

*Form No: HCJD/C-121.*

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No. 674 of 2018

Mst. Ashi Munir

***Vs***

National Accountability Bureau, Rawalpindi, etc.

DATE OF HEARING: 10-12-2018.

PETITIONER BY: Mr Sher Afzal Khan Babar Advocate.

RESPONDENTS BY: Mr Irfan Bhoola, Special Prosecutor NAB.  
Mr Qaiser Abbas Advocate, vice  
learned counsel for respondent No. 2.  
Mr Qasim, A.D/I.O. NAB.

**ATHAR MINALLAH, CJ.-** Through this

constitutional petition the petitioner has assailed letter, dated 15-09-2014, whereby the National Accountability Bureau (hereinafter referred to as the "**Bureau**") has refused to accept the request for permission to transfer her plot.

2. The facts, in brief, are that the Bureau had initiated an inquiry on 08-08-2014 under the National Accountability

Ordinance, 1999 (hereinafter referred to as the "**Ordinance of 1999**") relating to plots which had been illegally created by the Federal Government Employees Housing Foundation. The inquiry was extended to allotments which were made by the officials of the Federal Government Employees Housing Foundation (hereinafter referred to as the "**Foundation**") in violation of the waiting list relating to officials/employees of Pakistan Railways. Plot no. 15, Street No. 64-E, Sector G-14/2 (hereinafter referred to as the "**Plot**") was allotted to one of the employees of Pakistan Railways namely, Muhammad Asghar. The Plot was sold by the latter and was transferred in the names of several bonafide purchasers. The Plot was ultimately purchased from the market and transferred in the name of the petitioner on 07-06-2012. Admittedly, the inquiry was ordered and initiated by the Bureau on 08-08-2014 and later converted into investigations on 13-04-2015. The reference was filed on 30-03-2016. The allottees of the Plots nor the subsequent purchasers were arrayed as accused and admittedly, proceedings under the Ordinance of 1999 are not pending against them. The accused against whom trial has commenced pursuant to filing of reference are officials of the Foundation and they have no concern whatsoever with the Plot. The petitioner entered into an agreement to sell but she was informed that the Plot could not be transferred because permission of the Bureau was required. The petitioner, through an application, requested

the Bureau to grant permission so that the concerned authority could process the application for transfer of the Plot in the name of the buyer. The Bureau declined this request. The petitioner had also filed an application before the learned Accountability Court-1, Islamabad and the latter vide order, dated 15-01-2018 dismissed the application on the ground that the Plot was subjected to caution under section 23 of the Ordinance of 1999. The petitioner through this petition has challenged the refusal by the Bureau to allow her to dispose of the Plot and transfer it in favour of the prospective purchaser.

2. The learned counsel for the petitioner has argued that; the latter had purchased the Plot in 2012 while the inquiry was ordered and initiated in 2014; the petitioner was obviously a bonafide purchaser because no proceedings relating to the Plot were pending in 2012; the Bureau has misinterpreted section 23 of the Ordinance of 1999 which has led to issuance of the impugned letter, dated 15-09-2014; the Plot is not owned by those who are arrayed as accused in the pending reference nor is in possession of their relatives; the original allottee of the Plot is also not one of the accused; the purported caution under section 23 of the Ordinance of 1999 is without lawful authority and jurisdiction; the learned counsel has placed reliance on cases titled "Khan Muhammad Mahesar v. National accountability Bureau (Sindh)" [2010 P

Crl. L J 579] and "Chaudhry Muhammad Akram Warraich v. Chairman, National Accountability Bureau, Islamabad" [2010 YLR 2766].

3. The learned Special Prosecutor has appeared alongwith the Investigating Officer namely, Mr M. Qasim. They have argued that; the trial pending before the learned Accountability Court is regarding misuse of authority relating to allotment of plots in violation of seniority list; the Plot was also allotted to a person who was not eligible; the learned Accountability Court vide order, dated 15-01-2018, had dismissed the application of the petitioner and, therefore, the said order has attained finality because it was not challenged before any competent forum; the learned Special Prosecutor has also placed reliance on an unreported judgment of the learned Division Bench of this Court, dated 25-09-2018, passed in Criminal Appeal No. 194/2017.

4. The learned counsel for the petitioner and the learned Special Prosecutor of the Bureau have been heard and the record perused with their able assistance.

5. It is an admitted position that the petitioner had purchased the Plot in 2012 and that she was the fourth transferee. The original allottee of the Plot, who was an employee of Pakistan Railways, has not been arrayed as an

accused in the reference which was filed by the Bureau before the learned Accountability Court. It is an admitted position that the Plot is not owned by one of the accused against whom reference has been filed. The Plot was purchased by the petitioner from another bonafide purchaser in 2012 while the inquiry was ordered and initiated by the competent authority in 2014 under the Ordinance of 1999. The Bureau has turned down the request of the petitioner vide the impugned letter, dated 15-09-2014 on the ground that transfer of the Plot is void because provisions of section 23 of the Ordinance of 1999 are attracted.

6. The Ordinance of 1999 was promulgated and the objects and purpose are described in the preamble i.e. to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, etc. Section 5(a) defines the expression 'accused' while 'assets' is defined in section 5(c). Clause (a) of section 23 starts with a non obstante clause. Firstly, this provision is attracted after the Chairman of the Bureau has initiated an inquiry or investigation into any offence under the Ordinance of 1999, secondly, it is explicitly restricted to an accused person, the latter's relative or associate or any other person who acts on behalf of such an accused and lastly the section bars transfer of property, owned by the accused or if

it is in possession of any one of the aforementioned categories, while proceedings are pending under the Ordinance of 1999 before the Bureau or the Court, as the case may be. The consequence of transfer, title, right, interest or creation of charge relating to the property of an accused which offends section 23 has been explicitly declared as void. Moreover, under clause (b) of section 23, contravention of clause (a) is an offence and punishment has also been provided therein. In a nutshell the mischief contemplated under section 23 is solely restricted to the property of a person who falls within the ambit of the definition of the expression "accused" under section 5(a) i.e against whom inquiry or investigation before the Bureau, or proceedings before an Accountability Court are pending. If a person is not an accused nor proceedings are pending against him or her before the Bureau, or the Accountability Court then in such an eventuality provisions of section 23 relating to property owned by such a person are not attracted.

7. In this case it is an admitted position that the petitioner is not an accused nor proceedings are pending against her either before the Bureau or the learned Accountability Court. Likewise the original allottee nor the subsequent purchasers were proceeded against under the Ordinance of 1999. They are not one of the accused in the trial pending before the learned Accountability Court. It is not

the case of the Bureau that the petitioner is a relative or associate of one of the accused against whom trial is pending or that she in any manner is acting on behalf of an accused. Despite our repeated queries, the learned Special Prosecutor of the Bureau could not point out any provision in the Ordinance of 1999 which may create a clog or restrains the petitioner from transferring the Plot or dealing with it in any other manner. Section 23 of the Ordinance of 1999 is definitely not attracted in case of the Plot.

8. The Ordinance of 1999 is in the nature of a penal statute and, therefore, its provisions are required to be interpreted and construed strictly. The Bureau has misconstrued the unambiguous intent of the legislature and the scope of section 23 of the Ordinance of 1999. The learned counsel for the petitioner has rightly placed reliance on a judgment rendered by a learned Division Bench of Sindh High Court in the case titled "Khan Muhammad Mahesar v. National accountability Bureau (Sindh)" [2010 P CrL. L J 579] in support of his contention that the scope of section 23 is restricted to an accused person and property owned by him or her.

9. We have carefully perused order, dated 15-01-2018, passed by the learned Accountability Court and we are of the opinion that the findings recorded therein are per incuriam.

10. For what has been discussed above, the instant petition is allowed and consequently it is declared that provisions of section 23 of the Ordinance of 1999 are not extended to the petitioner nor the Plot. The impugned letter, dated 15-09-2014 was issued without lawful authority and jurisdiction and it is, therefore, accordingly set aside. The petitioner being the title holder and thus owner of the Plot, is entitled to deal with it in accordance with law, inter alia, its sale, transfer etc. The Bureau is not empowered nor vested with jurisdiction to interfere with the rights of the petitioner relating to the Plot.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Tanveer Ahmed.

*Approved for depositing.*