

Form No: HCJD/C-121

ORDER SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.2345 of 2026

Javed Masih

V/S

Amar Javed and others

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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24.06.2026 Syed Qalb-i-Hassan, ASC with Barrister Syed Saim Hassan, Advocate for the Petitioner.
Barrister Talha Ilyas Sheikh, Advocate for Respondent No.1 (on watching brief).
Mr. Muhammad Irshad, Assistant Advocate General.

This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) has been directed against order dated 11.06.2026 (the “*impugned order*”) passed by learned Additional District Judge/Special Court, Rawalpindi constituted under Overseas Pakistani Property Act, 2025 (the “*Act*”) hereinafter to be referred as “*Special Court*” whereby objection petition filed by the Petitioner was dismissed.

2. The facts giving rise to the instant constitutional petition are that the Petitioner instituted an ejectment petition against the Respondent No.2 on the strength of an alleged sale deed. The said ejectment petition was accepted by the Special Judge (Rent), Rawalpindi vide order dated 09.07.2025. Subsequently, the Respondent No.1, claiming himself to be the lawful owner of the property in dispute, filed an application

for *setting aside* the aforesaid order which was accepted by the “*Special Court*” vide order dated 18.03.2026, whereby the order dated 09.07.2025 was *set aside* and the Petitioner was directed to hand over vacant possession of the property to the attorney of Respondent No.1. Feeling aggrieved, the Petitioner assailed the order dated 18.03.2026 by filing W.P.No.1341 of 2026 before this Court; however, the said writ petition was dismissed vide order dated 13.04.2026. Thereafter, in implementation of the order dated 18.03.2026, the “*Special Court*” passed a further order dated 12.05.2026, directing the Petitioner to deliver possession of the property to the attorney of Respondent No.1. The Petitioner once again challenged the said order by filing F.A.O.No.52 of 2026, which was, however, dismissed as withdrawn vide order dated 04.06.2026. Subsequently, the Petitioner obtained an *ex parte* judgment and decree dated 10.06.2026 from the learned Civil Court, Rawalpindi and on the strength thereof, filed objection petition before the “*Special Court*” seeking to resist the execution of the earlier directions regarding delivery of possession. The said objection petition was dismissed by the “*Special Court*” through the “*impugned order*”, giving rise to the filing of the present constitutional petition.

3. Learned counsel for the Petitioner *inter alia* argued that the “*Special Court*” failed to appreciate the *ex parte* judgment and decree dated 10.06.2026 passed by a Court of competent jurisdiction, which continues to hold the field, having neither been *set aside* nor suspended by any competent forum; that the

Petitioner is the holder of a valid registered sale deed in respect of the property in dispute, the genuineness whereof has also been affirmed by the competent Civil Court, Rawalpindi and direction for restoration of possession through the “*impugned order*” is legally unsustainable; that the “*Special Court*” has passed the “*impugned order*” in a mechanical way, rendering the same liable to be *set aside*.

4. On the contrary, learned counsel for the Respondent No.1 supported the “*impugned order*” and stated that the operation of *ex parte* judgment and decree dated 10.06.2026 passed by Civil Court, Rawalpindi has already been suspended by the same court upon filing of application under Section 12(2) CPC by the Respondent No.1.

5. Heard. Record perused.

6. Pertinently, this matter pertains to an overseas Pakistani. The protection of the rights and interests of Overseas Pakistanis has consistently remained a matter of public importance, considering their valuable contribution to the national economy through remittances and the practical difficulties they face in pursuing litigation while residing abroad. Delay in adjudication of such matters often results in undue hardship and prejudice to their legal rights. This Court in the case of “TAHIR MIRZA versus SALEHA MEHMOOD, DCO and others” (2019 YLR 2852) reaffirmed that no one, merely by virtue of being an overseas Pakistani, can place themselves above the law; rather, both citizens living abroad and within Pakistan are equally bound by and protected under Articles 4 and 5 of the “*Constitution*”. This

constitutional scheme ensures that overseas Pakistanis, despite their residence abroad, remain entitled to the same legal safeguards and remedies as all other citizens, thereby upholding the rule of law and equality. In ‘TANVIR CHISHTI versus CITY POLICE OFFICER and other’ (PLD 2020 Lahore 453), this Court held that the proceedings initiated against the Petitioner were in excess of jurisdiction, unconstitutional and illegal, reiterating that Overseas Pakistanis are entitled to equal protection of law under Articles 4, 5, and 25 of the “*Constitution*”, but not to preferential treatment over other citizens. Likewise, in the case of “ABDUL WALI through Special Attorney versus STATE BANK OF PAKISTAN through Director Banking Conduct and Consumer Protection Department and 4 others” (2020 CLD 147) this Court has laid down the principle that an Overseas Pakistani, being a citizen of Pakistan, enjoys the same constitutional rights as all other citizens, irrespective of residence abroad. The Court held that Articles 23 and 24 of the “*Constitution*” guarantee every citizen the right to acquire, hold and dispose of property, and its protection, while Article 4 ensures that every citizen, wherever he may be, and every person within Pakistan, is entitled to the protection of law and to be treated in accordance with law. Article 5(2) of the “*Constitution*” further imposes an inviolable obligation of obedience to the “*Constitution*” and law upon every citizen, whether inside or outside Pakistan. In the context of banking disputes, the Court emphasized that if an Overseas Pakistani suffers embezzlement or mismanagement of funds, his

grievance must be redressed under the Banking Companies Ordinance, 1962, particularly Section 41, which empowers the State Bank of Pakistan to issue directions to safeguard depositors' interests and ensure proper management of banking companies. The Court directed the State Bank to inquire into the matter, hear the parties, and provide redress if a case was made out against the bank. Similarly, Division Bench of this Court in the case of "MUHAMMAD YAQOOB versus COMMISSIONER LAHORE DIVISION etc" (2021 CLD 392) reaffirmed that Punjab Overseas Pakistanis Commission is a facilitation forum and cannot assume judicial powers to adjudicate civil disputes between private parties. The Court held that the Commissioner had transgressed his jurisdiction by constituting a committee to thrash out revenue and registration records when the matter was already pending before competent civil courts. It was emphasized that the determination of third-party rights is a judicial function reserved exclusively for Courts under Article 175 of the "Constitution" and any interference by executive authorities amounts to unconstitutional overreach. This judgment further reiterated that Overseas Pakistanis are entitled to the same protection of law as all citizens under Articles 4, 5, and 25 of the "Constitution" but they cannot claim preferential treatment or bypass due process. This ruling consolidates the principle that while the rights of Overseas Pakistanis are protected, the Commission and Government Agencies cannot intrude into judicial functions, thereby preserving constitutional supremacy and the rule of law. Significantly, the Supreme Court

of Pakistan in the case of “Haji MUHAMMAD YUNIS (DECEASED) through legal heirs and another versus Mst. FARUKH SULTAN and others” (2022 SCMR 1282) has not only strengthened the principles laid down in aforesaid judgments but also appreciated the administrative measures undertaken by the Lahore High Court in establishing Special Courts for expeditious adjudication of disputes involving Overseas Pakistanis. The relevant portion reads as under:

“27. Before parting with the judgment, we consider it appropriate to highlight the plight of the overseas Pakistanis in perusing their legal rights in courts in Pakistan. Their disadvantageous position requires urgent positive attention of all organs of the State. Overseas Pakistanis being not present in Pakistan, cannot pursue their cases as efficiently as can be done by the local residents, and are thus in a disadvantaged position in comparison to the latter. They as such form a class distinct from the local residents, based on an intelligible differentia. The public institutions can, therefore, take affirmative actions and make certain special provisions for the protection of their lawful rights and for the redressal of their genuine grievances. We are informed that the Lahore High Court has taken certain administrative measures for early decision of the cases of Overseas Pakistanis and to address their complaints regarding undue delay in decision of their cases, and the Legislature of the Province of Punjab has also enacted a law to redress the grievances of Overseas Pakistanis relating to Government Agencies. These actions are appreciable, and we expect that other Provinces and the Islamabad Capital Territory would follow suit”.

7. For protection of the rights of overseas Pakistanis, the government of Punjab has established Special Courts for adjudication of petition in respect of immovable properties of overseas Pakistanis through promulgation of Punjab Establishment of Special Courts (Overseas Pakistanis Property) Act, 2025 (the “*Act*”) on 29th January, 2025. The preamble of the “*Act*” clearly states that it is necessary to establish special courts in order to secure and provide for protection of rights of ownership and possession in respect of immovable properties of overseas Pakistanis and for matters connected therewith and incidental thereto. The object of “*Act*” is to establish specialized judicial forums dedicated to adjudicating disputes concerning immovable properties of overseas Pakistanis, thereby ensuring their ownership and possession rights are safeguarded against unlawful encroachments or dispossession. The purpose of the “*Act*” is to provide overseas Pakistanis with an exclusive, expeditious, and accessible mechanism for resolution of property disputes. The “*Act*” introduces e-filing, video-link evidence, and strict timelines to overcome procedural delays and practical difficulties faced by litigants residing abroad. The “*Act*” lays down a comprehensive framework to protect the property rights of overseas Pakistanis and it prescribes a clear procedure for filing petitions, establishes mechanisms for adjudication and ensures speedy disposal of disputes. In interpreting such legislation, the preamble assumes considerable significance though it does not form an operative part of the statute

yet it serves as a key to understanding the object, purpose and legislative intent behind the enactment. The preamble illuminates the mischief sought to be remedied and the objectives intended to be achieved by the legislature, thereby providing valuable guidance in construing the substantive provisions of the law. Reliance in this regard is placed on DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others (2016 SCMR 447) wherein the Supreme Court of Pakistan has laid down the similar principle by holding that *“indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature.*

8. Section 2(c) of the “Act” defines the term “Overseas Pakistani” while the term “petitioner” is defined under Section 2(d) of the “Act”. Section 9 of the “Act” deals with period of disposal of petition which reads as under:

9. Period for disposal of petition.– (1) *The special court shall pass a judgment as expeditiously as possible but not later than ninety days from the date of grant of application for leave to defend.*

(2) *In case the proceedings are not completed within ninety days, the respondent may be required to furnish security in such amount as the special court deems fit, and on failure of the respondent to furnish security the special court shall pass judgment.*

(3) *The requirement of furnishing security under sub-section (2) shall be dispensed with, if in opinion of the special court on appreciation of material available on record, the delay is not attributable to conduct of the respondent.*

(4) At any time during the course of proceedings, the special court shall not allow adjournment for more than seven days.

(5) The special court if it deems necessary for expeditious disposal of the suit or petition, for reasons to be recorded in writing, shall on its own motion have the power to summon official record maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit or petition”.

The above provision of law reflects the legislature’s intent to ensure expeditious justice for Overseas Pakistanis by imposing strict timelines and limiting procedural delays and also embodies a proactive judicial framework designed to balance fairness with efficiency. It seeks to protect Overseas Pakistanis from prolonged litigation, while simultaneously safeguarding the respondent’s rights by linking delays to responsibility. The provision thus harmonizes speedy justice, procedural discipline, and equitable treatment, reflecting the legislature’s commitment to uphold the rights of Overseas Pakistanis in property disputes. Section 10 of the “Act” deals with appeal which reads as under:

10. Appeal.— *(1) Any person aggrieved by a judgment, decree or final order of the special court may, within fifteen days, prefer an appeal to the High Court.*

(2) The admission of appeal shall not be deemed to suspend operation of judgment, decree or final order unless a notice has been served on the decree holder.

(3) The High Court shall decide an appeal within a period of ninety days from the date of its filing.

(4) An appeal may be preferred under this section from a decree passed exparte.

(5) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend or any interlocutory order of the special court which does not dispose of the entire proceedings before the special court.

(6) Any order for stay of execution of decree in appeal shall automatically lapse on expiry of two months from date of such order.

This provision of law clearly establishes a streamlined appellate framework to ensure expeditious justice for Overseas Pakistanis and balances the right to appeal with the need for efficiency, ensuring Overseas Pakistanis' disputes are resolved swiftly while preventing misuse of appellate remedies to stall proceedings. Section 11 of the "Act" deals with execution of decree which reads under:

"11. Execution of decree.— (1)
Notwithstanding anything contained in any other law for the time being in force, upon issuance of decree by a special court, the suit shall automatically stand converted into execution proceedings without the need to file separate application and the case shall be heard by the special court for execution of its decree on the expiry of fifteen days from the date of issuance of decree or order.

(2) The decree of the special court shall be executed in accordance with the provisions of the Code or any other law for the time being in force or in such manner as the special court may at request of the decree holder may consider appropriate.

(3) The special court shall be entitled to seek services and assistance of the police or any law enforcement agency in exercise of powers conferred by this section.

(4) Notwithstanding anything confined in the Code or any other law, for the time being in force, if the claim or objections are found by the special court to be malafide or filed merely to delay the execution process the special court shall impose such penalty as it deems fit in facts and circumstances of the justice”.

This provision establishes a fast-track mechanism for execution of decrees passed by the Special Court in matters concerning Overseas Pakistanis, ensuring that judgments are not frustrated by procedural delays. This section reflects the legislature’s commitment to speedy enforcement of judgments in Overseas Pakistani property disputes. By removing procedural bottlenecks, empowering the Court to call upon law enforcement agencies and penalizing frivolous objections, it ensures that decrees are not rendered ineffective and that Overseas Pakistanis can secure timely relief in accordance with law.

“12. Attachment before judgment, injunction or appointment of receivers. –

(1) The special courts may, on its own or on an application, by the petitioners, with a view to preventing property from being transferred, alienated, encumbered, wasted or otherwise dealt with in a manner which is likely to impair or prejudice the rights of overseas Pakistanis, or otherwise in the interest of justice:

- (a) restrain the respondent or others from transferring, alienating, parting with possession or otherwise encumbering, charging, disposing of or dealing with the property in any manner;*
- (b) attach such property;*
- (c) transfer possession of such property to the aggrieved person; or*

(d) appoint one or more receivers of such property on such terms and conditions as it may deem fit.

(2) An order under sub-section (1) may also be passed by the special court against any third party to whom the property is sold in contravention of provisions of this Act or held benami by respondent in the name of an ostensible owner”.

This provision empowers the Special Courts to take proactive measures to protect the property rights of Overseas Pakistanis and ensure that justice is not defeated by fraudulent transfers or misuse of property during litigation. This section reflects a protective judicial framework designed to safeguard the property rights of Overseas Pakistanis during litigation. By authorizing injunctions, attachments, transfer of possession, and appointment of receivers, the law ensures that property remains secure until final adjudication. It also pierces benami transactions, thereby reinforcing the principles of equity, fairness, and constitutional protection under Articles 4, 5, and 23 of the “*Constitution*”.

9. In the case in hand, the Respondent No.1 namely Amar Javed purchased Villa No.21, Street No.06, Safari Villas-I, Bahria Town, Rawalpindi from one Majid Khalil Janjua through registered sale deed dated 04.05.2017, subsequently, on 03.04.2021, the Petitioner got allotment letter issued by the above said Majid Khalil Janjua regarding the same property which prompted the Respondent No.1 to file a civil suit seeking declaration, cancellation of the allotment letter through his attorney namely Ahmed Ali challenging the said fraudulent letter wherein the

injunction was granted by the competent Court. On the basis of such allotment letter, the Petitioner initially instituted an ejectment petition before the learned Special Judge (Rent), Rawalpindi on 02.06.2025, claiming entitlement to the disputed property on the basis of an allotment letter dated 03.04.2021; cancellation whereof has already been sought by the Respondent No.1 by filing suit for declaration, cancellation of allotment letter mandatory and permanent injunction on 13.12.2025 against Majid Khalil Janjua and Javed Masih. The Petitioner thereafter instituted suit for declaration, mandatory injunction and permanent injunction before the learned Civil Court on 07.03.2026 against Muhammad Aqeel Afsar and Majid Khalil. The factum of pendency of litigation with regard to the property in dispute is admitted by the parties. Record is indicative of the fact that vide order dated 25.02.2026 the Special Judge (Rent), Rawalpindi transferred the petition titled "*Javed Masih versus Muhammad Ejaz*" to the "*Special Court*" as the connected petition titled "*Amar Javed versus Javed Masih*", involving the same property had already been transferred to the "*Special Court*". This transfer was effected to ensure that all connected matters arising out of the same subject matter are adjudicated by one forum, thereby avoiding conflicting findings and securing a consistent and effective determination of the controversy between the parties. During the proceedings before the "*Special Court*", the Respondent No.1 filed an application for setting aside the proceedings, whereas one Majid Khalil/Defendant No.2 of suit for declaration filed by

the Petitioner moved an application under Order I Rule 10, C.P.C. seeking his impleadment as a party. The application filed by aforesaid Respondent for his impleadment was dismissed on merits, while the application for setting aside preferred by Respondent No.1 was accepted by the learned Civil Court.

10. The principal contention advanced by the learned counsel for the Petitioner is founded upon the *ex parte* judgment and decree dated 10.06.2026 passed by the Civil Court, Rawalpindi, on the strength whereof the Petitioner sought to resist the implementation of the orders already passed by the "*Special Court*". However, this contention is devoid of substance for more than one reason. Admittedly, the order dated 18.03.2026, whereby the earlier ejectment order dated 09.07.2025 was recalled and the Petitioner was directed to hand over possession of the property to the attorney of Respondent No.1, had already been challenged before this Court through W.P.No.1341 of 2026, which was dismissed vide order dated 13.04.2026. Thereafter, the consequential order dated 12.05.2026 directing delivery of possession was assailed by the Petitioner through F.A.O.No.52 of 2026, which too was withdrawn by the Petitioner on 04.06.2026. Thus, the orders directing restoration of possession had already attained finality and could not be circumvented by subsequently obtaining an *ex parte* decree from the Civil Court. It is also noted that *ex parte* judgment and decree dated 10.06.2026 has subsequently been suspended by the learned Civil Court, Rawalpindi upon an application filed by Respondent No.1 under Section 12(2), C.P.C. Once

the operation of the said decree stands suspended by the competent Court, the Petitioner cannot derive any legal advantage therefrom, nor can such suspended decree furnish a valid basis to obstruct or nullify the implementation of judicial order that had already attained finality. Even otherwise, an *ex parte* decree obtained subsequent to the passing of the orders sought to be executed could not nullify or eclipse judicial orders that had already attained finality. Rights crystallized through final judicial determinations cannot be defeated merely by obtaining a subsequent *ex parte* decree in collateral proceedings, particularly when the validity of such decree itself remains under challenge. It evinces from the "*impugned order*" that the "*Special Court*", while dismissing the objection petition, merely declined to interfere with the execution of its earlier orders, which had already survived judicial scrutiny before this Court. The Petitioner, under the guise of filing objections, sought in effect to reopen issues that had already been finally adjudicated. Such a course is clearly impermissible in law. The chronology of litigation unmistakably demonstrates that the Petitioner has persistently adopted successive proceedings before different forums with the apparent object of frustrating implementation of orders which had already attained finality. Such conduct amounts to an abuse of the process of law. The judicial process cannot be permitted to become an instrument for defeating final and binding judicial determinations by resorting to collateral proceedings. Constitutional jurisdiction under Article 199 of the "*Constitution*" is

supervisory in nature and cannot be invoked to re-agitate matters that have already attained finality between the parties or to defeat the implementation of binding judicial orders by relying upon a subsequent *ex parte* decree, particularly when the operation of that decree itself stands suspended. No jurisdictional defect, illegality, material irregularity or violation of any provision of law has been pointed out in the “*impugned order*” warranting interference by this Court in exercise of its extraordinary constitutional jurisdiction; rather the “*impugned order*” appears to have been passed strictly in accordance with law.

11. Consequently, finding no merit in this petition, the same is hereby **dismissed**.

(JAWAD HASSAN)
JUDGE

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