

JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 3218 of 2019

Ali Trust Pakistan through its President
VS
Capital Development Authority, Islamabad, etc.

PETITIONER BY: Barrister Ehsaan Ali Qazi,
Advocate.

RESPONDENTS BY: Hafiz Arfat Ahmed Chaudhry,
Advocate for respondent No.1.
Barrister Rizwan Ahmed, SPP,
NAB.
Ms. Ammarah Mehmood,
Advocate for respondents No. 4
to 8.
Mr. Kaleem Abbas, Deputy
Director/I.O, NAB.

DATE OF HEARING: 05-07-2021.

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BABAR SATTAR, J.- The grievance of the petitioner is that respondent No.1/Capital Development Authority ("**CDA**") is refusing to transfer Plot No. 3-C, F-8 Markaz, Islamabad ("**Property**") purchased by the petitioner from respondents No. 4 to 8 on the basis that National Accountability Bureau, Rawalpindi ("**NAB**") has initiated an inquiry against conversion of plots allocated for clinics into commercial plots by letter dated 09.11.2018.

2. The basic grievance of the petitioner is that CDA is refusing to transfer the Property in the name of the petitioner

because NAB is investigating acts of the CDA dating back to 2007 that allowed conversion of plots allocated to run clinics into plots for general commercial use. The Property was granted commercial status by CDA upon the request of Mr. Atta-ur-Rehman, who was the previous owner of the Property, by letter dated January 31, 2007. The share of the Property in the name of Mr. Atta-ur-Rehman was transferred to her daughters, respondents No. 4, 5 & 6, by CDA by letter dated 15.01.2009. The petitioner purchased the Property from respondents No. 4 and 5 on 21.06.2017 and from respondents No. 6, 7 and 8 on 28.09.2017. No Demand Certificate, which is pre-requisite for transfer of property that falls within the domain of CDA, was issued in relation to the Property on 30.05.2017. NAB authorized an inquiry against conversion of clinic plots into plots for general commercial use on 25.04.2018 and after initiation of such inquiry, CDA wrote to the petitioner on 09.11.2018 that the transfer letter in relation to the Property will be issued after receipt of clearance from NAB.

3. Learned counsel for the petitioner stated that all formalities for transfer of the Property had been completed and statements of respondents No. 4 to 8 acknowledging the sale of the Property and authorizing its transfer to the petitioner had been recorded by CDA during 2017 and the only action outstanding was the issuance of a transfer letter by CDA. He submitted that an inquiry into conversion of clinic plots into plots for general commercial use was ordered by

NAB on 25.04.2018, which was subsequent to the purchase of Property by the Petitioner. He further submitted that the petitioner was not the accused person in the inquiry conducted by NAB and consequently section 23 of the National Accountability Bureau Ordinance, 1999 (**"NAB Ordinance"**) was not attracted in the present case. He further submitted that the Property had been transferred by Mr. Atta-ur-Rehman to respondents No. 4, 5 & 6 on 15.01.2009 and respondents No. 4 through 8 from whom the petitioner had purchased the Property were not accused persons within the meaning of section 5(a) of the NAB Ordinance and consequently section 23(a) of the NAB Ordinance was not attracted and could be not made a basis by CDA to refuse the transfer of Property. He further submitted that conversion of trade of the Property took place in 2007 after which the Property was transferred to respondents No. 4, 5 & 6 from whom the petitioner had purchased the Property in 2017. That conversion of the status of the Property was a past and closed transaction and that the status of the Property declared as commercial in 2007 had never been undone by CDA. And at this stage the status of the Property could not be reverted to its pre-2007 status on the basis that CDA officials had not fully complied with CDA regulations in granting the change of the status to the Property, as alleged by NAB. He relied on **Shuja Khan Baloch Vs. Capital Development Authority, Islamabad through Chairman and 3 others (PLD 2011 Islamabad**

25), Khan Muhammad Mahesar Vs. National Accountability Bureau (Sindh) and another (2010 PCr.LJ 579), Mst. Ashi Munir Vs. National Accountability Bureau, Rawalpindi and others (2019 PCr.LJ 997) and W.P No. 77 of 2020 titled Muhammad Bilal Sheikh Vs. Accountability Court No.1, Islamabad, etc. (decided on 20.01.2021) to argue that section 23 of the NAB Ordinance was not applicable in the facts and circumstances of the presence case.

4. The Director (Estate), CDA appeared before the Court on 28.01.2021 and admitted that till 25.04.2018 there was no clog on the transfer of the Property and that the petitioner is now acknowledged as the owner of the Property except that the formality of issuing a transfer letter remains to be completed, which has been held up due to NAB's inquiry into the change of trade of the Property.

5. By order dated 28.01.2021 this Court had directed that the matter be placed before the CDA Board for consideration. The CDA Board considered the matter in its meeting dated 26.03.2021 and decided that, "*during the pendency of inquiry, investigation or proceedings before the NAB, any transfer of any right, title or interest or creation of a charge on such property cannot be carried out, in terms of NAB's Section 23-a of NAB Ordinance, 1999.*"

6. The learned Special Prosecutor NAB contended that an inquiry into change of the status of clinic plots to

commercial were initiated in April 2018, and till the time of initiation of such inquiry no transfer letter has been issued by CDA to the petitioner. The learned counsel for NAB contended that Mr. Atta-ur-Rehman had applied for conversion of trade of the plot allotted to run a clinic into a plot for commercial use, which conversion was illegally approved by CDA and NAB was conducting an inquiry into the conduct of CDA officials as well as Mr. Atta-ur-Rehman, as an abettor and beneficiary, and consequently in view of section 23 of the NAB Ordinance the Property could not be transferred into the name of the petitioner as an inquiry in relation to such Property had been initiated prior to its transfer in the name of the petitioner.

7. The controversy in the instant petition boils down to the scope and applicability of section 23 of the NAB Ordinance. Section 23 states the following:

23. Transfer of property void: (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated investigation into the offences under this Ordinance, alleged to have been committed by an accused person, such person or any relative or associate of such person or any other person on his behalf, shall not transfer by any means whatsoever, create a charge on any movable or immovable property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Accountability Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void:

(b) Any person who transfers, or creates a charge on property in contravention of sub-section (a) shall be punishable with rigorous imprisonment for a term, which

may extend to three years and shall also be liable to fine not exceeding the value of the property involved.

Provided that such transfer of any right, title or interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit.”

8. Section 23 deals with the effect of transfer of property by an accused person, or by a relative or an associate or any other person acting on behalf of the accused during the pendency of an inquiry, investigation or proceedings before the NAB or the Accountability Court. The trigger which brings section 23 into effect is the initiation of an inquiry or investigation by Chairman NAB. It prohibits an accused person or any relative or associate or other person acting on behalf of such accused person from transferring or creating a charge on a property owned by such persons or in their possession. It further provides that transfer of any right, title or interest or creation of a charge on such property in breach of provisions of section 23(a) shall be void. Section 23(b) goes on to declare that any person acting in breach of the provisions of section 23(a) will be deemed to have committed an offence punishable with rigorous imprisonment for a term which may extend to three years. The proviso to section 23(b) states that a transfer made or right, title or interest created with the approval of the Accountability Court shall not be void.

9. The legislative intent behind section 23 was interpreted by the august Supreme Court in **Khan Asfandyar**

Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) wherein it was held that:

"Section 23 ibid is an interlocutory measure to prevent persons accused of such offences to frustrate the objects of law by creating third party interest in respect of illegally acquired property, thereby creating hurdles in the object of law i.e. to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters ancillary thereto. The propose of this power is more to preserve the property acquired by the accused through corruption and corrupt practices so that ultimately if the guilt is proved the same can be taken back from him in accordance with law. Section 23 of the NAB Ordinance is also preventive in nature and prescribes penalties for the accused person who attempts to alienate or transfer by any means property after the Chairman NAB has initiated investigation, inquiry or proceedings have commenced against him in an Accountability Court. Put differently it is in the nature of a restraint order. The protective measures are not by way of punishment but with a view to ensure that the final decision is not rendered redundant."

10. The scope of section 23 was considered by this Court in **Shuja Khan Baloch Vs. Capital Development Authority, Islamabad through Chairman and 3 others (PLD 2011 Islamabad 25)** wherein it was clarified that Chairman NAB was vested with statutory authority under section 12 of the NAB Ordinance to order the freezing of a property that belonged to an accused. In the event that Chairman NAB passed no freezing order under section 12 of the NAB Ordinance and merely communicated to CDA that the property of the accused must not be transferred into the

name of any person, it would be assumed that the NAB was aware of the existence of the property in question and did not wish to exercise powers to order freezing of the property. And that such property was not under investigation by NAB, in which case CDA, being the custodian of public record, was under an obligation to transfer the property in accordance with its rules and regulations.

11. The scope of section 23 of the NAB Ordinance was then considered by the learned Sindh High Court in **Khan Muhammad Mahesar Vs. National Accountability Bureau (Sindh) and another (2010 PCr.LJ 579)**, wherein the following was held:

"The purpose of the said section is to ensure that an accused person who, having committed an offence under the said Ordinance, does not defeat any punishment to which he may be liable there-under by transferring out his properties or assets during the pendency of any investigation, inquiry or trial. However, that purpose cannot obviously be extended to include any third party who may have had some dealings with the accused and prevent such a person from dealing with his properties and assets in such manner as he may deem fit. In this context, it is important to keep the provision of Article 23 of the Constitution in mind, which confers a fundamental right on every citizen to acquire, hold, or dispose of his property subject to any reasonable restriction imposed by law in the public interest. The language of section 23 of the NAB Ordinance, 1999, if read and applied literally, is quite draconian and must be construed in a manner that is consistent with and subject to the mandate of Article 23 i.e. that any restrictions imposed thereby are to be interpreted and applied in a reasonable manner."

12. The scope of section 23 was also considered by this Court in **Mst. Ashi Munir Vs. National Accountability Bureau, Rawalpindi and others (2019 PCr.LJ 997)**, where it considered a challenge to a decision rendered by the Accountability Court, which refused to grant permission for transfer of a plot in view of section 23 of the NAB Ordinance. This Court held that the NAB Ordinance is a penal statute and its provisions are to be interpreted and construed strictly. And that the provisions of section 23 were attracted only in relation to an accused, within the meaning of section 5(a) of the NAB Ordinance, against whom an inquiry or investigation was pending. The scope of section 23 was also considered by this Court in **W.P No. 77 of 2020 (Muhammad Bilal Sheikh Vs. Accountability Court No.1, Islamabad etc.)** where the scope of section 23 was discussed in juxtaposition with section 12 of the NAB Ordinance and the practice of NAB of not passing freezing order under section 12 of the NAB Ordinance and relaying on section 23 to intimate the relevant authority to mark 'caution' on properties was deprecated.

13. In view of the express language of section 23 and the meaning accorded to its terms by superior courts as discussed above, it is apparent that the said provision vests no authority in NAB to take any affirmative action pursuant to it. The legislative intent behind promulgation of NAB Ordinance, as stated in its preamble, includes "*recovery of State money and other assets from those persons who have misappropriated or removed such money or assets through*

corruption, corrupt practices and misuse of power or authority". The purpose of section 23, as interpreted by the august Supreme Court in **Khan Asfandyar Wali**, is to ensure that an accused is unable to frustrate the purpose of the NAB Ordinance by creating third-party rights in any property acquired through corruption or misuse of authority in such a manner that such property or asset can no longer be recovered by the State from the accused person. For such purpose the legislature provided section 12, which vests in NAB the authority to pass a freezing order in relation to the property of an accused when reasonable grounds exist for believing that the accused has committed an offence under the NAB Ordinance and acquired properties and assets from graft and corruption. Such freezing order passed by NAB remains valid for a period of 15-days, in view of section 12(c) of the NAB Ordinance, and its effect does not extend any further unless confirmed by the Accountability Court. Anyone aggrieved of such order has a right to object to the same under section 13 of the NAB Ordinance. Consequently, the power to place any property or asset of an accused under fetters is conferred on Chairman NAB, under section 12 of the NAB Ordinance, subject to the supervision of the Accountability Court.

14. Section 23 declares the effect of transfer by an accused or anyone on his behalf during the pendency of an inquiry or investigation in order to affirm a superior right of the state over the right of a third-party who has purchased

any property or asset of an accused during the pendency of an inquiry or investigation. In other words section 23 is a declaratory provision that determines the priority to be accorded by law to the rights of the state vis-à-vis the rights of a third-party purchaser in relation to a property or asset sold by an accused being proceeded against under provisions of the NAB Ordinance. The effect of the provision is in the nature of a claw-back: in case that an asset of an accused, which is unknown and not frozen by NAB in exercise of its powers under section 12, comes to light during the inquiry or investigation and at such time the asset has been transferred to a third party, such third party's right created during the inquiry or investigation will not be superior to rights of the State to confiscate a property if the accused is found guilty of an offence under the NAB Ordinance. The object of section 23 is to prevent a property or asset acquired through corrupt means from changing form or hands in such manner that it becomes untraceable or unrecoverable thereby defeating the object of the NAB Ordinance to recover state money and misappropriated assets.

15. The language of section 23 makes it obvious that it vests no authority to place 'caution' on a property. NAB simply does not figure within the scheme of section 23 except to the extent that the trigger for application of section 23 is the time of authorization of an inquiry or investigation by Chairman NAB. Section 23 can only be relevant for purposes of NAB if it has passed a freezing order in relation to the

properties of an accused under section 12 of the NAB Ordinance and during the pendency of an inquiry or investigation against such accused it finds that the accused owned other property or properties, which were transferred to a third-party in breach of section 23 to defeat the purposes of NAB Ordinance. In such case NAB could possibly exercise its authority under section 12 in relation to such property to pass an appropriate freezing order. The third-party aggrieved by such order could file objections before the Accountability Court under Section 13 of the NAB Ordinance, and the Accountability Court would decide how to balance the claims of the state against those of such third-party in view of section 23.

16. What NAB is not authorized to do under section 23 is issue instructions to public authorities directing them to place some kind of 'caution' against transfer of property in view of section 23 of the NAB Ordinance. There are two issues to be considered here. One, the scheme of the NAB Ordinance in relation to encumbering property rights in view of sections 12, 13 and 23. And two, the rights of citizens to hold, acquire and dispose of property as guaranteed by the Constitution.

17. Article 23 of the Constitution guarantees the right to every citizen to "*acquire, hold or dispose of his property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.*" The august Supreme Court had declared in **Khan Asfandyar**

Wali that section 23 of the NAB Ordinance is not in conflict with Articles 23 and 24 of the Constitution per se. However, the manner in which NAB exercises its authority under the NAB Ordinance to encumber the rights of a citizen to acquire or dispose of a property can fall foul of Articles 23 of the Constitution. In **Federation of Pakistan v. Shaukat Ali Mian (PLD 1999 Supreme Court 1026)**, the august Supreme Court drew a distinction between a statutory provision that is ex-facie discriminatory and one which is “capable of being pressed into service in a discriminatory manner”. In case of the latter, it was held that the provision will be ultra vires the Constitution, for being in breach of fundamental rights of the citizens, but any action taken by an authority applying the provision in a discriminatory manner will be found to be ultra vires the law and the Constitution. The apex court had also explained the meaning of colorable legislation in **Shaukat Ali Mian**. To the extent that section 23 of the NAB Ordinance is interpreted as vesting in NAB the authority to indefinitely fetter the property rights of persons accused of corrupt practices, without judicial oversight, or incumber the property rights of third-party purchasers by forcing transferring authorities to place a caution against their transfers, section 23 could amount to excessive delegation of authority in the executive and colorable legislation in breach of Articles 9, 23, 24 and 25 of the Constitution, read together with Article 4. However, in the principles of interpretation of statutes, reiterated by the august Supreme Court in **Lahore**

Development Authority Vs. Ms. Imrana Tiwana (2015

SCMR 1739) it was held that in applying tools of interpretation every effort must be made to save a statutory interpretation. Thus, section 23 of NAB Ordinance cannot be read such that it vests in Chairman NAB the unstructured and unsupervised power to encumber the property rights of citizens, guaranteed by the Constitution, for an indefinite period.

18. The reasonability of exercise of authority under section 12 as well as the restriction imposed under section 23 of the Ordinance depends on the period during which the restriction stays in the field. Section 18 of the NAB Ordinance provides for the life cycle of a matter that NAB takes cognizance of and the various stages of the proceedings that culminate into the filing of a reference, including inquiry and investigation stage. Section 18(f) states that an inquiry or investigation under this Ordinance shall be completed as expeditiously as may be practicable and feasible. This provision makes it obvious that it had never been contemplated by the legislature that an inquiry or investigation under the NAB Ordinance would lumber along for years without end and consequently tie up valuable property rights of citizens guaranteed under Article 23 of the Constitution. Sections 12 and 23 of the NAB Ordinance may not be ultra vires Articles 23 and 24 of the Constitution per se. But any exercise of authority pursuant to such provisions that encumbers the property right of citizens guaranteed

under Article 23 of the Constitution for an indefinite period would be ultra vires the Constitution in view of the law laid down in **Shaukat Ali Mian**.

19. Given the legislative intent behind section 23 of the NAB Ordinance, in the event that NAB is aware of a property of an accused and yet refuses to exercise its authority to pass a freezing order in relation thereto under section 12 of the NAB Ordinance it is to be deemed that such property is not the subject of any inquiry or investigation of NAB and there can be no presumption that the transfer of such property is automatically barred under section 23 of the NAB Ordinance. As aforementioned, section 23 vests no authority in NAB to take any affirmative or prohibitory action in relation to any property or to issue instructions to any other public authority. Section 23 is not a unique provision. It merely seeks to undo the effect of transfer of property when such transfer has been affected to defeat the purposes of NAB Ordinance. And in such sense, it is similar to Section 53 of the Transfer of Property Act, 1882 or Section 391 of the Companies Act, 2017, which also seek to preserve the status of assets when transferred to third-parties with a fraudulent purpose. Further, if NAB is aware of the property of an accused and yet refuses to exercise its powers under section 12 to pass a freezing order in relation to such property and instead chooses to issue a communication to any other public authority to place a caution on such property in order to encumber it or prevent its transfer under section 23 of the NAB Ordinance,

such action is tantamount to a fraud on the statute. The statute vests in NAB the explicit authority to pass a freezing order in relation to a property subject to the oversight of the Accountability Court, which must approve within a period of 15 days such freezing order for it to continue to have effect. Any decision of NAB not to exercise its authority under section 12 and instead issue a caution for purposes of section 23, which provides for no judicial oversight, can only be treated as a surreptitious device meant to defeat the procedural requirements of section 12 and the judicial supervision of its actions that comes along. It is a settled principle that when law requires a thing to be done in a certain manner, it must be done in such manner or not at all.

20. In view of the above an issuance of caution by NAB for purposes of section 23 has no legal basis and the decision of any public authority to refuse to exercise its authority and its statutory powers or discretion in view of such caution would amount to nonfeasance. The scheme of the NAB Ordinance is clear. NAB is obliged to complete its inquiry and investigation expeditiously. If during its inquiry or investigation it collects sufficient material that leads to the belief that the accused has accumulated properties through corruption or misuse of authority, it can issue a freezing order against such property in order to enable the State to confiscate such property after the offense is proven. Section 23 enables the State to recover the property that is a product of corrupt practices and has been fraudulently transferred to

a third-party during the pendency of an inquiry or investigation to frustrate the ability of the State to confiscate such property. Section 23 consequently vests no authority in NAB to prevent the transfer of properties belonging to an accused that are within its knowledge but in relation to which NAB has chosen not to exercise its section 12 powers.

21. Let us now apply the law as explained above to the facts of the present case. The inquiry in question was ordered by NAB on 25-04-2018 and is still pending after the passage of over 3 years. The inquiry is focused on the possibility of corruption or abuse of authority by CDA officials. Mr. Atta-ur-Rehman and other allottees of the Property are being regarded as beneficiaries who might have connived with CDA officials to seek an undue favor. NAB's inquiry has not progressed into an investigation and no reference has been filed against any accused thus far. It is an admitted fact that the petitioner is not an accused person for purposes of section 5(a) of the NAB Ordinance and that respondents No. 4, 5 & 6, daughters of Mr. Atta-ur-Rehman, are also not accused persons. Respondents No. 4, 5 and 6 are, however, relatives of Mr. Atta-ur-Rehman. Mr. Atta-ur-Rehman is also their predecessor-in-interest in relation to the Property. They thus fall within the category of persons to whom the restriction under section 23 of the NAB Ordinance is meant to bind, to the extent that they are the relatives of an accused against whom an inquiry or investigation is pending.

22. By the time the inquiry was ordered on 25-04-2018, the Property had not yet been transferred in the name of the petitioner by CDA. The restriction imposed by section 23 relates to transfer of property or creation of a charge against such property. The Property has already been purchased by the petitioner for consideration and it is in possession of the petitioner, and CDA has also acknowledged that it treats the petitioner as the owner of the Property. It has only expressed its inability to transfer the Property after being advised by NAB that CDA officials as well as Mr. Atta-ur-Rehman are facing an inquiry in relation to the change of trade of certain properties by CDA, including the Property, and as transferring a property in breach of section 23(a) constitutes an offence under section 23(b) of the NAB Ordinance, the transfer letter being sought by the petitioner cannot be issued unless permission is granted by NAB.

23. CDA Board is correct in its decision to the extent that the relevant trigger for purposes of section 23(a) is the initiation of an inquiry and so long as initiation of inquiry predates the transfer of property and such property belongs to an accused person or a relative of the accused, the prohibition under section 23 would be attracted. CDA is however wrong in assuming that NAB is vested with authority to grant permission for purposes of transfer under section 23(a) of the NAB Ordinance. As explained above, the only authority vested in NAB relevant for purposes of section 23 is NAB's power to initiate an inquiry or investigation and its

powers to close an inquiry or investigation. The former triggers the prohibition under section 23 and the later would bring such prohibition to an end in the event that an inquiry or investigation doesn't culminate into a reference. It is therefore clarified that unless NAB has passed a freezing order in relation to a property under section 12, no public authority required to affect and record the transfer of such property is to assume that transfer of such property is barred under section 23 of the NAB Ordinance. However, in the event that any person who is purchasing a property from an accused person against whom an inquiry or investigation is pending, and wishes neither to risk the loss of property in view of section 23(a) or being charged for an offense under section 23(b) for having transferred such property in breach of section 23(a), may approach the Accountability Court for grant of permission to transfer in view of the proviso to section 23(b). The Accountability Court can then grant a conditional or unconditional permission to allow such transfer in view of the material adduced by NAB to establish whether or not such property is a product of corruption or abuse of authority.

24. In the present case NAB has no basis to seek the prevention of transfer of Property under section 23 of the NAB Ordinance as it has passed no freezing order in relation to the Property under section 12. Further, as the accusation in the inquiry pending against CDA Officials and Mr. Atta-ur-Rehman relates to change of trade of the Property, this is also not a

case that could result in confiscation of the property, as NAB's inquiry relates to use of the Property and not its acquisition. The question of whether or not NAB can inquire into exercise of discretion by officials of a statutory authority in breach of regulations of such statutory authority, in the absence of an allegation that exercise of such discretion is inspired by bribery or graft, is also a relevant question. However, as the legality of the inquiry is not a question before this court, we choose to express no opinion in relation thereto.

25. In view of the proviso to section 23(b), it is for the Accountability Court and not this court to grant permission for the transfer of any property from an accused or a relative of an accused to a third-party after considering the scope of the inquiry or investigation being conducted by NAB. It is not for the High Court to grant a clean chit of health to transfer of a property in its writ jurisdiction and hold that such transfer transaction will not be declared void under section 23(a) of the NAB Ordinance, unless the matter is first decided by the Accountability Court and comes to the High Court in appeal against such order.

26. Through the instant petition, the petitioner has challenged the letter issued by CDA dated 09.11.2018 stating that the transfer letter in relation to the property shall be issued after the issuance of clearance letter by NAB. The said letter is illegal to the extent that grant of permission has been rendered contingent on clearance from NAB. As aforesaid,

NAB is vested with no authority to grant any clearance for purposes of section 23 or place any property under caution for purposes of section 23. In the instant case, CDA ought not have declined to transfer the Property on the instruction of NAB by citing the restriction under section 23 as held above.

27. But now that CDA has declined the request by the petitioner to issue a transfer letter in relation to the Property, the remedy for the petitioner, to ensure that its title to the Property upon issuance of the transfer letter by CDA is clear and unencumbered, and the transfer transaction is not liable to be declared void under section 23, is to file an application before the Accountability Court under the proviso of section 23(b) for grant of permission for transfer of the Property. While granting such permission the Accountability Court would take into account as to when the inquiry was initiated, whether or not it has been conducted and or completed expeditiously for purposes of section 18(f) of the NAB Ordinance, and determine whether the manner of exercise of authority by NAB in ordering and continuing the inquiry amounts to placing an unreasonable restriction on the property rights of the petitioner and respondents 4 through 8 guaranteed under article 23 of the Constitution.

28. The petitioner is further seeking a declaration that conversion of trade of the Property from use as a clinic to its use for commercial purposes in 2007 is valid. Such prayer is premature as nothing has been placed on record by the

petitioner or by CDA to establish that the status of the property as determined by CDA by letter dated 31-01-2007 has been revoked.

29. In view of above, the petition is **allowed**. The impugned letter issued by CDA dated 09.11.2018 is set aside for being devoid of legal authority. CDA as repository of the property record is not barred by law from affecting a transfer due to a communication issued by NAB under section 23(a) of NAB Ordinance, subject, of course to its own satisfaction as to the completion of all legal formalities. For the purposes of ensuring that the transfer of the Property sought to be affected by issuance of transfer letter by CDA is not liable to be declared void in terms of section 23 of the NAB Ordinance at any subsequent stage, the petitioner may approach the learned Accountability Court to seek its permission in terms of section 23(b) of the NAB Ordinance, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in the open Court on **19.07.2021**.

JUDGE

JUDGE

Approved for reporting.

Saeed.