

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

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

Mr. Justice Mohammad Karim Khan Agha, J.

Petitioner number, name of the petitioner and his counsel.

C.P. No.D-7066 of 2017

Asma Chishty V. NAB through its Chairman & another.

Asma Chishty W/o Shaheryar Arshad Chishty (petitioner)

Through Mr. Faisal Zaffar, Advocate.

Counsel for the Respondents

Mr. Mohammed Altaf, Special Prosecutor, NAB.

Mr. Asif Rasheed, Advocate for DHA Respondent No.2.

Date of hearing: 11.01.2018.

Date of order: 19.01.2018.

ORDER

Mohammad Karim Khan Agha, J: By this order, we propose to dispose of the above petition filed on behalf of the petitioner against the respondents with the following prayers:

PRAYERS

- a. Declare the "caution" marked by the Respondent No.2 vide letter dated 08.02.2010 in the light of Respondent No.1/NAB, Sindh letter dated Dec. 17, 2009 and the regretted letter dated August 18, 2017 issued by the Respondent No.1 as unlawful, unjust, illegal, unwarranted, not born out of law and without any force having been vested with NAB.
- b. Direction be given to the respondents to act fairly, justly, in accordance with law and Respondents shall be restrained from interfering in the lawful possession and ownership of the petitioner's property and remove the "caution" marked in respect of the property measuring

100 sq. ft. yards (Approx.) bearing No.107-C, Kh-e-Shaheen Street, Phase-VIII, situated at Pakistan Defence Officers Housing Authority (DHA), Karachi.

c. Grant such further or additional relief as this Court may deem appropriate in the circumstances.

2. Brief facts of the petitioner's case as per contents of the petition are that the petitioner and her family is engaged in different businesses. That the petitioner is bona fide and lawful owner of the plot measuring 100 Sq. Yards (Approx.) bearing No.107-C, Kh-e-Shaheen Street, Phase VIII, situated at Pakistan Defence Officers Housing Authority, Karachi (the property) and the property was legally purchased by the petitioner for a total consideration of Rs.26,600,000/- through M/s. Kashni Estate, Real Estate Consultant, Shop no.A-1, Fl-4, Abdullah apartment block 16, Gulistan-e-Jauhar, Karachi. That the petitioner on account of business reasons often spends time outside of Pakistan and after returning on one occasion, to her horror, found through a letter from the DHA dated 10-02-2010 that the property had been cautioned by the DHA on the instructions of NAB vide NAB's letter dated 17-12-2009 after she had purchased the property.

3. Learned counsel for the petitioner submitted that she was a bona fide purchaser of the property and had carried out full due diligence before purchasing the same and under these circumstances the NAB had no lawful authority to have the property cautioned; the petitioner approached the

respondent no.1 for removal of "caution" but the same was declined vide letter dated 18.08.2017 and as such her prayer reproduced above should be allowed and the concerned authorities ordered to remove any caution which had been illegally placed over the property.

4. On the other hand learned Special Prosecutor NAB opposed the lifting of the caution from the property. According to him the property had been cautioned as it was property which was subject to NAB Reference No.24/2000 against accused Choudhry Muhammad Sharif and Muhammad Haneef in an assets beyond known sources of income case. He further submitted that the matter had not been hit by the NRO and relied on the case of **Dr. Mobashir Hassan V Federation of Pakistan** (PLD SC 2010 1) in this respect.

5. We have considered the submissions of learned counsel for the parties, perused the material available on record and the case law cited by them at the bar.

6. It would seem that the property in question was initially cautioned pursuant to the above referred NAB reference. However a time line of events are significant in getting to the bottom of the matter. It is not disputed that the accused in the aforesaid reference stood acquitted on 11-09-2008 by the concerned accountability court after promulgation of the NRO. Thus in our view on that date any caution over the property by NAB ceased to exist. The property was even

released by the court on 15-01-2009. It then appears from the record that after carrying out the necessary due diligence including advertising her intent to purchase the property in the news papers and informing the DHA and obtaining an NOC from the concerned authorities that the petitioner purchased the property free from all encumbrances as a bona fide purchaser for valuable consideration on 19-05-2009.

7. There is no material on record to suggest that she was related to the accused or even knew that the property had been the subject matter of a NAB reference or had been cautioned by the NAB. The NRO was struck down by the Hon'ble Supreme Court in the case of **Dr. Mobashir Hassan** (Supra) on 16-12-2009 (after the property had been released by the accountability court and after the petitioner purchased the property) and in effect the references which had been subject to the NRO were revived to the position which they had been prior to the promulgation of the NRO.

8. Based on the above time line and the particular facts and circumstances of this case however we see no reason why the petitioner should suffer on account of her being a bona fide purchaser of the property after carrying out her due diligence when the property was free from encumbrances and even released by the court during the period when the NRO was in operation. Even otherwise during the course of arguments learned special prosecutor for the NAB very candidly conceded that NAB does not possess any material to show that the petitioner was aware as to the previous caution .

marked on the property. Thus, it is crystal clear that the petitioner seems to have been unaware that the property was originally subject to a NAB reference and was at one time cautioned and furthermore she would not have been aware that cases under the NRO would have been revived in the future after her purchase of the property. In addition it appears that the accused in the aforesaid reference have been acquitted under Section 265-K Cr.P.C. by the Accountability Court No.1, Karachi vide judgment dated March 09, 2010 after the revival of the reference once the NRO had been struck down and in our view simply because NAB had filed an appeal against acquittal it would not give it the right to again caution a property which now belonged to the petitioner and had been purchased in her capacity as a bona fide purchaser. In our view it would not have been the intent of the Supreme Court in the **Dr. Mobashir Hassan case** (Supra) to penalize persons such as the petitioner who were unwittingly caught in the period of the NRO being promulgated and it being struck down and to continue with the caution over the property in the particular facts and circumstances as narrated above would in our considered view not serve the ends of justice.

9. As such we allow the petition and its prayer clause and order that any caution against the property be immediately removed by the respondents.