

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE GULZAR AHMED  
MR. JUSTICE MAQBOOL BAQAR

**CIVIL PETITIONS NOS.51 AND 57 OF 2015**

*(Against the judgment dated 12.1.2015 of the High Court of Baluchistan, Quetta passed in CP Nos.501 and 504 of 2014)*

Maqbool Ahmed Lehri		(In CP 51/15)
Ali Muhammad Baloch		(In CP 57/15)
		... Petitioners
	Versus	
NAB & another		... Respondents
For the petitioners:		
(In CP 51/15)	Mr.Abdul Hafeez Pirzada, Sr.ASC	
	Mr.Afzal Ahmed Siddiqui, ASC	
	Mr.Baz Muhammad Khan, Advocate	
	a/w petitioner	
(In CP 57/15)	Mr. Kamran Murtaza, ASC	
	Syed Rifaqat Hussain Shah, AOR.	
	a/w petitioner	
For respondent (NAB):	Mr.Nasir Mahmood Mughal,	
	Special Prosecutor	
Date of hearing:	20.4.2015	

**ORDER**

**MAQBOOL BAQAR, J.-** The petitioners, through the above petitions, have assailed the judgment dated 12.1.2015 of a learned Division Bench of the High Court of Baluchistan, whereby two separate petitions bearing CP Nos.501 and 504 of 2014, filed by the petitioners, have been dismissed, and the order granting ad-interim bail to them has been re-called.

2. The facts of the case, in brief, are that a certain piece of land was acquired by the Government of Baluchistan under the Baluchistan Land Acquisition Ordinance 1979, for construction of a bridge over a railway track to connect Zarghoon Road and Sariab Road in Quetta. The transfer of the land in favour of the Government of Baluchistan was accordingly recorded in the revenue record. The overhead bridge was constructed by Quetta

Development Authority ("QDA"). However, a portion of the aforesaid acquired land, bearing Khasra No. 2250/517 situated in Mohal Sirki Kalan, Tappu Saddar, District Quetta, measuring 30,492 sq.ft. which remained unutilized and was reserved for the future expansion of the bridge, ("the land"), was purportedly sold to one Sultan Ahmed through a purported sale deed dated 26.4.2007, purportedly executed by QDA in favour of Sultan Ahmed. At the relevant time the petitioner Maqbool Ahmed Lehri was the Nazim, City District Government, in which capacity he held the post of Chairman QDA also. Neither was any advertisement placed by QDA as required in terms of clause (a) of sub-section (2) of section 113 of the Quetta Development Authority Ordinance, nor was the land offered to those from whom the same was acquired, before the purported sale. It was in respect of the above purported transaction that reference has been submitted by National Accountability Bureau ("NAB") where arrest of the petitioner has been ordered. It is through the impugned judgment that the petitions filed by the present petitioners against the filing of the reference have been dismissed.

3. However, before we proceed any further, it would be relevant to briefly record the history of the case; in fact prior to acquiring the land through the purported sale deed, it was in the year 1990 that Sultan Ahmed procured a purported allotment of the land from petitioner Maqbool Ahmed Lehri, while the later was Mayor, Municipal Corporation Quetta ("MCQ"), and as such the purported lease deed was executed by the said petitioner in favour of Sultan Ahmed for a period of 30 years on 06.5.1990. For such allotment Sultan Ahmed initially applied to the Minister for QDA/WASA Baluchistan, who sought comments from MCQ. The Municipal Engineer MCQ, though in his note stated that the

ownership of the land is of QDA, yet recommended leasing out the land in favour of Sultan Ahmed, and sought permission to allot/lease out the land and to execute such agreement in favour of Sultan Ahmed. The petitioner Maqbool Lehri who, as noted above, was Mayor MCQ, endorsed the above for the approval of the Minister for QDA/WASA. Thereafter, Sultan Ahmed applied to the Chief Minister for allotment of the land for thirty years enabling him to establish and run a nursery, the Chief Minister, obliged by endorsing "*Please allot for thirty years*". Whereafter, the allotment and lease as noted above were granted. The lease, as disclosed by MCQ in its written statement in suit No.979/1993, was however terminated on 19.4.1993. On the said very date, i.e. 19.4.1993, MCQ also initiated criminal proceedings under section 133 Cr.P.C. for resumption of possession of the land. Sultan Ahmed thus, on the one hand, on 20.4.1993, filed the above noted suit in the Court of Civil Judge-I, Quetta for declaration and permanent injunction against the Administrator, MCQ, Municipal Magistrate, Illaqa Magistrate and the concerned SHO, in respect of the land in question, and on the other filed a Criminal Revision before the Additional Session Judge, Quetta. In his suit Sultan Ahmed alleged that the defendants are attempting to dispossess him from the land. Upon knowledge of the suit QDA joined the proceedings as defendant No.5. In their written statements the defendants denied Sultan Ahmed's claim over the land. MCQ in its written statement averred that the purported lease deed has been terminated on 19.4.1993, and that MCQ is not the owner of the land, and was not authorized to execute the purported lease, and further that the lease "*is neither properly stamped nor registered as required under the law*", whereas QDA in its written statement claimed that the lease is "*patently void*". The trial Court, after hearing the parties,

through order dated 26.10.1995, held that admittedly QDA is the owner of the land and since the purported lease has been cancelled by the Administrator, MCQ on 19.4.1993, Sultan Ahmed has no *locus standi* and his possession of the land is unauthorized, and dismissed the suit. Upon an appeal filed by Sultan Ahmed on 8.5.1996 the dismissal order was set-aside and the suit was remanded to the trial Court. The aforesaid criminal revision was dismissed by Additional Sessions Judge on 30.11.1993. Through judgment dated 09.1.1994, CrI.Misc. Quashment Application filed by Respondent-Sultan Ahmed in the High Court of Baluchistan was also dismissed. Criminal Petition filed by Sultan Ahmed against the said judgment before this Court was, on 23.11.1994, disposed of on the basis of a statement of the Additional Advocate General, that no proceedings under section 133 Cr.P.C. are pending against Respondent-Sultan Ahmed.

4. Sultan Ahmed was, through order dated 07.11.1997, allowed to withdraw the aforesaid suit with permission to file a fresh suit, the withdrawal was however allowed subject to payment of cost of Rs.25,000/-. He, however, did not file a fresh suit in respect of the action/decision impugned through the suit withdrawn.

5. Undeterred by the above cancellation, Sultan Ahmed in his pursuit to grab the suit land, after waiting for an opportune time, on 01.4.1997 submitted another application to the Chief Minister, where he concealed the termination of his purported allotment/lease and all the above noted subsequent events, and simply claimed that though the suit land was allotted to him for nursery by the former Minister Local Bodies through the former Mayor, MCQ in the year 1991, but some people are creating difficulties in his way, and requested the Chief Minister to order

allotment of the land, and for direction to the QDA to settle the price through negotiation with him. The then Chief Minister sought report in the matter. Unfortunately, the Chief Minister was not apprised of the correct legal and factual position in the matter, and on 28.9.1997, he passed an order as follow:-

*"This is an old case and the Authority has already given the approval for lease of land and settlement with the applicant. Now, since the applicant wants to buy the land, the Director General, QDA may settle the matter by negotiations with the applicant, keeping in view the rates of Commercial and other categories in mind."*

However, pursuant to the above orders, the Chief Secretary, Baluchistan, through his note dated 29.9.1997, sought information regarding the legal claim of the Government over the land. The Secretary Local Government, instead of meeting the query, observed that the file was sent to the government by mistake and referred the same to QDA *"for necessary action"*. Whereupon the Director (Estate) Commercial, QDA, neglected to mention the afore noted crucial aspects of the matter and simply stated that the land in question is in possession of Sultan Ahmed since 1991, and forwarded the aforesaid purported lease deed executed by the former Mayor, MCQ in favour of Sultan Ahmed. Through letter dated 21.10.1997, Director General, QDA in purported compliance of the Chief Minister's order dated 28.9.1997, called Sultan Ahmed for negotiations. In the meanwhile, the so called prevailing market rates of the residential and commercial lands in the vicinity of the subject land were obtained by QDA through Deputy Commissioner, Quetta, who through his letter dated 28.11.1997, conveyed the rate of residential land in the vicinity as being Rs.200 per sq.ft, and that the rates of such commercial lands ranges between Rs.200 to 500 per sq.ft. A summary was then prepared and submitted before the Chief Minister, Baluchistan saying that after negotiations with

Sultan Ahmed, the rates of the land have been agreed at Rs.400 per sq.ft for *commercial portion* and Rs.150 per sq.ft for *residential portion*. The Chief Minister, as noted by his Private Secretary on the relevant file on 6.4.1998, ordered that *"a case for lease rent for 30 years at the rate of Rs.15,000/- per annum may be processed and re-submitted for perusal/order"*. On 29.5.1998, the Chief Secretary, Baluchistan in his bid to save the land from being dolled out as above, ordered as follows:-

*"Please submit a summary to the Chief Minister pointing out the implications of this decision which will impact adversely on the QDA as the land is much too valuable to be leased out like that; and besides there is no precedent to return the acquired land paid for by public agency like QDA. Also please refer to Land Acquisition Act."*

6. However, through letter dated 20.8.1998, DG, QDA offered the price of the land @ Rs.450 per sq.ft for commercial portion and Rs.200 per sq.ft for residential portion, (such portions having been earmarked by the Incharge Town Planning, QDA), and required Sultan Ahmed to respond within a week's time. *It may be significant to note here that no where it is even mentioned, as to when, how, in what manner, on what basis, under what law, rules and regulations, and/or policy, and under what authority the land was bifurcated into commercial and residential categories. It is also not explained as to on what basis and under which criteria the sizes, location and demarcation of the two purported categories was affected.* In response to the above letter/offer Sultan Ahmed, through letter dated 31.8.1998, stated that the agreed rate being Rs.400 per sq.ft for commercial portion, and Rs.150 per sq.ft for the residential area, the offer be amended accordingly. The matter of allotment was placed before the Governing Body, QDA in its meeting held on 01.1.1999, however, the Governing Body rejected the very proposal to sale and decided that:-

- "i) The land occupied illegally by Mr.Sultan Ahmed s/o Shadi Khan may be got vacated with the help of concerned authorities.
- ii) The construction of second phase of the bridge may be examined and report be submitted."

7. Through letter dated 30.4.1999, DG, QDA informed Sultan Ahmed of the above decision and that the aforesaid letter dated 20.8.1998 be treated as withdrawn.

8. However, the matter did not rest here, as Sultan Ahmed, suppressing the above decision of the Governing Body and all the other adverse developments, and despite the fact that upon the above decision there remained no basis/offer (of whatever worth the same might have been), and thus there was absolutely no question of making any payment towards the land, through an undated letter requested the Chief Minister for an order directing the DG QDA to allow him to deposit 50% of the price of the land. The Chief Minister through letter dated 30.6.2003, directed that *"the applicant be allowed to deposit the cost of the plot as per agreed rate"*. It may be noted that the rates were purportedly agreed five years before the said order and that in the meanwhile the value of the land appreciated substantially.

9. Through letter dated 14.11.2002, petitioner Ali Muhammad Baloch, advised Sultan Ahmad to deposit 5% of the tentative price of the land; as previously determined so that the matter may be placed before the governing body of QDA for their decision.

10. However, still Sultan Ahmed did not make any payment and wrote yet another undated letter to the Chief Minister, stating that *"unfortunately the applicant could not deposit the said cost of land"*. The Chief Minister once again obliged the applicant, and on 23.8.2004, directed DG QDA, to grant

permission to the applicant to deposit the price of the plot as "*already agreed*".

11. A Summary dated 27.8.2004, was then submitted before the Chief Minister, which, inter alia, disclosed that Sultan Ahmed, has through an application approached NAB, and expressed his willingness to deposit the entire amount of the present market value of the land, and that in the event he is unable to make such payment, he shall surrender the land to QDA, whereupon the NAB sought comments from QDA and that QDA conveyed its no objection, subject to approval by its governing body, but Sultan Ahmed surrendered the land to QDA. The summary placed before the Chief Minister, two options, being (i) restoration of the offer made to Respondent-Sultan Ahmed earlier, or (ii) to sale the land at the prevailing market rate subject to the approval of the Governing Body QDA. The Chief Minister endorsed the following note on the summary:-

*"para 5 to be definitely to be xxxxxxxx [deleted] as proposed for xxxx [deleted] for restoration"*

12. Through letter dated 18.09.2004, petitioner Ali Muhammad Baloch in pursuance of the directives of the Chief Minister, revived the offer letter dated 20.08.1998 and directed Sultan Ahmad to deposit the cost of the land accordingly.

13. It was after a lapse of 17 months of the above, and only after the petitioner Maqbool Ahmed Lehri became Nazim, MCQ, as well as Chairman QDA, that the matter was purportedly placed before the Governing Body of the QDA, in its meeting held on 28.1.2006, which meeting was convened only for the approval of a revised budget, that the issue of the subject land was purportedly placed before the Board by way of an "*ex-agenda item*" under the heading "*Confirmation of orders of Chief Minister*



*Baluchistan - land of Mr.Sultan Ahmed"* and as per the purported minutes of the meeting, the board purportedly decided as follows:-

*"The house confirmed the directives of Hon'ble Chief Minister Baluchistan issued vide U.O.No.PS-CM/1-1/2003/2078 dated 13.6.2003 & U.O. No.PS-CM/1-1/2004 dated 01.9.2004 and also confirmed the letter No.2-395/93(QDA)E(C)/ 760-62 dated 18.9.2004 issued by QDA. It was further decided that the allottee may deposit the balance cost of land as per direction of the CM."*

14. Regarding the above meeting/proceedings, it is pointed out on behalf of the respondents that it was the very first meeting under the chairmanship of petitioner Maqbool Ahmed Lehri. It is alleged that the members of the Governing Body who participated in the meeting stated before the NAB authorities that neither was any issue pertaining to the land/"*ex-agenda item*", discussed in the said meeting, nor was any such proposal/item approved. It is further contended that under the relevant rules, the minutes of the meeting of the Governing Body were/are supposed to be signed either by the Director Administration or by DG QDA, but the minutes in question have purportedly been signed by the Chairman, Maqbool Ahmed Lehri, the petitioner. It is further pointed out, and it so appears from the relevant extract of the minutes of the meeting, the earlier decision of the Governing Body rejecting the proposal of sale of land to Sultan Ahmed, and for getting it vacated and submitting a report for the expansion of the bridge was concealed from the Board.

15. The purported sale deed was then purportedly executed by QDA on 26.4.2007, however, since the same did not specify the land purportedly sold, a deed of rectification was sought to be executed. However, DG QDA through letter dated 13.2.2010 informed the concerned Sub-Registrar that the said deed of rectification has not been issued with his approval and it therefore not be entertained. He further cautioned the Sub-

Registrar that *"The sale has some doubts and objection which are being examined"*. However, it seems that such deed of rectification had been registered by the time the above letter was sent.

16. The sale deed was executed without full payment of the purportedly agreed price of land being made and a substantial amount of the sale price remained unpaid at the time of the execution of the sale deed, such balance amount was paid only after the execution of the deed.

17. As noted above, admittedly the land was owned neither by MCQ nor by QDA, and was/is owned by the Government of Baluchistan and therefore none of the above bodies was either competent or authorized to sale the land, even otherwise in terms of section 113 of the Quetta Development Authority Ordinance, 1978, which reads as follows:-

*"113. Power to dispose of land-*

- (1) The Authority may retain, or may lease, well, exchange, rent or otherwise dispose of any land vested in or acquired by it under this Ordinance.*
- (2) Whenever the Authority decides to lease or sell any land acquired by it under this Ordinance from any person, it shall-*
  - (a) give notice through advertisement in newspapers published in the Quetta City.*
  - (b) offer to the person or persons, from whom the land has been acquired, or their heirs, executors or administrators, a prior right to lease or purchase such land, at rate to be fixed by the Authority, if in its discretion it determines that such lease or sale is in the public interest."*

*Firstly*, it is an essential pre-requisite to determine as to whether or not the sale of any land vested in or acquired by QDA would be in the public interest, *secondly*, it is mandatory to publish notice of the proposed sale by QDA in the newspapers published in the city of Quetta, and *thirdly*, and in the foremost, it is essentially required that in case the land is an acquired land, it be first offered to the person(s) from whom the same has been acquired. However, as evident from the foregoing, none of the above essential statutory requirements were met in respect of the transactions in question.

18. It is also crucial to note that since admittedly the land was/is owned by the Government of Baluchistan, it was to be dealt with under and in terms of Baluchistan Land Lease Policy, 2000 ("the policy"), formulated in pursuance of sub-section (2) of Section 10 of the Colonization of Government Land Act, 1912, and published in the Baluchistan Gazette on 01.12.2000. Clause 4(2) of which policy mandates that *"all state land falling within five miles of the limits of Municipal Committee/Municipal Corporation and within three miles of Town Committee will be reserved for further utilization"*. The land being situated within the city of Quetta, thus fell under the above restriction/prohibition and was therefore not saleable at all. The land, as noted earlier, was part of the land acquired for the construction of a bridge and after construction of the first phase was reserved for the construction of second phase thereof, the above fact, as noted earlier, was also acknowledged by the Governing Body of the QDA in its meeting held on 01.4.1999 and thus, in view of the clause 3 (2) of the policy, which prescribes that land can only be leased provided it was not required for *"public building, other public sector projects"*, could not have been leased out at all.

19. Furthermore, even the lease permissible under the policy, can, in terms of sub-clause (1) of clause 5 of the Policy, be granted for a period of thirty years only. Rates of the yearly rent money, as stipulated by sub-clause (2) of clause 5 of the Policy, is to be determined by a Committee, keeping in view the market value/performance. The policy in terms of sub-clause (3) of clause 5 further requires that *"the highest standard of transparency will be ensured"* and *"after giving due publicity"* and further that the lease money is to be charged *"as per market value or through the process of auction"*. In terms of clause 10 of the policy there is a

clear prohibition against assignment/sub-letting or transfer of the lease land or any part thereof by the lessee. The authority for grant of lease as designated through clause 16 of the policy, is "*Collector as defined under the Land Revenue Act, 1967*". However, as evident from the foregoing narration of events, every single provision of the policy has been trampled in the present case.

20. Another crucial aspect of the matter is that the land, as noted earlier, was compulsorily acquired by the Government of Baluchistan for a public purpose, "*public purpose*" having been exempted from the bar against compulsory acquisition as prescribed by Article 24 of the Constitution, which provision guarantees protection of proprietary rights in accordance with law, and therefore, not utilizing the land for the public purpose and selling the same to private person(s) is violative of the object, spirit, principle and the purpose of the provisions of Article 24 of the Constitution, in view whereof, even in case the land would not have been required for any public purpose, and even if it could have been lawfully sold, the person(s) from whom the same was acquired ought to have been provided an opportunity to participate in the process so as to enable them to make an offer for its purchase in accordance with law. The sale in question is, therefore, violative of the mandate of the constitution also.

21. From the foregoing narration of the facts and events, it can be seen that not only the policy was grossly violated and blatantly contravened, but prima facie the subject transactions were affected through fraudulent machinations. The suppression of the termination and cancellation of the purported lease and also of the rejection of the very proposal for sale by the Governing Body QDA, is manifest from the above narration. It has not been explained as to how, why, under what law, rule and regulations or

policy, and under what authority, the land reserved for a public sector project, was designated/bifurcated into/as "*Residential*" and "*Commercial*" categories, and as to under what criteria and on what basis the area and locations/dimensions of such purported categories were determined/affected. Very serious and valid objections raised by the Chief Office of the Province in the matter were also ignored. Although as narrated in the summary referred to hereinbefore, Sultan Ahmad himself offered to, either pay the market value, or to surrender the land. The land was still sold at a grossly inadequate price.

22. Though illegally, however, the Chief Minister Baluchistan, as noted earlier also, clearly directed that "*the case for lease land for 30 years at the rate of Rs.15000 per annum may be processed*" the purported sale is therefore also contrary to the order of the Chief Minister.

23. As per the NAB, the members of the Governing Body, who participated in the meeting dated 01.4.1999, disclosed before the NAB that neither they had any notice of the issue pertaining to the land being taken up in the aforesaid meeting, nor the matter/issue was in fact taken up or decided, as wrongly mentioned in the purported minutes of the meeting. It is further alleged that the DG QDA who also is a member of the Governing Body QDA, through his letter dated 29.9.2006, confirmed that the issue of the land was not discussed in the meeting. The deep involvement and persistent interest of the petitioner Maqbool Ahmed Lehri in the matter from the very beginning can be seen, *inter alia*, from the facts that it was he who, as Mayor MCQ, despite the fact that land did not belong to MCQ, forwarded the recommendation of the Municipal Engineer for leasing the land in favour of Sultan Ahmed and for executing the agreement

accordingly, and that, as evident from the minister's approval note itself, the approval was granted on Lehri's recommendation. And thereafter the purported allotment letter and the purported lease deed was also executed by Maqbool Lehri. Furthermore the process pertaining to the subsequent transaction, i.e. the execution of the sale deed, remained pending for about seventeen (17) months after Sultan Ahmed was finally allowed/advised to deposit the sale price, and was purportedly placed before the Governing Body, QDA, immediately upon petitioner Maqbool Ahmed Lehri's assuming the office of the Chairman QDA, by way of "*ex-agenda item*", where purported approval of the sale was purportedly obtained, despite the earlier adverse decision of the Governing Body, QDA not to sale the land. The purported approval and the consequential purported sale were in conflict with the earlier decision of the QDA and MCQ, and their stance in the relevant proceedings before the various courts. The land was doled out at the rate purportedly assessed six years earlier, and to further unduly favour the beneficiary the larger portion of the land was designated as residential, to which category lower rate was applied. This was done despite the fact that Sultan Ahmad had earlier offered before the NAB, either to buy the land at the market rate, otherwise to surrender the land. The above misuse of the authority, it appears, was not just to benefit Sultan Ahmed, the purported allottee, but was so exercised for the benefit of a real brother and two paternal cousins of petitioner Maqbool Ahmed Lehri, in whose favour the land was subsequently transferred, through an attorney of Sultan Ahmed, which attorney also is a cousin of petitioner Maqbool Ahmed Lehri. Furthermore, as noted earlier, the land was purportedly sold to Sultan Ahmed on 26.4.2007, however, the above attorney was appointed through a

power of attorney executed on 17.4.2006, a year before the purported sale. The execution of the Power of Attorney as above clearly demonstrates strong confidence of the beneficiary that the land shall surely be allotted to Sultan Ahmed, otherwise there was no question of appointing an attorney to deal with something that did not exist. It also appears that the real purpose of obtaining the power of attorney was to secure the interest of the real beneficiaries, the brother and a cousin of petitioner No.1. In the NAB reference, it has been alleged that Sultan Ahmed, being a small time motor mechanic, had no funds to pay for the land and had in fact acted as a front man for the petitioner Maqbool Ahmed Lehri. Reference in this regard has been made to the statement recorded by respondent Sultan Ahmed before the learned High Court of Baluchistan in Constitution Petition No.332 of 2012. In this respect the judgment of the learned High Court of Balochistan in the said CP has also pointed out, that the various signatures said to be inscribed by Sultan Ahmed on the applications purportedly made by him to the Chief Minister, from time to time, do not tally with his admitted signature on the record. The allotment in question being wholly illegal, mala fide and void has already been declared and treated by this Court as such.

24. Mr. Abdul Hafeez Pirzada, learned Sr.ASC who appeared on behalf of petitioner, namely, Maqbool Ahmed Lehri in CPLA No.51 of 2015, at the very outset submitted that the reference against petitioner was not maintainable and was violative of the mandate of Article 13(a) of the Constitution and the constitutional intendment of protection against double jeopardy. The learned counsel submitted that in fact prior to the present reference, earlier in the year 2001 also the matter was investigated by the NAB, against the petitioner in respect of the same land and

that the matter remained pending before the NAB upto the year 2003, however, since not enough evidence could be collected during the investigation to make out, a *prima facie*, case against the petitioner, an application was accordingly submitted before the concerned Accountability Court and the proceedings were thus closed through Court's order dated 02.6.2003 and that the NAB authorities informed the petitioner of the closure of the investigation through their letter dated 10.6.2003. That the petitioner thus enjoyed protection against double jeopardy on the principle of *autre fois acquit* and under the mandate of Article 13 of the Constitution and therefore, the present reference, which has been filed subsequently on the same facts in respect of the same land, is not maintainable. He submitted that the provisions of section 9(c) of the NAB Ordinance are not analogous to that of section 63 of the Code of Criminal Procedure. Learned counsel submitted that petitioner Maqbool Ahmed Lehri in executing the lease dated 06.5.1990 has merely followed the orders of the two relevant Ministers and the Chief Minister of the Province whereas he only chaired the meeting of the Governing Body, QDA where the repeated orders/directives of the Chief Minister for conveying land to Sultan Ahmed were approved/confirmed unanimously. Learned counsel further submitted that the transaction was processed and channeled through the concerned functionaries of the relevant department before the same was approved by the Governing Body of QDA. Learned counsel emphasized that neither Sultan Ahmed in whose favour the land was conveyed is related to petitioner Maqbool Ahmed Lehri, nor is there any allegation of receiving any gratification or any favour from Sultan Ahmed by the petitioner. He submitted that reference is *mala fide* and ill motivated and the same is not maintainable on the touch stone of Article 13 of the



Constitution, however, the learned High Court has mis-construed the relevant provisions of law and erred in treating section 9(c) of the NAB Ordinance as analogous to Section 63 of the Criminal Procedure Code. The learned ASC submitted that the learned High Court not only refused to quash the proceedings and to grant pre-arrest bail to the petitioner but has in fact, in dismissing the petition, dealt with and treated the same as an appeal against conviction and have given finding of far reaching consequences by pre-determining the guilt of the petitioner. Learned counsel submitted that in facts and circumstances of the case, leave may be granted against the impugned judgment and the interim pre-arrest bail granted to the petitioner be confirmed.

25. Mr. Kamran Murtaza, learned ASC for the petitioner in CPLA 57 of 215, namely, Ali Muhammad Baloch, submitted that the reference against the said petitioner is wholly unfounded and totally baseless. He submitted that neither petitioner Ali Muhammad Baloch has passed any order nor has he made any conscious decision through the two letters said to have been written by him. He submitted that petitioner Ali Muhammad Baloch merely conveyed the orders of the Chief Minister for deposit of the price of the land. Learned counsel submitted that in so far as the bifurcation of the land into commercial and residential is concerned, the same was affected by the Incharge Town Planning, QDA and not by the petitioner Ali Muhammad Baloch, and further that the entire amount of the land price was deposited by Sultan Ahmed and nothing remained due and outstanding on account thereof. Learned counsel prayed for grant of leave to the petitioner.

26. On the other hand, Mr. Nasir Mahmood Mughal, the learned Special Prosecutor NAB, supported the impugned judgment and opposed the grant of leave to the petitioners. He

submitted that neither is the reference barred under Article 13 of the Constitution nor the petitioners are suffering double jeopardy in the matter. He submitted that no reference prior to the present one was filed against any one in respect of the subject land/transactions and only an investigation was initiated in respect of the lease of the land executed by the petitioner Maqbool Ahmed Lehri on 06.5.1990 which investigation was dropped. Whereas the present reference pertains to the sale deed executed on 26.4.2007 and there is no question of violation of the principle of *autre fois acquit*. He urged for the refusal of leave and dismissal of the petitions.

27. From the facts as narrated and analyzed hereinabove, the deep involvement of petitioner Maqbool Ahmed Lehri in the illegal and apparently mala fide and dishonest sale of the land is quite obvious. The prosecution has, through the material placed before this Court and discussed above, been able to make out, a prima facie, case of the existence of dishonest intention of personal gain on the part of the petitioner Maqbool Ahmed Lehri. Whereas the said petitioner not only failed to make out a good *prima facie* ground for grant of bail but has also failed to demonstrate that the reference filed against him has been filed with ulterior motive for causing injury to his reputation, and not for furthering the ends of justice, and is based on false and malicious allegations to victimize, disgrace or dishonour him.

28. There is no question of double jeopardy or violation of the mandate of Article 13(a) of the Constitution in the present case as no reference other than the present one has ever been filed against any one in respect of the subject land/transaction. Indeed investigation in respect of a lease deed executed by the petitioner Maqbool Ahmed Lehri while he was Mayor, MCQ was initiated by

the NAB authorities, however, as noted above, the same was closed for lack of sufficient evidence as such, as permissible in terms of clause (c) of Section 9 of the NAB Ordinance, which reads as under:-

“(c) If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody.

Neither any reference was filed or pending as a result of such investigation before the Accountability Court nor was the Court thus seized of the matter. In any event, the present reference has been filed in respect of a separate transaction wherein sale deed dated 26.4.2007 has been executed by QDA, after 17 years, of the execution of lease deed dated 06.5.1990, executed by the petitioner Maqbool Ahmed Lehri as Mayor, MCQ.

29. In view of the forgoing, we do not find any justification for interfering with the impugned judgment. Leave is therefore, refused. CPLA No.51 of 2015 stands dismissed.

30. However, the prosecution has failed to place before us any material to demonstrate, prima facie, guilt of petitioner Ali Muhammad Baloch, and has in fact failed to make out a prima facie reasonable case to charge the said petitioner for an offence under section 9 of the NAB Ordinance so that pre-arrest bail may be refused to him. The allegations against petitioner Ali Muhammad Baloch, are that he wrote letters dated 14.11.2003 and 18.9.2004 to Sultan Ahmed and that he bifurcated the land into commercial and residential categories and in fact designated a larger portion thereof as residential. It is also alleged that said petitioner neither confirmed deposit of full value/price of the land before executing the subject sale deed, nor did he advise the Finance Branch for recovery of the balance sale consideration

amount. As rightly submitted by Mr.Kamran Murtaza, the learned ASC that through the aforesaid two letters, the petitioner Ali Muhammad Baloch neither made any conscious order or decision nor has he otherwise made any order or decision in the matter. On the contrary, through letter dated 14.11.2003, he has in fact informed Sultan Ahmed that the determination of the value of the land falls within the purview of the Governing Body, QDA, and the matter shall be placed before the Governing Body in its meeting, and merely advised him to deposit 5% of the "tentative cost" at the previously agreed rates, so that the matter may be placed before the Governing Body. Whereas through letter dated 18.9.2004, the petitioner Ali Muhammad Baloch has merely conveyed to Sultan Ahmed the decision/order of the Chief Minister of restoring permission to deposit the price of land at the agreed rate and directed him to deposit the amount within three months. The above two letters clearly did not contain any decision or order made by petitioner Ali Muhammad Baloch in the matter, and therefore, he cannot, prima facie, be held responsible for the sale of the land. So far as the bifurcation of the land into commercial and residential is concerned, the same as can be seen from the record before us, was done by Incharge Town Planning, QDA, and no material has been placed before us to show any involvement of the petitioner therein, whereas the balance amount of the sale price has been deposited purportedly by Sultan Ahmed seemingly, before filing of the reference. It is not even alleged that petitioner Ali Muhammad Baloch has, in any way, benefited from the transaction, absolutely no allegation of illegal gratification has been made against him. We, therefore, are of the view that arrest of the petitioner Ali Muhammad Baloch at this stage is not justified and would therefore, convert CPLA No.57 of 2015 into an appeal

and dispose of the same by confirming the interim bail granted to him by this Court through order dated 30.1.2015.

31. Before parting with the judgment, we may however observe that the observations made hereinbefore are tentative in nature and shall have no bearing on the trial of the case before the Accountability Court. Similarly, the observations made by the learned High Court of Balochistan in the impugned judgment shall also have no bearing on the trial.

Judge

Judge

Judge

Islamabad the  
Announced in open Court on \_\_\_\_\_

Judge

**'APPROVED FOR REPORTING'**