

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Ahmed Ali M. Shaikh, C.J. and Omar Sial, J

<><><><>

Constitution Petition No. D - 7750 of 2015

Muhammad Dawood Petitioner

Versus

Federation of Pakistan
through Secretary & Others Respondents

<><><><>

Constitution Petition No. D - 4951 of 2019

Syed Mustafa Kamal Petitioner

Versus

National Accountability Bureau (Sindh)
through its Director General Respondent

<><><><>

Constitution Petition No. D - 4455 of 2019

Nazir Ahmed Zardari Petitioner

Versus

Chairman National Accountability Bureau
& Others Respondents

<><><><>

Constitution Petition No. D - 4354 of 2019

Muhammad Rafiq Petitioner

Versus

Federation of Pakistan
through Ministry of Law & another Respondents

<><><><>

Constitution Petition No. D - 4288 of 2019

Fazal-ur-Rehman Petitioner

Versus

Federation of Pakistan
through Ministry of Law & Others Respondents

<><><><>

Constitution Petition No. D - 60 of 2016

Syed Nishat Ali Rizvi Petitioner

Versus

Federation of Pakistan
through Ministry of Law & another Respondents

Constitution Petition No. D - 61 of 2016

Iftikhar Ai Kaimkhani Petitioner

Versus

Federation of Pakistan
through Ministry of Law & another Respondents

<><><>

Constitution Petition No. D - 62 of 2016

Mumtaz Haider Petitioner

Versus

Federation of Pakistan
through Ministry of Law & another Respondents

<><><>

Constitution Petition No. D – 4284 of 2019

Muhammad Irfan Petitioner

Versus

Federation of Pakistan
through Ministry of Law & another Respondents

<><><>

Mr. Haider Waheed and Mr. Shahzeb Akhtar Khan, Advocates along with petitioners in C.P. Nos.D-7750/2015, D-60,D-61, D-62 of 2016 and D-4284/2019.

Mr. Habib Ahmed, Advocate along with petitioner in C.P. No. D – 4288/2019.

Ms. Wajeeha Maryam Mehdi, Advocate along with petitioner in C.P. No. D–4354/2019.

Mr. Hassan Sabir, Advocate along with petitioner in C.P. No. D – 4951/2019.

Petitioner in C.P. No. D – 4455/2019.

Mr. Riaz Alam Khan, Special Prosecutor, NAB along with Mr. Abdul Fatah, I.O.

ORDER

Omar Sial, J.: A number of small hawkers were doing business around the Kothari Parade in Clifton. A proposal was submitted by KMC that these hawkers and their businesses had caused administrative issues and hence they all be moved to one designated area. Two plots of land were ear marked for this purpose and subsequently 198 hawkers were given 11.11 square yard plots each. A revision in the master plan of the area was also made for this purpose.

2. Behind the land earmarked for the hawkers there were four plots of commercial land bearing numbers 2/7/A, 2/7/B, 2/7/C and 2/7/D each measuring 255.55 square yards which were purchased by D.J. Builders and Developers. The same firm also purchased the land which was allotted to the hawkers. After having purchased the land, the firm made an application that as the area had been declared a high density area, the original layout plan of the area, which had shown the entire land as one commercial tract of land be restored. This was done. Subsequently, the entire land was sold by the firm to Bahria Town (Private) Limited.

3. Very briefly the role of the petitioners, as explained to us by the learned Special Prosecutor, NAB is as follows:

Syed Nishat Ali Rizvi was the Additional District Officer for Scheme No.5 (Clifton), MPGO, CDGK at the relevant time. NAB alleges that he *“illegally recommended conversion of walkways in the stalls/cabin bazar and amalgamation with the 4 x commercial plot that is 2/7-A, 2/7-B, 2/7-C & 2/7-D.”*

Iftikhar Ali Kaimkhani, was the Executive District Officer, MPGO, CDGK. NAB alleges that he *“illegally recommended conversion of walkways in the stalls/cabin bazar & amalgamation with the 4 x commercial plot that is 2/7-A, 2/7-B, 2/7-C & 2/7-D.”*

Mumtaz Haider, was the District Officer, MPGO, CDGK. NAB alleges that he *“illegally recommended conversion of walkways in the stalls/cabin bazar & amalgamation with the 4 x commercial plot that is 2/7-A, 2/7-B, 2/7-C & 2/7-D.”*

Dawood Jan Muhammad, was a businessman. NAB alleges that:

“He is the person who initially purchased the stalls from the hawkers and gave application for the amalgamation of the plots and involved in all act to get illegal restoration of the plot com 2/7.”

“He is the person who involved in the transfer of plot after attachment by the Federal Board of Revenue in connivance with the government officials and that too without getting NOC from the KDA.”

“There were walkways/pathways in between the stalls which were not belong to the M/s. D.J. Builders & Developers and an amenity area despite he gave application for amalgamation/restoration of the plot com 2/7 with the plea that he is the absolute owner of the whole plot for hawkers including amenity area.”

Muhammad Irfan, was a businessman. NAB alleges that *“... it is crystal clear Muhammad Irfan was a benami partner of the M/s. D.J. Builders & Developers. Therefore, even knowingly that it is an illegal act and after attachment of the plot by FBR he signed the transfer deed as a witness shows his connivance. Further as he had been partner of the firm when the plot was illegally and without any lawful authority amalgamated in connivance with the government official, therefore, he is liable to be prosecuted as per law”*

Mustafa Kamal, was the then Nazim of Karachi. NAB alleges that *“he by misusing his authority illegally approved conversion of walkways in the stalls/cabin bazar*

and amalgamation with the 4 x commercial plots i.e. 27/A, 27/B, 27/C and 27/D.”

Fazal-ur-Rehman, was the then DCO of Karachi. NAB alleges that *“he by misusing his authority illegally recommended conversion of walkways in the stalls/cabin bazar and amalgamation with the 4 x commercial plots i.e. 27/A, 27/B, 27/C and 27/D.”*

Nazir Ahmed Zardari, was the then Sub-Registrar-II, Clifton, Karachi. NAB alleges that *“he by misusing his authority in violation of law, rules and with malafide intention illegally transferred an attached property which was already attached by FBR in the name of M/s. Bahria Town and extended illegal benefit to M/s. D.J. Builders & Developers and caused loss to the government exchequer.”*

Muhammad Rafiq, was partner of D.J. Builders & Developers. NAB alleges that *“he being one of the partners of D.J. Builders & Developers along with other partners initially purchased the stalls from the hawkers and then made an application for amalgamation of the plots and illegally and malafidely got restored the commercial plot No.27 in connivance with government officials and derived illegal benefits.”*

4. We have heard the learned counsel for the parties as well as the learned Special Prosecutor, NAB and from the voluminous record have also examined the pieces of evidence which both sides have shown to us in support of their respective case.

5. NAB alleges that the amalgamation of the land requested was only for the four plots of land bearing numbers 2/7/A, 2/7/B, 2/7/C and 2/7/D and not for the amalgamation of the hawkers land with the four plots. Apart from this, according to NAB, the amalgamation could not have been done in any case because the walkways between the shops of the hawkers were not included in the allotment and hence the same could not have been sold to by the hawkers to the firm. In addition, NAB alleges that the allotment to the hawkers only permitted them to construct a single storey shop for the purpose of their business and they were not entitled to sell the land to D.J. Builders. NAB further alleges that the requisite permission of KDA was not sought for the sale of the land by D.J. Builders to Bahria nor was the permission to sell obtained from MCB Bank as the land in question was mortgaged to the Bank. Apparently, the plot of land was also attached by the Federal Board of Revenue.

6. The learned counsel for the petitioners have very forcefully argued that the NAB Reference against them is an outcome of sheer malafide and has been filed exclusively on political grounds; that all laws, rules, regulations and codal formalities were fulfilled at every step of the transaction; that the petitioners are being punished for doing their respective jobs and that NAB cannot identify even one lapse on the part of the petitioners.

7. We have been shown a sample allotment order (on page 2920 of volume 20 of the IR) in favour of the hawkers. We understand that each hawker was issued such an allotment letter. It has not been disputed that the hawkers sold their respective pieces of land to D.J. Builders at their own freewill. On a tentative assessment it appears that in accordance with the terms and conditions of allotment (Term 13), the hawkers may have been restricted from selling their plots of land until such time as the lease for their plot was executed. However, the allotment letter in itself (Term 16) provides the remedy for a breach of the allotment terms i.e. cancellation of the allotment. We understand that the allotment of the entire land has already been cancelled by the Government and the position has reverted to the original one. As far as NAB's allegation that the hawkers could not have sold the walkways is concerned, it appears prima facie (Term 3) that each hawker was allotted the shop and a portion of the walkway. The loss to the national exchequer may have been of the non-payment of the requisite fees etc. however at this bail stage we have taken a lenient view in favour of the petitioners. A more detailed review of the terms of allotment will tantamount to a deeper appreciation of evidence which is only possible at trial when the parties record their respective evidence.

8. As far as the mortgage of any portion of the land to MCB Bank is concerned, no evidence from the records of the SECP has been shown to us that would show that the land is under mortgage or that when it was transferred a mortgage subsisted in favour of MCB. In any case, if the terms of a finance facility had been violated, it was up to the Bank to initiate appropriate proceedings in the relevant Banking Court. Similarly, we understand that the attachment order of the FBR was suspended by this Court. Once, again even if an attachment order had been violated, the law provides its own remedy in such an eventuality to the FBR.

9. As mentioned above, as the entire land has been resumed by the Government and all steps taken since the allotment to the hawkers have been undone and that investigation is complete, we have taken a lenient view at this stage as no purpose will be served in incarcerating the petitioners at this stage. We accordingly, confirm the

interim pre-arrest bails granted to the petitioners earlier on the same terms and conditions.

10. Our observations above are of a tentative nature and the trial court must not be influenced by them while deciding the case at trial.

JUDGE

CHIEF JUSTICE