

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.**

Writ PetitionNo.....1752-P.....of.....2019

J U D G M E N T

Date of hearing: 24th April, 2019

Petitioner(s): (Inam Ullah Khan Marwat) by Mr. Jehanzaib Khan Muhammadzai, Advocate

Respondent(s):(Chairman NAB etc.) by Syed Azeem Dad, Addl. DPG

SYED AFSAR SHAH, J.- Inam Ullah Khan

Marwat, the petitioner, through the instant constitutional petition, has asked for the issuance of an appropriate writ declaring that the order dated 24.04.2017 of NAB authorities, whereby, his house No.12-G, Street No.13, Sector F-7/2, Islamabad has been placed under ‘caution’ and, pursuant thereto, the CDA refused to issue clearance certificate thereof, being nullity in the eye of law is of no legal effect whatsoever. He has also asked for the issuance of an appropriate writ directing the respondents to remove the ‘caution’ by issuing him clearance certificate of the aforesaid house / property.

2. The learned counsel appearing on behalf of the petitioner contended that when the house / property in question (*House No.12-G, Street No.13, Sector F-7/2, Islamabad*) is not the part and parcel / subject matter of the

reference, filed against the principal accused Yousaf Ali, wherein, the petitioner has allegedly been shown as benamidar for him (the principal accused) regarding House No.03, Sector F-11/4, situated at main Nazim-ud-Din road, Islamabad, in that eventuality, the NAB authorities were having no power to put caution on the property / house in question, which was lawfully acquired by the petitioner with his earnest money / through legal means rather by doing so, they have committed violence on Section 23 of the National Accountability Ordinance, 1999 warrants interference of this Court while exercising its constitutional jurisdiction.

3. As against that the learned Addl. DPG appearing on behalf of the NAB authorities vehemently argued that the petitioner is co-accused / benamidar of principal accused Yousaf Ali in reference No.05/2017, for which, he is barred under Section 23 of the Ordinance from transferring / creating charge on any of his properties and since Section 23 *ibid.* automatically comes into operation, therefore, the act of the respondents-NAB by putting a caution on the house in question of the petitioner, being in accordance with law, is not open to any interference.

4. We have gone through the entire record carefully and considered the submissions of the learned counsel for the petitioner as well as the learned Addl. DPG for the NAB.

5. The record reveals that though vide the impugned letter dated 24.04.2017, the properties of the petitioner i.e. House No.03, Sector F-11/4, situated at main Nazim-ud-Din road, Islamabad and House No.12-G, Street No.13, Sector F-7/2, Islamabad were placed under caution by the NAB authorities by invoking the provision of Section 23 of the Ordinance but only the former house / property was made subject matter of reference No.05/2017, which was filed on 22.08.2017. Meaning thereby, that though the said house (*House No.12-G, Street No.13, Sector F-7/2, Islamabad*) was in the knowledge of the NAB authorities but, even then, no freezing order as required under Section 12 of the Ordinance was passed, which otherwise, if at all, unless confirmed by the Court, would not remain in the field beyond fifteen days. Had the house in question been part and parcel of the subject reference like the other house (*House No.03, Sector F-11/4, situated at main Nazim-ud-Din road, Islamabad*), which also remained under 'caution' besides the house in question, the NAB authorities would have come into action by filing supplementary reference against the petitioner and when there is nothing on the record in this regard, inference could be drawn that the house in question is either having no relevancy with the other house, which is subject matter of the reference or the NAB authorities knew that the house in question didn't

belong to the petitioner, that's why, they didn't want to take any action in this regard.

Even otherwise, the Chairman, NAB could only exercise the powers under the said provision of law, we mean, under Section 12 of the Ordinance, prior to taking cognizance by the competent Court of law and, the moment, Court takes cognizance of the matter (as in the instant case), in that eventuality, the Chairman, NAB would become *functus officio* and only the competent Court can pass any order with regard to the property of the accused, which is not the case in hand as no such order has been passed by the learned Trial Court with regard to the house in question. When seen in this perspective, the NAB authorities were having no power to place any embargo on the transfer of house in question of the petitioner by invoking the provision of Section 23 *ibid.* and, in this regard, the impugned letter dated 24.04.2017 cannot be said to have been issued in accordance with law. In this view of the matter, we are left with no option but to allow this writ petition.

6. For the reasons discussed above, we allow this writ petition, set aside the impugned letter dated 24.04.2017 of the NAB authorities with regard to placing a '**caution**' on the house of the petitioner bearing No.12-G, Street No.13, Sector F-7/2, Islamabad and direct them to remove the same

(‘caution’) forthwith enabling the CDA to issue him clearance certificate / NOC / NEC in this regard, if he is otherwise entitled.

Announced
24. 04. 2019

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Approved for Reporting