

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Civil Revision Application No.S-22 of 2023

Applicants: Abdul Jabbar and 03 others
Through Mr. Moharram Abro advocate.

Respondents: 1. Taluka Municipal Administration Jhudo.
Through Taluka Nazim Taluka Council Jhudo
(now Chairman Town Officer, Jhudo) Taluka
Jhudo District Mirpurkhas.

2. Province of Sindh through Secretary
Government of Sindh Housing, Town
Planning, Local Government and Rural
Development department Sindh, Sindh
Secretariat Karachi.
Through Mr. Muhammad Sharif Solangi, A.A.G.

Intervener: Market Committee Jhudo
Through Mr. Abdul Razzaque Laghari advocate.

Date of hearing: 09.02.2026.

Date of Order: 05.03.2026.

O R D E R

Miran Muhammad Shah, J.- By this Order, I intend to dispose of instant Civil Revision Application, which was filed against the judgment dated 08-08-2023 passed by learned First Additional District Judge/ MCTC, Mirpurkhas, in Civil Appeal No.05/2007 (Re: Taluka Municipal Administration Jhudo vs. Abdul Jabbar and others) whereby said appeal was allowed and the impugned judgment and decree dated 22-12-2006 and 04-01-2007 respectively passed in F.C.Suit No.113/ 2006 was set aside and suit of the applicants/ plaintiffs was dismissed, hence this Revision application.

2. Brief facts giving rise to the instant Revision application are that applicants/ plaintiffs filed suit for declaration and permanent injunction against the respondents/ defendants stating therein that Jhudo Town has been declared as notified Market Area under the provisions of the Agricultural Produce Market Act, 1939, and Market Committee was established which owns a plot on the Eastern side of Railway Crossing Naukot at Jhuddo where auction of *sabzi* and fruit brought by growers is being held and being its

licensed holders the applicants/ plaintiffs are entitled to hold functions of *sabzi* and fruit which is brought by growers within the limits of Market Committee Jhuddo and charge brokerage as per schedule of Market Committee from growers/sellers. In the year 1981, the respondent/ defendant No.1 through notification No.TC/JDO/TAX/947/81 dated 09-05-1981 levied Market (brokerage) fee on sale of fruit and vegetables and such notification was challenged through F.C.Suit No.259 of 1981, in which injunction was granted against the respondent/ defendant No.1 but subsequently through notification No.SO-1 (34) dated 26-07-1981 the respondent/ defendant No.2 restrained all the councils not to undertake such function which are assigned to and performed by Market Committee and therefore, applicants carried out their normal functions without any interference but again in the year 1997 the respondent/ defendant No.1 attempted to lease out the right of collection of *sabzi Dalai* on 09-04-1997 and published notice in daily Jang dated 02-04-1997 as such the applicant/ plaintiff No.3 and his companions filed F.C.Suit No.29 of 1997 in which interim injunction was granted but later on the respondent/ defendant No.1 assured that right of collection of *sabzi Dalali* tax would not be leased out as such suit was not pursued. It is the case of the applicants/ plaintiffs that about a week back prior to filing of this suit, the Administrator (defunct) of the respondent/ defendant No.1 called the applicants/ plaintiffs at his office and directed them to stop functioning as brokers of the Market Committee on which the applicants/ plaintiffs explained that they being licence holders have every right to continue their functions as brokers in view of the Government Circular and that the respondent/ defendant No.1 is not legally competent to interfere with their functions but the respondent/ defendant No.1 through its Administrator asked the applicants/ plaintiffs to windup their business as such action of the respondent/ defendant No.2 is illegal, malafide and of no legal effect being contrary to the instructions of the Government of Sindh. The applicants/ plaintiffs also alleged that the Administrator with staff came there while applicants/ plaintiffs were busy in auction proceedings in the Market area of Market Committee and started interfering with functions of the applicants/ plaintiffs who

threatened the applicants/ plaintiffs to comply with otherwise applicants/ plaintiffs would be forcibly removed with the help of police as such if the respondents/ defendants are not restrained from their illegal act, the applicants/ plaintiffs will suffer irreparable loss; hence, the applicants/ plaintiffs filed suit with the following prayers:

- (A) Declaration that the plaintiffs, being licensed brokers of Market Committee Jhudo, are entitled to recover Brokerage Fee on vegetables, fruits etc brought by growers in the Market area of Market Committee Jhudo under the Agricultural Produce Market Act, 1939 and Rules and Bye-laws framed thereunder and hold auctions for sale of such commodities in the Market Area and the action of defendants in preventing the plaintiffs from performing their functions as Brokers and recovering Brokerage fee and threats advanced to that effect are illegal, malafide, void, ultravires and of no legal effect.
- (B) Issue Permanent injunction against the defendants restraining them from interfering with plaintiff's functions as Brokers of the Market Committee Jhudo and holding auctions of vegetables and fruits brought by growers in the Market area of Market Committee Jhudo and recovering Brokerage fee personally or through its Administrator, employees, agents or agency whatsoever in any manner.
- (C) Award costs of the suit to the plaintiffs.
- (D) Grant any other relief to which the plaintiffs may be found entitled under facts and circumstances of the case.

3. After service of notice, the respondents/ defendants failed to appear, hence on 14-5-2001 they were ordered to be proceeded exparte but subsequently exparte order against the respondent/ defendant No. 1 was set-aside by an application u/o IX Rule 7 C.P.C vide order dated 17-7-2001 and the respondent/ defendant No. 1 then filed written statement, wherein pleaded that suit is not maintainable, suit is barred under the provisions of Specific Relief Act, Sindh Local Government Ordinance, 1979, and under the principle of res judicata. Being licensee, the applicants/ plaintiffs have no locus standi to challenge the statutory actions/powers of the respondent/ defendant No.1 and this Court has no jurisdiction. The license of the applicants/ plaintiffs Muhammad Yakoob and Qadeer Ahmed were valid upto 30-6-1998, therefore

they have no legal right to file this suit and notification of Government is in respect of Jhudo Market Committee and not Jhudo Town as Market area so also it has been denied that Town of Jhudo is notified as Market area. There is only plot and not established Market of Market Committee and denied that the applicants/ plaintiffs are entitled to hold auctions of *sabzi* and fruit being brought by growers except to collect commission fee on the sale of agriculture produce. It is pleaded that by virtue of notification dated 09-5-1981, the respondent/ defendant No.1 imposed fee on the sale of vegetable and fruit which was challenged through F.C Suit No.250 of 1981 which was subsequently dismissed in non-prosecution. The respondent/ defendant No.1 has further pleaded that Circular issued by the respondent/ defendant No.2 is not applicable nor it curtails powers so vested by virtue of Sindh Local Government Ordinance 1979 as the Circular cannot override the statutory powers of the respondent/ defendant No.1. The applicants/ plaintiffs and other licensee caused hindrance by filing cases and succeeded in carrying out their functions illegally because the respondent/ defendant No.1 had wanted to lease out the right of collection of *Sabzi Dalali* fee and such notice was got published but the applicant/ plaintiff No.3 and his companions filed suit in which stay was granted although the applicants/ plaintiffs No.1 and 3 being licensee of Committee cannot interfere in the functions of Town Committee and to hold auction of *sabzi* and fruit or collection from growers because Market Committee has not established Market in the town of Jhudo. The respondent/ defendant No.1 has also pleaded that Market Committee Jhudo granted licenses to the applicants/ plaintiffs on nominal fee of Rs.100/- for whole year while the applicants/ plaintiffs are recovering lac of rupees by establishing their own Market whereas the respondent/ defendant No.1 has to collect *Dalali* fee on *sabzi* and fruit and utilize such funds for the development of the area so also provides civic amenities to the public at large. The applicant/ plaintiff No.1 and his companions had filed similar suits for their ulterior motives which were dismissed in non-prosecution and that present suit is under-valued which is liable to be dismissed with cost.

4. On the pleadings of parties, learned trial court framed the following issues.

ISSUES

1. Whether the suit is not maintainable in law and is barred under the principle of res judicata?
 2. Whether the suit is barred under the Provisions of Specific Relief Act and Sindh Local Government Ordinance, 1979?
 3. Whether the plaintiffs are entitled to recover Brokerage Fee on vegetables, fruits etc brought by growers in the Market area of Market Committee Jhudo under the Agricultural Produce Market Act, 1939?
 4. Whether the action of defendants to hold auction for sale of such commodities in Market area and preventing the plaintiffs from performing their functions as Brokers and recovering Brokerage fee, is illegal, malafide, void and of no legal effect?
 5. Whether the plaintiffs have cause of action to file the present suit?
5. In order to prove the case, applicants/ plaintiff examined Noor Muhammad Tapedar (Ex:111), who produced entry No. 32 of village form No. VII-B as Ex:111/A. Applicant/ plaintiff Abdul Jabbar adduced his own evidence at Ex:113, who produced his own license as Ex:113/A and licenses of other applicants/ plaintiffs Qadeer Ahmed, Shahzad Ali and Muhammad Yaqoob as Ex:113/B to Ex:113/D respectively. He has also produced notification dated 09-5-1981 (photo stat copy) as Ex:113/E, notification dated 22-01-1977 as Ex:113/F. Ghulam Muhammad, Secretary Market Committee Jhudo (Ex:136), who produced letter Circular dated 26-7-1981 as Ex:136/A and dated 23-11-1988 as Ex:136/B both of Government of Sindh. The applicant/ plaintiff Qadeer Ahmed has adduced his own evidence at Ex:137, and thereafter the evidence side of the applicants/ plaintiffs was closed through statement Ex:138.
6. The respondent/defendant No.1 examined Shafique Ahmed, clerk of the court (Ex:157), who produced plaint, written statement of respondent/ defendant No.1, issues framed and order dated 07-12-1998 in F.C. Suit No. 259 of 1981 as Ex:158 to Ex:161 respectively. He has produced plaint, written statement of

respondent/ defendant No.1, issues framed and order dated 02-11-1999 in F.C. Suit No. 29 of 1997 as Ex:162 to Ex:165 respectively. TMO namely Sarfraz Ali at Ex:166, who has produced notification dated 09-5-1981 as Ex:167, true copy of order dated 20-03-1991 in F.C. Suit No. 259 of 1981 as Ex:168 and true copy of order dated 07-12-1998 in F.C. Suit No. 259 of 1981 as Ex:169. Tax Inspector Jan Muhammad at Ex:176 and thereafter the evidence side of the respondent/ defendant No.1 was closed through statement Ex:177 while the respondent/ defendant No.2 has been ordered to be proceeded ex parte and besides learned DDA submitted statement Ex:178 thereby closing the evidence side of the respondent/ defendant No.2.

7. Learned counsel for the applicants has contended that learned appellate Court passed the impugned judgment in hasty manner without reading the merits and demerits of the appeal; that entire plaint of the plaintiffs/applicants is in accordance with the laid down Provisions of existing laws i.e. Agricultural Produce Market Act, 1939 and Rules 1940 and suit contains the very established cause of action as well separate powers of each Government Functionaries with their own responsibilities to exercise powers to collect the taxes from the growers on Agricultural produce; that in the concluding Para of the impugned Judgment the learned appellate Court has wrongly come to the conclusion to discuss on the merit as well suit; that impugned Judgment thus, is bad in the eyes of law, and it is altogether illegal, unlawful and ab-initio void. Lastly he prayed for setting aside the impugned judgment.

8. Learned A.A.G supported the impugned judgment of learned appellate Court by arguing that there is no illegality or material irregularity in the impugned judgment. He however, submits that none is present from the respondent/ Municipal Committee concerned; that even at trial stage no one has shown his appearance on behalf of the Municipal Committee, Jhudo; such act falls within willful disobedience and non-compliance. He while praying for dismissal of instant Revision Application also

recommends for referral of this matter to the Chief Secretary, Sindh, for taking necessary action.

9. I have heard learned counsel for the parties and have gone through the material available on record.

10. At the very outset I want to reproduce the section 19 of Agricultural Produce Markets Act, 1939 along with its Sindh Amendment:

19. Levy of fees: The market committee may, subject to such rules as may be made by Government in this behalf, levy fees on the agricultural produce bought or sold by licensees in the notified market area and Government shall make rules specifying the maximum rates of the said fees:

Provided that-

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.

SIND AMENDMENT:

In the said Act, for Section 19, except the proviso, the following shall be substituted :-

19. Levy of fees (1) Subject to the rules made in this behalf, a market committee may levy a fee on an agricultural produce bought or sold in the notified market area at such rate as it may fix but such rate shall not exceed the maximum rate prescribed by the rules.

11. This provides the powers to the concerned Market Committee for levying a fee over the transactions made at the market fallen within the Market Committee area. The different rules applied under the Agricultural Produce Markets Rules 1940, invariably described the fees to be levied on dealer who are acting as commission agents and broker and how it is to be collected which is rule 26 whereas rule 29 which specify the levy to be imposed by the market committee over its agents while giving them different names. Entire mechanism has been developed in these rules for collection of this fee and levy where separate account is to be maintained and who are to be exempted or

otherwise. After perusing the law and its rules it has come on record that the levy in collection of any sort of fees over the products sold and bought at the market fall under the jurisdiction of market committee and is exclusively to be collected by the market committee concerned. No other corporate body or local Government is mentioned to collect such fee and if any is at all is levying any tax or fees of the market committee activities is not authorized to do so and is making an illegal collection. Market committees are declared as local bodies, hence, it enjoys equivalent status as that of any other local body wherein each body has accrued with separate function which do not overlap and do not have overriding effect on each other. Contrary to the Market Committee Law, the law that has been relied upon in the present civil suit at hand was the Local Government Ordinance 1979. This law has since been repealed twice. Once under the SLGO 2001 and then again under the Sindh Local Government Act 2013 wherein under its section 160 it was repealed as under the Sindh Peoples Local Government Act 2012 it was revived. However, later on under the prevalent Act of 2013 it was once again repealed. Such law is no more in the field however, in present Sindh Local Government Act 2013 is in field has no provision which law allows imposition of any levy or tax by any Town Committee/Municipal Committee/Town Municipal Administration to impose any levy or any taxation on the Market committee sale and purchase transaction. In fact it provides a new mechanism to these local bodies for installing their own markets and levying tax on them leaving the market committee markets under the sole and exclusive authority of the market committee formed under the Agricultural Produce Markets Acts, 1939. Hence, this issue at hand is no more prevalent and should not be on the consideration under the prevalent Laws of the Land.

12. However, for purely academic discussion the present suit was filed by the present applicants with the prayer that the Market committee be declared as exclusive levy holder of its market and TMA may be restrained from collection of any tax from the applicants, who are collectors of the levy amount being the broker/agent/dalal of the market committee and took the stance that they cannot be made victim of double taxation and hence

they are not liable to pay any levy/tax to the Town Municipal Administration Jhudo simultaneously they should only be liable to do with the same with Market Committee Jhudo. The said suit was decreed in the favor of the plaintiffs/applicants, however, Taluka Administration Jhudo being the respondent No.1 in this revision filed the appeal against the order passed in the civil suit. The Appellate Court went contrary to the observations made by the trial Court in the civil suits and set aside the said suit and decree passed and allowed the appeal of the respondent No.1. In my opinion in such order which is now the impugned order of the appellate Court was arbitrary and was based on misreading of the law and misinterpretation. The learned appellate Court in its impugned judgment clearly misunderstood the provisions of Agricultural Produce Markets Acts, 1939 and its rules 1940 and favored the Taluka Municipal Administration which exclusively has no powers to encroach upon the market committee mechanism of levying tax on their own markets. In fact the suit that was decreed on 22.12.2006 by the trial Court and was challenged before the appellate Court by the appellant on 08.08.2023, after lapse of 18 years. However, by such time the law has changed and the nomenclature of institution of the Local Government has changed, yet without relying and without observing in the judgments on the prevailing law of the land, the appellate Court arbitrarily and in illegal manner set aside the judgment and decree of the trial Court, hence this present appeal was filed by the very plaintiffs who had filed the original civil suit in the year 2000 seeking relief. In fact it was way back in 1981, the Secretary Local Government had issued a notification vide 26th July 1981, which is reproduced as under;

In exercise of the powers conferred by Section-40 of Sind Local Government Ordinance, 1979, the Government of Sind are pleaded to direct that no council shall undertake such functions as are assigned to and performed by a Market Committee under the Agriculture Produce Markets Act, 1939, rules and bye-laws made thereunder.

13. In support of my contentions I place my reliance upon 2006 S C M R 385 and 2010 YLR 2753. Second one being from our very

own High Court which has in detail defined the powers and limitation between the two local Government bodies, one being the Taluka Municipal Administration and other being the Market Committee.

14. In the light of the above observations and the case law cited I hereby allow the present Civil Revision Application S-22/2023 and set aside the Judgment passed by the First Additional District judge, Mirpurkhas in Civil Appeal No.05 of 2007 vide judgment dated 08.08.2023 and allow the impugned Judgment and decree dated 22.12.2006 and 04.01.2007 respectively. It is specifically observed that the respondent No.1 never appeared before this Court to defend his rights being a official functionary. Even the learned A.A.G stated that such act of respondent No.1 falls under the willful disobedience and non-compliance. However, due to change in the entire nomenclature and the system of local bodies by the Province it seems that the respondent No.1 has lost interest in the matter and was not ready to pursue as a respondent. Such act of their was verily misconduct and their absence despite several notices issued by this Court was willful dis-obedience. In such circumstances, I refer such conduct to the Chief Secretary Sindh for the further necessary action.

15. The Civil Revision Application in above terms and stands allowed.

JUDGE

"Adnan Ashraf Nizamani"