

names of owners, present status of such buildings and the names of the sanctioning officials. Let a report in this respect be made available by the Chief Secretary, Government of Sindh to this Court within a period of two weeks.

30. The Commissioner, Karachi has pointed out that on Shahrah-e-Quaideen, petrol pumps have been constructed on the green belts and nala land and when the administration tried to retrieve the said land, stay orders were obtained from the High Court. Learned A.G. Sindh shall immediately take measures in having the stay orders vacated from the High Court and retrieve the land from illegal possession and restore it for the purpose for which it is meant under the law. We expect that the High Court shall deal with such matters and decide the issue with promptness, within a period of two months.

31. A Director of the SBCA has appeared before the Court by the name of Mushtaq Soomro and started speaking in favour of Building Com-3. He has no authority to appear before this Court as the DG, SBCA himself is in attendance. He appears to have been motivated by someone to appear before the Court and make a statement without authority. He seems to have some papers also in his hand, which the Court has refused to take from him for he has no authority to submit any document of his department to the Court without the permission from the relevant authority and asking of the Court itself. The Chief Secretary shall ensure that he is dealt with in accordance with law.

P & T Colony

32. There were quarters of the Federal Government in the name of P&T Colony previously known as Gizri Road now Ch. Khaleeq-uz-Zaman Road. The status of the land is that it belongs to the Federal Government and some people seem to have started litigation in the High

Court of Sindh claiming that the land of P&T Colony has been leased to them. The actual owner of the land, as is contended by the learned Attorney General for Pakistan, is the Federal Government and except for the Federal Government no one has any authority over the land. Many multi-storeyed buildings have been constructed in P&T Colony on the land of quarters and open amenity land which are totally unlawful and the buildings, so constructed, need to be removed in order to restore its original status. Originally, it was meant for residential quarters of the employees of the erstwhile P&T department of the Federal Government. As P&T Department has been disband by the Federal Government, as stated by the learned Attorney General for Pakistan, the land has to go back to the Federal Government. Learned Attorney General states that except for some of the original quarters that were built by the Federal Government for accommodation of its employees, which still exist, all other constructions in the area shall be removed and no part of the land of the P&T Colony shall be allowed to be encroached upon and unlawfully built. He states that order of this Court shall be immediately implemented and all illegal structures from the P&T Colony shall be removed and land shall be preserved by the Federal Government for amenity purposes for the residents of the area. It may be observed that whosoever is dislocated from P&T Colony, the Federal Government shall take steps to have them resettled at other places. As the people themselves have made illegal constructions, we do not advise the Federal Government to pay any premium on such illegalities committed by the builders. The Clifton Cantonment Board shall lend all assistance to the Federal Government in ensuring compliance of this Court's order. Such exercise shall be completed within a period of six month.

Kachi Abadies

33. The learned Attorney General as well as the learned Advocate General, Sindh have made a categorical statement that there are serious issues, which the city of Karachi is facing and among them the most crucial one is that of 'kachi abadies'. He states that these kachi abadies occupy major part of the city of Karachi, including important and expensive chunks of land in the very heart of the city of Karachi and the Federal as well as the Provincial Government, has already started planning to relocate the residents of these kachi abadies in appropriately constructed buildings with all basic amenities of modern life and create open breathing spaces in the City for the betterment of environment and the people of Karachi.

34. We direct that while undertaking such exercise, the city representatives be duly consulted and at the same time professional input shall also be obtained. We have been informed by the learned Advocate General, Sindh that the Government of Sindh has already constituted a committee of renowned town and city planners who have started their work to give suggestions for remedying the issue of illegal constructions and rehabilitating the affected people in a decent and proper manner. Their report has already been received by the Government of Sindh but has not yet been finalized. The learned Advocate General, Sindh shall ensure that the initial report which has been received from the town and city planners, is filed before the Court and published in newspapers and disclosed on television so that public may know about it and give their input and suggestions. It shall be discussed by persons who can make the proposed plan more understandable to the public. Be that as it may, to the extent of what is noted above, let the compliance be made. In this regard further proceedings in the case shall take place in the next session.

35. Learned Advocate General states that the Government of Sindh has started development work on Nehr-e-Khayam and when the work had barely commenced, someone approached the High Court of Sindh and obtained a stay order against such work. We do not wish to comment upon it. As the matter relates to fundamental rights and is of public importance, interruption in the development activity, which is very essential for the recreation of the people of Karachi, is not a healthy sign. The very impact of approaching the High Court and obtaining a stay order means that this scheme will not be implemented or at least delayed for 5/10 years, which will be a total disaster. Without realizing this, someone invoked the jurisdiction of the High Court and the major activity of the Government came to a standstill. We, therefore, allow the Sindh Government to commence the construction work on Nehr-e-Khayam, however, the matter relating to commercial activity on it shall be considered by this Court after the said project is completed.

36. Mr. Abdul Rehman, who is counsel in the suit filed in the High Court of Sindh states that this serves the purpose of the plaintiff in the said suit and he may be permitted to withdraw the suit. Order accordingly.

PIA Marriage Hall

37. The General Manager (Legal Services) of PIA has appeared and assured that the marriage hall that is still standing on the land of planetarium, University Road, Karachi, will be dismantled and such dismantling shall be completed today i.e. 07.02.2020. The report regarding such dismantling be submitted by the PIA in the office of this Court by tomorrow. The PIA shall also submit report regarding other lands which have been given to it for using them as amenities. Details

Order dated
6-7-Feb-20

be also provided as to what actually is happening on those lands with photographs. Let report in this regard be submitted in the office by tomorrow.

Karachi Port Trust

38. We have heard Mr. Ali Zafar, learned ASC so also Mr. Yawar Farooqi, appearing on behalf of the Karachi Port Trust **(the KPT)** and the learned Attorney General for Pakistan.

39. On 09.05.2019, this Court has passed the order regarding the KPT Employees Housing Society on Mai Kolachi Road Karachi etc. which is as follows:-

"None has appeared on behalf of KPT although notice has been served upon them for today's date. Chairman KPT is directed to be present in Court on next date with report signed by him that all port lands are used for port purposes and in accordance of KPT Act and no land whatsoever of the port is either sold/transferred, leased, allotted to any person or its employee and whatever allotment, lease or transfer has taken place to immediately cancel and revert back the same to the port.

The land on both sides of Mai Kolachi Road was full of mangroves at one time with passage of sea, water, now there is barren land and passage of sea water has been blocked. The Chairman shall ensure that plantation of mangroves is made on both sides of Mai Kolachi Road and flow of sea water is restored touching the Bath Island area. The Chairman will appear on the next date."

40. The Chairman, KPT has also appeared and stated that he stands by what learned ASC for KPT has argued before the Court. Mr. Ali Zafar, learned ASC for the KPT has argued that the land of the KPT is vested in KPT and by virtue of the Karachi Port Trust Act, 1886, the KPT is entitled to lease out, sell and transfer its properties and that there is no embargo on KPT to allot and lease out the KPT property/land for Housing Society of its employees, more so, when permission of the government in this regard has been obtained.

41. On the other hand, the learned Attorney General for Pakistan has seriously opposed the submissions made on behalf of KPT and has contended that the whole of the KPT property/land is owned by the Federal Government and it has given this land in trust to the KPT for running of the Port Operations and not for allotting or leasing out or transferring its property/land to its trustees or any of the employees of KPT. He further contended that the KPT property/land can only be used or applied for the purposes as provided in the KPT Act and not for any other purpose. He contended that the KPT Act has not provided for allotting, leasing out or transferring of the KPT property/land to any of its trustees or employees.

42. We have considered the submissions of the learned counsel for the parties and have also gone through the record.

43. The Preamble of the KPT Act, 1886, reads as follows: -

Whereas it is expedient to vest the Port of Karachi in a trustee, and to provide for the management of the affairs of the said port by trustees"

The word Port has been defined in Section 2 (1) thereof as follows:

"Port' means the port of Karachi as defined for the purpose of this Act."

Sub-Section (4) of Section 2 defines lands as follows:

"land' includes the bed of the sea below high-water mark, and also things attached to the earth or permanently fastened to any thing attached to the earth:

Section 3 of the KPT Act provides for power to define and alter limits of Ports, which is as follows: -

"(a) define the limits of the port for the purpose of this Act, and

(b) from time to time alter such limits.

Such limits may extend to any part of the navigable approaches to the port, and may include any wharves, tramways, warehouses, sheds and other works made on behalf of the public for convenience of traffic, for safety of vessels or for the improvement, maintenance and good governance of the port, whether within or without high-water mark and subject to any rights of private property therein, any portion of the shore within fifty yards of high-water mark.

Section 4 thereof constitutes Board of Trustees as follows: -

"Act to be carried out by trustee.—The duty of carrying out the provisions of this Act shall subject to such conditions to and limitations as are hereinafter contained, be vested in a board to be called, "The Trustees of the Port of Karachi", and such Board, hereinafter referred to as 'the Board', shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid."

Section 18 of the KPT Act reads as follows:-

"Competency of the Board to lease, sell and transfer.— (1) The Board shall be competent, subject to the restrictions contained in sub-section (2), to lease, sell or otherwise transfer any moveable or immoveable property which may for the purposes of this Act, have become vested in, or been acquired by them and so far as is not inconsistent with the provisions and purposes of this Act, and subject to the

restrictions contained in sub-sections (3) and (4), to enter into and perform all such contracts as they may consider necessary or expedient in order to carry into effect the said provisions and purposes. (1A) The Chairman shall be competent to sell, transfer or otherwise dispose of any moveable property the depreciated value of which (Does not exceed five hundred thousand) rupees and which, in his opinion, is not longer required or useful for the purposes of the Port.

Sub-Section (2), (3) and (4) of Section 18 reads as follows: -

*Subject in certain cases to sanction of Government. In the case of every lease of immovable property for a term exceeding (twenty-five years with an option to renew for alike period of twenty-five) and, in the case of every sale or other transfer of any such property, the previous sanction of Government is required.

(3) Approval of Government to estimate when no pressing emergency and expenditure involved exceeds rupees (two hundred fifty thousand). In the case of every contract which will involve expenditure exceeding (two hundred fifty thousand) rupees not reported under Section 67 to Government, as required for a pressing emergency the previous and final approval of Government to an estimate at the time in force, in which provision is included for such expenditure, is required.

(4) Sanction of Board on Plan and estimate for new work costing over rupees (one million). In the case of every contract in respect of any new work, the estimated cost of which exceeds (one million) rupees the sanction of the Board on a plan and estimate submitted to and considered and approved by them, is required.

Section 25 of the KPT Act provides for power of the Board as to property, which is as follows:

"The Board shall for the purpose of this Act, have power to acquire and hold moveable and immovable property within or without the limits of the port or city of Karachi."

Section 27 of the KPT Act provides for transfer of Government Property to the Board, which reads as follows: -

"(i) if any question arises between [the Federal Government] and the Board as to the boundaries of any portion of such property, Government may define and demarcate such boundaries, and the decision of Government in respect of such boundaries shall be conclusive;

(ii) any portion of the land specified in the said schedule which shall be required by [the Federal Government] for a public purpose may be resumed by (the Federal Government) without claim to compensation on the part of the Board, except for Buildings or other permanent structures erected thereon."

Section 29 of the KPT Act provides for the power and duties of the Board works, which is as follows: -

"The works to be constructed and carried out by the Board may include the following: -"

- (1) Wharves; quays, stages, jetties, piers and docks with all necessary and convenient arches, drains, landing-places, stairs, fences, roads, railways and approaches;
- (2) Tramways, warehouses, sheds, engines and other appliances for conveying receiving and storing goods landed or to be shipped or otherwise.
- (3) Lighthouses, light-ships, beacon, pilot-boats and other appliances necessary for the safe navigation of the port and of the approaches thereto within a distance of three miles from the limits of the port; (and with the sanction of Government as to the funds to be contributed by the Board for the purpose, lighthouses beyond the said distance at the mouths of the Indus and at Cape Monze or the maintenance and lighting thereof)
- (4) Laying down moorings and the erection of cranes, soles and all means and appliance necessary for berthing, loading and unloading vessels;
- (5) Reclaiming, excavating, **enclosing** and raising any part of the foreshore of the port vested in the Board.

- (6) The construction procuring and application of dredges and other machines for cleaning, deepening and improving any portion of the port or foreshores aforesaid;
- (7) Procuring and employing (vessel) for lowering vessels into out of or within the port.
- (8) The construction of such works without the limits of the port as shall be necessary for the protection of works executed by the Board within the port, and all such other work and appliances as may, in the opinion of the Board, be necessary or desirable for carrying out the purposes of this Act;
- (9) The extinguishing of fires on the property of the Board and the equipment maintenance and use of engine for that purpose;
- (10) The equipment of vessels (tugs) or other boats and their use as well within the limits of the port as on the high seas beyond those limits, and whether in territorial waters or otherwise for the purpose of lowering or rendering assistance to any vessel whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property;
- (11) The supply of water to shipping in the port and the equipment, maintenance and use of boats and barges for that purpose;
- (12) The extinguishing of fires in the port, and the equipment, maintenance and use of engines for that purpose;

Approval of the Board and Government for commencing new works; Provided always that no new work, the estimated cost of which exceeds [one million] rupees shall be commenced by the board until a plan and estimate of such work shall have been submitted to the Board and considered and approved by them, nor shall any new work, the estimated cost of which exceeds (two millions) rupees, be commenced until such plan and estimate shall have been submitted to, and approval by Government.

Section 29A of the KPT Act is as follows: -

"Lease, transfer of work, etc. - The board may, for carrying out the works referred to in Section 29 and for their operation and maintenance, entrust, transfer, lease or assign such work to any other person, agency, department, company or contractor on such terms and conditions as may be prescribed by the Federal Government.

Provided that such person, agency, department, company or contractor shall abide by all rules, regulations and instructions made, or issued, under this Act."

44. The cumulative reading of the above provisions, as contained in the KPT Act provide that the very KPT Act was made for vesting the Port of Karachi in a Trust to provide for management of the affairs of the Port by the Trustees. The word "Port" has been defined as the Port of Karachi and the property/land has been defined to include the bed of the sea below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth. Section 3 (supra) gives power to the Government, which is the Federal Government to define the limits of the Port for the purpose of this Act and from time to time alter such limits. Section 4 (supra) casts duty on the Trustees to carryout the provisions of this Act, subject to such conditions and limitations, in a Board to be called "the Trustees of the Port of Karachi", which shall be a body corporate, having perpetual succession and a common seal and shall sue and be sued by its name. Section 18 (supra) of the Act makes the Board competent to lease, sale and transfer any movable or immovable property, which may, for the purpose of this Act, have become vested in, or been acquired by them and so far as it not inconsistent with the purpose and provision of this Act and subject to sub-section (2), (3) and (4). Sub-section (2) thereof provides that in the cases of every lease of immovable property for the

term exceeding twenty five (25) years with an option to renew for a like period of twenty five (25) years and in the case of every sale or transfer of any such property, the previous sanction of Government is required. Section 25 (supra) deals with power of Board as to property and it provides that the Board shall, for the purposes of this Act, have power to acquire and hold moveable and immoveable property within or without the limit of the Port or city of Karachi. Section 27 (supra) provides that the property specified in schedule-A shall vest in the Board. Section 29 (supra) provides works to be constructed and carried out by the Board and such have been mentioned in sub-sections (1) to (12). Section 29A of the KPT Act provides for lease, transfer of works, the remaining provisions of the Act deal with the landing and shipping of goods etc.

45. On a detailed examination of the provision of the KPT Act, it is crystal clear that nowhere in the Act, the Board of Trustees of the Port of Karachi have been given power or authority to lease out, transfer or sell KPT property/land for residential purpose to its employees i.e. its officers and servants. The Federal Government has created by statutory instrument, the KPT and has vested in the Board of Trustees the management of the affairs of the Port. Thus, the Board of Trustees of the Port of Karachi act as Trustees on behalf of the Federal Government in respect of management of the affairs of the Port. The power of managing the affairs of the Port does not give power and authority to the Board of Trustee to arrogate to itself or to any officer and servant of KPT, the very land of the Port which is vested in trust with the Board of Trustees. The term "Port" as defined in the Act does not include anything other than the Port of Karachi. The term land also

does not go beyond the term of Port, which is below high-water mark, and things attached to the earth.

46. Learned ASC for the KPT has heavily relied upon Sections 3 and 18 of the Act, which have already been reproduced above. Section 3 (supra) gives power to the Federal Government, by Notification in the official gazette, to define the limits of the Port for the purposes of the Act and from time to time, alter such limits. Section 18, as noted above, gives powers to the Board to lease, sell or otherwise transfer movable or immovable property but such has been given to the Board in respect of property which for the purpose of the Act has been made available to it and such power is not to be exercised which is inconsistent with the provision and purpose of the Act and also subject to the restrictions contained in sub-sections (2) (3) and (4). The very availability of the land to the Board vested in it to be used in accordance with the provision of the Act and none of its property is to be used or applied in the manner which is inconsistent with the provision and purpose of the Act. As noted above, the Act does not provide or make provision where the Board of Trustees may have been given power to lease out, sell or transfer the land/property of the Board for Housing Society of the KPT Officers and Servants. The powers of the Board as to property have been laid down in Section 25 of the Act, which provides that the Board shall, for the purpose of this Act have power to acquire and hold moveable and immoveable property within or without the limit of the Port or city of Karachi. Section 27 of the Act provides transfer of Government property to the Board, with certain powers to the Government to demarcate the boundaries and power of the Federal Government to resume land for public purposes from the Board. Section 29 of the Act provides for power and duties of the Board works

to be constructed and such works are provided in sub-section (1) to sub-section (12). Though the Board of Trustees have been authorized in terms of Section 23 of the Act, to make appointment of officers and servants for the Board. Section 21 gives power to the Board to prepare from time to time and sanction a schedule of staff, officers and servants, whom they shall deem necessary and proper to maintain for the purpose of the Act and the schedule shall also set forth the amount and nature of salaries, fees and allowances that the Board may sanction for each of such officers and servants. Thus, under the KPT Act, officers and servants are only entitled to be paid salaries, fee and allowances and not the very property/land of the Port.

47. Although it was argued before us by the learned ASC for the KPT that sanction of Federal Government has been obtained for leasing, transferring or selling of KPT property/land for housing societies to its officers and servants but in the very report of the Chairman, filed before this Court by way of CMA No.34-K/2019, there is no mention of obtaining of such approval from the Federal Government nor copy of such Notification(s) or order(s) of the Federal Government is attached with the application. However, Notifications dated 23.12.1875, 02.05.1940 and 05.10.1991, have been attached with the application, which apparently have been issued by the Federal Government under Section 3 of the KPT Act, whereby limits of the Port of Karachi have been declared. Thus, what appears from the reading of the KPT Act, the Board of Trustees of the Karachi Port have nowhere been given power to lease out to its own officers and servants the property/land of the Port of Karachi for 99 years or otherwise and apparently, such leasing, transferring or selling of the KPT property/land by the Board of Trustees, seems to be in excess of the

powers vested in it to manage the affairs of the Port. The Board of Trustees, being Trustees of the property/land of the Port, could not have breached the trust that was vested in it by the Federal Government for managing the affairs of the Port.

48. In the case of Hobibullah Energy Limited and another vs. WAPDA through Chairman and others [PLD 2014 SC 47], this Court has observed that "it is a well settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by *mala fide*, without discrimination and in accordance with law, keeping in view the Constitutional Rights of the Citizens". Further in the case of Messrs METALEX (PRIVATE) LIMITED vs. GOVERNMENT OF SINDH through Secretary, BOR (PLD2016 Karachi 414), the learned Single Judge has observed as follows: -

"11. The purpose of enacting Karachi Port Trust Act, 1886 was to manage the affairs of Karachi port in an orderly manner through a Board described as "The Trustees of the Port of Karachi". To achieve this objective, the Board was conferred with various powers and duties. These are defined in Part V, sections 29 to 59 of the Karachi Port Trust Act. The powers and duties of the Board relate to the running of Karachi seaport which in turn required control over an area as well as on certain immovable properties. Under section 27 (1) of K.P.T. Act, certain specified immovable properties of the then Karachi Harbour Port were transferred by the then Government of India to the Board and upon such transfer they stood vested in the Board. These immovable properties are listed in Schedule A to the K.P.T. Act. Apart from so acquiring immovable properties, the Board was empowered to acquire immovable properties directly or through the

process of acquisition under Land Acquisition Act. Such powers are contained in sections 25 and 26 of the K.P.T. Act. In order to carry out the purposes of the Act, the Board was also empowered under section 18 (1) of the Act to lease, sell and transfer immovable properties that vested in it. To deal with immovable properties that vested in the Board, the K.P.T. Act imposes certain restrictions as in evident from the provisions of sections 18 (2) and 27 of the Act. For convenience sake, section 18 (1), 25, 26 and 27 are reproduced hereunder:-

(18) Competency of the Board to lease, sell and transfers. - (1) The Board shall be competent, subject to the restrictions contained in subsection (2) to lease, sell or otherwise transfer any moveable or immovable property which may, for the purposes of this Act, have become vested in, or been acquired by them and so far as is not inconsistent with the provisions and purposes of this Act, and subject to the restrictions contained in subsections (3) and (4), to enter into the perform all such contracts as they may consider necessary or expedient in order to carry into effect the said provisions and purposes.

(25) Power of Board as to property.—The Board shall, for the purposes of this Act, have power to acquire and hold movable and immovable property within or without the limits of the port or city of Karachi.

(26) Procedure to be observed when the Board are unable to acquire, by agreement, any immovable property. When the Board are unable to acquire, by agreement, any immovable property required for the purposes of this Act, the Federal Government may order proceedings to be taken for acquiring the same on behalf of the Board as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall be forthwith defrayed by the Board and thereupon the said property shall vest in the Board.

(27) Transfer of Government property to the Board.—The property specified in schedule A shall vest in the Board,

Provided that:-

(i) If any question arises between the Federal Govt. and the Board as to the boundaries of any portion of such property, Govt. may define and demarcate such boundaries, and the decision of Government in respect to such boundaries shall be conclusive.

(ii) Any portion of the land specified in the said schedule which shall be required by the Federal Government for a public purpose may be resumed by the Federal Government, without claim to compensation on the part of the Board, except of buildings or other permanent structure erected thereon.

(2) Nothing in clause (ii) of the proviso of subsection (1) shall apply to land reclaimed from harbour waters, and the Board shall be compensated for any improvements effected by it on any land resumed under that clause.

(3) The railway now under construction between the Bander Station and the Kemari Station may be constructed by Government along the foreshore or on reclaimed land and any other work which the Federal Government may consider necessary in the public interests may be executed by Government in or upon any of the property specified in the said schedule without claim to compensation on the part of the Board except for building or other permanent structures which it shall be necessary to clear away for the purposes of such railway or work.

12. Now except for the above discussed modes of acquisition of immoveable property i.e. through

transfers made under section 27(1) at the time of enacting the K.P.T. Act and subsequent acquisition of immovable properties under the provisions of sections 25 and 26 of K.P.T Act, no immovable property can vest in the Board. Even land reclaimed by the Board at its own cost and expense from harbour waters can be resumed by the Government at any time under the provision of sections 27 (1) (ii) and 27 (2) of the Act without payment of any compensation to the Board except for a claim for the value of buildings or permanent structures that may have been raised or any improvements made by the Board.

13. Reading sections 18 and 27 of the Act together, it becomes quite evident that certain restrictions have been imposed on the Board even on immovable properties that vest in the Board. This is so because ownership of immovable properties was conferred on the Board, keeping the sole purpose in mind i.e. to enable it to run and manage the affairs of the Karachi Port as defined in the K.P.T. Act and nothing more. The K.P.T. Act never intended to create Karachi Port Trust into a land owning body like co-operative societies whose members are granted absolute proprietary interests in the land with the liberty to deal with the same for their own benefit.

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.

50. This CMA No.34-K/2019, filed by the KPT is disposed of in the above terms.

51. Needless to observe that this Court while exercising jurisdiction under Article 184(3) of the Constitution has all the powers and jurisdiction to declare acts of public functionaries, which are beyond the power and in utter violation of the law under which they were required to perform their duties to declare it to be *unlawful*, and *void ab initio* and cancel the document of transaction of lease, transfer or selling of property/land and in this regard reference is made to the cases of ***Suo Motu Case No.10 of 2009*** (2010 SCMR 885), ***Maulana***

Abdul Haque Baloch and others v. Government of Balochistan through Secretary Industries and Mineral Development and others (PLD 2013 SC 641), *Imran Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/ Member National Assembly, Prime Minister's House, Islamabad and 9 others* (PLD 2017 SC 265) and *Ishaq Khan Khakwani and another v. Railway Board through Chairman and others* (PLD 2019 SC 602).

Defence Housing Authority

52. The learned counsel for Pakistan Railways states that two pieces of open land adjacent to *Kala Pul* are the properties of Pakistan Railways, which shall be converted by Pakistan Railways into Parks for the use and benefit of the people of Karachi and will ensure that boundary walls on these plots are demolished and iron grills are affixed. The Park shall contain all amenities which are necessary to be provided for a public park and shall be developed with proper consultation with persons expert in parks and professional horticulturist. This exercise shall be done by the Pakistan Railways within a period of three months and report be submitted to this Court thereafter.

53. To come up in next session.

CHIEF JUSTICE

JUDGE

Karachi
06 & 07.02.2020
Aamir/PS
Approved for Reporting.

JUDGE