

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammad Karim Khan Agha, J.

Petitioner number, name of the petitioners and their counsel.

C.P. No.D-5992 of 2016

Nisar Ahmed & others V. NAB through its Director General,
Sindh at Karachi.

Nisar Ahmed S/o Haji Khaliqdino (Petitioner No.1)

Kaamuddin S/o Koral (Petitioner No.2).

Gada Hussain S/o Nawab Khan (Petitioner No.3).

Through Mr. Sarfaraz Ali Metlo, Advocate.

Nemo for Respondents

Date of hearing: 02.11.2017.

Date of order: 02.11.2017.

ORDER

Mohammad Karim Khan Agha, J: Through this petition, the petitioners have challenged the jurisdiction of the NAB authority before this Court with the following prayers.

P R A Y E R S

- a. Declare that under the circumstances of the case, NAB authorities have no jurisdiction to conduct inquiry/ investigation in the instant subject matter.
- b. Declare that all the orders, notifications, notices, opinions, correspondences etc. made / done during the proceedings/inquiry/investigation by NAB authorities in the above subject matter are illegal, unlawful, incompetent, unauthorized, without jurisdiction, having no legal effect and set aside all of them.
- c. Restrain the NAB authorities/respondents from conducting further proceedings of inquiry/investigation in the instant subject matter, till the disposal of the instant petition.

d. Direct the respondents to keep in abeyance proceedings/investigation/inquiry of above subject matter till final decision of civil litigation pending before the Hon'ble Court of competent jurisdiction.

e. Any other relief(s) which this Hon'ble Court deems fit, just and proper in favor of the petitioners.

2. Learned counsel for the petitioners in support of his above prayers submitted that the case of the petitioners fell below the amount of RS100M and as such pursuant to the case of **Amjad Hussain V Chairman NAB** dated 27-04-2016 in CP No. D1210 of 2016 the NAB had no jurisdiction to inquire into the illegalities allegedly committed by the petitioners and such inquiries/ investigations should be declared as unlawful.

3. We note that to a large extent the prayers in the petition have become infructuous as a reference has already been filed by the NAB against the petitioners which is proceeding before the Accountability Courts in Karachi and concerns the illegal sale of 192 acres of land.

4. Even otherwise **Amjad Hussain's case** (Supra) was clarified by this Court in the later case of **Rajib Ali Shah V Chairman NAB** dated 08-03-2017 that the Chairman NAB was not debarred from filing references which involved an amount of less than RS100M. **Rajib's case** (Supra) was challenged before the Hon'ble Supreme Court which was upheld by the Supreme Court in the case of **Waqar Ali Awan V Federation of Pakistan** dated 03-05-2017 in the following

terms at Para 4 of the Order which is set out below for ease of reference.

"Para 4. We have heard the learned counsel for the petitioner and perused the material on record. The main issue involved in this case pertains to the interpretation of the judgment in the Amjad Hussain case. The thrust of the arguments of the learned counsel of the petitioner is that the case of Amjad Hussain precludes respondent No.2 from filing references where the amount involved is less than Rs. 100 million. **A bare reading of the order in question however, defies such claim as there is a specific saving clause present in the judgment as has been discussed in the impugned judgment. Therefore, there is no absolute statutory bar on the Chairman NAB to take cognizance in cases of less than Rs.100 million**".(bold added)

5. Thus, in our view, not only has the prayer clause in the petition become infructuous but the issue of NAB filing references in respect of amounts being less than RS100M in certain cases has, for the time being, been interpreted and decided by the Supreme Court that the NAB may do so and as such this petition is dismissed in limine.