

2020 C L C Note 36

[Lahore]

Before Ch. Muhammad Iqbal, J

MUHAMMAD HANIF---Petitioner

versus

REVISIONAL AUTHORITY and others---Respondents

W.Ps. Nos. 183570 and 161038 of 2018, decided on 18th May, 2018.

(a) Evacuee Trust Property (Management and Disposal) Act (XIII of 1975)---

---Ss. 8, 10 & 17---Evacuee Property and Displaced Persons Law (Repeal) Act (XIV of 1975), S. 3---Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 4---Qanun-e-Shahadat (10 of 1984), Art. 100---Declaration of property as "evacuee trust property"---Validation of certain transfers---Scope---Transfer of property---Presumption as to documents thirty years old---Non-production of evidence of transfer of property---Effect---Chairman, Evacuee Trust Property Board, while invoking jurisdiction under Ss. 8 & 10 of Evacuee Trust Property (Management and Disposal) Act, 1975, cancelled the Permanent Transfer Deed (PTD)---Revisional Authority set aside the order passed by the Chairman, validated the PTD and declared the remaining suit property to be evacuee trust property---Validity---Jamabandi and khasra girdawaris for the years 1965 to 2002 showed that the property belonged to Gurdwara, which was an evacuee trust property and such longstanding entries had acquired the presumption of correctness under Art. 100 of Qanun-e-Shahadat, 1984---Revenue record was sufficient for proving that the suit property was trust property---Property belonging to Gurdwara in view of S. 4(2) of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, was not available in the pool of available properties of Settlement Department, which lacked jurisdiction to allot the trust properties to any person---Properties attached to charitable, religious or educational trusts or institutions were excluded from the Settlement Pool under S. 3 of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975---No document of auction proceedings was placed before the High Court to show that issuance of PTD was made in accordance with law---No khasra number was mentioned in the PTD---Order passed by Revisional Authority was set aside and that of Chairman was restored---Constitutional petitions were allowed, in circumstances. [Paras. 7, 8 & 10 of the judgment]

Qazi Akbar Jan and others v. The Chairman District Evacuee Trust Committee Peshawar and others 1991 SCMR 2206; Evacuee Trust Property Board, Lahore and another v. Syed Abdus Saleem and others 1990 SCMR 143 and Muhammad Usman and others v. Secretary to Government of Pakistan and another PLD 2004 SC 140 rel.

(b) Evacuee Trust Property (Management and Disposal) Act (XIII of 1975)---

---S. 8---Declaration of property as 'evacuee trust property'---Disposal of public property---Public interest litigation---Scope---Petitioners, Deputy Administrator and

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tenant of Evacuee Trust Property Board, assailed order passed by Revisional Authority through constitutional petitions—Contentions of respondent were that the tenant was not competent to challenge the order of Revisional Authority and that the Deputy Administrator was not competent to file Constitutional petition against the order of his own Authority, which amounted to disobedience of its order—Validity—Property belonged to Evacuee Trust Property Board and every citizen was very much competent to challenge the perverse order of the Authority—Every citizen was aggrieved person if such property was being embezzled/misappropriated by any person through fraudulent means—Secretary/Revisional Authority enjoyed two fold jurisdiction, firstly he was head of the department and his administrative orders were binding upon all his subordinates, whereas while performing quasi-judicial functions his orders were amenable to challenge by any person including his subordinate—Federal Government had authorized the Deputy/Assistant Administrators to institute and defend the suit/proceedings in the courts of law—High Court held that the Deputy Administrator was competent to file constitutional petition against the revisional order of the Secretary. [Para. 9 of the judgment]

Atta Ullah Khan Malik v. Federation of Government of Pakistan through President of Pakistan and 3 others 2010 PLD Lah. 605 rel.

(c) Qanun-e-Shahadat (10 of 1984)---

---Art. 70—Proof of facts by oral evidence—Scope—Oral assertion cannot be considered as sufficient to rebut the documentary evidence rather documentary evidence takes preference over verbal depositions—Document can only be rebutted by the document having better legal value. [Para. 7 of the judgment]

Abdul Ghani and others v. Mst. Yasmeen Khan and others 2011 SCMR 837 and Saleem Akhtar v. Nisar Ahmed PLD 2000 Lah. 385 ref.

(d) Administration of justice---

---When the law requires a thing to be done in a particular manner same should be done in that very specific modus operandi otherwise the same would be termed as illegal. [Para. 8 of the judgment]

Muhammad Saqib Jillani for Petitioner.

Muhammad Muazzam Sher for Petitioner (in W.P. No. 161038 of 2018).

Mian Muhammad Tariq, DAG.

Nasir Ahmad Awan for ETPB along with **Usman Nasir** and Rana Zahid Naseem Shahid for Respondents.

S.M. Tayyab and Syed Zulfiqar Ali Shah for Respondent No. 4.

Date of hearing: 27th April, 2018.

SA/M-61/L

Petitions allowed.

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