

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

CPLA. No. 03-K of 2023

On appeal against the Order dated 08.12.2022
passed by the High Court of Sindh, Karachi
in Constitution Petition No. D-1031/2021

Mst. Tahira Begum and others ...Petitioners

Versus

Federation of Pakistan through its
Secretary Ministry of Religious Affairs & ...Respondents
Interfaith Harmony, Government of
Pakistan & other

For the Petitioner : Syed Ehsan Raza, ASC
Ghulam Rasool Mangi, AOR with
Petitioner No.2 (Baber Jan)

For Respondent No.1 : Nemo.

For the Respondent : Mr. Iftikhar Javed Qazi, ASC.
No. 2 to 5 Mr. Muhammad Iqbal Chaudhry,
AOR.

Date of Hearing : 02.06.2025

Judgment

Muhammad Ali Mazhar, J. – This Civil Petition for leave to appeal is directed against the Order dated 08.12.2022 passed by the High Court of Sindh, Karachi in the Constitution Petition No.D-1031/2021.

2. The compendium of facts unveil that the petitioners No.1 & 2 are running a business under the name and style of M/s. Yamin &

Company. The property No.W.O.2/4-6, open space measuring 16481.35 Sq. Ft situated at Wadhomal Odharam Quarters, Karachi, **(Subject Property)** was acquired by the petitioners in the year 1974 through auction. It is further alleged that the possession was given in two parts, i.e. 13778 Sq. fts. in the year 1978 while the remaining portion of 2706 Sq. fts. was handed over in the year 1982. The indenture of 99 years was executed on 28.3.1992, vide Registration No.1347, Book No.2, dated 28.3.1992, Sub-Registrar T. div. Karachi with M.F. Roll No.1563, dated 15-4-1992. The lease was executed by the Evacuee Trust Property Board (**ETPB**), Government of Pakistan, Lahore, through its Deputy Administrator, Karachi in accordance with the approval letter of ETPB, dated 20.11.1991. The respondent No.6 issued notice of cancellation vide letter dated 17.9.2020 with the allegations that the lease granted in favour of the petitioners is bogus and fake. The petitioners responded to the notice of cancellation and show cause but the respondents extended threats of dispossession. Since the petitioners had no expeditious and appropriate remedy under the law especially with reference to Section 14 of the Evacuee Trust Property (Management & Disposal) Act 1975, (**ETP Act**), they filed the constitution petition against the respondents for setting aside the notice of cancellation of lease but the learned Division Bench of Sindh High Court dismissed the constitution petition by means of impugned order.

3. The learned counsel for the petitioners argued that the High Court failed to appreciate that the copy of impugned Order dated 14.9.2020 was not provided to the petitioners and the same was brought on the record for the first time through statement of the respondents No.2 to 5, hence Section 16, 17 and 21 of the ETP Act were inapplicable. It was further contended that the registered Lease Deed dated 28.3.1992 was cancelled on account of alleged fake approval despite issuing challans for payment of renewal of lease charges since long. He further argued that the whole exercise of cancellation of lease was done without providing ample opportunity of audience to defend the false allegations of forged or fake approval of lease of the subject property.

4. The learned counsel for the respondents argued that the subject property is an evacuee trust property which was leased out to the

petitioners for a period of one year with the rider of an extension for 30 years subject to the approval of the Federal Government. However in the year 1991, the then Administrator ETPB, (South Zone), Karachi wrote a letter to the Ministry of Religious Affairs for seeking approval of extension of lease for 99 years, which was not permissible. He further argued that the petitioners in connivance with the Administrator ETPB, (South Zone) managed to obtain a forged approval letter from the Ministry of Religious Affairs for the grant of 99 years lease and upon re-verification, it was found that the lease in favor of petitioners was forged. It was further contended that the Ministry of Religious Affairs, Government of Pakistan, categorically denied the approval for the conversion of lease from 30 years to 99 years. It was further averred that Chairman, ETPB took up the matter and opportunity was provided to the petitioners to explain their position, thereafter, the lease was canceled by him vide Order dated 14.9.2020 in exercise of his statutory powers conferred under Clause 23 of the Scheme for Management & Disposal of Urban Evacuee Trust Properties 1977, wherein, the Chairman ETPB may for the reasons to be recorded in writing, cancel the tenancy or lease of any property if he is satisfied that it was obtained illegally or in violation of the Rules, Regulations or Scheme.

5. Heard the arguments. In fact, the petitioners were nonsuited by the learned High Court on the ground that they only challenged the notice of cancellation but not the order dated 14.09.2020, which was subsequently placed on record through a statement filed on behalf of the respondents No.2 to 5 along with the copies of the show cause notice and notice for appearance. Moreover, the learned High Court observed that the opportunity was afforded to the petitioners to make their representation and an alternate remedy of filing a revision application as provided under Section 17 of the ETP Act was not availed. Indeed, the finer points of the writ petition filed by the petitioners reflects that they essentially challenged the cancellation notice of lease dated 17.09.2020, conveyed by the respondents in which the cancellation order of lease by the Chairman ETPB was also highlighted. The petitioners in the memo of petition, prayed for the declaration that the notice of cancellation is illegal and also disputed the demand raised by the respondents in the sum of Rs.4,79,70,721/-

for the period commencing from 1991 to 2020. The petitioners also asserted that the registered lease deed for a period of 99 years could not be cancelled through injudicious reasoning. The proceedings conducted by the respondents to upkeep the cancellation of lease ricochets that on 17.09.2020, the Deputy Administrator, ETPB, issued a notice for the cancellation of registered lease on the plea that the documents were sent to the Federal Government/Ministry of Religious Affairs for verification and in view of their letter of verification the documents produced by the petitioners were found fake and bogus. It was also intimated in the same notice that the Chairman ETPB, vide order dated 14.09.2020, cancelled the lease deed issued in favour of the petitioners. The Order dated 14.09.2020, passed by the Chairman ETPB shows in paragraph 04 of the Order that after issuing the show cause notice, it was revealed that proprietor of M/S Yameen & Company died on 01.06.2020 and petitioner No.1 submitted the reply to the show cause notice and the matter was adjourned for 17.06.2020, but it was further adjourned due to the Corona pandemic, however, on 29.06.2020, one Khalil Ahmed representing Tahira Begum as Attorney appeared and made a request for adjournment on the ground that Tahira Begum was suffering from Corona. In the intervening period the matter was adjourned to some other dates. However, when the matter was fixed on 20.07.2020, petitioner No.2 appeared and made a request that Mst. Tahira Begum has some serious health issues and made a request for an adjournment but the request was declined and the Administrator, South Zone was directed to submit parawise comments so that the matter may be decided on the basis of comments/reply and documentary evidence without any further hearing or recording of evidence. The request of adjournment made was declined on 20.07.2020 and the matter was decided on 14.09.2020 on the basis of available documents.

6. The conscientious survey of ETP Act accentuates that the foremost purpose of legislating this law was to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions. Under Section 2 (a) (Definition Clause), "Act" means the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958), or the Displaced Persons (Land Settlement) Act, 1958 (XLVII of 1958), as the case may be. While

clause (d) defines "evacuee trust property" which means the evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act. The right to appeal is provided under Section 16 of ETP Act, wherein any person aggrieved by an order passed under this Act may, within fifteen days of the passing of such order, prefer an appeal: (a) in the case of an order passed by an Assistant Administrator or a Deputy Administrator, to the Administrator; and (b) in the case of an order passed by an Administrator, not being an order passed in appeal by the Administrator confirming an order of an, Assistant Administrator or a Deputy Administrator, to the Chairman. Whereas Section 17 of the same act, ordains a provision for Revision which elucidates that the Federal Government may at any time, of its own, motion or otherwise, call for the record of any case or proceedings under this Act, which is pending or in which the Chairman, an Administrator, a Deputy Administrator or an Assistant Administrator has passed an order, for the purpose of satisfying itself as to the correctness, legality or propriety of such an order, and may pass such order in relation thereto as the Federal Government thinks fit. The proviso appended with this section, reads aloud that the record of any case or proceedings in which the Chairman, an Administrator, a Deputy Administrator or an Assistant Administrator has passed an order shall not be called for under this section on the application of any aggrieved person made after the expiration of fifteen days from the date of such order. According to Section 21 of the ETP Act, the Federal Government or any person authorised by it, the Chairman and every officer appointed under this Act shall, for the purposes of making any enquiry or hearing any appeal or revision under this Act, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, (CPC) when trying a suit in respect of the following matters, namely (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) requisitioning any public record from any Court or office; (d) issuing commissions for the examination of witnesses; (e) appointing guardians or next friends of persons who are minors or of unsound mind; (f) adding legal representatives of deceased applicants or claimants, as parties; (g) restoration of cases

dismissed for default; (h) substituting the names of the rightful claimants; (i) consolidation of cases; (j) any other matter which may be prescribed by rules made under this Act. While sub-section (2) expounds that the Chairman and every officer appointed under this Act shall be deemed to be a Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898, and any proceedings before the Chairman or any such officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code and for the purposes of sections 196, 199 and 200 thereof.

7. The order passed by the Chairman, ETPB, Lahore, on 14.9.2020, demonstrates the title of the alleged case/proceedings as "Administrator (SZ) ETP Karachi versus M/s Yamin & Company" with the nomenclature "Order regarding illegal 99 years lease in R/O ETP NOWO-2/4-6 Nanakwara, Nishtar Road Karachi". The aforesaid order deliberates that the Administrator ETPB, Southern Zone, Karachi reported that lease of the subject property was granted initially for 30 years which was converted to 99 years lease pursuant to the approval of the Federal Government, Ministry of Religious Affairs & Minorities Affairs vide Letter dated 11.07.1991 but no original approval of the Federal Government was available so the lease was executed without approval of the Federal Government, therefore, the Administrator South Zone Karachi issued a Show Cause Notice to the occupants on 04.05.2020. The substratum of order passed by the Chairman ETPB unequivocally articulates that neither he decided any appeal under Section 16 nor any revision under Section 17. In the best case scenario, the proceedings triggered on the basis of complaint instituted by the Administrator, ETPB, South Zone Karachi which can only be construed and reckoned as an enquiry at the original stage and not as appellate or revisional jurisdiction, therefore, it had nothing to do with any powers conferred or bestowed under the provisions of ETP Act to hear appeal or revision by the designated or competent authority. At this moment, we recapitulate that under Section 21 of the ETP Act, the Federal Government or any person authorised by it, the Chairman and every officer appointed under this Act shall, for the purposes of making any enquiry or hearing any appeal or revision under this Act, have the same powers as are vested

in a Civil Court under CPC, and under this section, various procedural powers have been conferred to ensure and protect the cause of justice and right to fair trial. Without a doubt, Clause 19 of the "Scheme for the lease of Evacuee Trust Agricultural Land, 1975" provides that the Assistant/Deputy Administrator shall be competent to cancel a lease if the lessee thereof has violated any of the terms and conditions of the lease or if the land is required for any public purpose provided the lessee has been provided a reasonable opportunity of being heard. Whereas under Clause 23, of the Scheme, the Chairman is competent to cancel the lease of any land if he is satisfied that the auction was not conducted properly or that the lease was acquired by fraud or deceitful means.

8. If we dwell on the watchword "reasonable opportunity of being heard" broached in Clause 23 of the Scheme for the lease of Evacuee Trust Agricultural Land, 1975, it simultaneously implores our attention to Section 27 of ETP Act, wherein any person who is entitled or required to attend before the Chairman or any other authority in connection with any proceeding under this Act, otherwise than when called upon to attend personally for examination on oath or affirmation, may attend or be represented by his duly authorised agent, and any application, appeal or revision may be presented by counsel or such agent. According to the Evacuee Trust Properties (Appeal and Revision) Rules, 1980, the procedure for causing appearance on the date fixed for hearing appeal or revision is jotted down in Rule (7), while Rule (8) germane to the "Adjournments" wherein, the authorities hearing appeals and revisions may, on sufficient cause shown by either of the parties, adjourn the hearing of an appeal or revision, as the case may be; provided that where a case is adjourned the authority hearing the appeal or revision shall fix the next date of hearing.

9. Under Section 105 of the Transfer of Property Act, 1882 (Chapter V), a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on specified occasions to the transferor by the transferee, who

accepts the transfer on such terms. The mannerism of how the leases are made is provided under Section 107, which set forth that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. It is further provided that all other leases of immovable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession and where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

10. It is somewhat significant to spotlight the niceties of Section 13 of the ETP Act, wherein all persons appointed under this Act, are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code. While Section 14, expounds that save as otherwise provided in this Act, no civil Court shall have jurisdiction in respect of any matter which the Federal Government or an officer appointed under this Act is empowered under this Act to determine, and no injunction, process or order shall be granted or issued by any Court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act. In the same context, the indemnity of actions is shielded and protected under Section 15 with the diction that no suit, prosecution or other legal proceeding shall lie against then Federal Government, the Board or any person appointed under this Act in respect of anything which is done in good faith or intended to be done in pursuance of this Act or any rules, scheme or order made thereunder.

11. The nucleus of the Order passed by the Chairman ETPB, dated 14.9.2020 for cancellation of lease is based on the perusal of record and documentary evidence, whereby, it was held that conversion of a 30 year lease to a 99 year lease and its approval was accorded as a result of fake documents which established fraudulent activity, mala fide and breach of trust causing loss to Government exchequer on the part of the then Administrator ETP Karachi and District Officer Karachi. In view of the rigors and exactitudes of Section 14 of the ETP Act, wherein explicit bar has been imposed that neither civil Court has jurisdiction to try any matter covered or regulated under ETP Act nor

can grant any injunction in respect of any action taken or to be taken in exercise of any power conferred by or under the said Act, therefore, in our view, if such bars are imposed through legislative instruments in any law/statute, then in such manifestations, more responsibilities and conscientiousness is attached to such authorities/offices to perform their functions with due diligence. It also commands an onerous responsibility to exercise special jurisdiction and powers under the special law with rationality and the existence of mental persuasion much higher than mere opinion. While Section 14 has created a specific bar but concomitantly, Section 21 of the ETP Act, conferred wide ranging powers vested in a civil Court under CPC, *inter alia*, summoning and enforcing the attendance of any person; examining him on oath and issuing commissions for the examination of witnesses.

12. On the face of it, the order of the Chairman ETPB depicts that the request for adjournment was made due to serious health issues of Mst. Tahira Begum which was declined for non-production of evidence and observation that the occupants are avoiding to appear/argue the case, hence, the Administrator South Zone Karachi was directed to submit parawise comments to decide the case on the basis of comments/reply and documentary evidence, which shows that without any further proceedings the order was reserved. The order does not reflect that the matter was fixed for recording of evidence in the enquiry which was necessary to reach a just and proper conclusion as to whether the lease was executed and registered on the basis of fraud or on a fake approval. All such issues could only be decided after recording evidence and providing fair opportunity to the occupant rather than deciding a serious matter of cancellation of registered lease after much time merely on the basis of available documents without confronting it to the occupant. In judicial or quasi-judicial proceedings, not only adherence to the law but legal principles including relevant rules of procedure and evidence is ought to be considered for fair and just decisions. The bar of jurisdiction of civil Court under Section 14 of the ETP Act, neither, bestowed unbridled or unchecked jurisdiction, nor does it authorize the authority to decide the matters in cursory or slipshod manner. On the contrary, it is their obligation under law to decide matters with proper application of mind

and pass judicious orders, which is lacking in this case. The High Court nonsuited the petitioners on hyper technical grounds and failed to advert to that the order dated 14.09.2020 was passed behind the back of the petitioners and for the first time placed in the High Court during the hearing of Constitution Petition, hence, there was no occasion to file revision against the order which was not communicated to the petitioners and after declining adjournment, no date was fixed in the case for any purpose and order was reserved, which was otherwise a wrong exercise of powers, the Chairman ETPB should have given the exact date for announcing the order without keeping it in limbo.

13. Due process is prerequisite that needs to be respected at all strata. The right to fair hearing and fair trial necessitates that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he is given a fair chance to answer it and a fair opportunity to explicate/present the case. To enjoy the protection of law and to be treated in accordance with the law is an inalienable right of every citizen. The purposefulness of Article 4 of the Constitution is to ascribe and integrate the doctrine of equality before law or equal protection of law, and no action detrimental to the life and liberty of any person can be taken without due process of law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain and contest before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken. In our Constitution, right to fair trial has also become a fundamental right under Article 10-A. The principle of natural justice is grounded on the astuteness and clear-sightedness of affording a right of audience before any prejudicial action is taken, therefore it is an inescapable obligation of all judicial, quasi-judicial and administrative authorities to ensure justice according to the sagacity of the law. Reference can be given to some judgments authored by one of us, such as Junaid Wazir v. Superintendent of Police (2024 SCMR 181), Federation of Pakistan v. Zahid Malik (2023 SCMR 603), Usman Ghani v. The Chief Post Master, GPO Karachi (2022 SCMR 745), Capital Development Authority v. Shabir Hussain (2022 SCMR 627), Raja Muhammad

Shahid v. The Inspector General of Police (2023 SCMR 1135),
Muhammad Yaseen v. Province of Sindh (2024 PLC(CS) 111),
Government of Balochistan v. Ghulam Rasool (2024 SCMR 1155),
Inspector General of Police, Quetta v. Fida Muhammad (2022 SCMR
1583)

14. In the wake of above discussion, this petition is converted into an appeal and allowed. As a consequence, thereof the impugned order of the High Court dated 08.12.2022 and the order dated 14.09.2020 passed by the Chairman ETP Board as well as the Notice/letter dated 17.09.2020 issued by the Deputy Administrator (U) all are set aside and matter is remanded to the Chairman ETPB to decide the matter afresh after providing an ample opportunity of hearing to the parties within a period of three months from the date of receipt of this judgment.

Judge

Judge

Judge

Karachi
02.06.2025
Khalid.
Approved for reporting.