MANDVIWALLA & ZAFAR
ADVOCATES

CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Monday, 17 August 2026

Upload Window: 13, 15 & 17 August 2026 (14 Aug public holiday) — with 11-12 Aug and SHC 7-10 Aug stragglers

FCC: 2 judgments | SC: 4 judgments | LHC: 2 judgments | SHC: 2 judgments | IHC: no new entries

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Exclusions and coverage notes: twenty-two candidates were identified across the holiday-adjusted window (13, 15 and 17 August 2026), together with judgments uploaded on 11 and 12 August 2026 and Sindh High Court matters of 7-10 August 2026 recovered after that portal came back online. Ten were curated for reporting. (a) Supreme Court Civil Appeal No. 1443 of 2018 (Commissioner of Income Tax, Lahore v. M/s Sui Northern Gas Pipelines Ltd) was re-checked for a fourth time at https://www.supremecourt.gov.pk/downloads_judgements/c.a._1443_2018.pdf: the eleven-page file again yielded only 112 characters of extractable text and remains an image-only scan. It is therefore excluded for a fourth consecutive check and will be carried forward. (b) Two further Supreme Court uploads are image-only scans and were excluded on the same basis: C.A. No. 19-P/2015 (Ghani Rehman through L.Rs v. Masal Khan), six pages yielding 60 characters, and J.P. No. 617/2025 (Wasim Abbas v. The State), four pages yielding 40 characters. (c) J.P. No. 321/2019 (Muhammad Irfan & 2 others v. The State, decided 09.07.2026) was extracted in full but excluded as a routine capital appeal and companion acquittal petition turning wholly on appreciation of evidence and the double presumption of innocence, with no fresh proposition. (d) Crl.M.Appeal No. 9/2017 (Sher Azam v. The State through A.G. KP, decided 19.05.2026) was extracted *but excluded as a case-specific miscellaneous appeal against the Institution Officer's return of a second criminal review petition. (e) Lahore High Court 2026LHC4972 (Misc. Writ 227807/18, Haroon Farooq v. Government of Punjab, Shahid Karim J, uploaded 13.08.2026) is the continuing smog/JWEC mandamus: the file runs to 288 pages including annexures and is too voluminous for a digest entry; it is flagged for a dedicated standalone note. (f) Lahore High Court 2026LHC4955 (W.P. (Rent) 4596-26, Muhammad Mehboob v. ADJ, Ahmad Nadeem Arshad J) was extracted but excluded as a constitutional petition dismissed in limine on the maintainability of an application under section 12(2), C.P.C. in rent proceedings, with express reservation of the parties' civil remedies. (g) Sindh High Court Const. P. No. 977/2025 (Sadruddin Noorali through Attorney Nooruddin Bhimani v. Muhammad Farooq, 2026 SHC KHI 1524) was extracted but excluded as a rent matter dismissed in limine on the Rent Controller's powers under sections 15 and 19 of the SRPO. (h) The remaining Sindh High Court items listed in the window — I.A. No. 35/2023 (Dileep Kumar v. Dileep Kumar, Circuit at Hyderabad, 2026 SHC HYD 1542), Const. P. No. 710/2026 (Khurram Mughal v. Mst. Naureen Mughal, 2026 SHC KHI 1530), Const. P. No. 823/2020 (Muhammad Iqbal Lakhani v. Jamaluddin, 2026 SHC KHI 1532), Cr.Acq.A. No. 5/2024 (Zameer Hussain Bhutto v. Muhammad Aslam Bhutto, Circuit at Larkana, 2026 SHC LAR 1535) and II.A. No. 130/2019 (Muhammad Atif v. Hassan Associates Ltd, 2026 SHC KHI 1528/1537) — were listed but not carried in this issue, being family, execution and acquittal-appeal matters of a routine character, and to keep this issue to ten reportable entries. (i) The Islamabad High Court search returned no results for the window. Note on the Sindh High Court citation for Const. P. No. 1266/2025: the portal records the citation as 2026 SHC KHI 1529 (SHC-319199), not 1266 of 2025 uncited as listed.*

Federal Constitutional Court of Pakistan

2 judgments

INCOME TAX ORDINANCE 2001 SS.4C, 137(1), 147, 168, 170 & CHAPTER X; CONSTITUTION ART.199 — SUPER TAX PAID UNDER SECTION 4C IS ADJUSTABLE AGAINST TAX CREDIT UNDER SECTION 168, BECAUSE SECTION 4C(3) INCORPORATES THE WHOLE OF CHAPTER X AND NOT MERELY ITS PROCEDURAL PROVISIONS

CM Pak Limited, through its authorized Officer v. The Federation of Pakistan, through Secretary, Revenue Division & others

PETITIONS CONVERTED INTO APPEALS AND ALLOWED; ISLAMABAD HIGH COURT JUDGMENT SET ASIDE; APPROVED FOR REPORTING

F.C.P.L.A. Nos. 1276 and 1277 of 2026 (against judgment dated 25.03.2026 of the Islamabad High Court, Islamabad in Writ Petitions No. 1125 and 1126 of 2026) · Bench: Chief Justice Amin-ud-Din Khan; Justice Aamer Farooq (authoring the judgment of the Court) · Decided: Heard and decided 30.06.2026 at Islamabad · Uploaded: 17.08.2026

FACTS

The petitioner is a Pakistani company forming part of a Chinese multinational telecommunications group. Section 4C was inserted into the Income Tax Ordinance, 2001 imposing a super tax on the income of specified high-earning sectors at the rates in Division IIB of Part I of the First Schedule, conceived as an additional charge on income as defined in section 4C(2). The constitutional validity of section 4C was assailed before the superior courts and was ultimately upheld (PLD 2026 FCC 62). Following that affirmation, the Federal Board of Revenue issued a notice dated 09.02.2026 requiring the petitioner to discharge its super tax liability. In correspondence the petitioner maintained that it held excess taxes deducted at source of Rs. 2,212,433,254 relating to tax year 2022 which was adjustable against the super tax demanded. The FBR declined. The petitioner invoked the constitutional jurisdiction of the Islamabad High Court under Article 199; the writ petitions were dismissed by judgment dated 25.03.2026, whereupon leave to appeal was sought before the Federal Constitutional Court.

LEGAL ISSUE

Whether income tax generally, and super tax under section 4C of the Income Tax Ordinance, 2001 in particular, is adjustable where there is a tax credit within the meaning of section 168 of that Ordinance, or whether the taxpayer is confined to the refund mechanism under section 170.

HOLDING

The Court answered the question in the affirmative. Section 4C(3) does two distinct things: it fixes the date and manner of payment by reference to section 137(1), and it then separately provides that all provisions of Chapter X shall apply. Because section 137(1) already governs the date and manner of payment, the subsequent incorporation of all of Chapter X cannot be reduced to the same procedural function without rendering the latter phrase redundant. The expression paid, collected and deposited is itself indicative of the entire statutory mechanism for discharging tax liability, including payment, collection, adjustment, credit and deposit. By employing the expansive phrase all provisions of Chapter X, which includes section 168 dealing with credit for tax collected or deducted, the legislature intended to incorporate the complete statutory regime under Chapter X including the tax credit regime, and not merely its procedural aspects. Had Parliament intended otherwise it could have expressly limited the incorporation to procedural provisions, and the Court cannot read such a limitation into the statute where none exists. A tax credit under section 168 is conceptually and statutorily distinct from a refund under section 170, the latter being a self-contained mechanism requiring an application to the Commissioner under section 170(1). Fiscal statutes are to be construed in favour of the taxpayer. There is accordingly no justification for holding super tax under section 4C incapable of adjustment against a tax credit under section 168 and thereby compelling the taxpayer to pursue only the refund route. The Court expressly left the quantification of any adjustment on the facts to the competent taxing authority.

LEGAL SIGNIFICANCE

This is the first authoritative construction by the Federal Constitutional Court of the interaction between the super tax charging provision and the withholding-credit regime of the Income Tax Ordinance, 2001. It settles that the incorporation of Chapter X by section 4C(3) is total and substantive, so that taxpayers with excess deductions at source may seek adjustment against super tax demands rather than being forced into the slower refund channel under section 170. For revenue practice the decision removes an important cash-flow obstacle for companies within the section 4C net, reaffirms the taxpayer-favouring canon of construction in fiscal statutes, and confirms that the FBR cannot administratively narrow a legislative incorporation of an entire chapter to its procedural parts.

LEGAL PROPOSITIONS (VERBATIM)

— For the reasons that follow, we answer the question in the affirmative.

— the legislature intended to incorporate the complete statutory regime under Chapter X including tax credit regime , and not merely Chapter X's procedural aspects.

— A tax credi t under s . 168 of the ITO is conceptually and statutorily distinct from a refund claimed under s . 170 of the ITO

LEGAL PRINCIPLES EXPOUNDED

Where a charging provision incorporates an entire chapter of a fiscal statute, that incorporation extends to the substantive provisions of the chapter and not merely to its procedural provisions; a court cannot read in a limitation the legislature has not imposed.

Source: *Had Parliament intended otherwise, it could have expressly limited the incorporation to procedural provisions. The Court cannot read such a limitation into the statute where none exists.*

Authority: *Sections 4C(3), 137(1) and 168, Income Tax Ordinance, 2001*

Fiscal statutes are to be construed in favour of the taxpayer.

Source: *It is equally well settled that fiscal statutes ought to be construed in favour of the taxpayer.*

Authority: *Messers Rajby Industries Karachi v. Federation of Pakistan (2023 SCMR 1407); Hamid Ashraf v. Commissioner Inland Revenue, Lahore (2020 SCMR 843)*

Once Chapter X is attracted to the super tax, its provisions must be given effect according to their terms, including the tax credit provision in section 168.

Source: *If Chapter X is attracted, its provisions must be given effect in accordance with their terms, including s . 168 where applicable.*

Authority: *Section 4C(3) read with Chapter X, Income Tax Ordinance, 2001*

OPERATIVE ORDER

The petitions were converted into appeals and allowed. The impugned judgment of the Islamabad High Court dated 25.03.2026 was set aside and the writ petitions were disposed of with a declaration and direction that the petitioner shall be at liberty to seek adjustment, if any, before the competent taxing authority, which shall determine such claim in accordance with the Income Tax Ordinance, 2001 and the observations in the judgment. All pending applications were disposed of. Approved for reporting.

■ **View Full Judgment**

CIVIL SERVICE REGULATIONS REG.423(1) & (2)(B); KHYBER PAKHTUNKHWA PENSION RULES (AS ADOPTED BY THE LOCAL COUNCIL BOARD BY NOTIFICATION DATED 31.5.1980); CONSTITUTION ARTS.9, 14 & 199 — PENSION IS A VESTED AND ENFORCEABLE RIGHT, AND ONCE THE COMPETENT AUTHORITY HAS LAWFULLY CONDONED A DEFICIENCY IN QUALIFYING SERVICE THE PENSIONARY BENEFITS CANNOT BE WITHHELD

Bashir Hussain (deceased) through Mst. Abida Parveen v. Government of Khyber Pakhtunkhwa through Secretary Local Government & Rural Department, Peshawar, and others

PETITION CONVERTED INTO APPEAL AND ALLOWED; PESHAWAR HIGH COURT ORDER SET ASIDE; APPROVED FOR REPORTING

C.P.L.A. No. 4153 of 2022 (on appeal from order of the Peshawar High Court, Abbottabad Bench dated 3.11.2022 passed in Writ Petition No. 941-A of 2021) · Bench: Justice Amin-ud-Din Khan, Chief Justice; Justice Syed Arshad Hussain Shah (authoring) · Decided: Heard 06.08.2026; judgment dated 6th August 2026 at Islamabad · Uploaded: 13.08.2026

FACTS

Bashir Hussain was appointed as a Fireman (BPS-1) in the office of the Municipal Administration, Abbottabad by appointment letter dated 1.10.2011. He was then 51 years old and thus six years over the upper age limit of 45 years; the competent authority, the Secretary, Government of Khyber Pakhtunkhwa, Local Government Elections & Rural Development Department, relaxed the upper age limit by six years by letter dated 7.1.2012. He retired as Chowkidar (BPS-3) with effect from 6.11.2020 and was paid leave encashment, but monthly pension was not allowed because he fell ten months short of qualifying service. On his application, the Regional Municipal Officer, Hazara Region recommended condonation on the ground of meritorious service, and the competent authority, through the Local Council Board, accorded approval for condonation of 10 months and 25 days by letter dated 3.2.2021 under Regulation 423(2) of the Civil Service Regulations. Pension was nevertheless not released; the Resident Deputy Director (Audit), Abbottabad objected that Regulation 423(2) applied only to federal employees, an objection clarified by the Administrator/TMO. Bashir Hussain died on 4.6.2021. His widow pursued family pension departmentally without success and filed a writ petition, which a Division Bench of the Peshawar High Court, Abbottabad Bench dismissed on 3.11.2022. She appeared in person before the Federal Constitutional Court.

LEGAL ISSUE

Whether, where the competent authority has lawfully condoned a deficiency of more than six months but less than a year in qualifying service under Regulation 423(2)(b) of the Civil Service Regulations as adopted for local council servants, pension and family pension may nevertheless be withheld; and whether the High Court was justified in dismissing the widow's writ petition without adjudicating upon the condonation and the true import of CSR 423(2)(b).

HOLDING

The Court held that all requisite conditions for the grant of pensionary benefits stood fulfilled. The Local Council Board had adopted the Government's Pension Rules by Notification dated 31.5.1980, which applied the Pension Rules mutatis mutandis to servants of Local Councils; the deceased held a Best Performance Certificate on the record establishing meritorious service; CSR 423(2)(b) was applicable; and the competent authority had lawfully exercised its power of condonation. There was accordingly no lawful justification for withholding or non-release of pensionary benefits, including family pension, and any denial would be contrary to law and to the settled principles governing pensionary rights. The Court restated that the right to pension is not a concession, privilege or bounty at the discretion of the employer or the State but a vested and legally enforceable right, a form of social security securing post-retirement livelihood and dignity, protected under Articles 9 and 14 of the Constitution, and that to trifle with pension is to trifle with constitutional justice itself. On construction, where two interpretations of service rules are possible, the one more favourable and beneficial to the servant must be adopted. Following its recent decision in C.P.L.A. No. 2793-L of 2022, the Court reiterated that pensionary benefits cannot be withheld except by order of a competent court, and that arbitrary or unexplained delay or withholding without lawful justification amounts to wilful disregard of the law declared by the superior judiciary and would amount to contempt of Court. The High Court had failed to examine the condonation and the import of CSR 423(2)(b), so its order could not be sustained.

LEGAL SIGNIFICANCE

The judgment consolidates the Federal Constitutional Court's pension jurisprudence and extends it expressly to employees of local councils in Khyber Pakhtunkhwa, whose service is governed by the provincial Pension Rules adopted mutatis mutandis by the Local Council Board. It establishes that a lawful condonation of deficiency in qualifying service by the competent authority exhausts the department's discretion: audit objections cannot be used to re-open or defeat the sanction. It also confirms that the family pension of a deceased employee follows the same protection, that the beneficial-construction rule applies to pension rules, and that withholding released pension may expose officials to contempt. The decision is a practical answer to the recurring pattern of pension sanctioned on paper but withheld in the accounts office.

LEGAL PROPOSITIONS (VERBATIM)

— pension is not a matter of bounty, charity, or benevolence - it is a right protected under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution)

— it is abundantly clear that all requisite conditions for the grant of pensionary benefits stood fulf illed

— To trifle with pension is, therefore, to trifle with constitutional justice itself.

LEGAL PRINCIPLES EXPOUNDED

The right to pension is not a concession, privilege or bounty in the discretion of the employer or the State but a vested and legally enforceable right of the employee, attracting constitutional protection because it is intrinsically connected with livelihood and dignity.

Source: *the right to pension is not merely a concession, privilege or bounty granted at the discretion of the employer or the State; rather, it constitutes a vested and legally enforceable right of an employee*

Authority: *Articles 9 and 14, Constitution of the Islamic Republic of Pakistan, 1973; 2026 SCMR 449*

Pensionary benefits cannot be withheld save by order of a court of competent jurisdiction; arbitrary or unexplained delay in their release amounts to wilful disregard of the law declared by the superior judiciary and would amount to contempt of Court.

Source: *We hold that pensionary benefits constitute a vested, enforceable, legal and fundament al right of a retired employee and cannot be withheld except by the order of a Court of competent jurisdiction in accordance with law.*

Authority: *C.P.L.A. No. 2793-L of 2022 (Federal Constitutional Court)*

Where two interpretations of a service rule are possible, the interpretation favourable to and more beneficial to the servant is to be adopted in preference to that favouring the State.

Source: *in a cont e s t between two possible interpretations, one favouring the right s and interests of the servant and the other favourable to the State, the interpretation favourable to and more beneficial to the servant should be adopted*

Authority: *1990 SCMR 1685*

OPERATIVE ORDER

The petition was converted into an appeal and allowed. It was held that the petitioner is legally entitled to receive all pensionary benefits admissible under the relevant law, including pension, family pension, gratuity, commutation, arrears and all other consequential and ancillary retirement benefits together with any revisions or increases lawfully accruing from time to time. The respondents were directed to immediately process, finalize and release the petitioner's pension, pensionary benefits and family pension after completing all necessary formalities. Approved for reporting.

View Full Judgment

Supreme Court of Pakistan

4 judgments

LAND ACQUISITION ACT 1894 SS.4, 18, 23(2) & 28 (AS AMENDED IN KHYBER PAKHTUNKHWA BY THE LAND ACQUISITION (AMENDMENT) ORDINANCE 2001); CONTEMPT JURISDICTION — THE 15% SOLATIUM UNDER SECTION 23(2) IS A ONE-TIME PAYMENT, AND THE AMENDED SECTION 28 CONFERS A DISCRETIONARY COMPENSATORY AWARD IN THE NATURE OF RENT WITH 6% PER ANNUM AS THE MINIMUM BENCHMARK

Land Acquisition Collector / Provincial Housing Authority, Peshawar v. Ali Akbar etc. (and connected appeals of the landowners)

APPEALS OF BOTH SIDES PARTLY ALLOWED; CONTEMPT PETITIONS DISPOSED OF WITH JUDICIAL RESTRAINT; APPROVED FOR REPORTING

Civil Appeals No. 8-P, 9-P, 272 and 293 of 2017 with Criminal Original Petitions No. 198 and 199 of 2017 (against the consolidated judgment dated 10.01.2017 of the Peshawar High Court in RFAs Nos. 146-P, 147-P, 182-P and 190-P/2016) · Bench: Justice Yahya Afridi, CJ (authoring); Justice Muhammad Shafi Siddiqui; Justice Miangul Hassan Aurangzeb · Decided: Heard and decided 21.05.2026 at Islamabad · Uploaded: 15.08.2026

FACTS

The acquiring department acquired the landowners' land through Award No. 36 dated 04.03.2013 and Corrigendum Awards No. 67 dated 18.07.2013 and No. 147 dated 31.12.2013, fixing compensation at Rs. 117,000 per kanal. The landowners sought references under section 18 of the Land Acquisition Act, 1894 claiming Rs. 350,000 per kanal. The Referee Court, by consolidated judgment dated 17.05.2016, enhanced compensation to Rs. 152,219.21 per kanal together with 15% per annum from the date of the section 4 notification until payment. Cross appeals by the department and the landowners were dismissed by the Peshawar High Court by the common judgment dated 10.01.2017, which maintained the Referee Court's award. Before the Supreme Court the department contended that the rate had been fixed by mutual agreement at Rs. 117,000 per kanal and that the 15% per annum award was contrary to section 23(2); the landowners sought further enhancement and interest at 6% per annum under section 28. Two criminal original petitions were also pending, alleging non-compliance with an interim order of the Court dated 18.07.2017.

LEGAL ISSUE

Four issues were framed: whether a binding agreement fixing compensation at Rs. 117,000 per kanal existed and barred a reference under section 18; whether the potential value of the land was duly taken into account; whether the Referee Court could award compulsory acquisition charges at 15% per annum from the date of the section 4 notification until payment in view of section 23(2); and whether, after the amendment of section 28 as applicable in Khyber Pakhtunkhwa, the landowners were entitled to interest at 6% per annum on the enhanced compensation.

HOLDING

On the first issue the Court agreed with the High Court that not a shred of evidence supported the alleged agreement; a plea founded upon an agreement relinquishing or restricting a statutory right must be established by clear, unequivocal and convincing evidence, and the burden lay on the acquiring department, which it failed to discharge. On the second, the determination of compensation is essentially a question of fact and, the High Court having analysed location, existing and future utility, proximity to the main road, institutions, markets and residences, no misreading, non-consideration or misapplication of law was shown. On the third, the Court held that section 23(2) creates a statutory entitlement of a fixed nature in the form of an additional solatium, compensatory in character and neither interest-bearing nor time-dependent; a plain reading shows the additional 15% is payable only once on the market value determined, and the direction awarding 15% per annum from the section 4 notification until payment amounted to rewriting the statute and converting a one-time solatium into a continuing liability. On the fourth, the 2001 substitution of section 28 in Khyber Pakhtunkhwa consciously omitted the words simple interest and the fixed 6% rate and substituted such amount as determined by it; following Govt. of KPK v. Misal Khan (2022 SCMR 277) and Govt. of KPK v. Yousaf Khan (2022 SCMR 1836), the amended provision preserves a compensatory head of relief in the nature of rent for deprivation of use, with proved market rental value as the primary basis and 6% per annum of the enhanced compensation as a minimum benchmark where no such evidence is led. As no rental evidence had been adduced, the landowners were entitled to an additional amount at 6% per annum as minimum compensatory rental value, but not as interest.

LEGAL SIGNIFICANCE

The judgment is the Chief Justice's consolidated restatement of the compensation architecture of the Land Acquisition Act, 1894 in Khyber Pakhtunkhwa after the 2001 amendment. Two propositions are of general application: first, the 15% under section 23(2) is a one-time solatium and any practice of awarding it annually is unlawful, which will require recalculation in a large body of pending references and executions; secondly, the amended section 28 is not a dead letter but a discretionary compensatory jurisdiction whose measure is rent for deprivation of use, with 6% per annum operating only as a floor in the absence of rental evidence, so that landowners who lead evidence of actual market rental value may obtain more. The Court also reinforced the evidential discipline governing claims that landowners have contracted out of their statutory right to a reference, and illustrated the exercise of judicial restraint in contempt matters once the substantive rights have been settled.

LEGAL PROPOSITIONS (VERBATIM)

— A plain reading of the above provision makes it abundantly clear that the additional amount of 15% is payable only once on the market value determined for the acquired land, as compensation for the compulsory nature of the acquisition.

— the statutory entitlement to 6% interest under the unamended Section 28 no longer survives after the 2001 amendment;

— Any such interpretation would amount to rewriting the statute and converting a one-time statutory solatium into a continuing financial liability, which is impermissible in law.

LEGAL PRINCIPLES EXPOUNDED

A plea that landowners agreed to a rate of compensation, and thereby gave up the statutory right to seek a reference under section 18, must be proved by clear, unequivocal and convincing evidence, and the burden lies on the acquiring department.

Source: *A plea founded upon an alleged agreement relinquishing or restricting a statutory right must be established through clear, unequivocal and convincing evidence.*

Authority: *Section 18, Land Acquisition Act, 1894*

The 15% awarded under section 23(2) is a one-time additional solatium on the market value in consideration of the compulsory nature of the acquisition; it is not interest and does not recur annually.

Source: *the provision under Section 23(2) creates a statutory entitlement of a fixed nature in the form of an additional solatium, which is intended to be compensatory in character and not interest-bearing or time-dependent*

Authority: *Section 23(2), Land Acquisition Act, 1894*

After the Khyber Pakhtunkhwa amendment of section 28, the court's award is a compensatory amount in the nature of rent for deprivation of use, governed primarily by proved market rental value, with 6% per annum of the enhanced compensation as a minimum benchmark in the absence of such evidence.

Source: *in absence of such evidence, 6% per annum of the enhanced compensation operates as a minimum benchmark of rental value.*

Authority: *Govt. of KPK v. Misal Khan (2022 SCMR 277); Govt. of KPK v. Yousaf Khan (2022 SCMR 1836); Aslam Khaki v. Muhammad Hashim (PLD 2000 SC 225)*

OPERATIVE ORDER

Civil Appeals No. 8-P and 9-P of 2017 of the acquiring department were partly allowed by setting aside the direction granting 15% per annum from the date of the section 4 notification until payment, the landowners being held entitled instead to a one-time payment of 15% on the market value determined under section 23(2); the determination of market value and compensation by the Referee Court as affirmed by the High Court was maintained. Civil Appeals No. 272 and 293 of 2017 of the landowners were partly allowed to the extent that under section 28 they are entitled to an additional compensatory amount equivalent to 6% per annum of the enhanced compensation as minimum rental value, computed from the date the Collector took possession until the date of deposit of the adjudged compensation into Court; their prayer for further enhancement was declined. Criminal Original Petitions No. 198 and

199 of 2017 were disposed of with the Court exercising judicial restraint, the acquiring department being directed to comply forthwith, the amounts to be worked out and recovered through the pending execution proceedings within three months of the landowners approaching the Executing Court. Approved for reporting.

View Full Judgment

BALOCHISTAN EMPLOYEES' EFFICIENCY AND DISCIPLINE ACT 2011 S.3(A) & (C) (BEEDA 2011); BALOCHISTAN SERVICE TRIBUNALS ACT 1974 S.5; QANUN-E-SHAHADAT ORDER 1984 ARTS.59 & 84; CODE OF CIVIL PROCEDURE 1908 — IN A DEPARTMENTAL INQUIRY THE BURDEN RESTS ON THE EMPLOYER, AND WHERE THE INQUIRY OFFICER HIMSELF CALLS FOR FORENSIC EXAMINATION OF A DISPUTED SIGNATURE, A FINDING OF GUILT WITHOUT IT CANNOT STAND

Ellahi Bakhsh Bugti v. Government of Balochistan, through the Chief Secretary Quetta and others (with Behram Khan v. The Chief Secretary, Government of Balochistan, Quetta and others)

BOTH CIVIL PETITIONS CONVERTED INTO APPEALS AND ALLOWED; TRIBUNAL JUDGMENT SET ASIDE; MATTER REMANDED FOR DE NOVO INQUIRY WITHIN THREE MONTHS; APPROVED FOR REPORTING

Civil Petitions No. 4364 and 4391 of 2024 (against the judgment dated 25.07.2024 of the Balochistan Service Tribunal, Quetta in Appeals No. 304 and 382/2023) · Bench: Justice Muhammad Ali Mazhar (authoring); Justice Musarrat Hilali · Decided: Heard and decided 11.03.2026 at Islamabad · Uploaded: 13.08.2026

FACTS

Ellahi Bakhsh was a Patwari in the Revenue department against whom there was no prior allegation. Mutation Entry No. 25 of 05.08.2019 was incorporated as a Sehat or correction entry in Halqa Saddar, Mouza Jouri and Hazara; the Collector, Dera Bugti cancelled it on 10.08.2020 on the ground that it should have been recorded as a gift (hiba), on which the government levy would have been Rs. 13,81,282, whereas only Rs. 200 was assessed and deposited. Behram Khan was the Tehsildar, Dera Bugti. An inquiry was ordered into the allegation that revenue officers had taken Rs. 13,81,282 from Naib Wali Dad Mukhtiar Khan Tuman Bugti in respect of a gift mutation but changed the type of mutation to correction of records and deposited only Rs. 200. Behram Khan denied his signature on the challans and said the copy of the challan was fake. The Deputy Commissioner Jaffarabad, as inquiry officer, recommended forensic examination of the signatures on the challans and mutations because he had no such facility himself, and simultaneously found both petitioners guilty and recommended major penalties. At the personal hearing stage the Additional Commissioner, Sibi Division found that Ellahi Bakhsh was not the halqa patwari of the mouzas and had signed nothing and could not be held responsible. Both were nevertheless dismissed from service by letters dated 15.06.2023, and their service appeals were dismissed by the Balochistan Service Tribunal on 25.07.2024.

LEGAL ISSUE

Whether a finding of guilt and imposition of major penalty in a departmental inquiry can be sustained where the inquiry officer, having recorded that the delinquent denied his signature on the payment challan and having himself recommended forensic examination of that signature, proceeded to find him guilty without any such examination; and whether the Service Tribunal was obliged to advert to that omission.

HOLDING

The Court held that the role and duty of an inquiry officer or committee is commensurate with quasi-judicial proceedings: the inquiry must be impartial and unbiased, reasonable opportunity must be given to the accused, witnesses' statements should be recorded in extenso with an opportunity of cross-examination rather than in a question-and-answer pattern, and even in ex parte proceedings the department must present its case vigilantly. Under section 5 of the Balochistan Service Tribunals Act, 1974 the Tribunal is deemed a civil court with the powers of the Code of Civil Procedure, 1908 and, as the first fact-finding forum, there is no bar to its recording evidence in case of dire need. In disciplinary proceedings the primary burden rests on the employer to prove misconduct on clear and credible evidence with little room for doubt, and the doctrine of presumption of innocence casts the burden on the prosecution. The Court held that the failure to apply the litmus test of handwriting verification destroyed the case at the departmental level; the inquiry officer could have adjourned briefly and referred the matter for forensic analysis, or at the least attempted a comparison himself, and the competent authority could have ordered a de novo inquiry. Referring to Articles 59 and 84 of the Qanun-e-Shahadat Order, 1984 and to the methodology of forensic handwriting examination, the Court found the Tribunal's judgment completely silent on this rudimentary point, though it observed that the petitioner was equally responsible for not inviting the Tribunal's attention to it.

LEGAL SIGNIFICANCE

The judgment sets a clear evidentiary standard for departmental inquiries where a document is the fulcrum of the charge. It holds that a disputed signature which the inquiry officer himself thought required forensic verification cannot be treated as proved, and that neither the inquiry officer nor the competent authority may convert an acknowledged evidentiary gap into a finding of guilt. It also confirms, importantly for service jurisprudence in Balochistan, that a Service Tribunal exercising powers under section 5 of the 1974 Act is not confined to the paper record but may itself record evidence, or compare a signature, where the case requires it. The Court's exposition of the burden of proof, the presumption of innocence and the requirements of natural justice in disciplinary proceedings, coupled with its survey of forensic handwriting methodology, gives practitioners a template for challenging document-based misconduct findings.

LEGAL PROPOSITIONS (VERBATIM)

— The reckless or negligent conduct of not following the litmus test of handwriting verification on challan destroyed the case at departmental level.

— It is strange that on such a rudimentary point at issue, the impugned judgment is completely silent.

— the role and duty of the Inquiry Officer/Inquiry Committee is commensurate with quasi - judicial proceedings in the departmental inquiries under labour laws or civil servant laws

LEGAL PRINCIPLES EXPOUNDED

In disciplinary proceedings the primary burden of proving misconduct rests upon the employer, and the matter must be decided on clear and credible evidence with little room for doubt, the presumption of innocence casting the burden on the prosecution.

Source: *In the disciplinary proceedings also, the primary burden rests on the employer to prove the misconduct and the matter should be decided on the strength of clear and credible evidence with little room for doubt.*

Authority: *Balochistan Employees' Efficiency and Discipline Act, 2011*

A Service Tribunal, being deemed a civil court with the powers of the Code of Civil Procedure and acting as the first fact-finding forum, may itself record evidence or examine a witness on oath where the case demands it, in order to achieve the doctrine of finality.

Source: *there is no bar or embargo that the Tribunal while dealing and deciding the matters relating to the terms and conditions of service of civil servants, cannot record the evidence in case of dire need and extreme necessity*

Authority: *Section 5, Balochistan Service Tribunals Act, 1974; Code of Civil Procedure, 1908*

Where the identity of handwriting or a signature is in dispute, expert opinion is a relevant fact and the court may itself compare the disputed signature with an admitted or proved specimen.

Source: *when any question arises with regard to dispute or disagreement to the signature or any other aspect, expert opinion is required for just and proper decision of the lawsuit*

Authority: *Articles 59 and 84, Qanun-e-Shahadat Order, 1984*

OPERATIVE ORDER

Both civil petitions were converted into appeals and allowed. The impugned judgment of the Balochistan Service Tribunal was set aside and the matter was remanded to the Competent Authority/Department with a direction to conduct a de novo inquiry after providing ample opportunity of hearing to the petitioners in both cases, including forensic examination of the signature and documents as suggested by the inquiry officer, within a period of three months; reinstatement of the petitioners was made subject to the outcome of that inquiry. Approved for reporting.

■ **View Full Judgment**

CONTRACT ACT 1872 SS.188 & 189; QANUN-E-SHAHADAT ORDER 1984 ART.95; CODE OF CIVIL PROCEDURE 1908 S.115; SPECIFIC RELIEF ACT 1877 — A REGISTERED POWER OF ATTORNEY CARRIES A STATUTORY PRESUMPTION OF DUE EXECUTION, AND AUTHORITY TO SELL ORDINARILY COMPREHENDS AUTHORITY TO EXECUTE THE ANTECEDENT AGREEMENT TO SELL

Saad Younis & 6 others v. Ghulam Bari & 2 others

APPEALS ALLOWED; HIGH COURT JUDGMENT IN REVISION SET ASIDE; TRIAL COURT AND FIRST APPELLATE DECREES RESTORED; APPROVED FOR REPORTING

Civil Appeal No. 435-L of 2012 with Civil Appeal No. 436-L of 2012 (against judgment and decree dated 30.03.2012 of the Lahore High Court, Bahawalpur Bench in C.Rs. Nos. 618 and 619 of 2011/BWP) · Bench: Ms. Justice Musarrat Hilali; Mr. Justice Shahid Bilal Hassan (authoring) · Decided: Heard 30.07.2026; announced in open Court at Lahore on 10.08.2026 · Uploaded: 11.08.2026 (straggler)

FACTS

The dispute concerned agricultural land measuring 100 kanals and 4 marlas in Mouza Pallu Shah, Tehsil Rahim Yar Khan. Ghulam Bari instituted a suit on 14.12.1978 for possession and recovery of produce, alleging unlawful dispossession. During its pendency Muhammad Younas instituted a suit on 08.03.1979 for specific performance of an agreement to sell dated 20.01.1979 executed on Ghulam Bari's behalf by his attorney Ahmad Din under a registered power of attorney dated 31.08.1977. The suits were consolidated and by common judgment and decree dated 29.07.1986 the Senior Civil Judge, Rahim Yar Khan dismissed the suit for possession and decreed the suit for specific performance. After a protracted course of appeals and remands, the Additional District Judge, Rahim Yar Khan upheld that decree on 25.07.2011. In Civil Revisions Nos. 618 and 619 of 2011 the Lahore High Court, Bahawalpur Bench, by judgment dated 30.03.2012, set aside the concurrent judgments, holding that the power of attorney had not been proved in accordance with law, principally on the strength of the statement of Nazir Ahmad (D.W.4), the identifying witness before the Sub-Registrar, and that in any event it did not authorise the attorney to enter into an agreement to sell.

LEGAL ISSUE

Whether the High Court, in revisional jurisdiction, was justified in reversing concurrent findings of fact on the due execution and proof of the registered power of attorney dated 31.08.1977; and whether the authority to sell conferred on Ahmad Din included, expressly or by necessary implication, authority to execute the agreement to sell dated 20.01.1979.

HOLDING

The Court held that the registered power of attorney stood duly proved. Article 95 of the Qanun-e-Shahadat Order, 1984 requires the Court to presume that a document purporting to be a power of attorney and authenticated by the competent authority has been duly executed, and a registered instrument enfolds a presumption of truth and genuineness which the party alleging fraud must rebut. Here the instrument came from proper custody and was supported by the petition writer, the then Sub-Registrar and Ahmad Din himself, by documentary proof that the attorney redeemed Ghulam Bari's Agricultural Development Bank loan from the earnest money, and by Ghulam Bari's own subsequent Ibtal Nama of 21.02.1979 revoking the very power of attorney, which he would have had no occasion to execute had none existed. The High Court erred in treating the isolated statement of D.W.4 as conclusive, since testimony is to be appreciated as a whole. Revisional jurisdiction under section 115, C.P.C. is supervisory and not appellate and does not permit a fresh appraisal of evidence merely because another view is possible; the High Court identified no misreading, non-reading, jurisdictional error or perversity and instead reassessed the evidence as a first appellate court. On the second question, sections 188 and 189 of the Contract Act, 1872 embody the doctrine of implied and incidental authority: where an attorney is expressly authorised to alienate immovable property, that authority ordinarily comprehends the authority to negotiate terms and execute the antecedent agreement to sell, and the contrary construction would render the authority to sell commercially impracticable and legally incongruous. Nothing on the record showed any express prohibition or restriction on Ahmad Din.

LEGAL SIGNIFICANCE

The judgment is a useful modern restatement of two frequently litigated propositions. First, it reaffirms the strength of the statutory presumption attaching to a registered power of attorney and holds that a resiling identifying witness does not by itself displace it, particularly where the principal's own deed of revocation acknowledges the instrument. Secondly, and of wider transactional importance, it settles that an express power to sell immovable property carries with it, by necessary implication under sections 188 and 189 of the Contract Act, 1872, the power to execute the agreement to sell that precedes the conveyance, so that purchasers dealing with attorneys need not insist on express authority for the antecedent contract. The Court also restated, with a full catalogue of authority, the boundaries of revisional jurisdiction against concurrent findings.

LEGAL PROPOSITIONS (VERBATIM)

— The registered power of attorney dated 31.08.1977 stood duly proved; Ahmad Din was competent to execute the agreement to sell dated 20.01.1979 on behalf of Ghulam Bari

— Had no such power of attorney ever existed, there would have been no occasion to execute a formal deed of revocation.

— we hold that the learned High Court misdirected itself both in law and in the exercise of its revisional jurisdiction

LEGAL PRINCIPLES EXPOUNDED

The Court is bound to presume the due execution of a document purporting to be a power of attorney authenticated by the competent authority; the registered instrument carries a presumption of truth and genuineness which the party alleging fraud must rebut by satisfactory evidence.

Source: *Article 95 of the Qanun - e - Shahadat Order, 1984 mandates that the Court shall presume every document purporting to be a power of attorney and authenticated by the competent authority to have been duly executed.*

Authority: *Article 95, Qanun-e-Shahadat Order, 1984; Mst. Iqbal Bibi v. Kareem Hussain Shah (2024 SCMR 1233); Anjuman-e-Khuddam-ul-Qur'an v. Lt. Col. (R) Najam Hameed (PLD 2020 SC 390); Abdul Aziz v. Abdul Hameed (2022 SCMR 842)*

Revisional jurisdiction is supervisory, not appellate: it does not permit a fresh appraisal of evidence merely because another view of it is possible, and interference is confined to jurisdictional defect, material irregularity, illegality or perversity from misreading or non-reading of evidence.

Source: *It does not permit a fresh appraisal of evidence merely because another view is possible.*

Authority: *Section 115, Code of Civil Procedure, 1908; Sultan Muhammad v. Muhammad Qasim (2010 SCMR 1630); Muhammad Sarwar v. Hashmal Khan (PLD 2022 SC 13); Mst. Zarsheda v. Nobat Khan (PLD 2022 SC 21); Mst. Farzana Zia v. Mst. Saadia Andaleeb (2024 SCMR 916)*

Authority conferred on an agent extends to every lawful thing necessary to accomplish the act and to every act ordinarily incidental to it, so that an express authority to alienate immovable property comprehends the authority to execute the antecedent agreement to sell unless the instrument expressly restricts it.

Source: *Where an attorney is expressly authorised to alienate immovable property, such authority ordinarily comprehends the authority to negotiate its terms and execute the antecedent agreement to sell, which constitutes the contractual foundation of the eventual conveyance.*

Authority: *Sections 188 and 189, Contract Act, 1872*

OPERATIVE ORDER

The appeals were allowed. The judgment dated 30.03.2012 of the Lahore High Court, Bahawalpur Bench in Civil Revisions Nos. 618 and 619 of 2011 was set aside, and the judgments and decrees dated 29.07.1986 of the Senior Civil Judge, Rahim Yar Khan and dated 25.07.2011 of the Additional District Judge, Rahim Yar Khan were restored. The parties were left to bear their own costs. Announced in open Court at Lahore on 10.08.2026. Approved for reporting.

View Full Judgment

WEST PAKISTAN FAMILY COURTS ACT 1964 S.14; CONSTITUTION ART.199; MUHAMMADAN LAW (JACTITATION OF MARRIAGE, CAPACITY TO CONTRACT NIKAH, LEGITIMACY) — A NIKAHNAMA PROCURED FROM A PERSON OF UNSOUND MIND IS A FRAUD THAT VITIATES EVERY CLAIM BUILT UPON IT, AND A DNA TEST CANNOT RESCUE A PARENTAGE CLAIM WHERE THE EXHUMATION DIRECTED BY THE COURT PROVES IMPOSSIBLE

Mst. Sarwar Mai, etc. v. Judge, Family Court, Muzaffargarh, etc.

CIVIL APPEAL DISMISSED; CONCURRENT FINDINGS OF THE FAMILY COURT, THE APPELLATE COURT AND THE HIGH COURT MAINTAINED; APPROVED FOR REPORTING

Civil Appeal No. 193-L of 2010 (against the judgment dated 10.07.2009 of the Lahore High Court, Multan Bench, Multan in W.P. No. 1807 of 2007; leave granted 14.06.2010) · Bench: Justice Muhammad Ali Mazhar; Justice Irfan Saadat Khan (authoring); Justice Aqeel Ahmed Abbasi · Decided: Heard 23.06.2026; judgment announced at Islamabad in June 2026 · Uploaded: 15.08.2026

FACTS

A suit for jactitation of marriage, cancellation of a forged Nikahnama and declaration was instituted on 10.05.1999 on behalf of Allah Ditta, a 65-year-old man described as a lunatic by birth and mentally incapable of appreciating the consequences of a matrimonial contract, through his next friend Qaisar Iqbal. It was alleged that Mst. Sarwar Mai, a woman of 25, had fabricated a Nikahnama to present herself as his wedded wife and falsely claimed that Bilawal was born of that wedlock, in order to grab his landed property. The appellants denied the allegations and asserted the validity of the marriage and the legitimacy of the child. The Family Court, Muzaffargarh, after framing issues and recording extensive evidence, decreed the suit on 27.05.2000, holding the Nikahnama forged and Bilawal not to be Allah Ditta's son; an earlier document dated 14.5.1991 had already recorded Allah Ditta as insane and placed his custody with his nephew, whereas the Nikahnama bore the date 04.12.1991. The appeal under section 14 of the West Pakistan Family Courts Act, 1964 was dismissed on 13.01.2001 and the writ petition on 10.07.2009. Before the Supreme Court the appellants pressed a DNA test; by order dated 15.09.2016, with the consent of the parties, the Court directed the District & Sessions Judge, Muzaffargarh to depute a Magistrate for disinterment of the body so that the Punjab Forensic Science Agency could take samples, but when the Judicial Magistrate visited the graveyard on 04.10.2016 no one could point out or identify the grave and the exhumation could not be carried out.

LEGAL ISSUE

Whether the concurrent findings that Allah Ditta was of unsound mind and incapable of contracting a marriage, that the Nikahnama was forged, and that Bilawal was not his son, could be disturbed; whether the next friend had locus standi to sue for jactitation; and what consequence follows where a DNA test directed by the Court could not be performed because the grave could not be identified.

HOLDING

The Court held that the Family Court and the Appellate Court had meticulously threshed out the medical and oral evidence in concluding that Allah Ditta lacked the cognitive capacity to give valid consent to marriage, a Nikahnama being a civil contract that can only be made between competent persons, and that the appellant had failed to produce the original Union Council record or otherwise prove the instrument, the Nikah Registrar who deposed being outside his licensed jurisdiction. The courts below had concurrently found that the next friend acted strictly in the welfare of the incapacitated person to ward off an apparent fraud. Since the foundational document was a product of fraud and misrepresentation executed upon an incompetent person, the entire superstructure built upon it, including claims of lineage or inheritance, must fall. As to DNA, the Court recorded that it had directed disinterment with the consent of the parties and that the exercise failed only because the grave could not be identified, with the result that the claim that Bilawal was Allah Ditta's son remained unproved. Concurrent findings of three tiers would not be disturbed absent gross misreading or non-reading, perversity or jurisdictional error, and constitutional jurisdiction under Article 199 is not an automated forum of appeal.

LEGAL SIGNIFICANCE

The judgment illustrates how the capacity requirement of a valid Nikah operates in practice: where the record establishes that the purported husband was of unsound mind before the date of the Nikahnama, the instrument is void as a civil contract and every derivative claim of status, legitimacy and inheritance collapses with it. It is also a rare recorded instance of the Supreme Court directing exhumation for DNA sampling in a parentage dispute and of the evidential consequence when that direction cannot be executed: the burden remains undischarged and the party asserting parentage fails. Finally the Court reiterated that fraud vitiates the most solemn proceedings and that any authority or tribunal retains inherent power to undo transactions obtained through fraud, together with the settled limits on Article 199 interference with concurrent findings of the family courts.

LEGAL PROPOSITIONS (VERBATIM)

— *It is a settled legal maxim that fraud vitiates the most solemn proceedings.*

— *Hence, the issue raised by the petitioners that Bilawal was the son of A.D. remained unproved.*

— *The other most important fact that Nikah Nama is a Civil contract which could only be made between the competent persons.*

LEGAL PRINCIPLES EXPOUNDED

Fraud vitiates the most solemn proceedings, so that where the foundational instrument is fraudulent and was executed upon an incompetent person, all claims of lineage or inheritance built upon it must fail; and any authority or tribunal retains inherent power to undo transactions obtained by fraud.

Source: *It is a settled legal maxim that fraud vitiates the most solemn proceedings.*

Authority: *The Chief Settlement Commissioner, Lahore v. Raja Mohammad Fazil Khan (PLD 1975 Supreme Court 331)*

Constitutional jurisdiction under Article 199 is not an appeal in disguise; a High Court must decline to disturb the factual findings of the family courts unless manifest illegality or grave miscarriage of justice is shown.

Source: *the constitutional writ jurisdiction under Article 199 is not an automated forum of appeal, and High Courts must decline to disrupt the factual findings of the Courts unless a manifest illegality or grave miscarriage of justice is established*

Authority: *Article 199, Constitution of the Islamic Republic of Pakistan, 1973; Muhammad Shamim Ali v. Mst. Asma Begum (2024 SCMR 1642); Sardar Ali Khan v. State Bank of Pakistan (2022 SCMR 1454)*

Where a court directs disinterment for DNA sampling and the exercise cannot be performed because the grave cannot be identified, the party asserting parentage does not discharge its burden and the claim remains unproved.

Source: *however, since no one could point out or identify the grave, the exhumation/disinterment could not be conducted*

Authority: *Order of the Supreme Court dated 15.09.2016 directing the Punjab Forensic Science Agency to take samples*

OPERATIVE ORDER

The Court concluded that the appellants had failed to point out any defect in the findings recorded by the High Court and saw no justification for interfering with the impugned judgment. The Civil Appeal was found to be bereft of merit and was dismissed, with no order as to costs. Approved for reporting.

View Full Judgment

Lahore High Court

2 judgments

CUSTOMS ACT 1969 SS.156(2), 157(2), 171, 187 & 196; SRO 566(1)/2005 — ONCE THE POSSESSOR PRODUCES A DOCUMENTARY TRAIL ESTABLISHING LAWFUL PROCUREMENT THE BURDEN UNDER SECTION 187 SHIFTS BACK TO THE DEPARTMENT, AND WHETHER DOCUMENTS CO-RELATE WITH SEIZED GOODS IS A QUESTION OF FACT OUTSIDE REFERENCE JURISDICTION

The Collector, Collectorate of Customs (Enforcement), Multan v. The Customs Appellate Tribunal, Lahore, etc.

REFERENCE APPLICATION DISMISSED; QUESTION OF LAW ANSWERED IN THE AFFIRMATIVE IN FAVOUR OF THE RESPONDENTS; APPROVED FOR REPORTING

Customs Reference No. 07 of 2025, 2026LHC4944 (against the judgment dated 10.03.2025 of the Customs Appellate Tribunal, Lahore) · Bench: Lahore High Court, Multan Bench: Muzamil Akhtar Shabir, J. and Syed Ahsan Raza Kazmi, J. · Decided: 26.02.2026 · Uploaded: 12.08.2026 (straggler)

FACTS

On information that miscellaneous goods were being smuggled under the garb of irrelevant documents on a Hino HTV truck trailer, staff of the Collectorate of Customs (Enforcement), Multan held a naka bandi at Airport Chowk, Sakhi Sarwar Road, Dera Ghazi Khan. The driver stopped and fled in the darkness. On cursory checking the vehicle was found loaded with the informed goods; a GD, the registration book, a bilty and a weight slip were recovered from the driver's cabin. Nobody claimed ownership at the spot and no import documents were produced, so the goods and the carrier vehicle were taken into possession, the vehicle was brought to the Customs State Warehouse at Hamidpur Kanora, Multan for de-stuffing, a recovery memo listing 23 categories of items in large quantities was prepared, and notice under section 171 was served by pasting. Order-in-Original No. 806/2024 dated 30.12.2024 confiscated the goods and vehicle, treating the documents filed by the private respondents as irrelevant. The Customs Appellate Tribunal allowed the respondents' appeals by consolidated order, holding on an examination of GDs, sales tax invoices and returns, bilties, a verification report of import status confirming two GDs in the PRAL database, and photographs taken at import and at seizure, that the documents prima facie covered the subject goods, that the burden had shifted to the department under section 187, and that the department had neither reconciled the documents nor placed any proof of smuggling on record. It declared the confiscation of the goods and, under section 157(2), of the vehicle unlawful.

LEGAL ISSUE

Whether the onus of proof upon the respondents under sub-section (2) of section 156 read with section 187 of the Customs Act, 1969 stands discharged where the documents provided do not co-relate with the seized goods; and whether that question could be entertained in reference jurisdiction under section 196.

HOLDING

The Court held that the Tribunal, after detailed scrutiny, had found the documents relevant and related to the seized goods, that on their production the onus shifted to the seizing agency to show that the goods were smuggled, and that the department failed to discharge it, having merely termed the documents irrelevant without any plausible basis or reconciliation statement, a course which the adjudicating authority had also adopted. Those findings were purely findings of fact recorded after a detailed comparison of the documents with the goods. The question referred, namely whether the documentary evidence co-related with the allegedly smuggled goods, was therefore purely a question of fact involving factual inquiry and deeper appreciation of evidence, which cannot ordinarily be entertained by the High Court in a reference under section 196, that jurisdiction being confined to pure questions of law or mixed questions of law and fact, with the recording of findings of fact resting with the Tribunal except where perverse or contrary to the material on record. The Court added that it was in any event not equipped with sufficient machinery to compare each of a very large number of recovered items with the receipts and documents, and was not persuaded of any misreading, non-reading, illegality or jurisdictional defect.

LEGAL SIGNIFICANCE

The judgment is a clear statement of two boundaries in customs litigation. First, on the merits it confirms the two-stage operation of section 187: the possessor discharges the initial onus by producing a coherent documentary trail of lawful procurement, whereupon the department must reconcile that trail with the seized goods and cannot succeed by simply labelling the documents irrelevant. Where the goods are not notified goods within SRO 566(1)/2005 and no proof of smuggling is placed on record, confiscation of the goods, and consequentially of the conveyance under section 157(2), is unlawful. Secondly, on jurisdiction it reaffirms that a reference under section 196 is not a further appeal on facts, and that a department dissatisfied with the Tribunal's appreciation of documents must demonstrate perversity rather than invite the High Court into a document-by-document comparison.

LEGAL PROPOSITIONS (VERBATIM)

— the onus of proof upon the respondents was rightly held by the Appellate Tribunal to have been discharged

— By producing these documents, the respondents had shifted the burden onto the Applicant- Department under Section 187 of the Customs Act, 1969

— The Applicant-Department has merely termed these documents as irrelevant without giving any plausible basis or without providing a reconciliation statement.

LEGAL PRINCIPLES EXPOUNDED

A question involving an inquiry into facts is not a question of law and cannot be entertained in a customs reference; the recording of findings of fact rests with the Appellate Tribunal unless those findings are perverse or contrary to the material on record.

Source: *a question involving inquiry into facts is not a question of law and cannot be considered by the High Court in a Reference under Section 196 of the Customs Act, 1969*

Authority: *Section 196, Customs Act, 1969; Commissioner Inland Revenue v. RYK Mills Lahore (2023 SCMR 1856); Commissioner Inland Revenue v. Sargodha Spinning Mills (2022 SCMR 1082); Pakistan State Oil Company Ltd. v. Collector of Customs (2006 SCMR 425); National Logistics Cell v. Collector of Customs (2023 SCMR 1325); Fancy Foundation v. Commissioner of Income Tax (2017 SCMR 1395)*

Where the person in possession produces a documentary trail establishing lawful procurement, the burden under section 187 shifts to the department, which must then reconcile the documents with the seized goods rather than dismiss them as irrelevant.

Source: *it was then incumbent upon the Applicant- Department to have reconciled these documents with the Subject Goods in order to verify the same, however no such exercise was conducted by the Applicant- Department*

Authority: *Sections 156(2) and 187, Customs Act, 1969*

The findings of fact of the Appellate Tribunal, recorded after a detailed comparison of the documents with the goods, are not open to interference in reference jurisdiction absent misreading, non-reading, illegality or jurisdictional defect.

Source: *whereas recording of findings of fact rest with the Appellate Tribunal, except where such findings are perverse or contrary to the material on record*

Authority: *Section 196, Customs Act, 1969*

OPERATIVE ORDER

The Court held that the impugned judgment of the Customs Appellate Tribunal did not suffer from any legal infirmity. The referred question was decided in the affirmative in favour of the respondents and against the applicant Department, with the observation that the onus of proof upon the respondents was rightly held to have been discharged, and the Reference Application was dismissed. A copy of the judgment was directed to be sent under seal of the Court to the Customs Appellate Tribunal. Approved for reporting.

View Full Judgment

DEFAMATION ORDINANCE 2002 SS.10 & 13; CODE OF CIVIL PROCEDURE 1908 S.9; MALICIOUS PROSECUTION — A CLAIM FOUNDED ON DEFAMATORY WORDS IS TRIABLE BY THE DISTRICT JUDGE UNDER THE SPECIAL LAW, AND A SUIT FOR DAMAGES FOR MALICIOUS PROSECUTION FAILS WHERE THE INGREDIENTS ARE NOT PLEADED AND THE UNDERLYING PROCEEDINGS ARE STILL PENDING

Muhammad Abid Saleem v. Mst. Jafaran Bibi & 05 others

REGULAR FIRST APPEAL DISMISSED IN LIMINE; FINDINGS OF THE TRIAL COURT UPHELD ON ADDITIONAL GROUNDS; APPROVED FOR REPORTING

R.F.A. No. 161 of 2024, 2026LHC4936 (against the judgment and decree dated 11.01.2024 of the trial court dismissing the suit for damages) · Bench: Lahore High Court, Multan Bench: Muzamil Akhtar Shabir, J. and Syed Ahsan Raza Kazmi, J. · Decided: 22.01.2026 · Uploaded: 11.08.2026 (straggler)

FACTS

The appellant, an advocate, had appeared for Abdul Sattar in partition proceedings before the revenue authorities entitled Muhammad Arshad versus Abdul Sattar, etc., and had filed an application for dismissal of those proceedings. In the reply to that application the respondents included, at preliminary objection No. 5, words alleging collusion between the halqa patwari, the applicant and his counsel, the appellant, in the unlawful splitting of a khewat, and sought an inquiry and punishment. The appellant sued for Rs. 50,00,00,000 as damages for malicious prosecution and ulterior motive, apportioned as Rs. 45,00,00,000 for damage to personal and professional reputation, Rs. 4,99,00,000 for physical and mental torture and inconvenience and Rs. 1,00,000 as costs including advocate's fee. The respondents contested the suit, and produced certified copies showing that the partition matter was still pending before the Member, Board of Revenue. The trial court framed the maintainability issue, treated it as the pivotal preliminary issue, held the suit premature because the underlying application had not been decided, and dismissed it on 11.01.2024. In appeal, counsel informed the High Court that the revision before the Board of Revenue had since been decided on 23.05.2025 and sought remand on the ground of changed circumstances.

LEGAL ISSUE

Whether a suit for damages for malicious prosecution founded on words used in a reply filed in pending revenue proceedings is maintainable before the Civil Court while those proceedings remain undecided; whether the subsequent decision of the revenue proceedings during the appeal cures the prematurity; and whether, the cause of action being damage to reputation, the suit lay before the District Judge under the Defamation Ordinance, 2002 rather than the Civil Court.

HOLDING

The Court upheld the dismissal on three grounds. First, the appellant had not shown how a preliminary objection raised before the revenue authorities had tarnished his personal and professional reputation, particularly while the matter remained pending, so the suit was premature, and it is settled that premature suits cannot proceed while the cause of action has not arisen and matured into a right to sue. Secondly, although the Court accepted that a premature suit may acquire a cause of action through changed circumstances and that it may mould relief, the grant of relief depends on the peculiar facts of each case and is not automatic where the change would have no effect on the merits; here the ingredients of malicious prosecution were absent from the plaint and even from the evidence, and evidence beyond pleadings cannot be read in support. Thirdly, the claim was in substance one for damages for defamation, which by section 13 of the Defamation Ordinance, 2002 is to be filed before the District Judge; the Ordinance is a special law with its own definitions, remedies, privileges, defences, limitations and procedures notwithstanding that section 10 applies the Code of Civil Procedure and the Qanun-e-Shahadat mutatis mutandis, and ordinarily a special law excludes the general law, so jurisdiction prima facie vested in the District Court and not the Civil Court under section 9, C.P.C. The Court declined to return the plaint because the evidence recorded at the premature stage would not suffice and fresh evidence would be needed. It noted that an appellate court may decide on grounds and reasons different from those of the court of original jurisdiction, the entire matter being open before it.

LEGAL SIGNIFICANCE

The judgment is a practical guide to forum and pleading in reputation claims. It confirms that where the substance of the claim is injury to reputation from published words, the Defamation Ordinance, 2002 governs and the suit must be instituted before the District Judge, so that pleading the claim as malicious prosecution or adding ancillary heads such as mental torture will not confer jurisdiction on the Civil Court. It also insists on proper pleading of the ingredients of malicious prosecution, holding that evidence cannot supply what the plaint omits, and confirms that words used in pending proceedings will not ordinarily found a cause of action until those proceedings conclude. Finally it restates the appellate court's power to affirm a decree for reasons different from those given below.

LEGAL PROPOSITIONS (VERBATIM)

— it is settled that premature suits cannot proceed during the time the cause of action had not arisen and finalized into a right to file suit

— Hence, the case for damages on the basis of malicious prosecution in the given circumstances of the case was not made out.

— In view thereof the jurisdiction in the instant case was prima facie vested in the District Court and not the Civil Court

LEGAL PRINCIPLES EXPOUNDED

A special law on a subject ordinarily excludes the general law, so that a claim for damages for defamation must be brought before the District Judge under the Defamation Ordinance, 2002 and not before the Civil Court under section 9, C.P.C.

Source: *ordinarily a special law on the subject excludes the general law*

Authority: *Sections 10 and 13, Defamation Ordinance, 2002; section 9, Code of Civil Procedure, 1908; Attaullah Khan v. Samiullah (2007 SCMR 298); Ismaeel v. The State (2010 SCMR 27); Capt. (Retd.) Nayyar Islam v. Judge, Accountability Court No. III (2012 SCMR 669)*

A claim for damages for malicious prosecution must plead the details and ingredients of the malicious prosecution relied upon; evidence beyond the pleadings cannot be read as supporting evidence.

Source: *even otherwise evidence beyond pleadings, if available, cannot be read as supporting evidence for decision of the case*

Authority: *Muhammad Arif Tarar v. Matloob Ahmad Warraich (PLD 2025 SC 691); Muhammad Aslam v. Muhammad Anwar (2023 SCMR 1371); Muhammad Naeem Khan v. Muqadas Khan (PLD 2022 SC 99)*

Although a premature suit may acquire a cause of action through a change of circumstances during its pendency and the court may mould relief accordingly, relief is not granted automatically where the change of circumstances would have no effect on the merits.

Source: *the grant or refusal of relief is dependent on the peculiar facts and circumstances of each and every case and relief was not to be automatically granted by mere change of circumstances*

Authority: *Abdur Razaq v. Abdul Hamid (1979 SCMR 534); Abdullah Bhai v. Ahmad Din (PLD 1964 SC 106); Martin Dow Marker Ltd. v. Asadullah Khan (2020 SCMR 2147); Javed Khalique v. Muhammad Irfan (2008 SCMR 28)*

OPERATIVE ORDER

The Court held that the appellant had not been able to point out any misreading or non-reading of the record, or any illegality or jurisdictional defect in the impugned judgment and decree warranting interference, and upheld the findings of the trial court. The appeal was dismissed in limine. Approved for reporting.

■ **View Full Judgment**

Sindh High Court

2 judgments

SINDH REGULATION AND CONTROL OF DISPOSABLE SYRINGES ACT 2010 SS.3-7 & 10; SINDH EMPLOYEES SOCIAL SECURITY ACT 2016 S.29; SINDH CIVIL SERVANTS (EFFICIENCY AND DISCIPLINE) RULES 1973 R.6; CONTEMPT OF COURT ORDINANCE 2003; CONSTITUTION ARTS.9, 10-A, 19-A, 199 & 204 — THE DUTY TO PROTECT LIFE EXTENDS TO PUBLIC-HEALTH AND MEDICAL-SAFETY ADMINISTRATION, AND AN INDEPENDENT FACT-FINDING MECHANISM MAY BE DIRECTED WITHOUT ANY FINDING OF INDIVIDUAL GUILT

M. Tariq Mansoor, Advocate v. Province of Sindh & others

CONSTITUTIONAL PETITION DISPOSED OF WITH DIRECTIONS; COMPLIANCE TO REMAIN SUBJECT TO THE COMMITTEE'S REPORT WITHIN TWO MONTHS; SEPARATE CONTEMPT PROCEEDINGS ORDERED AGAINST THE PETITIONER ADVOCATE

Constitutional Petition No. D-2984 of 2026 (D.B.), 2026 SHC KHI 1531 (SHC-319339) · Bench: High Court of Sindh, Karachi (Division Bench): Mr. Justice Adnan-ul-Karim Memon (authoring); Mr. Justice Muhammad Jaffer Raza · Decided: Heard and decided 11.08.2026 · Uploaded: 11.08.2026 (straggler)

FACTS

The petitioner, an advocate appearing in person, filed a public interest petition under Article 199 arising out of the reported HIV outbreak at the Kalsum Bai Valika SESSI Hospital, SITE, Karachi, attributed to the reuse of contaminated disposable syringes and gross medical negligence, with infections reported in approximately 84 to over 200 children and several fatalities. He sought registration of an FIR under the Sindh Regulation and Control of Disposable Syringes Act, 2010 and the Pakistan Penal Code, lifelong screening and treatment of the affected children at tertiary institutions at SESSI's expense out of the Employees Social Security Fund under section 29 of the Sindh Employees Social Security Act, 2016, an independent time-bound inquiry into misconduct and criminal professional medical negligence, a declaration of entitlement to damages, province-wide enforcement of sections 3 to 6 of the 2010 Act and framing of rules under section 10 within thirty days. On notice, the Health Department reported that a Rapid Response Team had been deputed, an ART Centre established at the hospital on 27.10.2025, over 10,000 persons screened and 120 HIV-positive cases detected and treated free of cost, while the Sindh Healthcare Commission had found deficiencies in infection prevention and control. The Labour Department reported that, following an inquiry ordered on the directions of the Provincial Ombudsman, 37 officials had been suspended and proceedings initiated under rule 6 of the Efficiency and Discipline Rules, 1973. The I.G. Police reported that no evidence of a cognizable offence had surfaced. SESSI submitted that the petition had become infructuous, an ART Centre was operational, infection-prevention protocols reinforced and an endowment fund of Rs. 2 billion established. Counsel for Respondent No. 7 candidly conceded that he could not himself fairly inquire into allegations concerning officers under his control.

LEGAL ISSUE

Whether, on reports of HIV transmission among children treated at a public-sector hospital, the existing departmental proceedings and reports sufficed, or whether the Court should direct the constitution of an independent fact-finding mechanism and interim protective directions in enforcement of the rights to life, health and dignity, without adjudicating individual culpability.

HOLDING

The Court held that the matter involved exceptional circumstances concerning the protection of the rights to life, health, dignity and fair treatment, and could not be treated merely as an administrative issue, because the constitutional obligation to protect life under Article 9 extends to ensuring effective discharge of public-health and medical-safety responsibilities, particularly towards vulnerable patients. At the same time allegations or departmental proceedings cannot by themselves establish individual culpability, which must be determined on evidence and after due opportunity of hearing. Finding the existing proceedings and reports insufficient to determine the number of affected persons, the source and circumstances of transmission, compliance with infection-control protocols and the 2010 Act, and the supervisory and individual responsibility of officials, the Court directed that an independent fact-finding Committee be constituted by the Government of Sindh through the Chief Secretary, who shall head it and co-opt two officers not below BS-20 without direct administrative involvement, with a ten-point terms of reference and power to examine records including medical and laboratory reports, procurement and syringe records, duty rosters, inspection reports and CCTV footage, while affording a hearing to any person facing an adverse finding, and to report through MIT-II within two months. Pending inquiry, all affected patients are to receive comprehensive free treatment at the Government's or SESSI's expense, compensation entitlements are to be determined by the Chief Secretary, non-discrimination and confidentiality are to be ensured, and preventive and corrective measures with strict compliance with the 2010 Act and framing of rules are to be secured. The Court expressly recorded that the constitution of the Committee and its directions are not to be construed as a finding of guilt against any person. Separately, the Court recorded that the petitioner had raised his voice, instigated private persons who recorded videos in Court and disrupted proceedings, compelling the Bench to retire to chambers, and directed issuance of a show cause notice for criminal and judicial contempt under the Contempt of Court Ordinance, 2003 read with Article 204, called upon the High Court Bar Association and Sindh Bar Council to take remedial measures, and directed preservation of CCTV recordings and an explanation from the court security officials.

LEGAL SIGNIFICANCE

This is a significant public-health accountability decision. It confirms that Article 9 imposes an enforceable institutional duty on the provincial government and social security institutions to run safe hospitals, and that where departmental inquiries are conducted by or under officials whose own acts are in question, the High Court may direct an independent, high-level fact-finding mechanism headed by the Chief Secretary with a defined mandate and a reporting obligation to the Court. Equally important is the Court's insistence on the separation between fact-finding and adjudication of guilt: the Committee is to ascertain the truth and fix responsibility on evidence after hearing, and its constitution carries no adverse inference. The interim regime of free lifelong treatment, determination of compensation, non-discrimination and confidentiality for HIV-positive children provides a template for continuing mandamus in health-rights litigation. The concluding contempt directions are a reminder that public interest advocacy does not license disruption of court proceedings.

LEGAL PROPOSITIONS (VERBATIM)

— *The matter cannot be treated merely as an administrative issue*

— *warrants an independent, transparent and evidence - based inquiry*

— *The constitution of the Committee and these directions shall not be construed as a finding of guilt against any person*

LEGAL PRINCIPLES EXPOUNDED

The constitutional obligation to protect life extends beyond abstention from harm to ensuring the effective discharge of public-health and medical-safety responsibilities, particularly towards vulnerable patients in public-sector hospitals.

Source: *the constitutional obligation to protect life under Article 9 extends to ensuring effecti ve discharge of public - health and medical - safety responsibilities, particularly towards vulnerable patients*

Authority: *Article 9, Constitution of the Islamic Republic of Pakistan, 1973; Shehla Zia v. WAPDA (PLD 1994 SC 693); Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416)*

Allegations and departmental proceedings cannot by themselves establish individual culpability, which must be determined on evidence and after due opportunity of hearing; a direction for independent fact-finding therefore implies no finding of guilt.

Source: *allegations or departmental proceedings cannot by themselves establish individual culpability, which must be determined based on evidence and after due opportunity of hearing*

Authority: *Rule 6, Sindh Civil Servants (Efficiency and Discipline) Rules, 1973; Article 10-A, Constitution*

Where the officials whose acts are in question control the inquiry, the Court may direct an independent, impartial and comprehensive fact-finding mechanism headed by the Chief Secretary and reporting to the Court within a fixed time, coupled with interim protective directions for the affected persons.

Source: *the matter is referred to a Committee to be constituted by the Go vernment of Sindh through the Chief Secretary , who shall take pains to head the Committee*

Authority: *Article 199, Constitution; section 7, Sindh Regulation and Control of Disposable Syringes Act, 2010*

OPERATIVE ORDER

The Constitutional Petition was disposed of with directions: an independent Committee headed by the Chief Secretary, Government of Sindh with two co-opted officers not below BS-20 is to conduct a comprehensive inquiry on the ten specified heads and submit its report through MIT-II within two months of its constitution, recommending departmental, statutory or criminal action including under section 7 of the Sindh Regulation and Control of Disposable Syringes Act, 2010; pending inquiry all affected HIV-positive children and identified patients are to receive comprehensive, uninterrupted and appropriate treatment free of cost at the expense of the Government or SESSI for as long as medically required; the Chief Secretary is to determine and process compensation entitlements expeditiously; non-discrimination and confidentiality are to be ensured; and preventive and corrective measures, strict compliance with the 2010 Act and framing of requisite rules are to be secured. Compliance is to remain subject to the Committee's report, which the Chief Secretary must ensure is submitted within two months, whereafter the matter is to be placed before the Court. Separately, a show cause notice was ordered to issue to Mr. Tariq Mansoor, Advocate for criminal and judicial contempt under the Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution, with a separate file to be prepared, his written reply and personal appearance directed, the High Court Bar Association and Sindh Bar Council called upon to take remedial measures, the Court security officials directed to identify the private persons involved and the Registrar directed to preserve the CCTV recordings.

■ **View Full Judgment**

SINDH COOPERATIVE SOCIETIES ACT 2020 SS.37, 38, 39 & 73; CODE OF CIVIL PROCEDURE 1908 S.151; CONSTITUTION ART.199 — DISPUTES CONCERNING THE AFFAIRS OF A COOPERATIVE SOCIETY ARE EXCLUSIVELY TRIABLE BY THE COOPERATIVE COURT, AND A TRIAL COURT WHICH HAS PASSED AND EXECUTED A FINAL DECREE BECOMES FUNCTUS OFFICIO

Shaheen Anwer (through Attorney Abdul Basit) v. Works Cooperative Housing Society Ltd. & others

CONSTITUTIONAL PETITION DISMISSED AS DEVOID OF MERITS; THE ORDER OF THE TRIAL COURT HELD CORAM NON JUDICE; PETITIONER LEFT TO THE APPROPRIATE FORUM

C.P. No. S-1266 of 2025, 2026 SHC KHI 1529 (SHC-319199) · Bench: High Court of Sindh at Karachi (Single Bench): Nisar Ahmed Bhanbhro, J. · Decided: Heard and decided 11.08.2026 · Uploaded: 11.08.2026 (straggler)

FACTS

Mst. Yasmin Akhter filed a suit for administration and partition of the life estate of the deceased Mst. Anwar Jahan, a double-storey house on Plot No. C-58, measuring 600 square yards, Block 8, Gulshan-e-Iqbal, Karachi, before the Senior Civil Judge III, Karachi East. A preliminary decree dated 24.04.2024 appointed the Nazir as Commissioner; on the Nazir's report proposing auction, a final decree dated 24.08.2024 directed auction proceedings, in which the petitioner Shaheen Anwer was the successful bidder. On deposit of the bid amount the society was directed to transfer the property into his name. When he approached the society it issued a demand notice dated 17.03.2025 for dues in respect of the plot including building fund, scrutiny fee of the completion plan, extra covered area and area occupied beyond the approved plan, transfer set and transfer fee. The petitioner instead moved an application under section 151, C.P.C. before the trial court, which by order dated 29.07.2025 allowed it and directed transfer of title while leaving the society at liberty to recover the dues for excess area before the appropriate forum. The society's Civil Revision No. 240/2025 was allowed by the XIIth Additional District & Sessions Judge, Karachi East on 22.10.2025, and that order was challenged in the constitutional petition, the petitioner also complaining that the revisional court had not heard him.

LEGAL ISSUE

Whether the trial court, having passed and executed a final decree in an administration and partition suit, retained jurisdiction to entertain an application under section 151, C.P.C. against a cooperative housing society's demand for dues, or whether such a dispute lies exclusively before the Cooperative Court under section 73 of the Sindh Cooperative Societies Act, 2020.

HOLDING

The Court held that since the petitioner sought transfer of property in excess of the original area, the society had the right to make the demand, and if the petitioner was unwilling to pay for the excess area he might surrender it. The trial court's observation that the society could not make such a claim was beyond its mandate: the parties had invoked the court only for the administration and partition of the deceased's life estate, and after passing the final decree and its execution the trial court became functus officio and was not competent to interfere in matters pertaining to the society. Any dispute against the demand fell within section 73 of the Sindh Cooperative Societies Act, 2020, which vests exclusive power in the Cooperative Court, all disputes other than those concerning disciplinary action against a paid servant and liquidation disputes being triable by that court, with sections 37, 38 and 39 laying down the procedure for disputes as to the assets and liabilities of a deceased member. The order of the trial court was accordingly coram non judice for want of jurisdiction. The Court observed that determination of jurisdiction is one of the important elements in the administration of justice, because justice provided on the basis of coram non judice orders has no legal sanction behind it, and that although the revisional court had not taken up the question of jurisdiction it could be attended to by the High Court in its writ jurisdiction as a question of law.

LEGAL SIGNIFICANCE

The order marks out the jurisdictional boundary between the civil courts and the Cooperative Court in Sindh. It confirms that the exclusive jurisdiction conferred by section 73 of the Sindh Cooperative Societies Act, 2020 covers disputes about a society's demands, dues and transfer requirements, so that an auction purchaser under a partition decree cannot obtain relief against such demands from the executing or trial court. It also reinforces the functus officio principle: once a final decree has been passed and executed, the trial court's residual powers under section 151, C.P.C. cannot be used to adjudicate a fresh controversy with a third party. Finally it confirms that a jurisdictional defect, even if not raised before the revisional court, may be examined by the High Court under Article 199 as a pure question of law, and that an order made without jurisdiction is coram non judice and carries no legal sanction.

LEGAL PROPOSITIONS (VERBATIM)

— *After passing the final decree and its execution Trial Court became functious officio and was not competent to interfere into the matters pertaining to the Society.*

— *the society has the right to make such demand and if the petitioner is unwilling to make payment of excess area , he may surrender the same to the society*

— *Learned Trial Court on passing the decree on main suit and after its execution through bid became functious officio and was not competent to pass any orders*

LEGAL PRINCIPLES EXPOUNDED

All disputes concerning the affairs of a cooperative society, other than disciplinary action against a paid servant of the society and liquidation disputes, are exclusively triable by the Cooperative Court established under the Sindh Cooperative Societies Act, 2020.

Source: *Dispute if any against the said demand fell within the meaning and definition of Section 73 of the Sindh Cooperative Societies Act, 2020 (the said Act) which vested powers exclusively to the Cooperative Court established under the provisions of the said Act.*

Authority: *Sections 37, 38, 39 and 73, Sindh Cooperative Societies Act, 2020*

Determination of jurisdiction by the court seized of a matter is a fundamental element in the administration of justice, since relief granted on a coram non judice order has no legal sanction behind it.

Source: *in the administration of justice determination of the jurisdiction by the Court seized with the matter is one of the important elements*

Authority: *Doctrine of coram non judice*

A question of jurisdiction, being a question of law, may be taken up by the High Court in its writ jurisdiction even though it was not raised before or considered by the revisional court.

Source: *the issue of jurisdiction was not taken up by the Revisional Court, however being a question of law, can be attained by this Court under its writ jurisdiction*

Authority: *Article 199, Constitution of the Islamic Republic of Pakistan, 1973*

OPERATIVE ORDER

The petition was held to be devoid of merits and was dismissed, the petitioner being left at liberty to avail his remedy against the respondent society before the appropriate forum if so advised. Approved for reporting.

■ **View Full Judgment**