

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D-5479 of 2016

Present:

**Mr. Justice Muhammad Junaid Ghaffar.
Mr. Justice Muhammad Humayon Khan.**

Ahmed Saeed ----- Petitioner

Versus

Director General NAB ----- Respondent

Date of hearing: 24.05.2017.

Date of order: 24.05.2017.

Petitioner: Through Mr. Shaikh Javed Mir Advocate.

**Respondent: Through Ms. Naheed Parveen DAG.
Mr. Riaz Alam Khan Special Prosecutor
NAB.**

ORDER

Muhammad Junaid Ghaffar, J. Through this Petition the
Petitioner seeks the following relief(s):-

- a) Declare that the letter dated 7.3.2016 of the Respondent (Annexure H) is ab-initio, illegal, having no legal value.
- b) Direct the Respondent to act strictly in accordance with law and to initiate proper action on the complaint of the Petitioner.
- c) Any other relief(s) which this Hon'ble Court deem fit and proper under circumstances of the case."

2. Learned Counsel for the Petitioner submits that the Petitioner had entered into an Agreement of Sale with one "*Rufi Properties*" in respect of land measuring 20-00 acres situated at Survey Nos. 269,22,271 and 272 of Deh Bund Murad, Gadap Town and subsequently, the buyer defaulted in making payments to the Petitioner and did not honour the agreement. He submits that a complaint was made before the Respondent for taking cognizance of the matter under the NAB Ordinance; however, they instead of making any effort or conducting

inquiry, have forwarded his complaint to Association of Builders and Developers (“**ABAD**”) in violation of NAB Ordinance and therefore, they may be directed to take cognizance and initiate inquiry / investigation against the said person(s) for cheating public at large. In support he has relied upon the case reported as *Amjad Hussain V. National Accountability Bureau and another (2017 Y L R 1)* and *Abdul Aziz Memon and others V. The State and others (PLD 2013 SC 594)* and has contended that inquiry and investigation can be carried out against a private person. He further submits that Reference to ABAD is uncalled for as that is not a forum for redressal of the grievance of the Petitioner.

3. On the other hand, Special Prosecutor NAB submits that the matter in question is a private dispute regarding contractual obligations, and NAB has correctly forwarded the complaint to ABAD for deciding it at their end. He submits that under Section 27 of the NAB Ordinance the matter can be sent to any agency or any other private person for assistance; therefore, instant Petition is misconceived. In support he has relied upon the case reported as *Rafiq Haji Usman V. Chairman NAB and another (2015 S C M R 1575)*.

4. We have heard the learned Counsel for the Petitioner as well as Special Prosecutor NAB. On 18.10.2016, while issuing notice of this petition an objection was raised by this Court as to its maintainability. On 10.5.2017, after seeking instructions, learned Counsel had stated that he will proceed with the petition. Today we have heard the learned Counsel on maintainability of this petition. It appears to be an admitted position that an Agreement of Sale was entered into by Munawar Construction being private limited company through present Petitioner on 14.2.2009 with one Ruffi Properties which is not a Respondent before us. The agreement in question was regarding sale of the subject property and it appears that thereafter, as alleged, commitment was not honoured by the said Ruffi Properties. It further appears that there was also an agreement for development dated 9.3.2009 between the said parties. The present Petition has been filed as the complaint of the Petitioner addressed to NAB has not been converted into any inquiry or investigation and instead has been sent to ABAD for taking appropriate action at their end.

We are afraid the grievance of the Petitioner with Ruffi Properties appears to be of a contractual nature and for such individual grievance; NAB is not the appropriate forum. It is not the case of the

Petitioner that the allottees of Ruff Properties have approached NAB as “public at large” and have requested to take any action against the said concern for deceiving and cheating by syphoning of their hard earned money. The Hon’ble Supreme Court in the case of **Rafiq Haji Usman supra** had the occasion to examine a more or less similar situation wherein the allegation against the builder was that he after having received money from allottees had not handed over the possession and the relevant finding reads as under:-

“The above transaction between the complainants/purchasers/ allottees and the firm for all intents and purposes was/is in the nature of an agreement to sell/contract for the sale of immovable property as mentioned above and according to the settled law the consequences of violation of such an agreement are prescribed through civil remedies available to an aggrieved party; such as to seek the specific enforcement of the agreement, if the same is capable of enforcement or to ask for the damages. But in any case the relationship inter se the parties carries the implications of a civil dispute giving rise to rights and obligations of the civil nature. Therefore, where the element of fraud, deceit etc. or a specific provision of any law which constitutes a criminal offence is not attracted and made out and there also is no material available on the record in this context, the exercise of discretion for granting bail by the courts in appropriate cases should not be withheld as a punishment. However it should not be understood that if a clear case of criminal offence has been made out, only for the reason that there also is some element of civil dispute involved that the bail should be granted as a matter of course; rather what shall be seen and evaluated in such cases would be what is the predominate factor, criminal or the civil. It may also be added here that the matter having some tinge of civil dispute simpliciter and/or singularly shall not be a ground by itself for the grant of bail. But this factor should be relevant along with other grounds raised entitling the petitioner (in a bail) matter for the said concession.

We are also of the opinion that the provisions of the NAB Ordinance are neither meant nor attracted/applicable for the purposes of settling scores of civil nature or the disputes emanating out of the contract between the few individuals and the delinquents (who allegedly violated the contract) having no criminal intent and motive behind it. The person aggrieved of the contractual breach of a civil contract, must resort to the civil remedies as has been mentioned above. But subject to what has been opined in the preceding paragraph.

Furthermore it is not a case where the money has been taken from the public in large number and scale and not utilized for the purposes of building of the project as has been mentioned earlier, it is only 22 people out of 438 who have come forward and out of these, three have patched up the matter with the firm, six have gone to the Court of law where the matter is pending regarding three, while three cases have been dismissed as being time barred or on some legal issue (these facts are not controverted by the Prosecutor NAB). In case of certain persons (out of these 22) the contract of sale, we are told, have also been cancelled by the firm, and there is no material on the record in relation to them whether they had taken any legal action about the cancellation of the contract. In essence, only thirteen persons are left who

have grouse against the firm or the petitioner and the challenge obviously is that the terms and conditions of the contract which was entered into between them and the firm have not been fulfilled.”

5. Even otherwise, we had confronted the learned Counsel for the Petitioner to refer to any provision under the NAB Ordinance which can be of any assistance to Petitioner’s case; however, none could be cited, rather reliance has been placed on the case of **Abdul Aziz Memon supra**, which according to us is materially different in facts as against Petitioner’s case, whereas, there is no cavil to the proposition that the NAB Authorities can proceed against a private person as defined under Section 9(a) *ibid*. However, the Petitioner’s case is an exception, and does not fall under any of the provisions of the NAB Ordinance being an individual and distinct grievance, for which a civil remedy is the appropriate redressal.

6. In view of hereinabove facts and circumstances of this case, we are of the considered view that instant Petition is frivolous and misconceived in nature, and is therefore, dismissed by imposing cost of Rs. 5000/- to be deposited in the account of Sindh High Court Clinic.

7. Petition stands dismissed as above.

J U D G E

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ARSHAD/