

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-3779 of 2019

Present:

Mr. Zafar Ahmed Rajput, J

Mr. Muhammad Faisal Kamal Alam, J

Mr. Taimur Ali Mirza, Advocate for petitioner

Mr. Akram Javed, Spl. Prosecutor, NAB a/w
Muhammad Saleem Ahmed, Acting Director (IW-1), NAB

Mr. Nadeem Sajid-I/O, Deputy Director NAB

Mr. Mubarak Ali Shah, Advocate for respondent No.1

Mr. Khursheed Javed, Assistant Attorney General.

Date of hearing : 01.12.2021
Date of order : 01.12.2021

ORDER

ZAFAR AHMED RAJPUT; J.- Through instant petition, the petitioner seeks *inter-alia* following reliefs:-

- i) *To issue writ of mandamus directing the respondent No.1 to entertain and process the request of the Petitioner for execution and registration of Lease Deed of Plot No.55, Category-D, Block-2, measuring 1000 Sq. Yds., Scheme-3, Clifton, Karachi, in favour of the Petitioner.*
- ii) *Direct the respondent/NAB, its subordinates, agents etc. to return the departmental file pertaining to Plot No.55, Category-D, Block-2, measuring 1000 Sq. Yds., Scheme-3, Clifton, Karachi to respondent No.1 on immediate basis.*

2. It is alleged that the property bearing Plot No.55, Category-D, measuring 1000 Sq. Yds., situated in Block-2, Scheme-3, Clifton, Karachi ("**subject property**") was allotted to one Muhammad Yousuf on pre-lease basis, who subsequently transferred the same to Mrs. Bintay Abbas for that the respondent No.1-**KDA** issued Transfer Order, dated 08.02.2010, in her favour. Thereafter, Mrs. Bintay Abbas transferred the subject property to Mrs. Shaheena Nasir vide Transfer Order,

dated 31.01.2014. Later, the petitioner and Mrs. Shaheena Nasir executed Agreement to Sell, dated 31.03.2014, whereby Mrs. Shaheena Nasir having received sale consideration handed over the physical vacant possession of the subject property to the petitioner. On 10.04.2014, respondent-KDA recorded the transfer of the subject property in its record in favour of the petitioner vide Transfer Order bearing No. KDA Wing/DLM/Clif.D-55/2/113 dated 10.04.2014, on pre-lease basis. Thereafter, petitioner approached to respondent- KDA with request to execute a registered Lease Deed in his favour but such request was not entertained by the respondent-KDA for the reason that the file of the subject property was not available to it, as the same was seized and taken over by the respondent No.2-**NAB** in connection with ongoing investigation against the Director General of the respondent-KDA, namely, Nasir Abbas (*the husband of previous owner of the subject property; namely, Mrs. Shaheena Nasir*). Later, it came to the knowledge of the petitioner that the said Nasir Abbas was under the custody of NAB on the allegation of having assets beyond known sources of income and corruption and corrupt practices. The petitioner on approaching to respondent-NAB was informed that neither any investigation was pending nor the subject property was/is part of any Reference filed against said Nasir Abbas by the respondent-NAB. It is case of the petitioner that the respondents are refusing to fulfill their duties on absurd grounds and with malicious intent and the petitioner is continuously suffering at their hands; hence, he has filed the instant petition.

3. The respondent-KDA has filed parawise comments to the petition. The relevant comments with regard to the facts of the subject property are reproduced as under:-

“The record file of Plot No.D-55, Block-2, measuring 1000 Sq. Yds., Scheme-5, Clifton, Karachi was taken/seized by Mr.

Nadeem Sajid, Deputy Director NAB, Karachi on 16.02.2018, which was not returned back to this office. Further, as per photocopies available in this office the said plot was allotted in favour of Mr. Muhammad Yousuf S/o Mohammad Ismail vide Allotment Order No.2058, dated 21.12.1989. Possession Order vide letter No.11, dated 06.01.1990 & Site Plan of measuring 1000 Sq. Yds., were also issued to him and physical possession at site handed over by the concerned Executive Engineer on 14.01.1990. Subsequently, 1st transfer of the plot effected in favour of Mr. Sohbat Khan S/o Essa Khan vide Transfer Order No.291, dated 12.04.1990. 2nd transfer effected in favour of Mr. Tahir Abbas S/o Syed Alamdar Hussain vide Transfer Order No.02, dated 03.01.1994 and also regularized in his name through attorney Mr. Nasir Abbas S/o Syed Alamdar Hussain vide Regularization letter No.21, dated 21.01.2010. 3rd transfer effected in favour of Mrs. Bintay Abbas W/o Safdar Ali vide Transfer Order No.38, dated 08.02.2010. 4th transfer effected in favour of Mrs. Shaheena Nasir W/o Syed Nasir Abbas vide Transfer Order No.33, dated 31.01.2014 and still stand transferred in her name.”

4. On 04.11.2021, Mr. Akram Javed, Special Prosecutor NAB filed through statement copies of Seizure Memos, dated 17.09.2018, 18.09.2018 and 15.02.2019 while Nadeem Sajid, Deputy Director NAB (*the then Investigating Officer*) filed seizure memo, dated 15.02.2018. The latter informed the Court that he seized the original file of the subject property; however, as he was suspended, the same alongwith other files of the properties was received by a Three-Member Committee, headed by Mirza Saqib Baig, the Deputy Director, NAB under a list. As such, Director Investigation Wing-1, NAB Karachi was directed to be in attendance alongwith the original file of the subject property on the next date of hearing.

5. On 15.11.2021, Special Prosecutor, NAB filed a statement, duly counter signed by Muhammad Saleem Ahmed-Acting Director (IW-1), NAB-Karachi with various documents relating to handing over of

record seized by Nadeem Sajid, Deputy Director NAB. Paragraphs No.1&2 thereof being relevant are reproduced as under:-

1. *It is respectfully submitted that pursuant to the statement of learned I.O. Mr. Nadeem Sajid and order passed by this Hon'ble Court on 04.11.2021 in the subject matter, the record of Investigation Wing-1, NAB Karachi was scrutinized and it revealed that the file of Plot No.55, Category-D, Block-2, Scheme-05, Clifton, Karachi was not available. It has further transpired that the case record was not handed over by outgoing I.O. In this regard, I.O. Mr. Nadeem Sajid was instructed from time to time to handover the record of KDA files, however, he has not handed over the case record in the form of proper chain of custody.*
2. *The matter regarding non handing over of record pertaining to KDA files has been taken up with NAB HQ, Islamabad for disciplinary proceedings/necessary action under the law. Further report/actions taken by the competent authority in this connection shall be placed on record before this Hon'ble Court as soon as the proceedings are completed by NAB HQ Islamabad.*

6. This Court vide order dated 15.11.2021, while observing that the contents of above statement *prima facie* show maladministration on the part of respondent-NAB which apparently lacks proper accountability mechanism within its own Organization, passed an order directing the respondent-NAB to ensure that original file of the subject property is produced in Court on the next date of hearing.

7. Today, it is informed by the learned Special Prosecutor, NAB that despite their best efforts, the NAB officials could not find original file of the subject property. Muhammad Saleem Ahmed, Acting Director (IW-I), NAB contends that in fact Nadeem Sajid, has not handed over original file to any officer of the NAB; if so, it *prima facie* amounts to misconduct on his part and in case he has handed over the same to any officer of the NAB, then on the part of that officer.

8. We are mindful of the fact that the process of execution of registered Lease Deed in respect of subject property in favour of the petitioner by the respondent-KDA is pending for many years, purportedly, as the original file seized by the Nadeem Sajid, apparently has not been returned back to respondent KDA, as alleged by the respondent-KDA in its reply, dated 03.11.2021.

9. We, therefore, direct the concerned officer of the respondent-KDA to reconstruct the record/file of the subject property within two months hereof as per rules and procedure and then proceed further into the matter with regard to execution of Lease Deed in favour of the petitioner after completing codal formalities. We also direct the Chairman, NAB to take disciplinary action against the delinquent officer for the alleged misconduct in accordance with law; result thereof be submitted within six weeks to the MIT-II of this Court.

The petition stands disposed of in above terms with pending application.

JUDGE

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