HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.3175 of 2023

Cantonment Board Nowshera through Executive Officer and another

Versus

Government of Pakistan through Secretary Religious Affairs and Interfaith Harmony, Islamabad and others

Petitioner by	**:**	**Syed Hamad Ali Shah, Advocate.**
Respondents by	**:**	**Raja Jawad Arsalan, Assistant Attorney General** **Syed Najam-ul-Hassan Hashmi, Advocate for respondent No. 2 & 3** **M/s Usman Anwar and Qaiser Jan, Advocates for respondent No. 6 & 7.**
Date of Hearing	**:**	**04.02.2025**

Babar Sattar, J:- The petitioners are aggrieved by order dated 19.06.2023 passed by Secretary Ministry of Religious Affairs dismissing the revision against order dated 28.10.2022 passed by Chairman, Evacuee Trust Property Board **("ETPB").**

2. Respondent No.2 (i.e. Chairman ETB) while dismissing an application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 **("CPC")** by order dated 28.10.2022 prohibited the Cantonment Board from using plot measuring 01 Kanal and 12 Marlas in Survey No.269/5 Cavalry Road, Nowshera Cantt **("Property")** and further directed that ETPB would retain possession of the Property on superdari basis through its lessees. By order dated 19.06.2023 the Secretary, Ministry of Religious Affairs dismissed the revision petition

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against Chairman ETPB's order, while holding that Chairman ETPB was vested with authority to adjudicate the status of the Property in exercise of authority under section 8 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 **("1975 Act")**. The petitioners' contention in the instant petition is that there has never been any determination or a declaration issued that the Property is Evacuee Property. The basic question is one of ownership of the Property, as the Property is vested in the petitioners and has never been vested in the ETPB. And further that the Chairman of the ETPB, who has exercised his authority under Section 8 of the 1975 Act, cannot act and judge of his own cause and declare that Property vested in another institution of the Federal Government falls within his administration.

3. Learned counsel for the petitioners submitted that according to the General Land Register maintained with Cantonment Executive Officer, Nowshera, the Property is vested in Cantonment Board Nowshera. It was leased out through a registered Lease Deed dated 15.12.1938, under Schedule VI of the of the Cantonment Land Administration Rules, 1937, read with provisions of the Cantonment Act, 1924, for a period of thirty years. The lease period expired in the year 1968, and was never renewed. He submitted that there was a school established on the Property, which could remain operational in terms of provisions of the Cantonment Act. In 2010, the building being an old structure was damaged due to floods in the area and after issuance of notice under section 126 of the Cantonment Act, the building on the Property was demolished. Respondent No.2 filed W.P. No.776-P/2016 before the Peshawar High Court impugning

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the petitioner's action in relation to the Property. The said petition was dismissed as withdrawn by order dated 11.07.2017 on the basis that the petitioner (i.e. Chairman Evacuee Trust Property Board) had availed an alternative remedy under law. Respondent No.2, Chairman ETPB then filed W.P. No.2964/2017 before the Peshawar High Court to prevent the petitioner from demolishing the building constructed on the property. This petition was heard along with certain other petitions and was disposed of by the Peshawar High Court by judgment dated 26.02.2020, while issuing directions to respondent No.2 and the petitioner to approach the proper forum for redressal of their grievances as the subject matter of the petition involved disputed questions of fact that could not be resolved by the High Court in its constitutional jurisdiction and would require recording of evidence. Meanwhile, respondent No.2 also filed a complaint under section 3 of the Illegal Dispossession Act, 2005, before the Sessions Judge, Nowshera. This complaint was dismissed by judgment dated 27.10.2018 on the basis that ETPB has failed to establish that it had possession of the Property and was illegally dispossess of the same or that the petitioner acquired possession of the Property illegally. Subsequently, the ETPB through its Deputy Administrator filed a petition under section 8 of the 1975 Act against the petitioner seeking a declaration that the Property was an Evacuee Trust Property. The petitioner on the other hand filed a civil suit before the Senior Civil Judge, Nowshera seeking a declaration that the Property was vested in Cantonment Board Nowshera and that respondent No.2 could not act as a judge in his own cause and declare that the Property was Evacuee Trust

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Property and vested in respondent No.2. While exercising authority in terms of section 8 of the 1975 Act that respondent No.2 passed an injunctive order in its own favour and directed that the possession of the Property would vest in ETPB during the pendency of the matter before respondent No.2, and this order was subsequently upheld by Secretary Ministry of Religious Affairs in exercise of its revision jurisdiction. Learned counsel for the petitioner relied on ***Muhammad Jamil Asghar Vs. The Improvement Trust, Rawalpindi (PLD 1965 SC 698)***, for the proposition that an administrative authority can exercise jurisdiction on the basis of determination of certain jurisdictional facts. But the order of such authority would be void where the underlying jurisdictional facts did not exist and the Civil Court's jurisdiction to declare so could not be ousted. He then relied on ***Evacuee Trust Property Board Vs. Umar Din (1999 YLR 1976)*** for the proposition that in order to exercise jurisdiction it was for the ETPB to first establish that the property was Evacuee Property and further that it was attached to some charitable, religious or education trust. And that the power to determine the existence of such jurisdictional facts vesting jurisdiction in a Special Tribunal always vested in the courts of plenary jurisdiction. He further relied on ***Alia Hussain Vs. Syed Ziauddin (PLJ 2008 Cr.C. Quetta 820)*** and ***Mumtaz Ahmed Siddiqui Vs. Tahir Aslam Mufti (PLJ 2013 Islamabad 278)*** where, the Balochistan High Court and the Islamabad High Court, respectively, held that where the possession of a party was found not to be illegal under provisions of the Illegal Dispossession Act, 2005, such person could not be treated as an illegal occupant.

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And as the Sessions Court Nowshera had dismissed the complaint filed by respondent No.2, in terms of section 5 of the Illegal Dispossession Act, respondent No.2, in exercise of any adjudicatory authority could not hand over the Property to itself in terms of section 8 of the 1975 Act.

4. Learned counsel for respondents No.2 and 3 submitted that writ petitions had been filed before Peshawar High Court (mentioned in the arguments of the learned counsel for the petitioners recorded above) with regard to the status of the Property while seeking a direction that the Cantonment Board be restrained from taking adverse action in relation to the Property. The petitions were disposed of on the basis that the question involved recording of evidence and such factual controversy could not be adjudicated by the High Court in its constitutional jurisdiction. In one such petition, i.e. W.P. 2501-P/20, the Cantonment Board Nowshera impugned the order of Peshawar High Court before the Supreme Court through C.P. No. 3706 of 2020, seeking leave to appeal against the judgment of Peshawar High Court dated 24.09.2020. The Supreme Court did not grant leave and noted in order dated 03.04.2023 that the counsel for Cantonment Board Nowshera admitted that the matter was pending before the Chairman ETPB and Cantonment Board Nowshera could take up all jurisdictional objections before such forum. He submitted that the Supreme Court did not hold that Chairman ETPB was devoid of jurisdiction in terms of Section 8 of the 1975 Act. He further relied on ***Evacuee Trust Property Board vs. Mst. Sakina Bibi*** (**2007 SCMR 262**), ***Auqaf Department through Chief Administrator Auqaf vs.***

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Secretary Ministry of Religious Zakat, Usher and Minorities Affairs Government of Pakistan **(2009 SCMR 210),** ***Evacuee Trust Property Board vs. Ali Bahadur*** **(PLD 2011 SC 126),** ***Khurshid Ahmed Vs. Rana Mumtaz Ahmed*** **(2016 SCMR 679)** and ***Samina Naz vs. Evacuee Trust Property Board*** **(2024 CLC 682)** for the proposition that Chairman ETPB was vested with authority under Section 8 of the 1975 Act to declare an Evacuee Property as Evacuee Trust Property. And in view of section 14 of the 1975 Act, the jurisdiction of the Civil Court stood ousted. He submitted that notwithstanding the judgments of the Supreme Court holding that section 8 of the 1975 Act vested jurisdiction in Chairman ETPB to adjudicate the status of the property and section 14 of the said Act read with section 9 of CPC, that ousted the jurisdiction of the Civil Court, the Civil Court Nowshera was continuing to exercise jurisdiction in the suit filed by the petitioner and had dismissed an application filed by respondent No.2 under Order VII Rule 11 of CPC for return of the plaint to the petitioner for lack of jurisdiction. He supported the impugned order of respondent No.2 and the order passed in revision by Secretary, Ministry of Religious Affairs.

5. After hearing the learned counsels for the parties by order dated 23.09.2024 this Court sought further assistance from the parties in the following terms:

> *2. The petitioner's claim to the title of the property-in-question is based on the fact that the title is always vested in Cantonment Board, Nowshera, and leasehold rights were granted by the Cantonment Authorities to Arya Prithi Nadhi Sabha, Lahore, for purposes of running a girls school for a period of thirty years from 20.06.1928 to 19.06.1958. The record does not, however, reflect as to the status of the*

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property and the entity that continue to administer such property from 1958 till the year 2016 when the site was assumed by the Cantonment Board, Nowshera, by CBR No.55 dated 08.02.2016.

3. There is also some record that there existed an education institution on the said site prior to the site being resumed in 2016. Let the petitioner file the record of the status of the property since the expiry of leasehold rights granted to Arya Prithi Nadhi Sabha, Lahore, as of 19.06.1958 till 2016 when the site was resumed. Let the petitioner also file a copy of the relevant noting file that contains notes with regard to resumption of the site by CBR No.55 dated 08.02.2016. Let these documents be filed within a period of four weeks.

4. Learned counsel for the respondents No.2 and 3 file the record on the basis of which the said respondents claim title to the property-in-question. More particularly, respondents No.2 and 3 file the relevant record to establish that the property-in-question qualifies as Evacuee Property for purposes of Pakistan (Administration of Evacuee Property) Act, 1957, the Displaced Person (Compensation Rehabilitation Act, 1958), the Displaced Person (Land Settlement Act, 1958) and the Evacuee Trust Properties (Management and Disposal) Act, 1975 ("1975 Act"). Further, let respondents No.2 and 3 file the relevant record to establish that the property-in-question fell within the Trust Pool for purposes of section 7 of the 1975 Act, and the relevant record on the basis of which respondent No.2 ascertained the jurisdictional fact with regard to the property being Evacuee Property falling within the Trust Pool before assuming jurisdiction under section 8 of the 1975 Act. Let this record be filed by respondents No.2 and 3 within a period of four weeks."

6. The Court afforded learned counsels for the parties an opportunity to assist with regard to the above observations and directions. The petitioner placed on record a Google image of the Property and placed on record extracts from the GLR reflecting that the Military Estate Officer has leased out certain land to Islamia High School through the issuance of lease for a period of

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thirty years starting on 15.12.1938 and ending on 14.12.1968. And that another parcel of land had been leased out to Islamia High School No.82 by the Military State Officer on 14.07.1928. He submitted that these entries in the GLR reflected that the Property was part of a parcel of land that always vested in the Military State Officer and had been leased out for a specific period to a trust running an educational institution but was never Evacuee Property, the status of which could be adjudicated by Chairman ETPB. Learned counsel for the respondents reiterated the arguments that he made during the initial hearings.

7. The questions that arise for adjudication of the instant petition are of a legal nature. The first question is *whether Chairman ETPB is vested with jurisdiction to adjudicate the status of some property where it has not been established through record that the property has ever been classified as an Evacuee Property.* The second question that arises is *whether in the absence of classification of a property as Evacuee Property, the jurisdiction of a court of plenary jurisdiction is ousted and it cannot determine the underlying jurisdictional fact with regard to the status of a property as Evacuee Property, which jurisdictional fact is a prerequisite for establishing the jurisdiction of Chairman ETPB for purposes of section 8 of the 1975 Act.*

8. Before we address the legal questions above, let us consider the jurisdiction vested in Chairman ETPB in terms of section 8 of 1975 Act. According to its preamble, the 1975 Act was promulgated, *"to provide for the management and disposal of the evacuee properties attached to charitable, religious or education trusts or institutions."* Section 7 of the 1975 Act

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determines what constitutes the Trust Pool for the management, maintenance and disposal of properties, comprising all the evacuee trust properties in relation to which power is bestowed on ETPB to manage, maintain and dispose of such properties. Section 7 states that following:

> ***7. Trust Pool.*** *For the purposes of management, maintenance and disposal of evacuee trust property a Trust Pool consisting of the following shall be constituted, namely:*
>
> *(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;*
>
> *(c) Government property or any other property exchanged with any evacuee trust property;*
>
> *(d) any property purchased or constructed by the Board;*
>
> *(e) sale proceeds of any evacuee trust property;*
>
> *(f) all profits and income received or derived from any evacuee trust property;*
>
> *(g) all rents and other amounts received, realized or recoverable in respect of evacuee trust property.*

9. Of relevance for our present purposes is section 8(1) of the 1975 Act, which states the following:

> ***8. Declaration of Property as evacuee trust property.—****(1) If a question arises whether an evacuee 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.*

10. A plain reading of section 8(1) of the 1975 Act leaves no ambiguity that the jurisdiction vested in Chairman is only in relation to an "Evacuee Property", where a question arises whether such property is attached to a charitable, religious or educational trust or institution or not. Therefore in order for the Chairman to assume jurisdiction, the underlying jurisdictional fact

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that must first be established is that the question that arises is not in relation to any property, but an "Evacuee Property". This is also evident from Section 7, where it is an evacuee trust property that falls within the Trust Pool when so determined in term of section 8 of the 1975 Act. And in terms of section 7(b), only an Evacuee Property can be declared in terms of Section 8 to be an evacuee trust property.

11. The definition of Evacuee Property is not provided under the 1975 Act. Section 2(2) of the 1975 Act, however, provides that words and expressions not defined in the said Act shall have the same meaning as in the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956), the Pakistan Rehabilitation Act, 1956 (XLII of 1956), the Pakistan Administration of Evacuee Property Act, 1957 (XII of 1957), the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII, of 1958), or the Displaced Persons (Land Settlement) Act, 1958 (XLVII of 1958). One of the first laws enacted for purposes of rehabilitation of refugees and evacuees was the Pakistan Rehabilitation Act, 1956, mentioned in section 2 of the 1975 Act. The terms 'Evacuee' and 'Evacuee Property' were defined therein as follows:

> ***(3) "Evacuee"*** *means any person, --*
>
> *(a) who, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, on or after the first day of March, 1947, leaves, or has left any place in the territories now comprising Pakistan for any place outside those territories; or*
>
> *(b) who acquires or has acquired, on or after the aforesaid date, by way of allotment or lease or by means of unlawful occupation or other illegal means, any right to, interest in or benefit from any property which is treated as evacuee property*

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under any law for the time being in force in India or in any area occupied by India; or

(c) Who is resident in any place in the territories now comprising India or in any area occupied by India, and, --

(i) is unable to occupy, supervise or manage in person his property in Pakistan, or

(ii) whose property in Pakistan has ceased to be occupied, supervised or managed by any person or is being occupied supervised or managed by a person (whether duly empowered in this behalf by him or otherwise) whose authority or right so to do on or after the aforesaid date has not been accepted or approved by the Custodian; or

(d) Whose business or undertaking in Pakistan in the case of a Corporation, has on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances, or the fear of such disturbances, ceased to function, wholly, or partially, or is being carried on by person (whether duly empowered in this behalf by the Corporation or its management or otherwise) whose authority to do so on or after the first day of March, 1947 has not been accepted or approved by the Custodian; or

(e) Being a joint stock company more than fifty percent of the shares of which are held by person who are evacuees;

***(4) "Evacuee Property"** means any property in which an evacuee has any right or interest (whether personally or as a trustee or a beneficiary or in any other capacity), and includes,-*

(a) any right or interest in joint Hindu family property which would accrue to the evacuee upon the partition of the same; or

(b) Property of an evacuee obtained by transfer on or after the first day of March, 1947, until the transfer is confirmed by the Custodian; or

(c) property belonging to any person who, after the eighteenth day of October, 1949, does or has done any of the acts specified in the next succeeding clause, or in which any such person has any right or interest, to the extent of such right or interest, but does not include, --

(i) Any ornaments or wearing apparel or any cooking vessels or other household effects in the immediate possession of an evacuee ; or

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> *(ii) any property belonging to a joint stock company the registered office of which was situated before the fifteenth day of August, 1947, in any place, in the, territories now comprising India and continues to be so situated after the said date;*

12. Section 6 of the Pakistan Rehabilitation Act, 1956, vested in the Central Government, as it then was, the power to authorize the Rehabilitation Commissioner to pool evacuee properties as specified and allot them to persons resident in Pakistan. The definition of Evacuee, as mentioned above, included within it a resident whose property in Pakistan was being occupied by a person whose authority was not accepted or approved by the Custodian. "Custodian" is defined in Pakistan (Administration of Evacuee Property) Act, 1957, as *"a Custodian of Evacuee Property appointed under Section 6…."* The Pakistan (Administration of Evacuee Property) Act, 1957, also defines "Evacuee" and "Evacuee Property" in identical terms as defined under the Pakistan Rehabilitation Act, 1956. Section 3(1) of the Pakistan (Administration of Evacuee Property) Act 1957, provides the following:

> ***3. Property not to be treated as evacuee property on or after 1st January, 1957.*** *(1) Notwithstanding anything contained in this Act, no person or property not treated as evacuee or as evacuee property immediately before the first day of January, 1957 shall be treated as evacuee or, as the case may be, as evacuee property, on or after the said date.*

13. In view of the above provision, it is evident that in order for a property to qualify as Evacuee Property, it must have been treated as an Evacuee Property by or before 01.01.1957. Section 7(1) of the Pakistan (Administration of Evacuee Property) Act, 1957, provided that Evacuee Property shall vest in the Custodian

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with effect from 01.03.1947. Section 9(1) of the Pakistan (Administration of Evacuee Property) Act, 1957, provided for return of property (in relation to which the Custodian had occupancy or tenancy rights) to a lesser who was not an evacuee in the following terms:

> ***9. Special provision with respect to transfer of occupancy or tenancy rights of evacuees.*** *(1) Where occupancy or tenancy rights have vested in the Custodian and have been allotted as evacuee property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare by general or special order, that with effect from such date as may be specified in the order, he shall stand absolved of all responsibilities with respect to the property or the allotment.*

14. A holistic reading of the above provisions clarifies that in order for a property to qualify as Evacuee Property, as defined above, it must have been determined to be an Evacuee Property as of 01.01.1957 and ought to have been vested in the Custodian. Where what was vested in the Custodian were occupancy or tenancy rights vested in relation to an Evacuee Property, which was a leasehold property, in terms of Section 9(1), the Custodian could order that the property would vest in the lesser upon expiry of the lease period in terms of section 9(1) of Pakistan (Administration of Evacuee Property) Act, 1957.

15. Consequently, for purposes of assumption of jurisdiction in terms of section 8(1) of the 1975 Act, Chairman ETPB would require to first determine that the property in relation to which he seeks to exercise authority (to determine whether or not the property is attached to a charitable, religious or educational trust or institution) is an Evacuee Property as discussed above. This is

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the foundational jurisdictional fact the determination of which in the affirmative would lead to creating jurisdiction in the office of Chairman. To determine whether such Evacuee Property was attached to a charitable, religious, educational trust or institution, the Chairman would first need to determine whether the property in question had been determined to be Evacuee Property by 01.01.1957 in terms of Section 3(1) of the Pakistan Administration of Evacuee Property) Act, 1957. And further, that in relation to such property, no order had been passed by the Custodian in terms of Section 9(1) of the said Act, where the rights in such property were occupancy or tenancy rights under a lease.

16. In the instant matter, the Chairman has not determined this foundational jurisdictional fact. Despite repeated opportunities afforded by this Court, respondent No.2 failed to produce any record in terms of provisions of the Pakistan Rehabilitation Act 1956, the Pakistan (Administration of Evacuee Property) Act, 1957 or the 1975 Act that the Property was determined and declared to be an Evacuee Property. And consequently the Chairman could assume jurisdiction in terms of section 8(1) of the 1975 Act. This is so despite the fact that the issue of status of the Property has been the prime controversy between the petitioner and respondent No.2. The Petitioner filed an application in terms of Order VII Rule 11 of CPC before Chairman ETPB on the basis that the Property was always owned by the Cantonment Board Nowshera, as evidenced by entries in the GLR, and the lease granted in relation to the Property also expired in 1968. Thus, even in the event that tenancy rights in

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the Property were deemed to have vested in the Custodian in terms of the Pakistan (Administration of Evacuee Property) Act, 1957, the rights would have reverted to the petitioner upon expiry of the lease. The application filed by the petitioner before respondent No.2 squarely flagged the issue of title of the Property and whether or not it was Evacuee Property. This then required the Chairman to determine the foundational jurisdictional fact of the status of the Property being an Evacuee Property or not before assuming jurisdiction and passing interim orders in exercise of authority under Section 8(1) of the 1975 Act. This respondent No.2 has not done. And for this reason alone the impugned order, and the order in revision, is not sustainable in the eyes of law.

17. There is no cavil with the judgments cited by the learned counsel for respondent No.2, which have been reproduced in the arguments above. While they enumerate the principle that the jurisdiction of civil court is ousted in cases where the statute vests authority to decide a question exclusively in the office of the Chairman, none of the judgments hold that the Chairman in terms of section 8(1) of the 1975 Act would have jurisdiction to determine the status and the vesting of title of any property notwithstanding that such property is not an Evacuee Property.

18. It is also a settled proposition that the plenary jurisdiction of a civil court to determine jurisdictional facts cannot be taken away implicitly. It was held by the Supreme Court in ***Muhammad Jameel Asghar v. The Improvement Trust*** **(PLD 1965, Supreme Court 698)** that, "*[a] purely administrative officer who is empowered to pass an order if certain*

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circumstances exist has no jurisdiction to determine those circumstances and the objective existence of those circumstances is an essential condition of the validity of his order. In respect of every order passed by him the Court can make an enquiry and if it finds that all the circumstances needed for passing the order were not present it will declare the order to be void. …An administrative officer or authority may be given jurisdiction to determine some facts on proof of which he can pass an order and in that case he will act in a quasi-judicial manner for the determination of those facts and his determination validly reached will support his order in relation to those facts. …The foundation of the jurisdiction of the Settlement Officers for transfer of property is that the property should be that which was evacuee property, which has vested it the Central Government and which is liable to be transferee under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act. …If the property was in fact not evacuee property and was not vesting in the Central Government the Settlement Authorities could not grant to themselves any jurisdiction to deal with it by holding that it was evacuee property. Their orders would always be liable to challenge in an ordinary civil Court on the ground that they had no jurisdiction with respect to the property transferred at all."

19. The law laid down in ***Muhammad Jameel Asghar*** remains good law. The suit filed before the Civil Court Nowshera, raises a question with regard to the title of the Property. The petitioner is claiming that the Property always vested in Cantonment Board Nowshera, and falls under the domain of the

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Ministry of Defence of the Federal Government. Respondent No.2, on the contrary, contends that the Property falls within the domain of ETPB and, therefore, under the control of the Ministry of Religious Affairs of the Federal Government. The jurisdiction of the civil court is not barred from recording evidence and determining whether or not there is any determination by a competent authority in terms of provisions of the Pakistan Rehabilitation Act 1956, the Pakistan (Administration of Evacuation Property) Act 957, and the 1975 Act that the Property is Evacuee Property. In the event that the civil court, after framing an issue, comes to the conclusion that the property is Evacuee Property, it would then need to stay its hand and let the Chairman decide whether or not such Evacuee Property is attached to a charitable, religious or educational trust or institution in terms of Section 8(1) of the 1975 Act. However, prior to such decision, the bar of jurisdiction in section 14 of the Act of 1975 would not be operative. In view of the above, the civil court would be within its right to proceed with the matter and determine the aforementioned question of the status of the Property and whether or not it is found to have been declared to be Evacuee Property in terms of section 3 of the Pakistan (Administration of Evacuation Property) Act, 1957.

20. Likewise, the Chairman ETPB would have no jurisdiction to exercise powers under section 8(1) of the 1975 Act unless he first determines the jurisdictional fact that the property in question is an Evacuee Property. And consequently, he has jurisdiction in the matter. It can be contemplated that where the civil court and the Chairman simultaneously assume jurisdiction,

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the findings of the civil court and the Chairman could be at variance. In such event, the order of the civil court could be challenged in appeal. And likewise, the order of the Chairman would be a revisable order, and any decision in revision could then be scrutinized by the High Court in exercise of its constitutional jurisdiction.

21. In view of the aforementioned discussion, this Court finds that the impugned orders passed by the Chairman and the Secretary Ministry of Religious Affairs are not sustainable in the eyes of law, as the said orders have been passed without determining the foundational jurisdictional fact with regard to the status of the Property and whether or not it is Evacuee Property. The impugned orders are therefore set aside and the instant petition is **allowed.** Any application filed before the Chairman, in terms of Section 8(1) of the 1975 Act, will be deemed pending, and he may proceed in such matter, but only after determining the status of the Property after reaching the conclusion, on the basis of record through a reasoned order, that the Property is Evacuee Property.

(BABAR SATTAR)
JUDGE

Announced in open Court on ***13.05.2025****.*

JUDGE

Approved for reporting.

M.A. Raza

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