

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,

C.P. No.D-5490 of 2023

Ayesha Zafar

Vs.

Federation of Pakistan & Others

1. For hearing of Misc. No.25365/2023 (Stay) :
2. For hearing of main case :

Petitioner : Through Mr. Mohammed Akram Sheikh Khan, Advocate a/w. M/S Behzad Haider and Mahmood Ali, Advocates.

Respondent No.1 : Through Kazi Abdul Hameed Siddiqui, DAG.

Respondent No.2 : Through M/S Ishfaque Ahmed Buriro and Muhammad Farooq Ali Jatoi, Advocates.

Respondent No.3 : Through M/S Khurram Ghayas, Mubarak Ali Shah and Nazia Siddiqui, Advocates.

C.P. No.D-5822 of 2023

The State (ANF)

Vs.

Agha Mehmoodul Hassan Haravi & Others

1. For orders on office objections :
2. For hearing of Misc. No.27419/2023 (Stay) :
3. For hearing of main case :

Petitioner : Through M/S Ishfaque Ahmed Buriro and Muhammad Farooq Ali Jatoi, Advocates.

Respondent No.3 : Through Mahmood Ali, Advocate.

Respondent No.1,2,4&5 : Nemo

Date of hearing : 14.12.2023

ORDER

MOHAMMAD ABDUR RAHMAN, J. By this common order we will be disposing of two petitions bearing C.P.No.D-5490 of 2023 and C.P.No.D-5822 of 2023, each maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

2. **C.P.No. D-5490 of 2023** has been maintained by Ms. Ayesha Zafar (hereinafter referred to as “Ms. Zafar”) seeking directions to be issued to the KDA and the Anti-Narcotics Force (hereinafter referred to as the “ANF”) preventing her from dealing with Plot No. C-197 Karachi Development Authority Scheme No.1, Karachi (hereinafter referred to as the “Said Property”).

3. **C.P.No.D-5822 of 2023** has been maintained by the ANF seeking to set aside an order dated 19 October 2022 passed by the Special Appellate Tribunal, constituted under the Prevention of Smuggling Act, 1977 (hereinafter referred to as the “1977 Act”) in Special Criminal Appeal No.47 of 2021, maintained under Section 43 of the 1977 Act, whereby an order dated 21 October 2021 that had been passed by the Special Court-I (Control of Narcotic Substances) Karachi under Sub-Section (1) of Section 32 of the 1977 Act discharging a show cause notice issued to Ms. Zafar under Sub-Section (1) of Section 31 of the 1977 Act was upheld.

4. The facts leading up to these proceedings are protracted to say the least. Ms. Zafar, is the sister of the former wife of one Mr. Pervaiz Haravi and who claims to be the owner of the Said Property on the strength of a Conveyance Deed dated 9 October 2002. The preamble of the Conveyance Deed dated 9 October 2002 clarifies that the Said Property was originally purchased by Agha Mehmood-ul-Hassan Haravi and his brother Pervaiz Haravi in the year 1979 and where after on 2 March 1981 Agha Mehmood-ul-Hassan Haravi orally gifted his share to Pervaiz Haravi and which gift was subsequently reduced to writing and registered on 25 April 1981.

5. Ms. Zafar contends that she entered into an Agreement of Sale dated 25 November 1997 with Pervaiz Haravi to purchase the Said Property for a sum of Rs.5,200,000 (Rupees Five Million Two Hundred Thousand but as Mr. Pervaiz Haravi was not honouring his obligations under that Agreement she had instituted Suit No. 273 of 2001 and which was on 27 August 2001 subsequently decreed by consent on an application Under Order 23 Rule 3 of the Civil Procedure Code of 1908.

6. During this period, FIR No. SIB-429 of 1978 was registered under the 1977 Act as against one Agha Mehmood-ul-Hassan Haravi. The said Agha Mehmood-ul-Hassan Haravi was by a Judgment dated 27 April 2002 purportedly declared as an absconder and these proceedings were declared as dormant.

7. Another FIR bearing No. 20 of 1997 was instituted under Section 6 and 9 of the Control of Narcotics Substance Act, 1997 (hereinafter referred to as the "CNS Act") by the P.S Anti-Narcotics Force, Lahore and in which proceedings the same Agha Mehmood-ul-Hassan Haravi was convicted. It is pertinent to mention that on 3 August 2001 the Special Judge Anti-Narcotics Force, Lahore had passed an order stating that *inter alia*:

“ ... *The properties mentioned in the application are accordingly forfeited in favour of Federal Government. The Federal Government may dispose of the said properties in accordance with law.*”

8. Two appeals were preferred against the order 3 August 2001 passed by the Special Judge Anti-Narcotics Force, Lahore bearing Criminal Appeal No.162 of 2001, challenging his conviction, and Criminal Appeal No.1538 of 2001, challenging the forfeiture of assets. Both these appeals were dismissed by the Learned Lahore High Court Lahore by a common Judgment dated 24 December 2003.

9. Thereafter, Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006 were each maintained as against the common judgment dated 24 December 2003 passed in Criminal Appeal No.162 of 2001 and Criminal Appeal No.1538 of 2001 before the Honourable Supreme Court of Pakistan and which were allowed vide a common order dated 12 March 2009, thereby setting aside both the conviction as well as the forfeiture order of the assets that had been passed by the Lahore High Court as well as by the Special Judge Anti-Narcotics Force, Lahore

10. A Criminal Review Application No.118 and Criminal Review Application No. 119 of 2010 were preferred by the State against the common order dated 12 March 2009 passed by the Supreme Court of Pakistan in Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006 and which were also dismissed on 28 May 2013 by the Honourable Supreme Court of Pakistan.

11. In the intervening period, the common order dated 12 March 2009 passed by the Supreme Court of Pakistan in Criminal Appeal No. 28 of 2004

and Criminal Appeal No. 625 of 2006 led to the order dated 3 August 2001, that had been passed by the Special Judge Anti-Narcotics Force, Lahore forfeiting the Said Property, being recalled on 29 October 2010 by the Special Court Control of Narcotics Substance, Lahore, in the following terms:

“ ... *Both the sides concede that accused has been acquitted by the Hon'ble Apex Court and that for all radical purpose this petition has become redundant. Ahlmad reports regarding the availability of the copy of Hon'ble Supreme Court on the margin of this order sheet. The necessary NOC to release and relieve the property be issued and the property stands de-frozed. File be consigned to the record room.*”

12. The ANF thereafter moved a Miscellaneous Application No.126 of 2016 under Section 31 of the Prevention of Smuggling Act, 1977 before the Special Judge Anti-Smuggling for CNS Karachi impleading the following persons as respondents:

- (i) Agha Mehmood-ul-Hassan Haravi,
- (ii) Pervaiz Haravi,
- (iii) Ayesha Zafar,
- (iv) Attaullah and
- (v) Mehwish Hassan,

seeking once again *inter alia* to “freeze” the Said Property alleging that it was purchased through proceeds of a crime under the PSA, 1977. It is admitted that at this time the ANF wrote letters *inter alia* to the Karachi Development Authority directing them not to permit any transaction to occur on the Said Property and which the Karachi Development Authority is honouring.

13. Against the institution of Application No.126 of 2016, Ms. Zafar preferred Criminal Original Petition No.136 of 2016 in Criminal Appeal No.625 of 2006 under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 3 and 4 of the Contempt of Courts Ordinance, 2003 alleging that the institution of Application No.126 of 2016 showed defiance of the order dated 12 March 2009 passed by the Honourable Supreme Court of Pakistan in Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006, whereby the Said Property had been ordered to be “de-frozen”. The application was disposed of by the Supreme Court of Pakistan with the following order:

“ ... *Be all that as it may, if petitioner is the owner of the house in dispute on the basis of a decree of a Court which is still intact and the house having been forfeited in case of narcotics was released and defrozen on acceptance of appeals by this Court, she could well produce the relevant documents before the court mentioned above and vindicate her position. Let the learned Special Judge pass appropriate order after hearing the petitioner within one month. This petition thus stands disposed of.*”

14. The matter came before the Special Judge Anti-Smuggling for CNS Karachi who vide order dated 21 October, 2021 was pleased to dismiss the Application No.126 of 2016 and directed inter alia for the Said Property to be “de-frozen”. Against that order the ANF maintained Special Appeal No. 47 of 2021 before the Special Appellate Tribunal constituted under the 1977 Act and which Application was on 19 October 2022 dismissed.

15. The ANF thereafter attempted to maintain an Appeal to the Supreme Court of Pakistan bearing Criminal Petition No.198-K of 2022 and which they withdrew as recorded in the following order:

“ ... *As far as the contentions of the learned counsel of the private respondents regarding the inaction of the petitioner/ANF are concerned, this Court, after allowing the withdrawal of this petition, does find it appropriate to pass any findings thereon. The private respondents may agitate their grievances, if so advised, before the appropriate forum under the law.*”

16. The ANF had during the pendency of all of these proceedings issued a letter to the KDA directing it not to permit the alienation of the Said Property and on the basis of which letter, the KDA has refused to permit Ms. Zafar to deal with the Said Property.

17. It is with this background that the two Petitions have been filed whereby:

- (i) Ms. Zafar, premising her petition on the basis of the order dated 19 October 2010 passed by the Honourable Supreme Court of Pakistan in Criminal Appeal No.28 of 2004 and Criminal Appeal No.625 of 2006 and on the basis of order dated 21 October 2021 passed by the Special Court No.1 Control of Narcotics Substances, Karachi in Miscellaneous Application No.126 of 2016 and on the order dated 19 October

2022 passed in Special Criminal Appeal No.47 of 2021 seeking a declaration that ANF and the KDA, jointly and severally, do not have the requisite jurisdiction or any legal basis to maintain the freezing the orders over the Said Property and directions to be issued to the KDA to allow her to deal with the Said Property without any restraint;

- (ii) ANF, in its Petition seeking to set aside the order dated 19 October 2022 passed in Special Criminal Appeal No.47 of 2021 upholding the order dated 21 October 2021 passed by the Special Court No.1 Control of Narcotics Substances, Karachi in Miscellaneous Application No.126 of 2016 and seeking directions to freeze the Said Property.

18. Mr. Muhammad Akram Sheikh had entered appearance on behalf of Ms. Zafar and has reiterated the facts as narrated above. He contends that orders “Freezing” the property having been set aside at all forums and as such there remained no basis for either the ANF or the KDA to restrain Ms. Zafar from dealing with her property. Mr. Muhammad Akram Sheikh has relied on Section 37 of the Control of Narcotic Substances Act, 1997 and has contended that the power that vests with the ANF to freeze a property vests under that section and which power having been exercised by the ANF and rejected by the Honourable Supreme Court of Pakistan in its order dated 12 March 2009 passed in Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006, the ANF had no jurisdiction under the provisions of Section 31 of the Prevention of Smuggling Act, 1977 to seek an order “freezing” the Said Property.

19. Regarding C.P.No.D-5822 of 2023 that was maintained by ANF, Mr. Muhammad Akram Sheikh has contended that while an appeal has provided under Section 43 of the 1977 Act, such an appeal can be maintained by” “Any person aggrieved” and which expression would only include “a person whose property is found to be forfeited” and could not include the ANF. Inasmuch as ANF did not have a right to maintain an appeal under Section 43 of the 1977 Act, it cannot maintain a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and hence it lacked the locus standi to maintain C.P.No.D-5822 of 2023. In this regard he placed reliance on three decisions of the Learned Peshawar High Court reported as **ANF vs. Haji Iqbal Shah**¹, **Government of West Pakistan/Federal Government through Deputy Attorney General of**

¹ 1999 P Cr. L.J. 1125

Pakistan, Peshawar and 3 others vs. Obaid Khan and 12 others², **State Force Commander Anti-Narcotics Force, N.W.F.P. through DAG vs. Haji Iqbal Shah**.³ He also relied on two decisions of the Honourable Supreme Court of Pakistan reported as **Hafiz Hamdullah vs. Saifullah Khan**,⁴ and **Province of Balochistan vs. Murree Brewery**⁵ and a decision of a Learned Division Bench of this Court reported as **Muhammad Naseem vs. Shameem Akhtar**⁶ to advance arguments as to the standard on which locus standi is to be established.

20. Mr. Ishfaq Ahmed Burrio, Special Prosecutor ANF has entered appearance on the basis of ANF. While conceding to the facts as narrated above, he contends that the ANF has the requisite jurisdiction under both the provisions of the Section 37 of the Control of Narcotic Substances Act, 1997 and Section 31 of the Prevention of Smuggling Act, 1977 to seek an order “freezing” the Said Property. Mr. Burrio contends that despite ANF having failed to “freeze” the Said Property under Section 37 of the Control of Narcotic Substances Act, 1997, it could independently maintain a separate application under Section 31 of the Prevention of Smuggling Act, 1977 to seek an order “freezing” the Said Property which are concurrent powers available under two separate statutes

21. Regarding the maintainability of **C.P.No.D-5822 of 2023** Mr. Ishfaq Ahmed Burrio contends that there being no provision for an appeal as against the order dated 19 October 2022 passed in Special Appeal No. 47 of 2022 by the Special Appellate Tribunal constituted under the prevention of Smuggling Act, 1977, his only remedy was to maintain a Petition as against that order in this Court’s jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking a writ of certiorari to review the order dated 19 October 2022 passed in Special Appeal No. 47 of 2021 by the Special Appellate Tribunal constituted under the Prevention of Smuggling Act, 1977.

22. Mr. Khurram Ghyasuddin has appeared on behalf of the KDA and has contended that they had received a letter from the ANF to not permit any transaction on the Said Property and while conceding that after the passing of the order dated 19 October 2022 passed in Special Appeal No. 47 of 2022 by the Special Appellate Tribunal constituted under the 1977 Act,

² 2012 P Cr. L.J. 1765

³ PLD 2015 Peshawar 80

⁴ PLD 2007 SC 52

⁵ PLD 2007 SC 386

⁶ 2010 YLR 2613

the order dated 12 March 2009 passed by the Honourable Supreme Court of Pakistan in Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006, there was no legal basis to restrain Ms. Zafar from dealing with the Said Property, they nevertheless chose to adhere to the directions of the ANF.

23. We have heard Mr. Muhammad Akram Sheikh advocate, Mr. Ishfaq Ahmed Burrio advocate and Mr. Khurram Ghayas advocate and have perused the record.

24. We had raised queries as to whether C.P.No.D-5822 of 2023 would be maintainable as against the order dated 19 October 2022 passed in Special Appeal No. 47 of 2021 by the Special Appellate Tribunal constituted under the Prevention of Smuggling Act, 1977, keeping in mind that the Learned Judge presiding over the Special Appellate Tribunal was also a Judge of this Court. This issue has been resolved by the Honourable Supreme Court in an unreported decision entitled **The State through Director ANF Peshawar vs. Shereen Shah and another** bearing C.P. No. 388-P of 16 and in which it has held that a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan would be maintainable as against the decision of a the Special Appellate Tribunal constituted under the 1977 Act notwithstanding that the Learned Judge was also a Judge of the High Court on the ground that the jurisdiction being exercised by that Judge was his jurisdiction under the 1977 Act and not his jurisdiction as a Judge of the High Court. We are bound by the Judgement of the Honourable Supreme Court of Pakistan and therefore are of the opinion that on this ground the Petition cannot be dismissed.

25. Mr. Muhammad Akram Sheikh has challenged the locus standi of the ANF to maintain C.P.No.D-5822 of 2023 before this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan against seeking relief in the nature of the writ of certiorari in respect of orders emanating from proceedings before the Special Court and the Special Appellate Court each constituted under the 1977 Act. The argument is premised on a decision of a Learned Single Judge of the Peshawar High Court in the decision reported as **ANF vs. Haji Iqbal Shah**⁷ in which it was held that:

“ ... 9. *Controverting the objections raised by Barrister M. Zahurul Haq, Mr. Amjad Zia appearing for the appellant contended that it has been categorically provided in*

⁷ *op cit.*

section 43 of the Act that any person aggrieved of the order of Special Judge could move the Special Appellate Court in appeal and since the appellant, A.N.F., is an aggrieved party has rightly filed the appeal. As for second objection, the learned counsel submitted that he has been specially appointed and authorized through special power of attorney to plead the case of the appellant, therefore, he has competently filed the appeal. As for the third objection, the learned counsel argued that the impugned order could not be considered as an acquittal as no punitive provision is provided in the Act and that the respondents are never termed as "accused" persons in the case. Only forfeiture of the property is the requirement of the relevant section.

10. The first question that needs to be determined is the definition of "person" and whether appellant falls within the definition of word "person". To properly appreciate the point in issue, it would be expedient to reproduce provisions of section 43 of the Act:

"Section 43. Appeal.--- (1) Any person aggrieved by an order of the Special Judge passed under section 31, section 32 or section 34 may, within thirty days from the date of such order, prefer an appeal before the Special Appellate Court whose decision shall be final.

(2) The provisions of the Limitation Act, 1908 (IX of 1908), shall apply in an appeal filed under subsection (1)."

11. The words "any person" though have been mentioned many a times in the different sections of the Act, but its definition is not available in the Act itself. However, under section 2(a) "associate" in relation to a person has been given. In such a situation we may refer to the definitions of a person given in the different provisions of law.

Under clause (39) of section 3 of the General Clauses Act, the word "person" "shall include any company or association or body of individuals, whether incorporated or not". The expression "person" includes not only natural person but also a juristic person. Chambers Twentieth Century Dictionary defines it as "a living soul or self-conscious being: a personality: a human being. According to Cochran's Law Dictionary, "person means "any body capable of having and becoming subject to rights; a human being, also called natural person. (2) An artificial person, or corporation". In conclusion, none of the above definitions suggests word "person" includes the State. It refers only to an individual.

12. In the case of *The Kapur Textile Finishing Mills v. Province of East Punjab* AIR 1954 Pb. 49 where the question was whether the State is entitled to claim protection under section 43 of the East Punjab Public Safety Act (5 of 1949), it was held that the word person in section 43 did not include the word "State", therefore,

there was no bar to a suit against the State. Similar question was raised in Andhra Pradesh High Court in case *Sardar-e-Aali Zaria Nazim v. Athar* AIR 1957 And. Pra. 714, the Honourable Judge Jaganmohan Reddy, to whom appeal was referred on difference of opinion between Qamar Hasan and Kumarayya, JJ., on the maintainability of the suit filed by the respondent against the appellant, who taking guidance from the observations of Lord Black-Burn in *Pharmaceutical Society v. London and Provincial Supply Association* (1880) 5 AC 857 (J) observed that "in my view, on a reading of section 2(43), (Hyderabad General Clauses Act) the office or the Government Department is not a person not only because it is not included in the said definition but because it is neither a natural person nor an artificial person, nor a legal person. If this is so, how can the Nazim Umoor-e-Mazhabi be considered either as a natural person or as an artificial person or a legal person or a corporation sole?"

13. As to the question, whether appellant is covered by any person "aggrieved", we may refer to the definition of "aggrieved person" provided in the "interpretation of statute", by N.S. Bindra where it is defined "a person aggrieved must be a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand". A very elaborate definition of "aggrieved person" has been given by Sardar Muhammad Iqbal, J. in *Sajjad Harder v Government of West Pakistan* PLD 1967 Lah. 938 which reads as under:--

"The words 'aggrieved party' or 'person' aggrieved do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. 'A person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. "

The above definition of 'aggrieved person' clearly connotes an individual who has wrongly been deprived of or refused of something. He is only aggrieved if he is entitled to be called a person.

14. I and also alive to the query that the word 'any' excludes limitations, restrictions of qualifications. It, no doubt connotes wide generality but when we get back to the word any person used to the different provisions in the Act itself, it is found to have been used to represent a person whose property is to be forfeited. Here we may like to refer to different sections of the Act.

"Section 3(1). Preventive detention.--- In order to maintain supplies essential to the community, if the Federal Government or a Provincial Government is satisfied that for preventing any

person from indulging in smuggling, it is necessary to detain him, it may by an order in writing, direct the arrest and detention of such person for such period as may, subject to the provisions of this Act, be specified in the order ..
"

Section 30(1). Property acquired by smuggling not to be held.---

(1) It shall not be lawful for any person to hold, either in his own name or in the name of any relative or associate, any property acquired by smuggling ...

Section 31(1). Notice to person holding property suspected to be acquired by smuggling.---

(1) Whenever a Special Judge receives information that within the limits of his jurisdiction any person, either in his own name or in the name of any relative or associate, is holding property which is reasonably suspected to be acquired by smuggling, the Special Judge may issue to such person a notice calling upon him to show cause, within such time as may be specified in the notice, which shall not be less than thirty days, why the whole or any part, of such property should not be declared to be property acquired by smuggling and to be forfeited to the Federal Government.

Section 35. Transfer of certain property void.---

(1)
.....

(2) Any person who transfers any property, or creates a charge thereon, in contravention of subsection (1) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Section 39(2) If any person to whom a direction has been issued under subsection (1) refuses or fails to comply with such direction, the Special Judge may cause possession of the property to be taken and for that purpose may authorize use of such force as may be necessary."

In all the aforesaid provisions of law, "any person" refers to a person against whom the action is to be taken and therefore, section 43 of the Act is to be interpreted in the same manner and style. Here the question may arise as to what remedy was available to the appellant in such-like situation.

14. It appears that the Legislature in its wisdom has not provided any relief to the Federal Government which could have very conveniently been extended to the appellant A.N.F. (Federal Government) as it did in section 185(F) of the Customs Act, 1969 (IV of 1969) by

virtue of amendment in section 51 of the Act, which reads as under:--

"Section 185-F. Appeal to Special Appellate Court.-

(1) Any person, including the Federal Government, aggrieved by any order passed or decision made by a Special Judge under this Act or under the Code of Criminal Procedure, 1898, (Act V of 1898), may, subject to the provisions of Chapters XXXI and XXXII of the Code, within sixty days from the date of the order or decision prefer an appeal or revision to the Special Appellate Court, and in hearing and disposing of such appeal or revision such Court shall exercise all the powers of the High Court under the said Court."

A similar question arose before the Lahore High Court in case of *Nawabzada Malik Habibullah Khan Tiwana and others v. The Province of West Pakistan and another* PLD 1967 Lah. 533 where controversy in issue was, whether exemption from land revenue or grant to retain the land revenue was Jagir in the ordinary sense of the word. The Honourable Judge of Lahore High Court taking into consideration the definition of "Jagir" given in section 2(1) of the Punjab Abolition of Jagirs Act, 1952 held that "it is well-established that when in any Statute word 'include' or 'includes' is used, then it is intended to enlarge the ordinary meaning of that word". Similarly, in *Emperor v. Jiand and another* AIR 1928 Sindh 149, De Souza, A.J.C. held that:--

"It is a well-known rule of interpretation that the word 'includes' is used as word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it; to add to the general clause a species which does not naturally belong to it."

15. Thus, the argument of Barrister Zahurul Haq appears to carry weight that words to be interpreted and understood, as used and mentioned in the Act itself unless enlarged to something else. It is thus, apparent that section 43 of the Act is a bar to the appeal filed by the appellant A.N.F."

This decision was approved by a Learned Division Bench of the Peshawar High Court in the decision reported as. **Government of West Pakistan/Federal Government through Deputy Attorney General of Pakistan, Peshawar and 3 others vs. Obaid Khan and 12 others**⁸ and in which it was held that:

⁸ *op cit.*

“ ... At the time of hearing the appeal filed by Anti-Narcotics Force against Haji Iqbal Shah and 11 others, reported in 1999 PCr.LJ 1125, the learned counsel appearing for respondents namely Mr. M. Zahurul Haq, Bar-at-Law raised an objection on the maintainability of appeal by referring to section 47(1) of the Act and submitting that counsel for Anti-Narcotics Force was only a Special Prosecutor, authorized to appear before the Special Judge and had no authority to file appeal or appear before the Special Appellate Court as by virtue of subsection (2) of section 47 of the Act, only Law Officer appointed under the Central Law Officers Ordinance, 1970 is competent to conduct proceedings before the Special Appellate Court. The above objection prevailed upon the then learned Presiding Officer of Special Appellate Tribunal in the following terms:--

"As to the question, whether appellant is covered by any person aggrieved", we may refer to the definition of "aggrieved person" provided in the "interpretation of statute ", by N. S. Bindra where it is defined "a person aggrieved must be a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand". A very elaborate definition of "aggrieved person" has been given by Sardar Muhammad Iqbal, J. in Sajjad Haider v. Government of West Pakistan PLD 1967 Lah. 938 which reads as under:-

"The words 'aggrieved party' or 'person' aggrieved do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. "A person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

The above definition of 'aggrieved person' clearly connotes an individual who has wrongly been deprived of or refused of something. He is only aggrieved if he is entitled to be called a person. I am also alive to the query that the word 'any' excludes limitations, restrictions of qualification. It, no doubt connotes wide generality but when we get back to the word any person used to the different provisions in the Act itself it is found to have been used to represent a person whose property is to be forfeited."

The above verdict was further affirmed by a learned Division Bench of this Court in the writ petition filed by Anti-Narcotics Force.

12. In the circumstances, we would subscribe to the earlier view taken by this Court and the view taken by the learned Special Appellate Court in the instant case that petitioners do not fall within the definition of aggrieved "persons"; hence the impugned judgment of

the Special Appellate Court requires no interference from this end.”

Finally, the decision was also followed by Yahya Afridi , J., as his Lordship then was, in the decision of the Peshawar High Court reported as **State Force Commander Anti-Narcotics Force, N.W.F.P. through DAG vs. Haji Iqbal Shah**⁹ and in which it was held that:

“ ... 4. *At the very outset of the proceedings, the learned counsel appearing on behalf of the respondents, while raising a preliminary objection, contended that by virtue of section 47(2) of Prevention of Smuggling Act, 1977, the appeals filed by the ANF being incompetent are liable to be rejected, as only a Law Officer appointed under the Central Law Officers Ordinance, 1970, is competent to conduct proceedings before the Special Appellate Court and that the ANF did not fall within the definition of "aggrieved person", and thus the present appeals are not maintainable and competent in the eyes of law.*

5. This issue has been adjudged against the appellant, ANF, by this Court in Haji Iqbal Shah's case (1999 PCr.LJ Peshawar 1125) and decided on 25-1-1999, which was affirmed by the Constitutional Bench of the High Court, wherein it was held that:-

" It is thus apparent that section 43 of the Act is a bar to the appeal filed by the appellant ANF "

The appeal against the aforementioned decision was filed before the apex Court, which has granted leave to defend to ANF, without suspending the operation of the said judgment of this Special Appellate Court and the Constitutional Bench of the Peshawar High Court. Following the 'ratio decedenti' laid down by this Special Appellate Court in Haji Iqbal Shah's case ('Supra'), the Peshawar High Court, while exercising its constitutional jurisdiction in Obaid Khan's case (2012 PCr.LJ Peshawar 1765), has also reaffirmed the dismissal of appeals of ANF on the grounds that:-

" Under section 47 of the Act only Special Law Officers who are appointed under the Central Law Officer Ordinance, 1970 are competent to conduct proceedings before the Special Appellate Court on behalf of the Federal Government. ..There is no such provision in the Act that provides provision of privately engaged counsel . that dismissal of any charge on complainant brought against the person involved therein shall amount to an acquittal ..Their right of appeals not available in the provisions of the Act. Therefore, it being a substantive right cannot be claimed by implications. It is in the

⁹ *op cit.*

circumstances, we would subscribe to the earlier view taken by this Court and the view taken by the learned Special Appellate Court in the instant case that the petitioners do not fall within the definition of aggrieved person, hence the impugned judgment of the Special Appellate Court requires no interference from this end."

6. *The learned counsel appearing on behalf of the appellants/ANF, when confronted with the preliminary objections discussed above, was unable to meet the objections raised by the learned counsel for the respondents and thus could not defend the competency and maintainability of the appeals filed by the ANF before this Court.*

7. *Before we proceed to legally determine the preliminary objection raised by the respondents against the very maintainability of the present appeals filed by ANF before this Special Appellate Court, it would be appropriate to first lay down the two issues, which would require deliberations;*

ISSUE NO.1 *Whether this Special Appellate Court exercising its jurisdiction under section 47 of the Act is bound by its own decision and thus of Division Bench exercising jurisdiction under the Constitutional jurisdiction as mandate under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.*

ISSUE NO.2 *Whether the leave granting order passed by the apex Court in decision rendered by this Appellate Court and Constitutional Court of a High Court can be regarded as a decision to be followed under the command of Article 189 of the Constitution."*

8. *Taking **ISSUE NO.1** first, it is noted that generally Courts in order to maintain consistency in its judgments are to follow its own decisions and in cases where it differs with the precedent cited before it, it has to give reasons for the same and proceed with its decision. However, in case a Bench of the High Court or the apex Court, differs with the view rendered by an earlier decision, it may render reasons for the same and proceed to decide the case, where the decision cited and differed is of a Bench comprising of worthy Judges, who are less in number. And in case, the judgment cited and differed is of a Bench consisting of the same or more number of worthy Judges, it is not to proceed and decide the case but to refer the same for adjudication before a larger Bench. This matter was aptly discussed by the Supreme Court of India in Motilal Padampat Sugar Mill's case (AIR 1979 SC 621), wherein the worthy Court enunciated the principle in terms that:--*

"We find it difficult to understand how a bench of two Judges in Jeet Ram's case could possible overturn or disagree with what was said by another Bench of two Judges in Motilal Sugar Mills' case. If the Bench of two Judges in Jeet

Ram's case found themselves unable to agree with law laid down in Motilal Sugar Mills' case, they could have referred Jeet Ram's case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same Court in Motilal Sugar Mills."

The 'ratio decidendi' of the aforementioned decision of the Supreme Court of India was cited and approved by our apex Court in cases of Multiline Associates. v. Ardeshir Cowasjee (PLD 1995 SC 423), Muhammad Saleem v. Fazal Ahmad (1997 SCMR 314) and Babar Shehzad v. Said Akbar (1999 SCMR 2518). In Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883), the apex Court reiterated the said principle in terms:-

"It may be pointed out that a Bench of the same number of Judges of the same High Court, or of the Supreme Court, cannot deviate from the view of an earlier Bench as rightly has been held in the case of Multiline Associates v. Ardeshir Convasjee and others in relation to the High Court."

Finally, the Supreme Court of Pakistan has in All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2004 SC 600), approved the aforementioned principle laid down in the cases cited hereinabove.

*9. Now moving on to **ISSUE NO.2**, it is noted that by now, it is a settled principle of safe administration of justice that a leave granting order passed by the apex Court, does not lay down a law to be followed, having a binding force, as is envisaged under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. This matter has been a matter of discussion of the superior Courts of our jurisdiction. In this regard, Justice Anwar-ul- Haq, J, while deciding a writ petition in Muhammad Iqbal Khan's Case (PLD 1963 (W.P.) Lahore 11), explained the principle very expressly in terms that:--*

"Mr. Qadir Bakhsh requested that as recently their Lordships of the Supreme Court have granted special leave to appeal in Civil Petition No.104 of 1961 (Mst. Amir Begum v. Umar Din etc.) to examine this very question, I should keep the present petition pending until the matter is decided by the Supreme Court. I regret I am not inclined to adopt this course, for the reason that the mere grant of special leave by the Supreme Court does not mean that the law laid down by a Division Bench of this Court is no longer good law. Sitting as a Single Judge, I am bound to follow the decision of the Division Bench, until such time as it is reversed by a large bench of this Court or by the Supreme Court. In the second place, it is not known as to when the decision of the Supreme Court will be given and it is desirable that writ petitions relating to

rehabilitation matters should be disposed of as expeditiously as possible."

The ratio decidendi in the aforementioned case has been consistently followed by the superior Courts of our jurisdiction. Some of the important case in this regard are Muhammad Ismail v. The State (PLD 1974 Karachi 29), Yousaf A. Mitha and 3 others v. Aboo Baker and 2 others PLD 1980 Karachi 942. Finally, the Hon'ble Supreme Court has also reiterated the principle in Shipyard K Damen International v. Karachi Shipyard and Engineering Workers Ltd (PLD 2003 Supreme Court 191), wherein it was observed as under:--

"We are not persuaded to agree with Mr. M.S. Baqir, learned Advocate, Supreme Court that leave granting order in case C.P. No.383-K of 2002 decided on 17-4-2002 has modified the law as laid down in National Construction Company Limited v. Aiwan-e-Iqbal (PLD 1994 Supreme Court 311) because a leave granting order passed by Supreme Court does not lay down law to be followed, hence this aspect of the matter hardly needs any further elaboration." (Emphasis provided)

In view of the above legal discourse, it can safely be stated that the present appeals have not been competently filed and thus not maintainable in the eyes of law."

26. We find ourselves in agreement with the aforementioned Judgments and cannot see how the dismissal of the application maintained by ANF under Section 31 of the 1977 Act can prejudice ANF. No right of the ANF has been violated by the dismissal of their application under Section 31 of the 1977 Act and that being the case we are clear that the ANF cannot be "aggrieved" by such a decision. While it might not like the decision and even not agree with it such a displeasure cannot be taken to such a level where it can be considered to be "aggrieved" by it. Similarly as the ANF cannot come within the scope of a person who can be classified as aggrieved to maintain an Appeal under Section 43 of the 1977 Act, it would naturally follow that their right to maintaining an appeal having been precluded, they could not also maintain a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against the decision of either the Special Judge or as against the decision of the Special Appellate Tribunal. To our mind on this ground C.P.No.D-5822 of 2023 filed by ANF is not maintainable and is liable to be dismissed.

27. Even on the merits of C.P.No.D-5822 of 2023 we do not believe that any exception can be taken to the decision dated 19 October 2022 passed by Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021. In that decision the Learned Judge has held that while the smuggling of

narcotics used to be an offence under the provisions of Customs Act, 1969 and hence triable under the 1977 Act, however, after the promulgation of the CNS Act, by virtue of Sections 7,9 and 72 of that statute, the offence of smuggling narcotics was removed from the purview of the Customs Act, 1969 and was an offence triable only under the provisions of the CNS Act. Reliance was correctly placed by Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021 on a decision of a Learned Full Bench of this Court reported as **Hussain Abdullah Salum vs. The State**¹⁰ in which it was held that:

“ ... 16. As is evident from the above quoted section 72 a restriction on import or export of narcotic drugs etc. imposed by this Act is- to be deemed to be one imposed under the Customs Act and it would, therefore, follow that such import or export would amount -to smuggling in terms of the Customs Act. Under the first proviso to the aforesaid section offences relating to narcotic drugs are required to be tried under the provisions of this Act notwithstanding anything contained in the Customs Act. The second proviso further clarifies that any inquiry or investigation carried out by an Officer of Custom apprehending a person involved in an offence relating to narcotic shall be deemed to be conducted under this Act. Section 74 stipulates that the punishment provided under this Act shall be imposed for an offence which might also constitute an offence under any law. From the abovementioned provisions it is quite clear that when a person is involved in smuggling of narcotic he can only be tried and punished under the C.N.S. Act. In our humble view the above specific provisions were designed to ensure that all persons involved in import, export or possession of narcotic should be tried under this Act notwithstanding anything contained in any other law. They were also intended to remove the possibility of a prosecution against double jeopardy in cases where prosecution under the Customs Act could take place. We are, therefore, clearly of the opinion that ever since the " enactment of the C.N.S. Act or the promulgation of its predecessor Ordinance all offences had to be tried under the aforesaid Special Law. A Consequently, a trial or a conviction before the Custom Court was coram non judice, and therefore, the protection of Article 13(a) of the Constitution I or section 403 of the Cr.P.C. would also not apply. ...

It is, however, clarified for future that all acts or omission which may constitute offences under the C.N.S. Act, as well as the Customs Act or any other law must be treated as those committed under the C.N.S. Act and be tried accordingly. We would like to emphasise that mere fact of import and export of Narcotics should not mislead the Investigating/Prosecuting Agencies to treat the matter

¹⁰ PLD 2001 Karachi 283

as an offence under the Customs Act because sections 7 and 8 of the C.N.S. Act expressly describe that such offences to have been committed under the C.N.S. Act punishable under section 9 of the Act.”

Similarly in a decision of the Honourable Supreme Court of Pakistan reported as **The State vs, Nasim Amin Butt**¹¹ and in which it was held that:

“ ... “8. The next question which arises is as to which of the two Acts would be given preference. Apart from the fact that Act XXV of 1997 being latter law and the purpose for which the same was promulgated as expressed in its preamble was to consolidate and amend the laws relating to narcotic drugs, psychotropic substances and. control the production, processing and trafficking of such drugs and substances. It has overriding effect as Section 76 thereof provides that the provisions of this Act shall have effect notwithstanding anything contained in any law for the time being in force. The matter has been put beyond any doubt by section 72 of the Act which provides that all prohibitions and restrictions imposed by or sander this ACL on the import into, export from Pakistan and transshipment of narcotic drugs, psychotropic substances or controlled substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1969 and the provisions of this Act would apply accordingly, with a proviso that notwithstanding anything contained, in the Customs Act or any other law, the offences relating to narcotic drugs, psychotropic substances or controlled substances shall be tried under the provisions of this Act the proceedings of, which have been quashed through the impugned judgments.

9. After having held that the prosecution under the Control of Narcotic Substances Act, 1997 of the respondents related to the same offence for which they had already been tried and punished under the Customs Act, normally it would be sufficient for us to hold that the impugned judgments of quashment of the prosecution under Act XXV of 1997 were validly made but this cannot legally be done in view of the law as it stands now.

10. As has already been observed under the proviso to section 72 of Act I XXV of 1997,, all offences relating to narcotic drugs, psychotropic substances or controlled substances; etc., are to be tried under this Act notwithstanding anything contained in the Customs Act, 1969 or any other law, therefore, the Special Courts created under this Act had the exclusive jurisdiction to try these offences to the exclusion of any other Court under any law inclusive of the Customs Act, therefore, the prosecution` of the respondents under the Customs Act was without jurisdiction and the proceedings taken thereunder, conviction recorded and sentence awarded were also illegal having been taken, recorded and passed by a Court which was not vested with

¹¹ 2001 SCMR 1083

jurisdiction to proceed with the matter, as such, all these proceedings from the very inception were coram non iudice, therefore, the quashment of the prosecution under Act XXV of 1997 in relation to conviction recorded and sentence passed by a Court under the Customs Act which was not vested with the jurisdiction to proceed in the matter was not justified.”

28. It seems that after the passing of those two judgments, further clarification to the law was brought by amending sub-clauses (i) and (ii) of Clause 8 of Sub-Section (1) of Section 156 of the Customs Act, 1969 whereby a distinction was made between the offence of smuggling narcotics and the smuggling of other goods thereby removing the offence of the smuggling of narcotics from the scope of the Customs Act, 1969. Finally Section 185 B of the Customs Act, 1969 was amended by the Finance 2014 to clarify that the Special Court constituted under the CNS Act had exclusive jurisdiction to try the offence of the smuggling of narcotics and which by default meant that the Special Judge constituted under the Customs Act, 1969 would have the jurisdiction to try offences of the smuggling of goods other than narcotics. We cannot summarise the findings better than as has been done by the Learned Judge constituting the Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021 wherein it was held that

“ ... *While section 30 of the [1977 Act] prohibits the holding of property acquired from proceeds of smuggling and makes it liable to forfeiture again, it does not classify that as an offence. On the other hand, discussed above, after the enactment of the CNSA, section 12 and 13 stipulate that it is an offence to knowingly possess, acquire or use any assets derived or obtained by means of smuggling prohibited narcotics, and that such assets are liable to forfeiture. Said offence is triable exclusively by the Special Court appointed under the[CNS Act]. As per section 19 and 39 of the [CNS Act], the order for forfeiting assets of the offender and persons holding assets on his behalf is also to be passed by the Special Court. Ultimately, as per Section 76 of the [CNS Act], it has overriding effect. Therefore, after the enactment of the [CNS Act], where the allegation is that an asset held by a person is the fruit of smuggling narcotics and liable to forfeiture proceedings can only be taken under the[CNS Act] and section 30 and 31 of the [1977 Act] have not application nor does the Special Judge appointed under the [1977 Act] have any jurisdiction. In other words section 30 and 31 of the [1977 Act] can only be invoked where smuggling is alleged of goods other than narcotics.”*

One cannot fault the logic of the Learned Judge constituting the Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021. Clearly if the offence of smuggling narcotics has been removed by the legislature from

the purview of the Customs Act, 1969 and the 1977 Act, it can barely follow that the Special Judge can be considered to have the requisite jurisdiction to act under Section 30 and 31 of the 1977 Act in respect of an offence which that statute does not regulate. Resort in that regard could only have been made to section 19 and 39 of the CNS Act and which was done by the ANF and on the basis of which orders freezing the property were secured and which were recalled after the order dated 12 March 2009 passed by the Honourable Supreme Court of Pakistan allowing Criminal Appeal No. 28 of 2004 and Criminal Appeal No. 625 of 2006. The jurisdiction of the ANF to freeze the property ended there and they could not have resorted to Section 30 and 31 of the 1977 Act unless they were able to show that the offence committed for which the order was sought under those sections related to offences committed under the provisions of the Customs Act, 1969 and which on the facts clearly was not the case.

29. Even on the evidence that was adduced, Mr. Ishfaq Ahmed Burrio has not referred us to any evidence that would corroborate that the Said Property was purchased from the proceeds of smuggling of narcotics. We have perused the record and cannot find and are clear that nothing was brought on the record by the ANF to substantiate such a contention. We are therefore unable to find any infirmity or illegality in the judgment dated 19 October 2022 passed by Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021. C.P. No. D-5822 of 2023 is hence not maintainable and is liable to be dismissed.

30. Having come to the conclusion that C.P.No.D-5822 of 2023 is not maintainable and that therefore there is no legal sanction on the part of the ANF to restrain Ms. Zafar from dealing with the Said Property, we are surprised to note that KDA has nevertheless continued to prevent Ms. Zafar from exercising her rights to the Said Property.

31. Article 4 of the Constitution of the Islamic Republic of Pakistan (which is identical in terms to Article 2 of the Constitution of Pakistan, 1962) clarifies:

“ ... **Right of Individuals to be dealt with in accordance with law**

(1) *To enjoy the protection of law and to be treated in accordance with law is the **inalienable** right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.*

(2) *In particular*

(a) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) **No person shall be prevented from or be hindered in doing that which is not prohibited by law; and**

(c) No person shall be compelled to do that which the law does not require him to do.”

32. The Honourable Supreme Court of Pakistan, in the decision reported as **Ch Manzoor Elahi vs. Federation of Pakistan**¹² has directed that it was the duty of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to enforce Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973:

“ ... In my opinion, the powers given to a High Court under Article 199 of the Constitution is wide enough to cover not only a case of infringement of Fundamental Right as contained in Part I of the Constitution, but also to enforce the inalienable right of a citizen as mentioned under Article 4 of the Constitution which runs thus:-

"4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do."

It has been contended in this context that there is no remedy provided by the Constitution to enforce the rights and obligations mentioned in Article 4. The contention is misconceived. In the first place, the injunctions contained in Article 4(2) are not only mandatory but they are also clothed in prohibitory language which indicate that the provisions are self-executing and no legislation is necessary to give effect to them. The rules of interpretation of a written Constitution as reproduced above support this view. Apart from the question of any machinery to enforce the right or obligation, as I have said

¹² PLD 1975 SC 66

earlier, nobody is relieved of the obligation to comply with them. In the second place, I am unable to conceive that a right or obligation so clearly and solemnly given or put can be without a content, meaning or purpose. Unless, therefore, on an examination of the Constitution I am led to the inevitable conclusion that the Courts are powerless to enforce the inalienable right or the obligation mentioned in Article 4, I am of the opinion that the Courts are bound to give the Article a meaning and a purpose. I have, however, already noticed that Article 199 of the Constitution gives indeed wide powers to a High Court to act for the enforcement of the rights and obligations mentioned in Article 4 of the Constitution.

Article 4 may be compared with the due process of law in the American Constitution. The case of *Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri* P L D 1969 S C 14, supports this view. In the case under report Article 2 of the 1962 Constitution which is corresponding to Article 4 of the Constitution was considered and the Court observed as follows:-

" The words 'in an unlawful manner' in sub-clause (b) of Article 98 (2) have been used deliberately to give meaning and content to the solemn declaration under Article 2 of the Constitution itself that it is inalienable right of every citizen to be treated in accordance with law and only in accordance with law. Therefore, in determining as to how and in what circumstances a detention would be in an unlawful manner one would inevitably have first to see whether the action is in accordance with law, if not, then it is action in an unlawful manner. Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts. It means according to the accepted forms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may well be as has been suggested in some quarters, that in this sense it is as comprehensive as the American 'due process' clause in a new garb. It is in this sense that an action which is mala fide or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. **Action taken upon no ground at all or without proper application of the mind of the detaining authority would also not qualify as action in accordance with law and would, therefore, have to be struck down as being action taken in an unlawful manner.**"

33. The Honourable Supreme Court of Pakistan in its decision reported as **Re: Tariq Aziz-ud-din and other**¹³ has further held that the provisions of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 are binding on all the functionaries of government including, but not limited to, the Prime Minister of Pakistan:

“ 27. *Once it is accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. **By virtue of Articles 4 and 5(2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution** and to act in accordance with law and decide the issues after application of mind with reasons as per law laid down by this Court in various pronouncements [Federation of Pakistan through Secretary, Establishment Division v Tariq Pirzada 1999 SCMR 2744].”*

34. As is apparent from the decisions of the Honourable Supreme Court of Pakistan, Article 4 is not only enforceable by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 it must be followed by every functionary of the State. Clause (b) of Sub-Article 2 of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that while it is the inalienable right of a citizen of Pakistan and of every other person for the time being within Pakistan to be treated in accordance with law in particular “No person shall be prevented from or be hindered in doing that which is not prohibited by law.” It seems to us that, regrettably, the KDA and the ANF are doing just that i.e. “preventing” and “hindering” Ms. Zafar from dealing with the Said Property without Ms. Zafar having specifically being “prevented” or “hindered” from doing so under any “law.”

35. All proceedings that have been attempted to restrain Ms. Zafar from dealing with her property have been taken by the ANF and having been exhausted, there exists no legal prohibition or hindrance under any law on the basis of which Ms Zafar could be prevented from dealing with the Said Property. The correct course on the part of the KDA on the conclusion of each of these proceedings should have been to permit Ms, Zafar to transact on the Said Property. Clearly Ms. Zafar is, as per Clause (b) of Sub-Article 2 of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 “permitted to do what is not specifically prohibited”. There being no prohibitive order, Ms. Zafar has every right to do what she wishes with the

¹³ 2010 SCMR 1301

Said Property without any hindrance. C.P.No. D-5490 of 2023 must therefore be allowed.

36. For the foregoing reasons, there being no illegality or infirmity in the order dated 19 October 2022 passed by Special Appellate Tribunal in Special Criminal Appeal No.47 of 2021, we had on 14 December 2023 dismissed C.P. No. D-5822 of 2023 filed by ANF as being misconceived and hence not maintainable and on the same date had allowed C.P.No. D-5490 of 2023 filed by Ms. Zafar with costs of Rs.100,000 in each Petition in favour of Ms. Zafar and with directions to the KDA not to impede Ms. Zafar in any of her dealings with the Said Property and in respect of which no impediment should be created by ANF and these are the reasons for those Orders.

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