JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 4118 OF 2026
Amjad Khan
Versus
Deputy Commissioner Islamabad and others

PRESENT: **Mr. Habib Ullah, Advocate alongwith Petitioner**
Syed Ameer Ali Shah, Ch. Zaheer Ahmed and Ch. Zubair Jatria, State Counsels.
Ch. Manzoor Ahmed, Tehsildar, Islamabad.
Mr. Amjad Ali, Deputy District Attorney, ICT.
Usman Rasool Ghumman , Assistant Attorney General

Date of Hearing: 27.08.2026

SHAHRUKH ARJUMAND, J. Through the instant constitutional petition, the petitioner has made the following prayer: -

> **"a. Declare all the impugned actions, orders and proceedings of the respondents either written or verbal including unlawful sealing of the petitioner's property residential House No.06, Street No.154, Sector G-13/4, Islamabad as illegal, arbitrary, without lawful authority, of no legal effect and violation of the fundamental rights guaranteed under the Constitution;**
>
> **b. Direct the respondents to immediately de-seal the aforesaid residential premises and restored to the petitioner and his family members to peaceful possession and use thereof;**
>
> **c. Direct the respondents to immediately return the articles, goods, cash, jewelry, electronic gadgets, laptop, educational certificates of children and documents of vehicles to the petitioner that they have taken from the sealed residential premises;**
>
> **d. Direct the respondents to ensure that the petitioner shall not be dispossessed, evicted or otherwise deprived of the use and enjoyment of the residential property in violation of the interim order dated 12.02.2026 passed by the Honourable Peshawar High Court Peshawar;**

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e. Direct the respondents to provide the petitioner and his family immediate access to their personal belongings, educational documents, academic records, books, laptops and other essential articles lying inside the sealed premises;

f. Direct the respondents to refrain/restrain from harassing, or taking any adverse action against the petitioner and his family members qua the above mentioned residential property.

g. Direct the respondent No.1 to initiate departmental disciplinary and other proceedings against the respondent No.2 and its employees according to law."

2. The facts giving rise to the instant constitutional petition, as set out by the petitioner, are that he claims to be the lawful owner of ancestral land measuring 05 kanals and 02 marlas, comprised in Khata/Khatooni No. 513/590, Khasra Nos. 342/2/6 and 343/1/5, situated in the revenue estate of Village Mauza Bagra, Tehsil and District Haripur. According to the petitioner, with a view to shifting his residence to Islamabad, he entered into an exchange arrangement in January 2023 in respect of the said ancestral property for House No. 06, Street No. 154, Sector G-13/4, Islamabad, on the representation that the house was free from any dispute or encumbrance. At the relevant time, the house stood in the name of Danish Wahab son of Wilayat Khan, stated to be its original owner, who had entered into a sale agreement with Hakeem Khan; thereafter, pursuant to the exchange transaction, the house was transferred in favour of the petitioner, who was also delivered peaceful and vacant physical possession thereof. The petitioner relies upon the sale deed, transfer deed, power of attorney, Certificate of Transfer and letter of transfer of allotment, stated to have been executed on 13.11.2023, in support of his title and possession. He asserts that he thereafter continued to reside in the premises with his family as its lawful owner and remained in peaceful possession thereof until he received, on 28.09.2025, a call-up notice dated 24.09.2025 from the National Accountability Bureau (NAB), requiring him to appear before the Combined Investigation Team-I, Investigation Wing-I, NAB (KP), Peshawar, on 01.10.2025 along with the relevant record, whereupon he came to know of the NAB proceedings concerning one Qaisar Khan. The petitioner states that he appeared before NAB, recorded his statement and explained that

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Qaisar Khan had transferred the house to him against exchange of the aforesaid ancestral land; according to him, the Investigating Officer acknowledged his ownership of the property and assured him that his rights therein would be protected. Subsequently, the petitioner came to know that his property had been frozen pursuant to proceedings before the NAB authorities and the Accountability Court and, being aggrieved, instituted W.P. No. 5197/2025 before this Court seeking, inter alia, setting aside of the orders dated 05.11.2025 and 12.11.2025, de-freezing of the property and suspension of the proceedings relating thereto. On 11.12.2025, this Court, while considering the said petition and the accompanying C.M. No. 1/2025, directed, inter alia, that the petitioner should not be dispossessed from the property, namely House No. 06, Street No. 154, Sector G-13, Islamabad, until the next date of hearing. The petition, however, came to be dismissed on 26.01.2026 for want of jurisdiction, the Court observing that the impugned orders dated 05.11.2025 and 12.11.2025 had been passed by the concerned NAB authorities and Accountability Court at Peshawar. The petitioner thereafter approached the Peshawar High Court through W.P. No. 10462-P/2025, accompanied by I.R. C.M. No. 536/2025, which, vide order dated 02.07.2026, was converted into an objection petition under Section 13 of the NAB Ordinance against the order dated 12.11.2025 passed by Accountability Court-III, Peshawar, and the record was directed to be transmitted to the said Court. During the pendency of the objection petition, the petitioner states that he proceeded to his native village during the summer vacation of his children and, in his absence, on 29.07.2026, the Magistrate, Humak, Islamabad, allegedly broke open the locks of the main gate of the aforesaid house, replaced them with other locks and sealed the premises without prior notice to the petitioner or, according to him, any court or sealing order having been furnished to him. The petitioner further states that, at the time of sealing, various household articles and valuables were lying inside the premises, including furniture, electronic equipment, approximately 10 tolas of gold ornaments, cash amounting to Rs.550,000/-, two vehicles, namely Suzuki Alto and Khyber, original documents, the educational certificates of his children, a laptop and other valuable articles. According to the petitioner, on 17.08.2026, his neighbour informed him that the entrance locks of the property had been opened and a window was also found open; he consequently alleges that, notwithstanding the sealing of the premises, employees associated with the office of the Magistrate

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had repeatedly visited the house, opened its locks and remained there without lawful authority, resulting, according to him, in the removal or misappropriation of various valuables kept inside the premises. The petitioner states that he brought the matter to the notice of the SHO, Police Station Sumbal, Islamabad, who allegedly recorded a video of the condition of the premises and contacted the concerned authorities, whereafter an employee, namely Bilal, was sent to the site but, according to the petitioner, failed to ensure proper locking and security of the premises. The petitioner thereafter submitted an application to the concerned respondent, alleging negligence, misconduct, misuse and abuse of official authority in relation to the safeguarding of the property and the articles lying therein, but asserts that no effective action was taken thereon. Meanwhile, on 04.08.2026, the petitioner instituted W.P. No. 11857-P/2026 before the Peshawar High Court against NAB and other respondents, wherein, according to him, despite the appearance of NAB, no sealing order was produced before the Court nor was the Court apprised of any judicial order authorizing the sealing of the property at Islamabad. The said petition was disposed of on 13.08.2026, with the Peshawar High Court observing that the sealing had been carried out by the Magistrate on the directions of NAB, but that there was no material on record establishing that any order had in fact been passed by a Court within that jurisdiction authorizing the sealing of the premises, and the petitioner was accordingly left to approach the appropriate forum at Islamabad. The petitioner, maintaining that he has no connection with or liability in respect of the NAB proceedings against Qaisar Khan and that the property in question was acquired by him through a bona fide exchange of his ancestral land, has accordingly called in question the freezing and subsequent sealing of the property, as well as the acts and omissions attributed by him to the respondents in relation thereto, and seeks appropriate constitutional relief, including de-sealing of the premises and protection of his asserted proprietary and possessory rights therein.

3. Learned counsel for the petitioner, while assailing the impugned actions of the respondents, contended that the freezing and sealing of the petitioner's property, and the consequential deprivation of his possession and use thereof, were wholly without lawful authority, jurisdiction or legal justification and amounted to an arbitrary, mala fide, disproportionate and colourable exercise of power, in

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violation of Articles 4, 9, 10-A, 14 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. It was argued that the petitioner, being a bona fide purchaser and lawful owner, could not be subjected to adverse consequences arising from any alleged wrongdoing attributable to another person, particularly in the absence of any allegation or material establishing his knowledge, participation, connivance or nexus with the alleged unlawful acquisition or source of the property. Learned counsel further submitted that the respondents had failed to identify any lawful provision authorizing the impugned deprivation or to demonstrate compliance with the requirements of due process, notice and lawful procedure, and that the impugned action, therefore, constituted an impermissible interference with the petitioner's proprietary, possessory, residential, privacy and dignity rights. It was contended that the respondents were bound to exercise their statutory powers strictly within the confines of law and could not, under the guise of proceedings against another person, extend the consequences thereof to an innocent third party without first establishing the requisite legal basis and nexus. Learned counsel also alleged that the officials concerned had failed in their legal duty to safeguard the property and its contents and that valuable articles belonging to the petitioner had been removed or misappropriated, warranting appropriate legal action. It was lastly argued that the impugned actions were founded upon conjectures and surmises rather than lawful material, that the respondents had failed to properly appreciate the petitioner's asserted title and independent legal status, and that the petitioner could not, in law, be made to suffer for any alleged wrongdoing of another; consequently, the impugned actions and orders, being contrary to law, facts and constitutional guarantees, were liable to be declared without lawful authority and set aside.

4. Learned counsel for the respondents, while opposing the petition, raised a preliminary objection to its maintainability, contending that the petitioner had already invoked the statutory remedy available under Section 13 of the National Accountability Ordinance, 1999 in respect of the very property and dispute in question and that the said proceedings, having been converted from W.P. No. 10462-P/2025 and transmitted to the learned Accountability Court-III, Peshawar, were still pending; consequently, the petitioner could not simultaneously invoke the extraordinary constitutional jurisdiction of this Court for substantially the same grievance or seek parallel relief from different forums. It was argued that the

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principal controversy concerning the freezing/attachment of the property emanated from the proceedings initiated by NAB (KP) and the orders passed by the competent authorities at Peshawar, whereas the sealing of the property at Islamabad was merely consequential thereto, rendering the Accountability Court seized of the matter the appropriate forum to determine all questions relating to the status and treatment of the property. Learned counsel further contended that the petitioner was estopped by his own conduct from maintaining the present proceedings, having approbated and reprobated before different forums, and that the petition was liable to be dismissed as an abuse of the process of law, particularly as the petitioner had allegedly failed to make a full and candid disclosure of the pending statutory proceedings and had approached this Court without clean hands. It was also urged that the petition suffered from misjoinder and non-joinder of necessary parties, particularly NAB (KP), whose proceedings and interests would directly be affected by any order concerning the de-sealing or status of the property. On the merits, learned counsel submitted that the property had been frozen in exercise of powers under Section 12 of the National Accountability Ordinance, 1999, on account of its alleged connection with the investigation/proceedings against Qaisar Khan and that the petitioner's assertion of bona fide ownership or purchase was itself a disputed question pending adjudication before the competent Accountability Court. Learned counsel emphatically denied the allegations of theft, misappropriation or removal of gold, cash, vehicles, electronic equipment or other articles from the premises, characterizing such allegations as unsubstantiated and disputed questions of fact requiring evidence, examination of witnesses, documentary material and, where necessary, forensic inquiry, matters which, according to learned counsel, could not appropriately be adjudicated in the summary jurisdiction of this Court under Article 199 of the Constitution. It was further submitted that, prior to the freezing of the property, an inventory of the articles therein had been prepared in the presence of a representative of NAB (KP) and a police official of Police Station Sumbal, thereby contradicting the allegation that the property or its contents had been left unsecured or unaccounted for. It was lastly contended that the petition is false, frivolous and motivated by ulterior considerations, that the petitioner had failed to establish any violation of his fundamental rights or any exercise of authority in excess of jurisdiction, and that, in view of the availability and

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pendency of the statutory remedy, the disputed nature of the allegations and the alleged non-joinder and suppression of material facts, the constitutional petition was liable to be dismissed.

5. Arguments I have heard, while record also perused.

6. The first question requiring determination is whether, notwithstanding the fact that the property in dispute is situated in Islamabad, territorial jurisdiction in relation to the impugned proceedings is to be determined solely with reference to the situs of the property, or whether the matter is governed by the special jurisdictional regime prescribed under the National Accountability Ordinance, 1999. The issue assumes significance because proceedings concerning the property were initiated by NAB and the reference/proceedings are pending before the learned Accountability Court at Peshawar. It therefore becomes necessary to examine the relevant provisions of the NAO in light of authoritative pronouncements of the Superior Courts, particularly those governing the institution and trial of references, and to determine whether the Chairman NAB possesses statutory discretion to institute a reference before the competent Accountability Court in a particular territorial jurisdiction or otherwise.

Scope and effect of Section 16(e) of the National Accountability Ordinance, 1999

7. The starting point of the analysis is Section 16 of the Ordinance, which is a special provision dealing specifically with the case management and trial of offences falling within the ambit of the accountability regime. Before diving in the detailed analysis of the NAB statutory scheme, for the sake of reference, the Section 16 of the Ordinance is reproduced as under: -

> **"16. Case management and trial of offences. (a) Notwithstanding anything contained in any other law for the time being in force, an accused shall be prosecuted for an offence under this Ordinance in the Court established under this Ordinance and the case shall be disposed of within one year.**
>
> **(b) The Court shall sit at such place or places as the Federal Government may, by order, specify in this behalf.**

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(c) Where more Courts than one have been established at a place, the Chief Justice of the High Court of the Province concerned shall designate a Judge of any such Court to be an administrative Judge and a case triable under this Ordinance shall be filed before the Court of the Administrative Judge who may either try the case himself or, assign it for trial by any other court established at that place at any time prior to the framing of the charge.

(d) In respect of a case assigned to a Court under sub-section (c), all orders made or proceedings taken before the assignment shall be deemed to have been made or taken by the Court to which the case has been assigned.

(e) Notwithstanding anything contained in this section, if in respect of any case relating to an offence triable under this Ordinance, the Chairman NAB, having regard to the facts and circumstances of the case may file a reference before any Court established anywhere in Pakistan, and such Court shall have the jurisdiction to try the same."

8. The provision is not couched in uncertain, qualified or restrictive terms. Rather, it provides in express and unequivocal language that, notwithstanding anything contained in Section 16, where a case relates to an offence triable under the Ordinance, the Chairman NAB, having regard to the facts and circumstances of the case, may file a reference before any Court established anywhere in Pakistan, and such Court shall have the jurisdiction to try the same. The provision, therefore, contains two distinct but interrelated components: first, it confers upon the Chairman NAB a statutory discretion concerning the forum before which a reference may be instituted; and secondly, it expressly attaches jurisdiction to the Court before which such reference is filed in accordance with the statutory discretion. Both components are required to be given full meaning and effect, for the Court is not at liberty to disregard any part of the legislative command or to substitute a limitation which the legislature itself has not enacted.

9. The expression "notwithstanding anything contained in this section" constitutes the first important indicator of legislative intent. It is a non obstante clause employed to give the succeeding provision overriding effect over the other provisions contained in Section 16. Subsections (a) to (d) principally establish the

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ordinary institutional and procedural arrangement governing Accountability Courts: prosecution before a Court established under the Ordinance, the place at which such Court shall sit, the designation of an Administrative Judge where more than one Court exists at a particular place, and the consequences of assignment of a case from one Court to another. Clause (e), however, deliberately begins by declaring that its operation shall prevail notwithstanding anything contained in the preceding provisions of the section. The legislative choice is therefore significant: while the earlier clauses establish the ordinary framework, clause (e) creates a specific and overriding rule for the selection of the forum in an appropriate accountability case. It would defeat the very purpose of the non obstante expression if clause (e) were interpreted as merely repeating the ordinary territorial arrangement contained in the preceding clauses *(overriding of Special law upon general law shall be discussed at a later stage in this judgment).*

10. The second expression of decisive significance is "having regard to the facts and circumstances of the case". This entrusted the Chairman NAB with discretion to determine the appropriate forum after taking into consideration the circumstances attending the particular case. The discretion is neither unstructured nor arbitrary; it is statutorily anchored to the facts and circumstances of the case. The phrase necessarily imports an obligation to apply mind to the peculiar features of the matter before exercising the statutory power. It may encompass, depending upon the nature of the case, the place where material transactions occurred, the location of relevant records and evidence, the persons involved, the public authority or public funds affected, the convenience and effectiveness of investigation and prosecution, the number and location of accused persons and witnesses, the relationship between different transactions forming part of one investigation, and other circumstances which may legitimately bear upon the efficacious prosecution of an accountability offence. What is important for present purposes is that the legislature did not make the situs of the alleged offence the sole statutory criterion for determining the forum. Had that been the legislative intention, it could readily have employed language expressly confining the filing of a reference to the Court within whose territorial jurisdiction the offence was committed. Instead, the legislature adopted the broader formulation that the Chairman NAB, having regard to the facts and circumstances of the case, may file

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the reference before "any Court established anywhere in Pakistan." The breadth of the phrase "any Court established anywhere in Pakistan" cannot be overlooked or reduced to surplusage. The ordinary meaning of "any" is expansive, and the words "any Court established anywhere in Pakistan" manifest a legislative choice to avoid restricting the Chairman NAB to the territorial limits of the place where the alleged offence, transaction, accused or property may be situated. The expression is nationwide in its geographical reach. It does not say "any Court within the territorial jurisdiction where the offence was committed"; nor does it say "any Court within the Province concerned"; nor does it require that the Court selected by the Chairman NAB should have an otherwise existing territorial nexus with the alleged offence. The only statutory qualification is that the Court must be a Court established under the Ordinance and that the Chairman must exercise his discretion having regard to the facts and circumstances of the case. Once these statutory conditions are fulfilled, the provision itself declares that the Court before which the reference is filed "shall have the jurisdiction to try the same." In the present case, the relevance of the expression "facts and circumstances of the case" is further reinforced by the very nature and genesis of the underlying accountability proceedings. The reference arises out of the alleged Kohistan scandal, the foundational allegations and alleged financial irregularities being rooted in Khyber Pakhtunkhwa. Thus, even when the matter is examined from the standpoint of the geographical nexus of the alleged occurrence and the circumstances giving rise to the accountability proceedings, there exists a substantial and direct connection with Khyber Pakhtunkhwa. The place where the alleged underlying events occurred, the origin of the allegations, the investigative material and the proceedings arising therefrom constitute circumstances which were legitimately capable of being taken into account by the Chairman NAB while determining the appropriate forum under Section 16(e). The fact that a particular asset subsequently came to be situated in Islamabad does not displace or diminish that nexus. On the contrary, the circumstances attending the underlying case, viewed as a whole, furnish a rational and legally cognizable basis for the institution and continuation of the reference before the competent Accountability Court at Peshawar.

11. The concluding words of clause (e) are equally significant. The legislature has not merely authorized the Chairman NAB to present or lodge a reference

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before a Court situated elsewhere; it has gone further and expressly provided that "such Court shall have the jurisdiction to try the same." The word "shall" ordinarily carries a mandatory character, and, in the context in which it has been employed, it leaves little room for treating the jurisdiction of the selected Court as merely provisional, contingent or subject to the general territorial rules applicable to ordinary criminal proceedings. The statutory consequence of a reference validly filed under clause (e) is therefore expressly stated by the legislature itself: the Court before which the reference is filed acquires jurisdiction to try that reference. This interpretation is further reinforced by the relationship between Section 16(e) and Section 18 of the Ordinance. Section 18 regulates the taking of cognizance by an Accountability Court and establishes the reference as the statutory mechanism through which the accountability jurisdiction of the Court is invoked. The two provisions must therefore be read harmoniously. Section 16(e) determines the permissible forum in which the reference may be instituted, while Section 18 regulates the assumption of cognizance upon such reference. The statutory scheme consequently does not contemplate that, after the Chairman NAB has exercised the discretion expressly conferred by Section 16(e) and the reference has been filed before a Court falling within the statutory description, the jurisdiction of that Court may nevertheless be defeated merely by invoking a general principle of territoriality which the special provision itself has displaced. This becomes particularly important in cases involving recovery, tracing, freezing or attachment of assets. The place where an asset is eventually located is not necessarily the place where the underlying corruption or corrupt practice occurred. An accountability investigation may originate from an offence committed in one part of the country, while the proceeds, investments, properties, bank accounts, securities or other assets connected with that offence may subsequently be found in several different jurisdictions. If the location of every such asset were treated as independently determinative of the territorial jurisdiction of the Accountability Court, a single reference could become subject to multiple and potentially conflicting jurisdictions. Section 16(e), by expressly permitting the Chairman NAB to select Accountability Court anywhere in Pakistan and by declaring that the selected Court shall possess jurisdiction to try the reference, provides a statutory answer to precisely such a problem.

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12. The legislative history of Section 16 further strengthens this interpretation. The provision quoted before me was introduced through the National Accountability (Amendment) Act, 2022, which expressly substituted Section 16 and retained, in subsection (e), the formulation empowering the Chairman NAB, having regard to the facts and circumstances of the case, to file a reference before any Court established anywhere in Pakistan, with jurisdiction thereby vesting in such Court. The Gazette of Pakistan dated 22 June 2022 records the substitution of Section 16 and reproduces the very language presently under consideration. The significance of this legislative history is that the nationwide forum-selection power was not merely an accidental survival from an obsolete statutory text; rather, the legislature, while substituting the entire provision, consciously retained the substance of the power in clause (e).

13. The judicial interpretation and application of this statutory provision by the superior Courts provide further guidance on the scope and effect of the jurisdictional framework embodied in Section 16 of the Ordinance. The superior Courts have consistently recognized that, once a NAB reference is filed before an Accountability Court and cognizance is taken, the proceedings fall within the exclusive domain of that Court. The constitutional jurisdiction of a High Court must, therefore, be examined with reference to the territorial jurisdiction of the Court seized of the reference, rather than merely the location of an asset connected with the proceedings. In PLD 2015 Sindh 1[Re. Aqeel Kareem Dhedhi Vs. Chairman NAB and 3 Others], it was held: -

> **"Muhammad Ashraf (supra), decided by honourable Supreme Court by order dated 13-11-2013, wherein the facts of the case are that the petitioner was facing trial under National Accountability Ordinance 1999 before the Accountability Court No.1 Lahore. He filed Constitution Petition before the Islamabad High Court, impleading the National Accountability Bureau, the Special Judge Accountability Court No.1, Lahore, The Special Prosecutor General, NAB and others, praying, inter alia,. that the Court be directed to dismiss the prosecution case against the petitioner. The High Court dismissed the writ petition, while holding that the matter falls within the territorial jurisdiction of the Lahore High Court where the petitioner is facing trial. Thus the petitioner preferred leave to appeal against such**

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judgment of the Islamabad High Court and Hon'ble apex Court while deciding such petition observed as under:--

> **"The Contention of the learned counsel has no merits. We will refrain from dilating upon the decision of this Court in Criminal Appeals Nos.140 of 2005 etc. as the High Court had not touched upon the same but dismissed the petitioner's constitution petition for want of territorial jurisdiction. We tend to agree with the High Court. Once the Chairman of the National Accountability Bureau had filed the Reference and cognizance was taken thereof by the Accountability Court the case there-after falls within the exclusive domain of the Court. The prayer for direction to the Chairman National Accountability Bureau and the Prosecutors could thus not be granted as the case is now under trial before the Accountability Court. The said court falls within the territorial jurisdiction of the Lahore High Court. The High Court under Article 199 of the Constitution can take cognizance of all matters that falls within its territorial iurisdiction and not bevond it The Islamabad High Court rightly declined to exercise jurisdiction in the matter. The petition, is therefore, dismissed and leave declined."**

14. While concluding the above case, the Court held that the jurisdiction of a High Court of a Province, in relation to proceedings under the Ordinance, is confined to the Accountability Courts situated within its territorial jurisdiction and does not extend to Courts established beyond it. This conclusion was reinforced by Section 32(a), which expressly provides that an appeal against the final judgment of an Accountability Court lies before the High Court of the Province where that Court is situated; any contrary interpretation would defeat the statutory scheme governing the administrative and appellate jurisdiction of the High Courts under the Ordinance. The Court held that: -

> **"It is patent that the provisions without any ambiguity confines the jurisdiction of High Court of a Province to the 'Courts' established within its jurisdiction and not beyond that. This legal position stands further clear from subsection (a) of section 32 of the Ordinance which specifies that:**

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(a) Any person convicted or the Prosecutor General Accountability, if so directed by (the Chairman) NAB) aggrieved by the final judgment and order of the Court under this Ordinance may within ten days of the final judgment and order of the Court prefer an Appeal to the High Court of the Province where the court is situated)

19. In view of above legal position, if the plea of the petitioner is sustained that this Court can competently quash the proceeding of reference, pending before the Court at Islamabad it shall mean to frustrate the very meaning, purpose and object of the above provision (s) of the Ordinance which limits the administrative or appellate jurisdiction of a High Court of a Province for Courts, established within its jurisdiction only. This view stood stamped by honourable Supreme Court in above referred unreported Judgment.

20. Accordingly, we find that petition, in hand, is not maintainable on the point of jurisdiction and same is dismissed in limine."

15. The existence of Section 16-A does not detract from this conclusion. On the contrary, the transfer mechanism contained therein complements Section 16(e). Section 16(e) addresses the initial selection of the forum by the Chairman NAB, whereas Section 16-A provides a statutory mechanism for transferring cases in circumstances contemplated by the Ordinance. The existence of a transfer mechanism presupposes that a case may validly commence before an Accountability Court having jurisdiction under the Ordinance and that its movement thereafter must take place through the statutory mechanism. It would be incongruous to read Section 16-A as impliedly nullifying the express jurisdiction conferred by Section 16(e), when both provisions form part of the same special statutory scheme. Nor can the ordinary rules governing territorial jurisdiction under general criminal law be employed to defeat the express command of Section 16(e). The principle that a criminal offence is ordinarily tried where it is committed is a rule of general application. Section 16(e), however, is a special statutory provision enacted specifically for offences falling within the accountability regime and contains an express departure from that general rule. The settled interpretative principle that a special provision prevails over a general provision therefore becomes relevant. The maxim *generalia specialibus non derogant* is not being

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invoked to create jurisdiction where none exists; rather, it is being applied to give effect to a jurisdiction which the legislature has expressly created through the special enactment.

16. The constitutional dimension also merits consideration. The conferment of forum-selection authority upon the Chairman NAB does not mean that such discretion is beyond legal scrutiny. The power must be exercised bona fide, for the purposes contemplated by the Ordinance, and having regard to the facts and circumstances of the case. An exercise of statutory discretion motivated by extraneous considerations, mala fides, discrimination or an abuse of authority may undoubtedly invite judicial review on an appropriate factual and legal foundation. What, however, cannot be done is to convert the existence of discretion into an absence of jurisdiction. The statute itself determines the legal consequence of a valid exercise of that discretion: the Court selected in accordance with Section 16(e) shall have jurisdiction to try the case. The provision must also be understood in light of the nature and purpose of the National Accountability Ordinance. Accountability proceedings frequently involve complex financial transactions extending across provincial and territorial boundaries, multiple accused persons, public funds, corporate structures, immovable properties, banking transactions and documentary evidence dispersed across different parts of the country. A rigid requirement that every constituent act or every connected asset must be litigated exclusively at its individual physical location could fragment a single investigation into multiple proceedings before different Courts. Such fragmentation would not only burden the administration of justice but could also produce inconsistent findings concerning the same factual matrix. The legislative conferral of a nationwide forum-selection power upon the Chairman NAB, subject to consideration of the facts and circumstances of the case, can therefore be understood as an instrument designed to preserve coherence, efficiency and effectiveness in the prosecution of complex accountability cases.

17. The foregoing interpretation also finds persuasive support in comparative jurisprudence. In *Rana Ayyub v. Directorate of Enforcement through its Assistant Director*, 2023 SCC OnLine SC 109, the Supreme Court of India was confronted with a question concerning the territorial jurisdiction of a Special Court constituted under the Prevention of Money Laundering Act, 2002 (PMLA), in circumstances

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where the relevant events and assets were spread across different territorial jurisdictions. The petitioner had initiated three crowdfunding campaigns during the COVID-19 pandemic through an online platform, Ketto, whereupon the Mumbai Zonal Office of the Enforcement Directorate initiated an investigation against her on 03.08.2021. Meanwhile, a private complaint was lodged at Ghaziabad on 07.09.2021 and registered as an FIR, on the basis of which the Delhi office of the Enforcement Directorate registered proceedings against the petitioner under the PMLA before the Special Judge at Ghaziabad. During the pendency of the investigation being conducted by the Mumbai Zonal Office, a bank account of the petitioner maintained at Navi Mumbai was attached under the provisions of the PMLA, and subsequently, on 29.11.2022, the Special Court issued summons requiring her appearance on 13.12.2022. The petitioner challenged the jurisdiction of the Special Court, contending that, in view of Section 44 of the PMLA, the case ought to have been dealt with by the court having territorial jurisdiction over the place where the offence was committed and that, since the attached bank account was situated at Navi Mumbai and no part of the alleged offence had been committed within the jurisdiction of the Special Court, the proceedings were without territorial competence. The Enforcement Directorate, on the other hand, contended that the court which had taken cognizance of the scheduled offence was competent to take cognizance of the proceedings under the PMLA. Upon examination of Sections 43 and 44 of the PMLA, the Supreme Court identified the distinction between cases where the scheduled offence and the offence of money laundering were committed within the jurisdiction of the same court and cases where they were committed within the jurisdiction of different courts, and observed that the statutory scheme of Section 44 required the scheduled offence to follow the offence of money laundering for purposes of territorial jurisdiction, rather than the converse. The Court further held that although the general provisions of the Code of Criminal Procedure ordinarily govern territorial jurisdiction, those provisions must yield where the special statute makes a specific provision regulating the jurisdiction of the court. While considering the territorial competence of the Special Court, the Supreme Court noted that criminal jurisdiction may, depending upon the nature of the offence, be attracted by various connecting factors, including the place where the offence is committed, the place where its consequences are felt, the location of the accused or victim, and the

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location of property connected with the offence. However, in the context of the PMLA, the Court emphasized that the mere existence or attachment of a bank account at Navi Mumbai could not, by itself, conclusively determine the place of commission of the offence, particularly where the statutory ingredients of money laundering included acts such as concealing, possessing, acquiring, using, projecting or claiming proceeds of crime as untainted, which might occur at different places. The Court was further persuaded by the fact that the transactions had been conducted through an online platform and that the questions concerning possession, acquisition and use of the alleged proceeds involved factual matters requiring determination by the Special Court seized of the proceedings and could not appropriately be resolved summarily in collateral proceedings. The petition was consequently dismissed, leaving the petitioner at liberty to raise her jurisdictional objections before the Special Judge. The ratio is of persuasive relevance to the controversy before this Court insofar as it demonstrates that, in the context of complex financial offences governed by a special statutory regime, the physical location of a particular asset or account cannot, in isolation, be treated as the sole or determinative basis for conferring territorial jurisdiction, where the statutory scheme connects the adjudication of the asset with the broader offence and proceedings of which it forms part.

18. Applying the foregoing principles to the facts at hand, the freezing of the property, the alleged sealing thereof, and every consequential question touching its status are inextricably bound up with the reference/proceedings pending before the Accountability Court at Peshawar, itself seized of the matter pursuant to a reference instituted, on the record before us, in the exercise of the Chairman NAB's discretion under Section 16(e). The sealing carried out at Islamabad was not an independent, free-standing executive act divorced from those proceedings; it was, on the petitioner's own pleadings and on the findings recorded by the learned Peshawar High Court in W.P. No. 11857-P/2026, an act undertaken at the instance and on the directions of NAB in aid of the very reference pending before the Accountability Court at Peshawar. It would be a plain non sequitur to hold that this Court, lacking supervisory jurisdiction over that reference and over the Accountability Court seized of it, may nonetheless assume jurisdiction over an act performed in aid of that reference merely because the act was physically performed

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within this Court's territorial limits. The petitioner's remedy — including his grievance regarding the propriety, manner, and consequences of the sealing, as well as his assertion of bona fide title through the exchange transaction — falls squarely for determination before the forum already seized of the substantive controversy, namely the Accountability Court at Peshawar, subject to the supervisory and appellate jurisdiction of the Peshawar High Court, and not before this Court.

Whether the special statutory scheme under the NAO, 1999 prevails over the general principles governing territorial jurisdiction?

19. The next question, therefore, is whether the ordinary rules relating to territorial jurisdiction, including those ordinarily applicable to disputes concerning immovable property, can govern a matter which is specifically regulated by the Ordinance. The answer, with respect, must be sought from the statutory scheme of the Ordinance itself. It is a settled principle of statutory construction that a special law, enacted to regulate a particular subject in a comprehensive or specialized manner, prevails over a general law to the extent of inconsistency, expressed in the maxim *lex specialis derogat legi generali*. The principle does not mean that general law becomes wholly irrelevant; rather, it means that where the legislature has consciously enacted a special rule addressing the precise subject-matter in question, the Court is required to give effect to that special rule instead of importing a general rule which would qualify, restrict or defeat the legislative scheme. The NAO, 1999 is manifestly a special enactment. It establishes a distinct institutional and procedural framework for the investigation, prosecution and adjudication of offences relating to corruption and corrupt practices, creates specialized Accountability Courts, prescribes the manner in which cognizance is assumed, regulates the filing and trial of references, provides specific mechanisms for freezing and attachment of property, creates an exclusive statutory forum for objections to freezing orders, and provides a defined appellate structure. The question of jurisdiction must consequently be approached from within that statutory architecture rather than by commencing the inquiry with general principles applicable to ordinary civil litigation or ordinary criminal proceedings. This conclusion is reinforced by the language of Section 17 of the NAO, which provides that, notwithstanding anything contained in any other law for the time

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being in force, the provisions of the Code of Criminal Procedure, 1898 shall, *mutatis mutandis*, apply to proceedings under the Ordinance only insofar as there is nothing inconsistent with the provisions of the Ordinance. The qualification is of considerable legal significance. Parliament did not incorporate the general criminal procedural law into the accountability regime without qualification; instead, it made its application expressly subordinate to the special provisions of the NAO. Thus, where the Ordinance itself makes a specific provision concerning the manner in which an accountability proceeding is instituted, the Court before which it is to be tried, the treatment of property connected with the offence, the forum for objections against freezing, or the appellate jurisdiction arising from such proceedings, the general procedural law cannot be invoked to override that specific statutory arrangement. In *Ahsan Ali Dawach v. The State through Chairman NAB*, 2025 SCMR 1041, the Supreme Court examined precisely this relationship between the NAO and the general procedural law and emphasized that Section 17 makes the Cr.P.C. applicable *mutatis mutandis* only in the absence of inconsistency with the Ordinance. The Hon'ble Court held that: -

> **"15. A close reading of the exactitudes of Section 17 of the NAO 1999 articulates that notwithstanding anything contained in any other law for the time being in force, unless there is anything inconsistent with the provisions of this Ordinance, the provisions of Cr.P.C. shall, mutatis mutandis, apply to the proceedings under this Ordinance and Chapter XXIIA of the Cr.P.C. (Trials before High Courts and Courts of Session) shall apply to trials under this Ordinance. At the same time, it distinctly avers under Section 18 that the Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him. Sure enough, the aphorism "special laws" is meant to refer to laws regulating specific subjects and stipulating their own limitations and conditions to be applied. At the nine time, it is also a well-known interpretation of law that special law prevails and dominates over a general law. However, while resolving the issue by the Courts on whether a statute is a special or general law, the crucial consideration must be the legislative intent."**

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20. Section 12 deals specifically with the freezing of property connected with an offence under the Ordinance; Section 13 provides the specific remedy and forum for challenging such freezing; Section 16 regulates the case management and trial of offences and, in the relevant statutory formulation, expressly addresses the forum before which a reference may be filed; Section 17 determines the limited and conditional applicability of the general criminal procedural law; and Section 18 makes a reference by the Chairman NAB or an officer duly authorized by him the statutory basis upon which an Accountability Court assumes cognizance. These provisions cannot reasonably be read in isolation. They constitute a special statutory chain in which the investigation, reference, cognizance, trial and treatment of property are interconnected components of one accountability process. The significance of Section 13 is particularly important to the present controversy. The legislature did not leave a person aggrieved by the freezing of property to pursue an unrestricted choice of remedies before any forum which might otherwise possess general constitutional or territorial jurisdiction. Instead, it expressly provided that the Court shall have exclusive jurisdiction to entertain and adjudicate claims or objections against the freezing of property under Section 12, and further provided an appellate remedy against the order of that Court before the High Court. The Supreme Court has recently recognized this statutory arrangement in express terms. Once the legislature has identified the forum competent to determine the legality, propriety and effect of a freezing order, the general location of the property cannot, by itself, be permitted to create a parallel adjudicatory route which bypasses the forum selected by the statute.

21. The petitioner seeks to approach the jurisdictional question primarily from the standpoint that the immovable property is situated in Islamabad. That approach, with respect, begins with the consequence rather than the statutory source of the power. The relevant property is not the subject of an ordinary title dispute, nor is the present controversy one arising independently out of a conventional civil claim concerning possession of immovable property. The property has allegedly become connected with proceedings under the NAO by reason of its alleged nexus with the underlying accountability offence. Its freezing or consequential securing is therefore an act undertaken within, and because of, the special accountability regime. The legal question is consequently not merely where is the property

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situated? but rather under what statutory authority has the property been frozen or secured, in connection with which proceedings, and which forum has the Ordinance designated to examine objections arising from that action? The answer to those questions leads back to the Accountability Court seized of the reference. The physical situs of the property may undoubtedly be relevant for purposes of implementing a freezing order—for example, Section 12 itself contemplates particular modes of freezing immovable property and refers, in the case of land paying revenue, to the Collector of the district in which the land is situated. But the fact that implementation may occur in one territorial locality does not necessarily transfer the adjudicatory jurisdiction over the underlying accountability proceedings to the Court of that locality. There is a fundamental distinction between the place where a statutory order is executed and the forum which possesses jurisdiction to adjudicate the legality and consequences of that order. To conflate the two would risk transforming every consequential act concerning property into an independent proceeding, notwithstanding that the property forms part of a larger reference already pending before a specialized Accountability Court.

20. There is an additional and equally important dimension. Article 175(2) of the Constitution itself recognizes that no Court shall have jurisdiction save as is or may be conferred upon it by the Constitution or by or under law. Thus, jurisdiction cannot be created merely because a particular subject-matter happens to be physically located within the territorial limits of a Court. There must be a legal source conferring the relevant jurisdiction. In case Dr. Fowzia Siddiqui Vs. Federation of Pakistan, etc., the Larger Bench of this Court in detailed analyzed the word "jurisdiction" in pursuance of Article 175(2). The operative part is reproduced as under: -

> **"7. Article 175(2) articulates the foundational rule that no court may exercise any jurisdiction except such as is conferred by the Constitution or by or under law. This clause cannot be interpreted through a narrow or literal lens. Its true import becomes evident when its language is effectively inverted: "a court possesses only such jurisdiction as the Constitution or law affirmatively confers". This principle governs not only the allocation of subject-matter jurisdiction**

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among various courts, but also the internal distribution and activation of jurisdiction within a particular court. Judicial authority within the High Court, therefore, does not attach to a Judge as an individual. It attaches to the institution itself and becomes exercisable only when the Judge sits as part of a Bench that has been validly constituted in accordance with law.

8. Article 175(2) imposes an absolute constitutional limitation: no court and no Judge may exercise judicial authority unless the law has unmistakably vested that jurisdiction in the forum that purports to act. Jurisdiction cannot be presumed, inferred from convenience, or assumed at will; it must exist as a matter of legal conferment. Where a Bench has not been lawfully conferred jurisdiction through the procedure prescribed by the Constitution and the relevant statutes, it cannot be regarded as a valid forum for the exercise of judicial power. Such a Bench exists outside the constitutional scheme governing the administration of justice. Consequently, any act on its part, whether to assemble, take up cases, hear parties, or pass orders, amounts to an assumption of authority that the Constitution does not permit. Acts performed in the absence of lawful jurisdiction are not curable defects or mere procedural irregularities; rather, they strike at the root of the matter. Any orders so passed have no legal force or effect, as they originate from a body that never acquired lawful seisin of the case and, therefore, lacked the competence to adjudicate upon it in the first place.

9. Before moving forward, we understand that it is necessary to examine the word "Jurisdiction" used in article 175(2).

10. "Jurisdiction" is one of the most fundamental concepts in judicial power and legal adjudication. In its classical sense, jurisdiction refers to a court's or judicial forum's authority to hear, entertain, and decide a case. It is not an abstract or moral quality; it is a legal condition precedent to the validity of any judicial act. At this juncture, it becomes necessary to state with precision what the law means when it refers to "jurisdiction" and to distinguish it from the broader and more abstract notion of "judicial power." Although the Constitution establishes the judicial organs of the State, its function extends far

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beyond their mere creation. The Constitution and the laws validly made under it may prescribe the categories of matters upon which the judicial power may be exercised; the manner, form, and stages of its exercise; the territorial limits within which a Court shall function and to which its writs shall run; and the persons or classes of persons over whom the Court's adjudicatory authority shall extend. It may confer appellate, revisional, or original jurisdiction, or restrict a particular Court to a narrow field such as cassation, constitutional adjudication, or administrative review.

11. These structural prescriptions collectively constitute what, in legal parlance, is termed the jurisdiction of a Court. Jurisdiction is not an abstract idea; it is a juridical configuration that defines the precise subject-matter, the geographical sphere, the persons, and the procedural modes in respect of which a Court is authorized to exercise the judicial power vested in it. It is therefore the legal authority of a Court to entertain, hear, and determine a given lis; and it also embodies the conditions under which that authority may be invoked and the manner in which it may be exercised.

12. Judicial power, by contrast, denotes the inherent authority of the judicial branch as one of the coordinate organs of the State, the power to ascertain facts, interpret law, apply legal norms, resolve disputes, and render binding judgments. But this judicial power, however expansive in the abstract, cannot be exercised in the absence of jurisdiction. Jurisdiction is the operational gateway through which judicial power passes before it may be exerted in any concrete case. It is thus jurisdiction, not the mere existence of judicial power that transforms a Judge or a Bench from a constitutional office-holder into a legally empowered adjudicatory forum in a particular matter.

13. In doctrinal terms, then, jurisdiction is the right and authority to adjudicate a specific subject-matter in a particular case, as well as the authority to deploy the judicial power of the State in the mode and manner prescribed by law. Without jurisdiction, judicial power remains dormant and cannot be validly invoked. Any act undertaken without jurisdiction, regardless of the qualifications of the Judge or the

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> **apparent justice of the outcome, is a legal nullity, a decision rendered *coram non judice*."**

22. The Ordinance constitutes that source for accountability proceedings and, through its interconnected provisions, identifies the Accountability Court and the appellate High Court as the institutions through which such proceedings are to be adjudicated. The Supreme Court has likewise emphasized that an Accountability Court cannot exercise jurisdiction beyond that conferred upon it by law; jurisdiction must always be traced to the statutory scheme. The principle of special law prevailing over general law also finds particular force where the general rule relied upon by a party would produce a result inconsistent with the express statutory scheme. If ordinary territorial principles concerning immovable property were treated as overriding Section 16(e), Section 13 and the other jurisdictional provisions of the NAO, the result would effectively be that the location of an individual asset could determine or fragment the forum of an accountability reference. Such an interpretation would reduce the words "any Court established anywhere in Pakistan" in Section 16(e) to a substantially narrower meaning than the legislature chose to employ. Conversely, giving effect to the special provision preserves the statutory distinction between the forum of the underlying accountability reference and the territorial location of an asset which may subsequently become the subject of a consequential order. The above principle finds authoritative support in the judgment of the Full Bench of the Peshawar High Court in *Khan Ajun Khan v. West Pakistan*, PLD 1958 Peshawar 191, wherein the Court, while considering the relationship between special and general provisions, held that a particular or special provision operates as an exception to the general provision and, to the extent of the field specifically covered by it, must prevail over the general enactment. Referring to the established principle embodied in the maxim *generalia specialibus non derogant*, the Full Bench observed that a special provision is to be regarded as an exception carved out of the general provision and that, even where a general enactment is expressed in comprehensive terms, it cannot be construed so as to override a particular provision enacted for a specific purpose. For sake of reference, the operative part is reproduced as under: -

> **"The source of this bar lies, as has been shown above, in Article 225 (3) of the Constitution. This Article stands in the transitional and**

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temporary provisions of the Constitution which are special provisions relating to transitional period and being special provisions relating to transitional period they operate by way of exception to the general provisions lying in the main part of the Constitution. For this reason provisions of the Constitution which form part of Article 225 (3) override the general provisions contained in Article 170 and constitute an exception to it.

The proposition that a particular or a special provision in an Act overrides the general provisions of the Act and operates by way of exception is too well known to need any elaborate discussion. Halsbury's Laws of England contains in many places in Volume 27 (1913 Edition) statements to this effect. At page 136, it says-

"A particular enactment wherever found must be construed strictly as against general provision". At another place in the same volume it says:-

"Special provisions as to particular properties following on general provisions contained in the same or an incorporated Statute are to be regarded as exceptions out of the general provisions". (pages 137-138).”

We find the same view expressed in the following language at pages 168 and 169.

"The general law of the country is not altered by special legislation made without reference to it, though a Statute passed for a particular purpose must so far as that purpose extends override general enactments. A general Statute may be repealed pro canto by a special Statute, an exception being made out of or a condition being imposed upon its general provisions".

"Where in the same or a subsequent Statute a particular enactment is followed by a general enactment and the later taken in its most comprehensive sense, would overrule the former the particular enactment is operative, and the general enactment is taken to affect only those other parts of the particular enactment to which it may properly apply".

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> **To the same effect is the discussion of this subject in Maxwell on "Interpretation of Law" under the maxim Generalis special bus non derogant. The rule which applies to two separate Statutes one general and the other special applies with greater force to two separate provisions a general and a special in the same Statute. The same view has been expressed in a Calcutta case Amar Chand v. Prasamna cited as (25 C WN 9)."**

23. The principle may also be expressed through the settled rule that *generalia specialibus non derogant*: a general provision does not derogate from a special provision. Where two legal regimes appear to operate in the same field, the Court should, so far as possible, interpret them harmoniously; but where an irreconcilable conflict exists, the specific provision enacted for the particular subject must prevail. Here, the general principles of territorial jurisdiction constitute the background law, whereas the NAO constitutes the special statutory regime specifically enacted to govern accountability offences and the property connected therewith. The former may supplement the latter where the Ordinance is silent; it cannot displace an express jurisdictional arrangement contained in the latter. This Court also draws guidance from *Re: Muhammad Rafique v. Director General, FIA, Islamabad*, reported as 2023 PCr.LJ 38 (Islamabad), wherein this Court examined the effect of an overriding clause contained in a special enactment and reiterated that the existence of such a clause manifests the special character of the legislation and its legislative intention to prevail over the general law. It was held that where a special statute provides a specific procedure for dealing with a particular class of matters, such special procedure is required to be followed in preference to the procedure prescribed under the general law; recourse to the general law is permissible only where the special enactment is silent on a particular matter and, even then, only to the extent that the general provision is not inconsistent with the special statutory scheme. The Court, while relying upon the principle enunciated by the Supreme Court in *Neimat Ali Goraya v. Jaffar Abbas*, 1996 SCMR 826, further observed that: -

> **"14. It is also settled law that any enactment having overriding clause, like section 39 of the Anti-Money Laundering Act, 2010, shows its special character of being special law and excludes the general law. In other words, the special provision overrides the general provision**

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and the special enactment prevails over general enactment, even, the special law dealing with specific matter provides special procedure, therefore, special procedure in such matter would be followed that the same has not been provided under the general law, as such, recourse to general law is permissible when special law is silent on particular point, except where the provision of general law is inconsistent with the provision of special law. It is also settled that special law is to be applied to a particular case on the basis of special jurisdiction envisaged in that particular law and provisions of general law stand displaced as held in 1996 SCMR 826 (Neimat Ali Goraya v. Jaffar Abbas). Furthermore, while taking analogy from cases reported as PLD 2002 Karachi 83 (Messrs Noorani Traders, Karachi v. Pakistan Civil Aviation Authority), 2010 SCMR 27 (Ismaeel v. The State), PLD 2010 Lahore 498 (The State v. Fazeelat Bibi), 1993 CLC 2009 Karachi (National Bank of Pakistan v. Emirates Bank International Ltd.) and 2014 CLD 582 Lahore (Saeed Ullah Paracha v. Habib Bank Ltd.), it has been observed that special law prevails over the general law and all the specialized kinds of offences, like predicate offences, and the special procedure dealing with Anti-Money Laundering is not provided in the Pakistan Penal Code, 1860 or in any other law disclosing specific character of AMLA, 2010, as such, there is no second opinion that it is a special statute providing special legislative intent to deal with specialized crime and when such kind of special laws have been promulgated the legislature has to provide an overriding clause in order to protect its character to prevail over any other law, legislation, rules and administrative instructions. The piece of legislation having overriding effect has to be interpreted in the light of phraseology and language used by the legislature. The Courts while interpreting laws relating to specialized economic activities and complexities of recent times do not admit of solution through any doctrinaire or straitjacket formula as held in PLD 2007 SC 133 (Federation of Pakistan v. Haji Muhammad Sadiq). The plain language of section 39 of AMLA, 2010 provides an overriding effect notwithstanding anything contained in any other law and this special Act is in addition to the Anti-Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti-Terrorism Act, 1997, National Accountability Ordinance, 1999 and any other law relating to predicate offences. Section 39 of the Act clearly

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> **establishes the legislative intent that this special law has precedence on all other specialized crimes referred in other laws, therefore, the argument advanced by learned counsel for petitioner that the AMLA, 2010 is not a special law, rather same has to be applied in earlier FIR, is not legally justified."**

24. The principle is not confined to criminal or accountability legislation. The Hon'ble Supreme Court, in *State Life Insurance Corporation of Pakistan v. Mst. Sardar Baigum*, 2017 SCMR 199, while examining the interplay between a special statutory provision determining the place of suing and the general provisions of the Code of Civil Procedure, reaffirmed that the forum prescribed by a special law must prevail over the forum contemplated by the general law. The Court held that:

> **"Hence where a Special law determines a place of suing, which in the present case in terms of section 2(6) could be either the principal Civil Court of Original jurisdiction in a district or the special Civil jurisdiction of the Sindh High Court and Islamabad High Court, the same would prevail over the provisions of section 15 of Code of Civil Procedure. It is now trite law that the provisions of special law always override the provisions of the general law to the extent of any conflict or inconsistency between the two. When it comes to filing of a suit under the provisions of Insurance Act, 1938, section 15 of the Code of Civil Procedure would stand eclipsed as it comes under the shadow of section 4(1) of the Code of Civil Procedure. Section 4(1) of the Code inter alia provides' nothing in the code shall be deemed to limit or otherwise affect any special or local law or any special jurisdiction conferred by or under any other law for the time being in force.' Thus the Court competent to try the suit would only be the one that falls within the definition of section 2(6) of the Insurance Act, 1938."**

25. The distinction between the general rule of territorial jurisdiction and a special statutory regime may be illustrated by a simple example. Suppose the general law ordinarily provides that a dispute concerning immovable property must be brought before the Court having territorial jurisdiction where the property is situated. However, a special statute subsequently provides that disputes concerning a particular category of property shall be determined exclusively by a designated Special Court, regardless of where the property is situated. In such a situation, the

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general territorial rule does not displace the special statutory provision. The property may physically be situated in Islamabad, Lahore or Karachi, but if the special statute validly confers jurisdiction upon the designated Special Court, the proceedings must follow the forum prescribed by that special law. The reason is that the general rule governs ordinary cases, whereas the special provision was enacted specifically to regulate that particular class of proceedings. The same principle applies here: the ordinary territorial rule relating to immovable property cannot be permitted to override the special jurisdictional scheme created by the NAO, 1999 for accountability proceedings and property connected therewith.

26. In view of the foregoing statutory scheme and the authoritative pronouncements discussed above, I am of the considered view that the question of territorial jurisdiction in the present proceedings cannot be determined by resort to general principles of territorial jurisdiction in isolation, particularly by treating the situs of the immovable property as the sole or overriding jurisdictional fact. The National Accountability Ordinance, 1999 constitutes a special statutory regime which has deliberately prescribed its own mechanism for investigation, reference, cognizance, trial, freezing and adjudication of property connected with accountability offences. Section 16(e), in its applicable statutory formulation, expressly empowered the Chairman NAB, having regard to the facts and circumstances of the case, to file a reference before "any Court established anywhere in Pakistan", and correspondingly declared that "such Court shall have the jurisdiction to try the same." Section 17, moreover, makes the application of the general provisions of the Cr.P.C. expressly conditional upon there being no inconsistency with the Ordinance, thereby affirming the subordinate and supplementary character of the general procedural law. Likewise, the scheme of Sections 12, 13, 16, 17 and 18 demonstrates that the legislature intended accountability proceedings, including matters relating to property connected with the offence, to be dealt with through a specialized and integrated statutory framework. The mere fact that the property sought to be secured or otherwise proceeded against is situated within Sector G-13, Islamabad, cannot, by itself, confer upon this Court a jurisdiction over the underlying accountability reference which the special statute has entrusted to the Accountability Court before which the reference was validly instituted. The situs of the property may be relevant to

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the implementation or execution of a lawful order concerning that property, but it is conceptually and legally distinct from the forum having jurisdiction to adjudicate the underlying accountability offence and the consequential questions arising therefrom. To hold otherwise would permit the general law relating to territorial jurisdiction to override the express statutory scheme of the NAO and would enable a single accountability reference to be fragmented merely because its assets, transactions, records or consequential effects extend across different territorial jurisdictions. Such a construction would not advance the legislative purpose of the Ordinance; rather, it would undermine the very coherence of the special accountability mechanism created by Parliament. Accordingly, where the reference in question was instituted before the Accountability Court at Peshawar pursuant to the statutory authority contained in Section 16(e), the jurisdiction of that Court over the reference cannot be displaced merely on the ground that one of the properties connected with the proceedings is situated in Islamabad. The jurisdictional question must, therefore, be determined by reference to the special statutory scheme of the Ordinance and the jurisdiction lawfully assumed thereunder, rather than by applying general territorial principles in a manner inconsistent with that scheme.

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The Principles Of Approbate And Reprobate

27. The record of the present proceedings discloses a matter of considerable significance which cannot be overlooked while determining the maintainability of the instant petition. The chronology of litigation initiated by the petitioner demonstrates that the petitioner has, on more than one occasion, invoked the constitutional jurisdiction of two different High Courts in relation to the very same orders, concerning the very same property, and seeking substantially the same relief. The issue, therefore, is not merely one of territorial jurisdiction in the abstract; it also concerns the propriety of invoking the extraordinary and discretionary jurisdiction of this Court after the petitioner had already approached another competent constitutional forum and, pursuant to the order of that Court, had obtained conversion of his petition into the statutory remedy expressly provided under Section 13 of the National Accountability Ordinance, 1999 ("NAO").

28. The sequence of events is material. The petitioner initially instituted W.P. No. 5197 of 2025 before this Court, assailing the order dated 12.11.2025 passed by the learned Accountability Court-III, Peshawar, and seeking, inter alia, setting aside of the said order, de-freezing of House No. 06, Street No. 154, Sector G-13, Islamabad, and suspension of all proceedings relating to the said property. This Court while entertaining the application for suspension granted interim order as under: -

> **"Notice. In the meantime, the petitioner shall not be dispossessed from the petitioner's property 'B' i.e., House No. 06, Street No. 154, Sector G-13, Islamabad, until the next date of hearing."**

29. On 26.01.2026, when the matter came up for further consideration, it was brought to the notice of this Court by the learned Senior Special Prosecutor, NAB, that the petitioner had already challenged the very same impugned order before the Peshawar High Court through W.P. No. 10462 of 2025, wherein substantially identical relief had been sought. Upon examination of the record, this Court found that the impugned order had been passed by the Accountability Court at Peshawar and that the petitioner had already availed the constitutional remedy before the Peshawar High Court. Resultantly this Court dismissed the said petition for want of Jurisdiction as under: -

> **"3. Pursuant to notice, the learned Senior Special Prosecutor, NAB tendered appearance and submitted that the petitioner had earlier challenged the order impugned in the instant petition before the learned Peshawar High Court in W.P. No.10462/2025 with the identical prayer; that this Court lacks jurisdiction to adjudicate upon the instant petition as the matter relates to the province of Khyber Pakhtunkhwa.**
>
> **4. Heard. Record perused.**
>
> **5. Perusal of the record reveals that the impugned order was passed by the learned Accountability Court at Peshawar, against which the petitioner availed the remedy before the learned Peshawar High Court, through a constitutional petition. In view of the principles and law enunciated in the case titled Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others, reported as (PLD 1997 SC 334),**

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this Court lacks jurisdiction to adjudicate upon the matter. Accordingly, the instant petition is dismissed for want of jurisdiction."

30. The significance of this order does not end with its dismissal on the ground of territorial jurisdiction. The petitioner, in the present proceedings, has stated at paragraph 7 that "after the dismissal of W.P. No. 5197 of 2025 by this Hon'ble Court, the petitioner preferred W.P. No. 10462 of 2025 before the Peshawar High Court." The statement, viewed in isolation, may appear innocuous; however, the record demonstrates that it does not correctly reflect the chronology of events. W.P. No. 10462 of 2025 was instituted before the Peshawar High Court during the year 2025, whereas W.P. No. 5197 of 2025 before this Court was dismissed only on 26.01.2026. Thus, the petition before the Peshawar High Court was not instituted subsequent to the dismissal of the petition by this Court. Rather, both proceedings had already been instituted in relation to the same controversy, and the proceeding before the Peshawar High Court pre-dated the dismissal of the petition before this Court. The distinction is material because it demonstrates that the petitioner was simultaneously pursuing substantially the same grievance before two constitutional forums. Before this Court, the petitioner challenged the order dated 12.11.2025 passed by the learned Accountability Court, Peshawar, and sought de-freezing of House No. 06, Street No. 154, Sector G-13, Islamabad, together with suspension of proceedings concerning that property. The record of W.P. No. 10462 of 2025 before the Peshawar High Court reveals that the petitioner challenged the very same orders dated 12.11.2025 and 05.11.2025 and sought, in substance, precisely the same relief. the prayer made by the petitioner in the said writ petition before Peshawar high court is reproduced as under: -

"**Prayer**

In view of the above circumstances, it is therefore most humbly prayed that the instant writ petition may kindly be allowed, the impugned orders dated 12.11.2025 and 05.11.2025 be set aside and the petitioner's property 'B' i.e. House No.06, Street No.154, Sector G-13/4, Islamabad may kindly be defreezed along with all the subsequent proceedings against the petitioner's property in the interest of justice.

it is further prayed that the operation of the impugned orders dated 12.11.2025 and 05.11.2025 may kindly be suspended/ stayed and the

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respondents may be restrained from interfering in the peaceful life, business and possession of the petitioner over the above mentioned property 'B', attaching, confiscating, creating any sort of lien, encumbrance, demand or charge over the property 'B', harassing, humiliating, pressurizing, calling the petitioner anywhere on any pretext or doing any other act which is prejudicial or constitute an invasion over the rights of the petitioner in any manner whatsoever till final disposal of the instant writ petition.

INTERIM RELIEF:

By way of interim relief, the operation of the impugned orders dated 12.11.2025 and 05.11.2025 may be suspended/stayed and the respondents be restrained from interfering in the peaceful life, business and possession of the petitioner over the above mentioned property 'B', attaching, confiscating, creating any sort of lien, encumbrance, demand or charge over the property 'B', harassing, humiliating, pressurizing, calling the petitioner anywhere on any pretext or doing any other act which is prejudicial or constitute an invasion over the rights of the petitioner in any manner whatsoever till final disposal of the instant writ petition."

31. The subsequent proceedings before the Peshawar High Court make the matter still more significant. By order dated 02.07.2026, the learned Peshawar High Court considered the maintainability of W.P. No. 10462 of 2025 in view of the specific statutory remedy available under Section 13 of the NAO. The Court observed that the Ordinance provides a comprehensive mechanism for freezing property which is the subject matter of an inquiry, investigation or trial and that, where an order is passed by an Accountability Court under Section 12, an aggrieved person is entitled to file an objection petition before the same Court under Section 13 of the Ordinance. The learned Peshawar High Court accepted that request and, accordingly, converted the constitutional petition into an objection petition under Section 13 against the order dated 12.11.2025 passed by the learned Accountability Court-III, Peshawar, directing transmission of the record to the said Court for registration and adjudication in accordance with law. The operative paragraphs of the said order are reproduced as under: -

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"2. The Ordinance provides a comprehensive mechanism for the freezing of properties that are the subject matter of an inquiry, investigation, or trial under the Ordinance. It further provides that where an order is passed by the Accountability Court under Section 12 of the Ordinance, any person aggrieved thereby may file an objection petition before the same Court in terms of Section 13 of the Ordinance.

3. When learned counsel for the petitioner was confronted with the question as to how the instant constitutional petition was maintainable in the presence of such an adequate and efficacious statutory remedy, he, upon seeking instructions, submitted that the petitioner would be satisfied if the instant petition was transmitted to the learned Accountability Court-III, Peshawar, to be treated as an objection petition under Section 13 of the Ordinance.

4. Although the said request was opposed by the learned counsel representing NAB, it is evident that the petitioner had approached this Court within the prescribed period of limitation and had been bona fide pursuing the appropriate remedy before this Court. Therefore, no legal impediment exists to treating the present constitutional petition as an objection petition under Section 13 of the Ordinance and transmitting the same to the learned Accountability Court-III, Peshawar, for adjudication in accordance with law.

5. Accordingly, the request made by learned counsel for the petitioner is accepted. The instant constitutional petition is converted into an objection petition under Section 13 of the Ordinance, against the order dated 12.11.2025 passed by the learned Accountability Court-III, Peshawar. The office is directed to transmit the original file, along with all annexures, to the learned Accountability Court-III, Peshawar/Registrar of the Accountability Court, for its registration and disposal as an objection petition under Section 13 of the Ordinance. The office shall, however, retain photocopies of the complete record for reference and office use.

6. The petition is disposed of in the above terms."

32. The legal consequence of this development cannot be understated. The petitioner did not merely approach the Peshawar High Court; he voluntarily

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invoked its jurisdiction in relation to the same property and the same impugned order and, when confronted with the statutory scheme of the NAO, accepted the course whereby his constitutional petition was converted into the very statutory objection contemplated by Section 13 of the Ordinance. Having elected to pursue that remedy before the competent statutory forum, the petitioner cannot thereafter be permitted to reopen the same controversy before another High Court under Article 199 of the Constitution as though the earlier proceedings had never occurred. The doctrine applicable here is not confined to the technical concepts of res judicata or issue estoppel. The broader and more fundamental principles governing abuse of process, judicial propriety, election of remedies, consistency of judicial proceedings and the prevention of forum-shopping are attracted with full force. Forum-shopping is particularly objectionable where a litigant, having failed to obtain the desired forum or relief in one Court, seeks to invoke the jurisdiction of another Court on the basis of the same cause, the same impugned order and substantially the same relief. The extraordinary jurisdiction under Article 199 is discretionary and equitable in character. A person invoking such jurisdiction is required to approach the Court with complete candour and to disclose all material proceedings relating to the subject-matter. The constitutional jurisdiction of a High Court cannot be converted into a mechanism by which a litigant may successively test the same grievance before different constitutional forums in the hope of obtaining a more favourable order. Such conduct is inconsistent with the very nature of judicial administration, which requires certainty, finality, institutional comity and respect for the jurisdiction already invoked.

33. The present case is aggravated by the fact that the petitioner was not unaware of the parallel proceedings. The proceedings before the Peshawar High Court were initiated during 2025, i.e. before the dismissal of W.P. No. 5197 of 2025 by this Court on 26.01.2026. The petitioner was therefore pursuing, or had pursued, substantially identical relief before two High Courts in relation to the same orders and the same property. More importantly, when the existence of the earlier proceeding before the Peshawar High Court came to light before this Court, W.P. No. 5197 of 2025 was dismissed for want of territorial jurisdiction. Thereafter, instead of treating the statutory route adopted in the Peshawar proceedings as the appropriate and exclusive course for determination of the

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grievance concerning the freezing order, the petitioner has once again invoked the jurisdiction of this Court seeking substantially the same relief. Such conduct cannot be regarded as a mere procedural irregularity or an innocent choice of forum. It amounts to an attempt to maintain successive avenues of judicial scrutiny over the same subject-matter. The doctrine against forum-shopping rests upon a deeper principle than the mere convenience of administration. The judicial system cannot permit a litigant to select a forum according to the perceived likelihood of obtaining a favourable outcome, particularly where the jurisdiction of one forum has already been invoked and the controversy has entered a procedurally defined channel. Permitting such conduct would expose the same impugned order to potentially divergent determinations by different High Courts and would allow a litigant to circumvent the territorial and statutory architecture governing the accountability proceedings. The resulting uncertainty would be particularly serious in the present case because the impugned order was passed by an Accountability Court at Peshawar and the petitioner's grievance had already been placed before the Peshawar High Court and thereafter converted into a statutory objection under Section 13 of the NAO.

34. The superior Courts have consistently deprecated the practice of pursuing parallel or successive proceedings before different forums in respect of the same subject-matter, particularly where such conduct has the effect of securing a second opportunity to obtain a relief which has already been sought, considered or pursued before another competent forum. In *2026 YLR 1121*, this Court, while examining a situation involving parallel claims for maintenance, held that a litigant cannot, by withholding disclosure of proceedings already instituted and relief already received, seek substantially the same relief before another Court for the same period and liability. This Court held that: -

> **"26. If a party is already receiving maintenance under orders of a foreign Court and, without candid disclosure of such proceedings and payments, seeks the same or substantially similar relief before a Court in Pakistan for the same period and liability, the Court would be justified in treating such conduct as an abuse of process. The law does not countenance double recovery in the garb of parallel proceedings. At the very least, full disclosure and lawful adjustment of payments are**

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> **indispensable so that no unfair enrichment results and no person is burdened twice over in respect of the same maintenance obligation."**

35. There is yet another legal impediment in the petitioner's approach. Having accepted the order of the Peshawar High Court whereby his constitutional petition was converted into an objection petition under Section 13, the petitioner cannot simultaneously seek to maintain an independent constitutional proceeding elsewhere for the same relief. The principle of *approbate and reprobate*, though ordinarily invoked in the context of inconsistent positions or elections, embodies a broader rule of procedural fairness: a litigant cannot accept and rely upon one procedural course when advantageous and, at the same time, reject its consequences when another forum appears more favourable. The same principle finds expression in the doctrine of election, waiver and estoppel. In *2026 CLD 369*, this Court, while considering the conduct of a party which had participated in proceedings without objecting to a jurisdictional or procedural defect and subsequently sought to challenge the very same proceedings after an unfavourable outcome, held that a party cannot remain silent or participate in a proceeding while awaiting a favorable result and, upon receiving an adverse order, opportunistically challenge the jurisdiction which it had previously accepted or tacitly affirmed. The Court held as under: -

> **"15. Looking the matter from a different angle, the petitioner's conduct reveals an implied waiver of its right to object to the expiry of the Arbitral Tribunal's mandate, further supported by the doctrine of estoppel. The record reflects that on 15.03.2025 the petitioner initially agreed to the proposal for a joint application seeking extension of time but when pursuant to this agreed proposal the respondent's counsel prepared and circulated a joint application for extension on 19.04.2025, the petitioner's counsel refused to sign the draft application and instead he pressed for adjudication of its pending application seeking bifurcation of claims. It is pertinent to mention here that the initial time for making award was going to expire on 24.04.2025 just five days after 19.04.2025 when petitioner's counsel refused to sign application for extension of time. Furthermore, the petitioner did not raise any objection regarding the Tribunal's lack of formal mandate on or after the expiry date. Instead, it continued to wait passively for a ruling on**

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> **its application for bifurcation of claims. This calculated silence and acquiescence lasted until the Tribunal announced its order on 17.05.2025. It was only upon the delivery of an unfavourable decision dated 17.05.2025 that the petitioner sought to weaponize the technical expiry of the time limit, a jurisdictional flaw it had been fully aware of and implicitly accepted for weeks. A party cannot participate in proceedings or hold its peace while awaiting a potential favourable outcome and then, upon an adverse ruling, opportunistically challenge the very jurisdiction it had tacitly affirmed. The petitioner is therefore estopped by its conduct from challenging the order on the grounds of time expiry."**

36. The principle has received authoritative recognition from the Hon'ble Supreme Court. In *Haji Ghulam Rasool and others v. The Chief Administrator of Auqaf and others*, reported as **PLD 1971 SC 376**, the Supreme Court explained that the doctrine of estoppel is not confined to the technical field of section 115 of the Evidence Act and recognized the wider principle that a person who, with full knowledge of the facts, has represented a particular position and acted upon that representation may subsequently be precluded from resiling from it. The Court expressly adverted to the rule that a party should not be permitted to **approbate and reprobate**, and approved the principle that a person who has knowingly represented a particular state of affairs cannot subsequently set up an inconsistent position. The Hon'ble Supreme Court observed that: -

> **"The doctrine of estoppel is not confined to the matters deal with under section 115 of the Evidence Act, for, as pointed out by Garth, C. J. in the case of Ganges Manufacturing Co. v. Sourajmull (IL R 5 Cal. 669) "estoppels in the sense in which the term is used in the English legal phraseology are matters of infinite variety and are by no means confined to the subjects dealt within Chapter VIII of the Evidence Act". It has been defined in Salsbury's Laws of England (2nd Edn.), Vol. 13, "as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability". It is in this sense that it has often been held that even as a rule of evidence or pleading a party should not be allowed to approbate and reprobate.**

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This principle was acted upon by the Judicial Committee in the case of Lakshmana Goundan v. Subramania Aiyar (AIR 1924 PC 44) where it was held that if a person had "held out and represented to the Hindu public that the temple was a public temple" he cannot resile from that position. Similarly in the case of Jai Dayal v. Dewan Ram Sarn Das (A IR 1938 Lah.686) the Lahore High Court also held that "where a person with full knowledge of the facts in unmistakable terms admitted the wakf nature of a house, he cannot subsequently be allowed to resile from that position". Is not the position the same in this case? In our opinion, since the appellants with full knowledge of the facts requested the revenue authorities to correct the records by entering therein the true position and have since allowed that position to remain unchanged for nearly 80 years they are now debarred from setting up a different case and should, at any rate, not be believed when they say that that is not the true position. The properties being properties of the shrine were clearly wakf properties and since the shrine, in this case, was a public institution, its properties also were public wakf."

37. The petitioner, having invoked the jurisdiction of the Peshawar High Court, having been confronted with the statutory remedy, and having expressly agreed to the conversion of his petition into an objection under Section 13, cannot now contend that the same controversy should independently be adjudicated by this Court under Article 199. The extraordinary jurisdiction of this Court under Article 199 is intended to advance the cause of justice, not to provide a litigant with successive opportunities to re-agitate the same controversy before different constitutional forums. The Court must, therefore, be particularly vigilant where the exercise of such jurisdiction would have the effect of undermining the statutory forum, multiplying proceedings, creating the possibility of conflicting orders, or permitting a litigant to circumvent a remedy which he has himself elected to pursue. Judicial process cannot be permitted to become a vehicle for forum-shopping.

38. Accordingly, quite apart from the question of territorial jurisdiction considered above, the present petition is liable to fail on the independent ground that the petitioner has invoked the constitutional jurisdiction of this Court in a manner amounting to forum-shopping and abuse of process. Having elected and

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pursued the remedy available under the special statutory scheme, and having failed to disclose the true chronology and full procedural history with the candour expected of a litigant invoking extraordinary jurisdiction, the petitioner cannot claim a discretionary relief under Article 199 as a matter of right. The Court cannot permit its constitutional jurisdiction to be used as a second or alternative forum for determination of a controversy which the petitioner has already placed before the competent statutory forum. The present petition, therefore, is not only territorially misconceived but is also tainted by an impermissible attempt to pursue parallel and successive remedies in respect of the same subject-matter.

Whether the order dated 13.08.2026 passed by the Peshawar High Court can confer jurisdiction upon this Court notwithstanding the earlier binding order of the Division Bench of this Court?

39. The controversy gives rise to yet another, and somewhat fundamental, question concerning the binding force of judicial precedent. The petitioner seeks to rely upon the order dated 13.08.2026 passed by the learned Peshawar High Court in W.P. No.11857-P of 2026, whereby the petitioner was left at liberty to avail the remedy before the competent forum at Islamabad. The petitioner appears to suggest that, by virtue of the said observation, the doors of this Court stand open for invocation of its constitutional jurisdiction. Such an approach, with respect, cannot be accepted. The order of another High Court may, at the highest, have persuasive value before this Court; it cannot confer jurisdiction upon this Court where jurisdiction has already been judicially declined by a Division Bench of this very Court in relation to the same controversy.

40. The starting point of the matter is Article 201 of the Constitution, which expressly provides that, subject to Article 189, a decision of a High Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding upon all courts subordinate to it. The constitutional architecture is therefore deliberate. Article 189 places the decisions of the Supreme Court, on questions of law, at the apex of the hierarchy and makes them binding upon all other courts, whereas Article 201 gives binding force to the decisions of a High Court within the judicial hierarchy subordinate to that High Court. There is no corresponding constitutional provision declaring that the decision of one High

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Court is binding upon another High Court. The distinction is not accidental; it follows from the constitutional distribution of judicial authority among the High Courts. The Supreme Court has recently reiterated this precise constitutional position in *Shahtaj Sugar Mills Ltd. v. Government of Pakistan*, reported as 2024 SCMR 1656, holding that Article 201 makes a High Court's decision binding upon the courts subordinate to it, whereas Article 201 does not render the decision of one High Court binding upon another High Court. The Court emphasized that Article 189, on the other hand, makes decisions of the Supreme Court binding upon all other courts. This constitutional distinction is of direct relevance to the present controversy. The Hon'ble Supreme Court held that: -

> **"3. Article 201 of the Constitution of the Islamic Republic of Pakistan ('the Constitution), reproduced hereunder, stipulates that a High Court's decision is binding on all courts subordinate to it:**
>
> **'201. Subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it.'**
>
> **4. Article 201 does not state that a High Court's decision is binding on other High Courts too. On the other hand Article 189 of the Constitution, reproduced hereunder, stipulates that the decisions of the Supreme Court are binding on all other courts, which would include all High Courts, but not the Supreme Court itself since the word other is used in Article 189.**
>
> **'189. Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.**
>
> **Reference in this regard may also be made to the case of Hussain Raza v. Lahore High Court.' 5.**
>
> **Article 201 commences with the words subject to Article 189 which removed all doubts (if at all there could be any) that the decisions of the High Court are only binding on all courts subordinate to it, which are those within its territorial jurisdiction. Therefore, while a decision of a High Court is persuasive and may be followed by another High**

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> **Court it is not binding on it, and another High Court may make a different decision. This also accords with the very first Article of the Constitution which states that 'Pakistan shall be Federal Republic' and mention the territories of Pakistan'. The High Court of each federating unit is independent, and a fortiori that it acts independently. Their independence can only be curtailed to the extent that the Constitution itself may do so. There is no constitutional provision which supports the said two sentences, on the contrary Article 201 of the Constitution states the opposite, which is iterated by its Article 189."**

41. Article 201 of the Constitution furnishes an important constitutional basis for understanding the binding force and hierarchical operation of judicial precedent within the judicial system. It provides that, subject to Article 189, a decision of a High Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding upon all Courts subordinate to that High Court. The constitutional command embodied in Article 201 is therefore not merely a rule of convenience or judicial courtesy; it forms part of the structure designed to secure consistency, certainty and uniformity in the administration of justice.

42. The distinction, however, must be maintained between vertical and horizontal precedent. A decision of a High Court operates vertically upon the Courts subordinate to it by virtue of Article 201, whereas a decision of a Bench of the same High Court operates horizontally within that Court under the doctrine of *stare decisis* and the settled principles governing decisions of coordinate Benches. The Hon'ble Supreme Court has expressly recognized this distinction and observed that vertical precedents are binding upon the courts below, while a higher Court ordinarily adheres to its own horizontal precedents and a coordinate Bench cannot simply disregard an earlier decision of equal strength. In CPLAs No.1862-L & 1863-L of 2021 [Hasnain Raza and another Vs. Lahore High Court, Lahore and others], the Hon'ble Supreme Court observed as under: -

> **"5. The Nusrat Yasmin case enunciated important principles of law for dealing with the matters like the present one, and it was therefore circulated amongst all the Hon'ble Judges of all the High Courts of the country for their information. And those principles were reiterated by**

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this Court in the Aijaz Ahmed case. Needless to mention that a decision of this Court, to the extent it decides a question of law or enunciates a principle of law, is binding on all other courts of the country including the High Courts, under the mandate of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"). Similar is the binding effect of such a decision of a High Court, under Article 201 of the Constitution, on all courts subordinate to that High Court. To appreciate the scope and extent of the binding force and authority of judicial precedents, they may be classified into two categories: vertical and horizontal precedents. Vertical precedents mean the decisions of a higher court, and horizontal precedents mean the decisions of the same or coordinate court. All courts are absolutely bound by the vertical precedents of a higher court. This binding tie is often said to be a matter of "owing obedience". Articles 189 and 201 of our Constitution also reinforces the binding effect of the vertical precedents. Judges are therefore obliged to follow a vertical precedent even when they disagree with it; this ensures a degree of national uniformity in judicial decisions. The judges have little room to decide how much weight or value is to be given by them to that precedent. Unless we wish anarchy to prevail within the judicial system, a precedent of the apex Court of the country must be followed by all other courts of the country who owe unflinching fealty to its decisions under the Constitution. Ignoring or refusing to follow the controlling precedent of this Court amounts to judicial effrontery, offends the constitutional mandate, and weakens the public confidence in the decisions of the apex Court of the country. As Jackson J. said, humbly but firmly, of the Supreme Court: "we are not final because we are infallible, but we are infallible only because we are final." A higher court generally adheres to horizontal precedents - its own earlier decisions - but it may depart from or overrule any of its own decisions by sitting as a larger bench if there is a compelling justification to do so."

43. The principle has also been expressly recognized by this Court. In *Pakistan Television Corporation Limited v. The Appellate Tribunal Inland Revenue*, this Court observed, while considering a judgment of the Lahore High Court, that the decision of another High Court is not binding upon this Court under Article 201. It was held as under:-

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> **"15. We are unable to substantiate the grounds urged by the learned counsel, for two reasons. Firstly, the decision of the Lahore High Court is not binding on this court in terms of Article 201 of the Constitution. Another High Court may make a different decision. Pakistan, as per Article 1 of the Constitution is Federal republic and the territories of Pakistan have been mentioned therein. The High Court of each Federating unit is independent, and fortiori that acts independently. There is no constitutional provision that supports the binding effect of the judgment of one High Court upon the other as provision of Article 201 of the Constitution states so, which is iterated by Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973."**

44. It is a settled principle of judicial discipline that a learned Single Judge is bound by the decision of a Division Bench of the same High Court on a question of law, unless that decision has subsequently been overruled, modified by a superior Court, or rendered inapplicable on account of materially distinguishable facts. A learned Single Judge cannot disregard a binding decision of a Division Bench merely because another High Court has subsequently expressed a different view. The rule is founded not merely upon technical hierarchy but upon the institutional requirement of consistency within the same High Court. The principle has been recognized in the jurisprudence of the superior Courts. The Sindh High Court, while discussing the binding force of Division Bench decisions (in Case CP D-3184 of 2014), has expressly observed that the normal and established rule is that a Single Bench of a High Court is bound by a Division Bench of that Court, and that even one Division Bench ordinarily follows an earlier Division Bench of the same Court. Similarly, judicial discipline requires a Bench of lesser strength to follow the decision of a Bench of greater strength and, where a genuine disagreement arises with a binding precedent, the appropriate course is to place the matter before a larger Bench rather than simply disregard the existing precedent.

> **"We have carefully considered this observation. The manner in which Hirjina came to be referred to in Hafeez ullah Malik & Co. has already been stated. We have also set out our view that the observations in relation thereto of the learned Single Judge (affirmed in Intra-Court Appeal) were not correct. The question that needs to be considered is whether the learned Division Bench of this Court, in the passage just**

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extracted, can be said to have adopted the view taken by the Lahore High Court in its entirety and thus (and more crucially) endorsed, albeit indirectly, the observation regarding Hirjina? The reason why this question arises is of course the rule that the ratio decidendi of the judgment of one Division Bench binds another Division Bench of the same High Court. We have carefully considered the point. In our respectful view, the question just posed must be answered in the negative. An erroneous understanding and application of a Supreme Court judgment cannot, with respect, be regarded as funning part of the ratio decidendi of another judgment in such a roundabout and indirect manner, especially where, as here, the Supreme Court decision is not even referred to. There is also another aspect to this matter. One of us (Munib Akhtar, J) while sitting singly had occasion, in Pak Turk Enterprises (Pvt) Ltd. v. Turk Hava Yollari 2015 CLC 1, to consider the question as to the binding effect of a Division Bench judgment, which purported to follow and apply a decision of the Supreme Court, but erred in its understanding of the latter. It was observed as follows (pp. 20-21): -

> **"36. This brings me to the final, but no less important, aspect, which is that while sitting singly, I am differing with what has said by a Division Bench of this Court. The normal rule is of course well established: a single Bench of a High Court is bound .by a Division Bench of that Court. Indeed, even a Division Bench is bound by a judgment of an earlier Division Bench. This is the established rule of precedent. I have very carefully considered the matter. In my respectful view, the present situation is one of the exceptions to the normal rule of precedent, and in order to explain the point, I must turn to English law, because the issue now at hand has been dealt with under that law, and the rules of precedent that we follow derive much assistance from English authority. As is well known, the English Court of Appeal applies the same principle as noted here: a later Court of Appeal is bound by a decision of an earlier Court of Appeal."**

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45. This distinction between intra-court binding precedent and inter-court persuasive precedent is of particular importance here. A judgment of a Division Bench of this Court is binding upon a learned Single Judge of this Court because it operates within the same judicial hierarchy established by the Constitution. A judgment of the Peshawar High Court, however, is not binding upon this Court because the Peshawar High Court and this Court are constitutional courts of coordinate status exercising jurisdiction over their respective territorial domains. The latter judgment may undoubtedly be considered with respect and, where persuasive, may assist the Court in determining a question of law; but it cannot displace a binding precedent of this Court. The jurisprudence is well settled that a decision of one High Court is not a binding precedent for another High Court and can, at most, have persuasive value. There is, therefore, an important hierarchy which cannot be lost sight of: **First**, a decision of the Supreme Court on a question of law is binding upon all Courts under Article 189. **Second**, a decision of a High Court, subject to Article 189, binds the courts subordinate to that High Court under Article 201. **Third**, within a High Court itself, the decision of a larger or superior-strength Bench binds a Bench of lesser strength, subject to the recognized exceptions arising from subsequent overruling, distinction of facts, or reference to a larger Bench where disagreement genuinely arises. **Fourth**, the decision of another High Court does not possess binding precedential force over this Court; it is, at best, persuasive.

46. The Supreme Court's recent exposition in *Shahtaj Sugar Mills* reinforces this constitutional structure. Article 201 does not say that the judgment of one High Court is binding upon another High Court; rather, its binding effect extends to the courts subordinate to the High Court which rendered the decision. This is entirely consistent with the federal constitutional structure of Pakistan, under which the High Courts operate as independent constitutional institutions within their respective territorial jurisdictions. The proposition is also reflected in the practical operation of Article 201. If a judgment of the Peshawar High Court were capable of binding a learned Single Judge of this Court, notwithstanding an earlier judgment of a Division Bench of this Court, the constitutional hierarchy would effectively be inverted. A decision emanating from a Bench of a coordinate High Court, exercising jurisdiction over another territorial sphere, would acquire greater

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binding force within this Court than a decision of a Division Bench of this very Court. Such a result is plainly incompatible with Article 201 and with the doctrine of judicial discipline.

47. The order dated 13.08.2026, therefore, requires to be understood in its proper legal perspective. When the learned Peshawar High Court left the petitioner at liberty to approach the competent forum at Islamabad, it did not, and constitutionally could not, determine the binding jurisdictional position of this Court. At most, the said observation enabled the petitioner to explore such remedy as might independently be available under law. It did not adjudicate that this Court possessed territorial jurisdiction; nor could it overrule or nullify the earlier decision of the Division Bench of this Court. Jurisdiction cannot be conferred by an observation of a Court which does not possess constitutional authority to determine the jurisdiction of another High Court. This distinction is particularly important because jurisdiction is conferred by the Constitution or law and not by judicial suggestion, convenience, consent of parties, or an order of another coordinate Court. Article 175(2) itself embodies the foundational principle that no Court shall exercise jurisdiction save as is or may be conferred upon it by the Constitution or by or under law. Consequently, the order dated 13.08.2026 cannot itself become the source of jurisdiction of this Court. The petitioner must independently demonstrate the existence of jurisdiction under Article 199 and the applicable territorial principles. Having already received a determination from a Division Bench of this Court that the matter falls outside its territorial jurisdiction, the petitioner cannot overcome that determination merely by relying upon a subsequent order of another High Court.

48. The discrepancy between persuasive value and binding force is therefore decisive. This Court may respectfully examine the reasoning adopted by the Peshawar High Court and may, if otherwise legally persuaded, reach an independent conclusion in a matter properly within its jurisdiction. But a learned Single Judge cannot treat that order as having the legal effect of overruling a prior decision of a Division Bench of this Court. To do so would not merely involve disagreement on the merits; it would amount to disregarding the established doctrine of precedent and judicial discipline.

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49. In view of the above discussion, the order dated 13.08.2026 passed by the learned Peshawar High Court does not furnish any legal basis for this Court to assume jurisdiction which its own Division Bench has already declined. The petitioner remains bound by the determination of the Division Bench of this Court, and the present petition, insofar as it seeks to reopen the same question of territorial jurisdiction on the strength of the subsequent order of the Peshawar High Court, is misconceived and cannot be maintained.

Non-Joinder of the Necessary Party and Principle of *Audi Alteram Partem*

50. There is yet another, independent and material impediment to the maintainability of the instant petition, namely, the non-joinder of the National Accountability Bureau (NAB), which is a necessary and proper party to the proceedings. The omission assumes particular significance in the facts of the present case because the petitioner himself, in paragraph 15 of the petition, has reproduced the order dated 13.08.2026 passed by the learned Peshawar High Court, wherein it has specifically been recorded that "the sealing was carried out by the Magistrate on directions of NAB." Thus, the petitioner's own pleading and the document relied upon by him unmistakably disclose that the action concerning the subject property was undertaken pursuant to directions issued by NAB. Once the petitioner himself attributes the impugned action to NAB, the Bureau cannot simultaneously be excluded from the lis in which the petitioner seeks relief having the effect of nullifying, restraining, or otherwise interfering with that very action. The petitioner cannot approbate the factual assertion that the property was sealed on the directions of NAB for the purpose of obtaining relief, while at the same time omitting NAB from the array of parties so as to avoid its participation in the adjudication of the controversy. The defect is not merely technical. The relief sought by the petitioner concerns property which, according to the record, is connected with proceedings arising out of the Kohistan Mega Scandal reference and which was dealt with pursuant to action taken within the accountability framework. NAB is therefore not a stranger to the controversy. It is the very authority whose directions constitute the immediate foundation of the action complained of. Any adjudication concerning the legality, propriety, justification or continuance of such action would necessarily require examination of the authority under which NAB acted, the material on the basis of which the property was

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subjected to such action, the relationship of the property with the underlying reference, and the circumstances in which the directions were issued. The Hon'ble Supreme Court, in *2025 PLD 572*, while explaining the general principles governing non-joinder, held as under: -

> **"4. It is important to note that even if this objection had been raised at the initial stage, it would bear no significance. To grasp this fully, it may be well to note the general rule relating to the non-joinder of parties In legal proceedings, a fundamental principle states that if a person deemed necessary to a suit is not joined as a party, this situation is referred to as non-joinder. The essence of this principle is that all persons must be joined as defendants against whom any right to relief is alleged to exist. It contemplates the necessary and the proper party: the former is the person in whose absence no effective order can at all be passed, and the latter is the person in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. There may be yet another class of person who is neither necessary nor proper party and against whom no relief is asked for. Such a person is popularly called 2 pro forma defendants. Thus and so the word "party" has been defined in section 2(d) of the Family Courts Act of 1964, to include any. Person whose presence as such is considered necessary for a proper decision of the dispute."**

51. The competence to institute legal proceedings must flow from the governing law, and a proceeding instituted by an officer or authority lacking the requisite legal mandate cannot be sustained merely on the basis of his official position. Likewise, where a person whose presence is necessary for the effective and complete adjudication of the controversy is not impleaded, the proceedings may be rendered incompetent for non-joinder of a necessary party. The principle was reinforced by the Hon'ble Supreme Court in 2025 PLD 251**,** wherein the Court held that: -

> **"15. The legal framework governing the University's operation may include the University's enabling legislation, its internal bylaws, and any regulations and rules established by the university governing bodies. The Vice-Chancellor is tasked with ensuring compliance with**

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> **these provisions to uphold the institution's legal and operational integrity. The Act does not provide that the Vice Chancellor can sue on behalf of the University. Hence, the very initiation of filing the Suit is not in accordance with the law under which the plaintiff/appellant is subjected. Moreover, in the Suit, neither the owner of the newspaper nor the Chief Editor was made a party; hence, the Suit is also hit by misjoinder and non-joinder of the necessary party. Consequently, the suit of the appellant/plaintiff is barred by law."**

52. The requirement of proper parties assumes particular importance in constitutional jurisdiction. Article 199 empowers the High Court to issue directions, orders and declarations in the circumstances specified therein, but the exercise of such extraordinary jurisdiction is subject to the constitutional and procedural requirement that the Court must be in a position to effectively and finally adjudicate upon the controversy. The present constitutional jurisdiction is not intended to authorize orders against persons or authorities who are directly affected by the adjudication without affording them an opportunity of hearing. Indeed, Article 199 itself contemplates relief against a person performing functions in connection with the affairs of the Federation, a Province or a local authority, and the identity of the authority responsible for the impugned act is therefore of fundamental significance to the exercise of jurisdiction.

53. The principle is reinforced by the nature of the relief sought in the instant case. The petitioner is not merely complaining of an independent ministerial act of the local administration concerning an otherwise unrelated property. His own case is that the property has been subjected to sealing in connection with the accountability proceedings, and the order relied upon by him expressly records that the sealing was carried out on the directions of NAB. The Court, therefore, cannot effectively determine the petitioner's grievance without examining the role, authority and conduct of NAB. Here the principle of *audi alteram partem* reinforces**.** The maxim *audi alteram partem*, literally meaning **"hear the other side,"** constitutes one of the foundational principles of natural justice. It embodies the elementary requirement that no judicial, quasi-judicial or administrative determination carrying adverse civil consequences should ordinarily be made against a person without giving such person notice of the proceedings and a

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meaningful opportunity to present his case. The principle is not a mere technicality of procedure; rather, it is directed towards ensuring fairness, impartiality and legitimacy in the decision-making process. A Court, while exercising jurisdiction, is required to hear all those persons whose rights or interests are likely to be directly affected by the order proposed to be passed, particularly where the relief sought cannot effectively be granted without determining matters concerning such person. The rule assumes greater significance where the person sought to be affected is not merely a remote or interested party, but is the very authority or person responsible for the act or order under challenge. In such circumstances, the Court cannot ordinarily adjudicate upon the legality, propriety or justification of that action behind the back of the person who took it or is legally responsible for defending it. The requirement of hearing is founded upon both fairness to the affected party and the institutional necessity of enabling the Court to have before it all relevant facts, explanations and legal submissions bearing upon the controversy. In PLD 2025 SC 11, the Hon'ble Supreme Court observed that: -

> **"14. Furthermore, Article 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard 20 The principle of 'audi alteram partem' is one of the foundational principles of natural justice. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a notice and then be allowed a hearing 21 These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution. In this matter, it appears that the Impugned Judgment and Impugned Order have not given an opportunity of hearing to the concerned parties which include the federal government and the affectees of the Revised Policy. This amounts to a violation of their basic right to be heard and suggests that the decision was made without following due process."**

54. The doctrine is closely connected with the concept of a necessary party. A necessary party is one in whose absence no effective and binding adjudication can properly be made, particularly where the proposed order would directly operate

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upon such party's rights, obligations, authority or conduct. The requirement of joinder, therefore, is not merely a matter of procedural convenience. It serves the substantive purpose of ensuring that a person against whom an order may operate is brought before the Court and afforded an opportunity to defend the legality of the action attributed to him. An order passed in the absence of such a party may not only occasion prejudice to that party but may also render the adjudication incomplete and vulnerable to challenge. In 2021 SCMR 369, the Hon'ble Supreme Court emphasized that a proceeding founded upon equity cannot be adjudicated without affording the affected person an opportunity of hearing.

> **"----'Audi alteram partem' and 'due process'---Scope---Any proceeding arising out of equity could not be decided without providing opportunity of hearing---Court ought to follow the principle of 'audi alteram partem' and 'due process' which were basis of administration of justice, especially when any order, if passed, might affect the rights of the entity not party to the proceedings."**

55. The defect is therefore not one which can be brushed aside merely because the petitioner has arrayed the Magistrate or other local authorities as respondents. The decisive question is not who physically performed the act, but whose statutory direction, decision or authority is actually under challenge and whose legal interests would be affected by the relief sought. On the petitioner's own showing, NAB falls squarely within that category.

56. The Court cannot be expected to determine the legality of an action attributed to NAB without NAB being before it. Nor can a binding and effective order concerning the continuance, validity or consequences of that action appropriately be made behind its back. The omission assumes greater significance because the petitioner seeks not merely a declaration of an abstract legal right but substantive relief affecting the property and the proceedings connected therewith. Consequently, the non-joinder of NAB constitutes an additional and independent impediment to the exercise of constitutional jurisdiction in the present case.

57. In view of the above reasons, this petition, being misconceived on the ground of territorial jurisdiction and on the independent grounds of forum-shopping, want of candour and non-joinder of a necessary party, is not

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maintainable and is hereby **DISMISSED**, alongwith pending application(s), if any. The petitioner is saddled with special costs of Rs. 100,000/- (Rupees One Hundred Thousand only), to be deposited by the petitioner with SOS Children's Village, Islamabad, within thirty (30) days from the date of this judgment. The original receipt evidencing such deposit shall be filed by the petitioner with the Deputy Registrar (Judicial) of this Court and placed on the record of this file within the said period, failing which it shall be open to the office to report the matter for appropriate orders. Office is directed to transmit a certified copy of this judgment to the learned Accountability Court-III, Peshawar.

(SHAHRUKH ARJUMAND)
JUDGE

Approved For Reporting

M.I.Khan

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