IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas

S. No.	H.C.A. No.	Name of parties		
1.	82/2007	Trustees of Port of Karachi & ors.	v/s	Muhammad Zahir Shah & others
2.	83/2007	Trustees of Port of Karachi & ors.	v/s	Ellahi Bux & others
3.	84/2007	Trustees of Port of Karachi & ors.	v/s	Jan Muhammad & others
4.	85/2007	Trustees of Port of Karachi & ors.	v/s	Allah Obahio & others
5.	86/2007	Trustees of Port of Karachi & ors.	v/s	Abdul Ghaffar & others
6.	87/2007	Trustees of Port of Karachi & ors.	v/s	Muhammad Ali & others
7.	215/2010	Trustees of Port of Karachi	v/s	Metatax Pvt. Ltd. & others
8.	216/2010	Trustees of Port of Karachi	v/s	M/s. A.B. Corporation
9.	217/2010	Trustees of Port of Karachi	v/s	M/s Asif & others
10.	218/2010	Trustees of Port of Karachi	v/s	Muhammad Qasim Sawal & others
11	219/2010	Trustees of Port of Karachi	v/s	Abdul Basit & others
12.	220/2010	Trustees of Port of Karachi	v/s	M/s T. Suleman & others
13.	221/2010	Trustees of Port of Karachi	v/s	Mst. Amina & others
14.	222/2010	Trustees of Port of Karachi	v/s	M/s Asif & others
15.	243/2010	Trustees of Port of Karachi Port Trust	v/s	Mst. Amna & others
16.	244/2010	Trustees of Port of Karachi Port Trust	v/s	Muhammad Salim Sawal & others
17.	245/2010	Trustees of Port of Karachi Port Trust	v/s	Muzammil & others
18.	246/2010	Trustees of Port of Karachi Port Trust	v/s	Mst. Rabia & others
19.	247/2010	Trustees of Port of Karachi Port Trust	v/s	Muhammad Hussain & others
20.	248/2010	Trustees of Port of Karachi Port Trust	v/s	Muhammad Usman Sawal & ors
21.	249/2010	Trustees of Port of Karachi Port Trust	v/s	Bano & others
22.	250/2010	Trustees of Port of Karachi Port Trust	v/s	Abdul Mannan Paracha & others

Dates of Hearing:	14.05.2024, 15.05.2024, 21.05.2024, 22.05.2024 and 24.05.2024
Appellants in HCA 215 of 2010:	Through Mr. Mushtaq A. Memon along with M/s. Shahid Ali and Ishtiaq Memon Advocates.
Appellants in HCA 82 to 87 of 2007:	Through Ms. Nasima Mangrio Advocate.
Appellants in HCA 216 to 222 of 2010:	Through Mr. Muhammad Sarfaraz Sulehri Advocate.
Appellants in HCA 246 and 247 of 2010:	Through Mr. Karim Abbasi a/w Mr. Muhammad Zeeshan Naeem Advocates.
Appellants in HCA 248 to 250 of 2010:	Through M/s Amjad Ali
Federation of Pakistan:	Through Ms. Wajiha Mehdi, Deputy Attorney General.
Respondent/Province of Sindh:	Through Mr. Abdul Jaleel Zubedi, Assistant Advocate General.
Respondent No.1 in HCA 82, 84 and 85 of 2007 and HCA No.215 of 2010:	Through Mr. Abid S. Zuberi a/w M/s Hidayatullah Mangrio, Muhammad Wasay Noor, Tarawish Javaid Chhatari and Ms. Hira Ahmed Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Private respondents filed their respective suits for the adjudication of their ownership, claimed to have been bestowed by the Board of Revenue, Land Utilization Department, Government of Sindh, and a declaration that they are in lawful use, occupation and possession of the subject land with consequential relief that the appellants, arrayed as defendants in the suit, be restrained from causing any harassment and issuing threats as to their (private respondents') dispossession and from causing interference in their peaceful possession and enjoyment of the land in question.

2. About 22 suits were filed which were decided vide two judgments; one set of suits i.e. Suit No.843 and 915 to 919 of 2004 was decided by judgment dated 22.02.2007 in terms whereof the suits were decreed whereas the other set of suits No.833 and 838 to 852 of 2000 was decided by a common judgment dated 09.08.2010 whereby the suits were dismissed with the observation that the **"subject lands belonged to Government of Sindh"** from whom respondents/plaintiffs claimed title, who had cancelled the same under Ordinance III of 2001; hence in the other set of suits Court observed that the plaintiffs therein were not entitled to the relief claimed in their respective suits as perhaps was not meant for such declaration.

3. The two judgments were assailed in this bunch of appeals by Karachi Port Trust only through its Chairman. Plaintiffs of subsequent bunch of suits did not prefer any appeal because of K.P.T. having been declared to have no right over the land(s). Hence, the gist of the matter that comes to fore is that entire land belonged to the Government of Sindh whereas one set of suits was decreed also to the extent that they (plaintiffs of suits) had a valid title bestowed to them by Government of

Sindh whereas the lands of other set of suits were observed to have been cancelled in terms of Ordinance III of 2001 hence their suits were dismissed as would require separate adjudication, notwithstanding the observation made/given against K.P.T.

4. We have heard learned counsel for parties and perused material available on record.

5. To us, after conclusion of suits it seems that the primary question is whether KPT has/had any right to interfere their (respondents') possession/use in presence of title, claimed to have been conveyed by Board of Revenue. Before adverting to decide the controversy as agitated before this Court vis-à-vis the High Court Appeal, it is pertinent to note that the appellant has also filed an application under order XLI Rule 27 CPC in High Court Appeal No.215 of 2010 (emanated from Suit No.833 of 2000) for producing additional evidence.

6. The prime prerequisite for invoking this provision of law is a refusal by the trial Court as to production of such evidence, as is being sought to be produced now. The record however would reveal that indeed the parties, including the appellant KPT, have agreed to confine their controversy to a single issue and disposal of the suit on the basis of record, without oral evidence. Learned counsel for the appellant KPT at that point in time appears to have not made any request for production of the present documents. Similarly, for the second limb of ibid provision, Court does not require any document to be produced or any witness to be examined to enable it to pronounce judgment, particularly when the litigants themselves have not felt it. Both limbs of Rule 27 of Order XLI do not apply to the situation in hand. Thus, in these circumstances, there appears to be no reasonable ground to allow this application, which is being dismissed. It is also pertinent to note that these appeals are pending since 2010 and this application is filed on

12.05.2024 {after about 14 years of pendency of appeals) hence the appellant does not deserve any indulgence from this Court on this count too. However, as far as any public record is concerned if this Court would deem it necessary it may go through the same for proper adjudication of appeals.

7. It is case of the appellant that they have challenged the part of the impugned judgment whereby negative declaration was granted in favour of Province of Sindh thereby denying the ownership of the appellant. It is further the case of the appellant:

- that while dismissing the suit of the private respondents/ plaintiffs on the count of having no legal right, there was no necessity to hold that the subject land belong to Government of Sindh;
- that the nature and scope of suit is to be determined by plaint and/or plaintiffs and not the written statements or defendants;
- while emphasizing the word “vest” it is argued that the subject land is salt land and hence is of KPT/Federal Government and not of Sindh Government;
- that entire Karachi region consisting of 54 Dehs (at some point in time) along with islands in the harbor of Karachi was declared as Federal Capital by demarcating the same from Sindh;
- that the disputed land having remained under sea water was part of the land vesting in KPT;
- that earlier in Suit No.725 of 2011 a compromise between the Government of Sindh and the KPT Officers Cooperative Housing Society Limited was held to be beyond the mechanism and mandate postulated by law;

- that the land within the port limits as held by the Supreme Court that the KPT could not transfer or lease its land for housing facility, will not affect the case in hand.

8. Perusal of record in consideration of above grounds reveals that since the controversy is more or less same, parties in both set of suits have relied on same documents though nomenclature and/or dates etc. could be different. In first set of suits the parties were allowed to file their respective documents and admission and denial was carried out accordingly whereafter the matter was heard, as is stipulated on page 4 of the impugned judgment. In the second set of suits a single consent issue was framed at the joint request of the learned counsel for the parties, including learned counsel for the appellant/KPT, who also agreed that such issue can be decided on the basis of documents (available on record) without recording of the oral evidence. The KPT/appellant has not attempted to plead for production of any documents before or after framing of the single issue.

9. It is also pertinent to note that the nature of the dispute appears to be such that the documents are not disputed and any additional document could not have an impact over the observations made in the judgments in two sets of the suits. Furthermore, the issues were initially framed on 17.09.2001 whereas a single issue was framed "by consent" on 17.03.2008 and the appellant/KPT had ample opportunity to make an attempt to produce the requisite documents on record during this period, but it did not and even up unitll 25.05.2010 when the final arguments in the suits commenced followed by impugned judgment on 09.08.2010. In these appeals too the arguments commenced on 14.05.2024 and application was filed on 12.05.2024, though the appeals were pending since 2010.

10. Responding to the questions raised we may sum up the first ground that no negative declaration is sought in the suits. At the very outset none of the plaintiffs (respondents here) prayed for any negative declaration. Primary declaration sought in the suits is/was that plaintiffs/respondents were the owners of their subject land, lawfully allotted to them by the Land Utilization Department of Province of Sindh. Consequently the appellants, attempting to dispossess the appellant, sought to be restrained from exercising/taking such actions as against their rights.

11. One of the bunch of suits was decreed as prayed vide judgment and decree dated 22.02.2007 and 03.03.2007 respectively whereas the judgment in other bunch declared that KPT cannot stake any claim over the land as it belonged to Government of Sindh. The subject of allotment by Land Utilization Department of Board of Revenue however was dealt with separately in terms of paragraph 18 and 19 of the judgment of the second bunch dated 09.08.2010 and decree dated 04.09.2010.

12. Although there was just one issue left to be decided i.e. whether this (subject) land (Phase-1 of K-28 Trans Lyari, Hawkesbay Road) belongs to KPT “or” the Board of Revenue, Government of Sindh? The judgment dated 09.08.2010 should have ended at the conclusion made in paragraph 17 ibid bestowing powers to the Land Utilization Department of Sindh Government. Sindh Government and/or Board of Revenue had never raised any objection in this regard nor any cause is shown to have accrued in the plaint with reference of Ordinance III of 2001 above. Nonetheless the effect of alleged cancellation is not germane to the controversy in hand and to be dealt with separately, if need be. This obiter will not affect the conclusion drawn in paragraph 17 of the judgment dated 09.08.2010. The contention of the appellant’s counsel

that since the later judgment is not impugned therefore no exception could be drawn is neutralized by virtue of Order XLI Rule 33 CPC which enabled this Court to do complete justice, notwithstanding the fact that appeal is in respect of obiter was not preferred by the respondents.

13. Much emphasis was made on the word "vest/vested", as demonstrated by virtue of the language used in Section 18 and 27 of Karachi Port Trust Act, 1886. Section 18 of the ibid Act describes the competence of Board to lease, sell and transfer any moveable or immovable property subject to the restrictions contained in subsection (2) thereof. Subsection (2) is in relation to an extended lease for which a sanction of the government was rendered inevitable. The provisions of Section 18, 25, 26 and 27 have been discussed in detail in one of the two impugned judgments i.e. judgment of 2007 dated 22.02.2007. In its paragraph 13 it was made clear that certain restrictions have been imposed on the Board even on immovable properties that vest in the Board. Such actions will undoubtedly be read with scope of Board of KPT, as extended by the aforesaid statute. Unlimited meaning, beyond the frame of the statute, cannot be extended/given to the Board. Karachi Port Trust was never created to own the land which it may deal with as deem fit and proper; KPT had to deal with the lands as deem fit and proper by the Act itself and/or mandated by it. Even the learned DAG Ms. Wajiha Mehdi has not only highlighted the jurisdictional contour of Karachi Port Trust but also the statutory managerial purpose of the statute which does not vest title upon Karachi Port Trust.

14. In the case of Naimatullah Khan Advocate[1] the Supreme Court while dealing with the subject in terms of paragraph 49 discussed/ observed that the Board of Trustees were not authorized by law to

[1] 2020 SCMR 513 (Naimatullah Khan Advocate v. Federation of Pakistan)

create housing societies for its officers. The said paragraph of the judgment is reproduced as under:-

> *"49. The legal position that emerges is that the Board of Trustees were not authorized by law to create housing societies for its officers and servants and lease, transfer or sell the property/land of the Port to its officers and servants and such act of the Board of Trustees of creating housing societies for officers and servants is contrary to the very mandate of the KPT Act and is thus, declared to be wholly illegal being void ab initio. All leases, transfers or selling of property/ land of the Port of Karachi by the Board of Trustees to its officers and servants are, thus, declared to be illegal and such leases, transfers or selling of the Port property/land are hereby cancelled. The whole of the property/land leased, transferred or sold to the officers servants/workers will immediately revert to the Port of Karachi to be used strictly in accordance with the KPT Act. The Board of Trustees is only required to manage the affairs of the Port as laid down in the KPT Act and nothing more. The officers, servants/workers are only entitled to payment of their salaries, fees and allowances to be sanctioned by the Board for their services and nothing beyond it is provided in Section 21 of the KPT Act as noted above. If any amount has been received by the KPT from any of its officers, servants/workers in respect of lease, transfer or selling of the Port land, the Board of Trustees of KPT shall immediately refund such amount to their offices, servants/workers and shall also pay, as compensation, the difference between the values of the money when the same was received and the value of money currently prevailing. The Federal Government, who has opposed granting of lease, transfer or selling of the KPT land to the officers servants/workers of the Board shall look into the matter and deal with the Board of Trustees in accordance with law."*

15. The aforesaid order was then subjected to the review application, para-9 of the review order deals with the subject review application bearing CMA No.165-K of 2020. The review application was then ultimately dismissed in terms of para-14 of the review order.

16. The judgment dated 09.08.2010 in the case of Metatex (reported in PLD 2010 Karachi 414), one of the two judgments in this bunch, has been discussed in detail in the above judgment of Supreme Court and seemingly approved the above understanding of law.

17. Section 25 of the KPT Act deals with the power of the Board to acquire and hold moveable and immovable property/properties, whether

within or without the limits of the Port or city of Karachi. First of all by virtue of any document, of which admission and denial has taken place, the appellants have not proved existence of the lands in question within their jurisdiction and Schedule 'A', which is relied upon, does not describe the subject lands within the managerial control of Karachi Port Trust. Secondly, it empowers the Karachi Port Trust to acquire and hold moveable and immovable properties "for the purposes of this Act", which they (appellant KPT) have failed to demonstrate. Section 26 strengthens the above explanation of Section 25. Section 27, without prejudice to the above, provides that the properties specified in Schedule 'A' vest in the Board. The only property highlighted by Mr. Mushtaq Memon is the land described at serial No.XXI, which is not the subject land. In fact it was Mai Kolachi land for which the judgment has already been rendered by Supreme Court in case of Naimatullah Khan (Supra).

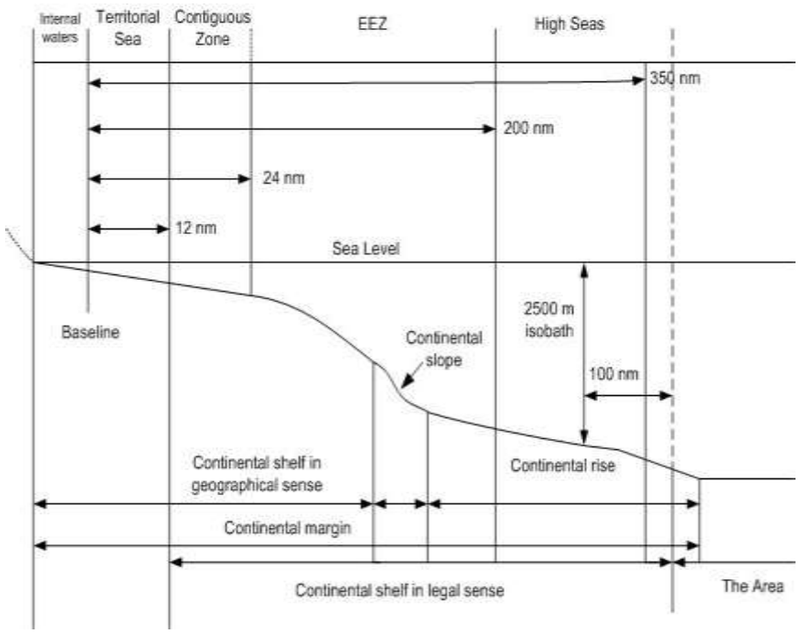
18. Without prejudice to the above, vesting of the lands in the Board, does not mean that the Board, either for the purposes mentioned in the statute or otherwise, is to be considered as "owner" of the subject lands. This question has also been discussed in detail in one of the two impugned judgments i.e. of 22.02.2007.

19. The concept of ownerless lands under Article 172 of Constitution of Islamic Republic of Pakistan, 1973 was also discussed in detail in an unreported judgment dated 03.09.2013 in the case of The Member (L.U) Board of Revenue Sindh v. KPT Officer Cooperative Housing Society Ltd. & others in High Court Appeal No.236 of 2009. In this judgment the question of jurisdiction of federal government and provincial government over the land in question in terms of Article 172 of the Constitution of Islamic Republic of Pakistan, 1973 was discussed in detail. Paragraphs 36 and 41 of the said judgment clearly demonstrate

that the land was never part of any continental slope and hence the same, in view of continental shelf in terms of its height, could only form part of the province. Paragraph 36 and 41 of the aforesaid judgment are reproduced as under:-

> *36. The land which is the subject matter of this suit is adjacent to Mai Kolachi By-pass and a substantial part of land was once a forest of mangroves which are considered as tropical and subtropical evergreen trees that grew in salt marches and on mudflats, along tropical coasts and forms branches that form a dense tangled network. Thus, in terms of section 50 of the Land Revenue Act, the presumption of ownership of forest, queries and wasteland vest with the province.*
>
> *Article 172 of the Constitution of Islamic Republic of Pakistan, 1973.*
>
> > *172. Ownerless property. (1) Any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in the Federal Government.*
> >
> > *(2) All lands, minerals and other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the Federal Government.*
> >
> > *(3) Subject to the existing commitments and obligations, miner oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government."*
>
> …..
>
> *41. Thus on the strength of above narration the rescue of Article 172(2) of the Constitution of Pakistan is not seems to be available and section 50 of Land Revenue Act, 1967 also provides interest of government of Sindh over the land in question. Though there is no such suit before us which could establish the title of the KPT or could lead to such possible conclusion, however for the sake of litigants we have gone through the above referred law as well as Colonization and Disposal of the Government Lands (Sindh) Act of 1912. Article 172(2) of the Constitution of Pakistan 1973 provides title to the Federal Government in respect of the land within the continental shelf or underline the Ocean beyond (within) the territorial waters of Pakistan. The continental shelf as described by*

> *"Yoshifumi Tanaka", the author of "the International Law of the Sea", is an area adjacent to a continent or around an island extending from the low-water line to the depth at which there is usually a marked increase of slope to greater depth. In order to demonstrate such continental shelf or subject land under the ocean in the legal sense he has also drawn certain diagrams one of which is reproduced as under. Even an island and land around such island is covered by same principle of marked and significant increase of slope to greater depth. Thus any island adjacent or in the vicinity of Sindh province are to be dealt with the same analogy.*



The aforesaid judgment also discussed the judgment in the case of Metatex, which is one of the two judgments impugned before us.

20. Somehow similar view necessitated when the case of Kandla[2] was being heard in the High Court of Gujrat at Ahmedabad. It discussed the status of the properties of the Port being vested with Kandla Port Trust as per section 29 of the Major Port Trust Act, 1963. The question that was framed in the said judgment with the discussion and findings thereon are reproduced as under:-

> *"7. The rival contentions set out above give rise to the following questions.*
> *1. …..*
> *2. Whether the vesting of the property by virtue of Clause (a) of Sub-section (1) of Section 29 of the 1963 Act in the*

[2] (1979) 1 GLR 732 (State of Gujrat v. The Board of Trustees of Port of Kandla)

Board was in the nature of vesting in possession only and not vesting in title; and

…

21. Now Clause (a) of Sub-section (1) of Section 29 of the 1963 Act, reproduced earlier, provides that all property, assets and funds vested in the Central Government or any other authority for the purposes of the Act shall vest in the Board. The question is whether the vesting is absolute, in the sense of vesting in title, or limited, in the sense of vesting in possession only. In other words did the Central Government intend to divest itself of ownership in the property, assets and funds while vesting the same in the Board? The expression "vest" does not have a definite or fixed connotation and is used in a variety of shades. To determine its exact import we must look to the context in which it is used. It is not permissible to read the language of the section in isolation but regard must be had to the scheme of the statute, its object and purpose and the contextual structure before a clear meaning is given to the expression falling for interpretation If so read we have no doubt that the vesting in the Board is not absolute but only for administration, control and management.

27. It was next pointed out that the absence of the power of resumption is indicative of the fact that the vesting is absolute. In this connection our attention was invited to Section 76(4) of the Bombay Provincial Municipal Corporations Act, Section 80(3) of the Gujarat Municipalities Act and Section 96(4) of the Panchayats Act which carry the power of resumption. The short answer to this contention is that if the Central Government is minded to resume any area it has merely to alter the limits under Section 5 of the 1908 Act, in which case the Board will automatically be divested of control over such property and the Central Government in whom the paramount title vests would assume control. Hence there was no need to make a separate provision for resumption as the paramount title was never intended to be transferred under the 1963 Act. In our view the absence of such provision is indicative of limited vesting in the Board and not vice-versa as contended on behalf of the State and the Municipality.

We now reach the last limb of the submission It was argued by the learned Counsel for the State and the Municipality that Clause (a) of Sub-section (1) of Section 29 of the 1963 Act deals with the transfer of assets and liabilities of not only the Central Government but also "any other authority" and if we take the view that the vesting contemplated by the said Clause is limited to vesting in possession in the case of assets belong to the Central Government, we would be obliged to assign the same meaning to the term

"vest" in the case of assets of "other authorities" also and that would lead to an anomalous situation not envisaged by the law makers. In this connection our attention was drawn to the three sister statutes, namely, (1) The Bombay Port Trust Act, 1879, (2) The Calcutta Port Trust Act, 1899 and (3) Madras Port Trust Act, 1905 in support of the contention that under these three statutes the vesting in favour of the port authorities was complete and if the narrow meaning that we are inclined to assign to the term "vest" applies in respect of the assets of both the Central Government and the statutory authorities, an anomalous situation will arise, in that, while the properties held by these authorities will vest in possession in the Board by virtue of the application of the 1963 Act to these ports by the Major Port Trusts (Amendment) Act, 1974, the title in the properties shall continue to vest in the said authorities; the repeal of the said Acts by the Amending Statute, notwithstanding. To answer these submissions we must briefly examine the scheme of the three sister statutes to understand the nature of "vesting" in the statutory authorities created by those Statutes.

35. The schemes of the three Acts clearly indicate that the Board of Trustees/Commissioners constituted under the respective Acts are charged with the duty of carrying out the provisions of the Acts to which they owe their existence. In the constitution of the Board of Trustees/Commissioners the Central Government has a dominant voice and even the resignation of a trustee can only be accepted by the Central Government. The power to borrow money is also dependent on the previous approval or sanction of the Central Government. It is thus obvious that the vesting of the property in the Trustees/Commissioners is for carrying out the duties imposed by the respective Statutes. The properties vest in the Trustees/Commissioners to achieve this objective and for that purpose certain governmental functions have also been delegated to the Trustees/ Commissioners. All these three Statutes empower the Trustees/ Commissioners to frame bye-laws and breach of the bye-laws so framed is made penal under the Statutes. The Statutes also empower the Trustees/Commissioners to order summary eviction of allottees occupying premises vesting in them. It is thus clear that the broad scheme of the three sister Statutes is akin to the scheme of the 1963 Act, which we have considered in extenso in the earlier part of this judgment. The scheme of these three Statutes therefore, does not militate against our view that the Parliament by incorporating corporate bodies under the Statutes created an agency for carrying out the purposes of the respective Acts and for that limited purpose the properties came to

be vested in the said agencies. In fact, the preamble of the Bombay Act in terms states that the vesting is for the purpose of control and management of the properties in one public trust. Provisions in the other two Acts also make it clear that the properties shall be held by the Trustees/Commissioners in trust for the purposes of the respective Acts. The Trustees/Commissioners are charged with the duty to carry out the provisions of the respective Acts. The maintenance of ports is primarily the function of the Government. For the efficient performance of that function the legislature created corporate bodies under different statutes and charged them with the duty to carry out the provisions of the respective Acts. The properties were, therefore, required to be vested in the corporate bodies created under the statutes and this vesting can only be for the purpose of administration, control and management only. Power to acquire, hold and dispose of properties, subject to the directions of the Government, is as a matter of convenience only but that cannot be understood to mean that the Government divested itself of title over such properties. Suppose in exercise of power under Section 5 of the 1908 Act the limits of a major port are altered so as to carve out a certain area. Immediately on the Government issuing a notification in that behalf the Board will cease to have control over lands and properties in such area. In that case in whom will the legal title in respect of such estate vest? If the vesting in the Board is absolute we will be faced with an absurd situation and may be compelled to resort to Article 296 of the Constitution on the principle of bona vacantia. To attribute such an intention to the law makers would be an affront to the wisdom of our Parliament. We are, therefore, of the opinion that if we take the view that vesting by Clause (a) of Sub-section (1) of Section 29 of the 1963 Act is limited to vesting in possession, no anomaly is likely to be created even under the scheme of the three sister Statutes, which we have considered earlier."

21. The case of KPT Officers Cooperative Housing Society Limited Karachi v. Government of Sindh reported as 2019 YLR 1671 attempted to distinguish the aforesaid judgment of the Division Bench in a case wherein the questions in hand were not matter of consideration. The aforesaid Judgment titled as KPT Officers Cooperative Housing Society Limited Karachi v. Government of Sindh reported as 2019 YLR 1671 has nothing to do with the subjects in hand. In addition, the findings as to the entitlement of the officers of the Karachi Port Trust, for whom

cooperative housing society was formed, was eclipsed by the judgment of Supreme Court in the case of Naimatullah Khan Advocate v. Federation of Pakistan (referred above).

22. The two notifications, the prior one being dated 02.05.1940 and the subsequent dated 05.10.1991, came under discussion while hearing these appeals. The first notification of 1940 was issued by the Government of India under section 3 of K.P.T. Act whereas the subsequent one of 1991 superseded the earlier one. Under no stretch of imagination any of them could bestow upon the Karachi Port Trust any proprietary right or could empower them (K.P.T) to consider themselves as undisputed owner of the subject lands; they being a statutory and regulatory body are governed by statute and nothing else. The provisions of Karachi Port Trust Act enabled it to deal with its affairs remaining within the frame of the statute. The argument that the Federal Government as being empowered to take and demarcate the port area is of no consequence as the rights of the KPT are to be navigated within the scope of the Act. By applying definition of land required for port, the application of land looses its strength. In the case of Modern Terminal Operator[3] the question relating to the limits and ownership has been highlighted in words and phrases.

23. On the high water mark, which is a crucial understanding as to the limits of the Port, a bund was constructed for the purposes of salt works in Hawkesbay area and the high water mark was extensively beyond that demarcation created by bund. By that time also it fell well beyond the limits of Port as could be determined under the law and for that reason the lands in question were not included in the notification of 1991.

[3] Modern Terminal Operators v. City District Government (2004 YLR 1161)

24. As to the effect of Sindh Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance 2000 (Ordinance III of 2001) we would not like to discuss as the consequence does not arise out of the litigation and additionally the Government of Sindh through Land Utilization Department, Board of Revenue, never raised such objections nor any issue was framed; they no doubt are at liberty to lawfully establish such contention if they so deemed necessary regarding cancellation, if made, however it would not be proper to adjudicate the question/controversy of cancellation when no such issue was ever framed or agreed upon to be framed in the instant litigation. It could have been a case where oral evidence was required by the parties.

25. With this understanding of law and facts and the observations made hereinabove we do not feel any reason to interfere in the impugned judgments in both sets of the suits and consequently appeals are dismissed along with pending applications.

Dated: **J U D G E**

J U D G E