JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3957 of 2016
Nadeem Aftab
Versus.
Capital Development Authority, Islamabad and others

Date of Hearing:	**03.05.2018**
Petitioner by:	**Khawaja Zafar Hussain Nadeem, Advocate.**
Respondents by:	**Mr. Nadeem Waqas Chatha, Advocate** **Mr. Imran Shafique, Learned Special Prosecutor, N.A.B.**

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Nadeem Aftab, seeks a direction to respondent No.1 (Capital Development Authority) to issue a No Objection Certificate ("N.O.C.") for the transfer of House No.5, Street No.95, I-8/4, Islamabad in the petitioner's favour. Furthermore, the petitioner seeks a direction to respondent No.2 (National Accountability Bureau) to remove and withdraw all cautions causing an impediment in the issuance of the N.O.C.

2. Learned counsel for the petitioner submitted that the petitioner purchased the said house from respondent No.3 (Muhammad Idrees) for a total sale consideration of Rs.2,60,00,000/- through agreement to sell dated 16.09.2013; that prior to the said purchase, the petitioner went through the relevant record maintained by respondent No.1 and satisfied himself that the said house was free from all sorts of encumbrances; that possession of the said house was handed over to the petitioner after the payment of the sale consideration to respondent No.3; that after respondent No.3 appeared before respondent No.1 and recorded his statement, the said house was transferred in the petitioner's favour vide transfer letter dated 24.09.2013; that the petitioner is residing in the said house along with his family members; that vide letter dated 03.12.2013, respondent No.2 required respondent No.1 to provide information regarding the said house; that the said

letter was received on 18.04.2014; that subsequently the petitioner came to know that respondent No.2 had placed an embargo on the transfer of the said house due to an investigation against Mufti Muhammad Ehsan ul Haq; that the petitioner filed applications dated 23.04.2014 and 09.02.2015 for the lifting of the embargo on the transfer of the said house, but to no avail; that till date, no decision has been taken by respondent No.2 on the said applications; and that the embargo placed on the transfer of the said house is being impugned through the instant writ petition.

3. Furthermore, learned counsel for the petitioner submitted that the petitioner was the *bonafide* purchaser of the said house for valuable consideration; that the said house was transferred in the petitioner's favour on 24.09.2013; that no order for the freezing of the said house has been passed by respondent No.2 under Section 12 and 23 of the National Accountability Ordinance, 1999 ("N.A.O."); and that the embargo placed on the said house is violative of the law laid down in the cases reported as *PLD 2013 S.C. 255 and PLD 2011 Islamabad 25*. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned Special Prosecutor, National Accountability Bureau ("N.A.B.") submitted that Reference No.02/2014 has been filed by N.A.B. against *inter-alia* respondent No.3 (Muhammad Idrees); that respondent No.3 has been accused of committing offences defined in Section 9 of the N.A.O.; that the said reference relates to *mudarba* scam; that numerous complaints had been filed against respondent No.3 as well as his cousin, Mufti Muhammad Ehsan ul Haq for depriving hundreds of people of their hard earned money; that respondent No.3 was arrested on 22.10.2015; that respondent No.3 played an active role in luring people to invest money with Mufti Muhammad Ehsan ul Haq; that respondent No.3's name was mentioned as a Director of the company in which members of the general public invested their money; that 248 claims against respondent No.3 were received by N.A.B., and he was

alleged to have defrauded the claimants from Rs.164,670,000/-; that respondent No.3 has admitted receiving commission on the collection of funds for Mufti Muhammad Ehsan ul Haq; that properties including the said house was purchased by respondent No.3 with the ill gotten money; that a caution had been marked on the said house by the N.A.B.; that the said house was transferred by respondent No.3 to the petitioner after the authorization of the investigation; that there is a discrepancy in the statements of respondent No.3 and the petitioner as regards the sale consideration for the said house; and that it was claimed that the entire sale consideration in millions of rupees was paid in cash, and not through any banking channel. Learned Special Prosecutor, N.A.B. prayed for the writ petition to be dismissed.

5. We have heard the contentions of the learned counsel for the petitioner as well as the learned Special Prosecutor, N.A.B. and have perused the record with their able assistance.

6. The petitioner claims to have purchased House No.5, Street No.95, I-8/4, Islamabad for a total sale consideration of Rs.2,60,00,000/-. The sale agreement annexed at page-13 of this petition shows that the entire sale consideration was received by the petitioner from respondent No.3. The said agreement also shows that the above mentioned entire sale consideration was paid in cash. This by itself renders the transaction suspect.

7. There is no denying the fact that reference No.2/2014 has been filed against respondent No.3. In the said reference, respondent No.3 has been accused of collecting millions of rupees from the general public for investment in entities owned and controlled by Mufti Muhammad Ehsan ul Haq, who is said to be respondent No.3's cousin. N.A.B.'s case is that the said house was purchased with the funds collected by respondent No.3 from the members of the general public, who had been lured to invest with Mufti Muhammad Ehsan ul Haq. Respondent No.3 was arrested by N.A.B. on 22.10.2015 at Islamabad. In his statement to N.A.B., he claims to have sold the said house to

the petitioner for Rs.55 Million. There is a clear discrepancy in the amount for which the petitioner claims to have purchased the said house with the one stated by respondent No.3.

8. The said house was transferred in the petitioner's favour vide transfer letter dated 24.09.2013 issued by respondent No.1/C.D.A. The said transfer letter shows that the seller of the said house was respondent No.3. Vide letter dated 03.12.2013, respondent No.2 called upon respondent No.1 to provide attested copies of the allotment letters regarding the said house. C.D.A.'s stamp/endorsement on the said letter shows that it was received on 03.12.2013 and not on 18.04.2014 as asserted by the petitioner. This information was sought in exercise of powers under Section 19 of the N.A.O. with respect to the investigation against Mufti Muhammad Ehsan ul Haq, Chief Executive, M/s Fayazi Gujranwala Industries (Pvt.) Ltd. Vide letter dated 04.02.2016, respondent No.2 marked a caution/lien on the said house in exercise of the powers under Section 23 of the N.A.O. Vide letter dated 03.11.2016, respondent No.2 in exercise of the powers under Section 12 of the N.A.O. ordered a freeze on the said house. This caused the petitioner to file an application for the amendment in this writ petition so as to challenge the order dated 03.11.2016, passed by respondent No.2.

9. On 09.11.2016, respondent No.2 filed an application before the Accountability Court No.II for the confirmation of the said order dated 03.11.2016. Vide order dated 23.12.2016, learned Accountability Court No.II confirmed the freezing order dated 03.11.2016. The said order dated 23.12.2016 was passed after the Court satisfied itself that the said house was transferred in the petitioner's favour after the authorization of the investigation. The Director General, N.A.B. being satisfied with the evidence placed before him, passed the freezing order and also confirmed the same.

10. Vide letter dated 29.08.2017, respondent No.2 conveyed to the petitioner the order dated 23.12.2016 passed by the learned Accountability Court No.II regarding a freeze on the

said house. The said order dated 23.12.2016 was passed during the pendency of the instant petition.

11. Now, the petitioner has not challenged the order dated 23.12.2016, passed by the learned Accountability Court No.II, whereby the freezing order dated 03.11.2016, passed by respondent No.2 with respect to the said house, was confirmed. The petitioner cannot collaterally challenge the said order passed by the learned Accountability Court No.II in the instant petition which is against the caution/freeze imposed by respondent No.2 on the said house. The petitioner is at liberty to challenge the said order dated 23.12.2016 before the appropriate forum in appropriate proceedings or to file an application for the recall of the said order dated 23.12.2016.

12. In view of the above, we do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____-2018.

JUDGE **JUDGE**

Ahtesham*

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