

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Syed Mansoor Ali Shah

Civil Petition No. 4737 of 2018

(Against the order dated 17.10.2018 of the Lahore High Court, Rawalpindi Bench passed in Writ Petition No. 3569/09)

*Deputy Administrator Evacuee
Trust Property, Rawalpindi.*

... *Petitioner*

Versus

Sakhi Muhammad Kiani.

... *Respondent*

For the Petitioner:

Hafiz S. A. Rehman, Sr. ASC.

Respondent No. 1, 2 (i-iv):

In person.

Date of Hearing:

02.09.2022.

ORDER

Qazi Faez Isa, J. This petition for leave to appeal assails the order dated 17 October 2018 passed by the learned Single Judge of the Rawalpindi Bench of the Lahore High Court who had allowed the writ petition filed by the private respondents. The writ petition had been filed because the Sub-Registrar (Urban) of District Rawalpindi was not registering sale deeds, leases and other documents of those who had acquired properties in certain land which had been declared to be a *katchi abadi* by the Directorate General Katchi Abadis, Government of the Punjab on 14 December 1989 under the Punjab Katchi Abadis Act, 1992 (respectively '**the said land**' and '**the Act**').¹ The said land was declared to be a *katchi abadi* on the written request of the Mayor, Rawalpindi, conveyed through letter dated 27 July 1987, which stated that there are forty household units constructed and occupied on the said land since the year 1948 and that '*to provide shelter for homeless is an integral part of the Prime Minister's Five Points Programme*'. The said Sub-Registrar had stopped registering documents presented for registration under the Registration Act, 1908 because he had been asked not to do so by the Evacuee Trust Property Board ('**the Board**').

2. The learned counsel representing the Board relies upon some entries in the revenue record wherein the said land is shown to be part of the land of a *dharamshala*. We are informed that in Hinduism *dharamshala* is a

¹ PLD 1993 Provincial Statutes 43.

shelter or rest house for pilgrims. The learned counsel for the Board states that the said land was wrongly declared to be a *katchi abadi*. The learned counsel states that in terms of the Evacuee Trust Properties (Management and Disposal) Act, 1975² (**‘the Evacuee Trust Act’**) the said land came to vest in the Board and as such it could not have been declared to be a *katchi abadi*, and that in doing so the Directorate General of Katchi Abadis, Punjab had committed an illegality. He also referred to the restriction stipulated in section 6 of the Evacuee Trust Act. The learned counsel placed reliance on the decisions in the cases of *District Evacuee Trust Committee v Mashraf Khan*,³ *Secretary, District E.T.P. v Habibullah*⁴ and *Muhammad Usman v Secretary to Govt. of Pakistan*.⁵

3. There is nothing on record to suggest that the said land ever became evacuee trust property. The record of rights also does not mention that the Board or the Federal Government were the owners thereof. Therefore, we need not concern ourselves with section 6 of the Evacuee Trust Act which would be applicable provided it was established that the said land was evacuee trust property whereupon it *‘shall vest in the Federal Government’* as per section 6, and as such the cited cases are not relevant.

4. We enquired from the learned counsel whether the notification issued by the Directorate General of Katchi Abadis, declaring the said land as a *katchi abadi*, was challenged and he stated that this had not been done. However, the learned counsel referred to a decision of the High Court, in some other writ petition which was dismissed, wherein it was stated that, *‘the question whether the property is evacuee and attached to charitable, religious or educational trust or institution, or not shall be decided by the Chairman’*. In response to our query, whether the Chairman of the Board had decided the same, the learned counsel stated this had not been done. The learned counsel next referred to an order passed under Order VII Rule 11 of the Code of Civil Procedure passed in some suit, wherein reference was made to the matter requiring a decision by the Chairman. However, since the Chairman of the Board had never determined that the said land was evacuee property, and had come to vest in the Board, this order too is no help to the Board.

5. Significantly, the Board also did not challenge the said land being declared as a *katchi abadi* by the Directorate General of Katchi Abadis,

² PLD 1975 Central Statutes 79.

³ 1989 SCMR 1636.

⁴ PLD 1991 Supreme Court 586.

⁵ PLJ 2004 Supreme Court 524.

Punjab, which was done in exercise of the powers under the Act. Instead the Board assumed that since the said land was part of a *dharamshala* it automatically came to vest in the Board upon the promulgation of the Evacuee Trust Act. But this understanding of the Board does not accord with the Evacuee Trust Act.

6. The learned Judge of the High Court had correctly observed that the properties of the Board are those which are part of the 'Trust Pool' or had been declared to be evacuee trust property as per section 7 of the Evacuee Trust Act, the relevant clauses whereof are reproduced hereunder:

'(a) all evacuee trust property which immediately before the commencement of this Act formed part of the Trust Pools constituted under the Acts;'

'(b) any evacuee property declared under section 8 to be evacuee trust property.'

However, the said land was neither part of the *Trust Pool* nor had been declared to be trust property. The Board's assertion that the said land was evacuee trust property was not supported by any evidence or material.

7. A large number of people are living in the properties constructed on the said land. Neither the *dharamshala* management nor any member of the Hindu community has come forward to deny the ownership rights of the *katchi abadi* dwellers or objected to the declaration of the said land as a *katchi abadi*. The Mayor of Rawalpindi had recommended that the said land be declared as a *katchi abadi*, and in doing so he had referred to government policy which required provision of housing for the poor and homeless. In response to our query, whether the Federal Government had disavowed the contents of the Mayor's said letter we were told that it had not done so. Therefore, it has to be assumed that the Federal Government had endorsed, or, at the least, did not have any objection to the declaration of the said land as a *katchi abadi*.

8. Therefore, for all the aforesaid reasons leave to appeal is declined. However, there is an ancillary matter which, having come to our notice, cannot be ignored.

9. The *sanade haqooq milkiat*⁶ issued by the Directorate General of the Katchi Abadis, through which *katchi abadi* dwellers on the said land were granted proprietary rights, prominently features the image of the Chief

⁶ Title document of ownership.

Minister of Punjab.⁷The apparent reason to portray the image of the Chief Minister, who is a politician, could only be to present him to the recipients of the *sanads* as their benefactor, and thus cultivate in them a feeling of being beholden to him. If the said gentleman wanted to help the homeless, nothing prevented him from distributing his own property, and, if he did so, he would be at liberty to affix his photograph on the documents of title. Self-projection on public/government records and self-aggrandisement at public expense is not permissible.

10. Quaid-e-Azam Muhammad Ali Jinnah was the President of the All India Muslim League, the political party which helped Pakistan attain independence, yet he directed civil servants not to support his own political party:

'You have to do your duty as servants; you are not concerned with this or that political party; that is not your business.'⁸

And, reiterated this categorically:

'You should have no hand in supporting this political party or that political party, this political leader or that political leader -this is not your business.'⁹

11. The Constitution of the Islamic Republic of Pakistan (**'the Constitution'**) mandates that the custodians of power must exercise it as a public trust. The Constitution opens by acknowledging that, '*sovereignty over the entire universe belongs to Allah Almighty alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.*' The Preamble to the Constitution proceeds to inscribe the peoples' commitment to be, '*Faithful to the declaration made by the Founder of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah, that Pakistan would be a democratic State based on Islamic principles of social justice; Dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny.*'

12. The Constitution also prescribes oaths of office for public office holders¹⁰ and also for the Chief Justices and the Judges of constitutional courts in the following words,¹¹ '*I will not allow my personal interest to influence my official conduct or my official decisions.*' Affixing one's own photograph on a public/government document projects *personal interest*, therefore, this is not permissible because it would violate one's oath of

⁷ Mr. Pervaiz Elahi.

⁸ Address to Gazetted Officers, March 25, 1948.

⁹ Talk to Civil Officers, April 14, 1948.

¹⁰ The President, Prime Minister, Federal Ministers, Ministers of State, Speaker of the National Assembly, Chairman Senate, Deputy Chairman of the National Assembly, Deputy Chairman of the Senate, Governors, Chief Ministers, Speakers of the Provincial Assemblies, Deputy Speakers of the Provincial Assemblies.

¹¹ Chief Justice of Pakistan and of the High Courts, Judges of the Supreme Court and High Courts.

office. It is also not permissible to manoeuvre the honouring of oneself through one's subordinates, political associates or in a manner that may call for the bestowal of reciprocal favours. Paid servants of the State, constitutional office holders and politicians in government must not use their positions for personal, partisan or pecuniary gain. If someone names a public/government place or property after themselves or affixes their own name or image on a public/government document, it is self-glorification, and if this is done by others, it would constitute obedience, flattery, nepotism and/or corruption. Pakistan is not a kingdom, principality or fiefdom in which the people are to be beholden to their rulers. We must remain constantly vigilant in maintaining the country's independence and democratic credentials. Politicians and anyone else who renders public service are best immortalised for what they did or stood for after their passing, if for no other reason than that during their lifetime, some unsavoury truth may be revealed about them, and the people may no longer want to honour them.

13. To name public/government properties and anything planned, developed and/or managed from public/government funds or to project oneself, as in the present case by getting one's photograph affixed on the *sanads*, violates the Constitution, undermines Pakistan's Islamic moorings, is without lawful authority, and, if one may add, is also in bad taste. Public/government properties, documents and funds must be used in a transparent manner and by observing the prescribed standards of financial propriety and must also be compliant with the mandate of the Constitution and the laws. It must also be ensured that no advantage or benefit, directly or indirectly, accrues to or is taken by any living person, as was done in this case by affixing the photograph of the Chief Minister on the *sanads* of properties situated on the said land.

14. Copies of this order be sent to the Cabinet Secretary, to the Chief Secretaries of the provinces and to the Chief Commissioner/Administrator of Islamabad Capital Territory, and all of them are directed to issue requisite notifications reminding government servants that they serve the people, and not individuals in government, and that they must strictly abide by paragraphs 9 to 13 of this Order.

Judge

Judge

Islamabad
(Tauseef)
22.11.2022

Approved for Reporting