

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Const. Petition No. D-7717 of 2018
(Aijaz Ali v. the Chairman NAB and another)

Petitioner : *Aijaz Ali* through Mr. Muhammad Haroon Shaikh, Advocate
Respondents : Through Ms. Shazia Hinjrah, Deputy Attorney General, Mr. Moazam Ali, Special Prosecutor NAB and Mr. Hakim Ali Shaikh, Additional Advocate General a/w Mr. Jam Muhammad Khoro, Assistant Advocate General Sindh
Date of hearing : **11.03.2026**
& Order

ORDER

NISAR AHMED BHANBHRO, J. Through this petition, the petitioner claims as under:

“1 Declare that the Impugned Orders dated 23.7. 2018 and 09.10.2018 passed in the NAB Reference No 44/2001 (The State Vs Abdul Aziz Memon & Another) are void ab initio and having nullity under law and set aside the same.

2. Declare that the Petitioner is lawful owner of the subject properties.

3. Direct the Respondent to release the aforementioned subject properties to Petitioner,

4. Pass any other and further orders which this Honourable Court may deem fit and proper, in the interest of justice.”

2. Learned counsel for the petitioner contends that the petitioner was *bona fide* purchaser of the properties viz. Bungalow No.15, Street No.30, Khayaban-e-Shamsheer, Phase-V, Ext DHA, Karachi and Plot No. A-21/4-1, KDA Scheme 1-A, Ext, Karachi, purchased from one Fareeda Aziz Memon wife of Abdul Aziz Memon. He contended that the properties

were involved in a reference filed by National Accountability Bureau against the Abdul Aziz Memon and Fareed Aziz Memon. On conclusion of trial, Learned Accountability Court IV Karachi (Trial Court) convicted the accused and forfeited the properties. He contended that the petitioner was not in knowledge of forfeiture of the properties and conviction of the owners of property; that the petitioner obtained the properties under valid sale consideration and upon failure of the owners to perform the part of agreement, he filed Civil Suit No. 89/2018 and Civil Suit No.174/2018 before the Court of Senior Civil Judge-I, Karachi South and Senior Civil Judge-VIII, Karachi East, the suits were decreed and sale deed were executed in favour of the petitioner. He contended that the petitioner filed an application before Learned Trial Court seeking release of the properties which was declined vide order dated 09.10.2018. He contended that the petitioner cannot be deprived of his right to property acquired through lawful means; therefore, he prays for allowing the petition.

3. Learned Special Prosecutor NAB contended that the properties originally belonged to Fareeda Aziz Memon and Abdul Aziz Memon, who were accused in Reference No.44/2001 (*re-State v. Abdul Aziz Memon & another*). The accused were convicted and their properties were forfeited by the Learned Trial Court vide judgment dated 28.06.2002, which attained finality having been maintained by Honorable Supreme Court. He contended that the accused malafidely transferred the properties, without the knowledge of NAB. He contended that the Trial Court has not committed any illegality while dismissing the application of Petitioner. He prayed to dismiss the petition.

4. Learned Deputy Attorney General contended that the petition is not maintainable as the petitioner was not the owner of the properties. She contended that the order of forfeiture was upheld by Honorable Supreme Court thus it was a case of closed and past transaction and cannot be reopened.

5. Heard arguments of the parties and perused the material made available before us on record.

6. Admittedly, the properties in question belonged to the accused Abdul Aziz and Fareeda Aziz who were facing charge under reference No 44 of 2001 before Learned Trial Court. The accused were found guilty of the charge and they were convicted under section 10 of the NAO, 1999 vide judgment 28.06.2002 by the Trial Court. The accused were convicted of the charge, besides a sentence of imprisonment, the properties being subject matter of the crime proceeds were also forfeited in favor of the Federal Government.

7. Under the provisions of NAO, 1999, when an accused is found guilty of charge, the properties subject matter of the crime proceeds are also forfeited in favor of the concerned Government or authority as the case may be. It will be conducive to reproduce Section 10 of the NAO, 1999, being relevant provision of law for the ease of reference, as it stands today:

“10. (a) A holder of public office, or any other person who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets and pecuniary resources of such holder of public office or person, as are] found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be forfeited to the appropriate Government, or the concerned bank or financial institution as the case may be.

(b) The offences specified in the Schedule to this Ordinance shall be punishable in the manner specified therein.

(c) The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.”

8. An order passed under Section 10 was appealable before the High Court under of Section 32 the NAO, 1999. It appears that the conviction awarded to the accused were assailed before this Court in appeal which was dismissed vide order dated 06.11.2002 and the appeal filed by the accused before the Hon'ble Supreme Court was dismissed too vide order

dated 24.03.2015, rendering the order of conviction and forfeiture of the properties as final.

9. The claim of the petitioner that he is bonafide purchaser of the property and entitled to a peaceful enjoyment of the properties, was not tenable and quite misconceived, for the reason that properties were forfeited by the orders of Court in year 2002 and Petitioner purchased the same properties in year 2009, after 7 years of the forfeiture order and at the time when a right in favor of the concerned Government was created. The contract of the Petitioner was void and not executable. Petitioner though obtained a decree from Civil Court, but that too without impleading NAB as party in the proceedings, as such the decree passed by the Civil Court was too voidable. Petitioner in collusion with convicts created an interest in the property which stood forfeited almost about 7 years prior to its alleged sale, a contract void in nature, therefore, was not executable by the Court of law. The petitioner, however may claim damages from the accused or compensation, as the case may be, regarding the properties subject matter of the case.

10. For the foregoing reasons, No infirmity or illegality has been pointed out in the order passed by the learned trial Court, therefore, this petition being devoid of merit is dismissed with no order as to costs.

JUDGE

**JUDGE
HEAD OF CONST. BENCHES**

Nadir /PS*

Approved for reporting