Deh	S.No.	Area of S.No. (in acres)	Approximate area required (in acres)	Purpose of acquis..
.....	....	....	.....	.....	....
.....	....	....	.....	.....	....
Karachi	Oke- wari	37	18-3	<u>8-0</u>	For the <u>construction of Karachi Police Lines etc.</u>

.....  
(Stamp of A.T. Naqvi  
Chief Commissioner, Karachi)

[Emphasis applied]

Notification under Section 6 of the Acquisition Act;

CHIEF COMMISSIONER’S SECRETARIAT  
(Revenue Department)

**No.25|10|Rev.53.** – Whereas by notification in the Revenue Department No.25|10|Rev.53 dated 15<sup>th</sup> July 1954, it was notified that the lands specified in the schedule hereto were needed for the purpose stated in the said notification viz., for construction of Police Lines, etc., and whereas I am satisfied that the said lands are needed for a public purpose as specified above.

It is hereby declared under the provisions of Section 6 of the Land Acquisition Act, 1894 (1 of 1894) that the said lands are needed for public purpose as stated above.

.....He (*Deputy Collector Land Acquisition*), *Karachi*) is also directed under Section 7 of the said Act to take order for the acquisition of the said lands.

And whereas the acquisition of the said lands is urgently necessary, I further direct under sub-section (1) of Section 17 of the said Act that the Collector shall on the expiration of 15 days from the publication of the notice relating to the said lands under sub-section (1) of Section 9 of the said Act, take possession of all the waste and arable lands specified in my notification aforesaid mentioned.

....  
....

*****					
Schedule					
Taluka: Karachi – District: Karachi					
Taluka	Deh	S.No.	Area of S.No. (in acres)	Approximate area required (in acres)	Purpose of acquis..
.....	....	....	.....	.....	....
.....	....	....	.....	.....	....
Karachi	Oke- wari	37	18-3	<u>8-0</u>	For the <u>construction of Karachi Police Lines etc.</u>
..... A.T. Naqvi Chief Commissioner, Karachi					

[Emphasis applied]

A perusal of the notifications above reveals that both were made under Section 17(1) of the Acquisition Act by virtue of which, on the expiration of 15 days from the publication of the notice relating to the said lands under sub-section (1) of Section 9 of the said Act, possession can be acquired by the Federal Government regardless of whether statutory award of compensation is made (*as required under Section 11 of the Acquisition Act*) to the persons entitled by such time. Needless to observe that the disputed land, to the extent of 8 acres, vested absolutely in the Federal Government once possession of

the same was taken under Section 16 of the Acquisition Act, which is reproduced hereunder;

16. Power to take possession.— When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.  
[Emphasis supplied]

Evidence of the taking of possession has been proved by the learned counsel for the respondents *vide* letter from the Mukhtiarkar to the Assistant to the IG Police dated 21.10.1954 which provides that possession was taken over by the Police on 21.10.1954. Although the learned counsel for the appellants has claimed that the disputed land is presently in possession of the appellants, he has failed to produce any evidence to controvert the fact that the possession was taken over under Section 16 by the Police, in effect completing the procedure of acquisition, or that at the time of acquisition, the *Haris* were occupying the disputed land and the same was not taken over by the Government. Once the land so acquired vested absolutely in the Federal Government, the Federal Government was competent to transfer the same to the KDA as there is no prohibition in the Acquisition Act in this regard, and this is in consonance with the law laid down in the judgments reported as **Muhammad Hussain Beg v. Govt. of West Pakistan (PLD 1961 Lah 696)**, **Syed Nazar Abbas Naqvi v. Commissioner Sargodha Division (PLD 1993 SC 455 at pgs 462-463)**, **Asmat un Nisa v. Govt. of NWFP (2010 SCMR 480 at pg 490)**, and **Rana Abdul Majid v. Faislabad Development Authority (1994 MLD 1895)**. The approval of the Federal Government for such transfer was given *vide* notification dated 19.10.1963 made by the Basic Democracies Social Welfare and Local Government Dept.,

which is a department of the Federal Government, as such, it constitutes a valid transfer for all legal purposes.

15. The amount of compensation to be awarded in this regard had been calculated as Rs.3000/- per acre according to the Award made by the Deputy Commissioner, Karachi vide notification dated 19.10.1963. The payment made by the KDA in this regard is evidenced in the challan dated 30.11.1964 (*at pg. 82 of CMA No.2659/2007*) referred to by the counsel for the respondents, the contents of which are reproduced hereinbelow;

-82-

**U R G E N T**

One copy to be immediately returned to the Accounts issuing the cheque with the acknowledgment on the duly signed and stamped.

To: The Deputy Commissioner, Karachi.

9543  
11/2/64

**M E M O**

S-267/K-63 Karachi, the 30. 11/1964.

Cheque No. 589865 dated drawn

Bank is forwarded herewith in payment

of bills noted below :-

B. R. No.	PARTICULARS OF BILLS PAID			NET AMOUNT
	NO.	DATE		
-248				
			Pay toward compensation	
			of land acquired for	
			Scheme No. 24 (Country	Rs. 1606.55 7/20
			Club Road)	
			(Rs. Sixteen Lacs Six thousand	
			five hundred fifty nine and three twenty six)	

Particulars of the retrenchments made from bills marked (X) are given in the attached slips.

DC Karachi demand letter No. LA/M/980/64 of 26/6/64 refers.

Accounts Officer,  
Water/Development Wing,  
K. D. A., Karachi.

Copy to:  
a) Works Section,  
b) The Executive Engineer,  
Survey & Investigation.

checked from relevant file  
& found correct

Attested. G. S. T.

2/6/74

Deputy District Officer (General)  
Karachi-I (Old Town)



The acquisition proceedings which commenced in the year 1954, thus stood concluded after due payment made as evidenced above, which was in accordance with the market rate calculated in the award made by the Deputy Commissioner on 19.10.1963.

16. As argued by the learned counsel for the respondent, the land acquired for a particular purpose can be subsequently used for a different purpose. Reliance in this behalf may be made to the judgments reported as **Muhammad Hussain Beg v. Govt. of West Pakistan** (PLD 1961 Lah 696), **Syed Nazar Abbas Naqvi v. Commissioner Sargodha Division** (PLD 1993 SC 455 at pgs 462-463), **Asmat un Nisa v. Govt. of NWFP** (2010 SCMR 480 at pg 490), and the law laid down in **Rana Abdul Majid v. Faisalabad Development Authority** (1994 MLD 1895) whereby it was held that once land has been acquired by the Government, the title no longer vests with the original owners. Further, as held by this Court in the judgments reported as **Pakistan v. Muhammad Ali** (PLD 1960 SC 60 at pgs 60,64, 67-70) and **Muhammad Ishaq v. Govt. of Punjab** (2002 SCMR 1652 at pg. 1661) the acquisition of land for a housing society is recognized as a public purpose. In light of the above and the notification under Section 9 of the Acquisition Act (pg. 28 of CMA No. 2659/2007), the said 8 acres of the disputed land are held to be validly acquired by the Federal Government under the 1954 acquisition proceedings.

17. The law governing evacuee trust property however underwent a sudden change in the year 1983, when MLR 57 was promulgated solely for the purposes of removing illegal encroachments (*property acquired illegally or by fraud or misrepresentation or otherwise*) by Government and private organizations on the evacuee

trust properties, which lands were to be restored to the ETPB. The appellants, who are the successors in interest of the *Haris*, maintain that pursuant to lease obtained by them from the ETPB for 33 years, which was later extended to 99 years in the year 1990, they were the rightful occupants of the disputed land and MLR 57 was not applicable to any evacuee trust land which was legally transferred to any person. The main thrust of the argument of appellant's counsel was that since the said lease was granted to the *Haris* pursuant to the judgment of the learned Trial Court dated 30.5.1984, which was upheld in appeal *vide* judgment dated 31.8.1988, therefore, the said *Haris* were lawful occupants of the disputed land.

18. In this regard it is to be noted that Paragraph No.1 of MLR 57, reproduced hereinabove, makes it abundantly clear that the disputed land was conclusively declared to be 'evacuee trust property' and hence any such property would be ordered to be restored. Moreover, paragraph 5 of MLR 57, without making any exceptions of any kind, provides that all judgments or orders of any Court before the promulgation of MLR 57, shall abate. For purposes of reference, paragraph 5 is reproduced below:

5. Every judgment or Order of any Court including the Supreme Court, High Court, Tribunal or authority given or made before the commencement of this Regulation, whether pending in the Supreme Court, Tribunal or authority shall abate.

In light of the above paragraph, as rightly held by the learned High Court in its findings in the impugned judgment, since all judicial proceedings and orders pronounced by different Courts prior to the promulgation of MLR 57 stood nullified, it would be a useless exercise to go into details with regards to any such judgments.

Needless to observe that when MLR 57 was promulgated, the appeal was pending before the appellate Court and as per above paragraph, the same stood abated, but the Appellate Court continued with the proceedings on the pretext that the *Haris* were lawful occupants of the same. Whereas, the fact that the *Haris* were lawful occupants had never been determined, which fact was determined by the Chairman, ETPB *vide* order dated 10.6.1985 passed under MLR 57 in his capacity as Authority. Therefore, the land of the Association as detailed in the Schedule to MLR 57 was conclusively declared evacuee trust property and only a legally valid transaction, agreement, lease etc., acquired prior to MLR 57 would be saved from the impact of paragraph 6 of the MLR. Thus, the remaining 24 acres and 3 ghunats of land, on account of the above, were saved from operation of paragraph 6 of MLR 57 which mandated that the land could be disposed of.

19. With regard to the remaining portion of the disputed property measuring 24 acres and 3 ghuntas, it is to be noted that the ETPB, under Section 4(d) of the ETP Act 1957, was authorized to sell or transfer the evacuee trust property provided that prior approval of the Federal Government was obtained in this regard. The said land fell within the boundaries of Scheme No.24, as such its possession was taken over by the KDA. The ETPB had for the first time raised the issue of the purported illegal occupation of evacuee land in the year 1968, conceding that a detailed circular in this regard was issued by the ETPB *vide* Circular No. ETPB/68/4152 dated 13.06.1968, whereby the ETPB categorically stated that where evacuee trust lands had already been taken over by the KDA, compensation on reasonable rates would be decided

upon and the matter henceforth would be disposed of. Subsequent to the issuance of the abovementioned Circular, the District Evacuee Trust Committee in its meeting held on 23.1.1969 (*Minutes of Meeting reproduced in letter of the ETPB*) resolved that the ETPB should be paid by the KDA for all of the land falling within KDA Scheme No.24 (2662 acres) on the basis of the compensation award in 1963 and based on the market rate prevailing at the time, compensation payable for 268-13 acres (*which according to the learned counsel meant evacuee land that was in addition to the 256 acres already paid for i.e. inter alia 8 acres of the disputed land*) was calculated at Rs.13,17,216.24 which was inclusive of interest from 7.5.1965 to 30.6.1971. Full payment of this amount was made through cheque No.CCC-982502 dated 30.7.1971, as evidenced in letter dated 15.9.1971, which is reproduced hereunder;

4- The Secretary, Divisional Evacuee Trust Committee forwarded extract of minutes of the 20th Meeting of the Divisional Evacuee Trust Committee with his letter No.II(41)/65-Part-I/73, dated the 7th March, 1969 in which it was decided that the rates fixed by the Dy. Commissioner, Karachi may be accepted and the K.D.A. should pay the outstanding amount to the Divisional Evacuee Trust Committee. The interest at the rate of 6% was to be charged from date of provision i.e. 7-5-1965 (the date on which the Director General, KDA agreed that the Trust lands be taken by K.D.A.). The Assistant Accounts Officer-II KDA was accordingly requested to calculate the total amount which was to be paid to the Administrator/Secretary, Divisional Evacuee Trust Committee. A copy of the calculations made by the Assistant Accounts Officer-II, KDA is enclosed which shows that total amount of Rs.13,17,216.24 was to be paid. This amount was sent under cheque No.CCC-982502, dated 30-7-1971.

*Altat*  
*True copy*  
 Sd/- 9-9-1971  
 LAND ACQUISITION  
 F.O.A. KARACHI

Thus, at that point, all formalities were complete and the land, to that extent too, stood conclusively transferred to the KDA.

20. As we have already held hereinabove 8 acres of Survey 37 of the disputed land had validly been acquired under the acquisition proceedings of 1954 and the same were validly acquired by the KDA and transferred to WCHS. We further hold that the remaining 24 acres and 3 ghuntas, which was evacuee trust property for all legal purposes after the promulgation of MLR 57, was legally and validly transferred/sold by the ETPB to the KDA in accordance with Section 4(d) of the ETP Act 1957.

21. With regard to the question whether the land was factually and validly leased out to the *Haris* and thus whether they had validly transferred it to the appellants or not; suffice it to say that as mentioned above in detail, the bulk of the members of the Managing Committee of the Association left the country and the remaining members were insufficient in number to complete the quorum, and further the annual general meetings of the Association could not be held over a long period of time, as such the Association had become defunct and ceased to function. In such a situation, it is not conceivable that the occupation of the land of the Association by the *Haris*, even if it was on lease obtained from the then Management Committee, when it was functional, could by any stretch of imagination be considered to be valid when the said Committee had become defunct. So when the title of the *Haris* was not valid, obviously, they could not transfer a better title to the appellants.

22. In light of the above, these appeals are dismissed.

23. In the circumstances when the appeals have been dismissed, we do not want to further proceed with the contempt

matter, resultantly, the same (*Criminal Original Petition No.31 of 2008*) is accordingly disposed of.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court  
on **16.2.2018** at **Islamabad**  
**Approved for reporting**  
**Waqas Naseer**

CHIEF JUSTICE