

2023 C L C 2090

[Lahore]

Before Asim Hafeez, J

EVACUEE TRUST PROPERTY BOARD
and others----Petitioners

versus

MUHAMMAD TUFAIL and others----Respondents

Civil Revision No.552 of 2010, decided on 3rd March, 2022.

***Evacuee Trust Properties (Management and Disposal) Act
(XIII of 1975)---***

***----Ss.10, 14, 16 & 17---Specific Relief Act (I of 1877), Ss.42 & 54---
Suit for declaration and injunction---Evacuee Trust Property---Status,
determination of---Jurisdiction of Civil Court---Plea of bona fide
purchaser---Scope---Petitioner / defendant was Evacuee Trust Property
Board and was aggrieved of judgment and decree passed by Lower
Appellate Court in favour of respondents / plaintiffs setting aside order
passed by Chairman Evacuee Trust Property Board determining suit
property as Evacuee Trust Property---Validity---Determination carried
out by the Chairman Evacuee Trust Property Board was not
challengeable before Civil Court, in terms of S. 14 of Evacuee Trust
Properties (Management and Disposal) Act, 1975---Powers were
exercised by the Chairman under S. 10 of Evacuee Trust Properties
(Management and Disposal) Act, 1975---Remedy of respondents against
order in question was available either under sections 16 or 17 of
Evacuee Trust Properties (Management and Disposal) Act, 1975---Plea
of bona fide purchase by respondents / plaintiffs, from alleged
allottees, extended no protection when allotment of alleged allottees, to
whom Permanent Transfer Deeds were issued after June 1968 and their
matter had been decided in terms of orders passed by Chairman, which
orders were intact and had otherwise attained finality---High Court set
aside judgments and decrees passed by Lower Appellate Court and
restored that of Trial Court---Trial Court had rightly held that
Civil Court lacked jurisdiction to entertain and adjudicate suits
filed by respondents / plaintiffs---Revision was dismissed, in
circumstances. [pp. 2097, 2098] A & B***

Evacuee Trust Property Board v. Ali Bahadur PLD 2011 SC 126; Khurshid Ahmad and others v. Rana Mumtaz Ahmad and others 2016 SCMR 679; Evacuee Trust Property Board and others v. Mst.

CLC

Sakina Bibi and others 2007 SCMR 262; Member BOR Punjab and others v. Mst. Siddiqan and others 2015 SCMR 1721; Chairman Evacuee Trust Property Board v. Saleem Khan and others 2021 CLC 468; Shamim Akhter v. Chairman Evacuee Trust Property Board 2017 YLR 851; Muhammad Abdullah v. Evacuee Trust Property and others 2019 YLR 2737; Assistant Administrator Evacuee Trust Property v. Sadaullah Khan 2012 MLD 787 and Evacuee Trust Property Board v. Sheikh Abdul Sattar and another 2009 SCMR 1223 ref.

Evacuee Trust Property Board v. Zakia Begum 1992 SCMR 1313 rel.

Usman Nasir Awan for Petitioners.

Salah-ud-Din Shaharyar Khan for Respondents.

Date of hearing: 3rd March, 2022.

JUDGMENT

ASIM HAFEEZ, J.----This and connected Civil Revisions, bearing Civil Revisions Nos. 553/2010 and 554/2010 raised common questions of law, primarily relating to the jurisdiction of the Civil Court in the context of provisions of Evacuee Trust Properties (Management and Disposal) Act, 1975 (Act No. XIII of 1975) ("Act 1975").

2. The facts of the cases are simple. Courts have concurrently decreed the suit for declaration and permanent injunction filed by the respondents, wherein the validity of orders dated 21.11.1977 and 18.02.1981 were questioned, passed by the Chairman Evacuee Trust Property Board upon reference by the Settlement Commissioner (Policy) Punjab. Chairman exercised powers under section 10 of Act 1975. Respondents in all these petitions claimed issuance of Permanent Transfer Order (PTO) and alleged to have made payments in lieu of effecting transfer of land, comprising of shops, allegedly allotted in satisfaction of duly verified claim. It is the case of the respondents that Permanent Transfer Deed (PTD) were issued in the year 1973 and in terms of policy circular of 1971, alleged orders dated 02.12.1972 and 14.05.1973 were passed by Department Settlement Commissioner, (policy of 1971 and referred orders are not placed on record of trial court, nor same are not available on record of these revisions). The chairman Evacuee Trust Property Board, upon reference for determination of validity of transfers, passed order in following terms:-

"Since the Evacuee Trust nature of the property has not been seriously contested, I declare the property as evacuee trust. The

transfer made by virtue of the PTO in view of what he has been said above is validated particularly because it was issued bona fide in satisfaction of the transferee's verified claim. The amount determined by the Settlement Department shall be deposited by the transferee with the Evacuee Trust Property Board. The price of this property in view of the direct payment to be made by the transferee shall not be claimed from the Settlement Department."

3. Subsequently order dated 18.02.1981 was passed with reference to one of the shops, bearing No. 3760. The shops subject matter of instant *lis* are numbered as 3758, 3759, 3761 and 3762. Ahmad Yar son of Mian Sardar Muhammad claimant of shop No. 3761 is not before this Court.

4. Respondents challenged orders passed by the Chairman Evacuee Trust Property Board before the Civil Court, wherein objections were raised regarding the jurisdiction of Civil Court in terms of section 14 of Act 1975. Learned Civil Judge dismissed the suits, which decrees were reversed by learned appellate court, and consequently the suits filed by the respondents were decreed. Hence these Civil Revision.

5. Learned counsel appearing for the Evacuee Trust Property Board contends that reference sent to the Chairman was decided in exercise of powers under section 10 of the Act, 1975. Submits that Civil Court lacked jurisdiction to adjudicate upon the *lis* in wake of jurisdictional bar contained in section 14 of the Act, 1975. Adds that Chairman had the exclusive jurisdiction to make declarations in terms of section 8 of Act 1975. Learned counsel referred to following decisions in cases of "Evacuee Trust Property Board v. Ali Bahadur" (PLD 2011 Supreme Court 126), "Khurshid Ahmad and others v. Rana Mumtaz Ahmad and others" (2016 SCMR 679), "Evacuee Trust Property Board and others v. Mst. Sakina Bibi and others" (2007 SCMR 262), "Evacuee Trust Property Board v. Zakia Begum" (1992 SCMR 1313), "Member BOR Punjab and others v. Mst. Siddiqan and others" (2015 SCMR 1721), "Chairman Evacuee Trust Property Board v. Saleem Khan and others" (2021 CLC 468), "Shamim Akhter v. Chairman Evacuee Trust Property Board" (2017 YLR 851), "Muhammad Abdullah v. Evacuee Trust Property and others" (2019 YLR 2737) and "Assistant Administrator Evacuee Trust Property v. Sadaullah Khan" (2012 MLD 787).

6. Conversely, learned counsel for the respondents contends that PTD's were issued, affirming the factum of conferment of ownership, hence, proceedings and decisions by the Chairman Evacuee Trust Property Board were illegal and without jurisdiction. Adds that upon issuance of PTD's matter stood past and closed, whereafter conferment

of ownership could not be questioned. He submits that section 8 of the Act, 1975 is not attracted as the dispute is not regarding the determination that whether the property in question was attached to charitable, religious, or educational trust or institutions. Adds that exclusivity is only extended to the extent of the matters provided in section 8 of the Act. Submits that respondents being *bona fide* purchaser of property from the transferee, who had acquired rights in terms of PTD's, who were not extended opportunity to defend the proceedings before the Chairman. Learned counsel referred to a decision in the case of "Evacuee Trust Property Board v. Sheikh Abdul Sattar and another" (2009 SCMR 1223) and read paragraph 7 thereof.

7. Arguments heard. Record perused.

8. Before proceedings further, it is expedient to reproduce relevant provisions, comprising of sections 8, 10, 14, 16 and 17 of the Act, which are referred while hearing;

8. DECLARATION OF PROPERTY AS EVACUEE TRUST PROPERTY:-

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

(2) If the decision of the Chairman under sub-section (1) is that an evacuee trust property, he shall, by notification in the official Gazette, declare such property to be evacuee trust property.

If a property is declared to be evacuee trust property under subsection (2), the Chairman may pass on order canceling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof;

Provided that no declaration under sub-section (2) or order under sub-section (3) shall be made or passed in respect of any property without giving the persons having interest in that property a reasonable opportunity of being heard.

10. VALIDATION OF CERTAIN TRANSFERS:-

(1) An immovable evacuee trust property;

(a) If situated in a rural area and utilized bona fide under any Act prior to June, 1964, for allotment against the satisfaction of verified claims; and

(b) *If situated in an urban area and utilized bona fide under any Act for transfer against the satisfaction of verified claims in respect of which Permanent Transfer Deeds were issued prior to June, 1968;*

Shall be deemed to have been validly transferred by sale to the Chief Settlement Commissioner, and the sale proceeds shall be reimbursed to the Board and shall form part of the Trust Pool.

(2) *If a question arises whether a transaction referred to in subsection (1) is bona fide or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any Court.*

(3) *If it is decided that a transaction referred to in a subsection (1) is not bona fide, the Chairman may pass an order cancelling the allotment or transfer of such property;*

provided that no decision under subsection (2) or order under subsection (3) shall be taken or passed in respect of any property without giving the person affected a reasonable opportunity of being heard.

14. BAR OF JURISDICTION:-

Save as otherwise provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Federal Government, or any 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.

16. Appeal. – *Save as otherwise provided in this Act, 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.*

17. REVISION:-

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 or an Administrator, or 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.

Provided that the record of any case or proceedings in which the Chairman, or an Administrator, or 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."

9. Most significant aspect of the case was that PTO were issued before 1968 but PTD's were admittedly issued in the year 1973, which is hit by sub-clause (b) of subsection (1) of section 10 of Act 1975.

10. The character of the property, being an evacuee property, was not seriously contested. The respondents primarily claimed rights based on PTD's terming those concluded transactions - earlier recorded in terms of PTOs and latterly reaffirmed through the issuance and execution of PTD's. When confronted, learned counsel for the respondents conceded that the policy circular of 1971 was not brought on record of learned trial court, nor said letter is available with the file, which was otherwise irrelevant in the wake of legislative intent expressed in terms of section 10 of the Act, 1975.

10(*sic*) This Court, in wake of the orders passed by the Chairman Evacuee Trust Property Board, is not asked to determine the question of validity of transfers in the context of section 10 of Act 1975. The only question raised for determination is the jurisdictional issue - whether civil court has jurisdiction in the matter when validity of transfers was decided by the Chairman, upon reference by the Settlement Commissioner. It is evident that Chairman, Evacuee Trust Property Board, exercised powers and jurisdiction while invoking sub section 1(b) of section 10 of the Act, 1975. The question is simple, and answer is found in subsections (1) and (2) of section 10 of Act, 1975, whereby legislature has extended powers to the Chairman to determine the validity of certain transfers, in the context of terms and conditions provided in sub-clauses (a) and (b) of subsection (1) of Section 10 of Act 1975. The Chairman is also empowered to examine the question of *bona fide* transaction with reference to the property classified as an evacuee property - subsection (2) of section 10 of Act 1975. It is reiterated that nature of the property, being an evacuee property is not disputed, nor

jurisdiction of the Chairman to determine validity of transfers - when PTD's were not issued before June 1968. Now the question is whether determination carried out by the Chairman Evacuee Trust Property Board in terms of section 10 of Act, 1975 can be questioned by invoking the jurisdiction of civil court, when its specifically barred. It is appropriate to refer to the text of section 14 of Act 1975, which says that 'save as otherwise provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Federal Government, or any officer appointed under this Act is empowered under this Act to determine'....."

It is apparent from the perusal of the section 10 of Act, 1975 that Chairman is vested with the power to determine the factum of validity of transfers - to which extent jurisdiction of the Civil Court is restricted -, which power was duly exercised upon passing of orders dated 21.11.1977 and 18.02.1981. I concur with the counsel for the respondents that question of applicability of section 8 does not arise in the circumstances, and simultaneously disagreed with assertion that matter was triable by the Civil Court, after exercise of powers by the Chairman under section 10 of Act, 1975. The question of powers exercisable by the Chairman and exclusivity of jurisdiction, to the exclusion of the jurisdiction of Civil Court was raised and settled in the case of "Evacuee Trust Property Board v. Mst. Zakia Begum and others" (1992 SCMR 1313) ratio of the decision at pages 1316 & 1317 are reproduced hereunder,

"A perusal of the above would show that when a question arises whether a property is evacuee trust property the decision of the Chairman, Evacuee Trust Property Board shall be final S.8(1) and if it is so, the Chairman may cancel the allotment or alienation (S.8(3)) , further, it shall be exempt from any process of Courts or other authority (S.9). Section 14 excludes jurisdiction of any Court in respect of any matter which is determinable by any authority under the Act.

However, section 10(1) provides that if an evacuee trust property has been utilized bona fide for transfer against satisfaction of claims in respect of which Permanent Transfer Deed was issued prior to June, 1968, that shall be deemed to have been validly transferred by sale to Chief Settlement Commissioner and the proceeds shall be reimbursed to the board. In case, a question arises whether transfer is bona fide or not, it shall be the Chairman whose decision shall be final and shall not be called in question in any Court S.10(2)).

immune from the scrutiny of Courts. In view whereof, the contention of the learned counsel for appellant that order dated 27-11-1976 was passed under section 10(2) of Act XIII of 1975 and protected has little substance and thus repelled. In this background it is thus held that only those orders passed by the Chairman, E.T.P.B. are protected from calling in question in any Court, which were passed strictly within the scope and purview of section 10(2) of Act XIII of 1975 and none else and, therefore, in all cases of evacuee trust property jurisdiction of civil Court cannot be ousted."

Respondents can still claim enforcement of the orders dated 21.11.1977 and 18.02.1981, as applicable to the case of the respondents.

13. In view of the aforesaid, these Civil Revisions are allowed, and judgments and decrees dated 05.11.2009 by the learned appellate court are set aside and judgments and decree of the learned Civil Court dated 20.03.2007, whereby it was held that Civil Court lacked jurisdiction to entertain and adjudicate the suits filed by the respondents, was affirmed. Any observation herein would not prejudice whatever rights were extended or claimable by the respondents in terms of Orders dated 21.11.1977 and 18.02.1981. No order as to the costs.

MH/E-6/L

Revision petition allowed.
