

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mubeen Lakho.

CR. ACCOUNTABILITY APPEAL NO.14 OF 2020 CONSTITUTION PETITION NO.D-5492 OF 2020

Appellant: Lal Mohammad son of Haji Adam Jokhio, through M/s. Rasheed A. Rizvi and Abbas Rasheed Razvi Advocates.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

CR. ACCOUNTABILITY APPEAL NO.15 OF 2020 CONSTITUTION PETITION NO.D-5493 OF 2020

Appellant: Wahid Bux son of Ilyas Jokhio, through M/s. Rasheed A. Rizvi and Abbas Rasheed Razvi Advocates.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

CR. ACCOUNTABILITY APPEAL NO.16 OF 2020 CONSTITUTION PETITION NO.D-5494 OF 2020

Appellant: Muhammad Fazal son of Ilyas Jokhio, through Ms. Pooja Kalpana, Advocate.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

CR. ACCOUNTABILITY APPEAL NO.17 OF 2020 CONSTITUTION PETITION NO.D-5495 OF 2020

Appellant: Zaman son of Muhammad Azim Jokhio, through M/s. Haq Nawaz Talpur and Barrister Muhammad Asad Ashfaq, Advocates.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

CR. ACCOUNTABILITY APPEAL NO.18 OF 2020 CONSTITUTION PETITION NO.D-5565 OF 2020

Appellant: Shahid Raza Shah son of Syed Israr Hussain Shah through Mr. Amer Raza Naqvi, Advocate.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

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**CR. ACCOUNTABILITY APPEAL NO.19 OF 2020
CONSTITUTION PETITION NO. D-5566 OF 2020**

Appellant: Muhammad Salik Nukrich son of Qazi Ahmed through Mr. Amer Raza Naqvi, Advocate.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

**CR. ACCOUNTABILITY APPEAL NO.20 OF 2020
CONSTITUTION PETITION NO.D-5493 OF 2020**

Appellant: Abdul Aziz son of Alam Khan through Mr. Amer Raza Naqvi, Advocate.

Respondents/State: Chairman, NAB through Mr. R.D. Kalhoro, Special Prosecutor, NAB.

Date of hearing: 20.05.2021, 21.05.21, 25.05.21, 26.05.2021 and 27.05.2021

Date of announcement: 18.06.2021.

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants/Petitioners Lal Muhammad, Wahid Bux, Muhammad Fazal, Zaman, Shahid Raza Shah, Muhammad Salik Nukrich and Abdul Aziz have filed their Criminal Accountability Appeals No.14 to 20 of 2020 separately in Reference No.16 of 2017 and impugned the judgment dated 26.10.2020 passed by Judge, Accountability Court No.IV Karachi whereby all the accused have been convicted and sentenced as under:-

"All accused Muhammad Salik Nukrich son of Qazi Ahmed, Abdul Aziz son of Alam Khan, Shahid Raza Shah son of Syed Israr Hussain Shah, Wahid Bux son of Ilyas Jokhio, Zaman son of Muhammad Azim Jokhio, Lal Muhammad son of Haji Adam Jokhio and M. Fazal Hussain son of Ilyas Jokhio are convicted for having committed the offences of corruption and corrupt practices as defined u/s.9(a)(iii)(iv)(vi)(x) and (xii) of NAO, 1999 punishable u/s. 10(a) of said Ordinance. As far as the quantum of sentence is concerned, it is fit case for maximum sentence, however, I am taking a lenient view in consideration of fact that land was returned to the government hence I convict and sentence the all accused Muhammad Salik Nukrich son of Qazi Ahmed, Abdul Aziz son of Alam Khan, Shahid Raza Shah son of Syed Israr Hussain Shah, Wahid Bux son of Ilyas Jokhio, Zaman son of Muhammad Azim Jokhio, Lal Muhammad son of Haji Adam Jokhio and M. Fazal Hussain son of Ilyas Jokhio u/s. 265-H(ii) Cr.P.C. to suffer R.I. for ten (10) years and fine of rupees five million upon each accused. The fine shall be recoverable as arrears of Land Revenue in

terms of Section 33-E of the Ordinance, *ibid.* In case of default in payment of fine, they shall suffer further S.I. for six (06) months more each. The accused shall be entitled to the benefit of Section 382-B Cr. P.C."

2. The facts of the case as per Reference No.16 of 2017 are that on receipt of reference u/s 18(g) read with Section 26(b) of the National Accountability Ordinance, 1999 (NAO) and source report regarding illegal order of 100 acres of land in favor of 07 unauthorized private firms/entities, an inquiry was authorized by the National Accountability Bureau (NAB) which was subsequently converted into investigation.

3. That the investigation revealed accused Nos.1, 2, 3 & 4 namely Aftab Ahmed Memon (trial separated), Muhammad Salik Nukrich, Abdul Aziz and Shahid Raza Shah and one deceased Muhammad Zafar Baloch in connivance with each other illegally and malafidely facilitated fake ownership of 100 acres land in favor of accused No.5,6,7,8,9 and 10 namely Wahid Bux, Zaman, Sabir Hussain (seriously ill in coma so trial also separated), Lal Muhammad and Fazal Hussain and one deceased Sijawal by allotting 14 acres 11 ghuntas and 52 each from NA class No.26 in Deh Dih, tapo Ibrahim Hyderi District Malir, details of the same are as under:-

S. #	Name of Beneficiary / Alottee	Registered Deed No.	Entry No.
1	Mr. Wahid Bux s/o Ilyas Jokhio, Director M/s. Al-Jalil Enterprises	110 dated 22.11.1997	295/298 dated 12.02.1998
2	Mr. Zaman s/o Muhammad Azim Jokhio, Director A- Muees Builders	111 dated 22.11.1997	295/299 dated 12.02.1998
3	Mr. Sijawal s/o Haji Abdul Raheem, Director Al-Wakeel Associates	112 dated 22.11.1997	295/300 dated 12.02.1998
4	Mr. Sabir Hussain s/o Haji Adam Jokhio, Director Al-Salam Enterprises	113 dated 22.11.1997	295/301 dated 12.02.1998
5	Mr. Lal Muhammad s/o Haji Adam Jokhio, Director Al-Rahman Associates	114 dated 22.11.1997	295/302 dated 12.02.1998
6	Mr. M Fazal Hussain s/o Ilyas Jokhio Director Al-Quds Developers	115 dated 22.11.1997	295/303 dated 12.02.1998
7	Mr. Raza Muhammad s/o Sijawal Jokhio, Director M/s. Al Khalil Associates	116 dated 22.11.1997	295/304 dated 12.02.1998

4. That the investigation revealed that above mentioned entries of 7 beneficiaries were based upon bogus entries thus after a comprehensive inquiry

by Muhammad Younas Dagha, the then Deputy Commissioner Malir vide his order dated 01.02.1999, cancelled the previous bogus entries as well as above mentioned 07 entries.

5. That investigation further revealed that an entry dated 1914/15 **was made basis of this fraud**, such entry was basically in red ink which marks a limited period / restricted right over and not freely transferable right. In this entry the restricted right owners were Muhammad Yousuf s/o Haji Laddah and Haji Abdullah s/o Haji Laddah. This entry does not repeat mention over the entire period after 83 years till 1997. Clearly such limited period restricted land grant was never renewed and lapsed in due course otherwise separate survey numbers would have been issued for it, if the right was ever converted into a permanent grant which itself would have found its mention in the record of rights. To enliven a non-existent land matter, a bogus entry No.121 with the date of 30.05.1956 was kept in the record, showing its transfer to four persons namely Moosa s/o Meenhin Wasayo Jokhio, Umderdin s/o Ahmed Jokhio, Muhammad Ali s/o Sikkoo Jokhio and Ilyas s/o Khaliq Jokhio.

6. That the investigation also revealed that accused No.1 Aftab Ahmed Memon being the then Member Land Utilization, Board of Revenue (BOR), illegally and malafidely passed an order No. Reader/MBR/LU/71/2014 dated 09.09.2014 by which he set-aside above mentioned Order dated 01.02.1999 of the then Deputy Commissioner Malir. He further mentioned in the order that if the land was not available on site then an alternate land of equal price be provided anywhere in District Korangi or District Malir. It is pertinent to mention here that accused No.1 was not the appropriate authority to set-aside the order of Deputy Commissioner Malir. He again passed another order dated 23.09.2016 about exchange of alternate land to the accused and issued directions to Deputy Commissioner Malir for implementation of the same. Accordingly through subsequent order he allotted following 1729 acres land in lieu of 100 acres, valuing Rs.3000 Million.

S #	Measurement	Category	Deh	Worth In PKR	Taluka	District
01	286 Acres	A	Thado	715,000,000	Murad	Malir
02	40 Acres	A-1	Tore	260,000,000	Memon	Malir
03	1308 Acres	A	Abdar	1,972,000,000	Gadap	Malir
04	95 Acres	A	Khadeji	142,500,000	Gadap	Malir
Total	1729 Acres			3,059,500,000		

7. That investigation revealed that on one hand the accused No.1 knowing that there is no land available, ordered the Deputy Commissioner Malir to accommodate the accused with alternate land of the same value and on the other hand issued letter dated 27.09.2016 with the direction to Deputy Commissioner Korangi that the land of the accused may be kept in record of rights in favor of Government.
8. That investigation further revealed that accused No.1, Aftab Ahmed Memon the Member Land Utilization, Board of Revenue took cognizance of the Revision under section 164 of Land Revenue Act which does not deal with the allotment of the land. Accused No.1 Aftab Ahmed Memon by misusing his authority has made alternate land in utter violation of provision of Land Revenue Act, 1967. The allotment of land is dealt under Land Colonization Act, 1912. Section 10(1) of the Act defines that the Board of Revenue subject to the general approval of Government may grant land in colony to any person on such conditions as it thinks fit. Further Section 10(2) of the Act defines that the Provincial Government may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenant. Under the said provisions the Secretary, Land Utilization with the approval of Government can dispose of land under the notified Statement of conditions, which whereas, in the instant case, accused No.1 Aftab Ahmed Memon, in capacity of Member, Land Utilization with malafide intention has illegally allotted alternate land for which he was not competent.
9. That the investigation also revealed that accused No.2 namely Muhammad Salik Nukrich being the then Mukhtiarkar, has changed foti-khata vide Entries No.287 to 294 dated 05.08.1997 of so-called owners of the land whose ownership was based on fake Entry No.121 dated 30.05.1956. Being Mukhtiarkar it was his duty to ascertain genuineness of Entry No.121 before affecting foti-khata. He initiated measurement of the land on the sketch provided by the land grabbers. The accused No.2 in his letter dated 21.07.1997 addressed to the Deputy Commissioner Malir, has categorically mentioned that sketch produced by Khatedars seems to be prepared in the year 1956, since the so called allotment is purported in the year 1914-1915.
10. That the investigation also revealed that accused No.3 namely Abdul Aziz Mehar the then Tapedar, Tapo Ibrahim Hyderi, District Malir in connivance

with accused No.2 made changes in the names of the so-called khatedars and kept Entries bearing No.287 to 294 dated 05.08.1997 based upon a bogus Entry bearing No.121 dated 30.05.1956.

11. That the investigation also revealed that deceased accused Muhammad Zafar Baloch, the then Sub Registrar T. Division No.XV, Karachi during year 1997 had registered General Power of Attorney (GPA) dated 15.08.1997 in favour of one Sadardin s/o Haider. In the said GPA, there is no description of age, addresses, and NIC numbers of executants of the deed. The address of Attorney, Sadardin s/o Haider claimed his address as 843-R, Block-14, KDA scheme No.16, Federal B Area, Karachi could not be substantiated.

12. That the investigation further revealed that accused No.4 namely Shahid Raza the then Sub Registrar, Agriculture land Karachi (East) his jurisdiction was for transaction of agricultural land but he registered seven sale deeds bearing Registration Numbers 110 to 116 dated 22.11.1997 of an area of 100 acres Deh Dih, which was an Urban Area. Furthermore, the accused No.4 also registered above seven sale transaction on the basis of invalid Power of Attorney bearing Registration No.1193 dated 15.08.1997, which was not containing ages, addresses, and NIC numbers of executants.

13. That the investigation revealed that accused No.5,6,7,8,9 & 10 and one accused Sijawal in connivance with accused No.3 and accused No.2 arranged fake and false entry No.121 in VF-VII-B of Deh Dih in back dates. Thereafter, they arranged false General Power of Attorney in favor of a dummy person named Sadardin s/o Haider in connivance with deceased accused Muhammad Zafar Baloch, who registered said Power of Attorney bearing Registration 1193 dated 15.08.1997. Thereafter, the beneficiaries jointly arranged registered deeds of sale transaction before accused No.4 who had no jurisdiction of said sale transaction. On 23.07.2001 accused Sijawal expired and the remaining (beneficiaries) accused persons in the year 2014 filed seven Revisions / Applications (including Revision of deceased Sijawal) under Section 164 LRA 1967 before accused No.1 and got illegal order of their choice.

14. That foregoing in view, it has been established that all accused persons in connivance with each other illegally and with malafide intention usurped Government land admeasuring 1729 acres situated in District Malir and caused huge loss of Rs.3,059,500,000/- to the Government Exchequer. Thus the accused

persons have committed the offence of corruption and corrupt practices as defined under Section 9(a)(i)(ii)(iii)(iv)(vi) and (xii) of NAO, 1999 read with Schedule thereto, punishable under Section 10 of the said Ordinance within the cognizance of this Court.

15. After compliance of the provision of Section 265 (C) Cr.P.C. the trial court framed the charge against the accused persons. The accused persons pleaded not guilty to the charge and claimed to be tried.

16. The Prosecution / Special Prosecutor, NAB in order to prove its case examined 11 PWs and exhibited numerous documents. The statements of all the accused were recorded under section 342 Cr.PC in which all the accused denied all the allegations against them, gave detailed explanations in respect of each allegation/piece of evidence adduced at trial and claimed to be tried. None of the accused examined themselves on oath nor produced any defence witnesses in support of their defence case.

17. After appreciating the evidence on record the accountability court convicted and sentenced the accused as set out earlier in this judgment vide the impugned judgment dated 26.10.2020 and hence the appellants have filed these appeals against their convictions.

18. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.10.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

19. Since all these appeals arise out of the same Reference and same impugned judgment we intend to dispose of all of these appeals by this one common judgment.

20. Learned counsel for the official appellants Shahid Raza (Ex Registrar), Muhammed Salik (Ex Mukhtiarkar) and Abdul Aziz (Ex Tapedar) has contended at the outset that there was no wrong doing or illegality committed by any of the official appellants in connection with the entries made in 1914 to 1915 and 1956 as the official appellants were not even in service at that time as was stated in the evidence and as such they could not change or tamper with the record and even if any illegality had been committed in connection with these

entries by some other party NAB had no jurisdiction to inquire into such entries as the NAO at Section 2 only gave jurisdiction to the NAB from 01.01.1985 and as such inquiries into the 1914 and 1915 and 1956 entries were coram non judice and were with out jurisdiction. The only possible entries which could be inquired into under the NAO related to those made in 1998 which were made at a time when NAB had jurisdiction to investigate acts of corruption.

21. **With regard to official appellant Shahid Raza** who was Registrar at the relevant time he contended that the power of attorney in favor of Sadardin had already been registered by another person and that his role was only to register the sale deeds which admittedly were genuine. There was no indication that the power of attorney was not genuine and he simply registered the sales deeds in routine in accordance with law; that he was entitled to register the sale deeds as he was responsible for registering agricultural land and the land in question was agricultural and no evidence has been brought on record to the contrary. In support of his contention he referred to P.873 of the paper book which was the form VII for the relevant land which showed it was agricultural; that the registration of the document did not carry any right and at worst he had made a mistake which amounted to negligence which was without criminal intent and as such could not be made a criminal offense under the NAO as he had no mens rea. There was no evidence that he connived with any of his co-appellants and as such he should be acquitted of the charge by being extended the benefit of the doubt.

22. **With regard to official appellants Muhammed Salik (Ex Mukhtiarkar) and Abdul Aziz (Ex Tapedar)** he contended that all the entries from 1956 to 1997/1998 for which it was alleged they made illegally and were subsequently set aside by DC Malir through his order dated 01.02.1999 Muhammed Salik was sent to face disciplinary proceedings under the relevant service laws in respect of all the matters relating to his allegedly illegalities in connection with this reference. The case under the relevant service laws had to be proved against appellant Muhammed Salik on a balance of probabilities which is a much lesser standard than beyond a reasonable doubt and yet he was exonerated in these proceedings and found to be acting in accordance with law and as such he could not have had any criminal liability in connection with such entries which liability had to be proved beyond a reasonable doubt. It was particularly submitted that the person who carried out the inquiry against him had greater access to

documents which were even before the NAB and would have been in a better position to determine his guilt or innocence. Again at worst this was a case of negligence without criminal intent which cannot attract criminal liability. That appellant Abdul Aziz's case was on a better footing than appellant Muhammed Salik as appellant Abdul Aziz was only the tapedar and was subordinate to Muhammed Salik and thus if Muhammad Salik had been exonerated of any wrong doing then he would also stand exonerated as he was only his subordinate. There was no evidence of them having any connection or nexus with the beneficiary appellants; that DC Malir's order which found that the entries were illegal was over turned by the Member Land Utilization BOR vide order dated 02.09.2014 on appeal/revision by the appellant beneficiaries of which he was not a part which in essence found that the entries had been wrongly cancelled which reached finality and was ordered to be implemented by the Sindh High Court vide order dated 06.04.2016. The fact that the beneficiary appellants were ordered to be given alternate land had nothing to do with the official appellants and at worst their case might be of negligence which would not amount to a criminal offence and as such all the official appellants should be extended the benefit of the doubt and be acquitted of the charge. In support of all the official appellants contentions he has placed reliance on **Khalid Mehmood v The State** (2011 SCMR 664), **The State v Anwar Saif Ullah Khan** (PLD 2016 SC 276), **Ayub Mashi v The State** (PLD 2002 SC 1048) and unreported judgment passed by Supreme Court in case of **Sikandar Ali & others v The State** (Cr. Appeal Nos.153, 154, 155, 156, 157 & 158 of 2008 dated 20.06.2019).

23. Learned counsel for the beneficiary appellants have contended that the charge was vague and lacked specificity and was therefore defective as it failed to adequately inform the appellants of the case which they had to defend themselves against; that the NAB had no jurisdiction to inquire into the entries made before 1997/1998 on the same grounds as mentioned by the official appellants. Furthermore, they contended that since the land was always private land as opposed to Government land on this ground as well the NAB did not have the jurisdiction to entertain the matter at all including in respect of entries made in 1997/1998 since private land being sold to private people was beyond NAB's jurisdiction which applied to public land; even if NAB did have jurisdiction no illegality had been committed by any of the appellants. It was undisputed that the 1914 to 1915 mother entry was genuine by both the PW's and on account of S.184 © of the Land Revenue Act 1967 and even otherwise this

land was only non alienable for a period of 10 years as per the prosecution evidence and this period had long since lapsed as the land was sold in 1956 to private beneficiaries over 40 years later; that the 1956 entry was a genuine entry and had not been fabricated by the official appellants in collusion and connivance with the beneficiary appellants as even PW 10 Ramesh Kumar in his evidence had stated that the 1956 entry was made in 1956 as such there can be no possibility of that entry being interfered with by the official appellants in collusion and connivance with the beneficiary appellants. Even if there had been some illegality by a third party this would also be outside NAB's jurisdiction; that the order passed by DC Malir cancelling the entries up to 1914 to 1915 was completely illegal as it was not made after following the relevant legal procedures, that the beneficiary appellants were denied their right to be heard; that the DC Malir could not cancel entries under S.44(1) of the Land registration Act as he had done but rather S.54 of the said Act set out the relevant procedure for cancellation which in respect of long standing entries needed to be determined by a civil court after hearing the parties concerned and not in a summary manner; that the order dated 02.09.2014 passed by Member Land Utilization Department BOR was passed legally and had reached finality and as such this order was in the field which had been affirmed by the Sindh High Court vide order dated 06.04.2016. As such no reliance could be placed on the DC Malir's order dated 01.02.1999. That the Member Land Utilization's Order dated 02.09.2014 quite correctly gave alternate land to the appellant beneficiaries as under Article 24 of the Constitution no person can be illegally deprived of land without compensation and since the Member Land Utilization BOR already knew that the 100 acres of the beneficiary appellants land had already been cancelled and the Government of Sindh had allotted it to two separate housing society's which were under construction compensation was not made in monetary terms but by ordering the exchange of land for the 100 acres land at equal price; that para 3 of the charge was completely erroneous and misconceived as the beneficiary appellants had not been allotted the land as stated in the charge but instead they were purchasers of such land as evidenced by the sale deeds; that the documents on record proved that Sadardin whom the 26 legal heirs had given a power of attorney to was not a fictitious person as shown from the record and neither were the 26 legal heirs fictitious as was shown from the record; that the power of attorney had been executed in accordance with the law; that under the Qanun-e-Shahadat Ordinance there was

a presumption of genuineness and correctness of all official documents, registered documents and even the registered power of attorney which the prosecution had not been able to rebut in this case; that there had been no loss to the revenue and based on any or all of the above reasons the appellants were entitled to be acquitted by being extended the benefit of the doubt. In support of their contentions they placed reliance on **National Accountability Ordinance, 1999, West Pakistan Land-Revenue Act, 1967, Combined Set of Land-Revenue Laws, The Qanun-e-Shahadat Order (X of 1984), The Sindh Land Revenue Code, 1879, Ordinance XI of 1980 Sind Land Revenue (Amendment) Ordinance, 1980, The Constitution of the Islamic Republic of Pakistan, 1973, Notice To Police Constable Khizar Hayat (PLD 2019 SC 527), Muhammad Hanif Abbasi v Imran Khan Niazi (PLD 2018 SC 189), Zulfiqar Ahmed Bhutta v Federation of Pakistan (PLD 2018 SC 370), Mian Muhammad Nawaz Sharif v President of Pakistan (PLD 1993 SC 473), The University of Dacca and another v Zakir Ahmed (PLD 1965 SC 90), Mrs. Anisa Rehman v P.I.A.C. and another (1994 SCMR 2232), Abdul Majeed Zafar v Governor of the Punjab (2007 SCMR 330), Government of Khyber Pakhtunkhwa v Muhammad Khurshid (2021 SCMR 369), Abdul Wahid v Mst. Zamrut (PLD 1967 SC 153), Ahsan Ali v District Judge and others (PLD 1969 SC 167), Hotel De'l Europe Ltd. V William Dudley Currie-Fryer and another (PLD 1958 Privy Council 48), Mst. Bhano v Mian A.M. Saeed (1969 SCMR 299), Begum Shams-un-Nisa v Said Akbar Abbasi (PLD 1982 SC 413), Muhammad Jibran Nasir v The State (PLD 2018 SC 351), Messrs United Woollen Mills Ltd. Workers Union v Messs United Woollen Mills Ltd. (2010 SCMR 1475), Mazloom Hussain v Abid Hussain (PLD 2008 SC 571), Evacuee Trust Property Board v Mst. Sakina Bibi (2007 SCMR 262), Dr. Abdul Wahab v Sameena Maqsood (2014 MLD 1086), Ms. Uzma Masood v Orient Communications (Pvt) Ltd (2013 YLR 284), Abdul Jabbar v Ghulam Mustafa (2019 CLC 704), Bilawal v Abdul Razzak (1987 CLC 1092), Muhammad Iqbal Ahmad v The State (2016 YLR 2547), Ghulam Akbar v The State (2008 SCMR 1064), Azeem Khan v Mujahid Khan (2016 SCMR 274), Fazal Maula v The State (PLD 2006 Peshawar 108), Mst. Gul Hamida v The State (2005 P Cr.LJ 167), Muhammad Mukhtiar alias Moju v The State (2010 P Cr. L J 1750), Muhammad Jibran v The State (2020 SCMR 1493), Khalid @ Khalidi v The State (2012 SCMR 327), Riaz Ahmed v The State (2010 SCMR 846), Muhammad Zubair v The State (2007 SCMR 437), Powers of Attorney Act, 1882 (ACT NO.VII OF 1882), The Sindh Land Revenue Code, 1879, Moulana Atta-ur-**

Rehman v Al Hajj Sardar Umar Farooq and others (PLD 2008 SC 663), *Yousuf Ali v Muhammad Aslam Zia & 02 Ors* (PLD 1958 SC (Pak.)104), *Executive District Officer (Education) Rawalpindi* (2007 SCMR 1835), *Muhammad Nazir Khan v Ahmad and 02 Ors.* (2008 SCMR 521), *Mst. Surrayia Bano v Mst. Nazia Bano* (1996 CLC 1690), *Muhammad Yousuf and 03 Ors. V Khan Bahadur through legal heirs* (1992 SCMR 2334), *Mazhar Hussain and others v Shahran Bano and others* (2014 CLC 1484), *Messrs D.J. Builders and Developers V Federation of Pakistan* (2016 PTD 1723), *Glaxo Laboratories Limited v Inspecting Assistant Commissioner of Income Tax* (1992 PTD 932), *Sajjad Ahmad v Habib Bank Limited* (2019 CLD 824), *Zahoor Hussain and others v Abdul Hamid and others* (1991 SCMR 164), *Waseem Ahmed and others v Federation of Pakistan* (2014 PTD 1733), *M. Zunnoon Khan, Advocate v Nisar Ahmad Siddiqui Member BOR, Sindh* (2001 CLC 326), *Samundar Khan through legal heirs v Muhammad Bashir and 04 others* (2015 MLD 378), *Khyam Films v Bank of Bahawalpur Ltd* (1982 CLC 1275), *Sahibzada Anwar Hamid v Messrs Topworth Investments (Macu) Ltd* (2003 YLR 2843), *Dr. Muhammad Javaid Shafi V Syed Rashid Arshad* (PLD SC 212), *Chaudhary Aamir Ali v The State* (2002 YLR 1902), *Special Civil Application No.1497 of 2001 in the case of Natwarbhai Ranchhodbhai Patel v State of Gujarat and Ors* decided on 14.09.2016 by the High Court of Gujarat at Ahmadabad (India), *Ali Muhammad v. Hussain Bakhsh and others*, (PLD 1976 Supreme Court 37), *Muhammad Shah v. The State* (2010 SCMR 1009), *Syed Riffat Hussain and others* (2020 P. Cr.LJ 1486), *Moula Bux v. Charuk and others* (PLD 1952 Sind 54), *Yaqoob v. Mst. Sharifan and 2 others* (1976 P. Cr.LJ 1212) and *Land Acquisition Collector, Sargodha and another v. Muhammad Sultan and another* (PLD 2014 Supreme Court 969)

24. Special Prosecutor NAB has fully supported the impugned judgment. He contended that NAB had jurisdiction to inquire into the matter as the land in the 1914 to 1915 entry had been illegally sold despite it being of restricted duration by the official appellants (although he very fairly conceded when confronted by the court that the 1914 to 1915 entry itself was a legal and genuine entry). That the 1956 entry had been illegally inserted by the official appellants at the same time as the 1998 entry had been made by the official appellants in collusion and connivance with the beneficiary appellants in order to unduly favor the beneficiary appellants and as such since the chain of illegalities commenced in 1914 to 1915 to 1998 NAB had the jurisdiction to inquire into the matter under S.2

of the NAO. On merits he submitted that the 1914 to 1915 land entry had been illegally sold as it was excluded from sale by being marked in red ink and therefore had to revert back to the Government. That the land in question was Government land and was not private land as contended by the appellants and he pointed to various documents in this regard. That the 1956 entry was completely bogus and had been inserted by the appellant Salik who was Mukhtiarkar at that time along with his accomplice appellant Abdul Aziz who was acting as tepedar at that time; that at the same time the appellant Mukhtiarkar arranged a fake power of attorney in favor of a Mr. Sadardin along with 26 fake legal heirs of the owners of the land in the 1956 entry who then got the bogus power of attorney in favor of Sadardin registered by Sub Registrar appellant Shahid Raza by misusing his authority which enabled the sale of the land by the 26 fake legal heirs to the appellant beneficiaries through registered sale deeds. These aforesaid illegalities were all proved by the order of the then DC Malir dated 01.02.1999 whereby he had cancelled all the illegal entries up to but not including the 1914 to 1915 mother entry. He contended that the order of DC Malir had been passed in accordance with the law. Then after a long delay of 14 years the appellant beneficiaries had filed appeals/revisions against the DC Malir's order which co appellant Aftab Memon (Aftab) now absconding connived with the beneficiary appellants to pass by misusing his authority in his capacity as Member Land Utilization BOR by passing an illegal order dated 02.09.2014 in order to favor the beneficiary appellants which order illegally restored the original entries in favor of the appellant beneficiaries and ordered that if the land was not available then alternate land was to be provided to the appellant beneficiaries. He further contended that this order passed by the Member Land Utilization BOR was in fact recalled by the Member Land Utilization BOR himself through his letter dated 27.09.2016 where he asked the DC Korangi to restore the land as Government land in the record of rights. That appellant Shahid Raza who registered the sale deeds back in 1998 had no power to register them as his duties only extended to registering agricultural land and not urban land which was the category of the land in question. That all these illegal acts were an attempt by the official appellants by misusing their authority in connivance with the beneficiary appellants in order to unduly favor the beneficiary appellants by granting them land which they were not entitled to which was done with full criminal intent and as such the prosecution had proved its case beyond a reasonable doubt and all the appeals of the appellants should

be dismissed. In support of his contentions he has placed reliance on **Malik Din V Chairman NAB** (2019 SCMR 372) and **Syed Zahir Shah V NAB** (2015 YLR 371).

25. We have heard the learned counsel for the appellants as well as special Prosecutor NAB, perused the record and considered the relevant law including that cited at the bar.

26. The appeals concern two groups of appellants. The first are official appellants namely Muhammad Salik Nukrich the then concerned Mukhtiarkar, Abdul Aziz the then concerned Tapedar and Shahid Raza Shah the then concerned Sub Registrar. The second are beneficiary appellants namely Wahid Bux, Zaman, Lal Muhammad and M. Fazal Hussain.

27. In essence the official appellants have been convicted under S.9 NAO of colluding and conniving with the beneficiary appellants by misusing their authority in making bogus entries in the land register/record of rights in order to favor/benefit the beneficiary appellants which entries were placed in their name which lead to a colossal loss to the national exchequer. The beneficiary appellants were convicted in their capacity as beneficiaries under S.9 NAO who received undue favor in the shape of 100 acres of valuable land through the official appellants misusing their authority.

The Charge

28. Before turning to the main issues before us we would like to briefly comment on the charge dated 01.11.2017. According to para 14 of the charge the accused committed the offenses of corruption and corrupt practices as defined under S.9(a) (i) (ii) (iii) (iv) (vi) and (xii) of the NAO. Such offences are set out below for ease of reference.

"9. Corruption and Corrupt Practices:- (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:-

- (i) If he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in S.161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do any official act, or for showing or for-bearing to show, in the exercise of his official functions,

- favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person; or
- (ii) If he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or
 - (iii) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control or willfully allows any other person so to do; or
 - (iv) If he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage; or
 - (v)
 - (vi) [If he] misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempt to render to do so, [or willfully fails to exercise his authority to prevent grant, or rendition of any undue benefit or favor which he could have prevented by exercising his authority]
 - (vii)
 - (viii)
 - (ix)
 - (x)
 - (xi)
 - (xii) If he aids, assists, abets attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi).]

29. The language of the charge itself tends to suggest that it only covers S.9 (a) (iii), (iv) (vi) and (xii) at best and even then it tends to lack specificity such as particulars as to time, place and person as required under S.222 Cr.PC. S.221 Cr.PC in respect of the specificity of the charge also appears to have been not fully complied with. The charge in effect gives a chronology of facts which lead to the offense and then at the end states that such conduct amounts to offenses u/s 9(a) (i) (ii) (iii) (iv) (vi) and (xii) of the NAO. It would have been preferable for the accused to have been properly put on notice of the charge to which they had to defend themselves. If the style/format of the reference was to set out certain facts it should then clearly set out which facts relate to which offense e.g. S.9(a) (i) and then a new set of facts which lead to an offense under S.9(a) (ii) etc. The charge in the present form gives the impression that NAB does not precisely know which offense under S.9 (a) has been committed as the roman numeral sub

sections of S.9 (a) are **all separate offences** for which a separate conviction or acquittal needs to be recorded for each offense under S.9 (a) and separate sentences handed down in respect of each offense which resulted in a conviction. If an accused is acquitted in respect of one section of the charge e.g. under S.9 (a) (i) then an acquittal should be recorded in the judgment in respect of that offense

30. For example, in the present charge according to the impugned judgment the appellants were only convicted u/s S.9(a) (iii) (iv) (vi) and (xii) and one global sentence was handed down in respect of all these offenses. Interestingly no finding has been made in respect of S.9 (a) (i) and (ii) for which they were charged. Presumably, the appellants were acquitted of these charges which should have been mentioned in the judgment. Interestingly, the appellants have also been convicted and sentenced in the impugned judgment u/s 9(a) (x) of the NAO an offense which they were never charged with and put on notice of which does not seem to be clear from the charge. In our view the charge could have easily been limited to offenses under S.9 (a) (vi) and (xii) which clearly shine through from the charge and give complete clarity as to which specific offenses under the NAO which of the accused had to defend himself against.

31. In short we are not impressed by the way the charge has been framed and in future the charge should be framed in accordance with the relevant provisions of the Cr.PC and findings recorded in respect of each individual offense and convictions (if required) especially as u/s 17 NAO the provisions relating to the framing of the charge under the Cr.PC do not appear to have been ousted.

32. As such the NAB should ensure that their references from which the charge is based are specifically factual as to which facts constitute which specific offense u/s 9(a) (i) to (xii) NAO so that the charge is framed in accordance with the provisions of the Cr.PC so that the accused is well aware of what he has to defend himself against and findings and sentences in respect of each offense are handed down as mandated by law. **The trial court whilst framing the charge should pay careful attention to this aspect of the case as the whole case against the accused flows from the charge and the accused needs to know in sufficient detail the factual and legal basis for each offense under the NAO for which he is charged so that he is not prejudiced in his defence.** By lumping all the separate offenses together at the end of a sometime lengthy factual narrative in the charge **might** well prejudice the accused in his defense and **might** also violate

Article 10 (A) of the Constitution and as such the trial court must very carefully and with due caution frame the charge to ensure that the rights of the accused are not violated and he is put on full notice of each offense he has to defend himself against with the name of the section and name of the offense with a full factual background indicating that he has committed the offense in question.

33. It is also appears that when the charge had been originally framed accused Aftab Ahmed and accused Sabbir Shah were apart of that charge and once later on their cases were separated from the case of the rest of the co-accused the charge ought to have been reframed. However we consider that this aspect is not particularly relevant based on the particular facts and circumstances of this case as noted above the other co-accused to a large extent already knew the charge to which they had to defend themselves.

34. On this occasion we find that by the finest of margins the charge is not defective but would caution the trial court to exercise more care and caution in the future in framing charges which must be done strictly in accordance with law so that no prejudice is caused to the accused at trial.

35. Although not related to the charge we have found another potential illegality/irregularity in the procedure adopted by the trial court which may have caused prejudice to the accused which is cited in the impugned judgment. Namely, it appears that after the case was reserved for judgment the trial court called for certain parts of the original record which the judge personally examined in chamber without associating the accused in such procedure and relied upon such examination of this record to convict the accused in the impugned Judgment. Furthermore, such documents/record which was called and considered by the judge in chambers was not put to any of the accused whilst recording their S.342 Cr.PC statements which had already been recorded. Not only does this procedure adopted by the learned trial court appear to be irregular but it is well settled by now that such documents which he relied upon to convict the appellants must be excluded from consideration as they were not put to any of the appellants whilst recording their section 342 Cr.PC statements. Such practice of calling for documents once the matter has been reserved and relying on them without associating the defense counsel is highly deprecated

and should be avoided in the future so that the fair trial rights of the accused under Article 10 (A) of the Constitution are protected.

Jurisdiction of the NAB

36. The first issue before us is whether or not the NAB had the jurisdiction to inquire into this matter keeping in view that the initial entries which are the starting point of NAB's inquiry are dated 1914 to 1915 the so called "mother entries" which were in the correct name of the legal owners. NAB has not been able to prove that these entries were fraudulent through any evidence lead at trial. Fraud like any offense needs to be proved beyond a reasonable doubt and not based on presumptions, assumptions and suspicions (however strong) but through reliable cogent and trust worthy evidence. In this respect reliance is placed on **Ms Bano's case** (Supra) and **Begum Shams Un Nisa's case** (Supra). On the contrary the evidence lead at trial leads to the conclusion that these were genuine entries which NAB has very fairly conceded to. NAB's only issue it appears with these entries is that they were marked in red link and as such according to NAB could not be transferred and after efflux of time the land under those entries had to be transferred back to the Government of Sindh. This however was not done and the land was illegally transferred in 1956 to 4 separate owners by a fraudulent entry made by the official appellants in connivance with the beneficiary appellants.

37. It is an admitted fact through the PW's that none of the official appellants were in service in 1914 to 1915 or 1956 and the beneficiary appellants were not the beneficiaries of this transaction and as such none of the appellants had anything to do with this transaction.

38. Even if the transaction in 1956 was illegal because the land in question was marked in red ink and could not be sold this entire period (1914 to 1956) is **out side** the purview of the NAO which as per section 2 of the NAO is deemed to have come into force **from 01.01.1985** and as such the appellants can have no liability in respect of such transactions since the NAB had no jurisdiction to enter into such an inquiry during this time period especially as the NAO specifically states that it will be **effective from 01.01.1985 and has no retrospective effect before this time**. It is also significant that the NAB has not been able to prove from the evidence that this land was not private land and was in fact government land. NAB has pointed to a document at P.1245 of the paper book to prove that

the land was Government land and was never in private ownership. However when read in the proper context the entries in this document return the 100 acres of land to the Government pursuant to the compliance with the order of the Sindh High Court (which we will come to later) where by the 100 acres had to be returned to the Government as it had already been built upon despite belonging to the beneficiary appellants because the beneficiary appellants were provided with alternate land of the same value of 1729 acres and as such to prevent the appellant beneficiaries from being doubly enriched (as they had already been given 1729 acres of land in exchange for their 100 acres which the Government of Sindh had already allotted to some other parties to build housing projects) the 100 acres land had to be entered in the name of the Government of Sindh to prevent the appellant beneficiaries having any further claim over it. PW 1 Gudda Hussain also states in his evidence that he took possession of the 100 acres of land from the appellant beneficiaries which indicates that the appellant beneficiaries were always in possession of the private land after 1997 as per their registered sale deeds.

39. As per the impugned Judgment this jurisdictional aspect was raised by the appellants and even put to a few witnesses in cross examination but we can find no finding on it in the impugned judgment and as such it was clearly **not** addressed by the trial court. It is also well settled that the question of jurisdiction can be raised at any time. As such this aspect of the case concerning inquiries into allegations of illegalities and corruption from 1914 to 01.01.1985 is found to be unlawful and of no legal effect in so far as it may relate to any liability/illegality of the appellants under the NAO and is to be disregarded since the NAO had no effect before 01.01.1985. As such we find these proceedings **before** 01.01.1985 as **coram non judice** as being without lawful authority and jurisdiction. As such the only aspect of the appeals which remains relates to the aspects of the appeal **after** 01.01.1985 which would mainly appear to relate to the 1997/1998 entries, 26 legal heirs, power of attorney to Sadardin, the 7 sale deeds, DC Malir's order dated 01.02.1999, Member Land Utilization BOR order dated 02.09.2014 and order of Sindh High Court dated 06.04.2016 and the issue of alternate land. In this respect reliance is placed on the case of **Chaudhary Aamir** (Supra) which held at P.1908 as under;

"The learned Law Officers appearing on behalf of NAB have admitted that the Ordinance has been given retrospective effect from 1-1-1985 and it does not cover any offence committed prior to the said date. They have

not controverted that the word "acquired" connotes acquisition of property after 1-1-1985. Therefore, any property acquired by a person before 1-1-1985 cannot form subject-matter of a charge before an Accountability Court under the NAB Ordinance." (bold added)

40. It could be argued at this point that as the whole superstructure on which NAB's case was built has collapsed the entire reference should fall especially as paragraph 5 of the Charge reads as under;

"That investigation further revealed that an entry dated 1914/15 was made basis of this fraud, such entry was basically in red ink which marks a limited period / restricted right over and not a freely transferable right. In this entry the restricted right owners were Muhammad Yousuf s/o Haji Laddah and Haji Abdullah s/o Haji Laddah. This entry does not repeat mention over the entire period after 83 years till 1997. Clearly such limited period restricted land grant was never renewed and lapsed in due course otherwise separate survey numbers would have been issued for it, if the right was ever converted into a permanent grant which itself would have found its mention in the record or rights. To enliven a non-existent land matter, a bogus entry No.121 with the date of 30.05.1956 was kept in the record, showing its transfer to four persons namely Moosa s/o Meenhin Wasayo Jokhio, Umderdin s/o Ahmed Jokhio, Muhammad Ali s/o Sikkoo Jokhio and Ilyas s/o Khalique Jokhio.

41. Even NAB's alleged Land Revenue expert PW 10 Ramesh Kumar states in his evidence as under;

"Further says that the said scam starts from entry No.2 of the year 1914-15 where the tenure of restriction is mentioned that was why the entry was made in red ink. It is correct to suggest that entry No.2 is still alive in favor of the original owners" (bold added)

42. However for the sake of argument we will consider the merits of NAB's case from the 1914 to 1915 entries and the chain of transactions which followed.

On Merits

43. There appears to be no doubt that the Entry dated 1914 to 1915 is a genuine legal entry and is the mother entry which is an admitted position. PW 1 Gudda Hussain in his evidence stated as under to this effect;

"It is also mentioned in my 161 Cr.P.C. statement that the allotment was related to an entry No.2 which was kept in year 1914-1915 dated NIL in favour of Muhammad Yousuf s/o Haji Laddaa and Haji Abdullah each having 50% share or 08 aana share in above mentioned land measuring

100-00 acres near sea from Na Class No.26 of Tapo Ibrahim Hyderi, Deh Dih. It is correct to suggest that Entry No.2 in the name of Muhammad Yousuf s/o Haji Laddah and Haji Abdullah s/o Haji Laddah is a mother Entry of subject land in record of rights which is called in Sindhi language "Alif" record. (bold added)

44. NAB's main contention is that although the 1914 to 1915 entry was legal and genuine the owners had no power to sell the land as it was marked in red ink and as such only gave them limited ownership rights for a limited period the most important one being that they could not sell the land as after efflux of time the land would revert back to the Government of Sindh. Interestingly, PW 10 Ramesh Kumar the NAB's alleged expert on Land Revenue stated in his evidence that;

"I have not gone through the Sindh Land Revenue Code, 1879 minutely, as it has been repealed in 1967. Sindh Land Revenue Code is superseded by the West Pakistan Land Revenue Act, 1967. It is incorrect to suggest that the entry No.02-A is an ownership entry. It is correct to suggest that entry made with red ink is restricted only for the period not exceeding 10 years U/s 73(a) of Sindh Revenue Code.(bold added)

For ease of reference S.73 (a) of Sindh Land Revenue Code 1879 is set out below:

"[73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which 7[the Provincial Government] may, by **Notification** published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, [occupancies] shall not after the date of such **Notification** be transferable without the previous sanction of the Collector.

Provided that nothing in this sub-section shall apply to the transfer of an occupancy by way of lease or mortgage for a **period not exceeding ten years** [except when the occupancy has been granted on the condition among others, that the occupant shall personally cultivate the land covered by the grant.

The Provincial Government may, by **Notification** in the [Official Gazette] from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section."

45. Thus, it appears from a plain reading of section S.73 (a) of Sindh Land Revenue Code as relied upon by the NAB to support its case that the 1914-1915 land could not be sold out that such argument is without substance. This is because (a) since there is no evidence on record of any notification being issued under S.73 (a) the land in question could not be restricted in terms of its sale at all and (b) even if a notification did exist (which we have found no evidence of as

mentioned above) NAB's own alleged expert on Land Revenue PW 10 Ramesh Kumar has admitted in his evidence that the entry of 1914 to 1915 marked in red ink was capable of being transferred after 10 years and did not automatically revert back to the Government of Sindh. It is significant that the 1914 to 1915 entry was not transferred to another owner until 1956 which is over 41 years after it was made and as such according to the NAB's own alleged expert on Land Revenue it could be legally transferred in 1956 as over 10 years had lapsed since its creation **which would tend to defeat the entire NAB case that the entry made in 1914 and 1915 could not have been legally transferred to a third party.**

46. The fact that the alleged land Revenue expert had not gone carefully through the Sindh Land Revenue Code 1879 hardly inspires confidence in his expert evidence which expertise needed to cover the period of 1914 to 1956 when the aforesaid Code was in the field and who even at one point in his evidence states that the red ink embargo on transfer lasts for only one year in contradiction with his later evidence of 10 years embargo as mentioned above. In fact he states in his evidence that he did not give a S.161 Cr.PC statement to the IO PW 11 Fazlur Rehman despite the IO insisting in his evidence that he PW 10 Ramesh Kumar did give a S.161 Cr.PC statement which again shakes his reliability as in our view it is quite a major contradiction for a key witness such as PW 10 Ramesh Kumar who was the alleged NAB land expert to deny making a S.161 Cr.PC statement which naturally would have been quite lengthy and contained his expert opinion.

47. Even otherwise when the Sindh Land Revenue Code was repealed by the Sindh Land Revenue Act 1967 S.184(4) of that Act in effect stated that any person who is shown on 31.12.1927 as owner in the record of rights prepared under the Code of 1879 **shall be deemed an owner of the land for the purposes of the Act** and thus as at 01.01.1928 Entry No.2 of 1914 to 1915 gave valid legal ownership of the concerned land to those persons mentioned in that entry. Even otherwise S.135 (j) of the Sindh Revenue Code gave a presumption of correctness to such entries which the prosecution has produced no cogent evidence to rebut.

48. For ease of reference S.184 of the Sindh Land Revenue Act 1967 and S.135 (j) of the Sindh Revenue Code are set out below;

"184. Repeals and savings. (1) The enactments mentioned in Part One of the Schedule are hereby repealed.

(2) On the commencement of this Act in any area the enactments mentioned in part two of the Schedule shall, if and, in so far as applicable to that area, stand repealed; and in the event of specified provisions of this Act, being applied to any area, only the corresponding provisions in such enactments shall stand repealed.

(3) Notwithstanding the repeal of the enactments mentioned in subsection (2) -

(a) all rules, appointments and transfers made, notifications and proclamations issued authorities and powers conferred, farms and leases granted, record-of-right and other records framed, revised or confirmed, rights acquired, liabilities incurred, times and places appointed, and other things done, under any such enactment shall, if not inconsistent with the provisions of this Acts, be continued and, so far as may be, deemed to have been respectively made, issued, conferred granted, incurred, appointed and done under this Act; and

(b) all assessments of land revenue duly made, approved or confirmed under any such enactment and in force immediately before such repeal shall continue, and subject to the provisions of this Act, remain in force until assessments made, approved or confirmed under those provisions take effect.

(4) Notwithstanding anything to the contrary contained elsewhere in this Act, or in any other law, or in any order or decree of a Court or other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document, any person who, immediately before the commencement of this Act, was the holder of any land under the provisions of the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879) or the Sindh Land Revenue Code, 1879 (Sindh Act V of 1879), as the case may be (hereinafter in this subsection referred to as the Code), shall:-

(a) *If such land (whether alienated or un-alienated) was shown on the thirty-first day of December, 1927, in the Record-of-Rights prepared under the provisions of the Code to have been in the possession of an occupant, other than a lessee or a mortgagee-in possession, or if any person was shown to have proprietary rights therein, be deemed, to be the owner of such land for the purpose of this Act;*

(b) if such land was granted by Government to any person on or after the first day of January, 1928, otherwise than on lease -

(i) be deemed, if he has paid the full price on which the land was granted to him, the owner of such land, and be subject to all the rights and liabilities of a proprietor under the Colonization of Government Lands (Punjab) Act, 1912 (Punjab Act V of 1912); and

(ii) be deemed, if he has not paid the full price on which the land was granted to him, a tenant of

Government under the Colonization of Government Lands (Punjab) Act, 1912 (Punjab Act V of 1912), on the conditions on which the grant was made, provided that on such person paying the full price on which the land was granted to him in accordance with the conditions of, and within the period provided in the grant, the provisions of sub-clause (I) shall apply." (bold added)

"S.135 (J). An entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereof..."

49. As such there is no evidence on record to prove that the entries in 1914 to 1915 in respect of the 100 acres of land had been forged by any one or were made on account of fraud especially by none of the appellants who were either not in service or not even of school going age at that time. **This entry still remains in tact and is found to be genuine and to have been legally made in 1914 to 1915.**

50. The 100 acres land in question entered in 1914-1915 was purchased through an oral sale, duly recorded by the Revenue Officials from the aforesaid grantees by four persons namely (1) Musa son of Mehn Wasaya, (2) Umer Din son of Ahmed, (3) Muhammad Ali son of Mukko and (4) Alyas son of Sidiq all having equal shares. Accordingly, an entry bearing No.A-2/121 (Ex. 14/2, at P. 397 of the paper book) was incorporated into the record of rights on 30.05.1956 in this respect. There was no restriction on the sale of this land.

51. That later the owners of the entry No.121 dated 30.05.1956 expired and the land in question being 100 acres passed to 26 legal heirs of the deceased owners through there verbal statement recorded on 27.05.1956 which was a holiday (it has come in evidence that Revenue field officers work on holidays so there is nothing suspicious about this aspect of the case) and that the transactions were made in a separate Takari register. NAB's assertion in effect is that the 1956 entries were fake entries and the 26 legal heirs did not exist and that the official appellants in collusion and connivance with the beneficiary appellants added this bogus transaction/entry so that the land could be sold by the 26 legal heirs (fake) to the appellant beneficiaries by the fake legal heirs through a dummy power of attorney executed in favor of Mr. Sadardin who according to the NAB also did not exist.

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52. The power of attorney given by the legal heirs in favor of Sadardin was registered by Registrar Zafar Baloch (now deceased). On 22.01.1997 through 7 registered sale deeds through which Sadardin acted as attorney for the 26 legal heir's approx 14 acres of land was allotted to each of the appellant beneficiaries and other c-accused which totaled 100 acres in NA class No.26 in Deh Dih, Tapo Ibrahim Hyderi District Malir (now District Korangi) which entries were dated 12.02.1998. The genuineness of the sale deeds are not disputed but a part of NAB's case is that Sadardin and the 26 legal heirs who gave him a power of attorney did not exist and were all fictitiously registered as owners by the official appellants in order to favor the appellant beneficiaries who got 100 acres of valuable land allotted to them illegally and as such the 1998 entries regarding the sale of the land was also bogus having been illegally managed by the appellants through their collusion and connivance.

53. Such contention in respect of the illegality of the 1956 and 1998 entry 121 (No.121/287, 287/288, 287/289 and 287/290) however is not borne out by the record which suggests that the entries were legally made. Extracts of certain prosecution witnesses to this effect are set out as under;

(i) PW-1 Gudda Hussain.

"It is correct to suggest that Entries No.121/287, 287/288, 287/289 and 287/290 dated 05.08.1997 (ex.14/02) were prepared as per law. It is correct to suggest that all the above said entries were made on the basis of Fotikhata Badal and according to Takrari Register. It is correct to suggest that Entry No.02/121 (Ex.14/02) was prepared / made on the basis of sale deed."

(ii) PW-10 Ramesh Kumar.(NAB's own alleged land expert)

"Thereafter, in the year 1956, vide Entry dated 30.05.1956, the owner had sold the said land to four persons namely Moosa, Umer Din, Muhammad Ali and Ilyas.".....

'It is correct to suggest that the Entry No.121 dated 30.05.1956 came forward from sale purchase of land.....

It is correct to suggest that Entry No.02/121 was made in the year 1956,.....

'I see page 8 of Ex.14/2 and say it is an entry No.21/121 dated 30.05.1956, where it is mentioned that the sale transaction was made on verbal statement recorded at page-145 dated 27.05.1956,".....

"It is correct to suggest that entry No.287 to 294 dated 05.08.1997 were made by accused Muhammed Salik and Accused Abdul Aziz on the basis of Takari Register".

54. That it is evident from the evidence of the PW's that entry No.121 was prepared as per law and hence the allegation of its non genuineness cannot hold water. The entry was scrutinized at the relevant time as per law. No witness has given evidence that entry 121 was inserted by the official appellants Salik and Abdul Aziz rather it is the prosecution case that they failed to check the genuineness of the entry for which no evidence has been produced to rebut the presumption of the genuineness of the entry as per law. In this respect S.52 of the West Pakistan Revenue Act 1957 and Articles 91 and 92 of the Qanun-e-Shahadat Ordinance 1984 are set out below for ease of reference;

"Section-52; Presumption as to correctness of records:- An entry in a record of right shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor".

"Article 91. Presumption as to documents produced as record of evidence: Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court, shall presume -

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."

Article-92; Presumption as to genuineness of documents kept under any law--- The Court shall presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document kept substantially in the form required by law and is produced from proper custody".

55. The 1914 to 1915 and 1956 entries were also more than 30 years old and thus attracted an extra presumption under Article 100 of the Qanun-e-Shahadat Ordinance 1984 which is set out below for ease of reference;

"Article 100. Presumption as to documents thirty years old: Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that

it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation: For the purposes of this Article and Article 92, documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable."

56. In this respect the NAB has completely failed to rebut any of the above presumptions with any reliable evidence and as such the presumptions will continue to apply.

57. It also appears that the appellant Salik being Mukhtiarkar had no authority to challenge the Revenue entry which existed in the Revenue Record much prior to his posting.

58. Moreover such a **longstanding entry** could only be challenged in the Civil Court in accordance with Section 53 of the West Pakistan Revenue Act, 1967. Reliance in this regard is placed on **Nemat Ali V Malik Hababullah** (2004 SCMR 604), **Ikramullah V Zakirullah** (2010 YLR 2687), **Mazhar Hussain** (Supra), **Mst Sarrayia Bano** (Supra). In the case of **Muhammed Yousaf** (Supra) it was held as under at P.2341

"But once the inquiry is made or the entries recorded in the Revenue Record, a presumption of truth is attached to it under section 52 of the Act *ibid* until the contrary is proved or the new entries are substituted therefore. To **dislodge this presumption a remedy is provided under section 53 of the said Act which provides that if any person considers himself aggrieved by an entry in a record-of-rights or in periodical record as to any right of which he is in possession, he may institute a suit for declaration of his rights under section 42 of the Specific Relief Act, 1877 Act (I of 1877).** Apparently, the jurisdiction of the Civil Courts is not ousted to question the correctness of the entries of revenue record, or declaration of title under the Specific Relief Act, or claiming relief of possession of immovable property, rather aggrieved party has been invested with a right to challenge the entries made in the Land Revenue Act through a suit for declaration in Civil Court. The learned appellate court not only misinterpreted the provisions of West Pakistan Land Revenue Act but omitted to take into consideration the provision of section 53 of the Act *ibid* and legally erred in holding that the Civil Court had no jurisdiction in the matter and, in consequence, ordered the return of plaint." (bold added)

59. From the record we have found no evidence that the Entry in question was ever challenged before a civil court and as such there was no legal bar on the said

entry at the time official appellant Salik was posted as Mukhtiarkar hence as is evident the official appellant Salik's actions were in accordance with law. **Significantly**, these registered sale deeds remain in place and have not been challenged by the NAB or any other party.

60. With regard to the case of official appellant Abdul Aziz who was working as tapedar under official appellant Salik whilst he was Mukhtiarkar we have not found any illegality committed by official appellant Salik as discussed above and we have not found any evidence of any illegality committed by official appellant Abdul Aziz or that they were in any way in collusion or connivance with either each other or the appellant beneficiaries. It is also relevant in respect of the charge against appellant Abdul Aziz who was tapedar at the relevant time that the tapedar is not legally tasked with keeping and checking entries which is the job of the Mukhtiarkar. As per PW 1 Gudda Hussain;

"It is correct to suggest if suspected entry is found in the record of right it is the Mukhtiarkar who initiates the process by sending note to that effect to the high ups....."

61. In any event a number of PW's as mentioned earlier have admitted in their evidence that the entries were made in accordance with law and as such no checking was required.

62. With regard to official appellant Shahid Raza who was Sub Registrar at the time the main allegation against him is that he registered the 7 sale deeds in favor of the beneficiary appellants which he had no lawful authority to do as he was responsible for registering agricultural land and not urban land which the land in question was (urban) and as such he had misused his authority **and** that he registered the sale deeds on the basis of an invalid power of attorney.

63. Turning to the type of land at issue. No evidence has been produced by the prosecution to show that the land in question was urban. On the contrary P.1245 of the paper book reveals that the land in question is agricultural land. Other documents on record also clearly indicate that the land was registered under form VII which relates to agricultural land and as such the sub registrar Shahid Raza had jurisdiction to register the sale deeds.

64. Turning to the aspect of the invalid power of Attorney in favor of Sadardin. This was not registered by official appellant Shahid Raza but by ⁵

deceased Zafar Baloch and thus even if the power of attorney was invalid (which as we shall discuss later we do not believe the prosecution has proved) there is no evidence on record that official appellant Shahid Raza had any knowledge that the power of attorney was invalid. In fact the power of attorney itself fulfills all the relevant legal requirements. The NAB's objections to the legality of the power of attorney do not hold water. In that the power of attorney has been executed in accordance with the law and under Article 95 Quan-e Shahadat Ordinance 1984 is presumed to be authentic and executed by the executors which presumption has not been rebutted by NAB by any reliable evidence. For ease of reference Article 95 Quan-e Shahadat Ordinance 1984 is set out as under;

"Article 95. Presumption as to powers-of-attorney: The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Pakistani Consul or Vice-Consul, or representative of the Federal Government, was so executed and authenticated".

65. NAB's objections range from minor errors in wording to the fact that No CNIC was mentioned. These objections however will not lead to the power of attorney becoming invalid as was held in the cases of **Mohammed Aslam V Gulraj Begum** (1989 SCMR 1), **Escolastica V Peter D'Souza** (1986 CLC 1472), **Zunnoon Khan V Nisar Ahmed** (2001 CLC 326), **Muhammed Siddique V Hafeezan** (2004 YLR 1440) and **Sultan Sumandar V Mohammed Bashir** (2015 MLD 378). The Power of Attorney Act 1882 at S.2 which is set out below only requires that the name and signature of the relevant person are mentioned and no other identification details as claimed by the NAB.

"2. Execution under power -of-attorney. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where scaling is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

66. No evidence has also been placed on record to show that the land in question was urban as opposed to agricultural and thus there is no evidence on record which disbarred official appellant Shahid Raza from registering the sale deeds. Since it was a registered power of attorney and the sale deeds were original (which is not disputed) he had no option as per his official role but to

register the sale deeds as per duties of sub registrar as mentioned in Section 52 of the Registration Act 1908 and Rule 135 of the West Pakistan Registration Rules 1929 which are set out below for ease of reference;

"S.52. Duties of registering officers when documents presented:---(1)(a) The day hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document on the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and

(c) subject to the provision contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefore according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.(bold added)

"Rule 135. Registering officers not concerned with validity of document.—Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following, e.g. that the executant was dealing with property not belonging to him, or that the instrument infringed the rights of third persons not parties to the transaction, or that the transaction was fraudulent or opposed to public policy. These and similar matters are for decision, if necessary, by competent Courts of law and registering officers, as such, have nothing to do with them. If the document is presented in a proper manner by a competent person at the proper office within the time allowed by law and if the registering officer is satisfied that the alleged executant is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects". (Emphasis Added).

67. We note that the learned trial court has placed reliance on Section 21 of the Registration Act, 1908 and opined that since the maps and plans are not attached with the sale deeds presented before the Sub-Registrar namely, official appellant Shahid Raza the said Sub Registrar ought not to have registered the said sale deeds without compliance of the mandatory procedure as stipulated in Section 21 of the Act, 1908. We find that this interpretation of the learned trial court is contrary to the scheme of the Registration Act, 1908 and Rules made there under.

68. From a bare reading of Section 21(1) of Registration Act, 1908, which states that if the documents are presented before the Sub-Registrar and the same contain a description of such property sufficient to identify the same, the Registrar shall register the same non-testamentary document. From a perusal of the seven (7) registered Sale Deeds (Ex. 14/17) in favor of beneficiary appellants and other co-accused beneficiaries, it appears that there is a clause where the property can sufficiently be identified and the same is described with the survey numbers, deh taluka and district. For ready reference, the recital of the property is reproduced as under:-

"WHEREAS the vendor above named is seized and possessed of in its absolute right, title and interest to the agricultural land bearing NA-Class No.24 measuring 100 Acres and from them new created Survey No.302/8-29, 303/16-36, 304/12-01, 305/14-17, 306/12-27, 307/6-38, 308/13-04, 309/11-06, 310/04-02, Total 100 Acres of Deh Dih Taluka Ibrahim Hyderi Malir Karachi hereinafter called the "SAID LAND" fully described in the schedule hereto"

69. In view of the above, we find that the learned trial court has erred in law on its interpretation of S.21 of the Registration Act 1908 based on the particular facts and circumstances of this case and that such interpretation was misconceived and as such no reliance can be placed on such interpretation.

70. Without be laboring the point we also find that time and again PW's have given evidence that the registered sale deeds are genuine and are intact and the Revenue Department had no jurisdiction to cancel the same and in absence of any judicial determination of cancellation it is evident that registration of the sale deeds was a lawful and valid act by official appellant Shahid Raza Shah.

71. At worst the official accused Muhammed Salik, Abdul Aziz and Shahid Raza might have been negligent in performing their official duties (which the prosecution has not proved beyond a reasonable doubt) and even otherwise the case of negligence or carelessness does not denote a criminal offense under the NAO especially as there was no mens rea which can be inferred on their part based on the particular facts and circumstances of this case. In this respect we rely on unreported judgment passed by Supreme Court in case of **Sikandar Ali & others v The State** (Cr. Appeal Nos.153, 154, 155, 156, 157 & 158 of 2008) dated 20.06.2019 which held as under at P.3 in material part;

"Be that as it may the case in hand was one of defective execution of a contract of construction which did not *ipso facto* reflect upon misuse of authority by a public servant or any other person as contemplated by the provisions of section 9(a) (vi) of the National Accountability Ordinance, 1999 as interpreted by this Court in the case of *The State v. Anwar Saif Ullah Khan* (PLD 2016 SC 276). Another way of looking at the allegation leveled in this case could be that at worst it was a case of an error of judgment *vis-a-vis* selection of the site for construction or negligence or carelessness in execution of the project without any criminal intent. No independent evidence worth its name had been brought on the record by the prosecution to establish ulterior motives on the part of the present applicants." (bold added)

With further reference to the fake power of attorney given by the fake 26 legal heirs to Sadardin to sell their land by registered sale deed to the beneficiaries (which sale deeds were found to be genuine).

72. This allegation is based on the evidence of the IO PW 11 Fazalur Rehman (which it appears was largely based on the set aside order dated 01.02.1999 by DC Malir which we shall come to later in this judgment) who states as under in his evidence;

"As the entries were found fake and subsequent order passed by the then Collector Malir and entries were perused, it was confirmed that the General Power of Attorney, which was executed in favor of Saddar-u-din s/o Hyder Ali by 26 fake Khatedars contained only address of Saddar-u-din s/o Hyder Ali therefore efforts were taken during the course of investigation to ascertain the factual position. In this regard, I have called information from the relevant department of KDA and the society or scheme in a result, it was found that the address mentioned in the General Power of Attorney did not belong to Saddar-u-din s/o Hyder Ali, whereas it belongs to one lady Mamta Begum wife of Muhammad Shafi Rajput. I produce original letter dated 18.12.2016 of Telephone employees cooperative house building society Ltd along with photocopy of 11 pages as Annexure as Ex.31/3 ...

.....The above said letter has further disclosed that Saddar-u-din s/o Hyder Ali has never been the resident of said address, therefore it was established that the General Power of Attorney contained fake addressees and found baseless for subsequent transactions."

73. However the learned trial court failed to appreciate the following evidence in making such finding that Sadardin and the 26 legal heirs were fake/bogus persons:

(i) PW-10 Mr. Ramesh Kumar,

'It is correct to suggest that executants of the power of attorney (Ex.21/2) and (Ex.21/3) were defendants in Suits No.136 to 142 of 1999'

(ii) That Ex.34/1 to Ex.34/3 are depositions of the Executants of the power of attorney Ex.21/2 (i.e two of the legal heirs) and their written statements filed in Civil Suit No.136/1999 filed before the Hon'ble High Court. The statutory presumption of truth and correctness is attached to the same in terms of Article 91 of the Quan-e-Shahadat Ordinance 1984 as mentioned earlier in this judgment

(iii) The Deposition of executants (legal heirs) of power of attorney Ex.21/2 in Suit No.136 of 1999, wherein on 26.04.2010, two of the executants namely, Ibrahim son of Muhammad Moosa and Haji Essa son of Haji Ilyas have deposed as under:-

'It is correct to suggest that I have sold the land of Deh NC No.26 measuring One Hundred Acres and I am one of the share holder of the above land. It is correct to suggest that I have executed the General Power of Attorney before the concerned Sub-Registrar namely Zafar Baloch. It is correct to suggest that my other co-share relatives have also signed the said General Power of Attorney which is Ex.P/21 which the same.

(iv) PW-9 Mr. Ghulam Muhammad.

'I produced attested photocopy of SBP/Treasury Challan of each dated 23.08.1997 paid by Mr. Sadrudin (Attorney) on behalf of Survey Superintendent for demarcation of Boundary charges of land 100 Acres of NC 26 Deh Dih Malir Karachi as Ex.23/5.'

(v) Attorney Sadardin was associated with the survey superintendent during survey proceedings and his signature is also affixed in Ex.23/9, (Page 1639 of the paper book) which is identical with the signature mentioned in power of attorney Ex.21/2. (P. 1449 of the paper book).

(vi) Moreover PW-11 Fazal Ur Rehman the investigating officer, in his cross examination, has admitted the fact that he has only verified the address of Mr. Sadardin mentioned in Power of Attorney Ex.21/2, however, he found that Mst. Mumtaz Begum is the owner of the property mentioned at address of Mr. Sadardin in Ex.21/2 despite the fact that Mst. Mumtaz Begum was not made a witness in this case and because of the omission of the examination of Mst. Mumtaz Begum, an adverse inference can legitimately be drawn under Article 129(g) of the Quan-e-Shahadat Ordinance 1984 that had she been produced, she would not have supported the case of the prosecution. Mr.Sadardin could have been residing with her as her tenant but this avenue was not explored by the IO. In this respect regarding Article 129 (g) and adverse presumptions reliance is placed on **Mohammed Rafique V State** (2010 SCMR 385) and **Muhammed Mal V Allah Yar** (2002 SCMR 235)

(vii) In this regard, the relevant cross examination of Investigating Officer namely PW 11 Mr. Fazal-ur-Rehman Narejo is reproduced as under:-

'It is fact that, I secured the record of ownership of Saddar-u-din's plot NO.R-A 43, Block-14, Scheme-16, Federal B Area, Karachi for verification of his address. I found from the said record that Mst. Mumtaz Begum was owner of the said plot. I tried to record the statement of Mst. Mumtaz Begum for verification about resident of Saddar-u-Din but she refused to give her statement it is a fact that I have stated the said fact at page No.12 of my IR. I did not initiate any legal proceeding against her on her refusal to get recorded her statement.'

(viii) The fact that the 26 legal heirs were fake dummy persons was not put to the appellants at the time when they recorded their section S.342 Cr.PC statements and as such it is well settled by now that since such a question was not put to the appellants in their S.342 Cr.PC statements it cannot be used to convict them which the trial court erred in so doing and hence the issue of the dummy/fake 26 legal heirs is excluded from consideration

74. Thus, based on the evidence mentioned above we find that the prosecution has not been able to prove that Sadardin was a fake/dummy person and did not exist and that the 26 legal heirs were also fake/dummy person's who did not exist. On the contrary we find that the evidence suggests that such persons were living people and the IO made very little effort to trace them out. He seems to have blindly been unduly influenced by the now set aside order of DC Malir dated 01.02.1999. **Significantly** no forensic evidence was put forth by the prosecution as to the verification of the thumb impressions and other details mentioned in the power of attorney in order to vindicate the findings of the learned trial court. As such we find that the prosecution has not been able to prove that the power of attorney made by the legal heirs in favor of Sadardin was not genuine and that Sadardin and the legal heirs were dummy/fake persons. In fact we find that there is sufficient evidence on record to indicate that Sadardin and the 26 legal heirs were real persons and not dummy persons but the IO made insufficient efforts to trace them out. For example, there is no evidence on record that he made any serious efforts to trace any of them out despite the CNIC No. of Sadardin being available and simply relied on the DC Malir's finding despite that order not being any longer in the field and on this issue his order being largely based on assumptions which can never take the place of reliable cogent evidence. As such we find the power of attorney executed in favour of Sadardin to be genuine and the transactions and

the Constitution and the well settled principle of *audi alteram partem* which is a settled part of our jurisprudence. In this respect reliance is placed on **Abdul Majeed Zafar (Supra)**, **Ms Anisa Rehman (Supra)** and **The University of Dacca case (Supra)**. In **Anisa Rehman's case (Supra)** it was held as under at 2240;

"...7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No.1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991 reverting her Grade VI from Grade VII was passed. In this view of the matter, there has been violation of the principles of natural justice. The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise..."

79. It is also observed that that in the case of **Ali Muhammed V Hussain Bukhsh (PLD 1976 SC 37)** it was held that an order without jurisdiction is a nullity in law and does require to be set aside formally.

80. Even other wise the then DC Malir Younas Dagha who passed the order was given up by the prosecution as a witness despite being called to give evidence and thus the inference can be drawn under Article 129 (g) of the Quan-e-Shahadat Ordinance 1984 that he would not have supported the prosecution case and perhaps avoided cross examination on the legality of his order in which he did not give any right to the appellant beneficiaries to be heard whose land he cancelled as it appears that he made an assumption that Sadardin was a fake person without any cogent evidence to this effect which as we have discussed earlier in this judgment was not the case. Interestingly Mr.Dagha did not cancel the mother entry of 1914 to 1915 which still remains in tact which again suggests that there was no illegality in the mother entry as we have already found. Article 129 (g) of the Quan-e-Shahadat Ordinance 1984 is set out below for ease of reference.

"129. Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct

and public and private business, in their relation to the facts of the particular case.

The Court may presume –

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g) *that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*
- (h).....
- (i).....

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it;" (bold added)

81. It is also significant that DC Malir referred the case of appellant Mukhtiarkar Muhammed Salik for disciplinary proceedings (in respect of acts of negligence, in efficiency and misconduct) on account of the entries which he deemed to be illegal/bogus and which he cancelled in his order however vide order dated 15.01.2003 Secretary Government of Sindh Revenue Department in the aforesaid order referred to the enquiry officers report which found as under;

"that charges leveled against the appellant Muhammed Salik had not been proved and that the old entry was not to be disturbed as he (the appellant Salik) had adopted the required procedure laid down in S.42 of the Sindh Land Revenue Act 1967 as amended vide S.5 of the Sindh Ordinance II of 1980. All the legal and codal formalities were observed accordingly the accused officer (appellant Salik) is not guilty" as such the disciplinary proceedings were dropped against official appellant Salik through the aforesaid order by Secretary Government of Sindh Revenue Department.

82. Thus, since the official appellant Salik has been found not guilty in a civil case which concerned the standard of proof only being based on the balance of probabilities that he illegally added/interfered with the entries which are the subject matter of this appeal how is it possible for him to be convicted in a criminal case for the same offense i.e tampering/changing the entries illegally which has a much higher standard of proof i.e beyond a reasonable doubt. In this respect reliance is placed on Waseem Ahmed's case (Supra) which held as under at P.1777 Para 59;

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"The differences in standards of proof required for section 33 on the one hand and section 21 on the other can have important consequences. If at the end of the proceedings under section 21, the Commissioner concludes that the concerned person has not committed tax fraud, or makes such a finding but it is negated on the merits in any appellate or other such proceedings, then clearly the person cannot be held liable on the same facts for the criminal offence of tax fraud. The reason for this is that if something cannot be proved on the (lower) civil standard of proof, it certainly cannot be established beyond reasonable doubt (the criminal standard). Of course, the reverse is not true. Even if something cannot be established beyond reasonable doubt, it may yet be established on the civil standard. The relevance of this is at once obvious. If a petitioner is proceeded against in terms of section 21 in the same terms as alleged in the criminal cases, and the former proceedings conclude (either at first instance or ultimately) in his favor then he cannot further be proceeded against before the Special Judge in the criminal cases. No case having been made out against him as satisfies the civil standard, it necessarily follows that such a case cannot be established beyond reasonable doubt." (bold added)

PW 1 Gudda Hussain states in his cross examination in respect of the illegal exercise of powers by DC Malir as under;

"It is correct to suggest that u/s.161 of Sindh Land Revenue Act, 1967 DC is not competent to take Suo Moto action. I do not know that in the year 1999, Mukhtiarkars were the custodian of the record of rights. It is correct to suggest that if suspected entry found in the record of rights, it is Mukhtiarkar, who initiate the process by sending note to that effect to the high ups including DC for necessary action as per Section 164 of Sindh Land Revenue Act, 1967. It is correct to suggest that after receiving the note from Mukhtiarkar in respect of suspected entry, the Revenue Officer including DC is required to initiate an inquiry by calling reports from the concerned Mukhtiarkar and Tapedar. I see Exh. 14/18 and say that the above said procedure was not followed by the DC while passing the above said order. It is correct to suggest that right of accused persons has been accrued in land in question by seven (07) Registered Sale Deeds (Exh.14/17). It is correct to suggest that DC does not have powers to cancel the registered sale deed. The Civil Court has only powers to cancel the registered sale deed."

83. It is well settled by now that what needs to be done in accordance with law must be done in accordance with law and what cannot be done directly cannot be done through indirect means which the DC Malir attempted to do. In this respect reliance is placed on **Muhammed Hanif Abbasi's case** (Supra), **Zulfiqar Ahmed Bhutta's case** (Supra) and **Mian Muhammed Nawaz Sharif's case** (Supra). DC Malir did not have any Suo Moto powers to act as he did and did not follow the correct legal procedure in passing his order and he did not

give the appellant beneficiaries who were adversely affected by his order the right to be heard as already discussed earlier in this judgment. The issue regarding the cancellation of long standing entries has already been discussed earlier in this judgment which had to be decided by a civil court and not by summary proceedings which were adopted by DC Malir.

84. Notwithstanding the questionable legal validity of the DC Malir 's order the same was challenged in appeal/ revision by the beneficiary appellants before the co-accused Aftab (whose case has been separated from the instant appeal) who was then Member Land Utilization BOR which vide order dated 02.09.2014 over turned the order of the DC Malir and reinstated the earlier cancelled entries. He before passing the order had referred the matter to the Mukhtiarkar whose report dated 06.06.2014 revealed that the Government of Sindh had already allotted the 100 acres of land in question to Ghagar Co-operative Housing Society and Mehran Housing Society after approval of the competent authority and as such the land was now irretrievable. Thus, in this back ground when the Member Land Utilization BOR passed his order dated 02.09.2014 over turning DC Malir's order dated 01.02 1999 he specifically ordered, quite logically, the provision of alternate land as he knew the land in dispute was irretrievable and he protected the interest of the Government of Sindh by ensuring that it was of equal value in his order in the following terms;

"In view of the facts and legal position the order dated 01.02.99, passed by the Deputy Commissioner is set-aside and allow the all appeals, with the observation that if no land is there at site, therefore, Deputy Commissioner Korangi and also Deputy Commissioner Malir Karachi is hereby ordered to provide the alternative state land available in anywhere in the equal market price to the petitioner."

85. It is the case of the prosecution that co-accused Aftab in his capacity as Member Land Utilization BOR in connivance with the beneficiary appellants passed an order of their choice in order to unduly benefit them by misusing his authority however there is no evidence to this effect from the record. There is no evidence that appellant Aftab knew the appellant beneficiaries or that he received any kick back or benefit for passing such an allegedly illegal order to favor the appellant beneficiaries and as such such an inference of him passing an illegal order also cannot be drawn. In any event once a judicial order is made it is to be challenged through the proper appellant hierarchy rather than sought

to be set aside by NAB through collateral proceedings before the trial court which is not legally permissible.

86. It was argued by NAB that the delay in filing the revisions/appeal proved that the appellants had no case on appeal however we have seen from the record that the appeals were originally promptly filed before the Sindh High Court which dismissed them with the direction that the beneficiary appellants approach the appropriate forum. Accordingly the appeals/revisions were filed before Executive District officer (EDO) Revenue under S.161 of the Land Revenue Act 1997 which remained pending for some time until the CDGK regime was changed and the old Revenue System was revived which lead to the appeals/Revisions being filed before the Revenue Court i.e Court of Board of Revenue Sindh before Member Land Utilization BOR and as such any apparent delay in filing the appeals/revisions by the beneficiary appellants has been adequately explained by the beneficiary appellants.

87. Significantly, the beneficiary appellants moved CP.D.No.544 of 2016 for implementation of the Member Land Utilization's order dated 02.09.2014 and the Sindh High Court was pleased to pass an order on 06.04.2016 which indicated that Member Land Utilization's order had reached finality and needed to be implemented and thus it was made clear that DC Malir's order dated 01.02.1999 was no longer in the field having been set aside and that the Member Land Utilization's Order dated 02.09.2014 had reached finality especially as no party moved the supreme court after the Sindh High Courts Order dated 06.04.2016 and thus it is difficult to see how Member Land Utilization's order is illegal. In fact it appears to have been affirmed by the Sindh High Court which ordered its implementation in the following terms vide order dated 06.04.2016;

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-544 OF 2016

Date _____ Order with signature of Judge _____

1. For orders on CMA No.8148/2016
2. For hearing of main case.

06.04.2016.

Mr. Owais Ali Shah Advocate for the Petitioners.
Mr. Miran Mohammad Shah, AAG.

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1. Urgent application is granted.
2. Learned counsel for the Petitioners has drawn attention of this Court to para-3 of written reply / parawise comments filed by the Respondent No.5 on 28.03.2016, wherein it is stated that:
*".....It is respectfully submitted that the grievance of the Petitioner has already been redressed vide Order dated 09.09.2014 passed by the Respondent No.5, and the operative part thereof, is reproduced hereunder:
 "In view of the facts and legal position the order dated 01/02/1999 passed by the Deputy Commissioner is set-aside and allow the appeals, with the observation that if no land is there at site, therefore, the Deputy Commissioner Korangi and also Deputy Commissioner Malir Karachi are hereby ordered to provide the alternative state land available in anywhere in equal price to the appellant."*

Per learned counsel for the Petitioner, order of the Respondent No.5 referred to above, **has not been challenged before any competent authority and/or otherwise, there is any impediment whatsoever in implementation of the order dated 09.09.2014 as the same has got finality.**

In view of above position, Respondents are directed to implement order dated 09.09.2014 passed by the Respondent No.5, referred to above, within forty five (45) days from receipt of this order and submit compliance report to this Court through MIT.

In the above terms, instant petition stands disposed of. (bold added)

Sd/-
Sd/-

88. Thus, it is quite apparent that the order of DC Malir dated 01.02.1999 was illegal and was rightly set aside by Member Land Utilization's order dated 02.09.2014 which still remains in the field as indicated by the above reproduced High Court Order **which affirmed the same** and which needed implementation having reached finality and was agreed to by the Government of Sindh who were a party to the proceedings before the Sindh High Court. In fact we find that the Member Land Utilization's Order dated 02.09.2014 has now merged with the Sindh High Court Order dated 06.04.2016 which has reached finality and cannot be challenged in NAB proceedings before an accountability court. In this respect reliance is placed on **Galxo Laboratories V Inspecting Asstt. Commissioner** (1992 PTD 932), **Sajjad Ahmed V HBL** (2019 CLD 824), **Zahoor Hussain V Abdul Hamid** (1991 SCMR 164) and **Nasir Ahmed Shaikh V Nahid A Shaikh** (19986 SCMR 1621) /

89. As such no reliance can be placed on DC Malir's order dated 01.02.1999 which has been set aside and is no longer in the field. Any reliance on that order by the learned trial court was misconceived and erroneous.

90. It is even arguable that NAB's case ends here as the whole superstructure on which NAB's case was built i.e the DC Malir's order has once again collapsed. In this respect reliance is placed on **Yousaf Ali V Aslam Zia** (PLD 1958 SC 104), **Maulana Ata ur Rehman V Al Haj** (PLD 2008 SC 663) and **Executive Distt. Officer V Muhammed Younas** (2007 SCMR 1835)

91. PW 1 Gudda Hussain answers why the 100 acres of land was to be exchanged for 1729 acres. Namely, that since the cancellation of the ownership of the 100 acres of land held in the name of the beneficiary appellants in 1999 by DC Malir and the Sindh High Court order in 2014 i.e a gap of 15 years pursuant to DC Malir's Order dated 01.02.1999 which was subsequently set aside the land reverted back to the Government of Sindh which allotted the same to two housing societies who had built on the land and thus this original 100 acres was no longer available and hence pursuant to the Sindh High Court Order alternate land of 1729 acres was earmarked for the appellant beneficiaries in exchange for their now lost 100 acres which amounted to the same value as the 100 acres which position is not disputed.

92. It has been argued by the NAB that the Member Land Utilization BOR realizing that his order was illegal and in order to save his skin wrote two letters. One letter was to restore the land to the Government of Sind whilst the other letter which in fact was an order directed the exchange of alternate land and thus these letters were self contradictory. We find the contentions of the NAB to be misconceived when placed in juxta position and proper context. This is because both of these letters were written after the Sindh High Court Order dated 06.04.2016 which needed to be implemented regarding alternate land being made available to the appellants beneficiaries. The first letter dated 23.09.2016 is an order from the Member Land Utilization BOR which has as its subject compliance of order of Hon'ble Sindh High Court dated 06.04.2016 and concerns alternate land be given of equal value to the appellant beneficiaries as per the Sindh High Court order and is in effect implementing that order. (P.813 of the paper book). The second letter dated 27.09.2016 from the Member Land Utilization Department BOR has the same subject heading i.e compliance with

the Sindh High Court order and is sent to DC Korangi directing him to keep the land of the beneficiary appellants in the record of rights in favor of Government of Sindh (P.817 of the paper book) which was done vide entry which is found at P.873 of the Paper book which registers the land as agricultural under Form VII. The object of the first letter/order was to comply with the order of the Sindh High court by ensuring the provision of alternate land to the beneficiary appellants as directed by the Sindh High Court order whilst the object of the second letter was to ensure that the original 100 acres of the appellant beneficiaries which was now irretrievable was returned to the Government of Sindh and would prevent the appellant beneficiaries making a claim in the future over the 100 acres of land for which they had been given alternate land pursuant to the order of the Sindh High Court.

93. With regard to the appellant beneficiaries. No evidence has been brought on record in any way to show that they knew or ever connived with the official appellants in respect of the registration of the land in their favor or obtaining an illegal order from co-accused Aftab who was Member Land Utilization BOR and heard their appeal/revisions which favored them.

94. Some general findings;

(a) By way of completeness it was part of NAB's case that the land in question was on the river bed and was unavailable for allotment however this position is belied by their own PW's. For example, PW 1 Gudda Hussain at P.363 of the paper book states that the land in question has been allotted to Gaghar Co-operative society and Mehran Co-operative society with the approval of the competent authority. This evidence is repeated by PW 6 Muhammed Bahtti at P.987 of the paper book. As such there is no question of some or any of the original 100 acres being under water on the river bed and thus not capable of being built on and therefore worthless. On the contrary such land was allotted to two housing societies for the purpose of building houses which would have not been possible if the land was in the river bed.

(b) Section 14 of the NAO only shifts the burden of proof onto the accused once the prosecution has made out a reasonable case against the appellants. After considering the evidence discussed above we do not consider that the prosecution has made out a reasonable case against the appellants and as such based on the evidence adduced in this case S.14 NAO was not attracted and the burden did not shift to the appellants to prove their innocence

(c) No evidence has come on record that any of the official appellants received any financial or other benefit on account of their actions. Likewise the appellant beneficiaries as in the event no land was transferred to them

(d) It is an admitted position that no loss was caused to the National Exchequer.

(e) Based on the conduct of the appellants and the evidence produced before the trial court it cannot be inferred that any of the appellants had any mens rea for the offenses which they were charged with which is an essential requirement for a conviction in any criminal case including under the NAO.

(f) From the evidence on record the prosecution has not been able to prove beyond a reasonable doubt that the appellant beneficiaries were not bona fide purchasers for value and as such did not have good title to the subject land.

(g) The benefit of the doubt always goes to the accused in a criminal case not as a matter of concession but as a matter of right. In this respect reliance is placed on Tariq Pervez V State (1995 SCMR 1345) and the case of Khalid Mehmood (Supra) extracts from which are set out below regarding the application of the benefit of the doubt;

95. In Tariq Pervez case (Supra);

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right." (bold added)

96. In Khalid Mehmood's case (Supra)

"The following observations were made by this Court in Ayub Masih v The State (PLD 2002 SC 1048);

"It is hereby necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there be an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not the imaginary or artificial. The rule of benefit of doubt, which described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, it is better that ten guilty persons be acquitted rather than one innocent person be convicted. In simple words it means that utmost care should be taken by the court in convicting the accused. It was held in the State v Mushtaq Ahmad (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or

reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and that is enforced rigorously in view of the saying of the Holy Prophet (PBUH) that the mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent." (bold added)

Conclusion

97. For the reasons discussed above we find that;

(a) the NAB did not have the jurisdiction to proceed under the NAO for large parts of this case as admittedly, as per NAB itself through its reference and charge and evidence which it led at trial the offense started in 1914 to 1915 and 1956 and the NAB only has the jurisdiction under the NAO to pursue offenses of corruption and corrupt practices after 01.01.1985. As such we find that these proceedings before 01.01.1985 are coram non iudice as being without lawful authority and jurisdiction and thereby set aside and the only aspect of the appeal which remains relates to the aspects of the case after 01.01.1985.

(b) Even otherwise, if we ignore the finding at paragraph 97(a) above and consider NAB's case on merits from the so called fraudulent entries onwards from 1914 to 1915 to the conclusion of their case in 2016 after our reassessment of the evidence on record we find that the prosecution has failed to prove its case against any of the appellants (both official and beneficiary) beyond a reasonable doubt and as such by extending the benefit of the doubt to the appellants all the appeals are allowed, all the appellants are acquitted of the charge and all the appellants shall be released from jail unless wanted in any other custody case. Since all the appeals have been allowed all the constitutional petitions are dismissed as infructuous.

98. The appeals and Constitutional Petitions stand disposed of in the above terms.