

NAB Acquitted

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Before:

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Omar Sial.

Cr. Accountability Appeal No.09 of 2021

Appellant: **Nazar Muhammad & others (on bail)**
Through M/s. Raj Ali Wahid, Amer Raza
Naqvi and Muhammed Yousaf Laghari
advocates

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.11 of 2021

Appellant: **Faryad Hussain (on bail)**
Through Mr. Sajjad Ahmed Chandio
advocate

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.12 of 2021

Appellant: **Abdul Raheem Baloch & others (on bail)**
Through Mr. Raj Ali Wahid advocate

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.13 of 2021

Appellant: **Muhib Ali & others (on bail)**
Through Mr. Mr. Raj Ali Wahid advocate

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.14 of 2021

Appellant: **Barkat Ali Junejo (on bail)**
Through Isharat Ali Lohar advocate

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Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.15 of 2021

Appellant: **Dr. Asghar Abbas Sheikh (on bail)**
Through Mr. Riazat Ali Sahar advocate

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.16 of 2021

Appellant: **Ayaz Hussain (on bail)**
Through Mr. Mr. Mr. Raj Ali Wahid advocate

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Cr. Accountability Appeal No.20 of 2021

Appellant: **Imran Mehdi (deceased)**
Through M/s. Noor-ul-Haq Qureshi and
Ammar Ahmed advocates

Respondents/State: NAB through Mr. Niaz Hussain Mirani,
Special Prosecutor NAB

Dates of hearing: 02.05.2024, 09.05.2024 and 15.05.2024.

Date of Judgment: 23.05.2024.

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- The appellants named above have assailed the impugned judgment dated 27.01.2021 passed by learned Accountability Court at Hyderabad in Reference No.11 of 2015 whereby the appellants and other co-accused faced trial. After full dressed trial, the co-accused Shoaib Abbas was acquitted by the learned trial court while the present appellants were convicted and sentenced in the following manner:-

- i. Accused Barkat Ali Junejo is convicted u/s 10 of the NAO, 1999 r/w Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for seven years and to pay fine of Rs.4.790 Millions. In case of default in non-payment of fine, same shall be recovered as arrears of Land Revenue.

- ii. Accused Asghar Abbas Sheikh is convicted u/s 10 of the NAO, 1999 r/w Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for five years and to pay fine of Rs.5,00,000/- [Rupees Five Lac]. In case of default in non-payment of fine, same shall be recovered as arrears of Land Revenue.
- iii. Accused Imran Mehdi Memon is convicted u/s 10 of the NAO, 1999 r/w Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for five years and to pay fine of Rs.5,00,000/- [Rupees Five Lac]. In case of default in non-payment of fine, same shall be recovered as arrears of Land Revenue.
- iv. Accused persons each namely Nazar Muhammad Junejo, Hyder Ali, Mir Shah Muhammad, Abdul Raheem Baloch, Mohib Ali, Allah Dino, Ghulam Muhammad Dal, Ali Anwar, Muhammad Khan, Liaquat Ali, Muhammad Amir Tunio, Abdul Latif Junejo, Faryad Hussain, Hayat Muhammad, and Ayaz Hussain Laghari, are convicted u/s 10 of the NAO, 1999 r/w Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for three (03) years each and to pay fine of Rs.2,00,000/- [Rupees Two Lac] each. In case of default in non-payment of fine, same shall be recovered as arrears of Land Revenue.
- v. All the accused were also debarred from public office and taking loans from financial institutions as set out in the NAO 1999.

2. It is the case of prosecution as per Reference No.11 of 15 as mentioned above in brief that, accused Barkat Ali Junejo (Administrator of Sindh University Employees Cooperative Housing Society) in connivance with co-accused persons each namely, Asghar Abbas Sheikh (DG Sehwan Development Authority) and Imran Mehdi Memon since deceased MD Sindh Co-opetative Housing Society) have illegally revised the layout plan of Sindh University Employees Cooperative Housing Society, Jamshoro Phase-I (the Society) and later on illegally allotted amenity / commercial plots to accused persons from Sr. No.4 to Sr. No.24 (beneficiaries of the plots). The total value of plots on registered deeds was Rs.4.790 M whereas accused Barkat Ali Junejo has received amount of Rs.27.794 M from the beneficiary persons and only Rs.2.051 M were deposited in Sindh University Employees Cooperative Housing Society, Jamshoro account rarely used for the society, later on the accused Barkat Ali Junejo misused and embezzled whole amount of Rs.2.051 M. Whereas the loss caused to Public Exchequer / society is assessed as Rs.312.5 M. Thus the accused persons have committed the offence of corruption and

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corrupt practices as envisaged under section 9(a) of the National Accountability Ordinance, 1999 punishable under section 10 of the ordinance and schedule thereto.

3. The trial Court framed charge against all the accused mentioned in the subject reference to which, they pleaded not guilty and claimed to be tried.

4. At the trial prosecution examined 14 witnesses and exhibited numerous documents and other items in order to prove its case. Statements of accused were recorded u/s 342 Cr.P.C., wherein they denied the prosecution allegations leveled against them and claimed their false implication in the subject reference; however, none of the accused in order to disprove the prosecution allegation has examined himself on oath nor produced any DW in his defense.

5. Learned trial Judge after hearing the learned counsel for the respective parties and evaluating the evidence available on record convicted and sentenced the appellants as set out in the earlier para of this judgment. Hence the appellants have filed these appeals against their convictions.

6. Learned trial court in the impugned judgment has already reproduced the evidence in detail and as such there is no need to repeat the same here so as to avoid duplication and unnecessary repetition.

7. **Learned counsel for the appellant Barkat Ali** has mainly contended that he did not seek permission for the change of amenity plots to commercial plots and that such permission had already been applied for by Saeed Ahmed in his capacity as Secretary of the Society vide his letter dated 4.01.2013 which was approved on 24.01.13 by AD to the Secretary SDA which was before the board of the society was superseded and before Barkat Ali was appointed administrator and as such he had nothing to do with the initial process of revising the plan. After becoming administrator he continued with the work of amending the original plan and got permission to do the same from appellant Imran Mehdi which actually lead

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to an increase in the amenity area but simply changed its location and then sold the plots at market value as permitted by the Circular through advertisement and open auction as per market value; that the funds were paid into the joint account of JS bank which he operated jointly with PW 10 Sattar and as such he did not make any person gain from the transaction and there is no evidence that he received any pecuniary advantage and as such based on all or any of the above reasons he should be acquitted by being extended the benefit of the doubt. In support of his contentions he placed reliance on the case of **The State V M.Idress Ghauri** (2008 SCMR 1118).

8. **Learned counsel for appellant Asghar Abbas Shaikh** who was DG of Sewan Development Authority (SDA) has mainly contended that he did not approve the revised lay out plan; the revised layout plan produced at trial was a photocopy and no explanation was given by the trial court as to why it was admissible when the original had not been produced and as such the revised layout plan was inadmissible and could not be relied upon; that the evidence suggests that even otherwise the revised amenity plot area in the revised plan was increased from 5% to 10%; that he had nothing to do with the sale of the plots which was done legally through advertisement; that the allegation that he benefited by revising the layout plan though his son co-accused Shoaib Abbas Shaikh being given a plot is belied by the fact that his co-accused son was acquitted of the charge of being a beneficiary and the NAB has not filed any appeal against his acquittal; that the star prosecution witnesses were either accused in other NAB references or had been convicted in other NAB references and as such no credibility can be given to their evidence and as such based on all or any of the above arguments the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the case of **Sarwar Shakir V The State** (1992 MLD Kar 1253), **Remseh Udeshi V State** (PLD 2004 Kar 224) and **M.Idress Ghauri V State** (NLR 2008 Crim 555).

9. **Learned counsel for appellant Imran Mehdi** (now deceased) who was Ex MD of Sindh Co-operative housing society has contended that he did not give permission to either amend the lay out plan or for the sale of plots through his letter dated 25.06.2013 which letter was misconstrued and even otherwise out of abundant caution he withdrew the letter 6 months later which shows that he never had any criminal intent; that there was no evidence that he received any benefit, monetary or otherwise; that the evidence of the main witnesses is unreliable and lacks credibility as most of them were facing NAB references or were NAB accused at the time when they gave evidence; that since this was a private society no loss was caused to the Government exchequer and as such based on all or any of the above arguments the appellant should be acquitted of the charge by being extended the benefit of the doubt.

10. **Learned counsel for appellant beneficiaries** Nazar Muhammad Junejo, Hyder Ali, Mir Shah, Abdul Raheem Baloch, Mohib Ali, Allah Dino, Ghulam Muhammad, Ali Anwar, Muhammad Khan, Shoaib Abbas, Liaquat Ali, Abdul Latif, Faryad Hussain, Hayat Muhammad and Ayaz Hussain Leghari have contended that NAB had no jurisdiction in this case as the Society was a private society which operated through funds which the society self generated and had its own rules for dealing with any potential wrong doing by its members; there was no loss to the Government Exchequer and it was not a case of cheating the public at large; that being a private society there was no bar on amending the layout plan; that no original layout plan or revised lay out plan was ever produced and as such the photocopy documents which were produced at trial were inadmissible in evidence; that even otherwise there was no bar in amending the lay out plan and no objection had been received for amending the layout plan from the master plan department; that area of amenity land was increased from 5% to 10%; that there is no evidence that the plots were sold at throw away prices as the auction was carried out in accordance with law; that the valuation of the plots relied upon by NAB was

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excessive which was based on a report of a Mukhtikar who had relied on a report of a tapedar which had not been exhibited neither of whom had any experience in valuing plots based on market value; that co-accused beneficiary Shoaib Abbas Shaikh who was the son of the one of the main accused Asghar Abbas Shaikh who was DG of Sewan Development Authoirty (SDA) whom there was more evidence against was acquitted of the charge and since the prosecution has not proven that any of the accused are related to one of the other main accused Barkat Ali or were his favorites or were his Kith and Kin they should also be extended the same treatment of the acquitted co-accused beneficiary Shoaib Abbas Shaikh who was acquitted on the same set of evidence; that one of the beneficiaries Mir Shah Muhammed Talpur's plot came from Phase II which lay out plan was not revised; that the case of the prosecution is that the lease deeds of the beneficiaries were leased out by appellant Barkat Ali between 16.09.2013 to 18.09.13 however this was not the case in respect of some beneficiaries, for example appellant Hyat Muhammed's lease was executed on 18.11.2013; that even if the main appellants Barkat Ali, Asghar Shaikh and Imran Mehdi had acted illegally the beneficiaries had no knowledge of the same and as such when they purchased the property through advertised auction at market value they had no criminal intent to commit any crime and as such for any or all of the above reasons the appellant beneficiaries named above should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions, they placed reliance on the cases of **Mir Munawar Ali Talpur v. The State** [PLD 2003 SC 46], **Ramesh M. Udeshi v. The State** [2005 SCMR 648], **Muhammad Siddique Al Farooq v. The State** [PLD 2002 Karachi 24], **Mansoor UL Haq v. Government of Pakistan** [PLD 2008 SC 166], **Ramesh Udeshi v. The State** [PLD 2004 Karachi 224], **NAB v. Khalid Ahmed Khan Kharral** [2013 MLD 849], **Sh. Khalid Mehmood and 03 others v. The State and 02 others** [2006 P.Cr.L.J 1115], **Muhammad Masood Chishti v. Chairman NAB and others** [PLD 2001 Islamabad 350], **The State v. Muhammad Idrees Ghauri and others** [2008 SCMR 1118], an unreported case of **Muhammad**

Ikhlaque Memon v. The State passed in Cr. Acct. Appeal No.38 of 2018, **Ayub Masih V State** (PLD SC 2002 1048) **Khalid Mehmood V State** (2011 SCMR 664), **Mazhar Ibnehassan Siddiqui and 2 others v. The state and another** [1997 P Cr.L.J 130 Karachi], **Munir Ahmed alias Munni v. The State** [2001 SCMR 56], **Jagin and 2 others v. The State** [PLD 2001 Quetta 64], **Mian Nisar Akhtar and another v. The State** [2002 MLD 372 Karachi], **Ashraf and 4 others v. The State** [2004 P Cr.L.J 42], **Salamat Mansha Masih v. The State and another** [PLD 2022 SC 751], **Muhammad Naeem Khan and another v. Muqadas Khan (dec) through L.Rs and another** [PLD 2022 SC 99], **Muhammad Shakeel alias Chotoo v. The State** [2024 MLD 286] and **Raheel v. The State** [2024 P Cr.L.J 121 Sindh].

11. On the other hand Special Prosecutor NAB fully supported the impugned judgment. He contended that the prosecution had proved its case beyond a reasonable doubt against all the appellants based on reliable ocular evidence which was supported by documentary evidence and as such the appeals be dismissed. In support of his contentions he placed reliance on the cases of **Malik Din V Chairman NAB** (2019 SCMR 372), **Syed Muhammed Adnan v. The State** (2023 P.CR.LJ 1356) and **Muhammad Azam Brohi v. National Accountability Bureau (The State)** [2024 P Cr.L.J 745 Sindh].

12. We have carefully considered the contentions of the parties, perused the evidence on record and considered the case law cited at the bar.

13. At the outset it is doubtful whether the NAB had the jurisdiction to inquire into the affairs of a private Society which was self financed and had its own rules for dealing with irregularities/potential illegalities of the nature alleged in the reference where no loss was caused to the Government exchequer but in any event we shall decide these appeals on merit through this one common judgment.

14. The case essentially breaks down into two parts: 5

- (a) The illegal revision of the lay out plan of the Society by appellants Barket Ali, Asghar Shaikh and Imran Mehdi (now deceased) that enabled amenity plots to be used as commercial plots and
- (b) The sale of these converted amenity plots to the beneficiary appellants on throwaway prices by appellant Barkat Ali to his favorites and kith and kin who then pocketed the purchase price for these plots.

Turning to the illegal revision of the lay out plan of the Society by appellants Barket Ali, Asghar Shaikh and Imran Mehdi (now deceased) which enabled amenity plots to be used as commercial plots.

15. There are two crucial documents in connection with this first aspect of the case. The first is the original lay out plan of the Society and the second is the revised lay out plan of the Society. It was essential that these documents were tendered admissibly into evidence as they would show what the original lay out plan was in terms of (a) land earmarked residential areas (b) land earmarked for commercial areas and (c) land earmarked for amenity areas and how this original lay out plan had been changed, if at all, concerning the aforesaid earmarked area's. Incredibly, the original of the original lay out plan was never exhibited in evidence or even seen by the trial court as admitted by PW 14 IO Muhammed Umair. Only, an attested copy of the original lay out plan was exhibited. No reason was given as to why the prosecution was not able to exhibit the original lay out plan or even show it to the court and then be returned as is the usual practice and why it had to revert to an attested copy. Where the attested copy came from and its veracity remained unproven. With regard to the second document the revised lay out plan the original was not exhibited at trial or even produced at court for the court to see and return. Not even an attested copy of the revised lay out plan was produced instead only an ordinary photo copy of the carbon copy was produced with out any explanation as to why the original or even an attested copy of the revised lay out plan could be produced. Where the photocopy of carbon copy which the photo copy of the revised plan came from and its veracity remained unproven Under these circumstances these copy documents were inadmissible in evidence by virtue of Articles

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72 to 74 of the Qanoon-e-Shahdat Ordinance 1984 and ought to have been excluded by the trial court from consideration and thus for the reasons mentioned above we find both of these documents (copies of the original lay out plan and revised lay out plan) to be inadmissible in evidence and exclude them from consideration as they remained unproven. Hence it is almost impossible to prove which areas were, if any, converted from amenity plots to commercial/residential plots or where they were relocated to within the society and whether it was in fact amenity plots which were sold to the beneficiary appellants which creates doubt over the revision of the lay out plan and which parts of it were actually revised and whether if the plots which were sold were amenity plots or otherwise.

16. Even the impugned judgment this confirmed this fact at Para's 61 and 62 in the following terms;

*"61 In view of above discussion in the preceding point that prosecution has proved the charge against all accused persons except against accused Shoaib Abbas S/o Asghar Abbas Shaikh. **Prosecution has not been able to produce the original copy of subject layout plan allegedly got approved by accused Barkat Ali Junejo as according to record the subject process was already undergoing.**" (bold added)*

17. And at Para 62;

*"62. In the similar manner, accused Asghar Abbas Shaikh S/o Maqbool Ahmed is also convicted U/s 10 of the NAO, 1999 r/w section 265-H (ii) Cr.P.C and sentenced to suffer five years Rigorous Imprisonment and to pay fine of Rs.5 lacs **while taking lenient view on the ground that original subject layout plan allegedly signed by him has not been produced by prosecution.**"*

18. PW 15 Muneer Ahmed in his evidence **only exhibited original copy of tracing of approved revised lay out plan not the original or even an attested copy or copy of it.**

19. It would appear that the trial court has erred in that instead of using the non production of the original lay out plan or admissible secondary evidence in accordance with the law of evidence as a ground for acquittal as the attested/photo copy documents were not proved in accordance with the law it

instead erred in using this crucial evidentiary omission as a ground for mitigation.

20. In any event as PW 9 Muhammed Ashraf stated in his evidence there was no absolute bar to revising the lay out plan in the following terms;

“It is correct that there is no any bar for revising of the layout plan. It is correct that before approval of any proposed plan is scrutinized by the Master Plans Department. It is also correct that it is the responsibility of Master Plan Department. In examine the proposed plan for its technicalities and legal requirements and that if the Master Plan department raised objection on the proposed layout plan that it cannot be approved. It is correct that I did not find any objection from the Master Plan Department so as to is technicalities and legal requirements.” (bold added)

21. PW 15 Muneer Ahmed also in his evidence stated that ***“the original lay out plan could be revisedand that the subject land is the property of the Society not Government. It is correct that the Government has not reserved any piece of the land for amenity purposes which is the subject land of the Society. It is correct that the areas in the amenities in the original lay out plan and in the revised plan were suggested by the Society itself”***(bold added).

22. Para (xi) of Circular dated 15.07.2013 which applies when a housing society is superseded, as in this case, and an Administrator is appointed also tends to support this contention that plots could be transferred which states as under;

“(xi) Only genuine cases of transfer of plots be processed and forwarded to the office of the managing director, Sindh Co-operative Housing Authority for grant of NOC.”

23. PW 9 Muhammed Ashraf also confirmed that the amenity space in the revised master plan had been increased from 5 to 10% in his evidence as under;

“I further say that according to this revised layout plan area reserved for amenities is 10% of the total area. It is correct to suggest that the reserved area for the amenities was increased by 5.5% in the revised layout”.

24. This tends to indicate that the location of the amenity plots might have been changed or if an amenity plot was changed to a commercial plot a larger commercial/residential

plot was changed to an amenity plot as in the end there was a 5% increase in the amount of land ear marked for amenity plots within the society and as such amenity areas did not lose out on account of any revisions which might have been made to the original plan and in fact their area was increased and as such no loss or detriment was caused to the society in this respect.

25. It is alleged by the prosecution that appellant Barkat Ali whilst administrator of the Society after the management had been superseded started the process of revising the lay out plan to fulfill his own nefarious designs in collusion with co-appellants Asghar Shaikh and Imran Mehdi. However this aspect of the prosecutions case is undermined by the evidence of PW 14 Muhammed Umair who was the IO of the case in the following terms;

“It is correct to suggest that the before the said date accused Barkat Ali Jujnejo had nothing to do with the affairs of the subject society. It is correct to suggest that as per letter No.03/13/SUECHS dated 07-01-2013 available in the folder shows that SUECHS applied for revision of layout plan accused Barkat Ali Junejo had nothing to do with the affairs of the society. It is incorrect to suggest that on 04-01-2013 Secretary of the society Saeed Ahmed also wrote a letter to Sehwan Development Authority for revision of the layout plan of the society. Vol: says that we have recorded the statement of Saeed Ahmed Burdi and he denied the signature on the said letter moreover, no outward number is mentioned therein.

I did not find any document showing that such letter was received in the office of SDA other than the date mentioned in the said letter. I did not get the signature of Saeed Ahmed Burdi by any handwriting expert. There is no any rule of Sindh Building Control Authority that the layout plan once approved cannot be revised”.

26. The evidence suggests that appellant Barkat Ali did not seek permission for the change of amenity plots to commercial plots and that such permission had already been applied for by PW 5 Saeed Ahmed in his capacity as Secretary of the Society vide his letter dated 4.01.2013 which was approved on 24.01.2013 by AD to the Secretary SDA (not Asghar Shaikh) which was before the board of the society was superseded and **before** appellant Barkat Ali was appointed administrator and as such he had nothing to do with the initial process of revising the original lay out plan. Surprisingly the person who seems to

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have started the whole revision of the original lay out plan process Saeed Ahmed was made a PW and not even an approver. Admittedly PW 5 Saeed Ahmed denied his signatures on these requests for change of lay out plan however the IO did not arrange for his signatures to be examined by a hand writing expert. The trial court judge it appears did not even seek to compare the two signatures of PW 5 Saeed Ahmed. So it appears from the evidence that it was PW 5 Saeed Ahmed who was the secretary of the Society who initially sought to revise the lay out plan and had it revised (and not appellant Barkat Ali) especially as PW 9 Muhammed Ashraf confirms in his evidence that the 07.01.2013 letter was sent by PW 5 Saeed Ahmed who was the secretary and Barkat Ali had nothing to do with the society at that time which is in line with the evidence of the IO. PW 5 Saeed Ahmed also states in his evidence that he was not aware of any changes in either the original or the revised plan which seems inexplicable considering that he was the Secretary at that time and was apparently producing all the relevant documents to the IO. He does not know who signed the revised lay out plan but denies that it is his signature on the revised lay out plan. According to PW 10 Sarmad Sattar the letter dated 07.01.2013 was apparently signed by PW 5 Saeed Ahmed in his capacity as Secretary and the letter dated 04.01.2013 was signed by PW 5 Saeed Ahmed both of which requested approval of lay out plan and not appellant Barkat Ali. PW 5 Saeed Ahmed does not even know who signed the revised layout plan. The signature of appellant Barkat Ali is not on the revised lay out plan. Overall we find the evidence of PW 5 Saeed Ahmed the Secretary of the Society to be far from confidence inspiring and have grave doubts as to its reliability and truthfulness and certainly leads to us having doubts about the role of appellant Barkat Ali in seeking to initially seek approval to change the layout plan.

27. It appears from the evidence that appellant Barkat Ali in his role as Administrator continued with seeking approval of the change of lay out plan which approval/permission was apparently granted by appellant Imran Mehdi MD of Sind Co-⁷

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operative Housing Society. Even here however there is some doubt whether the actual letter accorded permission or not which letter is reproduced as under for ease of reference;

Office of the
Managing Director
Sindh Cooperative
Housing Authority

Cooperative House, Opp. Hill Park General Hospital
Shaheed-i-Millat Road Karachi, Phone # 021-34920015

NO.MD/SCHA/285/2013, Karachi

dated:- 16/7/2013

Mr. Barkat Ali,
Administrator,
Sindh University Employees Cooperative
Housing Society Ltd Jamshoro
District Jamshoro Sindh

Exhibit No: R&R 11/10

SUBJECT: PERMISSION IN RESPECT OF AMENITY PLOT (SHOPPING CENTRE) SITUATED AT INFRONT OF MASJID-E-QUBA S.U.E.C.H.S JAMSHORO REQUEST OF THE

This refers to your office letter No.ad/suechs/19/2013 dated 12.07.2013 on the subject noted above, permission **may** be accorded and **advise you** to take further necessary action, in the interest of the society, **completion of all codal/legal formalities and as per Byelaws of the society.**

Managing Director
Sindh Cooperative Housing
Authority,
Karachi

Copy to P.S to Secretary, Cooperation Department, Government of Sindh, Karachi for information.

Managing Director
Sindh Cooperative Housing
Authority,
Karachi

28. From the letter from appellant Mehdi the term, "permission **may** be accorded and **advise you** to take necessary action in the interests of the society **subject** to completion of all codal/legal formalities and by laws" is used. This letter could therefore be read in two ways (a) The way Barkat Ali saw it as granting permission and (b) the way apparently appellant Mehdi claims to have meant it i.e it was a conditional permission

which was more of an advise and even otherwise all legal formalities had to be carried out (which they were).

29. We find it quite understandable that appellant Barkat Ali considered the letter as a permission when it may not have been if it had been analyzed more deeply but what appears certain is that there was no criminal intent behind the way appellant Barkat Ali interpreted the letter and no criminal intent behind the apparent vagueness of the letter written by appellant Mehdi who in any event withdrew the letter 6 months later when he saw what appellant Barkat was doing which in his view amounted to a misinterpretation of the letter and there is no evidence that he received any benefit from such a permission which he later cancelled which creates doubt about both his and Barkat Ali's criminal intent in respect of this matter. With regard to the inquiry into the affairs of the Society this was stayed by the Sindh High court and as such the report is of no evidentiary value. Even otherwise little, if any, reliance can be placed on the report as it contained no annexures, had not considered any of the plans and had been carried out in a very rudimentary manner which even stated that a deeper inquiry was needed.

30. Similarly the initial approval from the SDA to Saeed Ahmed to revise the lay out plan did not come from appellant Asghar Shaikh the Ex DG of SDA but rather the AD at that time who was not examined. With regard to his approval to the revision of the master plan however there is no evidence that he actually approved it. It seems from the evidence that it was dealt with by one Ms Fatima in his office who was not called as a witness to substantiate whether or not appellant Asghar Shaikh actually gave his approval and under what circumstances, if at all. PW 9 Muhammed Ashraf in his evidence states that there was no evidence that the revised lay out plan ever landed on the desk of appellant Asghar Shaikh and could not confirm whether or not the appellant's signature is on the plan; which all creates doubt. In his evidence he also states that he did not see the signature of appellant Barkat Ali. Even otherwise neither any official from the Town Department of the

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Government of Sindh or the SBCA was ever called as a witness to give evidence that the original plan of a private society could not be revised under any circumstances.

31. We also have doubt over the credibility of some of the witnesses who gave evidence. For example, the IO admits that star witnesses Sohail Bachani, Asadullah Solangi and Muneer Soomro and from cross examination that Syed Hajan Ali Shah and Muneer Ahmed were all facing NAB inquiries at the time of their evidence and even one had been convicted and another had already had his VR accepted so they had every reason to support the prosecution case in return for lenient treatment in the NAB cases which they were facing. Even the IO of the case was dismissed on account of misconduct which casts doubt on his entire investigation. The aspect of appellant Barkat Ali receiving financial benefit through the sale of the plots to the beneficiaries will be dealt with below when we turn to deal with the cases of the beneficiaries.

32. Thus for the reasons mentioned above we find that the prosecution has not proved its case against appellants Barkat Ali, Asghar Shaikh and Imran Mehdi (now deceased) beyond a reasonable doubt and as such by extending them the benefit of the doubt they are acquitted of the charge. Their bail bonds stand cancelled and sureties discharged and they are free to go.

Turning to the sale of these allegedly converted amenity plots to the beneficiary appellants on throwaway prices by appellant Barkat Ali to his favorites and kith and kin who then pocketed the purchase price for these plots.

33. The plots it seems were sold by appellant Barkat Ali after advertising as confirmed by PW 3 Sohail Adeep in his evidence as under;

".....it is correct that the plots sold by Barkat Ali were on the basis of advertisement"

34. PW 4 Asadullah in his evidence states that all sales of the plots was done after following all codal formalities as under:

*"it is correct to suggest that I had issued the said certificates of plots in respect of Sindh University Employees Cooperative Housing Society during my incumbency. **It is correct that such***

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sale certificates were issued after completion of all codal formalities.

35. The sale in any event was **not** done on a pick and chose basis as the sale was through auction following an advertisement.

36. The valuation of the plots was made by PW 4 Asadullah who was a mukhtiarkar who relied upon a report from a local tapedar who did not give evidence and whose report was not exhibited. PW 4 Asadullah admits in his evidence that it is **not** the job of a revenue officer to ascertain the market value of the property as such we find that we cannot place any reliance on his valuation of the plots and cannot reach the conclusion that the plots were sold on throwaway prices as no proper market valuation of the plots was made by an expert who was qualified to do the same. In fact the value of the adjacent plots was not even ascertained or a sale deed in respect of such plots ever collected to consider the market prices of the plots nor were attempts made to ascertain the actual market value of the plots as admitted by the IO.

37. It is the prosecution case that the plots were allotted to relatives, favorites and kith and kin of appellant Birkat Ali however there is no evidence to this effect.

38. All the evidence suggests that all the appellant beneficiaries who purchased the plots were bona fide purchasers for valuable consideration without notice that there was any defect in their title. The IO himself has conceded in his evidence that no loss was caused to the Government exchequer. The beneficiaries would also not have any criminal intent in buying the plots as they would not have known about any alleged criminality by Barkat Ali, Imran Mehdi and Asghar Shaikh in allegedly revising the original plan and converting amenity plots into commercial plots in order to make a profit. The precise plot No.s which the beneficiaries allegedly purchased at throwaway prices was not even put to them during their S.342 Cr.PC statements nor whether they were favorites or kith and kin of appellant Barkat Ali and as such any,

evidence to this effect is discarded and cannot be used to convict them.

39. In the impugned Judgment whilst convicting and sentencing all the appellant beneficiaries the trial judge at para 64 has held as under in respect of the beneficiaries;

*"Para 64. Beneficiary accused persons each namely Nazar Junejo S/o Abdul Lateef Junejo, Hyder Ali s/o Ghulam Muhammad, Mir Shah Muhammad S/o Mir Ghulam Muhammad, Abdul Raheem Baloch S/o Ghulam Muhammad, Munib Ali S/o Rustam Ali, Allah Dino S/o Muhammad Ismail, Ghulam Muhammad S/o Nabi Bux, Ali Anwaar S/o Abdullah Sehar, Muhammad Khan S/o Nabi Bux, Liaquat Ali S/o Muhammad Yaqoob, Muhammad Amir Tunio S/o Abdul Hakeem, Abdul Lateef Junejo S/o Nazar Muhammad, Faryyad Husain S/o Muhammad Bachir, Hayat Muhammad S/o Nazar Muhammad Junejo and Ayaz Hussain S/o Ghulam Qadir Leghari are convicted U/s 10 of the NAO 1999 r/w section 265-H(ii), Cr.P.C and sentenced to suffer rigorous imprisonment for the period of three years each and to pay fine of Rs.2 lacs each **while taking lenient view on the ground that no evidence has been brought against them with regard to the embezzlement of funds at their hands and only they are alleged to have purchased the plots being the favorites of accused Barkat Ali Junejo and being kith and kin.** In case of default in non-payment of fine, same shall be recovered as arrears of Land Revenue from them as provided U/s 33-E of NAO 1999."*(bold added)

40. In our view this very finding of the judge is self contradictory as on the one hand he has convicted the beneficiary appellants but on the other hand has found **no evidence** of them being involved in embezzlement of funds and are **alleged (as opposed to have been found)** to have purchased plots as they were favorites or kith and kin of appellant Barkat Ali **for which there is no evidence.**

41. It is notable that one co-accused beneficiary who was the son of Asghar Shaikh who had allegedly received a plot in return for his father appellant Asghar Shaikh approving the revised lay out plan and whose case was on a worse footing than the current beneficiary appellants was acquitted on the same set of evidence and no appeal against his acquittal has been filed and as such we find that the appellant beneficiaries are entitled to equal treatment to also be acquitted of the charge.

⚡

42. We have also found no evidence that appellant Barkat Ali misappropriated any funds which he might have collected from the appellant beneficiaries as although it seems that appellant Barkat Ali withdrew funds from the society's account, which he had the right to do, this was done along with the joint signatory PW 10 Sarmad Sattar and there is no evidence what these funds were used for i.e for his personal benefit or for that of the Society. According to the evidence of PW 10 Sarmad Sattar while the Society stood superseded it was the job of the Secretary PW 5 Saeed Ahmed to look after the accounts of the Society and according to his evidence PW 5 forced him to sign 4 cheques in the name of JS Bank and not the Society so once again there is doubt as to who was moving the Society's money to where and why and as such the prosecution has not proved beyond a reasonable doubt that Barkat Ali embezzled any of the Society's funds. No recovery was made from him and no excess money was found in either his personal bank accounts or that of his relatives.

43. The prosecution also gave up 8 witnesses without explanation and as such under Article 129 (g) Qanoon-e-Shahadat Ordinance 1984 an adverse inference can be drawn that in their evidence they would not have supported the prosecution case.

44. There is also a plethora of cases on the point that there can be no conviction in NAB cases **unless** a financial benefit or pecuniary advantage is proven, that procedural irregularity will not lead to a conviction (which appears to be the instant case) negligence or reckless ness will would not equal corruption (which might be the instant case) and that criminal intent must be proven in terms of mens rea for example in the cases of **Mir Munawar Ali Talpur** (Supra), **Ramesh** (Supra) **Mansoor ul Haq** (Supra), **Muhammed Masood Chisti** (Supra) and **State v M.Idress Ghauri** (Supra) which is lacking in respect of all of the appellants in this case.

45. Thus, based on our above discussion and considering the above referred to case laws we hereby acquit all the beneficiary

appellants namely Nazar Junejo S/o Abdul Lateef Junejo, Hyder Ali s/o Ghulam Muhammad, Mir Shah Muhammad S/o Mir Ghulam Muhammad, Abdul Raheem Baloch S/o Ghulam Muhammad, Munib Ali S/o Rustam Ali, Allah Dino S/o Muhammad Ismail, Ghulam Muhammad S/o Nabi Bux, Ali Anwaar S/o Abdullah Sehar, Muhammad Khan S/o Nabi Bux, Liaquat Ali S/o Muhammad Yaqoob, Muhammad Amir Tunio S/o Abdul Hakeem, Abdul Lateef Junejo S/o Nazar Muhammad, Faryyad Husain S/o Muhammad Bachir, Hayat Muhammad S/o Nazar Muhammad Junejo and Ayaz Hussain of the charge by extending them the benefit of the doubt.

46. We have already earlier in this judgment acquitted appellants Barkat Ali Junejo, Asghar Abbas Sheikh and Imran Mehdi Memon.

47. The upshot of the Judgment is that all the appeals are allowed, the impugned judgment is set aside, all the appellants are acquitted of the charge, their bail bonds stand cancelled and their sureties are discharged and they are free to go.