

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.1770-2021

Muhammad Ashraf Malik

Vs.

Judge, Accountability Court No.III, Islamabad etc.

W.P. No.1772-2021

Mian Iqbal Barkat

Vs.

Judge, Accountability Court No.III, Islamabad etc.

W.P. No.1773-2021

Muhammad Aslam Aziz

Vs.

Judge, Accountability Court No.III, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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19.05.2021

Qazi Misbah-ul-Hassan, Advocate for  
petitioners.

**AAMER FAROOQ J.** This order shall dispose of instant writ petition as well as W.P. No.1772-2021 & W.P. No.1773-2021, as they assail orders dated 01.10.2020 & 22.04.2021 passed by the Judge, Accountability Court-III, Islamabad.

2. The petitioners claim to be the claimants with respect to properties which were attached by the orders of the Judge, Accountability Court-III, Islamabad owned by Mian Muhammad Nawaz Sharif, who was declared 'proclaimed offender' by the referred court in Reference No.6 of 2020 pending before it. In this behalf, the petitioner in W.P. No.1770-2021, claims to have purchased the agricultural land measuring 88-kanals 4-marlas

situated in Mouza Ferozwatan District Sheikhpura through agreement to sell and has filed a suit for specific performance with respect to said land, which is pending before Civil Court of Sheikhpura. The petitioner, in W.P. No.1772-2021, claims to be the owner of property bearing No.135-Upper Mall, Lahore as having acquired the same through Family Settlement Agreement dated 06.04.2014; the petitioner, in W.P. No.1773-2021, claims to be the lessee, who obtained the property known as 'Shamim Zari Farm' comprising of 65-acres on lease/patta and made investments.

3. Learned counsel for the petitioners *inter alia* contended that vide order dated 01.10.2020, the properties in which the petitioners have interest, were ordered to be attached, however, said order of attachment, was not properly made in light of section 88(2) of Code of Criminal Procedure, 1898; in this behalf, learned counsel pointed out that under the referred provision, the Sessions Judge of the District, in which, the property sought to be attached is situated, has to endorse the attachment, which was not done. It was contended that in view of referred position, the process of attachment is illegal in light of judgment reported as 'Ganu Shukul and others Vs. Emperor' [AIR 1930 Patna 347(1)]. It was further contended that properties, in question, are immovable properties, hence were to be attached in

accordance with section 88(4) *ibid*, which again, was not done. Learned counsel pointed out that petitioner in W.P. No.1770-2021, is the purchaser of land measuring 88-kanals and his claim, for specific performance, is pending in the court of competent jurisdiction. Likewise, it was contended that petitioner in W.P. No.1772-2021, acquired the property through family settlement and the petitioner in W.P. No.1773-2021, is the lessee of property known as 'Shamim Zari Farm', hence petitioners are claimants, who have interest in the properties attached, therefore, the attachment order needs to be set aside. It was added that under section 88(7) *ibid*, the property is being auctioned/sold in violation of law.

4. In response to the query of the Court, learned counsel for the petitioners submitted that no objections were filed, as the petitioners did not come to know about the attachment order. In support of his contentions, learned counsel placed reliance on cases reported as 'B.K. Shaikh Vs. The State and others' (1985 SCMR 1291) and 'Naila Tranum Jamshed Vs. Haji Muhammad Abbas and 4-others' (2001 SCMR 383).

5. In response to another query of the Court, learned counsel submitted that auction/sale is being conducted in accordance with procedure provided in Lahore High Court Rules and Orders, which are being followed by this Court as well.

6. Arguments advanced by learned counsel for the petitioners have been heard and the documents, placed on record, examined with his able assistance.

7. The facts, leading to filing of instant petitions, have been mentioned hereinabove, therefore, need not be reproduced, however, it is added that Mian Muhammad Nawaz Sharif was declared 'proclaimed offender' in Reference No.6 of 2020 pending before Judge, Accountability Court No.III, Islamabad, hence under section 88 of Code of Criminal Procedure, 1898 (the Code), respondent No.1 proceeded with attachment of his properties and did so vide order dated 01.10.2020. With respect to those properties, where no objections were filed, the court ordered the sale/auction of the same vide order dated 22.04.2021. The properties, which are subject matter of the instant petitions, are included in the list of properties, with respect to which, orders for sale have been made.

8. Under section 88 of the Code, the court issuing the proclamation under section 87 *ibid*, may at any time, order the attachment of any property movable or immoveable or both belonging to the proclaimed person.

9. Section 88(6A) of the Code provides for the right to challenge any attachment, if any person has any claim or objection made to the attachment with respect to any property, which has been attached and owned by the proclaimed offender. For ease of

convenience, relevant subsection is reproduced below:-

**“(6-A)** *If any claim is preferred to, or objection made to the attachment of any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part;*

*Provided that any claim preferred or objection made within the period allowed by this subsection may, in the event of the death of the claimant or objector, be continued by his legal representative”.*

The bare perusal of above subsection shows that if any person has any claim with respect to attached properties or objection to the attachment of the property, he/she can object to it within six months from the date of attachment, however, proclaimed offender cannot challenge the attachment. The grounds, on the basis of which attachment can be challenged, is that claimant or objector has interest in such property and that such interest is not liable to attachment under this section and claim or objection is to be inquired into and/or may be allowed or disallowed in whole or in part. The words used in subsection (6-A) *ibid* are ‘claim’ with respect to attached properties or ‘objections’ made to the attachment’, hence it is wide enough to cover any factual challenge to the attachment or even legal attack on the same.

The claims of the petitioners are not only factual but legal as well, as are borne out from the contentions by learned counsel for the petitioners, however, to cater such claims, the statute provides adequate relief and remedy by way of application before the court/Magistrate which passed the attachment orders. Learned counsel, when was confronted with this view of the matter, he candidly acknowledged the availability of remedy but submitted that it has become barred by limitation and when reason for the same was asked, he responded that petitioners did not have the knowledge of attachment order.

10. Be that as it may, alternate, adequate and efficacious remedy is available to the petitioners, under which, the petitioners can challenge the attachment not only on the basis of the interest they have, if any, in the properties in question, but also on the legal grounds. Under section 88(6-A) *ibid*, the Court can hold an inquiry into the claim of the objector. Moreover, the limitation provided for assailing the attachment, is six months from the date of attachment. It is not clear from the record appended with the petitions, as to when, attachment was made and whether the remedy of petitioners has become barred by limitation. The attachment order was passed on 01.10.2020, but when the attachment was made, is not borne out from the available record. Even-otherwise,

limitation starts from the date of attachment and one of the grounds of the petitioners in the instant petitions, is that attachment has not been made in accordance with provisions of section 88 of the Code, hence question of limitation remains grey.

11. Since the petitioners have alternate and adequate remedy, they can challenge the attachment by way of that remedy provided under section 88 (6-A) *ibid*. Learned trial court, while deciding the applications/objections to the attachment, can also advert to the question of limitation; the fact that alternate and adequate remedy has become barred by limitation, is no ground for assailing the order of attachment by way of petitions under Article 199 of the Constitution.

12. In view of above, petitioners may assail attachment of the properties in accordance with process provided under section 88 (6-A) *ibid* and if such applications are made, learned trial court shall decide the question of limitation as well in accordance with the mandate of law.

13. For what has been stated above, instant petitions are not maintainable, hence are dismissed in limine.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

W.P. Nos.1770-2021 etc.