

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

C.P. No.D-441 of 2019

Samiuddin son of BabouddinPetitioner

Vs.

Province of Sindh & othersRespondents

Date of hearing: 11.03.2019.

Mr. Nouman Sahito, Advocate for petitioner.

ORDER

ADNAN-UL-KARIM MEMON-J: - Through the instant petition the petitioner has prayed for initiation of inquiry about allotment and cancellation of shops at New Sabzi Mandi Market at Hala Naka as well as for allotment of Shop No.114 to him.

2. Brief facts of the case are that petitioner and his elder brother namely Muhammad Arfeen were allotted shop No.23 and paid requisite fee; that petitioner and number of people who had auction shed in the Old Sabzi Mandi, located at Hali Road Naya Pull were compelled to run from pillar to post to get allotment orders in their favour for the shops/shed at the new premises. Finally the petitioner was allotted shop No.114 but subsequently transferred in the name of respondent No.8, who is the member of executive committee of Union. Petitioner being aggrieved by the aforesaid action has filed the instant petition on 06.03.2019.

3. At the very outset, following legal principles emerge as to the maintainability of this writ petition: whether his purported allotment of the

subject shop has been cancelled and allotted to another person? In reply Mr. Nouman Sahito, learned counsel for the petitioner has argued that the allotment and its prompt cancellation by the respondents is illegal and without lawful authority; that the aforesaid actions of the respondents are based on malafide intentions and in excess of powers and authority; that respondents have violated their own policy which is an example of bad governance and nepotism. He prays for allowing the instant petition.

4. We have heard the arguments and perused the material available record.

5. This writ petition is concerned with the eviction of the Petitioner from shop duly allotted to him, his trade and thereby rehabilitating him pursuant to his traumatic dislocation in the outcome of the relocation at New Sabzi Mandi Market at Hala Naka. It appears to us that the nature of the controversy is clouded round the legal status of the Petitioner, namely whether he enjoys the status of tenant or of licensees. Record does not reflect that the petitioner was allotted the subject shop after relocation of the Sabzi Mandi Market at Hala Naka. This court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability; like illegality, irrationality and procedural impropriety. Whether action of the respondents falls within any of the categories has to be established first. Mere assertion in that regard would not be sufficient to entertain the instant petition. We have also perused the letter dated 25.02.2006 issued by Administrator, Market Committee, Hyderabad which reflects the following factual position of the case:-

“It appears that you despite knowing full facts of the case is dragging the department in unnecessary complications and difficulties. Record shows that you under mutual agreement had transferred plot No.114, Block No.08 in favour of Haji Badaruddin S/o Haji Abdullah and Mr. Haji Muhammad Hanif s/o Deen Muhammad transferred his plot No.169, Block No.06 in

your favour. Such facts are available on office record. You have not deprived from plot, your plot is available but you had made internal changes of your plot. There is only changes of members which are under mutual consent and amicably. This Market committee is not at fault in internal changes as no interest of Market Committee was involved, it was internal changes in between traders.

6. *That the contents of para No.6 of the application are not admitted it is stated that you despite knowing facts of allotment policy have raised irrelevant question, first of all it may be considered that defaulters can be given permanent transfer? Although as per terms and condition of allotment the plot is liable to be cancelled on the ground of default.*

7. *In view of the facts as stated above you are therefore requested to clarify whether you under a mutual agreement has not transferred your plot in favour of Haji Baddaruddin? If not give in writing so that further action may be taken and your legitimate grievance may be redressed.”*

6. In the light of foregoing factual position of the case, we therefore are of the view that this writ petition must fail on the short ground that the petitioner has failed to pursue legal avenues for the his ejection or removal from the subject shop if any which has been purportedly in his possession. This being the position the petition is meritless and is accordingly dismissed in *limine* alongwith pending applications.

JUDGE

JUDGE

Irfan Ali