

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

Judicial department

J U D G M E N T

Writ Petition No.1115/2007

Date of hearing.....16.03.2017

**Chairman Evacuee Trust Property Board & anther
Vs
Mst:Rubina Ibad & others**

Petitioner(s) by: Mr. Maazullah Barkandi, Advocate.

Respondent(s) by: Syed Shahid Shah, Advocate for respondents
No.1 to 7, 24 to 26 Mr. Asghar Ali, Advocate for respondents
No.8 to 23 & Mr. Muhammad Javed Yousafzai, AAG for
respondent No.33/Federal Government.

MUHAMMAD YOUNIS THAHEEM, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the order dated 07.4.2007 passed by Secretary, Government of Pakistan, Ministry of Minorities, Islamabad (respondent No.33) whereby revision Petition No.3-322/2005-Rev filed by respondents No.1 to 26 Mst: Rubina Ibad and others against the order dated 20.5.2005 passed by Chairman Evacuee Trust Property Board was allowed.

2. This case has long checkered history. Dispute among the parties is regarding land measuring 12 kanal and 08 marla relating to Khata No.252 bearing Khasra No.96, situated in Mahal, Tukra No.1 Peshawar city was declared as evacuee trust property by the Chairman Evacuee Trust Property Board (hereinafter called as E.T.P.B) on the strength of Revenue Record vide mutation

No.656 sanctioned on 26.06.1927 transferred to Trust under Panj Teerath Committee and other relevant record while respondents No.1 to 26 asserts that it was landed property leftover by the native Handus, and so was evacuee property in simple resultantly was included in the compensation pool by the settlement department under the Displaced Persons (Compensation & Rehabilitation) Act 1958, hence was allotted to the refugees against their verified claims vide RL II No.60,61,62 & 165 to:

i)	Jan Muhammad	5 kanal 0 marla
ii)	Ahmad Bakhsh	2kanal 08 marla
iii)	Fazal Ahmad	0 kanal 12 marla
iv)	Muhammad Ali	<u>4 kanal 08 marla</u> 12 kanal 08 marla

Above alleged allottees further sold out their shares onward to the present respondents No.1 to 26.

3. The Chairman, E.T.P.B declared the same property as Evacuee Trust Property shown in possession and ownership of Panj Teerath committee under section 8 of Evacuee Trust Properties (Management and Disposal) Act, 1975 vide order dated 25.11.1976 and transfers vide RL-II No.60,61,62 in the name of (i) Jan Muhammad 05 kanal on 22.09.1961 (ii) Ahmad Bakhsh, Noor Muhammad and Abdul Majid 02 kanal 08 marla on 22.09.1969 (iii) Fazal Ahmad 12 marla on 22.09.1964 were declared validated under 10 of E.T.P Act 1975 being bonafide purchasers prior to target date Jun 1968 and transfer in the name of Muhammad Ali area measuring 04 kanal 08 marla vide LR-II No.165 dated 03.04.1974 being after target date of June 1968 was declared invalid.

4. The above order dated 25.11.1976 was challenged by Deputy Administrator E.T.P.B by filing revision petitions u/s 17 of E.T.P (M&D) Act 1975 bearing No.3-6/77-ETP against Municipal Committee, Peshawar and 16 others. Similarly (1) Muhammad Ali Khan (2) Muhammad Ibad and 03 others also challenged the same order dated 25.11.1976 by filing their separate revision petition No.3-7/77-ETP against Chairman E.T.P.B & 03 others before the Revisional Authority in respect of above mentioned disputed property contained in Khasra No.96. Both the revision petitions were heard together being relating to same subject matter and involving common question of law, so consolidated order dated 27.11.1979 was passed by the learned revisional authority vide which revision petition filed by Deputy Administrator was accepted and the impugned order dated 25.11.1976 passed by the Chairman E.T.P.B. was set aside and case was remanded to the Chairman for decision afresh after recording of evidence. Similarly revision petition filed by respondents No.1 to 26 was disposed in the light of consolidated order dated 27.11.1979. The relevant concluding para of remand order dated 27.11.1979 is reproduced as below.

“From the reasons mentioned above, I accept the revision petition of the Deputy Administrator and set aside the impugned orders of the Chairman, the case is remanded back to him for recording fresh evidence and deciding the case strictly in accordance with the provisions of the law on the subject. The revision petition of Muhammad Ali Khan and four others is also remanded for similar action.”

5. After remand, evidence of Patwari Halqa Tukra No.1, Peshawar was recorded who produced revenue record and the then Chairman Evacuee Trust Property Board, passed an order on

20.05.2005, vide which all RL-IIs in favour of claimants respondents No.1 to 26 or from whom they purchased disputed land were cancelled and property pertaining to Khasra No.96 was declared as **“Evacuee Trust Property”** and Deputy Administrator was directed to take over the management of trust property. The relevant concluding para of above said order dated 20.05.2005 is reproduced as below.

“On the request of the counsel for the parties, they were directed to file the written arguments which they have filed and have been placed on record.

After hearing the arguments of the parties and going through the statements of witnesses and the written arguments filed by the parties, I have come to conclusion that as per revenue record contained in Jamabandis for the year 1929-30 upto 1951-52 the land in question belongs to Abadi Deh/Panj Teerath Committee through Lal Nath Chela Chand Nath. Moreover, copy of exemption Ex P/2 for the year 1929-30 clearly shows that the land in question, measuring 12 kanals & 08 Marlas belongs to Panj Teerath and has been shown exempted from payment of any tax. Further as per mutation No.656 dated 26.06.1927 the old Khasra No.55 measuring 9 Kanals & 4 Marlas, was part of the present Khasra No.96 under the management of Lal Nath Chela Baba Chand Nath. Even as per mutation No.758 dated 14.05.1929 the land in question is a trust property under the management of Dewan Singh s/o Narinjan Singh pertaining to Khasra No.66 measuring 3 Kanals & 11 Marals. The respondents have miserably failed to produce any documentary evidence pertaining to the period prior to partition of 1947. In view of the above facts, the evacuee trust nature of the land in question as per pre and post partition revenue record is beyond doubt, therefore, I have no hesitation to declare the land in question as an evacuee trust property. Let it be notified under the law.

As regards validation, admittedly RL-II No.165 was issued on 06.02.1974 i.e much after the target date of June, 1964. The said RL-II was got issued by the allottee in

connivance with the Settlement Department with mala fide intention despite the evacuee trust nature of the said land. Even otherwise the allotment is anti-dated and has been made after the target date which cannot be validated. Since all the mandatory conditions for validation of such transfers as per provisions of Section 10 of the Act ibid, are not fulfilled hence the transfer cannot be validated. I, therefore, cancel the RL-II No.165 dated 06.02.1974 alongwith subsequent mutations sanctioned in respect of the land in question. Further alienation, if any, will also meet the same fate."

6. Feeling aggrieved from the order of Chairman E.T.P Board dated 20.05.2005 respondents No.1 to 26 (including legal heirs of deceased respondents as well as subsequent purchasers) filed revision petition before the Revisional Authority/Secretary to Federal Government of Pakistan, Ministry of Minorities Islamabad, the Revisional Authority/respondent No.33, after hearing the parties allowed the petition vide impugned order dated 07.4.2007 and declared the suit property relating to Khasra No.96 as an **‘Evacuee Property’** and not **‘Evacuee Trust Property’** by giving validation to the allotments to the allottees through different RL-IIs No.60,61,62 & 165 by settlement department discussed above and subsequent transfers. The concluding para of impugned order dated 07.04.2007 is reproduced as under:-

"I have no hesitation to conclude that the land exclusively falling under khasra No.96 measuring 12 kanal and 08 marla is simply an evacuee property and lawfully formed part of the Compensation Pool for allotment to bonafide claimants against their verified claims. Accordingly after having concluded as such I equally hold that transfers of land by the Settlement and Rehabilitation Department are maintained under the laws. The validation of land under RL-IIs No.60 to 165 are valid alongwith subsequent transfers

against khasra No.96 given effect under the provision of relevant laws/rules.”

7. Feeling aggrieved from the above order dated 07.04.2007 passed by Revisional Authority/Federal Secretary respondent No.33 the present petitioners filed instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. The same was partially allowed vide judgment dated 28.01.2015 and case was again remanded to the learned Revisional Authority for its decision afresh after giving findings on the maintainability and competency of proceedings before it. The above remand order of this Court was challenged by respondents No.1 to 26, Ghulam Farooq and others before the Hon’ble Supreme Court of Pakistan through C.P No.456/2015 and the Hon’ble apex Court remanded the matter back to this Court for decision a fresh which was also agreed by learned counsel for the parties vide judgment dated 11.02.2016 with the following guide lines:-

“We have noted from the impugned judgment that the High Court has considered the merit of the case considerably and whether the proceedings before the respondent No.33 was competent or not in the light of the judgment of this Court in Iftikhar-ud-Din’s case (2000 SCMR 1), the same could have been adverted to by the High Court as it was a simple question of the maintainability of proceeding requiring examination of the law. In the light of the background of the case more so its long pendency, it seems advisable that High Court while exercising its writ jurisdiction decide the matter including the question of jurisdiction of respondent No.33. The remand of the case, thus, appears to us un-necessary and the High Court ought to have decided the said writ petition including the question of the maintainability of proceeding before the respondent No.33.

The learned counsel for the parties also agree that the matter be remanded to the High Court for re-decision of the writ petition on merit as well as on legal issues.

Consequently, this petition is converted into appeal and allowed. The impugned judgment is set aside and the matter is remanded to the High Court for decision afresh of the writ petition on merits as well as on all legal issues that are raised before the High Court by the parties."

8. The learned counsel for the petitioners argued that the property pertaining to khasra No.96 became ownership of a Hindu Religious Trust Managed by Panj Teerath Committee vide mutation No.656 sanctioned on 26.06.1927, and was exempted from the payment of Revenue vide *Fehrist Maafiat* placed on record as Ex P-12 since it's establishment, thereafter the name of Panj Teerath Committee has been shown entered in the column of ownership pertaining to year 1929-30 and onward Jamabandi till 1947. The name of Panj Teerath Committee has been mentioned in the column of cultivation/possession as Hisadar, however lateron after 1947 when Hindus migrated from Peshawar certain irregular entries has been shown sometime in the name of Abadi deh or somewhere in the possession of Peshawar Municipal Committee and some where again in the name of Panj Teerath or *Lal Nath Cheela Baba Cheena Nath*. The entries in the name of Abadi deh or in column of cultivation in the name of Municipal Committee, Peshawar were wrongly and illegally shown and trust property of Panj Teerath Committee was put to compensation pool by the settlement department illegally. Learned counsel supported the findings of Chairman E.T.P.B passed in the impugned order dated 20.05.2005.

He added that similar kind of litigation relating to other part of property of Panj Teerath Trust bearing khasra Nos.101,102,103 and 104 situated in Mahal Tukra No.1 Peshawar city was claimed by one Muhammad Amin & others as their ownership which was declared '**Evacuee Trust Property**' under the management of Panj Teerath Committee by Chairman u/s 8 of E.T.P (M&D) Act 1975 and order declaring it as '**Evacuee Trust Property**' was challenged by the then occupier before Revisional Authority, who maintained the order of Chairman. The order of Chairman and Revisional Authority was challenged through W.P No.204/82 which was decided by this Court on 09.05.1983 and the same judgment of this Court passed in W.P No.204/82 was upheld vide judgment dated 06.04.1986 by the Honourable Supreme Court of Pakistan in CP No.153-P/1983 in case titled as Amir Khan Vs E.T.P etc on 06.04.1986. Learned counsel further argued that impugned order dated 07.04.2007 passed by respondent No.33 is against law, facts and is without considering 30 years old document placed on file in the evidence in shape of mutation No.656 and Fehrist Maafiat i.e Revenue Record regarding exemption from payment of revenue due to Waqf placed on record as Ex P-12 Jamabnadi pertaining to year 1929-30. He added that same property had been correctly declared as '**Evacuee Trust Property**' by the Chairman by appreciating the documents and evidence on record after remand while learned Revisional Authority based its findings upon illegal, irregular revenue record prepared after 1947 that also upon bogus RL-IIs No.60,61,62 and 165. He added that ibid Act has provided remedy of revision u/s 17 to call for record upon challenging of order of Chairman and in this respect Federal Secretary, Ministry of

Religious and Minorities affairs exercises powers as Revisional Authority by adding that he has wrongly and illegally exercise its jurisdiction and impugned order dated 07.04.2007 is the result of misreading and non-reading of evidence and record, so, he prayed that the impugned order dated 07.4.2007 be declared null and void, against facts and law, so, be set aside and order of learned Chairman dated 20.05.2005 be kept maintained.

9. On the other hand, learned counsel for respondents No.1 to 26 vehemently supported the impugned order dated 07.04.2007 passed by learned Revisional Authority. He added that disputed property bearing khasra No.96 was correctly put to compensation pool by the settlement department as it was evacuee land left over by native Hindus who migrated from Pakistan to Bharat after partition of India into two independent countries i.e Pakistan and Bharat and property in dispute was rightly allotted to the displaced Muslims who migrated to Pakistan leaving their landed property behind in Bharat against their verified claims for **‘Evacuee Property’** and the disputed property being **‘Evacuee Property’** and not **‘Evacuee Trust Property’** was rightly allotted to them vide RL-IIs No.60,61,62 & 165 and the Chairman E.T.P.B was not authorized to declare the **‘Evacuee Property’** as **‘Evacuee Trust Property’**, so the order passed by Chairman was without lawful jurisdiction against evidence on record particularly jamabandies from 1929-30 till date, hence was rightly set aside by the Revisional Authority. He further argued that in the Jamabandi prepared during settlement operation and after 1947, it was not entered in the name of Panj Teerath Trust, so prayed that under

E.T.P ibid Act the respondent No.33 is competent Revisional Authority for calling record to re-examine the findings of Chairman, who after going through entire record had revisited the order of learned Chairman and correctly annulled it to which no exception could be taken.

10. We have heard the arguments of learned counsel for the parties and have gone through the available record.

11. From the perusal of record annexed with petition, produced during recording of evidence after remand order dated 27.11.1979, it reveals that the property pertaining to Khasra No.96 measuring 12 kanal 08 marla has been entered in column No.4 in the name of Trust Managed by Panj Teerath Committee, Peshawar transferred vide mutation No.656 sanctioned on 20.6.1927 lying on record in the instant petition as Annexure “B” entered as ‘*Mall waqf ba ehtimam panj teerath committee shehr Peshawar*’ same mutation has been shown incorporated in the column of owners as Panj Teerath, Khasra No.96 alongwith other Khasra Nos relating to Jamabandi 1929-30 while entry regarding exemption from payment of revenue vide letter No.1370 due to Waqaf Ahle Hanood has been made which is placed on record as Annexure “C” on page 21 of the instant petition. According to Jamabandi 1933-34 placed on page 24 of petition the entry in the column of cultivation/possession is in the name of “*Lal Nath Chaila Baba Cheena Nath*” as sharer and lessor while Sardar s/o Faquir Muhammad is shown as lessee and same entries continued in the Jamabandies pertaining to year 1937-38, wherein lease is shown cancelled vide mutation No.601. In the

Jamabandi pertaining to year 1941-42 in column of possession the name of *Lal Nath* as Hissadar is appearing in the year 1947-48. The entries in the column of cultivation in the name of *Lal Nath Cheela Cheena Nath Hissadar* remain intact but when Pakistan came into being thereafter entries started changing which seems due to migration of Hindus but even in the year 1951-52 name of *Lal Nath Cheela Cheena Nath Hissadar* alongwith entry of lease holders subsisted. The *Lal Nath chaila Baba Cheena Nath* has been entered in column No.4 as *Maal Waqf Ba Ehtimam Lal Nath* in the mutation No.656. So previous to mutation No.656, it was Trust Property under the management of *Lal Nath Chaila Baba Cheena Nath*, who was disciple of *Baba Cheena Nath*.

12. From the perusal of shown RL-11 No.60 it has been sanctioned on 13.07.1968. In the order Khasra No.19 in lieu of 59 units has been shown allotted while on the same RL-II, 69 units and Khasra number are mentioned as 50 and 51 pertaining to Khata No.9 to 11 sanctioned by Additional Settlement commissioner, Peshawar on 22.09.1964. So this RL-II No.60 is, if genuine and legal, then it is about some other land beside, there is no mention of verified claim on it, moreover in the order on over leaf there is over cutting for the name Jan Muhammad which reveals that some other name was cut and name of Jan Muhammad was inserted and this cutting has not been endorsed by settlement officer concerned while area has been shown as 10 kanal 18 marla and the allotment is for Lyallpur District of Punjab (present Faisal Abad) despite opportunity of producing evidence no witness from Central Record Office Lahore and rehabilitation and settlement department Peshawar has been produced to verify and testify the claims and RL-IIs. Same

is the position about RL-II No.61,62, particularly property allotted vide RL-II No.165 is about evacuee landed property pertaining to khasra Nos.2,689,690,837/313, 309,310,308 total area 14 kanal 3 marla situated in Mouza Gara Tajik Tehsil Peshawar besides on RL-II No.165, there appears three orders of different settlement officers and in each order Khasra Nos are different while order shown dated 01.04.1972 is shown about impugned khasra No.96 to the extent of 4 kanal 8 marla in the name of Muhammad Ali. All allotment process shown on RL-IIs is through attorney but neither Wasiqa No, nor Bahi No, nor date of attestation, nor office of sub-registrar has been mentioned. In the evacuee settlement land related records the element of fraud, manipulation, forgery and bogus proceeding could not be ruled out, so the very RL-IIs are doubtful and the settlement authorities without making, genuine and lawful inquiry has put the Panj Teerath Trust Property into compensation pool without scrutinizing revenue record in shape of mutation No.656 and Maafiat Ex P-12 regarding khasra No.96 which was and is Religious Trust Property then managed by Panj Teerath Committee which was previously managed by *Lal Nath Chaila Baba Cheena Nath*. The learned Revisional Authority failed to examine the relevant revenue record in shape of mutation No.656 and exemption from payment of revenue record vide *Fehrist Maafiat* Ex P-12 and other persistent entries in the column of ownership and cultivation as Hissadar of the Panj Teerath Committee or Lal Nath before 1947 while strong presumption of truth is attached to the old revenue record particularly when mutation No.656 and Maafiyat EX P-12 are still in field. The preponderance of record is showing that disputed property is Trust

Property. In this respect reliance is placed on case titled as **“District Evacuee Trust Committee Vs Muhammad Umar & others” (1990 SCMR 25)**, while the respondents No.1 to 26 and settlement department failed to discharge burden upon them that property is Evacuee Property and not Trust Property. In this respect wisdom is derived from the judgment of Hon’ble Supreme Court in cases cited as **PLD1991 SC 586 & 1991 SCMR 2206**.

13. The instant petition was decided by this Court vide judgment dated 28.01.2015, order of respondent No.33 i.e of Revisional Authority was set aside and case was remanded to him i.e to respondent No.33 to re-decide the matter after giving findings on the maintainability and competency of proceedings before it in the light of judgment of Hon’ble Supreme Court of Pakistan cited as **2000 SCMR 1**, same remand order was assailed by filing **Civil Petition No.456/2015** and the Hon’ble apex Court observed that same could have been adverted to and decided by this Court in the background of this case due to its long pendency with direction to examine the question of jurisdiction and competency of respondent No.33 vide order dated 11.02.2016.

14. Now the question before this Court for determination remains as to whether Revisional Authority u/s 17 of ETP (M&D) Act 1975 has jurisdiction and is competent to examine the order passed u/s 8 of ibid Act by the Chairman of E.T.P.B and on merit whether property in question was or is Evacuee Trust Property or simply Evacuee Property left over by the native Hindus who migrated to Bharat after 1947.

15. This Court gone through the judgment passed by Shariat Appellate Bench of Hon’ble Supreme Court cited as **2000**

SCMR 1, Evacuee Trust Property Act 1975 and the Evacuee Trust Property (Appeal and Revision) Rules 1980. Under the *ibid* Act 1975 provisions relating to appeal are provided in Section 16 and according to section 16(a), if order is passed by Assistant Administrator or Deputy Administrator the appeal lies before the Administrator and u/s 16(b), in case order is passed by the Administrator, not being an order passed in appeal by Administrator confirming an order of Assistant Administrator or a Deputy Administrator to the Chairman and in the Act as well as in Rules 1980, no provision of appeal against original order of Chairman is provided rather it is provided that order passed by Chairman is final. For comprehension the provisions envisaged in Section 8 are reproduced as below:-

Section 8:- Declaration of property as evacuee trust property.

(1) If a question arises whether an evacuee property is attached to charitable, religious or educational trust or institution or not, it shall be decided by the Chairman whose decision shall be final and shall not, except as provided in sub-section (4), be called in question in any Court.

(2)

(3)

(4)

16. Similarly in the *ibid* Act revisional powers has been provided u/s 17 to the Federal Government to call for record of any case or proceedings under this *ibid* Act which is pending or in which the Chairman and Administrator etc for the purpose of satisfying itself as to the correctness, legality or propriety of such an order and may pass such an order in relation thereto as the

Federal Government thinks fit. The provisions, contained in Section 17 are reproduced as below:-

- Section 17:-Revision. (1) The Federal Government may, of its own motion:-*
- (i) If no appeal is preferred to the High Court or as the case may be, to the Chairman within the period allowed for preferring such appeal, at any time after the expiry of such period, or*
 - (ii) If an appeal is preferred to the Chairman, at any time during the pendency of the appeal or after judgment has been pronounced by him. Call for the record of any case or proceeding for the purpose of satisfying itself as to the correctness, legality or propriety of such order and may pass such order in relation thereto as it thinks fit.*
- (2).....*
(a).....
(b).....
Call for the record of any case or proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of such order and may pass such order in relation thereto as he thinks fit.
- (3) No order under this section or section 18 shall be passed revising or modifying any order affecting any person without giving such person a reasonable opportunity of being heard.*

17. The Hon'ble Shariat Appellate Bench of Supreme Court of Pakistan in its judgment in case "**Federation of Pakistan through Secretary Religious Affairs/Minority Vs Mufti Iftikhar-ud-Din**" cited as (2000 SCMR 1), held that in E.T.P (M&D) Act 1975, no provision of appeal against the original order of Chairman has been provided, so there shall be a right of at least one appeal, in this respect Federal Government was directed to table the amendment bill before legislature for providing right of appeal against the original order passed by the Chairman E.T.P.B

by 30th of July 1999 while the same cited judgment was passed on 25th of March 1989 but up till now, no same direction of Hon'ble apex Court to amend the law has been acted upon by the worthy Federal parliament or by any Assembly of the federating unit. Moreover the provisions of Section 8,10 and 21 of E.T.P (M&D) Act have not been held contrary to injunctions of Holy Quran and Sunah of Holy Prophet (PBUH) and in case titled as **“Khurshid Ahmad Vs Rana Mumtaz Ahmad & other”** cited as **2016 SCMR 679**, a principle has been laid down by Hon'ble apex Court, that the final order passed by Federal Government is assailable before the High Court in exercise of constitutional jurisdiction. The relevant paragraph is reproduced:-

“A look at the extracts from the record of rights for the year 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 and 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 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.

(Underling is of us to emphasis)

18. So in view of above discussion the Revisional Jurisdiction of Federal Government through Secretary, Ministry of Religious Affairs and Minorities as Revisional Authority is established and is competent to call for record and to examine the correctness, legality, or propriety of the order passed by the Chairman and this Court in its constitutional jurisdiction is competent to examine the entire record, the legality and correctness of orders passed by Chairman and the Revisional Authority.

19. The Hon'ble Supreme Court of Pakistan vide remand order in **C.P No.456/2015** while disposing of instant petition, directed this Court to decide the case afresh while exercising its writ jurisdiction including question of jurisdiction of respondent No.33 and the question of maintainability of proceedings before Revisional Authority. So, after dilating upon the above legal

propositions in the light of guide lines laid down by Hon'ble apex Court, the Federal Government as Revisional Authority u/s 17 of ibid Act is competent to call for record and examine the orders passed by Chairman and this Court under constitutional jurisdiction is also competent to examine the orders passed by Chairman and the Revisional Authority and its legality. Thus in the light of above discussed circumstances in the supra paras and in the light of mutation No.656 and *Fehrist Maafiat* Ex P-12, the property pertaining to Khasra No.96, Tukra No.1, Peshawar city has been correctly declared by the Chairman as an 'Evacuee Trust Property' and is not simple 'Evacuee Property' available for allotment to the displace persons under the **Displace Persons (Compensation and Rehabilitation) Act 1958**. In this respect reliance is placed on the judgments of Hon'ble Supreme Court in cases cited as **PLD 2011 SC 126, 2009 SCMR 210 and 2009 SCMR 375**. So, the order passed by the learned Revisional Authority is the result of misreading and non-reading of record including documentary evidence, based on wrong presumptions, so is set aside and that of chairman dated 20.05.2005 is restored.

Announced.
Dt:16.3.2017.

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