

IN THE HIGH COURT OF SINDH AT KARACHI
(APPELLATE JURISDICTION)

High Court Appeal No.59 of 2017

(Market Committee Karachi v. Haji Shah Jehan & Others)

Before:

Muhammad Faisal Kamal Alam J &
Sana Akram Minhas J

Appellant:	Market Committee Karachi Through, Mr. Shafiq Ahmed Lanjar, Advocate
Respondent No.1:	Haji Shah Jehan Through, M/s Ayan M. Memon & Hasaan N. Qamar, Advocates
Respondent No.2:	Province of Sindh Through, Mr. Syed Hussain Shah Assistant Advocate General Sindh
Respondent No.3:	The Director General, Agricultural (Extension) Sindh None
<u>Date of Hearing:</u>	19-1-2026 & 11-2-2026
<u>Date of Decision:</u>	6-4-2026

J U D G M E N T

1. **Sana Akram Minhas, J:** At its core, the present Appeal stems from an internal conflict between the outgoing and incoming Administrators of the Appellant, each taking divergent positions – the former executing and the latter opposing the compromise entered into with the private Respondent No.1 (**“Private Respondent”**).
2. This Appeal is directed against the Order dated 16.11.2016 and the Decree dated 24.11.2016 (**“Impugned Order”**) passed by a learned Single Judge in a Suit for *“Specific Performance, Declaration, Injunction, and Damages”*, bearing Suit No.750/2001 (*Haji Shah Jehan v. The Director General Agriculture (Ext.) Sindh & Others*) (**“Underlying Suit”**), which was instituted on 4.6.2001 by the Private Respondent (Plaintiff in the Underlying Suit).

3. The Impugned Order was passed on CMA No.13032/2015 being an application under Order 23 Rule 3 of the *Code of Civil Procedure, 1908* (“**Compromise Application**”), filed on 11.9.2015 and jointly signed by the Private Respondent and the then Administrator of the Appellant (Defendant No.2 in the Underlying Suit).

Factual Background – Case Set Up By Private Respondent In Plaint

4. The Private Respondent has been engaged in the vegetable business at the old Sabzi Mandi, Gulshan-e-Iqbal, Karachi and is ex-member¹ of the Market Committee. Upon its relocation to the new premises known as the New Fruit and Vegetable Market, Super Highway, Karachi (“**New Sabzi Mandi**”), the Private Respondent, in an open auction held on 2.7.1995, purchased a utility plot designated for a “Service Station”, bearing No.S-1, situated within the New Sabzi Mandi, Karachi, measuring 556 square yards (“**Original Plot**”). This fact was communicated to him by the Appellant vide letter dated 18.7.1995. The said service area was intended to facilitate the maintenance, repair, and unloading of fruits and vegetables transported via heavy trucks and loaders arriving from upcountry.
5. Upon deposit of the requisite amounts in the Appellant’s designated bank accounts, the Private Respondent was issued a Provisional Allotment Order dated 18.2.1998 in respect of the Original Plot. Owing to delays in the grant of construction permission, sought by the Private Respondent through letter dated 28.2.2000, he issued a legal notice dated 25.4.2001 to the Appellant; however, to no avail. Instead, the Private Respondent received a cancellation notice dated 31.5.2001 from the “*Authorised Officer*” of the Appellant, informing him that the allotment of the Original Plot had been cancelled with immediate effect, purportedly pursuant to sanction accorded by a “*Standing Committee formulated by Provincial Ombudsman*”.
6. Aggrieved thereby, the Private Respondent instituted the Underlying Suit on 4.6.2001, inter alia, for specific performance.

Developments Subsequent To Institution Of Suit – Settlement Deed

7. Upon conclusion of evidence and at the stage of final arguments, a “*Deed of Settlement*” dated 3.3.2015 (“**Settlement Deed**”) came to be executed,

¹ Though not stated in the Plaint of the Underlying Suit, during legal research on the relevant statute, an order dated 9.5.2018 disposing of CP No.D–6115/2017 (*Ali Ahmed Jokhio v. Province of Sindh*) came to our attention, wherein the Private Respondent filed an intervenor application (under Order 1 Rule 10 CPC), asserting that he is an ex-member of the Market Committee

during the pendency of the proceedings, between the then Administrator of the Appellant, viz. Shah Nawaz Kutrio ("**Outgoing Administrator**"), and the Private Respondent.

8. Under the Settlement Deed, the Outgoing Administrator of Appellant agreed to issue possession orders, site plans, and allotment orders in favour of the Private Respondent in respect of four shops in the New Sabzi Mandi, bearing Nos.36, 37, 38 and 39 ("**Substituted Shops**"), collectively measuring 1,440 square feet (equivalent to 169 square yards); the Private Respondent, in turn, agreed to leave 40 square feet as an open passage in front of the said shops; further, in respect of the remaining balance area of 396 square yards, the Appellant agreed to issue the requisite possession order, site plan, and allotment order in favour of the Private Respondent for a plot measuring 396 square yards ("**Substituted Plot**") situated adjacent to the said passage. The Settlement Deed also records payment of Rs.1.6 million by the Private Respondent towards construction costs of the Substituted Shops and contemplates the filing of a compromise application by the parties for obtaining a decree in terms thereof.
9. The Settlement Deed dated 3.3.2015 and the Compromise Application (dated March 2015) were signed by the Appellant's Outgoing Administrator, upon which certain original documents were handed over to the Private Respondent.
10. However, by the time the Compromise Application was presented before this Court on 11.9.2015, the Outgoing Administrator had been replaced by a new Administrator, Anwar Ali Gopang ("**Incoming Administrator**"), vide Notification dated 4.3.2015. The Appellant's Incoming Administrator, filed a Counter-Affidavit opposing his predecessor's Compromise Application, inter alia, on the grounds that it was without the approval of "*competent authority*" and contrary to law, which was, in turn, rebutted by the Private Respondent in his Rejoinder.
11. By virtue of the Impugned Order, the learned Single Judge allowed the Compromise Application and decreed the Underlying Suit in terms thereof.

Respective Submissions

12. Learned Counsel for the Appellant contended that the Impugned Order erroneously allowed the Compromise Application. According to him:
 - i) Although the Settlement Deed and Compromise Application were executed on 3.3.2015 by the Outgoing Administrator, by the time they

were presented before the Court on 11.9.2015, the said Administrator had ceased to hold office and stood replaced by the Incoming Administrator, who had expressly opposed both the Settlement Deed and the Compromise Application.

- ii) The Settlement Deed was, in any event, unauthorized, as under Section 14 of the *Agricultural Produce Markets Act, 1939* (“**1939 Act**”), although a Market Committee is empowered to manage and dispose of property, the proviso thereto mandates that any permanent transfer of immovable property must be approved by a three-fourths majority at a specially convened meeting. In the absence of such approval prior to the transfer in favour of the Private Respondent, the Settlement Deed is void and of no legal effect.
13. Conversely, learned Counsel for Private Respondent supported the Impugned Order and submitted that the Appellant had failed to demonstrate any illegality in the allotment of the Original Plot to the Private Respondent through public auction, its full payment, or the subsequent substitution (i.e. Substituted Shops and Substituted Plot). It was emphasized that the four commercial shops and the alternate plot measuring 396 square yards were provided in lieu of the Original Plot, which had been resumed by the Appellant for its own benefit to construct additional shops. Counsel contended that the Private Respondent cannot be made to suffer on account of internal disputes between the Outgoing and Incoming Administrators of the Appellant, driven by extraneous considerations. Despite having purchased the Original Plot in 1995 and completing payment in 1997, the Private Respondent has, to date, been deprived of the use of either the Original Plot or, in the alternative, any of the substituted properties.

Primary Question For Determination

14. The determinative question in this Appeal is whether the Impugned Order, allowing the Compromise Application and decreeing the Underlying Suit, is sustainable in law where the compromise (comprising the Settlement Deed and Compromise Application) was executed by the Outgoing Administrator but opposed by the Incoming Administrator of the Appellant.

Opinion Of The Court

15. The submissions advanced by Counsel for the respective parties have been duly considered, and the record examined.

Extract Of Relevant Statutory Provisions²

16. Given that the Appellant has, in reliance on Section 14 of the 1939 Act, questioned the authority of its Outgoing Administrator to execute the Settlement Deed transferring immovable property to the Private Respondent without prior sanction of the Market Committee, the relevant provision is reproduced below:

Section 14 of 1939 Act

14. Incorporation of Committee:- Every market committee shall be body corporate by such name as the Government may specify in the notification establishing it, shall have perpetual succession and a common seal, may sue and be sued in its corporate name and shall subject to the provisions of Section 24³, be competent to acquire and hold property, both movable and immovable, to lease, sell or otherwise transfer any movable or immovable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purposes for which it was established.

Provided that no committee shall permanently transfer any immovable property except in pursuance of a resolution passed at a meeting specially convened for the purpose by the majority of not less than three-fourths of the members of the committee.

17. Considering that, at all relevant times, the Market Committee stood superseded and its powers vested in the Government of Sindh-appointed Administrator(s), the relevant provisions of the 1939 Act are Sections 25 and 25-A, which are extracted below:

Section 25 of 1939 Act

25. Supersession of Market Committee:-

- (1) If, in the opinion of Government, a market committee is incompetent to perform or persistently makes default in performing the duties imposed on it by or under this Act, or abuses its powers, the Government may, by notification, supersede such committee:

Provided that before issuing a notification under this subsection the Government shall give a reasonable opportunity to market committee for showing cause against the proposed

² The statutory provisions of Sections 14, 25 and 25-A of the 1939 Act have been reproduced from the following two books:

- (i) *Manual of Agricultural Product Market Committee Laws in Pakistan* [2020 Edition], Imran Law Book House
- (ii) *Manual of Agricultural Product Market Committee Laws* [17th Edition], Khyber Publishers

³ Section 24: Power to borrow. (1) The market committee may, with the previous sanction of the Government raise the money required for carrying on the purposes for which it is established on the security of any property vested in and belonging to the market committee and of any fees leviable by the market committee under this Act.

(2) A market committee may, for the purpose of meeting the initial expenditure on lands, buildings and equipment required for establishing the market, and for the proper discharge of the duties and functions imposed on it by or under this Act, obtain a loan from the Government on such conditions, and subject to such rules as may be prescribed.

supersession and shall consider the explanations and objections, if any, of the market committee.

- (2) Upon the publication of a notification under sub-section (1) superseding a market committee, the following consequences shall ensue:
 - (a) All the members including the chairman and vice-chairman of the market committee shall, as from the date of such publication, be deemed to have ceased to be members of the committee;
 - (b) All assets of the committee shall vest in Government and the Government shall be liable for all the legal liabilities of the committee subsisting at the date of its supersession up to the limit of the said assets.
- (3) The Government may, at their discretion, by order, constitute either a new committee as provided under Section 7 or such other authority for carrying out the functions of the committee, as the Government may deem fit.
- (4) (a) When the Government have made an order under sub-section (3), the assets and liabilities defined in sub-section (2)(b) vesting in the Government at the date of such order shall be deemed to have been transferred on the date of such order to the new committee or authority constituted as aforesaid.
 - (b) (i) Where the Government by order under sub-section (3) of the Section 25 have appointed an authority other than new committee for carrying out of the functions of the superseded committee, the Government may by notification determine the period for which such authority shall act. Such period shall not be longer than three years, but where no new committee has been constituted to succeed the authority, it shall, unless Government otherwise directs, continue to hold office until a new committee is constituted;

Provided that the term of office of such authority may be terminated earlier if the Government for any reason consider it necessary.

 - (ii) At the expiry of the term of office of such authority, a new committee shall be constituted.
 - (iii) Upon such an order being made, the assets and liabilities vesting in the authority thereby superseded, be deemed to have been transferred by such order to the new committee.
- (5) Whenever the assets of a committee vest in the Government and no new committee or authority is appointed in its place, the Government shall employ the balance of the assets remaining after the discharge of the subsisting legal liabilities of the said committee for any object of public utility in the area specified in the notification issued under sub-section (1) of Section 4.

Section 25-A of 1939 Act

25-A. Emergency Powers:- If at any time Government are satisfied that a situation has arisen in which the purposes of this Act cannot be carried out in accordance with the provisions thereof, Government may by notification:

- (a) declare that the functions of the market committee shall, to such extent as may be specified in the notification, be exercised by Government or such person or persons as they may direct;
- (b) assume to themselves all or any of the powers vested in or exercisable by any market committee,

and such notification may contain such incidental and consequential provisions as may appear to Government to be necessary or desirable for giving effect to the objects of the notification.

Integrated Reading Of Applicable Provisions

18. Upon a conjoint reading of Sections 14, 25 and 25-A of the 1939 Act, it is evident that:
- i) While Section 14 vests a Market Committee with corporate powers to manage and dispose of its property, including immovable assets, such power, in the case of permanent transfer, is circumscribed by the proviso requiring a resolution passed by a three-fourths majority in a specially convened meeting. The proviso thereto, thus, imposes an internal procedural safeguard.
 - ii) However, the applicability of this safeguard under Section 14 is contingent upon the Market Committee being duly constituted and functioning in its ordinary capacity. Sections 25 and 25-A operate as statutory overrides of this normal regime.
 - iii) Once the Market Committee is superseded under Section 25, it stands dissolved, all its members cease to hold office, and its assets vest in the Government, which assumes control of its affairs and liabilities either directly or through a newly constituted Committee or interim authority to the extent provided therein. In such a situation, the decision-making authority contemplated under Section 14, including compliance with its proviso, becomes inapplicable as the statutory body itself ceases to exist and is replaced by the Government or an appointed authority.
 - iv) Section 25-A further empowers the Government, in emergent situations, to assume all or any powers of the Market Committee or delegate them as it deems fit. Consequently, once the Committee is superseded or emergency powers are invoked, the decision-making authority envisaged under Section 14, including the procedural requirement contained in its proviso, stands displaced by statutory substitution of the competent authority, and the governance and

management of the Committee's affairs, including property, pass to the Government or its designated authority in accordance with the 1939 Act.

19. Read cumulatively, Sections 25 and 25-A of the 1939 Act, indicate that the safeguard contained in the proviso to Section 14 applies only in the ordinary course of functioning of a duly constituted Market Committee, and stands displaced where the Committee is superseded or its functions are assumed by the Government under the 1939 Act.
20. The Impugned Order rightly affirms that the office of a government functionary is impersonal, not person-specific, and that official acts performed in discharge of public duties cannot be reversed or undone by a successor in office by a mere stroke of the pen or at his whim. Public administration is founded upon continuity, institutional responsibility, and adherence to lawful decision-making, rather than the subjective discretion of individual office holders. At the same time, any illegality, if alleged in respect of an act previously undertaken, cannot be ignored in the name of continuity and must be duly addressed by initiating appropriate proceedings against the officer concerned in accordance with law, rather than by unilaterally nullifying such acts through administrative fiat. To permit a successor in office to undo past official actions in this manner would undermine governance and erode public trust in the continuity and certainty of State action.
21. In the present case, at all relevant times, the Market Committee remained superseded and its functions were exercised by Government-appointed Administrators; neither has the Appellant's Counsel contended otherwise, nor has any material been placed on record to suggest the contrary. Therefore, the Appellant's contention that the Settlement Deed violates the provisions of Section 14, particularly its proviso, is misconceived.

Objection As To Divergence Between Original Suit Plot And Terms Of Settlement Deed

22. While, at the time of hearing, Counsel for the Appellant did not point out any illegality in the purchase of the Original Plot in public auction or its substitution through the Settlement Deed, a perusal of the memo of Appeal shows that, in paragraph 9, the Appellant has raised a fleeting objection. It is contended that the property in the Plaint of the Underlying Suit was the Original Plot (measuring 556 square yards), whereas the Settlement Deed relates to four Substituted Shops and an "additional plot" i.e. Substituted Plot measuring 396 square yards, allegedly without consideration. On this basis, the compromise (i.e. the Settlement Deed) is asserted to be unlawful.

23. This objection is misconceived. The Settlement Deed – though somewhat inartfully drafted – appears to have been executed pursuant to a letter dated 10.10.2001⁴ (“**Letter of Undertaking**”) issued by the Appellant’s then Administrator, Lt. Col. (Retd) M. Jawed Iqbal, which clearly sets out the purpose of the Settlement Deed. Under the said letter, the Appellant expressed its intention to construct twenty (20) additional shops at the site of the Original Plot allotted to the Private Respondent. It was further undertaken that, **in lieu of the Original Plot**, the Private Respondent would be provided commercial shops, while the remaining balance area would be allotted to the Private Respondent on the “*other side*”.
24. The Settlement Deed, executed **in furtherance** of the arrangement contemplated under the said Letter of Undertaking, records the following arrangements:
- i) The Appellant agreed to issue possession orders, site plans, and allotment orders in favour of the Private Respondent for four Substituted Shops in the New Sabzi Mandi (bearing Shop Nos.36, 37, 38, and 39), collectively measuring 1,440 square feet (equivalent to 169 square yards).
 - ii) The Private Respondent agreed to leave 40 square feet (equivalent to 4.44 square yards) as an open passage in front of the said Substituted Shops.
 - iii) In respect of the remaining balance area of 396 square yards (being the difference between the Original Plot measuring 556 square yards and the curtailed area), the Appellant agreed to issue possession order, site plan, and allotment order in favour of the Private Respondent for a plot measuring 396 square yards (i.e. Substituted Plot) situated adjacent to the aforesaid passage.
 - iv) The Settlement Deed further records payment of Rs.1.6 million by the Private Respondent towards the construction cost of the Substituted Shops and envisages the filing of a compromise application by the parties for the purpose of obtaining a decree in terms thereof.
25. The Settlement Deed, when read in conjunction with the Letter of Undertaking, demonstrate that the Substituted Shops and the Substituted Plot were provided **in substitution of**, and **not in addition to**, the Original Plot measuring 556 square yards. Notably, the four Substituted Shops collectively measure 1,440 square feet (equivalent to 169 square yards), which, when

⁴ See High Court Appeal File, Pg.135 (placed on record along with the Settlement Deed)

added to the 396 square yards of the Substituted Plot, equals 556 square yards – the exact area of the Original Plot. Furthermore, the Private Respondent paid an additional sum of Rs.1.6 million towards the construction of the Substituted Shops.

26. The Appellant's contention that the Settlement Deed goes beyond mere substitution and confers additional benefit is, therefore, incorrect.

Conclusion

27. In view of the foregoing discussion, we find no illegality or infirmity in the Impugned Order and Decree, allowing the Compromise Application and decreeing the Underlying Suit in terms of the Settlement Deed. The record demonstrates that the arrangement between the parties represents a substitution of the Original Plot and does not confer any additional or extraneous benefit, nor has any material irregularity been shown warranting interference in appellate jurisdiction. The Outgoing Administrator of the Appellant was competent and duly authorised to enter into the Settlement Deed on behalf of the Appellant. Accordingly, the Appeal is **dismissed** and the Impugned Order and Decree are maintained, as they call for no interference. In the circumstances of the case, there shall be no order as to costs.

JUDGE

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