IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE SH. AZMAT SAEED.

C. A. NO. 204-L OF 2015, CMA. NO. 61 OF 2016 IN C. A. NO. 204-L OF 2015.
(On appeal against the judgment dt. 20.03.2015 passed by the Lahore High Court, Lahore in C. R. Nos. 1575, 1882 and 1883 of 1999).

Province of the Punjab through Collector, Sheikhupura, etc. ...Appellant(s)
Versus
Syed Ghazanfar Ali Shah, etc. ...Respondent(s)

AND

C. A. NO. 205-L OF 2015, CMA NOS. 974, 62 AND 117 OF 2016 IN C. A. NO. 205-L OF 2015.

Province of the Punjab through Collector, Sheikhupura, etc. ...Appellant(s)
Versus
Iqbal Ahmad (decd) through his L.Rs. etc. ...Respondent(s)

AND

C. A. NO. 206-L OF 2015, CMA NOS. 63 OF 2016 AND 1604-L OF 2015 IN C. A. NO. 206-L OF 2015.
(On appeal against the judgment dated 20.03.2015 passed by the Lahore High Court, Lahore in C. R. Nos. 1575, 1882 and 1883 of 1999).

Province of the Punjab through Collector, Sheikhupura, etc. ...Appellant(s)

Versus

Fazal Dad Khan, etc.
Iqbal Ahmad (decd) through his L.Rs. etc. ...Respondent(s)

For the appellant(s): Mrs. Aasma Hamid, Addl. A. G. Pb.
Rana Shamshad Khan, Addl. A. G. Pb.
Rao M. Yousaf Khan, AOR (Absent)
(in all cases)

In CA.204-L/2015.

For respdt. 1: Mr. M. Muzammil Khan, Sr. ASC.

For respdts. 2-3: Mr. Tahir Naeem, ASC.

For respdts. 4-15: N.R.

In CA.205-L/2015.

For respdts. 1, 2(b)-2(d), 3-8: Syed Najmul Hassan Kazmi, Sr. ASC

For respdt. 2(a) : Raja M. Ibrahim Satti, Sr. ASC.

For L.Rs. of respdts. 10: Mr. M. Muzammil Khan, Sr. ASC.

For respdts. 2(e) to 2(j), 9, 11-25: N.R.

In CA.206-L/2015.

For respdt. 1 : Ch. M. Masood Akhtar Bhan, Sr. ASC.

L.Rs. of respdt. 7: Mr. M. Muzammil Khan, Sr. ASC.

For respdts. 2-6, 8-15: N.R.

In CMAs. 61-63/2016: Ms. Aasma Hamid, Addl. A. G. Pb.
(For bringing on record LRs of Syed Ghazanfar Ali Shah). Rana Shamshad Ahmed, Addl. A. G. Pb.

In CMA. 117/16 : Syed Ashiq Raza, ASC.
(Intervenor).

In CMAs. 974 and 1604/L/16: Nemo.
(Intervenor).

Date of Hearing: 21.11.2016. (Judgment Reserved).

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JUDGMENT

EJAZ AFZAL KHAN, J.- These appeals with the leave of the Court have arisen out of the judgment dated 20.03.2015 of the Lahore High Court whereby the learned Single Judge in its chambers dismissed the revisions petitions filed by the appellants and upheld the judgments and decrees of the learned Appellate Court.

2. Brief facts of the case are described in paragraph one of the impugned judgment which reads as under :-

> *"Briefly the facts are that Syed Ghazanfar Ali Shah and legal heirs of Syed Raza Ali Shah respondents (hereinafter to be referred as plaintiffs) brought a suit for possession with the assertion that land measuring 117 acres fully mentioned in the body of the plaint was evacuee property, which was leased out to the petitioners/Forest Department (hereinafter to be referred as the defendants) for a term of twenty years vide Notification dated 27.07.1950. However, out of the said property a chunk of land measuring 13 acre 5 kanals and 12 marlas was released and restored to the original owners on 27.1.1959 whereas rest of the property measuring 103 acres 2 kanals and 8 marlas remained in occupation of the defendants. It is also averred in the plaint that whole of the disputed land being evacuee property was available for allotment to the displaced persons and after due verification of*

claims of the plaintiffs the same was proposed to the them, which was subsequently confirmed to the plaintiffs by duly attestation of RL-II in pursuance of the issuance of No Objection Certificate by the Forest Department/defendants. It is also pleaded in the plaint that as the disputed property was proposed to the plaintiffs and later on it was confirmed, therefore, property in disputed became private property and no nexus was attached with the Rehabilitation/ Settlement authorities whereas the lease period of defendants was extended for another ten years, which expired on 26.07.1980, but despite of the best efforts made by them, the plaintiffs could not succeed to take physical possession in spite of that the defendants had no right to retain possession thereof, which constrained the plaintiffs to institute the suit for possession. The said suit was resisted by the defendants with the assertions that disputed property is owned by them and that no NOC was issued on behalf of the department."

3. The points raised and noted at the time of grant of leave read as under:-

"The suit for possession filed by the respondents vis-à-vis 117 acres of land has been decreed by the learned Trial Court only to the extent of 13 acres and 5 marlas, but it was dismissed to the extent of 103 acres and 2 marlas. The respondents challenged this judgment and decree in appeal(s) which has been accepted. The revision(s) filed by the petitioner has also failed.

2. Leave is granted in these cases, inter alia, to consider whether the directive issued by the Chief Settlement Commissioner dated 27.2.1965 was operative retrospectively and would not in any way entitle the respondents to have confirmation of the suit land in their favour as evacuee property; whether the courts below have rightly interpreted RL-II which per se was conditional on the issuance of NOC by the Forest Department when admittedly, till date there is nothing on the record to establish if such NOC has been issued by the Forest Department for the confirmation of the suit land in favour of the respondents; whether in the earlier round of litigation the points now agitated especially about the confirmation of land has been conclusively decided by this Court in favour of the respondents and against the petitioner, the Forest Department; whether the property till date does not vest in the petitioner (Forest Department) and the lease period in its favour has also expired, thus the petitioner is bound and required under the law to surrender the land to the respondents, who were the allottees of the land and in whose favour the confirmation has been made vide RL-II dated 30.11.1964; whether RL-II was duly and validly issued to the respondents and there is no element of fraud and misrepresentation in this

context; whether RL-II has been validly and properly construed and relied upon by the courts below."

4. Before the learned AAG for the appellants could take the rostrum to open up her case, a preliminary objection was raised by the learned ASC for the respondents for dismissal of appeal on account of having been filed against the dead persons. The learned AAG repelled the contention of the learned ASC for the respondents by submitting that where the appeal was filed against more than one person, death of one or two of the respondents would not render it liable to dismissal. To support her contention learned AAG placed reliance on the cases of **Farzand Ali and another. Vs. Khuda Bakhsh and others (PLD 2015 SC 187) and Muhammad Yar deceased through L.Rs. and others. Vs. Muhammad Amin deceased through L.Rs. and others (2013 SCMR 464).** She next contended that where the record was completed and corrected at the instance of the respondents themselves, appeal would not abate on this score. The learned AAG to support her contention placed reliance on the case of **Niamat and another. Vs. Allah Banda and another (1984 SCMR 321).** The learned AAG arguing the case on merits contended that where the Chief Settlement Commissioner placed ban on allotment of notified or un-notified evacuee land in possession of Forest Department vide Memorandum dated 27.02.1965, its allotment could not be confirmed in the name of any claimant and that the judgments and decrees of the fora below as well as the High Court being against law merit outright annulment. The learned AAG to support her contention placed reliance on the cases of **Muhammad Ayub and others. Vs. The Province of Punjab (1989 SCMR 1033)**, **Province of Punjab. Vs. Muhammad Mahmood Shah (1991 SCMR 1426) and Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (2002 SCMR 703)**. The learned AAG next contended that mere allotment without confirmation does not create any right much less vested, therefore, memorandum mentioned above, would be applicable with all force and vigour to the allotment

which is subsequent to the date of issuance of memorandum. Learned Additional Advocate General to support her contentions placed reliance on the case of **Mian Rafi-ud-Din and 6 others. Vs. Chief Settlement and Rehabilitation Commissioner and 2 others (PLD 1971 SC 252).** The learned AAG went on to argue that where title of the respondents was disputed by the appellants in their written statement by asserting their own title, mere suit for possession without declaration could not be decreed. The learned Addl. A. G. placed reliance on the cases of **Muhammad Aslam. Vs. Mst. Ferozi and others (PLD 2001 SC 213) and Sultan Mahmood Shah through L.Rs. and others. Vs. Muhammad Din and 2 others (2005 SCMR 1872).** Deduction about issuance of NOC, the learned AAG contended, would be just conjectural when it has not been proved through primary or secondary evidence. She next contended that the letter purportedly issued by a Minister could not be banked upon without knowing where did it come from and whether it was ever issued by the Minister it was attributed to. She lastly argued that neither the High Court nor the fora below considered the documents showing that the land forming subject matter of dispute was in fact purchased by the Forest Department.

5. Learned ASC appearing on behalf of respondent contended that the land being evacuee was allotted to Ghazanfar Ali, respondent No. 1 and his brother Ali Raza predecessor-in-interest of respondents No. 2 to 9; that their status as allottees of the aforesaid land has never been disputed nor has it been challenged in any Court of law; and that failure of the appellants to challenge it at any stage of litigation would take away the ground from beneath their feet to challenge it, even if, it is assumed without conceding, that allotment in favour of the respondents was void. Even void orders, the learned ASC added, have consequences if not questioned within the prescribed period of limitation. The learned ASC to support his contention placed reliance on the cases of **Conforce Ltd. Vs. Syed Ali, etc (PLD 1977 SC 599) and S. Sharif Ahmed Hashmi. Vs. Chairman Screening Committee, Lahore and another (1978 SCMR 367).** Application of

memorandum banning allotment of land in possession of Forest Department, the learned ASC maintained, cannot be stretched to the present case when the land stood allotted to the respondents before its issuance, that too, when there is nothing in the memorandum providing for its retrospective operation. The learned ASC next contended that no documentary evidence has been brought on the record by the appellants to show that the land in dispute has ever been sold to the Forest Department, therefore, their claim about its sale was rightly turned down by the Court of appeal as well as the Court of revision. Reliance on the cases of **Muhammad Ayub and others. Vs. The Province of Punjab, Province of Punjab. Vs. Muhammad Mahmood Shah, and Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (supra)** the learned ASC argued, is misconceived when the memorandum cannot override or extinguish a right accrued nor could it restrict the powers of the Settlement Authority to allot the property. The learned ASC next contended that the judgments rendered in the cases of **Muhammad Ayub and others. Vs. The Province of Punjab, Province of Punjab. Vs. Muhammad Mahmood Shah, and Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (supra),** lack authoritative or even persuasive value when they were rendered in derogation of an earlier three-member bench judgment rendered in the case of **Wali Muhammad. Vs. Settlement Commissioner Sargodha Division, Sargodha and others (1984 SCMR 1574)**. The learned ASC next contended that where a party did not raise objection as to the admission of a document and its exhibition, it cannot subsequently complain about its mode of proof. Latter loss or lapse in production of the NOC, the learned ASC contended, would not have much meaning once its existence finds mention in RL-II and the letter dated 13.11.1988 issued by the Minister for Forestry, Wildlife and Fisheries Department. The said letter of the Minister, the learned ASC argued, would also prove whether the land was purchased by the Forest Department or

closed for forestation. Suit for possession, the learned ASC contended, is the only remedy when allotment of the land to the respondents has never been challenged by the appellants. The learned ASC lastly argued that when in another litigation between Mst. Sairan and the respondents, the issue about the memorandum banning allotment of the land in possession of Forest Department has been decided, the appellants who were party thereto could not raise it again.

6. Learned ASCs appearing on behalf of the applicants in CMAs. No. 61, 974, 62, 117 and 63 of 2016 and 1604-L of 2015 pleaded for their being impleaded as respondents in C. As. No. 204-L to 206-L of 2015 on the ground of their being bonafide purchasers. The learned Addl. A. G. opposed the CMAs for being impleaded as parties by contending that plea of bonafide purchaser cannot be entertained nor the rights thus acquired could be protected under Section 41 of the Transfer of Property Act when the allotment itself does not hold good. The learned Addl. A. G. to support his contention placed reliance on the cases of **Gul Muhammad and others. Vs. The Additional Settlement Commissioner and others (1985 SCMR 491) and Ejaz Ahmad Khan. Vs. Chahat and others (1987 SCMR 192).**

7. We have gone through the record carefully and considered the submissions of learned Addl. A. Gs. Punjab and learned Sr. ASCs and ASCs for the parties.

8. A perusal of the impugned judgment would reveal that the learned Single Judge of the High Court while concurring with the finding of the learned Appellate Court mainly relied upon the extracts from the record of rights, NOC, purportedly issued by a D.F.O, letter dated 18.12.1980 written by the Solicitor to the Government of Punjab and letter dated 13.11.1988 written by the Minister for Forestry, Wildlife and Fisheries. But none of these documents has been brought on the record in conformity with the mode provided by the Qanoon-i-Shahadat Order, 1984. Extracts from the record of rights were produced and exhibited without examining the Patwari. Who prepared and signed them and affirmed about their

correctness is anybody's guess. Where did NOC come from, who issued, and countersigned it and what is the latter fate of this document is again anybody's guess. How did the Solicitor edge in and where did the letter purportedly written by him come from and how did it reach the hands of the person producing it in the Court? How did the Minister step in the matter when it was pending in the Court? Where did go the record of the letter and the register showing its dispatch, if at all it was written? Why did the respondents bypass the mode of proving the document prescribed by Articles 2 and 78 of the Qanoon-e-Shahadat Order and what did constrain the Court to rely upon them? How could, bringing of papers on the record, be considered synonymous with proving them? All these questions are fundamental and foundational but the learned Additional District Judge hearing the appeal and the learned Single Judge of the High Court hearing the revision petition relied on these documents without addressing anyone of them.

9. The argument that where a party did not raise objection as to the admission of a document and its exhibition, it cannot subsequently complain about its mode of proof has not impressed us as the provisions governing the mode of proof cannot be compounded or dispensed with, nor can the Court, which has to pronounce a judgment, as to the proof or otherwise of the document be precluded to see whether the document has been proved in accordance with law and can, as such, form basis of a judgment. In the case of **Messrs Bengal Friends and Co., DACCA. Vs. Messrs Gour Benode Saha and Co., and The Deputy Registrar of Trade Marks, Chittagong (PLD 1969 SC 477)** this Court while dealing with the mode of proof of the documents not properly brought on the record held as under :-

> *"Besides the authenticity of the account books relied upon by the respondent that were not properly brought on record as evidence of the transactions mentioned therein. The learned Chief Justice in the High Court ruled out the objection raised by the appellant on the view that it related to mode of proof of the entries in the account books and was not raised before the Deputy Registrar of Trade Marks. It was omitted from consideration that under section 34*

of the Evidence Act entries in books of account regularly kept in the course of business are only declared to be relevant whenever they refer to a matter into which the Court has to enquire. But this does not dispense with the requirement of section 67, that if a document is alleged to have been written by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Mere production of account books kept in regular course of business, therefore, does not constitute evidence of entries contained therein. The Legislature has made an exception in this behalf in the Bankers' Books Evidence Act. Section 4 provides as follows:

> *"Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."*

In the absence of such a provision in the Evidence Act regarding entries in books of account kept in regular course of business the mere production of the account books does not constitute evidence of the transaction and accounts therein recorded. Mr. Israrul Hossain further pointed out that the account books containing Exh. G.B. 3 series were not even exhibited by the Deputy Registrar. In the affidavit of the respondent sworn on the 25th August 1958, in paragraph the genuineness of the records, Exhs. G.B. 1 to G.B. 10, is affirmed, but this bald statement did not constitute proof of the entries in these series unless they were in his handwriting and he swore to the correctness of the transactions mentioned therein. The documents Exhs. G. B. 3 series relied upon by the respondent No. 1 in support of his claim that since 1937 he had been selling on large scale in Bengal and Assam including the riverine districts now constituting East Pakistan coaltar bearing trade mark "Jahaj Marka Al-katra" with a device of a ship were in this view wrongly treated as evidence by the Courts below."

10. In the case of **Khan Muhammad Yusuf Khan Khattak. Vs. S. M. Ayub and 2 others (PLD 1973 SC 160)** this Court while dealing with an identical issue held as under :-

> *"I am of the view that even if such documents are brought on record and exhibited without objection, they remain on the record as "exhibits" and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been*

> *signed and written by the persons who purport to have written or signed them, unless the writing or the signature of that person is proved in terms of the mandatory provisions of section 67 of the Evidence Act. If instead of the copy Exh. P.E., the original form "E" which formed the primary evidence, had been exhibited on the record without proving as to who was its author can it be argued that by merely exhibiting it, the document should be taken for granted as bearing the signature of the appellant without proof that in fact it was written and signed by him. The onus obviously lay on the respondent to prove this fact and his failure to prove it did not cast any responsibility n the appellant to negatively disprove it. "*

11. The argument that latter loss or lapse in production of the NOC would not have much meaning once its existence finds mention in RL-II and the letter dated 13.11.1988 issued by the Minister for Forestry, Wildlife and Fisheries Department, has also not impressed us when it did not see the light of the day at any stage. We, therefore, have no hesitation to hold that deduction about the issuance of NOC being conjectural has no evidential basis.

12. The argument that when in another litigation between Mst. Sairan and the respondents, the issue about the memorandum banning allotment of land in possession of the Forest Department has been decided, the appellants who were party thereto could not raise it again is misconceived, firstly because the litigation referred to above ended up in rejection of plaint, and since rejection of plaint does not operate as res-judicata, against the plaintiff in the subsequent suit, it cannot operate as such against a party who was defendant; and secondly because all the Courts in the said litigation having focused on the question of title between the rival claimants, decided the question of title only, without attending to the question of law and the judgments rendered in the cases of **Muhammad Ayub and others. Vs. The Province of Punjab** and **Province of Punjab. Vs. Muhammad Mahmood Shah (supra).** Therefore, reference to the previous litigation would not be of any help to the respondents.

13. Let us pause here for a while to see where did the memorandum dated 27.02.1965 come from and what did it stand for? This memorandum was issued by the Chief Settlement Commissioner under paragraph 4-A of the Rehabilitation Settlement Scheme, who had the power to exclude land from allotment where it was required for public purpose. The memorandum provided as under:-

> *"On the representation of Forest Department it has been decided by the Chief Settlement Commissioner that evacuee lands in possession of the Forest Department whether notified or un-notified should not be allotted against claims under the provision of the West Pakistan Rehabilitation Settlement Scheme till further orders. "*

The memorandum reproduced above provides that evacuee land in possession of the Forest Department whether notified or un-notified could not be allotted against claims under the provisions of the West Pakistan Rehabilitation Settlement Scheme, till further orders. Additional Settlement Commissioner or any other Officer in the hierarchy being subordinate to the Chief Settlement Commissioner could not nullify or neutralize its effect unless, of course, ordered otherwise by the Chief Settlement Commissioner himself. It does not give any power or authority even to the Forest Department to nullify or neutralize its effect, or read something in it what is not there. Allottee, too, could not ask for allotment of land on the condition of managing its retrieval from the Forest Department on his own when he does not figure anywhere in the scheme of the memorandum. We do not understand what prevailed on the Additional Commissioner to confirm allotment on the undertaking of the respondents or on the basis of NOC of the Forest Department, if at all it is assumed to have any existence, outside the record, when the memorandum does not provide for either of them. We thus hold that the allotment confirmed in derogation of memorandum dated 27.02.1965 cannot hold good. In the case of **Muhammad Ayub and others. Vs. The Province of Punjab (supra)** this Court while dealing with an identical issue held as under:-

> *"The suit was dismissed by the learned trial Court observing "that the plaintiffs never got possession and that many trees have been grown up there in the supervision of the Forest Department" and, therefore the claim of the petitioners that they were in possession which was allegedly interfered with by the Forest Department, was not well founded. It was also held on account of Memorandum No.65/775-RL, dated 27-2-1965 from the Chief Settlement Commissioner Lahore to the Deputy Commissioners, Sialkot, Gujranwala, Sheikhupura, Gujrat, Rawalpindi, Jhelum and Attock on the subject of "disposal of evacuee land in possession of Forest Department" which was to the effect that evacuee lands in possession of the Forest Department whether notified or unnoticed were not to be allotted against any claim under the provisions of the West Pakistan Rehabilitation Settlement Scheme, the allotment of this land in favour of Muhammad Din on 1-3-1966 against his verified claim was itself not valid and the subsequent sale of this land in favour of the petitioners did not confer any title on them. The aforesaid judgment and decree was upheld by the, learned District Judge on appeal and again by the. High Court on revision. Hence this petition for leave."*

14. In the case of **Province of Punjab. Vs. Muhammad Mahmood Shah (supra)** the same view was restated with much greater clarity and emphasis in the paragraph which reads as under :-

> "*9. Under paragraph 4-A of the Rehabilitation Settlement Scheme, the Chief Settlement Commissioner had the power to direct the exclusion of land from allotment where it was required for a public purpose. While so excluding by his directive dated 27-2-1965, the Chief Settlement Commissioner was acting within hi; lawful authority. The High Court, however, did not approve of it in a case (Civil Appeal. No.155 of 1983) where the allotment had been made for the first time on 18-4-1968, by observing as hereunder:---*
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> > *"The main ground on which the Settlement Commissioner set aside the allotment of the petitioners was the order of the Chief Settlement Commissioner dated 27-2-1965 mentioned above restraining the district authorities from allotting such lands as were in possession of the Forest Department. The copy of the Jamabandi for the year 1905-66, however, shows that the possession over some of the land in question at that time was that of the petitioners but he did not go into the same. In any case it has recently been held by a Division Bench of this Court in Inayat Bibi etc. v. Assistant Settlement Commissioner and Chief Settlement Commissioner PLD 1978 Lah. 252 that the Chief Settlement Commissioner could not issue such instructions restraining statutory functionaries to*

> *allot land against the claims. The letter dated 27th February, 1965 is thus without lawful authority and of no legal effect: "*

Another paragraph which is extremely relevant in this behalf also merits a look and thus reads as under :-

> *10. The decision referred to and relied upon for recording the above findings related to absolute prohibition against making the allotments and not qualified prohibition as is contained in paragraph 4-A of the Rehabilitation Settlement Scheme. Hence, the very basis for the decision is incorrect. In a decision of this Court in Muhammad Ayub and others v. The Province of Punjab (1989 SCMR 1033), the allotments made on 1-3-1966 were held to be violative of the directive of the Chief Settlement Commissioner dated 27-2-1965. The law point involved in all these cases has received an authoritative pronouncement in Mian Rafi-ud-Din and 6 others v. The Chief Settlement and Rehabilitation Commissioner and 2 others P L D 1971 S C 252 in the following words:--*
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> > *"It is necessary in my view to keep in mind that there is a distinction between the right to claim a transfer and the right to the transfer and the right to the transference of the property itself. The provisions of the Schedule indicated the persons or the category of persons who can claim the transfer of a particular property but the right to the transfer of the property accrues or becomes vested only after a final order for such transfer has been made in accordance with the provisions of the Act itself, the Schemes, the rules framed under the Act and the instructions from time to time issued. Until a final order of transfer has been made it cannot be said that the property has been disposed of and is no longer available for transfer. It is only when a property is no longer available for transfer that an order of the Central Government laying down a different mode of disposal will not affect it, on the principle that change in the mode of transfer cannot reopen a past and closed transaction."*

15. In the concluding part of the judgment only those lands have been excluded from the purview of the memorandum in which the confirmation of allotment was made before 27.02.1965. The land forming subject matter of dispute in this case would be fully covered by the memorandum when its allotment was admittedly confirmed on 30.04.1965.

16. The same view was reiterated in the case of **Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (supra).**

17. The argument that failure of the appellants to challenge confirmation of allotment in favour of the respondents at any stage of the litigation would takeaway the ground from beneath their feet to challenge it even if it is assumed that allotment in favour of the respondents was void, is devoid of force as the appellants despite enjoying uninterrupted possession have been questioning the confirmation of allotment in favour of respondents at every forum including Civil Courts and even in the litigation culminating in the instant appeals. The argument that even void orders have consequences if not questioned within the prescribed period of limitation would have been tenable had the appellants abated legal fight at any stage. Their unabated fight even in the second round of litigation initiated at the instance of the respondents speaks for itself. Therefore, the judgments rendered in the cases of **Conforce Ltd. Vs. Syed Ali, etc and S. Sharif Ahmed Hashmi. Vs. Chairman Screening Committee, Lahore and another (supra)** have no relevance to the case in hand.

18. The argument that the judgments rendered in the cases of **Muhammad Ayub and others. Vs. The Province of Punjab, Province of Punjab. Vs. Muhammad Mahmood Shah and Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (supra)** lack authoritative and even persuasive value when they were rendered in derogation of an earlier three-member bench judgment rendered in the case of **Wali Muhammad. Vs. Settlement Commissioner Sargodha Division, Sargodha and others (supra)** is not correct as the former deal with the memorandum dated 27.02.1965 while the latter deals with the memorandum dated 25.06.1973. The first having been issued by the Chief Settlement Commissioner under paragraph 4-A of the Rehabilitation Settlement Scheme was held to be intra vires and any

allotment confirmed in derogation of the said memorandum was held to be of no effect. Whereas the second having been issued without jurisdiction and lawful authority was declared void and so was the cancellation or allotment made thereunder. Therefore, no parallel can be drawn between the memoranda mentioned above nor between the judgments rendered in the cases of **Muhammad Ayub and others. Vs. The Province of Punjab, Province of Punjab. Vs. Muhammad Mahmood Shah and Forest Department through Divisional forest Officer, Chhanga Manga, Lahore. Vs. Muhammad Amin and 26 others (supra)** and the one rendered in the case of **Wali Muhammad. Vs. Settlement Commissioner Sargodha Division, Sargodha and others (supra).** Allotment without confirmation has also been held to be of no effect by a five-member bench of this Court in the case of **Mian Rafi-ud-Din and 6 others. Vs. Chief Settlement and Rehabilitation Commissioner and 2 others (supra)** which has been taken notice of and referred to in the case of **Province of Punjab. Vs. Muhammad Mahmood Shah (supra)**.

19. The argument that where no documentary evidence has been brought on the record by the appellants to show that the land in dispute was ever sold to the Forest Department, their claim about its sale was rightly turned down would have been relevant had the allotment in favour of the respondents been confirmed in conformity with the memorandum issued under paragraph 4-A of the Rehabilitation Settlement Scheme.

20. The argument that the memorandum banning allotment of the land cannot be stretched to the case in hand in the absence of anything providing for its retrospective effect, is also misconceived when allotment in favour of the respondents was confirmed after issuance of the memorandum mentioned above.

21. Form of suit also does not appear to be proper when the respondents did not ask for declaration, in spite of the fact that their title to the land in dispute was seriously disputed by the appellants. Reference to

the cases of **Muhammad Aslam. Vs. Mst. Ferozi and others** and **Sultan Mahmood Shah through L.Rs. and others. Vs. Muhammad Din and 2 others (supra)** would not be out of context.

22. The argument that applicants be impleaded as party on account of being bonafide purchasers is devoid of force, where the original allotment made in favour of the vendors cannot hold the field. The cases of **Muhammad Yamin and others. Vs. Settlement Commissioner and others (1976 SCMR 489), Manzoor Hussain. Vs. Fazal Hussain and others (1984 SCMR 1027) Gul Muhammad and others. Vs. The Additional Settlement Commissioner and others (1985 SCMR 491) and Ejaz Ahmad Khan. Vs. Chahat and others (1987 SCMR 192)** may well be referred to in this behalf. The argument of the learned ASC for the respondents seeking dismissal of appeals on account of having been filed against the dead persons need not be addressed at length when it has been befittingly dealt in the judgments rendered in the cases of **Farzand Ali and another. Vs. Khuda Bakhsh and others, Muhammad Yar deceased through L.Rs. and others. Vs. Muhammad Amin deceased through L.Rs. and others and Niamat and another. Vs. Allah Banda and another (supra).**

23. Having thus considered, we allow these appeals, set aside the impugned judgments and decrees with no order as to costs.

CMAs. NO. 61 TO 63, 117, 974 AND 1604-L OF 2016.

These CMAs are disposed of accordingly.

JUDGE

JUDGE

Announced in open Court at Islamabad on **25.11.2016**

JUDGE

'NOT APPROVED FOR REPORTING'
M. Azhar Malik