FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

Present:
JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

F.C.P.L.A.168-L/2026
[against the judgment dated 02.03.2026 passed by the Lahore High Court, Lahore in I.C.A.7676/2024]

Muhammad Ahmad Yousaf ***...Petitioner***

Versus

Muhammad Adeel Akhtar and others ***...Respondent(s)***

For the Petitioner	:	Mr. Shehzad Shaukat, ASC
For the Respondents	:	Sardar Muhammad Usman Bhutta, AHC *[with special permission]*
Research Assistance	:	Dr. Muhammad Mumtaz, *Research Officer*
Date of Hearing	:	24.09.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- This petition filed under Article 175(F)(1)(C) of the Constitution of the Islamic Republic of Pakistan, 1973 challenges the judgment dated 02.03.2026 passed by the Division Bench of Lahore High Court, Lahore in ICA No.7676/2024, whereby the ICA filed by the respondent(s) was allowed.

2. Briefly stated, the dispute concerns House No. 131-WV-458/RH, measuring 6 marlas and 175 square feet, situated at Mandi Raiwind, Lahore, originally constituting evacuee property. The property was provisionally transferred to Azeem Bukhsh in 1960, followed by issuance of a Permanent Transfer Deed dated 13.10.1970 in favour of his legal heirs. The petitioner claims title through subsequent registered instruments and Mutation No. 34057 dated 30.09.2012. However, vide order dated 31.03.2022, the property was declared State land and directed to be auctioned. The learned Single Judge set aside the said order on 14.12.2023, but the learned Division Bench reversed that judgment on 02.03.2026. Hence, the present petition for leave to appeal.

3. We have heard the learned counsel for the parties and examined the contention advanced before us.

4. The foremost question requiring determination is whether the Intra-Court Appeal preferred by respondent No.1 against the order dated 14.12.2023 of the learned Single Judge of the Lahore High Court was maintainable under section 3(2) of the Law Reforms Ordinance, 1972 (hereinafter referred to as "the Ordinance"). The controversy essentially concerns the statutory bar contained in the proviso thereto, which excludes an Intra-Court Appeal where the law governing the original proceedings provided at least one remedy of appeal, review or revision. The right of Intra-Court Appeal under section 3(2), though statutorily conferred, is expressly qualified by this exclusion. Being a threshold question of jurisdiction, its determination must precede examination of the merits, as appellate jurisdiction cannot be assumed contrary to an express statutory prohibition, nor conferred by consent or acquiescence. The relevant provision is reproduced here as under:

> "**[3. Appeal to High Court in certain cases.** — (1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.
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> (2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under [clause (1) of Article [199] of the Constitution of the Islamic Republic of Pakistan] not being an order made under sub-paragraph (i) of paragraph (b) of that clause:---
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> Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or one review] to any court, tribunal or authority against the original order."

The proviso imposes a mandatory jurisdictional bar against an Intra-Court Appeal where the law governing the original proceedings provides at least one remedy of appeal, review or revision. The expression "shall not be available or competent" is unequivocal and admits of no discretionary relaxation. The right of Intra-Court Appeal, being a statutory creation, cannot be extended beyond its prescribed limits through judicial interpretation. The

applicability of the bar depends upon the nature and statutory origin of the proceedings, rather than their nomenclature or the form of constitutional relief sought. The expression "arises out of any proceedings" encompasses the underlying statutory adjudication and the remedies provided thereagainst. Any contrary interpretation would frustrate the legislative intent and permit circumvention of an express statutory prohibition.

5. The exercise of constitutional jurisdiction under Article 199 does not *ipso facto* confer a right of Intra-Court Appeal, which is purely statutory and circumscribed by section 3(2) of the Ordinance. The maintainability of a constitutional petition and the competence of an Intra-Court Appeal are distinct legal questions, each requiring independent determination within its respective jurisdictional framework. Applying these principles, the controversy originated from proceedings concerning mutation of evacuee property, its allotment to Azeem Bakhsh and subsequent transfer to his legal heirs. The invocation of constitutional jurisdiction did not alter the statutory character of the underlying dispute. Insofar as the controversy arose from mutation proceedings, sections 161, 163 and 164 of the Punjab Land Revenue Act, 1967, provided remedies of appeal, review and revision, respectively, subject to their statutory conditions. Likewise, if construed as a challenge to the original allotment or Permanent Transfer Deed under the Displaced Persons (Compensation and Rehabilitation) Act, 1958, the availability of statutory remedies against the original order would govern the competence of the Intra-Court Appeal. The existence of any one legally available remedy of appeal, review or revision is sufficient to attract the prohibition under the proviso to section 3(2) of the Ordinance. Neither actual invocation nor exhaustion of such remedy is a prerequisite for its application. The subsequent institution of constitutional proceedings cannot circumvent the statutory exclusion or confer an appellate jurisdiction expressly withheld by the legislature.

6. The legal position stands settled by the judgment of Supreme Court in *Mst. Karim Bibi*[1], wherein the scope of the expressions

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[1] *Mst.Karim Bibi and others v. Hussain Bakhsh and another* (PLD 1984 SC 344)

"proceedings" and "original order", occurring in the proviso to section 3(2) of the Ordinance, received elaborate judicial consideration. A plain reading of the proviso to section 3(2) of the Law Reforms Ordinance, 1972, reveals that an Intra-Court Appeal is expressly barred where the constitutional petition arises out of proceedings under a statute providing at least one remedy of appeal, review or revision against the original order. The expression "any proceedings" encompasses the statutory process undertaken before the competent hierarchy of authorities for determination and enforcement of rights under the relevant enactment. Significantly, the statutory test relates to the availability of a remedy against the "original order", rather than the particular order assailed in constitutional jurisdiction, which may have been passed at any subsequent appellate, revisional or review stage. The expression "original order" thus denotes the initial adjudicatory determination from which the statutory proceedings emanated. Accordingly, the existence of at least one prescribed remedy against such order attracts the jurisdictional bar, irrespective of whether that remedy was actually invoked or exhausted. The expression "proceedings" must, therefore, be construed in its statutory context and consistently with the legislative object of restricting further appellate recourse where an ordinary remedial mechanism was already provided by law. Suffice it to refer to the case of Nawab Din[2], in which Supreme Court had occasion to examine the scope and meaning of the word as it occurs in section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. An earlier case of Jan Muhammad[3], is also referred to in this connection and the view taken therein was declared by Supreme Court as the correct enunciation of the law on the subject. The ratio decidendi is directly relevant to the present controversy, particularly because the original settlement proceedings were initiated in 1959–1960, when the Displaced Persons (Compensation and Rehabilitation) Act, 1958 provided appellate remedies under section 19 and revisional jurisdiction under section 20. We have no hesitation to hold that the existence of an appellate, revisional or review remedy

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[2] Nawab Din v. Member Board of Revenue P E D 1979 S C 846
[3] Jan Muhammad and another v. Home Secretary, West Pakistan and others P L D 1968 Lah. 1455

under the law governing the original proceedings excludes the competence of an Intra-Court Appeal.

7. The record reflects that the controversy emanated from settlement proceedings initiated in 1959, culminating in the Provisional Transfer Order dated 17.05.1960 and subsequent transfer proceedings. Sections 19 and 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, provided appellate and revisional remedies against orders falling within their statutory ambit. Where such remedies were available against the original order, the subsequent invocation of constitutional jurisdiction could not displace the express prohibition contained in the proviso to section 3(2) of the Law Reforms Ordinance, 1972. The statutory origin of the controversy and the availability of the prescribed remedial mechanism, rather than its actual invocation, constitute the determinative considerations for attracting the jurisdictional bar.

8. The subsequent challenge to the mutation before the Chief Settlement Commissioner did not alter the statutory character of the underlying settlement proceedings. A mutation merely reflecting an antecedent allotment or transfer neither independently confers title nor extinguishes rights lawfully acquired thereunder. The substance and statutory origin of the controversy, rather than the form of relief sought, govern the applicability of the jurisdictional bar. Although sections 161, 163 and 164 of the Punjab Land Revenue Act, 1967, provide remedies of appeal, review and revision against orders within their respective ambit, the determinative consideration in the present case remains the original settlement order and the remedies provided under the law governing its issuance. Where a constitutional petition arises out of statutory proceedings in which the original order was amenable to appeal, review or revision, the prohibition under the proviso to section 3(2) of the Law Reforms Ordinance, 1972, operates *ex proprio vigore*, leaving no scope for assumption of appellate jurisdiction by the Division Bench. In the present case, the constitutional petition emanated from the original settlement proceedings governed by a statutory remedial framework. Consequently, the Intra-Court Appeal preferred by respondent

No.1 was incompetent, notwithstanding the subsequent mutation proceedings or invocation of Article 199 of the Constitution. The principles enunciated in *Mst. Karim Bibi* (supra) and *Muhammad Abdullah* (PLD 1985 SC 107) further reinforce the mandatory nature of this statutory exclusion. The learned Division Bench, therefore, exercised appellate jurisdiction expressly withheld by law, rendering its judgment *coram non judice* and legally unsustainable, independently of the merits of the underlying controversy.

9. The Displaced Persons (Compensation and Rehabilitation) Act, 1958, stood repealed by the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. Section 2(2) thereof preserves jurisdiction exclusively in respect of proceedings pending immediately before repeal and neither permits initiation of fresh proceedings nor restores the plenary jurisdiction of the erstwhile settlement authorities. Admittedly, the application before respondent No.2 was instituted on 14.02.2022, nearly forty-seven years after repeal, and thus fell outside the statutory saving provision. Consequently, the notified officers lacked jurisdiction to entertain such proceedings or declare any Provisional Transfer Order (PTO) or Permanent Transfer Deed (PTD) null and void, even on allegations of fraud or forgery, where no proceedings concerning such instruments were pending on the relevant cut-off date. Their jurisdiction remained confined to the disposal of lawfully saved proceedings. Any person possessing the requisite *locus standi* to challenge such instruments must, therefore, seek redress before the competent civil court exercising plenary jurisdiction. Reference in this regard may be made to Muhammad Din case[4] and Muhammad Ayub case[5]. Respondent No.2 could validly assume jurisdiction only if the application constituted a continuation of proceedings lawfully pending at the time of repeal or was otherwise protected by an express statutory saving. In the absence of such foundation, neither administrative practice nor purported authority under a repealed enactment could confer jurisdiction. Consequently, the application dated 14.02.2022, not being referable to any proceedings saved under section 2(2) of the Repeal

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[4] Muhammad Din v. Deputy Settlement Commissioner (2022 SCMR 1481)
[5] Muhammad Ayub v. Ghulam Muhammad (2005 SCMR 1650)

Act, was incompetent *ab initio*, and the proceedings undertaken thereon were *coram non judice* and without lawful authority. This fundamental jurisdictional defect, independent of the statutory bar against the Intra-Court Appeal under section 3(2) of the Law Reforms Ordinance, 1972, escaped consideration by the learned Division Bench, thereby materially vitiating the impugned judgment and rendering it legally unsustainable.

10. Another material question concerns the finality of settlement proceedings upon issuance of a transfer instrument. Once the transfer is lawfully completed, the Settlement Authorities ordinarily become functus officio and cannot reopen or annul the concluded transaction except under an express statutory authority. The jurisdiction of Settlement Authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1958, was confined to the powers conferred by statute. Upon completion of the transfer, no continuing or unrestricted authority to cancel the transaction could be presumed. Any subsequent interference with the rights flowing therefrom required an independent statutory foundation. An allegation of fraud, by itself, neither confers jurisdiction nor revives powers already exhausted. The principle *fraus omnia corrumpit* does not dispense with the requirement of a competent forum. Even where fraud is pleaded, an authority lacking statutory power cannot annul a completed transfer. Such disputed questions of title and entitlement are ordinarily amenable to adjudication under section 9 of the Code of Civil Procedure, 1908, subject to any statutory exclusion. The reference in this regard may be given of Mst. Jehan Ara Begum[6], Haji Faiz-ul-Haque Khan[7], Sufi Abdul Ghani[8], and Amin-ud-Din cases.[9]

11. The settlement proceedings initiated in 1959 culminated in the Provisional Transfer Order dated 17.05.1960 and subsequent transfer in favour of the legal heirs of Azeem Bakhsh. Upon attainment of finality, the transfer could not be reopened by an authority rendered *functus officio*. Following repeal of the settlement laws in 1975, the jurisdiction of the notified officers

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[6] Mst. Jehan Ara Begum v. Bashir Ahmad and others (1975 SCMR 401)
[7] Haji Faiz-ul-Haque Khan v. Syed Abdul Hamid and others (1976 SCMR 429),
[8] Sufi Abdul Ghani v. Nazir Ahmed (1976 SCMR 493)
[9] Amin-ud-Din v. Settlement Commissioner and others (1973 SCMR 624).

stood restricted to proceedings expressly saved under section 2(2) of the Repeal Act. Mere allegations of fraud or irregularity could neither revive extinguished jurisdiction nor authorize reconsideration of a concluded transfer. The principal *interest reipublicae ut sit finis litium* further reinforces such finality, without prejudice to recourse before a competent civil court. Consequently, respondent No.2, lacking any subsisting statutory authority, had no jurisdiction to entertain the application dated 14.02.2022, rendering the proceedings *coram non judice* and the consequential order without lawful authority and legal effect.

12. Apart from the jurisdictional defects already discussed, the impugned order suffers from a fundamental violation of natural justice, having been passed without notice to the petitioner or affording him an opportunity of hearing, despite its adverse consequences upon his proprietary rights. The principle *audi alteram partem*, read with Articles 4 and 10A of the Constitution, mandates procedural fairness before any determination prejudicial to vested rights. Furthermore, the alleged illegibility, overwriting or alterations in the Permanent Transfer Deed (PTD), or its purported issuance by the Excise and Taxation Department, could not, *ipso facto*, establish fraud or invalidate the instrument without verification of the original settlement record, examination of the competent issuing authority and legally admissible evidence. Respondent No.2 was required to undertake such scrutiny and record cogent reasons before drawing any adverse conclusion. The failure to observe these essential safeguards constitute a substantive illegality, rather than a mere procedural irregularity, independently rendering the impugned order legally unsustainable.

13. The learned Single Judge, in exercise of constitutional jurisdiction under Article 199 of the Constitution, was justified in examining the assumption of jurisdiction by respondent No.2 and declaring the proceedings *ultra vires*. Before reversing that determination, the learned Division Bench was obliged to address the foundational jurisdictional defect, denial of the petitioner's right of hearing and absence of legally sufficient evidence warranting invalidation of the PTD. Its failure to examine these

material aspects constitutes a manifest misdirection in law, rendering the impugned judgment legally unsustainable.

14. In view of the foregoing, we are persuaded to hold that the order passed by respondent No.2, being without lawful jurisdiction, in violation of the principles of natural justice and without proper verification of the Permanent Transfer Deed (PTD) from the original settlement record, was legally unsustainable. The learned Single Judge, therefore, rightly exercised constitutional jurisdiction in setting aside the said order. The learned Division Bench, however, failed to address the foundational questions concerning the maintainability of the Intra-Court Appeal, the statutory competence of respondent No.2 under the Repeal Act, 1975, and the finality of concluded settlement proceedings. These jurisdictional and procedural defects, being fundamental to the legality of the proceedings, could not be disregarded in favour of competing proprietary claims. Consequently, the impugned judgment of the learned Division Bench, suffering from material errors of law and non-consideration of decisive legal questions, cannot be sustained.

15. For the foregoing reasons, this petition is converted into an appeal and allowed. Consequently, the impugned judgment dated 02.03.2026, passed by the learned Division Bench of the Lahore High Court, is set aside, while the order dated 14.12.2023, rendered by the learned Single Judge of the said Court, is maintained. The parties shall bear their own costs.

CHIEF JUSTICE

JUDGE

Islamabad,
24.09.2026
APPROVED FOR REPORTING
RajaAhsan/-