JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 901 OF 2023

BRIG. (R) IMTIAZ AHMED

VS

DEPUTY COMMISSIONER IN-LAND REVENUE, BENAMI ZONE-I, ISLAMABAD & ANOTHER

Appellant by : Mr. Moazzam Habib, Advocate for the petitioner.

Respondents by : Hafiz Ahsaan Ahmad Khokhar Advocate, for Respondent No.1.
Malik Talat Hussain Advocate, for respondent No.2.

Date of hearing : 27.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the present Writ Petition, the Petitioner [Brig. (R) Imtiaz Ahmed], challenges the Notice dated 15.11.2022 **("Impugned Notice")** issued by the Respondent No. 1 [the Deputy Commissioner, Inland Revenue] under Section 22(2) of the Benami Transactions (Prohibition) Act, 2017 **("Act of 2017")**. The Impugned Notice includes a copy of the Show Cause Notice dated 15.11.2022 issued to the Respondent No. 2 [Abdul Ghaffar Chohan], alleged to be the "benamidar" of House No. 286, Sumbal Road, F-10/4, Islamabad **("Subject House")**. The Impugned Notice claimed that the Petitioner is the "beneficial owner" of the Subject House and required both the Petitioner and the Respondent No. 2to explain why the Subject House should not be considered as "benami property." Additionally, the Petitioner was warned not to retransfer the Subject House either back to his name or to any other person.

2. The brief facts of the case in hand are that the Petitioner purchased the Subject House from the Respondent No. 2 [Abdul Ghaffar Chohan] who after receiving the sale consideration, duly executed irrevocable General Power of Attorney on 25.08.1999 in favour of the Petitioner and registered the same before Sub-Registrar, Islamabad. Soon after, the Petitioner was arrested by the National Accountability Bureau **("NAB")** in the year 1999 on the allegation of keeping

assets beyond means and having benami property including the Subject House and there upon filed Reference No. 21/2000 against the Petitioner. The Accountability Court, Rawalpindi sentenced the Petitioner and forfeited the Petitioner's properties against which the Petitioner preferred Criminal Appeal No. 25-E of 2002 before the Lahore High Court, Lahore and the Petitioner was acquitted vide Judgment dated 19.06.2015 and all the properties including the Subject House were released. The NAB preferred Appeal before the august Supreme Court which was dismissed vide Order dated 26.06.2019 and the order of the High Court regarding acquittal of the Petitioner and release of properties attained finality. The Petitioner filed Writ Petition No.1632/2020 before this Court for clearance Letter/NOC regarding the Subject House from NAB and the Capital Development Authority **("CDA")**, which was allowed and NOC was issued by NAB and CDA in favour of the Petitioner on the directions of this Court. The Memo of Petition also states that the Petitioner, who is a cancer patient, entered into an agreement to sell with one Sami Ullah to fulfill his needs. However, Sami Ullah failed to honor the agreement, prompting the Petitioner to file a suit for specific performance. The property transfer could not proceed due to a *status quo* order, and ultimately, the suit was dismissed by the learned Civil Court vide Judgment & Decree dated 03.02.2023. The Respondent No. 1 issued the Impugned Notice dated 15.11.2022 regarding the Subject House being a benami property regarding transaction which was happened in the year, 1999 and illegally taken the cognizance and attached the property. The Petitioner initially submitted all the documents pertaining to judicial record that cognizance taken by the Respondent No.1 is based on *malafide*. The Respondent No.1 then sent the Notice dated 23.01.2023 to the Petitioner for submission of written reply to Show Cause Notice on which the Petitioner submitted the reply on 03.02.2023. The Petitioner claims that Respondent No. 1 unlawfully took cognizance of the Subject House in relation to a transaction that occurred 18 years before the enactment of the Act of 2017". The Petitioner being aggrieved of the Impugned Notice dated 15.11.2022 has filed instant writ petition.

3. The learned counsel for the Petitioner argued that Respondent No. 1 unlawfully took cognizance of the Subject House as a benami property in relation to a transaction from the year 1999, for which an irrevocable General Power of Attorney was registered on 25.08.1999 while possessing benami property was not an offence in the year 1999; that the Act of 2017 was enacted in the year 2017 and

it is established principle of law that this Act cannot be implemented retrospectively, hence, the Impugned Notice is illegal and liable to be struck down; that according to Article 12(1)(a) of Constitution of the Islamic Republic of Pakistan, the Impugned Notice is unconstitutional and liable to be withdrawn; that it has been settled by this Court that the Act of 2017 can be implemented prospectively. In this regard, the learned counsel has relied upon judgment of this Court reported as *Muhammad Nawaz versus Shahida Perveen,* **PLD 2017 Islamabad 375**; that the Act of 2017 was enacted having penal consequence and no person can be held responsible for an offence which was not offence at the time of omission or commission; that the Petitioner got NOC of the Subject House by filing W.P. No.1632/2020 which was decided in his favour, hence by all purposes and means, the Subject House cannot be treated as benami property; that it is an established principle of law that a person cannot be subject to double jeopardy; that the Petitioner after spending eight years in imprisonment got acquitted by the Hon'ble Lahore High Court, Lahore and same acquittal order was upheld by the august Supreme Court, hence, the Impugned Notice and proceedings thereto are attracting principle of double jeopardy which is also unconstitutional, hence, the Impugned Notice is illegal and liable to be set-aside; that the public functionaries are duty bound and under legal obligation to redress the grievance rather to issue illegal orders, thus, where public functionaries are perpetuating injustice with *malafide* intentions this Court has ample power to exercise its Constitutional jurisdiction to direct the public functionaries to act in accordance with law, rules, and regulations and decide the matter pending before them after due application of mind. In this regard, the learned counsel relied upon the judgments reported as *Manzoor Ali Chaudhry versus Government of the Punjab,* **2000 SCMR 689**, *Shah Mawaz versus Lahore Development Authority,* **1999 PLC (CS) 1320**, *Government of Pakistan through Director General, Ministry of Interior, Islamabad versus Farheen Rashid,* **2011 SCMR 1**, *Aleem Jaffar versus WAPDA*, **1995 SCMR 778** and *Kadir Bux versus Province of Sindh,* **1982 SCMR 582**. Lastly, the learned counsel prayed that the Impugned Notice may kindly be declared illegal, unconstitutional and all proceedings thereto may also be struck down.

4. On the other hand, the learned counsel for the Respondent No. 1 argued that the Petitioner has merely challenged the Show Cause Notice through the instant Writ Petition and this Court and the august Supreme Court have already held that

the Writ Petition against the show cause notice is not maintainable, thus, the instant Writ Petition is not maintainable and liable to be dismissed. The learned counsel in this regard, placed reliance upon the judgments reported as *Abdul Aziz versus Abdul Hameed (Deceased) through L.Rs.,* **2022 SCMR 842**, *Indus Trading and Contracting Company versus Collector of Customs (Preventive) Karachi and others,* **2016 SCMR 842,** *Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others versus M/s Punjab Beverage Company (Pvt.) Limited,* **2008 SCMR 308**, and *Al Ahram Builders (Pvt.) Limited versus Income Tax Appellate Tribunal,* **1993 SCMR 29**. The learned counsel further submitted that the Act of 2017 is a special law and it has a well overriding effect over other laws including the NAB law as held by this Court in reported *Saad Sumair versus National Accountability Bureau,* **PLD 2022 ISB 371**; that the case in hand is not a case of retrospective or prospective effect of the Act of 2017 as alleged by the Petitioner, and in this regard, the learned counsel drew the attention of this Court to Section 2(8) of Act of 2017; that in view of the above said Section, any person, who if found holding the benami property is covered under the Section 2(8) *supra*; that the Respondent No. 1 has legal jurisdiction to initiate the investigation and to file the reference thereafter before the competent authority, which in the present case, has been done as per law, thus, the instant Petition is devoid of any legal merit and is liable to be dismissed. The learned counsel further argued that Sections 3, 4, and 5 of the Act of 2017 are clear in terms of their application and culpability, reflecting the intent of the legislature; that as claimed by the Petitioner, his case was not determined by any authority or Court as a benami transaction, but was resolved on technical grounds, which are irrelevant to the case initiated by Respondent No. 1 under the Act of 2017. Finally, the learned counsel prayed for the dismissal of the instant Petition.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. The main contention of the learned counsel for the Petitioner is that the Petitioner could not be vexed twice for the same offence and it will amount to double jeopardy. This Court will have to see that as to whether the nature of the offence, for which the Petitioner was tried by the Accountability Court under the National Accountability Ordinance, 1999 **("NAB Ordinance")** and the offence under the Act of 2017, are same. As per the allegations made in the reference filed

by the Chairman, NAB against the Petitioner, he served as Director Intelligence Bureau, Government of Pakistan from 31.03.1990 to 23.04.1993 and he had accumulated vast properties both moveable and immovable which appear to be disproportionate to his known sources of income. During the NAB investigation, it was found that co-accused Nadeem Imtiaz, Afzal Ghaffar Chohan (who is Respondent No. 2), Shamshad Ali, and Adnan A. Khawaja aided and abetted the Petitioner/principal accused in the acquisition of the properties and assets. In the said reference, among other immovable properties, the Subject House was also alleged to be made through illegal income. The learned Trial Court convicted the Petitioner vide Judgment dated 31.07.2001. The Petitioner filed appeal before the Lahore High Court, Rawalpindi Bench, Rawalpindi, which was accepted and he was acquitted on 19.06.2015. The NAB challenged the said order before the August Supreme Court, which was also dismissed.

7. The word "Benami" means without a name, nameless or fictitious. Benami transaction is used to denote a transaction which is really done by a person without using his own name but in the name of another. In the present case, the Impugned Notice was issued by the Respondent No. 1 to the Petitioner under Section 22 (2) of the Act of 2017, to show cause regarding the Subject House and as to why such property should not be treated as "benami property". A similar notice was issued to Respondent No. 2 wherein it was mentioned that upon inquiry from CDA, it is confirmed that the property was transferred in June, 1999 and the Subject House is still in his name. The CDA also confirmed that the Respondent No. 2 has executed a General Power of Attorney in favour of the Petitioner. The notice further reveals that the property has always been in beneficial use of the Petitioner and the rent proceeds of the Subject House were always collected in the form of cash by the Petitioner; that the tax declarations filed over the years show a financial health that does not warrant purchase of such an expensive property; that the Respondent No. 2 become approver against the Petitioner in the proceedings initiated by NAB)where the Respondent No. 2 conceded the *"Benami"* arrangement of purchase of this particular property among others.

8. The allegations of offence committed by the Petitioner was regarding accumulation of vast properties both moveable and immoveable which appear to be disproportionate to his known sources of income. The charge against the

Petitioner which was framed on 10.03.2001 by the learned Accountability Court, is reproduced as under:-

> *"That during period from 1990 you Brig. (R) Imtiaz Ahmad and Adnan A. Khawaja accused acquired properties and assets at different places (detail whereof has been given in the reference) which are disproportionate to your known source of income; that you Brig. (R) Imtiaz Ahmad also acquired properties and assets (detail whereof has been given in the reference) in your name and in the name of your dependents and Adnan A. Khawaja and that you also acquired properties (detail whereof has been given in the reference) in the names of Abdul Ghaffar Chohan and Shamshad Ali Chohan (approvers) as benamidars and thereby committed offence of corruption and corrupt practices as defined in Section 9 which is punishable u/s 10 of NAB Ordinance, 1999 within the cognizance of this Court."*

9. The Lahore High Court, while deciding Criminal Appeal No. 25-E of 2002 titled "Brig. (R) Imtiaz Ahmad versus The State", has discussed in Paragraphs Nos. 19 & 20 that:-

> *"19. Scanning the above evidence as well as findings of the trial Court, we are constrained to hold that the said properties cannot be confiscated for the simple reason that the findings were based on the statements of approvers who were not permitted to become as such by the order of the Chairman, NAB and in case of the above said properties, the vendors were not produced. Moreover, the ingredients of Benamidars transactions as held in the dictum laid down by the apex Court in MST. ZAHIDA SATTAR and others versus FEDERATION OF PAKISTAN and other* ***(PLD 2002 SC 408)*** *could not be produced. The possession of the property, the written transaction, the circumstances under which Benamidar transactions were made were required to be disclosed before the Court by the prosecution.*
>
> *20. As already observed, the appellant was made to discharge the burden of his innocence which is against law. The declaration for the purpose of income tax and wealth tax could not be used to ascertain the source of income to determine the assets beyond the means of the appellants by the NAB authorities. There is an iota of allegation against the appellant Brig. (R) Imtiaz Ahmad that he has misused his authority, therefore, there was no nexus of ill-gotten money for the built of the above said assets/properties."*

10. According to Section 2(8) of the Act of 2017, "Benami Transaction" is defined as under: -

> *"**(8). 'Benami transaction'** means,—*
>
> *(A) a transaction or arrangement—*
>
> *(a) where a property is transferred to, or is held by, a person and the consideration for such property has been provided, or paid by, another person;*

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, agent or legal adviser and any other person as may be notified by the Federal Government for this purpose; or

(ii) any person being an individual in the name of his spouse or in the name of any child or in the name of his brother and sister or lineal ascendant or descendant and the individual appearing as joint owner in any document of such individual and the consideration for such property has been provided or paid out of known resources of income of the individual; or

(B) transaction or arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or arrangement in respect of a property where the owner of the property is not aware of, or denies knowledge of, such ownership; or

(D) a transaction or arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious."

11. The Petitioner was acquitted in the NAB reference from the charges of holding public office and he was having moveable and immovable properties beyond his known sources of income, while the Impugned Notice is served under the Act of 2017, for holding the Subject House as "Beneficial Owner". Both the offences are different in nature and under different statutes, as the offence under the NAB Ordinance is pertaining to the property beyond his known source of income, while under the Act of 2017, the offence is distinct by being beneficiary for the benami transaction. Since the offences are distinct, the Petitioner's accusation in both cases do not constitute double jeopardy. Reliance is placed on the Supreme Court's ruling cited in *Raja Tanweer Safdar versus Mrs. Tehmina Yasmeen,* **PLD 2024 SC 795** wherein it has been held that:-

"6. Protection against double punishment is provided in Article 13(a) of the Constitution which specifically prescribes that no person shall be prosecuted or punished for the same offence more than once. This Court in the Muhammad Ashraf case has extensively elaborated the principle of double jeopardy to be that a person shall not be exposed twice to hazards of punishment and conviction for one and the same offence. 2 The rule is based on the Latin maxim 'nemo bis punitur pro eodem delicto,' which means nobody is to be punished twice for the same crime. 3 The Fifth Amendment to the US Constitution states that 'no person shall be .. subject for the same offence to be twice put in jeopardy of life or limb'. Article

20(2) of the Indian Constitution is also pari materia with Article 13(a) of our Constitution. The protection against double jeopardy is also part of due process of law. 4 The principle is also recognized in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of Protocol No.7 to the European Convention on Human Rights (ECHR). Even Article 86 of the Geneva Convention (III) on the Prisoners of War, 1949 imposes prohibition against double jeopardy. Hence, this principle is recognized both under the national and international law.

7. The protection given under Article 13 (a) of the Constitution is against prosecution and punishment, which means the trial and its proceedings followed by a conviction. The Muhammad Ashraf case clarified that if the first prosecution results in an acquittal, so far as Article 13(a) of the Constitution is concerned, the second prosecution is not prohibited. 5 The concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice. 6 It is based on the rule of conclusiveness and finality which requires that once a court has taken cognizance of an offence, tried a person and convicted them, then for the same offence that person cannot be tried again. 7 So, the basic question is that in the case of double jeopardy, the second trial should be on the same set of facts of the first trial which resulted in a conviction for the same offence, which would require the same evidence before the court. Basically, this means that the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy."

12. Similarly, in the case titled *Muhammad Nadeem Anwar versus Securities and Exchange Commission of Pakistan through Director NBFC's Department, Islamabad* reported as **2014 SCMR 1376** the august Supreme Court has held that**:-**

"6. Bare reading of afore-quoted provision of law is clearly suggestive of the fact that both are under different enactments of law having different procedure and forum for initiating proceedings thereunder although both the sets of offences have been committed by the accused in one go that is to say that the accused-petitioner acted in such a manner which constituted offences punishable under two separate and distinct laws i.e. one under the NAB Ordinance and the other under the Companies Ordinance. Both are different and distinct pieces of legislation, therefore, acts and omissions of the petitioner committed by him cannot be said to be same offences. The example for the same can be deduced from the fact that an accused goes to a place for commission of a particular offence that is to say he has made up a mind to take life of a person by using fire arm and if his action of murdering of a person is at a public place involving serious threat to the public at large or creating a sense of fear or insecurity in society, he will be charged with the offences punishable under two different and distinct enactments and if during his action he has also used fire arm weapon which ultimately is recovered at his instance and the accused could not produce any valid permit for keeping the said weapon in his custody then he will also be proceeded against under Arms Ordinance which is a third offence committed by an accused while taking the life of a person. Thus, he will be tried under section 302, P.P.C. (a piece of legislature under the criminal law), under section 7 of the Anti-

Terrorism Act, 1997 and under the Arms Ordinance, 1965. Although, offence under section 302, P.P.C. is triable by a court having ordinary jurisdiction i.e. Sessions Judge or the Additional Sessions Judge, whereas offence under section 7 of the Anti-Terrorism Act is triable by a Special Court constituted under the said Act but since the Special Court constituted under AntiTerrorism Act, 1997 has been conferred power to try an offender under section 302, P.P.C. wherein his commission has also constituted an offence under section 7 of the Anti-Terrorism Act, 1997 and the case registered against him under Arms Ordinance is triable by a Magistrate 1st Class, therefore, it cannot be said for any purpose that since the accused has committed three offences in one go and they are same offences. Since the acts committed by the petitioner do not fall at all within the definition of the same offence, therefore, the principle of double jeopardy will not come into force. The Black's Law Dictionary meaning of the words "same offence" clearly shows that a similar offence, one of the same character or nature."

13. Secondly, the Petitioner should have contested the Impugned Notice by submitting a reply before the relevant authority under the Act of 2017, i.e. the Adjudicating Authority/Adjudication Committee. However, instead of doing so, he filed the present Writ Petition before this Court. Consequently, this Court holds the view that the Petitioner has an alternative and effective remedy available under the Act of 2017, and as such, the present Writ Petition is not maintainable. Reliance is placed on the judgments of the august Supreme Court passed in 2016 SCMR 842, 2008 SCMR 308, and 1993 SCMR 29.

14. For what has been discussed above, the Writ Petition is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of March, 2025.

JUDGE

--/Mehboob/--

Approved for Reporting
Blue Slip added.