

**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE SHAHID WAHEED  
MS. JUSTICE MUSARRAT HILALI**

**CIVIL APPEAL NOS.248, 249, 250, 251 & 252 OF 2014 &  
C.M.A.NO.5086 OF 2022 IN CIVIL APPEAL NO.250 OF 2014**

(On appeal against the judgments dated 09.10.2013 passed by the Peshawar High Court, Abbottabad Bench in Writ Petition Nos.104-A, 159-A, 165-A of 2007 & 183-A/2008 & 685-A of 2010)

Chairman Evacuee Trust  
Property Board, Lahore &  
others (*in all cases*)

... Appellants

**VERSUS**

Sufi Nazir Ahmed & others  
(*in C.A.248/2014*)  
Ghulam Bibi & others  
(*In C.A.249/2014*)  
Chenzeb & others  
(*In C.A.250/2014*)  
Abdul Khaliq Awan & others  
(*In C.A.251/2014*)  
Muhammad Iqbal & another  
(*In C.A.252/2014*)

... Respondents

For the Appellants : Hafiz Ahsan Ahmed Khokhar, ASC  
(*in all cases*)

For the Respondents : Mr. Sabir Hussain Tanoli, ASC  
(*L.Rs of respondent No.2 in C.A.248/2014*)

For the Respondents : Mr. Zulfiqar Ali Abbasi, ASC  
(*Respondents No.1-19 in C.A.248, respondent No.1 in C.A.249 & 252/2014*) Syed Rafaqat Hussain Shah, AOR

For Respondents No.1, : Ch. Akhtar Ali, AOR  
4, 7, 10, 19, 21 & 26  
(*in C.A.250/2014*)

For other Respondents : Nemo

Date of Hearing : 29.11.2023

**JUDGMENT**

**Shahid Waheed, J.** This litigation has secured leave from us and has reached the appeal stage. All these appeals lend themselves to disposal by a common judgment having been filed against the same judgment of the Peshawar High Court dated 9<sup>th</sup> of October, 2013.

2. The background of the legal point involved in these appeals may be in place here. The respondents who are tenants under the Evacuee Trust Property Board (**ETPB**), constituted under section 3 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 (**the Act**), had challenged the lawfulness of the amendment to clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977, (**the Scheme**), vide SRO No.13KE/2006 dated 13<sup>th</sup> of February, 2006, on the ground that it was unreasonable, arbitrary, and oppressive. These clauses provide for the procedure for assessing or reassessing rent of evacuee trust property, which encompasses residences, commercial shops, buildings, plots and land. The High Court regarded *Muzzafar Khan*<sup>1</sup> as a touchstone for deciding the soundness of the challenge. It is, therefore, necessary to give a broad-brush of the cause celebre to *Muzzafar Khan*. On 14<sup>th</sup> of September, 2001, the ETPB, with the prior approval of the Federal Government, issued a Notification bearing SRO No. 464(I)/2001 by which clause 11 of the Scheme was amended, and it was provided that from the year 2002, the minimum monthly rent of the urban evacuee trust properties would be assessed and charged on the basis of covered area at the rate specified for each floor, in accordance with the categorisation to be determined by the District Officer by an order area-wise or property-wise as the case may be. The minimum rent had been fixed for each category, and each category had been defined. Only the determination of category had been left to the District Officer. Due to this amendment, the rent was enhanced from 150% to 2240.92%. The *Muzzafar Khan* case was filed in the Lahore High Court by the tenants questioning this amendment in the delegated legislation, to wit, the Scheme on the ground that it was unreasonable. This ground won out in the High Court, and amendment in clause 11 of the Scheme was held to be unreasonable because by it: firstly, the same rent was fixed for property situated on the main road and property in the same vicinity in a lane; secondly, classification of the property made by the Board was not reasonable; thirdly, the objections or proposals were not invited by the tenants, nor they were associated in the preparation of formula for a reassessment of rent and thus, no room for consultation was left open; fourthly, the fixation of rent to a property could not be tied to DC rate fixed for stamp duty and Registration Act, 1908; and lastly, the District Officer was operating

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<sup>1</sup> *Muzzafar Khan v. Evacuee Trust Property* [2002 CLC 1819].

as a calculator, since he had no discretion to apply his independent mind while fixing rent.

3. It appears that, consequent to the decision in *Muzzafar Khan*, the ETPB on 13<sup>th</sup> of February, 2006, in the exercise of the powers conferred by section 30 of the Act, with the prior approval of the Federal Government issued a fresh notification, that is, SRO 13(KE)/2006 and introduced the following new amendments in the Scheme: -

10. Procedure for assessment or re-assessment.-

(i) Assessment of rent of each sub-unit or property shall be made with effect from 1<sup>st</sup> July, 2006 by the District Officer concerned in the following manner namely: -

(a) he shall assess or re-assess the rental value of each sub-unit or property keeping in view the market rent and rent of other properties in the vicinity in similar circumstances.

(b) he shall make the proposed assessment or re-assessment of rent of the sub-unit or property openly available for inspection by the tenants and general public;

(c) he shall give a notice to the general public and the tenant indicating proposed assessment or re-assessment of rent and shall give fifteen days time from the date of receipt of notice, for filing objections, if any;

(d) he shall fix the assessed or re-assessed rent of the sub-unit or property after giving opportunity of hearing to the tenant and objectionist, if any and

(e) he shall complete the entire process within a period of sixty days from the issuance of first notice, which may be further extendable by the Chairman on merit.

(ii) The chairman or the concerned Administrator may at any time, call for the record of any property, to check the correctness or propriety of assessment or re-assessment and fixation of rent of that property and may pass such orders as deemed fit after giving opportunity of hearing to the parties.

11. Periodical re-assessment and enhancement of rent.-

(i) The periodical reassessment of rent shall be made by the District Officer concerned after every six years in accordance with the procedure laid down in clause 10.

(ii) Enhancement in rent shall be made at the rate of eight percent per annum.

4. It is the above amendments which were brought under challenge before the Peshawar High Court by relying upon *Muzzafar*

*Khan* case and thus, was declared illegal. We are, therefore, called upon to examine whether these amendments could be said to be unreasonable in light of *Muzzfar Khan*. It bears noting that the respondents, being tenants, are in possession of the evacuee trust properties, which are attached to charitable religious, educational trusts and institutions, whose objects and purpose are carried out with the rent of their properties. Therefore, the Board is empowered under section 4(f) of the Act, to assess or reassess the rent of the evacuee trust properties. Although it is not specifically mentioned in the Act, nevertheless, it is implied that the rent payable by the tenant shall be just, equitable, impartial, dispassionate, uncoloured and objective. It is an old-line that in as far as social legislation, such as the Act and the Scheme is concerned, the law must strike a balance between competing interests, and should try to be just to all. The law ought not to be unjust to the tenant and give a disproportionate benefit or protection to the landlord. The Holy Quran also says the same in *Surah Al Baqra*, verse 279 'do not cause harm nor be harmed'. So, it is desirable that some protection should be provided to the tenants in order to ensure that they are not exploited. At the same time, the rent has to be revised periodically, as it is normal for the market rent to become marginal or insignificant every three to four years with the prevailing rate of inflation. It needs no emphasis that as a social welfare measure, the purpose of any rent legislation is to regulate the relationship between the landlord and the tenant harmoniously and not to increase conflict and hostility between them.

5. Taking all the facts and circumstances in consideration, we have no doubt that the existing provisions of the Scheme relating to rent determination and fixation can no longer be considered unreasonable. The whole procedure of the Scheme is neither too mechanical, nor too rigid. It is a fundamental principle of justice that legitimate expectation ought not to be thwarted. The protection of legitimate expectation is at the heart of the constitutional principle of the rule of law, which requires fairness, reasonableness, regularity, predictability, a proper hearing, and certainty in the dealings of the government or its instrumentalities with the public. We find that legitimate expectation is present in the Scheme, and its existence brings procedural fairness in two ways: first, a policy or practice that dictates a particular procedure to be followed gives rise to the right of the tenant to demand that the procedure for assessment or

reassessment of rent be followed; and secondly, if there is a legitimate expectation of a reasonable benefit, it may give rise to a right for a fair procedure before the benefit is withheld.<sup>2</sup> It is clear from clauses 10 and 11 of the Scheme that the District Officer is mandated to fix the rent of the evacuee trust property, keeping in view the market rent and rent of other properties in the vicinity in similar circumstances. This means that his powers are not unbridled. He cannot act on his whims while assessing the rent. He is bound to observe the standards mentioned in the Scheme, so as to eliminate any improper motive and possibility of coercion. It is also evident that to bring transparency in the rent assessment procedure, the existing clause 10 ensures that not only the proposed assessment is open to inspection by the tenant but also provides them an opportunity for objections and hearings. An additional measure to prevent unfairness in the determination of rent is provided by empowering the Chairman of the Board or the Administrator concerned to *suo moto* examine the correctness or propriety of the determination of rent. At that, it has been mandated to periodically reassess the rent every six years and increase it at the rate of eight per cent per annum. After considering all things, we are poised to conclude that all those shortcomings which were found illegal in the erstwhile procedure of assessment and reassessment of rent in *Muzzafar Khan*, has been remedied in the Scheme, and as such, we cannot accept the view expressed by the Peshawar High Court that clauses 10 and 11 of the Scheme are arbitrary, oppressive and unreasonable.

6. We, therefore, allow these appeals in light of the interpretation adopted by us and set aside the judgment of the Peshawar High Court dated 9<sup>th</sup> of October, 2013.

**Judge**

**Judge**

**Judge**

Islamabad, the

29.11.2023

"Approved for reporting"

Sarfraz Ahmad & Agha M. Furqan, LC

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<sup>2</sup> *McInnes v. Onslow-Fane* [(1978) 1 WLR 1520].