

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Acquittal Appeal No.89 of 2015

Present. Mr. Justice Nazar Akbar-J.

Appellant : Syed Muhammad Ahsan (In Person).

Versus

Respondent No.1 : Munawar Ali Naqvi.
Respondent No.2 : Dr. Syed Nadeem Raza Zaidi.
Respondent No.3 : Irshad Hussain (**Died on 27.01.2019**)
Respondent No.4 : Syed Asif Hussain Zaidi.
Respondent No.5 : Syed Kausar Abbas Rizvi.
Respondent No.6 : Shahid Jiwani.
Respondent No.7 : Syed Muhammad Abbas Rizvi.
Respondent No.8 : Syed Raza Mehdi.
Respondent No.9 : Syed Nasir Abbas.
Respondent No.10: Syed Muhammad Ali Naqvi.
Respondent No.11: Syed Talib Raza Abidi.
Respondent No.12: Syed Khurshid Hussain.
Respondent No.13: Iftikhar Ali.
Respondent No.14: Mohsin Abidi.
Respondent No.15: Syed Ali Murtaza Zaidi.

Respondents No.1, 4, 5, 6, 7, 8, 12, 13 & 14
through Syed Tasawur Hussain Rizvi,
advocate.

Respondents No.9 and 10 through
Syed Haider Imam Rizvi, advocate.

Respondent No.16: The learned IIIrd Additional District &
Sessions Judge, Central, Karachi.
Ms. Rahat Ahsan, Additional P.G.

Date of hearing : **22.05.2019**

Date of Decision : **17.07.2019**

JUDGEMENT

NAZAR AKBAR-J. This Criminal Acquittal Appeal is directed against the Judgment dated **14.02.2015** passed by IIIrd Additional District and Sessions Judge, Central Karachi in Criminal Petition No.250/2011 filed by the appellant under **Section 3, 4, 5, 7 and 8** of the Illegal Dispossession Act, 2005 (hereinafter the Dispossession Act), whereby all the accused/Respondents No.1 to 15 have been acquitted under Section 265-H(I) of the Cr.P.C.

2. Briefly, the facts of the case are that the appellant is duly nominated and appointed Nigran-e-Aala/ Life member of Majlis-e-Nigran of MARKAZ-E-HUQUQ-E-SHARIA PAKISTAN, REGISTERED (hereinafter the INSTITUTION). It was a private institution established in the year 1963 by **Moulana Syed Muhammad Mohsin Naqvi Mujtahid**, father of the appellant/complainant who was founder Nigran-e-Aala of the Institution. The Government of Pakistan by Gazette Notification dated **02.12.1966** has officially declared it a Charitable Institution. The Institution owns an amenity plot bearing No.ST-19, Block-16, Scheme 16, Federal B Area, Karachi, measuring 16416.44 Square Yards by virtue of allotment letter dated **16.6.1966** and possession letter dated **06.7.1966** both issued by Karachi Development Authority followed by registered indenture of lease dated **27.04.1970** executed by the Karachi Development Authority (K.D.A) and the Institution through its Founder/ Nigran-e-Aala (father of the appellant). It was further averred that the Institution constructed an **Orphanage** (All Pakistan Shia Yateem Khana), a Madrassa and Darul Aqama, Al-Mohsin Hall, Masjid, Dispensary on the said plot (hereinafter the plot with construction is referred as “the subject property”).The subject property has always been in physical possession of the Institution. In the year 2002 after the death of the Founder/Nigran-e-Aala (father of appellant), the complainant/appellant being Life Member of the Institution was elected and nominated as Nigran-e-Aala of the said Institution by the other life members and he continued to control/occupy the subject property till **10.7.2010**, when the accused persons/ Respondents unlawfully dispossessed him and occupied the subject property on gun point, therefore, the appellant/ complainant after making several complaints to police and other authorities filed Criminal Petition

under **Sections 3, 4, 5 & 7** of the Dispossession Act before the trial Court.

3. The learned Additional Sessions Judge, in terms of **Section 5** of the Dispossession Act, called report from the SHO concerned, who in his detailed 5 pages typed report annexed statements of **Syed Asif Hussain** (Respondent No.4), **Syed Kausar Abbas** (Respondent No.5) **Syed Shahid Hussain** (Respondent No.6) and **Syed Nasir Abbas** (Respondent No.9) and also the statements of the appellant and two independent persons namely Ali Abbas and Dilawar Abbas both sons of Syed Iqbal Hussain. The perusal of his report suggests that a complaint was lodged by the appellant on **10.07.2010** which was later on registered as **FIR No. 246/2010** against Syed Asif Hussain Zaidi (Respondent No.4) and others and the said Syed Asif Hussain Zaidi on **12.7.2010** lodged a counter report at P.S Yousuf Plaza followed by complaint under **Section 22-A** of the Cr.P.C whereafter probably he got the counter **FIR No. 283/2010** registered on **29.8.2010** against Syed Muhammad Ahsan Naqvi (the appellant) and others including his brother (**Moulana**) **Syed Muhammad Hussain Naqvi** who, according to the written submissions of both the counsel for the Respondents was then a lawful Chairman / President of the Institution. In his report, the SHO has informed that the said four Respondents whose statements were recorded by him have claimed that they are members of "**Working Committee of Al-Mohsin Hall**" approximately for the last 10/15 years, however, they have not provided any document to him in support of their claim whereas the appellant has placed before the police sufficient documents which he has also filed alongwith the complaint that the appellant and others have been in lawful control/occupation of the subject property of the Institution. The statement given by respondent to the S.H.O on

03.5.2011 during the inquiry under **Section 5** of the Dispossession Act did not show any legal authority to justify their possession over the subject property of the institution since **12.7.2010**. They have stick to it even before this Court, therefore, relevant portions of their statements showing their feeble justification to grab, control or occupy the subject property of the Institution are reproduced below:-

بیان ازاں سید آصف حسین زیدی ولد سید ساجد حسین زیدی

پندرہ سال سے المحسن ہال ورکنگ کمیٹی کی طرف سے بحیثیت ممبر مذہبی تقریبات منعقد کرتا ہوں اور یہ مذہبی تقریبات ہم اپنی مدد آپ کے تحت اور کرتے ہیں اور منعقد کرتے ہیں چونکہ المحسن ہال کے اندر واقع مسجد میں نماز پنجگانہ نہیں ہوتی تھی ہم نے عرصہ دو سال میں نماز پنجگانہ شروع کی مورخہ بارہ جولائی ۲۰۱۰ کو جب ہم مسجد میں نماز مغربین ادا کر رہے تھے اس وقت محمد حسین نقوی ولد محسن النقوی اپنے گارڈ داؤد پٹھان اور عالم شاہ گلگتی و دیگر ۱۵/۲۰ افراد کے ساتھ جو کہ آتشی اسلحہ سے مسلح تھے مسجد میں جوتوں سمیت داخل ہوئے مجھے اور دیگر نمازیوں کو مسجد سے نکال دیا اور عشانہ کی نماز پڑھنے نہیں دی اور علم پاک کی بے حرمتی کی اور علم کو اکھاڑنے کی کوشش بھی کی جس کی FIR تھانہ یوسف یلازہ پر بہ خلاف محمد حسین نقوی و دیگر کے خلاف درج ہے اور مقدمہ عدالت میں زیر سماعت ہے FIR درج ہونے کے بعد سے مذکورہ بالا افراد یتیم خانہ چھوڑ کر بھاگ گئے اور یتیم خانہ میں موجود یتیم بچے بہت پریشان ہوئے لہذا مجبوراً ہم نے ان یتیم بچوں کا انتظام سنبھال لیا اور اب یتیم بچے بہت خوش ہیں المحسن ہال، یتیم خانہ، و مسجد جو کہ ایک رفاہی پلاٹ نمبر ST-19 بلاک ۱۶ فیڈرل بی ایریا پر واقع ہے خریداری و تعمیر ملت جعفریہ کے چندے سے ہوئی ہے یہ ایک قومی ملکیت ہے ہم بھی اس ادارے کے مستقل ممبر ہیں اور چندہ ادا کرتے آرہے ہیں جبکہ محمد حسین نقوی، واحسن نقوی بدکرداری میں ملوث ہیں یتیم بچوں کے ساتھ بڑا ظالمانہ رویہ رکھتے تھے اپنے گھر کے کام کاج اور اپنے ہاتھ پاؤں بھی ان یتیم بچوں سے دبواتے تھے۔

بیان ازاں مسمی شاہد حسین ولد صادق حسین

المحسن ہال، جو کہ پلاٹ نمبر ST-19 بلاک ۱۶ فیڈرل بی ایریا کراچی پر واقع ہے جو کہ ایک رفاہی پلاٹ ہے جس کے اندر ایک مسجد ایک یتیم خانہ واقع ہے المحسن ہال کے اندر مسجد میں نماز پنجگانہ عرصہ دو سال قبل ہم نے شروع کرائی ہے اور یہ پلاٹ

چندے کی رقم سے خریدا گیا ہے جو کہ ایک رفاہی ادارہ ہے کسی کی ملکیت نہیں ہے مورخہ بارہ جولائی ۲۰۱۰ کو بم المحسن ہال کے اندر مسجد میں نماز مغربین ادا کر رہے تھے اس وقت محمد حسین نقوی ولد محسن النقوی اپنے گارڈ داؤد پٹھان اور عالم شاہ گلگتی کے ساتھ اپنے دیگر ساتھیوں مسلح کے ساتھ اندر مسجد میں داخل ہوئے ہمیں نماز ادا کرنے سے منع کیا اور علم پاک کی بے حرمتی کی جسکی ہم نے تھانہ یوسف پلازہ میں FIR ان کے خلاف درج کرانی اور یہ لوگ FIR کے بعد فرار ہو گئے یتیم خانہ کے اندر موجود بچے جو کہ زیر کفالت تھے پریشان ہوئے ہم بھی اس ادارے کے باقائدہ ممبر ہیں اور چندہ بھی ادا کرتے ہیں یہ ادارہ کسی بھی فرد کی ذاتی ملکیت نہیں ہے یہ ایک قومی ملکیت ہے جو کہ چندے کی رقم سے خریدی گئی ہے اور تعمیر کی گئی ہے محمد حسین نقوی اور اس کا بھائی احسن نقوی جو کہ یتیم خانہ کے بچوں سے اپنے ذاتی کام لیتے تھے۔

بیان ازاں مسمی سید کوثر عباس رضوی ولد سید وقار حسین رضوی

عرصہ پندرہ سال سے مسجد و امام بارگاہ المحسن ورکنگ کمیٹی کی طرف سے بحیثیت ممبر مذہبی تقریبات منعقد کرتا رہا ہوں اور یہ مذہبی تقریبات ہم اپنی مدد آپ کے تحت کرتے چلے آ رہے ہیں المحسن ہال واقع بلاک 16 فیڈرل بی ایریا کراچی جو کہ پلاٹ نمبر ST-19 پر واقع ہے جو کہ ایک رفاہی پلاٹ پر واقع ہے جہاں پر واقع مسجد کے اندر نماز پنجگانہ ادا نہیں ہوتی تھی جو کہ ہم نے عرصہ دو سال سے نماز پنجگانہ کا اہتمام کیا ہے مورخہ بارہ جولائی ۲۰۱۰ کو المحسن ہال میں واقع مسجد میں ہم نماز مغربین ادا کر رہے تھے اس وقت محمد حسین نقوی ولد محسن النقوی اپنے گارڈ داؤد پٹھان اور عالم شاہ گلگتی کے مسلح اندر اپنے دیگر ساتھیوں کے ساتھ داخل ہوا اور ہمیں نماز ادا کرنے سے منع کیا اور علم پاک کی بھی بے حرمتی کی جسکی ہم نے تھانہ یوسف پلازہ میں FIR درج کرانی اور اس کے پندرہ لوگ وہاں سے بھاگ گئے اور یتیم خانہ میں موجود بچوں کو چھوڑ کر بھاگ گئے جسکی وجہ سے زیر کفالت بچے پریشان ہو گئے اور ہم نے پریشان یتیم بچوں کی کفالت شروع کر دی اب جبکہ ہمارا مقدمہ عدالت میں زیر سماعت ہے جس میں محمد حسین نقوی نامزد ہے المحسن ہال، یتیم خانہ، و مسجد جو کہ رفاہی ادارہ ہے اور چندے کی رقم سے خریدا اور قائم ہوا ہے۔

بیان ازاں مسمی سید ناصر عباس ولد سید رفیع حیدر

میں پتہ بالا پر عرصہ ۵ سال سے رہائش پذیر ہوں اور سول انجیر ہوں عرصہ ۲۰/۲۵ سال سے المحسن ہال میں واقع مسجد میں نماز مغربین کی ادائیگی کرتا ہوں اور عرصہ ۳۰/۳۵ سال سے چندہ بھی ادا کرتا ہوں المحسن ہال جو کہ پلاٹ نمبر ST-19

بلاک 16 فیڈرل بی ایریاکراچی پر واقع ہے جو کہ ایک رفاہی ادارہ ہے جو کہ چندے کی رقم سے اس پلاٹ پر قائم ہوا ہے مورخہ بارہ جولائی ۲۰۱۰ میں نماز مغربین کیلئے المحسن ہال پر مسجد میں موجود تھا کہ محمد حسین نقوی ولد محسن النقوی اپنے گارڈ داؤد پٹھان اور عالم شاہ گلگتی کے ساتھ اپنے دیگر ساتھیوں کے ہمراہ مسلح داخل ہوا اور ہمیں نماز مغربین کی ادائیگی سے منع کیا اور وہاں پر علم پاک کی بھی بے حرمتی کی جسکی ہم لوگوں نے تھانہ یوسف پلازہ پر انکے خلاف **FIR** درج کرائی تو محمد حسین نقوی اور اس کا بھائی احسن نقوی وہاں سے فرار ہو گئے

4. The learned Additional Sessions Judge in view of the contradiction and otherwise dubious claim of the Respondents as reflected in the police report by order dated **06.9.2011** has been pleased to register the complaint and issued summons to the Respondents. On **06.2.2012** the trial Court framed charges against all the accused persons/ Respondents at Ex: 3 to which 13 out of 15 respondents pleaded not guilty at Ex:3/A to Ex:3/M and claimed trial of the case and two respondents namely **Dr. Syed Nadeem Raza Zaidi** and **Syed Ali Murtaza Zaidi** (Respondents No.2 & 15) had been declared absconders.

5. The appellant/ complainant in order to prove his entitlement, possession and control/ occupation on the subject property, examined himself at Ex:3. His examination-in-chief was partly recorded on **07.4.2012** when he has produced following documents as Ex:5/A to Ex:5/Z and Ex:5/A/1 to Ex:5/A/40:-

1. Copy of Registration Certificate(**Ex-5/A**);
2. Copy of Memorandum of Association of Markaz-e-Huquq-e-Sharia Pakistan Registered dated **19.09.1963(Ex-5/B)**;
3. Copy of Article of Association of Markaz-e-Huquq-e-Sharia Pakistan (Regd) dated **19.09.1963 (Ex-5/C)**;
4. Copy of Amendment by Founder/ Permanent Nigran-e-Aala in Memorandum and Article dated **10.11.1969(Ex-5/D)**;
5. Copy of another Amendment by Founder/Permanent Nigran-e-Aala dated **14.09.1980(Ex-5/E)**;
6. Copy of Amended Article of Association of Markaz-e-Huquq-e-Shariah Pakistan (Regd)(**Ex-5/F**);

7. Copy of Gazette Notification(**Ex-5/G**);
8. Copy of Letter from CBR dated **12.11.1966(Ex-5/H and 5/I)**;
9. Copy of Publication in Daily "Morning News"**07.12.1966(Ex-5/J)**;
10. Copy of Allotment Order No.KDA/LSII/67/65/4520 dated **16.06.1966(Ex-5/K)**;
11. Possession Order No.KDA/LSII/67/65/4731 dated **06.07.1966(Ex-5/L)**;
12. Lease Deed Registered No.6223, Pages No.143 to 146, Volume No.1578, of Book No. I-Addl: dated **29.06.1976** Karachi(**Ex-5/M**);
13. Copy of Data Collection Form issued by Excise &Taxation Department Government of Sindh(**Ex-5/N**);
14. Copies of Nomination of Majlis-e-Nigran, Publication daily Intikhab dated **08.08.2000** and paid Challan to Registrar Joint Stock Companies dated **08.08.2000(Ex-5/O to 5/Q)**;
15. Copies of Covering Letter to Manager Allied Bank, Officer Order by Permanent Nigran-e-Aala dated **02.08.2000** and Office Order by Permanent Nigran-e-Aala dated **12.08.2000(Ex-5/R &5/S)**;
16. Copy of Nomination of Executive Committee dated **01.07.2000** and **30.06.2001(Ex-5/T and 5/U)**;
17. Copy of Covering Letter dated **07.10.2002(Ex-5/X)**;
18. Copy of Letter of Substitution of Signatures Banks dated **08.10.2002**, Resolution and Nomination and Appointment of Nigran-e-Aala dated **14-08-2002 (Ex-5/V to 5/Z)**;
19. Copies of:-
 - Appointment of Office bearers dated **07.10.2002**,
 - Appointment of office bearers Appeal published in daily Jang dated **07.08.2010**,
 - Submission of list of Registrar Joint Stock Companies dated **06.12.2010**,
 - Office order dated **06.01.2011**,
 - Nomination of Nigran-e-Aala dated **14.08.2002**,
 - Submission of list and audit report to Registrar Joint Stock Companies,
 - Appointment of office bearers dated **27.02.2009**to Allied Bank Limited,
 - Appointment of office bearers to Allied Bank Limited dated **09.7.2010**,
 - Challan to Registrar Joint Stock Companies dated **05.8.2010**,
 - Appointment of officer bears dated **03.01.2011** to Allied Bank and Habib Bank dated **03.01.2011**,
 - Paid challan to Registrar Joint Stock Companies dated **06.01.2011(Ex-5/A to 5/A/9)**;
20. Copy of certified true copy of Extract of Resolution passed on **04.07.2010** in favour of the Applicant by Mr. Sibt-ul-Hasan, Treasurer Markaz-e-Huquq-e-Shariah Pakistan (Regd) (**Ex-5/A/10**);

21. Copy of Certified copy of Trust Deed of Markaz-e-Huquq-e-Shariah Trust, Book No.IV, dated **06.6.1998** and M.F Roll No.509/B-IV, dated **20.08.1998** Sub-Registrar, Karachi (**Ex-5/A/11**);
22. A true copy of Certified copy of Registered Amendment in Trust Deed No.1153 Pages No.124 to 125, Volume No.439, Book No.IV-Add: dated **11.6.1999** (**Ex-5/A/12**);
23. A true copy of Certified copy of Registered Amendment in Trust Deed for Appointment of More Trustees dated **23.06.1999** (**Ex-5/A/13**);
24. A true copies of Karwaye Meeting approved by Board of Trustees of Markaz-e-Huquq-e-Shariah Trust dated **18.08.2002, 12.10.2002, 03.09.2002** (**Ex-5/A/14**);
25. Copy of balance certificate from the Habib Bank Limited Yousuf Plaza Branch, Karachi (**Ex-5/A/15**);
26. Copies of the utility Bills of the institution (**Ex-5/A/16 to 5/A/20**);
27. Copies of the Relevant Pages of Book namely "TAREEKH-E-LUCKNOW" (**Ex-5/A/21**);
28. Copies of the Relevant Pages of Book namely "SAWANAH-E-HAYAT HAZRAT-E-GHUFRAAN MAAB"(**Ex-5/A/22**);
29. Copies of the Audit Reports dated **25.11.1964** to **30.06.2009** by Chartered Accountants (**Ex-5/A/23 to 5/A/34**);
30. Copies of Bank Statements issued by the Allied Bank Limited, Saghir Centre Branch, and Habib Bank Ltd, Yousuf Plaza Branch, Karachi(**Ex-5/A/36 to 5/A/39**);
31. Copy of Bank Challan of HBL, Yousuf Plaza Karachi dated **21.3.2011** (**Ex:5/A/40**);

6. The appellant's examination-in-chief partly recorded on **07.4.2012** could not be completed on one or the other ground until **24.4.2014** and his application under **Section 7** of the Dispossession Act was already pending. The record shows that the trial Court after hearing counsel for both sides on the basis of the documents already brought on record and particularly on failure of the Respondents to prove that the appellant was not in control and occupation of the subject property of the Institution, allowed complainant's application under **Section 7** of the Dispossession Act in the following terms:-

It appears further that although the respondents/ accused have admitted that father of the

*complainant was the Permanent Nigran-e-Aala of the institution/premises in question but however **they claimed that present applicant was not lawfully appointed as Nigran-e-Aala/life member of Majlis-e-Nigran Markaz-e-Huquq Shariah Pakistan after the death of his father but no such documents have been brought on record by the respondents/accused that complainant was illegally appointed as Nigran-e-Aala of the institution.***

*complainant has also annexed certain documents with his complaint which authenticity has not been denied by the respondents. It appears further that complainant was in lawful possession of the premises/institution when he was dispossessed by the respondents/accused on **10.7.2010.***

*In view of the above circumstances application in hand is accordingly allowed as prayed and the respondents/**accused are directed to hand over the possession of the premises in question to the complainant within 10 days hereof** -----.*

All the Respondents in order to perpetuate their illegal occupation of the Institution challenged the above interim order through a **Criminal Revision No.150/2012** filed before this Court and on **10.8.2012** got the above interim order suspended. Their able lawyer, Syed Haider Imam Rizvi from **10.8.2013** onward kept on getting the interim orders extended on every date of hearing of the said criminal revision till the final disposal of the complaint No.250/2011 by the trial Court through the impugned Judgment.

7. On **24.4.2014** further examination-in-chief of the appellant was recorded and he also produced following additional documents as Ex:4/A/41 to Ex:5/A/63:-

1. Copies of the Letter from Accused Persons dated **24.04.2010**, Complaint addressed to SHO P.S Yousuf Plaza, and D.I.G.

Operation (West) Zone dated **12.07.2010** intimation regarding the incident and illegal occupation of accused persons, **F.I.R. No.246/2010** and Order passed by Vth Add: District Judge (Central)(**Ex-5/A/41**);

2. Copies of Application addressed to SP Gulberg dated **30.7.2010** for protection to Applicant, acknowledge by S.P. Office, and D.I.G. Operation West Zone dated **30.07.2010(Ex-5/A/42)**;
3. Copy of Order on Cr. Petition No.579 moved by accused persons dated **24.07.2010(Ex-5/C/A/43)**;
4. Copies of the application addressed to I.G. Sindh for re-investigation, courier slip and its confirmation (**Ex-5/A/44**);
5. Copies of application submitted to S.H.O. P.S Yousuf Plaza, publications in daily Qaumi Akhbar dated **29.08.2010** and daily Jang dated **30.08.2010** and publication made by accused persons on dated **31.08.2010(Ex-5/A/45 to 5/A/47)**;
6. Copy of complaint dated **10.11.2010** addressed to S.H.O Police Station Yousuf Plaza duly acknowledged by SHO Police Station Yousuf Plaza Karachi (**Ex-5/A/48**);
7. Copies of the Appeal published in daily Jang dated **07.08.2010**, Covering Letter dated **16.08.2010** and courier slips and its confirmation (**Ex- 5/A/49 &5/A/50**);
8. Copies of letters addressed to (i) Divisional Engineer Phones (Aziz Abad Exchange) for stopping of using of telephone No.021-36321110, another letter address (ii Divisional Engineer Phones (Aziz Abad Exchange) for shifting of Telephone, alongwith T.C.S. Receipt (**Ex-5/A/51 & 5/A/52**);
9. Copies of the letter addressed to M/s. Hawks Security dated **16.08.2010** and copy of said letter forwarded to the police higher authorities, alongwith courier slips and its confirmation reports (**Ex-5/A/53**);
10. Copies of the letters addressed to (i) Manager HBL Yousuf Plaza Branch (ii) Manager Allied Bank Limited Yousif Plaza Branch, dated **20.08.2010(Ex-5/A/54)**;
11. Copies of complaint by the complainant addressed to S.H.O P.S Yousuf Plaza Karachi dated **25.09.2010**, Registration Book of Suzuki Van and other related documents/reports of the said vehicle(**Ex-5/A/55**);
12. Copy of complaint by the complainant addressed to S.H.O P.S Yousuf Plaza, dated **13.10.2010** duly acknowledged by concerned P.S Yousuf Plaza, Karachi (**Ex-5/A/56**);
13. Copies of complained by the complainant addressed to SHO P.S Yousuf Plaza, dated **10.11.2010** duly acknowledged by concerned P.S Yousuf Plaza, Karachi and letter from Ministry of Interior Islamabad dated **10.12.2009**, Publication made by Applicant in daily Jang dated **17.12.2009,19.12.2009** and **28.12.2009(Ex-5/A/57)**;
14. Copies of applications by the complainant to:-
 - SHO P.S. Yousuf Plaza dated **16.07.2010** for submission of documents (**Ex-5/A/58**);

- SHO P.S Yousuf Plaza dated **18.09.2010** for submission of documents;
 - S.H.O P.S Yousuf Plaza dated **13.10.2010** for submission of documents;
 - S.H.O P.S Yousuf Plaza dated **13.10.2010** for submission of Audit report;
 - SHO P.S Yousuf Plaza dated **18.09.2010** for submission of brief history of the institution;
15. Copies of letters to the Administrator (CDGK) KDA Wing dated **09.12.2010** alongwith courier report and acknowledgement (**Ex-5/A/59**);
16. Copy of application submitted to Chief Controller K.B.C.A. dated **09.12.2010** alongwith courier report and acknowledgement (**Ex-5/A/60**);
17. Copy of letter by the complainant to the Chief Controller KBCA dated **09.12.2010** alongwith courier receipt (**Ex-5/A/61**);
18. Copies of:-
- The Abide Memorie to S.H.O. P.S Yousuf Plaza Karachi dated **21.03.2011**,
 - Application to Home Secretary, Government of Sindh, Karachi dated **21.03.2011**,
 - Application to C.C.P.O. Karachi dated **21.03.2011**,
 - Application to D.I.G. (Operation) West Zone, Karachi dated **21.03.2011**,
 - Application to S.S.P, Gulberg, Karachi dated **21.03.2011**,
 - Administrator, Municipal Administration, Gulberg Town, dated **21.03.2011**,
 - D.D.O (Revenue) Gulberg Town, Karachi dated **21.03.2011**,
 - All courier receipts and acknowledgement as well as registered post A/D (**Ex-5/A/63**);

The appellant was cross examined by counsel for the Respondents on **8.5.2014**, **02.6.2014**, **13.9.2014** and **18.10.2014**. Then his witnesses were also examined before closing the side of appellant for evidence.

8. On **29.11.2014** statements of accused/ Respondents namely (Moulana) Syed Muhammad Ali Naqvi, (Moulana) Syed Munawar Ali Naqvi, Syed Raza Mehdi, Syed Nasir Abbas and Iftikhar Ali under **Section 342** of the Cr.P.C were recorded as **Ex:5** to **Ex:9** and on **01.12.2014** statements of other accused namely Syed Talib Raza Abidi, Syed Asif Hussain Zaidi, Syed Muhammad Abbas Rizvi, Syed Mohsin Abidi, Shahid Hussain, Syed Kausar Abbas Rizvi, Irshad Hussain and Syed Khursheed Hussain were recorded at **Ex:10** to

Ex:17. All the Respondents/accused denied the allegations of the complainant/appellant and each of them took ONE AND THE SAME stand. The first accused whose statement under **Section 342** of the Cr.P.C was recorded by the Court on **29.11.2014** was (Moulana) **Syed Mohammad Ali Naqvi**. Since all accused who were examined by the Court after him have word by word repeated the same statement, therefore, it is appropriate to reproduce just one such statement as under:-

Exhibits No.5 to 17

STATEMENT OF ACCUSED U/S 342 CR.P.C

I do hereby state as under:

My name is	Syed Muhammad Ali Naqvi
Father's name	Syed Majid Ali Naqvi
Religion	Islam
Caste	Syed
Age about	42 years
Occupation	Islamic Scholar
Resident	HouseNo.2/1 Gulshan-e-Iqbal, Sharifabad, F.B Area, Block-1, Karachi District.

Q.No.1. Have you heard the evidence of petitioner's case?

Ans. Yes Madam.

Q. No.2. It has come in evidence that on 10th July, 2010, you along with co-accused persons and absconding accused persons namely Dr. Syed Nadeem Raza Zaidi and Syed Ali Murtaza Zaidi in furtherance of your common intention have forcibly and illegally dispossessed the petitioner and occupied the plot bearing No.ST-19, Block-16, Scheme No.16, Federal B Area, Karachi admeasuring 3.4 Acres (16416.44 Sq. Yards), which was purchased by the founder/ Nigran-e-Aala namely Aytullah Moulana Syed Muhammad Mohsin Sahib Qibla Mutahid, the late father of applicant/petitioner and the same was leased out in favour petitioner's Institution by the then K.D.A what you have to say?

Ans. It is false allegation against me.

Q. No.3. Why the P.Ws deposed against you?

Ans. **They want to usurp the property of the Institution of the Trust and that is why they want (us) to vacate the premises hence deposed falsely.**

Q. No.4. Do you want to examine yourself on oath?

Ans. No.

Q. No.5. Do you want to lead any evidence in your defence?

Ans. No.

Q. No.6. Do you want to say anything else?

Ans. I am innocent and falsely implicated in this case as **the complainant has nothing to do with the property of trust. Neither the petitioner is absolute owner of the property nor the trustee of the said property.** This is a charitable trust and a public property.

Sd- 29.11.14
(Miss Rashida Siddiqui)
III Additional Sessions Judge,
Karachi-Central
29.11.2014

All the Respondents have avoided to record their evidence on oath in terms of **Section 340(2)** of the Cr.P.C in disproof of the charge and allegations against them individually. The Respondents/accused after recording their identical statements under **Section 342** of the Cr.P.C on **03.12.2014** also filed a common written statement under **Section 265-F(5)** of the Cr.P.C signed by each one of them.

9. The trial Court after hearing learned counsel for the parties passed the impugned judgment whereby all the accused/respondents No.1 to 15 including two absconders were acquitted under Section 245-H(i) of the Cr.P.C. The appellant/ complainant being aggrieved has preferred the instant Criminal Acquittal Appeal against the said Judgment.

10. I have heard learned counsel for the parties and perused the record. They were also directed to file written arguments.

11. The contentions of the appellant from the arguments advanced at the bar and in the written arguments can be summarized as follows:-

a). The learned trial Court has failed to appreciate its own order dated **01.08.2012** whereby appellant's application under **Section 7** of the Dispossession Act was allowed and Respondents were directed to handover possession of the subject property of the Institution to the appellant. In the final order the trial Court did not declare that the interim order of putting the appellant in possession is confirmed or recalled. Consequently the Respondents/accused, who in the interim order were admittedly found in illegal occupation and control of the subject property "without any lawful authority" were allowed to continue illegal occupation and control of the Institution.

b). The trial Court has failed to appreciate that the appellant through various documents has very elaborately established that he was in lawful occupation and control of the Institution since 2002 in terms of the registered Memorandum of Association and Articles of the Institution and registered trust deed as against him the Respondents have not been able to produce even single document to justify that in what capacity they were claiming control and occupation of the subject property of the Institution. The very fact that not a single document has been produced by any of the Respondents to establish any lawful/legal basis to control and occupy the subject property of the Institution in terms of any laws, rules or regulations to run the Institution was enough to establish that whatever they have been doing since **10.7.2010** illegal and unlawful.

c). The trial Court in the final impugned order in continuation of interim order dated **01.08.2012** for restoration of possession of the subject property to the appellant did conclude that the complaint under **Section 3, 4, 5 and 7** of the Dispossession Act was maintainable and, therefore, the case against the respondents that they were in illegal possession and control of the Institution was established and yet the trial Court did not award any punishment to all or any of the accused / respondent nor confirmed and/or recalled its earlier order of handing over possession back to the appellant.

d). The learned trial Court has erred in law by holding that the dispute between the appellant and the respondents is purely of civil nature concerning the management of the Trust since the Respondents/accused had never filed any civil suit or proceedings challenging the status of the appellant before any forum. Nor they have sought any declaration about their own right or entitlement to control and occupy the Institution under any law of the land for protecting their control and occupation of the subject property.

e) The trial court has failed to appreciate the settled law that even pendency of civil dispute between the parties is not an impediment in the criminal proceedings between the same parties. In the instant case there was no civil dispute pending between the appellant and the Respondents and yet the trial Court acquitted the accused impliedly concluding that the act of taking over possession of the Institution by the respondents was not in violation of **Section 3** of the Dispossession Act and their such act creates a dispute of civil nature. He has relied on

the case-laws reported in **2010 YLR 2139** and **2009 SCMR 1066**.

f). Learned trial Court has totally ignored the documentary evidence showing history of control and occupation of the Institution by the appellant which was even otherwise established when the Respondents conceded that the appellant has been Nigran-e-Aala of the Institution but their stance was that the appellant was unlawfully nominated as Nigran-e-Aala of the Institution. Since the Respondents No.1 to 15 have not denied that they have taken over possession and running the affairs of the Institution since 2010, therefore, in terms of Dispossession Act and the law laid down by Superior Court they were required to establish that their control and occupation of the Institution is lawful and in accordance with the law. The failure of the Respondents to prove that they have **“any lawful authority”** to take over control or occupy the Institution was enough to hold them guilty of violation of **Sub-section (1) of Section 3** of the Dispossession Act.

12. The submissions made in rebuttal/reply by the learned counsel for the Respondents at the bar as well as in their written submissions can be summarized as follows:-

a). **Syed Tasawur Hussain Rizvi**, Advocate representing Respondents No.1, 4 to 8 and 12, 13 and 14 in very brief written submission of hardly 5 pages, has contended that the appellant has failed to establish his status as occupier or owner of the subject property in terms of **Section 2(c) and (d)** of the Dispossession Act. The status of appellant as Nigran-e-Aala of the Institution by virtue of Ex:5/2 dated **14.8.2002**

signed by other life members and the resolution of his appointment dated **18.8.2002** passed by (1) **Moulana Syed Muhammad Hussain Naqvi**, (2) **Syed Mujavir Tabassum**, (3) **Syed Wazir Ali Zaidi** and (4) **Syed Ali Aala Jafferi** was fake and all of them have expired and none was produced as witness. He has also contended that the appellant has not followed the requirement of **Section 92** of Civil Procedure Code for initiating the criminal complaint as required by law laid down by Hon'ble Supreme Court and reported in **PLD 1989 S.C 283**.

b). Regarding authority of the Respondents in relation to the control and occupation of the subject property of the Institution, learned counsel for the said respondents has conceded that the respondents have no legal title or basis and he conceded that it is but for the lack of their legal status to run the Institution, the respondents have not challenged the order of this Court dated **22.3.2019** whereby Receiver has been appointed to take over the control and occupation of the subject property of the Institution. He has, however, tried to justify that the Respondents used to visit Al-Mohsin Hall where 25 orphans were living in miserable condition and also Imam Bargah, Masjid and Orphanage were in very poor condition, therefore, they have requested the Chairman/President **Moulana Syed Muhammad Hussain Naqvi** to take care of the Institution and since he did not take their request seriously and deserted the Institution, the Respondents started providing food and other facilities to the orphans from their own pocket and subsequently from donations.

c). In para-3 of his written arguments he has surprised the Court when he submitted that on **22.3.2019 Syed Asif Hussain Zaidi** (Respondent No.4) has made a false statement before the Court that a sum of **Rs.700,000/-** cash were in hand while nothing was in his hands and the said amount of **Rs.700,000/-** was borrowed by him in order to produce the same in Court. He further contended that on Monday morning i.e **25.5.2019** two cheques of **Rs.550,000/-** and **Rs.1,22000/-** were encashed from the bank account of **Moulana Munawar Ali Naqvi** (Respondent No.1), who had only opened bank account for running the affairs of the orphanage and practically he has nothing to do with the management of accounts and he was helping in good faith on humanitarian grounds. He has contended that **Syed Asif Hussain Zaidi** (Respondent No.4), **Syed Kausar Abbas Rizvi** (Respondent No.7) and **Syed Talib Raza Abidi** (Respondent No.11) managed the affairs of the orphanage under the advice of *Ulama*. The *Ulama* he was referring to are obviously respondents No.1, 10 and 15. He has also stated that Respondent No.9 **Syed Nasir Abbas Rizvi** used to run Bakra Mandi on the subject property of the Institution from 2011 and 2017. He further drawn attention of the Court to a letter dated **24.4.2010** to one of the trustees by the *Mohallah* people to take notice of miserable condition of orphanage, Masjid and Imam Bargah.

13. **Syed Haider Imam Rizvi**, advocate after induction of Syed Tasawur Hussain Rizvi as lawyer for the other Respondents appeared only on behalf of Respondent No.9 and 10 and from his arguments at the bar and written arguments, his contentions can be summarized as follows:-

a). In the first place in his written arguments he has contended that Respondents No.9 and 10 never had possession or management of Al-Mohsin Hall (the Institution) and on **10.7.2010** they had gone there only to attend *Majlis* and after filing of the criminal complaint they did not go there even to attend *Majlis* or for any other purpose. Respondents No.9 and 10 did not play any role in the alleged illegal dispossession. He has further contended that no relative of Respondents No.9 and 10 have ever been associated with any of the affairs of Al-Mohsin Hall and they have no relationship with the other Respondents. They were never even member of any so-called committee for running the management of Al-Mohsin Hall.

b). He further contended that the appellant had no cause of action and all the allegations were false as at the relevant time **Moulana Syed Muhammad Hussain Naqvi** was Chairman of the Institution and he had not lodged any complaint either to the police or to the trial Court. The appellant Syed Muhammad Ahsan was not trustee of the Institution as such he has nothing to do with the management of the Institution. He has further contended that in the report of the SHO on the complaint the alleged incident of dispossession was not proved. He referred to the FIR lodged by appellant prior to filing of the criminal complaint which was disposed of in class "A".

c). Like Mr. Syed Tasawur Hussain Rizvi, advocate Mr. Haider Imam Rizvi, advocate has also contended that for filing any legal proceedings a resolution of Board of Trustees was required in terms of the case-law reported in **PLD 1971 S.C 550** and **2012 CLC 793** and, therefore, the complaint is liable

to be dismissed. He has also contended that the appellant has failed to file any document showing any exclusive possession of the Institution or that the accused persons have forcibly dispossessed him from the Institution on **10.7.2010** and, therefore, in the absence of proof of any exclusive possession, the provisions of Dispossession Act were not applicable. He has relied on **PLD 2007 Lahore 231** and **PLD 2010 S.C 661**.

14. The appellant in support of his contention that he alongwith others was in lawful occupation, control of the subject property of the Institution and the Respondents have unlawfully dispossessed him has drawn attention of this Court to various documents showing creation/establishment of the Institution which is essentially a private institution having registered Memorandum of Association and Articles of Association both dated **19.9.1963 (Ex:5-B and 5-C)** read with Deed of Declaration of Trust of Markaz-e-Huquq-e-Shariah Trust registered dated **6.6.1998 (Ex:5/A/11)**. He has also referred to Registered Amendment WORKING ARRANGEMENT in the Trust Deed on the death of permanent Trustee Syed Zammurad Hussain whereby on **11.6.1999 Moulana Syed Mohammad Hussain Naqvi**, his brother, was inducted as Permanent Trustee and also registered deed of Appointment of more Trustees whereby on **23.6.1999** the appellant was also appointed as one of the **Trustees** in the said Trust (**Ex:A/12** and **Ex:A/13**). He has produced certified copies of several other documents including a registered document showing his nomination as **life member** of Majlis-e-Nigran Markaz-e-Huquq Shariah Pakistan (Registered) dated **04.8.2000** in accordance with **clause 3(b)** of Article of Association of the Institution (**Ex.5/C**). by the authority of the Founder/Nigran-e-Aala of the Institution **Moulana Syed Muhammad Mohsin Naqvi Mujtahid**. Such information was

published in newspaper on **8.8.2000** and it was forwarded to the approved bank as well as to the Registrar Joint Stock Company, Government of Sindh (**Ex:5/O, 5/P, 5/Q, 5/S**) Thereafter the then Hon'ble permanent Nigran-e-Aala of the Institution **Moulana Syed Muhammad Mohsin Mujtahid** in exercise of power under **clause 3(b)(i)** of the Article of Association while nominating the Office Bearers of the Institution, appointed the appellant as **Secretary General** of the Executive Committee of the Institution with effect from **01.07.2001 (Ex.5/U)**. All these documents and many others produced in evidence have gone un-rebutted. In the cross-examination learned counsel for the respondents only made an attempt to discuss some of these documents. Syed Tasawar Hussain Rizvi, counsel for Respondent in his written arguments has declared that **Ex.5/Z** dated **14.8.2002** whereby appellant was appointed Nigran-e-Aala of the Institution is a fake document. But in cross examination it was not even suggested that it was fake document or signatures of other life members were forged. The question is who are these Respondents? They have no rights to even challenge this or any other document since the respondents themselves have never claimed to have been member of or in any way associated with the Institution in accordance with the registered Memorandum and Articles of Association of Markaz-e-Huquq-e-Shariah (**Ex:5/B and 5/C**) nor anyone of them was ever Trustee at any point of time since 1998 when the Trust of Markaz-e-Haquq-e-Shariah (**Ex:5/A/11**) was created.

15. The stand taken by the Respondents / accused before the SHO reproduced in para-3 above confirmed that they have taken over possession of the subject properties of the said private Institution if not on **10.7.2010** as alleged by the Appellant then at least from

12.07.2017 as already admitted by them before the Police that they have taken over possession of the subject property on the pretext that appellant and his brother (**Moulana**) **Syed Mohammad Hussain Naqvi** had run away leaving the orphans unattended. At the expense of repetition I reproduce just one sentence from their afore-quoted statement as follows:-

مذکورہ بالا افراد یتیم خانہ چھوڑ کر بھاگ گئے اور یتیم خانہ میں
موجود یتیم بچے بہت پریشان ہوئے لہذا مجبوراً ہم نے ان یتیم
بچوں کا انتظام سنبھال لیا اور اب یتیم بچے بہت خوش ہیں۔

Such claim of Respondents does not create any lawful authority in their favour to justify control and occupation of the subject property owned by a private Institution. The main accused Respondent No.4 who has been instrumental in mobilizing other accused / respondent to dispossess the lawful owner or occupier on the pretext that they had run away leaving the subject property abandoned has failed to prosecute (**Moulana**) **Syed Muhammad Hussain Naqvi** and others nominated in FIR No.283/2010 about the incident of **12.7.2010**. To the contrary his so-called application to the police on **12.7.2010** against the appellant and others was not entertained by the SHO and therefore, Respondent No.4 (Syed Asif Hussain Zaidi) had filed a criminal petition under **Section 22-A** of the Cr.P.C before the Court of Vth Additional District Judge, Central Karachi bearing Cr. Petition **No.579/2010** for registration of FIR on his report. Strangely enough when the appellant entered appearance in the said complaint as counsel for himself and his brother (**Moulana**) **Syed Muhammad Hussain Naqvi** and other proposed accused, counsel for Respondent No.4 has disowned allegations against the appellant. It was noted by learned Additional District Judge in the following paragraph of the order dated **24.7.2010** on the petition No.579/2010.

*Learned counsel for the applicant has contended that **name of one of the proposed accused is Ahsan Naqvi but Syed Muhammad Ahsan Naqvi son of Syed Muhammad Mohsin-ul-Naqvi** who is by profession Advocate **is not the proposed accused and that Ahsan Naqvi is another person** who is proposed accused in this application and **Syed Muhammad Ahsan Naqvi who is present in court** is by profession Advocate and he **is not the proposed accused in this application.***

Then with the above observation, on **24.7.2010** Additional Sessions Judge has allowed the petition to register the FIR, but Respondent No.4 took more than one month to approach the SHO to register FIR **No.283/2010** on **29.10.2010** at **2345** hours. Be that as it may, the accused / respondent No.4 has failed to prosecute anyone on his **FIR No.283/2010** as even copy of any challan pursuant to the said FIR has not been placed on record nor since 2010 anyone has been arrested/tried and / or convicted on the said FIR.

16. The record shows that much before the complaint dated **12.10.2010** against the appellant, Respondent No.4 posing himself to be General Secretary, Working Committee of Al-Mohsin Hall by a letter dated **24.4.2010 (Ex:5/A/41)** (Also referred by Mr. Tasawur Hussain Rizvi, advocate in his arguments) addressed to one of the then alive Trustee namely **Syed Dawood Rizvi** has attempted to create a ground to illegally interfere and subsequent take over of the subject property and control of the private Institution. Then Respondent No.4 after 3 months on **10.7.2010** as so-called General Secretary of the Working Committee of Al-Mohsin Hall addressed a letter to S.H.O Yousuf Plaza Police Station. It is also available in R&P and it is worth reading, therefore, it is reproduced below:-

مسجد و امام بارگاہ المحسن ورکنگ کمیٹی

بلاک نمبر ۱۴، فیڈرل بی ایریا کراچی

تاریخ 10-07-2010

حوالہ نمبر 0002/MIAM

اسلام علیکم:-

بخدمت انچارج پولیس تھانہ یوسف پلازہ فیڈرل بی ایریا بلاک 16

مرکز حقوق شرعیہ پاکستان مسجد و امام بارگاہ بلاک 16 کی انتظامی بدحالی کو دیکھتے ہوئے مومنین بلاک 16 کی قائم کردہ ورکنگ کمیٹی نے مجالس و میلد اور انتظامی امور کو درست کرنے کا فیصلہ کیا ہے۔ نیز آج بروز ہفتہ بعد نماز مغرب مجلس عزا کا بھی انتظام ہے۔ لہذا متعلقہ تھانہ سے درخواست ہے کہ سیکورٹی فراہم کی جائے۔

واسلام
جنرل سیکرٹری

Sd/-
سید آصف حسین

The date of above document is the same date on which the Appellant has lodged complaint against the Respondents that they have forcibly been denied entry into their Institution. The language of the above letter clearly discloses the criminal intentions of the so-called Working Committee purportedly established by Momineen of Block-16, F.B Area. I am afraid Law of the land and even SHIA PERSONAL LAW does not authorize Momineen (مومنین) of any locality to request anyone amongst themselves to unlawfully “control or occupy” immovable property of an ORPHANAGE owned by some registered private Institution with intention to dispossess, grab, control or occupy the said property and dispossess the otherwise lawful occupiers of such property. At the trial the Respondents have not produced even fake record of creation of so-called AL-MOHSIN HALL WORKING COMMITTEE and Mr. Haider Imam Rizvi, advocate has categorically disowned it and denied any association of Respondents No.9 and 10 with such WORKING COMMITTEE. The so-called

Momineen of Block-16 have not even appeared in Court. In fact it was a group of few persons led by Respondent No.4 who had their eyes on the subject property and the resources of the said private Institution and, therefore, they decided to take it over by force with the backing of religious scholars namely Respondent No.1 (Moulana) Syed Munawar Ali Naqvi, Respondent No.10 (Moulana) Syed Muhammad Ali Naqvi and Respondent No.15 (Moulana) Syed Ali Murtaza Zaidi. The respondents despite backing of so-called religious scholars and their GOOD WILL in the community were conscious of the fact that they have no moral authority or legal defense to justify taking over possession of the subject property and grab and control of the resources of a private Institution. But for this reason, the Respondents have never filed any civil suit to seek declaration of their title in respect of the subject property. They knew that their so-called Working Committee is not even fraudulently registered. Therefore, to give some legal backing to their occupation and control of the subject property of the Institution, the accused / respondent No.4 (Syed Asif Hussain Zaidi) after one month of registration of **FIR No.283/2010** by him against **(Moulana) Syed Muhammad Hussain Naqvi** and others also got a purported Trust registered on **21.9.2010** by contribution of just Rs.5000/- from his pocket showing his personal residence as address of the office of the purported Trust and declared that the said TRUST shall look after the subject property of the private Institution namely Al-Mohsin Hall, Masjid and Yateem khana **with power to even sale and mortgage the said property**. All the so-called members of purported Working Committee of AL-MOHSIN HALL namely Respondents No.1, 2, 4 to 8, 11, 12 and 14 constituted Board of Trustees of the said Trust. Relevant portion of the purported

Declaration of Trust Deed dated **21.9.2010** registered with the Sub-Registrar of Properties at Gulberg Town are reproduced below:-

*BY THIS DEED OF DECLARATION OF TRUST made at Karachi on this **21st day of September, 2010**, I, Syed Asif Hussain Zaidi S/o. Syed Sajid Hussain Zaidi adult, Resident of R-136 Block No.16 Federal "B" Area Karachi, **General Secretary/Trustee do hereby create a Trust of Rs.5,000/= (Five Thousand only) Forming the subject Trust to be known as "AL MOHSIN TRUST". I transfer the said amount along with the right of control over the affairs of management and administration of Trust to the board of Trustees with stipulation and condition herein said below. However the General Secretary will act a managing Trustee.***

That the first board -----.

*Hereinafter **the Trustees of AL-MOHSIN TRUST WAQF**, created to look after and maintain Masjid & Imam Bargah Al-Mohsin and orphan Hostel (Yateem khana) and for welfare of the Shia Asna Ashri in respect of Trust, Its Registered office situated at **R-136, Block 16, Federal 'B' Area, Karachi**. Which comes within the local limits of YOUSUF PLAZA POLICE STATION Karachi.*

- 1. -----
- 2. -----
- 3. *That in the interest of the Trust, the Board of Trustees shall have the discretionary powers to appoint more trustees as and when it deems fit, necessary and proper.*
- 4. *That in case of death OR resignation of General Secretary or his disqualification to hold the office, another General Secretary shall be elected amongst the remaining members of the Board of Trustees, and in the event of other Office Bearer OR Trustee, the same shall be nominated from amongst the general public.*
- 5. *To transfer, sell or deal in **moveable or immovable properties, of the said Trust** to mortgage, leas out or rent out rent out or hire, or construct etc. as and when required in the interest of Trust; (Emphasis supplied).*

17. The contentions of both the counsel for the Respondents that the appellant and others have abandoned the subject property and, therefore, they have not dispossessed anyone and also the appellant was not lawfully appointed to run the affairs of the Institution are

devoid of any merit. In either case the Respondents admit possession of appellant prior to them and they have not produced their own authority, if any, to grab, control or occupy the subject property. It is settled law that even abandoned property is supposed to be in constructive possession of its lawful owner. Likewise, if at all, there had been any defect in the status of the appellant as a lawful trustee or life member of the Institution to hold, occupy and control the subject property of a private Institution, the Respondents were not supposed to contravene the provisions of **Section 3(1)** of the Dispossession Act. The provisions of **Section 3** *ibid* are reproduced below:-

3. Prevention of illegal possession of property, etc.- (1) *No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.*

(2) *Whoever contravenes the provisions of the subsection (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be **punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544-A of the Code.***

It is clear from the reading of the above provision that “**No one**” is supposed to enter into or grab any immovable property. The use of word “**any**” means even the “abandoned” property “**without lawful authority to do so**”. The words “control or occupy” and “owner or “occupier” used in **Section 3** of the Dispossession Act are clearly applicable to the status of the appellant. The “OWNER” of the property in question is a private Institution. Therefore, owner being a juristic person cannot be dispossessed, however, its “control” defines who is in “occupation” of its property in terms of the registered

instrument creating the juristic person to authorize living beings to “control or occupy” the immovable property of the said juristic person. The use of words “lawful authority” refers to the due process of law. The Respondents admittedly have “no lawful authority” nor they have adopted any course of law. They have not produced single document to legally justify their “control or occupation” of the subject property of the Institution. In view of the evidence led by the appellant and discussed in para-14 above, the appellant has fully demonstrated that he was “**lawful occupier**” of the subject property as defined in **Section 2(c)** and **(d)** of the Dispossession Act. The learned trial Court, too, while relying on the law laid down by Hon'ble Supreme Court in the case of Shahabuddin vs. The State (**PLD 2010 SC 725**) has rightly held that the complaint filed by the appellant was maintainable. Therefore, the contention of Mr. Tasawur Hussain Rizvi, advocate for some of the Respondents that appellant has failed to make out a case in terms of **Section 2(c)** and **2(d)** of the Dispossession Act is devoid of any force.

18. Similarly contention of Syed Haider Imam Rizvi, learned counsel for Respondents No.9 and 10 that Respondents are not land grabbers and, therefore, the case under Illegal Dispossession Act, 2005 was not maintainable was also contrary to the same case-law. Relevant observations in para-8 from the judgment reported in **PLD 2010 SC 725** are reproduced below:-

*8. So far as the contention of the learned counsel that the Act, 2005 is meant for the land grabbers, **whereas the petitioner is not a land grabber, is concerned, this argument is also not available to him for the reason that he had failed to prove his lawful ownership over the property in dispute. Moreso, the Act, 2005 is a special enactment, promulgated to discourage the land grabbers and to protect the rights of***

owner and lawful occupants of the property as against the unauthorized and illegal occupants. Learned High Court, in the impugned judgment, has elaborately discussed this aspect of the case and observed that "there is no requirement in the Act that one must have grabbed at least so many properties and only then he will be proceeded against; no doubt in the preamble, the words 'land grabbers' have been used and they have been used in the plural, but firstly the preamble though it must be given due weight, it does not have the same weight as the word used in the Act.....**Therefore, for prosecution under the Illegal Dispossession! Act, 2005 even if an individual is illegally dispossessed, he has a right to have a recourse to the provisions of Illegal Dispossession Act, 2005 without prejudice to the such other remedies that may be simultaneously available to him under the other laws**". In our considered opinion, these observations by the learned High Court are irrefutable and worthy of credence. Thus the arguments put forward by the learned counsel in this behalf are accordingly repelled. (Emphasis provided).

19. Likewise common contention of both the counsel for the Respondents that the appellant/ petitioner had no lawful authority to file the legal proceedings in view of **Section 92** of the **CPC** are absurd when raised before a Court seized of a criminal case. The proceedings under Criminal Procedure Code, 1898 cannot be regulated by Civil Procedure Code, 1908. Mr. Haider Imam Rizvi, advocate for Respondents No.9 and 10 has relied on the case-laws reported as Zahoor Ahmad and 5 others vs. The State and 3 others (**PLD 2007 Lahore 231**) and Bashir Ahmed vs. Additional Sessions Judge (**PLD 2010 SC 661**) to impress upon the Court that the appellant has tried to transform a civil dispute into a criminal case. The observations of learned trial Court in para-12 of the impugned judgment whereby with a short observation the complaint has been dismissed appears to be a result of totally misconceived contentions of the learned counsel based on the out of context two case laws. Yes out of context

since neither the Respondents have filed any civil proceedings nor even it was anywhere mentioned in the record that the parties are also in civil Court to claim right to “control or occupy” the subject property of a private Institution. Para-12 of the impugned order is reproduced as follows:-

12. *Overall assessment of the fact, it is revealed that there is dispute of a purely civil nature between the parties concerning the management of the Trust, resolution whereof is absolutely out of the ambit of jurisdiction of this Court. It appears that the complainant through instant petition under Illegal Dispossession Act, 2005 is trying to transform the civil dispute into criminal proceeding, which even otherwise failed to prove by the complainant, without any shadow of doubts, rather there are material glaring contradictions in the claim of the petition. Therefore, this point is answered as doubtful. However, the complainant is at liberty to approach civil court of law, if so advised.*

20. The learned trial Court has referred to and relied on the Supreme Court judgment in the case of Shahabuddin reported in **PLD 2010 SC 725** but unfortunately the trial Court has not at all referred to the cases Muhammad Akram and 9 others vs. Muhammad Yousuf and another (**2009 SCMR 1066**) and Mumtaz Hussain vs. Dr. Nasir Khan and others (**2010 SCMR 1254**) relied upon by the appellant. In both the cases the Hon'ble Supreme Court has dilated upon the purpose and intent of legislature for enactment of the Illegal Dispassion Act, 2005. Relevant law laid down in the case of Muhammad Akram in para-7 is reproduced below:-

7. ***The provisions of subsection (1) of section 3 of the Illegal Dispossession Act, 2005 are in the form of preventive provisions.*** The section begins with the words: "no one shall...". ***This is a prohibitory mandate.*** There is no restriction as to the class of person. All persons have been prohibited to commit the offence detailed in this provision, be he male or female. In order to constitute an offence under section' 3(1) of the Illegal

Dispossession Act, 2005, the complainant is to allege and show before the Court:---

(i) that the complainant is the actual owner (or occupier i.e. in lawful possession) of the immovable property in question;

(ii) that the accused has entered into (or upon) the said property;

(iii) that the entry of the accused into (or upon) the said property is without any lawful authority;

(iv) that the accused has done so with the intention to dispossess (to grab or to control or to occupy) the complainant.

The defence line for the accused can be:---

(1) that the complainant is not the actual owner of the property;

(2) that the entry of the accused into the property is not to dispossess the complainant;

(3) that the accused has the lawful authority to enter into the property;

(4) that the accused had no intention to dispossess the complainant.

The law has made it clear that a person who is proved guilty shall not save him from the punishment for which he may be liable under any other law for the time being in' force. (Emphasis supplied).

In the case of Mumtaz Hussain the above observations have been re-affirmed by the Hon'ble Supreme Court in the following terms:-

11. -----
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Thus for the purpose of attracting the provisions of section 3 of the Act, the Court is required to examine as to whether the property was an immovable property; **secondly** that the person was owner of the property or in its lawful possession. **Thirdly**, that the accused has entered into or upon the property unlawfully. **Fourthly**, that such entry is with intention **to dispossess i.e. ouster, evict or deriving out of possession against the will of the person in actual possession, or to grab i.e. capture, seize suddenly, take greedily or unfairly, or to control i.e. to exercise power or influence**

over, regulate or govern or relates to authority over what is not in one's physical possession (Ref. Merritt's Estate, 46 N.Y.S.2d 497, 505) or **to occupy i.e. holding possession, reside in or something.** (Emphasize supplied).

Both the judgments (PLD 2007 Lahore 231 and PLD 2010 SC 661) relied upon by Mr. Haider Imam Rizvi, advocate have been declared “**not good law**” and the three judgments (**2009 SCMR 1066** and **2010 SCMR 1254** as well as **PLD 2010 SC 725**) relied upon by the appellant have been declared “**good law**” by a larger bench of Hon'ble Supreme Court comprising five members in the cases of Shaikh Muhammad Naseem vs. Mst. Farida Gul (**2016 SCMR 1931**) and Mst. Gulshan Bibi and others vs. Muhammad Sadiq and others (**PLD 2016 SC 769**). In the case of Shaikh Muhammad Naseem the Hon'ble Supreme Court has very clearly and elaborately held that irrespective of any civil litigation between the parties **once the case under Dispossession Act is proved the accused cannot escape punishment.** The relevant portion of para-5 of the judgment is reproduced below:-

5. *In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. **Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment** on the ground that some civil litigation on the same issue is pending adjudication between the parties.*

No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law. (Emphasis provided)

I reiterate that in the case in hand the Respondents have not even claimed any civil right to “control or occupy” the subject property nor any civil litigation between the parties was pending. And even it be so the law laid down by the Hon'ble Supreme Court is that it would not make any difference and the case under the Dispossession Act, would still be maintainable.

21. I have thoroughly examined the record and even discussed the respective arguments of the either side but before concluding I want to recapitulate the proceedings of the instant appeal since many things have come on record during the course of arguments which prima-facie indicate that the Respondents have also committed several other offences which were neither triable by the special Court seized of an exclusive issue of illegal dispossession of the appellant from the subject property of a private Institution in their lawful occupation.

22. The instant criminal acquittal appeal was pending since **26.3.2015** and on **27.2.2019** it was partly heard by me. Then on **15.3.2019** after hearing Mr. Haider Imam Rizvi, counsel for the respondents at some length in presence of Respondents No. 4, 6, 9 & 11 and with the permission of learned counsel I made certain queries

from Respondent No.4 (Syed Asif Hussain Zaidi) and while adjourning the case to **22.3.2019** I passed the following order:-

Respondent No.4, Syed Asif Hussain Zaidi states before the Court that he has been running the affairs of the Trust for almost eight years. When he was asked about the bank accounts which he is operating since the Trust is established by the respondents in 2010, he informed that no bank account is being maintained by him. He has further informed that Court that for the last eight years there was no audit of any income and expenditures, however, he says that he was about to start the audit. Be that as it may, he is directed to make a categorical statement on oath that in what capacity he and who else was running day-to-day affairs of Trust and managing finance and expenditures. He should submit complete account details of donations and other income of the Trust and expenditures for the last 8 years on or before next date of hearing.

Respondent No.4 on **22.3.2019** in compliance of above orders filed an affidavit in which he admitted that **Respondents No.1 to 8** have been running the affairs of Al-Mohsin Hall. In his affidavit he has for the first time stated on oath that he and seven other Respondents are also members of Markaz-e-Huqooq-e-Shariah Pakistan and they have taken over possession and control of the subject property at the request of people of locality after a formal request to the Trustees and office bearers not to abandon the management of Al-Mohsin Hall. It is very strange, when the appellant and others have run away to avoid prosecution on the FIR No.283/2010 registered by the Respondents themselves then why and how such request was made to the absconders. And admittedly if (8) eight Respondents were already members of Markze-e-Huqooq-e-Shariah Pakistan as stated for the first time before this Court on **22.3.2019** on oath then why a so-called Working Committee of Al-Mohsin Hall was formed by the Momineen of Block No.16, F.B Area who are not claiming to be members of Markaz-e-Huqooq-e-Shariah, Pakistan. Be that as it may,

when I noticed that Respondent No.4 has avoided to comply with the above orders in letter and spirit, I was left with no option except to appoint Receiver and also order for audit of the accounts through chartered accountant from **July, 2010** onwards when the Respondents have taken over possession of the subject property as per their own statements before SHO on **3.5.2011** during inquiry under **Section 5** of the Dispossession Act. The order dated **22.3.2019** to be made integral part of this judgment, is reproduced as follows:-

*In terms of the order dated 15.03.2019, Respondent No.4, Syed Asif Hussain Zaidi was required to furnish up-to-date accounts and expenditures incurred in the running of the orphanage and the property which is subject matter of this Criminal Acquittal Appeal against his acquittal from the charges under Illegal Dispossession Act, 2005. Respondent No.11, Syed Talib Raza Abidi has also filed affidavit and certain documents as he was directed in the last order. The statement of accounts filed by respondent No.4 is not in accordance with the directions of this Court contained in the order dated **15.03.2019**. It is for the period from 2012 to June, 2018. When Respondent No.4 was confronted with his statement of accounts that he has not disclosed accounts till today and what is cash in hand. In the beginning he said that a very meager amount of cash is in hand and they rely on day-to-day donations received in the Al-Mohsin Hall for orphans to meet daily expenses of the orphans residing in the orphanage and allied expenses. However, after further queries by the Court, he informed that around **Rs.700,000/-** are in hand of the accountant appointed by him. He informed that the exact figure can be given by the accountant and he is ready to handover the amount in hand to this Court. Therefore, he was directed to call his accountant within one hour and the case was adjourned to be taken up at 12:30 P.M.*

*The case was taken up around 01:00 P.M as Mr. Haider Imam Rizvi, advocate was busy in another Court. Shamim Haider, Accountant is present and he informed that he has brought the entire cash in hand and it come to a sum of **Rs.705,100/-** (Rupees Seven Lac Five Thousand and one Hundred). **In view of the fact that all the money belongs to the orphans and it has been inappropriately handled and misappropriation cannot be ruled out since the respondents have never audited their accounts during last 8 years,** therefore, in exercise of powers*

under Section 561-A Cr.P.C read with Section 7 of the Illegal Dispossession Act, 2005 pending this appeal following interim order is passed for taking over possession and management of the subject properties of Markaz-e-Huquq-e-Shariah, Pakistan (Registered No.KAR-1622 by 1963-64).

i. Two officials of this Court namely Head Bailiff Syed Hasnain Raza, and Bailiff Nouman Razaq are appointed as Receiver of the movable and immovable properties in dispute namely property Majlis-e-Nigran Markaz-e-Huquq-e-Shariah, Pakistan (the institution) running an orphanage and Al-Mohsin Hall and allied building structure standing on plot No.ST-19, Block-16, Scheme-16, Federal "B" Area, Karachi measuring 3.4 Acres (16416.44 square yards). They will take over each and every movable and immovable properties of Markaz-e-Huquq-e-Shariah, Pakistan today under proper inventory to be prepared by them in presence of Respondent No.1, Respondent No.4 and Respondent No.11, however, if the respondents do not cooperate, the inventory may be prepared in presence of SHO, P.S Yousuf Plaza or any representative of the SHO. They are allowed to break open the locks of any portion of the building and cupboards etc.

ii. The Head Bailiff will ensure that by 10:00 am tomorrow morning at least two CC TV cameras should be installed, **one** showing the desk of receiving the donations in cash or kind and every receipt to be issued should be viewed in that CC TV Camera and the other CC TV Camera should be installed at the entry point into the premises.

iii. The SHO, P.S Yousuf Plaza is also directed to ensure that he should be available to assist the Head Bailiff and the Bailiff as and when required by them in carrying out affairs of the institution in dispute pending this appeal.

iv. The entire cash in hand shall be deposited by the Head Bailiff in presence of Mr. Shamim Haider, the accountant who has brought it, in Habib Bank Limited, Court Road Branch in the account to be opened in the name of Markaz-e-Huquq-e-Shariah, Pakistan (Registered) today and henceforth all donations received in cash shall be deposited in the Bank every next morning before 10:00 am provided the cash exceeds the value of **Rs.25,000/-** or as soon as it comes to Rs.25,000/-. The account shall be opened and operated jointly by the two bailiffs namely Syed Hasnain Raza and Nouman Razaq till the further orders.

v. **M/S Salahuddin and Co. Chartered Accountants**, having office at 514, 5th Floor,

*Madina City Mall, Abdullah Haroon Road, Saddar, Karachi, 744000 are appointed as Auditor to audit the account of the institution from **July, 2010 to 22.03.2019**. Mr. Shamim Haider and Raza Hussain Accountant and Office Assistant respectively provide all details to the auditors. Respondent No.1, 4 and 11 shall also be present in the institution during the audit. Non-cooperation in the process of Audit would entail serious consequences and it would amount to defying the order of the Court. However, still if they do not cooperate, the audit should be completed as soon as possible and for that purpose the accountant Mr. Shamim Haider is bound down that he will provide everything before the Auditor. The audit should preferably be completed within one month. The initial fee of auditors shall be Rs.50,000/- to be paid by the Receivers through cross-cheque within 15 days and the auditors are expected to start audit by Monday **25.03.2019** or next day.*

vi. The day-to-day affairs of the institution shall be carried jointly by the Head Bailiff and Mr. Nouman Razzaq, Bailiff of this Court and for this purpose they may depute any one they may like to assist them to run the affairs.

vii. Pending this appeal the appellant and any of the respondents shall have no right to interfere in the affairs of the institution.

viii. All the respondents are directed to disclose their Bank accounts numbers and place on record last three years statement of their personal Bank accounts without fail on or before the next date of hearing.

*To come up on **01.04.2019** for further arguments of the appellant and the counsel for the respondents.*

*Sd/-
JUDGE*

23. On **26.4.2019** Syed Tasawar Hussain Rizvi, advocate filed power on behalf of Respondents No.1, 4, 6, 7, 8, 12, 13 & 14 and argued this case at length before he was allowed to file written arguments. His main contention was that case under Illegal Dispossession was not made out. He even contended that at the most the Respondents could be guilty of misappropriations of funds in the Institution for the last 10 years for which the Court may take

appropriate action. I had recorded his concluding remarks in the order dated **26.4.2019** as under:-

He has stated at the bar that may be there is some misappropriations of funds in the institution from the last 10 years for which the Court may take appropriate action against the Respondents who have been running the show as several Respondents were obviously not running the show, three of them are Ulma-e-Kiram and they are only at their back to Shariatise the deeds of Respondents. His this contention will also be taken care in the final order.

24. On **6.5.2019** the Receiver appointed by Court filed interim audit report wherein it was complained that proper cooperation was not extended to the auditors by the Respondents and it has also come on record that as many as 19 persons including respondents No.1, 2, 4, 5, 6, 7, 11, 13 and 14 were probably receiving remittances of donations / zakat in favour of the Institution from different parts of the country and abroad but such donations have not been reflected in the record nor disclosed to the auditors. Therefore, names of the said 19 persons were sent to the State Bank of Pakistan through the Receiver for obtaining information of various remittance having been received by any of them. On **22.5.2019** Mr. Aatifuddin, advocate for the State Bank of Pakistan filed details of foreign remittances received by the persons about whom such information was sought. The information received from the State Bank of Pakistan reveals that out of 19 persons only respondents No. 1, 2, 4, 6, 13 and (3) three women including wife of Respondent No.6 have received various remittances of donations on different dates and from different donors during the period from 2010 to 2019 details whereof are summarized as below:-

S. No.	Name	Total Amount
1.	Syed Munawar Ali Naqvi (Respondent No.1)	Rs.198,387/-
2.	Syed Nadeem Raza Zaidi (Respondent No.2)	Rs.568,415/-
3.	Syed Asif Hussain Zaidi (Respondent No.4)	Rs.166,052/-
4.	Shahid Jiwani (Respondent No.6)	Rs.168,103/-
5.	Iftikhar Ali (Respondent No.13)	Rs.499,826/-
6.	Ambreen Shahid Wife of Respondent No.6.	Rs.135,043/-
7.	Syeda Shahida Bano	Rs.2,150/-
8.	Syeda Talat Fatima	Rs.31,876/-
	Grand Total	Rs.1,769,852/-

25. The information received from the State Bank of Pakistan was supplied to the Respondents through their counsel and also to the auditors. On the same day both the counsel have filed their respective written arguments and judgment was reserved to be announced after the Final Audit Report is received from the auditors. The auditors have filed their report on **24.06.2019** and since judgment was reserved to be announced after the audit report, therefore, before the judgment could be finalized, I thought it appropriate to provide copy of the Final Audit Report to all the respondents and also call for their comments, if any. Therefore, on **29.6.2019**, the instant Criminal Acquittal Appeal was fixed for re-hearing and copies of Final Audit Report were also sent to the respondents with notices of re-hearing to them. The Final Audit Report is reproduced below:-

Final Audit Report

It is very respectfully submitted that by orders dated 22.03.2019 and 06.05.2019 passed by this Hon'ble Court in the above criminal acquittal appeal, we (M/S Salahuddin and Co. Chartered Accountants) were appointed as Auditor to audit the account of the Majlis-e-Nigran Markaz-e-Huquq-e-Sharia Pakistan (The institution) from July, 2010 to 22.03.2019. Since

we faced a lot of practical difficulties in accomplishing our task, auditing the accounts of the institution.

Auditor's Responsibility for the Audit:-

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs as applicable in Pakistan will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISAs as applicable in Pakistan, we exercise professional judgment and maintain professional skepticism throughout the audit.

Our findings are as under:-

1. *There was No system adopted and implemented by the institution/ staff of respondents.*
2. *They have not provided the closing account for the year ended June 30th, 2009 therefore the opening balance is not posted.*
3. *We found payment vouchers and receipt books in unsorted condition.*
4. *None cash items and cash receipts were issued from the same receipt book.*
5. *Gate pass system was not implemented/operated.*
6. *Many supporting documents are missing in the payment vouchers.*
7. *Many of payment vouchers were not signed by the authorized person.*
8. *As they were using manual procedure in the department the possibility of duplication in payments is there.*
9. *Receipt books were not maintained in any proper order and the staff was using more than one receipt book at the same time which created problems for the auditors to check the serial wise receipts.*
10. *Receipts are missing for the periods 16.02.2011 to 27.02.2011, 01.04.2011 to 13.04.2011, 24.05.2016 to 31.05.2016, 01.06.2016 to 03.06.2016, 05.06.2016 to 07.06.2016, 11.06.2016 to 18.06.2016, 24.06.2016 to 30.06.2016, 01.07.2016 to 10.07.2016.*
11. *As per respondents they were not maintaining proper accounting system in the institution while we suspect it to be a false statement as we found a payment voucher for purchase of WD External Hard Drive of ITB for date backup which was*

purchased on 26.06.2017 for Rupees 6250. This hard drive is used for data backup which means there was a record being maintained on computer which they intentionally did not provide us and the hard drive was not found either.

12. *We observed that during the Eid-ul-Adha institute was providing facilities of sale/purchase of animals however No record was provided for this activity. And No record was provided for the financial activity of the sale of cowhide (Animal Skin).*

13. *Animals/goats for sadqa etc. were not received through gate pass system and there was No inventory found for livestock usage and distribution.*

14. *Mr. Asif had a Murree tour on institution expense on 28.06.2013. Murree tour expense Rs.34000/-. Is this office tour?*

15. *Imam Bargha Expense was charged on 30.11.2012 Rs.55,500/- for which there is No evidence/bills etc. in record.*

16. *There are court expenses charged in different dates without providing evidence of expense.*

17. *The receipts do not match the cash flow. As from 2011-2012 the cash balance is in negative. Which proves that the cash receipts were not prepared/issued properly.*

Conclusion/Recommendations:

1. *So far, we have ascertained that **PKR 45,208,813.00** (Rupees:- Forty Five Million Two Hundred Eight Thousand Eight Hundred and Thirteen) has been misused, misappropriated, embezzled and concealed intentionally purposely for their personal beneficial advantage. And not accounted for properly as per International Accounting Standards (ISAs).*

2. *A detailed audit is required which can bring more clarity to the accounts.*

3. *The SIMs used by the institution should be used in smartphone to access WHATSAPP, which will help us to communicate with the donors to get a history regarding donations.*

4. *Mr. Khursheed Hussain's HBL KMC Branch Account No.0015-00091812-01 is required from 1st Jul-2010 to 31st Dec-2015.*

5. *Mr. Talib Raza HBL Yousuf Plaza Branch Account No.1115-79004290-03 is required from 1st Jul-2010 to 31st Dec-2015.*

6. *Syed Kausar Abbas Rizvi HBL Khalid Bin Waleed Account No.19815000001170 is required from 1st Jul-2010 to 31-Dec-2016.*

7. *Syed Mohammad Ali Syeda Kaneez Abbas HBL Water Pump Bank Account No.1031-0078-010179-01-4 is required from 1st Jul-2010 to 31-Dec-2015.*

8. *Shamim Haider's personal family bank account statements should be obtained for the last 5 years.*

9. *Explanations required from all individuals as per Annexure A & B.*

10. *However, our submissions may kindly be considered as a Final Audit Report but subject to further comprehensive audit and reconciliation of all the accounts made available to us or/and to be made available in due course.*

Karachi

Dated: 22.06.2019

Sd/-

*For and on behalf of
M/S Salahuddin and Co.
Chartered Accountant*

26. In response to the order dated **29.6.2019** requiring comments, if any, from the Respondents on the Final Audit Report, only Respondent No.10 (Moulana) Syed Muhammad Ali Naqvi and Respondent No.11 Syed Talib Raza Abidi have filed their comments which are taken on record. However, no comments have been offered by any other Respondent on the Audit Report as well as report of the State Bank of Pakistan dated **25.5.2019** regarding remittances of donations received by some of the Respondents and women including wife of Respondent No.6. The Receiver who was appointed on **22.3.2019** has also filed a report and statement of Account from **22.3.2019**, when he was appointed, till **04.07.2019**. On **22.3.2019** a cash amount of **Rs.705,100/-** was handed over by Respondent No.4 and the same was deposited in the fresh bank account opened by the Receiver on instruction of the Court in the name of the Institution. In this period of three months and hardly 12 days the Institution has received donation in the shape of *Khums* (خمس), *Zakat* (زكاة) and *Fitra* (فطره) etc. amounting to **Rs.2,548,200/-** including the account opening amount of **Rs.705,100/-**. On **04.7.2019** an amount of **Rs.1,615,699/-** was balance in the bank account. The increase in the amount of bank balance by more than **Rs.900,000/-** during the three months time supports the opinion of the auditor in their Final

Audit Report that a thorough scrutiny of the affairs of the Institution would definitely reveal misuse, misappropriation and embezzlement in the funds of the Institution which were collected primarily for the welfare and up-keep of the ORPHANS. The offence of eating up the property of the ORPHANS after taking over the subject immovable property of the orphanage of the Institution is an offence independent to the offence punishable under **Section 3(2)** of the Dispossession Act and the punishment for such a grave offence in terms of the Divine law as given in the holy Quran is:-

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ
نَارًا تَوْ سَيَصْلُونَ سَعِيرًا.

بے شک جو لوگ ظلم کے ساتھ یتیموں کا مال کھاتے ہیں وہ
اپنے پیٹوں میں آگ بھر رہے ہیں اور عنقریب بھڑکتی ہوئی آگ
میں داخل ہوں گے (واصل جہنم ہوں گے۔)

*Those who unjustly eat up the property of
orphans, eat up a Fire into their own bodies:
They will soon be enduring a Blazing Fire!*

27. Indeed the subject matter of this Criminal Acquittal Appeal is a private property of a private Institution which was primarily established as an **orphanage**. The offence of taking over the subject property in contravention of **Sub-section (1)** of **Section 3** of the Dispossession Act was not limited to mere dispossession of an “owner or occupier” from an “immovable property”, however, other offences committed in the course of commission of the said offence were not triable under the Illegal Dispossession Act, 2005. The Respondents were facing trial under a special law which deals only with an offence in respect of “property” defined under **Section 3(e)** of the Dispossession Act. Therefore, the jurisdiction of the Court of Additional Sessions Judge under the Dispossession Act was confined to the offence of illegal dispossession of the appellant from the “immovable property” at the hands of Respondents. Consequently the

Respondents were neither tried nor they could have been tried, by the special Court seized of a case for an offence under **Section 3** of the Dispossession Act, for any other offence in respect of moveable property of the Institution or any other offence which has been committed by the Respondents during the course of illegal dispossession of the complainant party from the subject property. The remedy for the aggrieved party affected by other offences committed by the same party who has contravened **Sub-section (1)** of **Section 3** of the Illegal Dispossession Act, 2005 is also provided in **Sub-section (2)** of **Section 3** *ibid*. When an offence in respect of moveable property or any other offence is also committed during the course of an offence punishable under **Section 3(2)** of the Illegal Dispossession Act, 2005 then for such other offence the accused/Respondents can be charged and tried separately. The conviction of Respondents under **Sub-section (2)** of **Section 3** *ibid* shall be **“without prejudice to any punishment which he (they) may be liable under any other law for the time being enforce”**. In the case in hand the silence of Respondents with reference to the admitted report of the State Bank of Pakistan, the Final Audit Report, report of Receiver and some of the contentions of their own lawyer, Syed Tasawur Hussain Rizvi, suggest that possibility of commission of an offence of embezzlement and misappropriation of funds on daily basis and forgery and fabrication of documents by the Respondents during (9) nine years of continuous illegal occupation of the subject property and control of resources of a private Institution cannot be ruled out. The Respondents *prima-facie* are also liable to be charged with and tried for other offences committed by them by abusing their even otherwise illegal control and occupation of the subject property. In this context beside the above referred **Sub-section 2** of **Section 3**,

of the Dispossession Act, the Respondents even after conviction can be tried for the offence of embezzlement of funds etc. and their trial shall also be protected by the provisions of **Sub-section 4** of **Section 403** of the Cr.P.C. reproduced below:-

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

28. In view of the above factual and legal position, while allowing the instant Criminal Acquittal Appeal and convicting the Respondents in accordance with their respective roles in commission of an offence under **Section 3(1)** *ibid*, to determine their guilt for any other offence having been committed by all or anyone of them during the course of commission of aforesaid offence, a thorough inquiry and investigation is necessary to meet the requirement of **Article 10-A** of the Constitution of Islamic Republic of Pakistan 1973. The facts which have come on record of the instant appeal since **27.2.2019** prima-facie constitute an offence of financial embezzlement and willful causing losses to the property of the Institution. In this context affidavits filed by the Respondents against each other as well as reports of State Bank, Auditors Report, report of Receiver and even the written arguments of Mr. Tasawur Hussain Rizvi, advocate, in which he has categorically referred to the two withdrawal of **Rs.5,50,000/-** and **Rs.1,22,000/-** on **25.3.2019** by Respondent No.4 from the account in the name of Respondent No.1 after voluntarily handing over the assets of the Institution on **22.3.2019** to the Receiver provide sufficient material for initiating legal action against some of the Respondents. In this connection each and every

individual claiming to be Momen (مومن) of Block No.16, F.B Area, Karachi who regularly visit Al-Mohsin Hall or otherwise whoever in whatever capacity has been associated with the Institution or so-called Working Committee of Al-Mohsin Hall and/or the Trust fraudulently registered on **08.9.2010** by Respondent No.4 and 5 as well as all the employees and even volunteers including women who had worked at the Institution should be examined by the Investigation/Inquiry Officer. Even the assets of individual Respondents prior to July, 2010 and thereafter may be thoroughly checked. Therefore, the Receiver appointed by this Court is directed to hand over reports of auditors, the State Bank of Pakistan and his own report and any other relevant information/ material in his possession/knowledge to the S.H.O, Yousuf Plaza, F.B Area, Karachi to initiate thorough inquiry and investigation for action in accordance with law against whoever is found prima-facie guilty of an offence of embezzlement or any other offence in respect of moveable and immovable property of the Institution.

29. In view of the above facts and circumstances when I am inclined to allow this appeal I have first to decide about the fate of possession of the subject property in terms of **Section 8** of the Dispossession Act. In ordinary cases of contravention of **Sub-section (1) of Section 3** of the Dispossession Act, the Court while finally holding the accused guilty has to decide about “**delivery of possession of property to owner etc**”. In the exact words of the Section on completion of trial, the Court ***may, at the time of passing order under Sub-section (2) of that Section direct the accused or any person claiming through him for restoration of the possession of the property to the OWNER or as the case may be, the OCCUPIER, if not already restored to him under Section***

7. In the case in hand the OWNER of the subject property illegally occupied by the Respondents is a juristic person created by virtue of registered instrument of Memorandum of Association and Articles of Association (**Ex:5/B & 5/C**) and “the occupiers” at the relevant time were collectively the appellant and the other Trustees through and or along with the appellant. In fact, it was collective possession of all the Trustees and life members of the Institution who were alive at the time of physical dispossession of the appellant who was managing the affairs of the Institution on behalf of the collective owner. The dispossession of the appellant was dispossession of all the Trustees/members from the date and time when a group of persons headed by **Respondents No.4** and **5** and others with the blessing of three religious scholars (Ulama) who are also Respondent No.1, 10 & 15 had dispossessed them. By now several trustees have already died during almost 9 years of litigation. Appreciating the nature of the “owner” of the subject property, during the arguments of appellant, I have enquired from him about the legal status of the management of the Institution at present. He has informed that by now only two persons namely (i) **Mr. Mujawar Hussain Tabassum** who was appointed as **Permanent Trustee** and **Vice President** of Markaz-e-Huqooq-e-Shariah Pakistan Trust established by a registered deed on **06.6.1998 (Ex:5/A/11)** under the patronage of **Moulana Syed Muhammad Mohsin Naqvi Mujtahid**; and (ii) the appellant who was appointed as one of the **Trustees** on **23.6.1999** and **life member** of Markaz-e-Huqooq-e-Shariah Pakistan on **04.8.2000** prior to his nomination as General Secretary of the Institution on **01.7.2001** (Exhibits **5/A/13**, **5/O** and **5/U**) are alive. The names of office bearers/ Permanent Trustees of the Institution who have died during litigation from **10.07.2010** till date are as follows:-

1. Syed Mohammad Wazir Zaidi has expired on **09.6.2011**.
2. Syed Muhammad Hussain Naqvi has expired on **25.6.2013**.
3. Syed Muhammad Dawood Rizvi has expired on **23.10.2013**.
4. Syed Ali Aala Jaffery has expired on **11.11.2015**.

30. In view of the above factual position for all practical purposes in 2010 more than six Trustees were available to run the affairs of the Institution as according to **Article 14(A)** of Memorandum of Association and Articles of Association of Markaz-e-Huqooq-e-Shariah Pakistan (Ex:5/B & 5/C) the requirement of quorum for meeting of the Association is minimum five (5) members. By now the number of members/trustees has already been reduced below the required number of members to complete the quorum to hold a meeting to even induct/appoint new Trustees/ Members of the Institution, therefore, before exercising the power conferred on the Court under **Section 8** of the Dispossession Act, to direct the Receiver, who is in possession of the subject property, for restoration of its possession to the persons who can lawfully control, “**occupy**” the subject property, the “**owners**” of the Institution have to be resurrected according to the registered instrument which has created the Institution. The appellant and even the counsel for the Respondents are of the view that this Court may appoint any respectable member of the community to fill the vacancies fallen vacant during the illegal possession of the subject property by the Respondents. Irrespective of their consent, when the Court has to pass an order for restoration of possession of the subject property to the “Owner” or the “Occupier” and such orders have to be “given effect”, then in the given circumstances of the case in hand this

Court has to exercise its inherent power under **Section 561-A** of the Cr.P.C to secure the ends of justice. It reads as follows:-

561-A. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Therefore, unless the OWNERS of the subject property is re-constituted, orders directing the **Receiver** who is in possession of subject property for restoration of its possession to the owner/occupier cannot be passed. And it is judicial responsibility of this Court to pass such orders and, therefore, to “give effect to” such orders as well as “to secure the ends of justice” in favour of the “orphans” and needy who have actually suffered, the following persons including the appellant and Mr. Mujawar Hussain Tabassum, are hereby appointed as Permanent Trustees and Trustees in terms of Registered Memorandum of Association and Articles of Association dated **19.9.1963** (Ex:5/B and 5/C) read with the registered declaration of Markaz-e-Huqooq-e-Shariah Pakistan Trust registered on **06.6.1998** (Ex:5/A/11):-

1. **Syed Najmul Hassan Jafferi** son of Syed Ali Mutaqi Jafferi, CNIC No.42201-0639979-1, resident of House No.4, Mohallah Aamil Colony No.1, Soldier Bazaar, Karachi. **D.O.B 10.03.1942** Permanent Trustee and **Chairman/Nigran-e-Aala**.
2. **Mujawir Hussain Tabassum** son of Syed Mehmood Hasan, CNIC No.42201-0380273-7, resident of Flat No.B-1, Sattar Tarace, Block-11, Gulshan-e-Iqbal, Karachi **D.O.B 03.05.1945** Permanent Trustee and **President**. (He is already permanent Trustee) as his name is mentioned in Deed of Declaration of Trust of Markaz-e-Huqooq-e-Shariah Pakistan Trust duly registered on **06.6.1998** (Ex:5/A/11).
3. **Syed Anis Abbas Rizvi** son of Zair Hussain Rizvi, CNIC No.42201-8778109-5, resident of Flat No.05, Plot No.C-15, Gulshan-e-Iqbal, Block-2, Karachi. **D.O.B 08.07.1946**. Permanent Trustee and **Vice President**.

4. **Agha Tajamul Hussain** son of Agha Yousuf Hussain, CNIC No.42301-2829195-9, resident of House No.F-44, Block-7, Mohallah Kahkashan, Clifton, Karachi. **D.O.B 03.08.1946.** Permanent Trustee and **General Secretary.**
5. **Syed Masood Ali Naqvi** son of Syed Shahid Ali Naqvi, CNIC No.42301-1125542-5, resident of House No.32/1Street No.31, Off: Khayaban-e-Shamshir, Phase-V, DHA, Karachi. **D.O.B 22.10.1947.** Permanent Trustee and **Treasurer.**
6. **Mr. Mazhar Ali Jumani** son of Hussain Ali Jumani, CNIC No.42301-4512189-1, resident of Flat No.1-A, Plot No.F-22, Block-4, Mohallah Mehdi Homes, Clifton, Karachi. **D.O.B 27.03.1948.** **Permanent Trustee.**
7. **Syed Hussain Imam Abidi** son of Syed Ali CNIC No.42101-4097196-1, resident of House No.C-142, Block-A, Mohallah North Nazimabad, Karachi. **D.O.B 08.10.1948.** **Trustee.**
8. **Mr. Ghulam Abbas Badami** son of Raza Hussain Badami, CNIC No.42000-0516733-5, resident of Flat No.162/1, Zawar Homes, Block-3, Mohallah PECHS, Karachi. **D.O.B 05.01.1953.** **Trustee.**
9. **Syed Ali Shamim Naqvi** son of Syed Samimul Hassan Naqvi, CNIC No.42201-8755555-3, resident of House No.28, Faisal Street-2, Mohallah Phase-8, PDHA, Karachi. **D.O.B 02.10.1960.** **Trustee.**
10. **Syed Muhammad Ahsan** son of Syed Muhammad Mohsin-ul-HaqNaqvi, CNIC No.42501-1012624-5, resident of Flat No.3, B-50, 3rd Floor, Noman View, Plot Metroville-III, Scheme-33, Gulzar-e-Hijri Block-1, Sector 14-A, Karachi. **D.O.B 07.03.1962.** **Trustee.** (He is appellant and he was earlier appointed as Trustee on **23.6.1999** by virtue of Registered document (Ex:5/O) and life member of Markaz-e-Huqooq-e-Shariah Pakistan (registered) (Ex:5/S).
11. **Ali Raza Rizvi** son of Syed Muhammad Hafeez Rizvi, CNIC No.42101-6579910-1, resident of House No.B-110, Block-13, Federal "B" Area, Karachi. **D.O.B 02.11.1965.** **Trustee.**

I have exercised inherent powers of High Court to revive the Institution in terms of the initial registered document whereby the Institution was created. I am highly grateful to all the persons named above for having kindly consented to take the responsibilities for the sake of orphans and other possible charitable services through the Institution. The actual reward for their kindness would be fulfillment of the following promise by our Holy Prophet to whoever takes care of orphans:-

أَنَا وَكَافِلُ الْيَتِيمِ فِي الْجَنَّةِ هَكَذَا، وَقَالَ بِإِصْبَعَيْهِ السَّبَّابَةِ وَالْوَسْطَى.

میں اور یتیم کے نگرانی کرنے والا جنت میں اس طرح داخل ہونگے،
(مثال کے طور پر) شہادت کی انگلی اور درمیانی انگلی ملا کر،
درمیان میں کوئی جگہ نہیں چھوڑتا۔

“I and the caretaker of the orphan will enter Paradise together like this, raising (by way of illustration) his forefinger and middle finger jointly, leaving no space in between.”

31. Now coming back to the offence under **Section 3(1)** of the Dispossession Act having been committed by as many as 15 Respondents as alleged by the appellant in the memo of Direct Complaint under Sections, 3, 4, 5, 7 and 8 of the Illegal Dispossession Act, 2005. The Respondents have collectively taken the stance that irrespective of any lawful authority to do so, they have taken over the possession of the subject property on two counts; firstly, the Momineen (مومنین) of Block No.16, F.B Area, Karachi had warned the lawful Trustees to control the deteriorating state of affair (انتظامی بدحالی) in the Institution and continue to lookafter orphans instead of abandoning it but the Trustees did not respond to their warning; and secondly, under compulsion when the appellant and (Moulana) Syed Mohammad Hussain Naqvi ran away on coming to know that Respondent No.4 has lodged FIR against them leaving the orphans unattended. I have already discussed these contentions of the Respondents in para-15 to 20 of this judgment and reached to the conclusion that such excuses to commit an offence under **Section 3** of the Dispossession Act are not legal defense. By all means the Respondents have acted **“without any lawful authority”** to dispossess the otherwise lawful occupiers of the subject property and, therefore, the Respondents are guilty of committing the offence under **Section 3(1)** of the Dispossession Act. The offence has continued for almost nine (9) years until the Receiver was appointed

by this Court on **22.3.2019** and, therefore, despite making ONE AND THE SAME statement by all the Respondents, it is difficult to say that each and every Respondent has play identical role during the nine (9) years long commission of the offence of illegally dispossessing “owner or occupier” from the subject property. However, they all have shared common intention as may be gathered from the fact that each one of them on **29.11.2014** and **12.12.2014** has not only made identical statement under **Section 342** of the Cr.P.C but each one of them on **03.12.2014** has signed one and the same written statement under **Section 265-F(5)** of the Cr.P.C to fully support the real culprits who continued to control and occupy the subject property for almost (9) nine years without break. And what have they done during this period can be guessed from the contents of para-21 to 30 above. Therefore, each one of the Respondents is guilty of contravening **Sub-section (1) of Section 3** of the Dispossession Act, if not throughout the Nine long years to some extent at certain point of time by extending their unconditional support to each other.

32. The overall assessment of record reflects that the offence appears to be brain-child of few persons led by accused **Syed Asif Hussain** (Respondent No.4) and **Syed Kausar Abbas Rizvi** (Respondent No.5) who like any other accused/Respondent were never associated with the private Institution known as Markaz-e-Huqooq-e-Shariah Pakistan (Registered), the lawful owner of the subject property by virtue of registered lease deed. However, in order to give legal cover to their misdeeds firstly they (Respondents No.4 & 5) posed themselves as **General Secretary** and **Deputy General Secretary** of a fake and self-styled **Working Committee** of **Al-Mohsin Hall** formed by Momineen (مومنین) of Block-16, F.B Area, Karachi allegedly around 15/20 years ago. Then after accomplishing

the mission of illegally dispossessing the lawful occupier from the subject property they converted the said Working Committee into a registered Trust on **08.9.2010** and Respondent No.4 and Respondent No.5 declared themselves as Managing Trustee/General Secretary and Trustee/ Deputy General Secretary and declared the subject property of a private Institution is WAQF property of the said Trust. Interestingly in the said Working Committee allegedly formed by the Momineen (مومنین) of Block-16, F.B Area and subsequently converted into a Trust, most of the Momineen (مومنین) are close family members and relatives of Respondent No.4. The relations of different accused/ Respondents (*Momineen*) of Block-16, F.B Area with Respondent No.4 **Syed Asif Hussain** are that (i) accused **Syed Nadeem Raza Zaidi** (Respondent No.2) is **his real brother**, (ii) accused **Shahid (Hussain) Jeewani** (Respondent No.6) is **husband** of his **real sister-in-law**, (iii) accused **Syed Khursheed Hussain** (Respondent No.12) is his **real brother-in-law** (Husband of his own real sister), (iv) accused **Iftikhar Ali** (Respondent No.13) is also his **brother-in-law** (Brother of his wife) and (v) accused **Mohsin Abidi** (Respondent No.14) is **real uncle of his wife**. All these Respondents and Respondent No.5 have been in continuous illegal possession and control/occupation of the subject property, and their case appears to be identical as compare to be the role/case of other Respondents namely Respondents No.1 and 7 to 11 though they have made identical statement under **Section 342** of the Cr.P.C as well as written statement under **Section 265-F(5)** of the Cr.P.C. However, record shows that though they share common intention with the other Respondents, their role is different. Respondent No.1 has extended co-operation of providing his own bank account and or services of opening a fresh bank account in his name at the request of Respondents No.4 and 5. Mr. Tasawur

Hussain Rizvi, advocate has categorically referred to his role in para-5 of his written arguments that he has opened bank account but he was otherwise not involved in management. Respondents No.7 and 8 were involved as Momineen of Block-16, F.B Area, Karachi as active members of so-called Working Committee of Al-Mohsin Hall and Trustees of the Trust created by them but later on they have been shifted away from Block-16, F.B Area after the offence was actually committed and their direct or indirect involvement in the offence did not continue to be the same for quite some time. Respondents No.9 and 10 (Syed Nasir Abbas) & [(Moulana) Syed Mohammad Ali Naqvi] had common intentions and they have fully supported the Momineen of Block No.16, though they were not resident of Block No.16 F.B Area. Their presence at the place of incident on **10.7.2010** was admitted even by their counsel in para-3 of written arguments that they were there to attend only a Majlis. But they have not taken this stand in their statements under **Section 342** and **265-F(5)** of the Cr.P.C. The role of Respondent No.11 Syed Talib Raza Abidi was mixed role of common intention and support to the main accused as and when required to run the affairs of the illegally occupied subject property. However, at later stage he has distanced himself from the main accused. He has even filed written complaint against the main Respondents to the S.H.O, P.S Yousuf Plaza which has not been denied by Respondent No.4 and others when it was brought to the notice of this Court through his affidavit, copy whereof was supplied to the other Respondents.

33. The order of acquittal of the Respondents by the trial Court was so perverse, illegal and contrary to law that even the absconding accused/ Respondents namely **Dr. Syed Nadeem Raza Zaidi** (Respondent No.2) and (Moulana) **Syed Ali Murtaza Zaidi**

(Respondent No.15) have also been acquitted without realizing that once the Court declares an accused absconder, his case is supposed to be separated from the case of other accused facing the trial. As far as Respondent No.2 is concerned, now his brother who is co-accused/ Respondent No.4 has informed the Court that during the proceedings of instant appeal Respondent No.2 has been shifted to USA. Respondent No.4 is directed to give complete address and phone number of Respondent No.2 to the Investigating Officer/ police to be brought on record of trial Court for further proceedings. Respondent No.15 (Moulana) **Syed Ali Murtaza Zaidi** is very much available in the city but he appears to be so influential person that despite addressing public religious gatherings in the vicinity of the place of incident, the police has failed to execute perpetual warrants of his arrest until he was unlawfully/ illegally acquitted by the trial Court and the warrants issued by trial Court have become infructuous.

34. Consequent to the above facts, law and discussion the instant appeal against Syed Irshad Hussain, Respondent No.3, who has died on **27.01.2019**, stands abated and against the other Respondents/ accused it is allowed in the following terms:-

(a) The order of acquittal of Respondents No.2 and 15 namely Dr. Syed Nadeem Raza Zaidi and (Moulana) Syed Ali Murtaza Zaidi is set aside and their case is remanded to the trial Court with following directions:-

(i) Since it has come to the notice of the Court through Respondent No.4 that absconding accused/Respondent No.2 is traceable and living outside Pakistan, the Court should issue Red Warrant through Interior Ministry for

the arrest and production of absconding accused/
Respondent No.2 before the trial Court. The trial Court is
directed to take steps for extradition of Respondent No.2
to face the trial.

(ii) As far as Respondent No.15 is concerned, the trial Court
should issue fresh non-bailable warrants of his arrest to
be served through SSP, Central Karachi. In case of
failure of SSP Central, Karachi to produce Respondent
No.15, the trial Court should start fresh proceedings
under **Section 87** and **88** of the Cr.P.C against him. The
trial Court should issue fresh proclamation and take
steps for attachment of his immovable properties by
obtaining information from the Revenue Authorities and
also attach his Bank Accounts after obtaining
information from the State Bank of Pakistan.

(iii) The trial Court is also directed to submit report of
progress of case against Respondents No.2 and 15 to this
Court through MIT-II every month for perusal in
Chamber.

(b) As far as the Respondents/accused who have contested this
Criminal Acquittal Appeal, they are convicted and sentenced as
under:-

(i) Respondents No.4, 5, 6, 12, 13 and 14 namely **Syed Asif
Hussain Zaidi, Syed Kausar Abbas Rizvi, Shahid
(Hussain) Jiwani, Syed Khursheed Hussain, Iftikhar
Ali** and **Mohsin Abidi** are convicted under **Section 3(2)**
of the Illegal Dispossession Act, 2005 and sentenced to

undergo three (3) years Rigorous Imprisonment with fine of **Rs.100,000/-** each in default whereof to undergo further Rigorous Imprisonment for three (3) months; with further directions to pay **Rs.500,000/-** each as compensation to the Institution namely Markaz-e-Huqooq-e-Shariah Pakistan (registered) in view of the provisions of **Section 544(A)** of the Cr.P.C and in default in payment of compensation to further undergo six (6) months simple imprisonment.

- (ii) Respondents No.1 and 7 to 11 namely **Syed Munawar Ali Naqvi, Syed Muhammad Abbas Rizvi, Syed Raza Mehdi, Syed Nasir Abbas, Syed Muhammad Ali Naqvi** and **Syed Talib Raza Abidi** are also convicted under **Section 3(2)** of the Illegal Dispossession Act, 2005 and sentenced to undergo only seven (7) days Rigorous Imprisonment with fine of **Rs.50,000/-** each in default whereof to further undergo additional seven (7) days Rigorous Imprisonment; with further direction to pay **Rs.300,000/-** each as compensation to the Institution namely Markaz-e-Huqooq-e-Shariah Pakistan (registered) in view of the provisions of **Section 544(A)** of the Cr.P.C and in case of default in payment of compensation to further undergo six (6) months simple imprisonment.
- (iii) The amount of fine and compensation should be deposited by the respondents with the Nazir of this Court and as soon as it is deposited, the Nazir should deposit the amount of fine in the government treasury and hand over the amount of compensation to the management of

the Markaz-e-Huquq-e-Sharia Pakistan (Registered) forthwith.

35. The Respondents, during the instant acquittal appeal were not even asked to furnish security pending the acquittal appeal, however, they have been represented through counsel, therefore, the Respondents/ accused present in Court are taken into custody and remanded to the jail authorities to serve their respective sentences. And Respondents who are not present, issue warrant of their arrest through SSP Central, Karachi to immediately take them into custody and handover to the jail authorities to undergo their respective sentences. Compliance of this order by the SSP Central, Karachi within (7) days from today should be submitted to this Court through MIT-II for information.

36. The Receivers should comply the direction contained in para-28 above. They are also directed to clear the bill of the auditors within three days as well as handover all the moveable and immovable assets viz the subject property of the Institution including Account maintained by them to the persons mentioned in para-30 above.

JUDGE

Karachi, Dated: 17.07.2019

Ayaz Gul