

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Agha Faisal J.

C.P.No.D-6652 of 2021

Pakistan Post Office Employees Cooperative
Housing Society through its authorized persons.

Petitioner

Versus

Federation of Pakistan and others-----

Respondents

M/s M. Sarmad Khan and Muhammad Qasim Iqbal,
advocates for petitioner.

Mr. Zeshan Adhi, Addl. Advocate General Sindh

Mr. Asad Iftikhar, Assistant Advocate General Sindh

Mr. Shahbaz Sahotra, Special Prosecutor NAB a/w

Waqar Anwar I.O. NAB.

26.05.2022

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioner, a Cooperative Housing Society, has challenged caution notices dated 08.05.2014, 08.01.2015 and 30.07.2018 enforced on its land u/s 23 of National Accountability Ordinance, 1999 (NAO, 1999) under recommendation of NAB in different enquiries effectively abridging its right to deal with the same in any manner such as allotting plots etc. to its members.

2. Ref. No.02/2011 (State Vs. Kamran Nabi Ahmed & others) covering subject matter of notice dated 08.05.2014 and Ref. No.33/2016 (State Vs. Kamran Nabi Ahmed & others) addressing subject matter of notice dated 08.01.2015 have already been decided. Ref. No.02/2011 has culminated into acquittal of accused and currently Cr. Acc. Acquittal Appeal No.13/2020 filed by NAB is pending admission, whereas in Ref. No.33/2016, the accused have been

convicted and their appeal is pending before Honorable Supreme Court of Pakistan in Cr. Petition No.625/2020 and 634/2020. However, the charge against the accused in that reference (33/2016) is of embezzlement of funds and does not involve a question over the land under caution by the impugned notice.

3. The enquiry identified in third caution notice dated 30.07.2018 is still pending impeding petitioner's ability to deal with its land: making any allotment etc. of plots to its members. Since in respect of first two caution notices, the proceedings have already been concluded, save appeal before Honorable Supreme Court but on a different charge, learned Special Prosecutor NAB and the IO have not ardently defended their unending enforcement. However, they both have stood up in support of the third and last caution notice on the ground of pendency of enquiry.

4. We have noted, on the basis of submissions, this enquiry pertains to allegations against revenue officials of tampering with entries in record of rights regarding petitioner's land done *prima facie* at the instance of private persons, against whom the petitioner has already filed a suit seeking *inter alia* declaration of title. In the enquiry, the report of which has been shown to us in the court as it has not been submitted formally, the I.O. has concluded that relevant entries in favour of one Ali Akber were recorded illegally by the relevant Mukhtiarkar under the garb of some order of the then Member, Land Utilization with the sole aim of causing loss to the petitioner. The IO, based on such findings, has recommended up-gradation of inquiry into investigation however to be carried out against relevant revenue officials and beneficiaries of such tampering and manipulation. Learned Special Prosecutor NAB and I.O. both have not disputed that reference, if any, is going to be filed against them for trying to usurp the land of petitioner by inserting false and fabricated entries in the record of rights of the subject land and not against the petitioner or its management.

5. Besides, we have noted, the dispute over the land is essentially between the private persons--petitioner and beneficiaries of tampering in the record of rights. The government has nothing to do with it, it has not suffered any loss in any terms, nor at any point in time has its land been involved or come under question to warrant interference by NAB. Determination of title of the land in favour of either party is pending in a civil suit and insofar as the enquiry by NAB is concerned, nothing against petitioner is being looked into. On the contrary, the report of enquiry seems to uphold claim of the petitioner over the land and shows that it is the petitioner which has been at receiving end from machinations of revenue officials done in league with some private persons. Section 23 is meant to hamper an accused from creating third party interest in the property acquired through illegal means and thereby making it difficult for the government to retrieve it. In the present case no such situation is extant. Therefore, endless enforcement of caution appears to be harsher, to the detriment of only petitioner's right to deal with its land in accordance with law, and ergo against tenets of natural justice.

6. There is also a legal aspect to this matter, highlighted by learned Islamabad High Court in a case reported as 2021 PCr.LJ 1738 relied upon by learned counsel for the petitioner in his arguments. Relent observations in para 19 we are quoting in aid of our findings on facts above. "..... Sections 23 is not a unique provision. It merely seeks to undo the effects of transfer of property when such transfer has been effected to defeat the purposes of NAB Ordinance. In that 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 choses 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.”

7. We for foregoing discussion hold that without first exercising powers of freezing the property u/s 12 of NAO, 1999, section 23 cannot be pressed into service. NAB cannot be given *carte blanche* to deprive an owner to deal with his property when he is not an accused in any enquiry or investigation pending with NAB on allegations of acquiring said property through illegal means and when there is no chance of his alienating the property by creating third party interest in it and thus making it difficult for the government to recover it. Consequently, this petition is allowed and impugned caution notices are set aside with no order as to cost. The petition is disposed of accordingly.

JUDGE

JUDGE

A.K