

**Order sheet**  
**IN THE HIGH COURT OF SINDH, KARACHI.**

Present:-  
**Mr. Justice Muhammad Iqbal Kalhoro.**  
**Mr. Justice Shamsuddin Abbasi.**

**Constitutional Petition No.D-7991 of 2019**

Saeed Hassan

**Versus**

National Accountability Bureau & another

**Date of Hearings: 02.06.2021 & 09.08.2021.**

**Date of order: 17.08.2021.**

Mr. Khawaja Shamsul Islam, advocate for petitioner  
Barrister Waleed Rehan Khanzada, advocate for respondent No.3/KW&SB  
Mr. Riaz Alam, Special Prosecutor, NAB a/w IO Adeel Zia  
Ms. Naushaba Haq Solangi, AAG

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**ORDER**

**Muhammad Iqbal Kalhoro, J:-** Aggrieved by an order dated 24.10.2019, passed by the learned Administrative Judge, Accountability Courts Sindh at Karachi, rejecting the report recommending closure of investigation undertaken by National Accountability Bureau against petitioner on a complaint forwarded by Transparency International Pakistan alleging forgery in the record transferring 8000 square yards of government plot in the name of petitioner and illegal construction of additional floors on the building standing thereon, the petitioner has filed this petition, praying essentially for setting aside of the impugned order and allowing consequential reliefs of unfreezing his accounts and returning all the documents and files of the project seized during the investigation at the time of raid on his office.

2. The petitioner, a builder, statedly a part of Saddar Market Development Consortium, was entrusted to build additional six floors on Saddar Cooperative Market Karachi after a bidding process carried out under the auspices of Project Director, Cooperative Development Funds, Cooperative Department. After due formalities and approval of building plan by Karachi Building Control Authority in the year 1997, he started work on the plan but met with several hiccups on account of varied reasons including ambiguity about title of the bidder over the plot comprised of essentially eight small plots, their commercialization and filing of civil suits by a number of people having stakes either in favour of or against the

project. Meanwhile, when complaints were sent by these elements against the petitioner to different forums, a number of enquiries were embarked upon against him engendering further troubles to completion of the project. But, ostensibly, nothing incriminating was found against him, and despite all the hurdles, he succeeded in completing about 95% of the work on the project. Against that horizon, NAB, approached by Transparency International Pakistan, took up an enquiry against him followed by investigation, and submitted a report dated 07.03.2019 in the court recommending closure of investigation. Learned Administrative Judge, however, found it faulty and while rejecting the same has ordered reinvestigation in the matter to be concluded within six weeks.

3. Learned defense counsel in his arguments mainly hit at the wisdom behind such a conclusion and pointed out that there was found absolutely no evidence of any wrongdoing against the petitioner. That learned Judge has based his opinion on the idea of *mala fide* on the part of investigating officer without pinpointing the material that helped him assume the same. Learned Special Prosecutor, NAB too could not persuade himself to support the impugned order.

4. Considered the case in the light of material available on record. The scope of enquiry/investigation undertaken by the NAB, as we have understood, was confined to probing allegations of forgery in the record of rights effecting transfer of a big government plot i.e. 8000 square yards situated in Saddar Karachi in favour of some private persons, and making additional construction on already standing building thereon without approval of Sindh Building Control Authority. In the enquiry certain illegalities on the part of petitioner yielding to his failure to honour contractual obligations, and complete the project, etc. were traced by the inquiry officer. His such report paved the way for investigation in which however it was dug up that the land was still in government's ownership (Cooperative Department) and was not transferred, and since the building belonged to the government, in view of a notification dated 31.12.2008 excluding government buildings from purview of SBCA, its approval for erecting additional structure thereon was not required. Hence, the IO recommended closure of the investigation and put up his report before the Regional Board Meeting (RBM) for a decision which after articulating the issue threadbare agreed with him and observed that no loss to the government exchequer was caused and that the matter at the most involved breach of contractual obligations on the part of the petitioner.

5. Against such conclusion nothing is available on record to tempt us to take a reverse view and agree with the impugned order. This opinion, irresistible as it is, reached by the IO and endorsed by RBM, is an outcome of a long toil aimed at ferretting out incriminating material against the petitioner, but without a result. Interestingly not only this time but in already held investigations and enquires on

complaints before other forums including Anti-Corruption Establishment, no proof qua allegations against the petitioner was found and he was exonerated. However, in the impugned order, learned judge has reversed the opinion of the IO, upholding innocence of the petitioner, hypothesizing *mala fide* on his part, and his failure to take into account the complaints of effectees. In our view, *mala fide* by the IO can only be alluded and taken as a ground for disagreeing with his report when the material available emphatically points out to evidence connecting the accused with the crime, and when, on a look at the material, no other opinion except the one endorsing involvement of the accused in the crime is possible. But when such scrutiny bears only likelihood of a different result, or/and when the learned judge, acting on his own wisdom, despite the negative report and no apparent material, still perceives traces of incriminating evidence and decides to take cognizance of the offence against the accused, *mala fide* as an element affecting the IO's opinion to deliberately favor the accused will not be read in his report. Yet, in certain cases on a negative report, learned judge could order for reinvestigation, but it must be urged that he shall not until he delivers reasons to warrant his opinion. He cannot simply observe in the order that the IO has acted *mala fide*, without actually specifying the reasons with reference to the material inducing him to form such opinion directing a course different than the one recommended. When we apply this criteria, we don't find any traces of material sufficiently establishing nexus of the petitioner with the allegations to vindicate either taking cognizance of the offence or directing reinvestigation in the matter. No material to show nexus of the petitioner with the allegations, or evidence that the IO deliberately out of *mala fide* has overlooked such material is available. The land is still with the government and the things as they stand SBICA has no jurisdiction to grant approval for alteration or making addition in government buildings. Reinvestigation is not going to alter this reality or even bring forth new evidence in this regard.

6. Another factor which weighed with the leaned judge to order for reinvestigation seems to be the fact of his receiving complaints from public / affectees against the petitioner. Intriguingly, neither any detail of such complaints are given in the impugned order, nor the reason as to why the affectees did not approach the IO or any other relevant authority of NAB in this regard. There is no observation by learned judge either that before being influenced by such complaints, he tried to confront the same to either petitioner or the IO to see if they can justify reinvestigation in the matter or not. Besides, he did not try to appreciate that those complaints had nothing to do with the mandate and scope of the investigation against the petitioner and were mainly, as is recorded by him, pertaining to breach of contractual obligations by the petitioner, an issue totally different to what the IO was authorized to investigate about. More than that the

proceedings before him were not of such nature to allow entertaining such complaints. In part because the learned presiding officer was seized with an issue requiring him to only form an opinion, on the basis of material available, to either agree or not with the conclusion drawn by IO in investigation about guilt of the petitioner. And partly because the affectees had the occasion to either approach the IO or the relevant authority of NAB (which option they still have) for either enhancing scope of investigation or for directing further investigation in the matter to take in their part of grievances. But when they did not do so, and when there is nothing on the record to establish such fact or the fact that if they did so, it yielded any effect or not, their applications/complaints in the proceedings as above were not competent and worthy of taking into consideration.

7. Before parting with this order, we want to point out that during pendency of this petition, on one occasion i.e. 26.02.2020 when it was reported to the court that certain portion of the subject building was in occupation of Karachi Water & Sewerage Board, Karachi and that it was causing hindrance in completion of the project and reaping consequential benefits, a notice was issued to the Managing Director, KW&SB to file a written reply in this regard. Picking a trail therefrom, petitioner also came forward and instituted an application u/o 1 Rule 10 CPC requesting to implead KW&SB as respondent No.3, which was allowed vide an order dated 25.11.2020, but with a qualification that scope of the petition shall not be enlarged. After KW&SB was impleaded as such, certain exercise to determine its capacity to occupy portion of the building/project was carried out. On one occasion, since the issue happened to be between two government departments, the matter was referred to the Chief Secretary Sindh for resolution. He, however, could not prove to be of any assistance, and in view of controversial claims of each party on the issue failed to achieve any result and communicated his inability to the court in writing.

8. Notwithstanding, the issue lingered on, but when during final arguments, learned counsel acting for KW&SB took an exception to amplification of petition's scope in violation of court's order, learned defense counsel readily conceded and voiced to avail a remedy before the proper forum, which proposition everyone present accepted.

9. In view of above discussion, this petition is allowed as prayed and is disposed of along with all the pending applications.

JUDGE

JUDGE