

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**C. P. No. D- 06 of 2020**

[Muhammad Asif & another vs. Province of Sindh & others]

**C. P. No. D- 96 of 2020**

[Abdul Rasheed & another vs. Province of Sindh & others]

**C.P. No. D-111 of 2020**

[Muhammad Anwar vs. Province of Sindh & others]

**C.P. No. D-126 of 2020**

[Nizamuddin & others vs. Province of Sindh & others]

**C.P. No. D-244 of 2020**

[Wali Muhammad & others vs. Province of Sindh & others]

**Before:**

*Mr. Justice Adnan-ul-Karim Memon*

*Mr. Justice Adnan Iqbal Chaudhry*

Petitioners : Through M/s. Muhammad Arshad S. Pathan, Ishrat Ali Lohar, Imdad Ali Unar, Zulqarnain Talpur, Ahmed Murtaza A. Arab and Zarab Hyder advocates.

Respondents : Through Mr. Riazat Ali Sahar Advocate for Market Committee.

Mr. Ashfaque Nabi Qazi, Assistant Attorney General for Pakistan.

Mr. Allah Bachayo Soomro, Addl. A.G Sindh along with SIP Mirzo Khan o/b of SSP Hyd, SIP Ghulam Farooq & SHO Hali Road, Hyderabad.

Date of hearing : 26.10.2021

**ORDER**

**Adnan Iqbal Chaudhry J.** - The facts leading to these petitions are common. The Government had acquired around 73 acres under the Land Acquisition Act at Deh Gaju, Taluka City Hyderabad for the purposes of

developing a fruit and vegetable market at Hala Naka, hereinafter 'the new sabzi mandi [NSM]'. Eventually, by notices dated 22-11-2019, the Administrator of the Market Committee Hyderabad called upon all licensees / dealers of the Market Committee to shift their business from the 'old sabzi mandi' [OSM] at Hali Road, to the NSM at Hala Naka, and to take possession of the plots/shops allotted to them at the NSM. The local administration also issued public notices requiring all traders at the OSM to shift their business to the NSM. Apparently, the OSM, which was situated within the city, had become congested and unmanageable, giving rise to a host of civic, municipal and administrative issues. However, some of the traders at the OSM resisted the move of the administration to shift the market to the NSM. Thus, on the recommendation of the Commissioner Hyderabad, the Home Department issued a notification dated 28-01-2020 to impose a ban under section 144(6) Cr.P.C for 60 days on assembly for auction at the OSM. The action taken by the local administration to shift the fruit and vegetable market from the OSM to the NSM became the cause of action of these petitions.

C.P. No. D-06/2020 -

2. These two Petitioners, who claimed to be office bearers of the Action Committee of Wholesale Fruit and Vegetable Merchants & Commission Agents, contended that development works at the NSM were not complete; that basic infrastructure had not been provided thereat; that there was no provision for clean water or storage; that the sewerage line was old and broken; that there was no provision for electricity or sui-gas; that the Market Committee had made double allotment of plots/shops at the NSM; that the roads and platforms at the NSM were not complete; and therefore, compelling the Petitioners to shift their business from the OSM to the NSM was an infringement of their fundamental right to trade. The Petitioners therefore prayed that until the required infrastructure and facilities were made available at the NSM, the Respondents / local administration should be restrained from stopping the Petitioners from continuing business at the OSM. They also prayed

for a direction to the Respondents to provide infrastructure and facilities at the NSM so as to make conducive for market activity.

C.P. No. D-96/2020 -

3. These two Petitioners, who claimed to be traders at the OSM, brought this petition contending and praying as follows :-

(i) that the notification dated 28-01-2020 issued under section 144(6), Cr.P.C. imposing a ban on trading at the OSM, was unlawful for reasons:

(a) that the NSM was not ready for business as the basic infrastructure and facilities necessary for market activity had yet to be provided; and (b) that the said ban deprives the Petitioners of a livelihood at the OSM; hence the prayer that such notification be suspended;

(ii) that the original lay-out plan of the NSM prepared in 1990-1991 was altered and revised by the Administrator of the Market Committee from time to time either to convert or reduce the plots meant for amenities into shops and other commercial uses; and therefore, the original lay-out plan of the NSM should be restored;

(iii) that a part of the land of the NSM had been converted to a housing society by the name of 'Fruits and Vegetable Market Housing Scheme'; therefore such conversion be declared unlawful and the land be restored.

C.P. No. D-111/2020 -

4. The Petitioner claimed to be a trader at the OSM and challenged the notification dated 28.01.2020 issued by the Home Department Sindh to impose a ban under section 144(6) Cr.P.C. on assembly for auction at the OSM. He further prayed that the Respondents be directed to comply with orders passed by this Court in a previous petition to provide adequate infrastructure and facilities at the NSM before compelling the Petitioner to shift his business to the NSM.

C.P. No. D-126/2020 -

5. These are six Petitioners who claim to be dealers/licensees of the Market Committee Hyderabad, and claim that they were allotted plots for shops at the NSM. Their grievance is that the Market Committee re-demarcated the plots at NSM and made double allotments of the plots

allotted to the Petitioners. They pray for possession of their respective plots.

C.P. No. D-244/2020 -

6. These are forty Petitioners who claim to be dealers/licensees of the Market Committee Hyderabad, and claim that they were also allotted plots for shops at the NSM. Their first grievance is that the Market Committee made double allotments of the plots allotted to them; that around 18 of the Petitioners had filed Suit No. 252/2010 against the Market Committee for possession of their respective plots, which suit was decreed vide judgment dated 22-02-2012 subject to verification of allotments and dues; that for enforcing such decree they had filed Execution Application No. 42/2014, but possession has still not been delivered possession to them; therefore they pray for a writ to the Market Committee to deliver possession of their respective plots.

The second grievance of these Petitioners was that parking facilities and toilet facilities at the NSM have yet to be provided, and shifting of the market to the NSM is still ongoing; therefore, till such time they should be allowed to continue trading at the OSM.

The third grievance of these Petitioners was that the Market Committee recently constituted by notification dated 23-01-2020 issued under section 8 of the Agriculture Produce Markets Act, 1939, did not include local growers and dealers as required under the said provision; that the names proposed by the association of the Petitioners for inclusion in the Market Committee were not considered; and therefore, they prayed that the said notification dated 23-01-2020 be declared unlawful.

7. Heard the learned counsel and perused the record.

8. The grievance central to all these petitions was that traders at the OSM should not be compelled to shift their businesses to the NSM until basic infrastructure and facilities were provided thereat. To gather first-hand information, this Court by a common order dated 10-12-2020 passed in all petitions, appointed the Additional Registrar of the High Court as Commissioner to inspect the infrastructure and facilities at the NSM as

compared to the OSM, and to verify the allegation of double allotments at the NSM.

The Additional Registrar's inspection report is dated 02-01-2021. That report clearly indicated that the infrastructure and facilities required for commencing market activity at the NSM was available by and large. It was reported that the NSM was far more spacious, spread over a much larger area compared to the OSM, and the Covid-19 virus could be better curtailed at the NSM; that drinking water was available and a drainage system was in place; auction platforms were in place; shops of traders were constructed and were being constructed; cold storages were available; internal roads were laid; space was provided for post-office, mosque, dispensary, lavatories; and that electricity was also available. The inspection report also noted complaints by some of the allottees that the Administrator of the Market Committee had made double allotments of plots at the NSM and had not delivered possession to genuine allottees. The ADC Hyderabad also submitted a map to the Additional Registrar to show that the drain/nala at the NSM had been encroached by illegal construction of around 22 shops, and a part of it was also encroached by a petrol pump.

9. In the meanwhile, the Government issued notification dated 23-01-2020 to constitute the Market Committee Hyderabad under section 8 of the Agricultural Produce Markets Act, 1939 and the erstwhile Administrator was replaced. By order dated 07-01-2021 passed in these petitions, the Market Committee was directed to examine the issue of double allotments being faced by the allottees, with the observation that if any allottee was in non-compliance of terms of allotment, his allotment should be cancelled after opportunity of a hearing. In exercise of that mandate, the Chairman Market Committee issued notices to various persons who had been allotted shops at the NSM so as to verify double allotments and to check whether allotments had been made to persons eligible. But then subsequently on 26-10-2021, the Chairman Market Committee filed a statement in these petitions to submit that the issue of double allotments involved factual controversies requiring the recording of evidence, which was beyond the powers of the Market Committee.

10. By the aforesaid order dated 07-01-2021 passed in these petitions, this Court had also directed the Deputy Commissioner to ensure that the NSM starts functioning at the earliest and that the market be shifted from the OSM to the NSM in phases. In compliance thereof, the Additional Deputy Commissioner issued order dated 23-03-2021 for shifting the market in phases from the OSM to the NSM. Again, by order dated 18-05-2021 directions were issued to the local administration to ensure that the principal market activity takes place only at the NSM, but keeping in view the prevailing Covid-19 pandemic, it was observed that for the time being those licensees who do not opt to shift business to the NSM should be allowed to continue at the OSM.

11. The inspection report dated 02-01-2021 filed by the Additional Registrar of this Court, which is discussed in para 8 above, reflects that infrastructure and facilities required for market activity at the NSM are by and large in place. Such fact is also affirmed in the comments filed in these petitions by the Chairman, Market Committee and the Deputy Commissioner Hyderabad. Further, pursuant to orders dated 07-01-2021 and 18-05-2021 passed in these petitions, and the subsequent lifting of curbs imposed to check the Covid-19 pandemic, the fruit and vegetable market has already been shifted to the NSM. On 23-06-2021, the Deputy Commissioner Hyderabad had formally notified the shifting of the fruit and vegetable market to the NSM. Thus, subsequent events have overtaken these petitions, and the primary grievance of the Petitioners that they should not be compelled to shift business to the NSM until necessary infrastructure and facilities thereat are in place, is no longer a live issue. Keeping in view said developments, we now proceed to decide each of these petitions.

Decision in C.P. No. D-06/2020:

12. The prayer in this petition was essentially that until the required infrastructure and facilities were made available at the NSM, the Respondents / local administration should be restrained from stopping the Petitioners from continuing business at the OSM. On the other hand,

in his comments filed to this petition, the Chairman Market Committee has disputed the very status of the Petitioners. He has averred that though the Petitioner No.1 was the transferee of a plot at the NSM, such allotment was cancelled on 08-10-2019; and that the Petitioner No.2 is neither a licensee nor an allottee of the Market Committee. However, since the premise of the prayer made in this petition is no more, we do not travel into that controversy. The inspection report relating to the NSM has already been discussed by us in para 8 above, which goes to show that the necessary infrastructure and facilities are by now provided at the NSM, and therefore that basis for continuing business at the OSM is no longer available to the Petitioners. In fact, pursuant to subsequent orders passed in these petitions, discussed in para 11 above, the local administration has already shifted the market to the NSM. Given the said developments, this petition has served its purpose.

13. Regards the encroachment on the drain/nala at the NSM noted in the inspection report of the Additional Registrar of this Court, the Deputy Commissioner is directed to inspect such drain/nala, and if he finds the same under encroachment, he shall take action against it under the provisions of the Sindh Public Property (Removal of Encroachment) Act, 2010.

14. With the above observations, C.P. No. D-06/2020 is disposed of as having served the purpose. Pending applications become infructuous. However, nothing herein shall be construed to prevent the Market Committee from taking action under the law against defaulting licensees, dealers and allottees.

Decision in C.P. No. D-96/2020:

15. The primary grievance of the Petitioners was that the action taken by the local administration for stopping market activity at the OSM, including the ban dated 28-01-2020 imposed under section 144(6), Cr.P.C., had deprived the Petitioners of a livelihood when the NSM was not ready for market activity for want of basic infrastructure and facilities. The inspection report relating to the NSM has already been discussed by us in

para 8 above, which goes to show that the necessary infrastructure and facilities are by now provided at the NSM, and therefore that basis for continuing business at the OSM is no longer available to the Petitioners. In fact, pursuant to subsequent orders passed in these petitions, discussed in para 11 above, the local administration has already shifted the market to the NSM.

16. The allegation made in this petition that the Administrator Market Committee had permitted a Housing Scheme on the land of the NSM, is based merely on a letter dated 31-12-2019 (page-87) issued by the Directorate of Planning and Development Control, HDA, stating that it had approved a lay-out plan dated 31-01-2018 for the "Fruits and Vegetable Market Housing Scheme". However, subsequently, by corrigendum dated 11.02.2020 the same Directorate clarified that the words 'Housing Scheme' in that letter were a typographical error, as the said lay-out plan had been approved for the "Fruits and Vegetable Market Project". While different lay-out plans of the NSM have been filed by the Petitioners, there is nothing to show that a lay-out plan was duly approved by the competent authority in the year 1990-1991. On the other hand, the lay-out Plan No.6 dated 31-01-2018 filed with the Additional Registrar's inspection report is duly approved by the Directorate of Planning and Development Control, HDA. Therefore, none of the other prayers made in the petition merit consideration.

17. For the foregoing reasons, C.P. No. D-96/2020 is disposed of as having served the purpose. Pending applications become infructuous. However, nothing herein shall be construed to prevent the Market Committee from taking action under the law against defaulting licensees, dealers and allottees.

#### Decision in C.P. No. D-111/2020

18. The grievance in the petition was essentially against the notification dated 28.01.2020 issued by the Home Department Sindh under section 144(6) Cr.P.C., to prevent trading activity at the OSM so as to require traders to shift their business to the NSM. The Petitioner had



contended that until adequate infrastructure and facilities are made available at the NSM, he should not be compelled to shift his business to the NSM. The inspection report relating to the NSM has already been discussed by us in para 8 above, which goes to show that the necessary infrastructure and facilities are by now provided at the NSM, and therefore that basis for continuing business at the OSM is no longer available to the Petitioner. In fact, pursuant to subsequent orders passed in these petitions, discussed in para 11 above, the local administration has already shifted the market to the NSM. The purpose of C.P. No. D-111/2020 having been served, same is disposed accordingly alongwith pending applications.

Decision in C.P. No. D-126/2020

19. These six Petitioners claimed to be dealers licensed by the Market Committee under the Agricultural Market Produce Rules, 1940, and claimed to have been allotted plots by the Market Committee at the NSM for the purposes of shops. They contended that the Market Committee had made double allotments of the plots allotted to them, and thus they sought a writ to the Market Committee for delivery of possession of their respective plots. However, the copies of licenses filed with the petition do not show any of the licenses to be subsisting/renewed at the time of the petition. The copies of allotment orders filed with the petition show that these were 'revised provisional' allotment orders issued by the Market Committee to the Petitioners 2 and 3, and to the predecessors of the Petitioners 1, 4, 5 and 6 between the years 2001 to 2003. Per the comments filed by the Chairman Market Committee, the Petitioners 1, 4, 5 and 6 have not been issued licenses by the Market Committee; and that the plots allotted to the Petitioners 2 and 3, and to the predecessors of the Petitioners 1, 4, 5 and 6, had been cancelled as far back as 2010 for non-payment of installments and after issuing numerous notices to such allottees. In support of that, the Market Committee has filed copies of cancellation letters issued to said allottees in the year 2010. It is further stated by the Market Committee that after the said allotments were cancelled, those plots were duly allotted to other licensees; and thus the allegation of double allotment was false.

20. In the circumstances discussed above, where none of the Petitioners have demonstrated that they hold licenses duly renewed by the Market Committee under the Agricultural Market Produce Rules, 1940; and where the Market Committee alleges that the allotment of plots made to the Petitioners or their predecessors at the NSM were duly cancelled in the year 2010 for non-payment of installments, and then allotted to other licensees, the allegation of double allotment becomes a question of fact requiring evidence. Said question cannot be decided in writ jurisdiction, and that too in the absence of parties who were subsequently allotted the plots in question. Therefore, C.P. No. D-126/2020 is dismissed leaving the Petitioners to remedies available at law.

Decision in C.P. No. D-244/2020

21. The first of the grievances of these Petitioners was that the Market Committee had made double allotments of the plots allotted to the Petitioners at the NSM, and despite a decree for possession passed by a civil court in favor of some (not all) of the Petitioners, the Market Committee has yet to deliver possession to them. On the other hand, per the comments filed by the Market Committee, some of the Petitioners do not even hold valid licenses under the Agricultural Market Produce Rules, 1940; while some of the Petitioners defaulted in payments owed to the Market Committee under the terms and conditions of allotment of plots at the NSM.

22. The question whether the plots allotted by the Market Committee to the Petitioners at the NSM were doubly allotted to others, or whether those plots were allotted after cancelling the allotment of Petitioners on account of default in payment, are questions of fact that require evidence. Such questions cannot be addressed in writ jurisdiction. Admittedly, some of the Petitioners have already availed a remedy before the civil court where they were awarded a decree for possession of their respective plots at the NSM, and for the enforcement of which they have already filed an Execution application before the civil court. Therefore,

for the relief of possession of plots from the Market Committee, the Petitioners are left to alternate remedy available at law.

23. The second grievance of these Petitioners was that parking facilities and toilet facilities at the NSM have yet to be provided; that the shifting of the market from the OSM to the NSM will take time; and therefore, till such time, the Petitioners should be allowed to continue trading at the OSM. Apparently, this grievance of the Petitioners is no more. The inspection report on the record, the comments of the Market Committee and those of the DC Hyderabad, all show that parking and toilet facilities are now available at the NSM. In fact, pursuant to subsequent orders passed in these petitions, discussed in para 11 above, the local administration has already shifted the market to the NSM.

24. The third grievance of these Petitioners was that the Market Committee recently constituted by the Minister for Agriculture by notification dated 23.01.2020 issued under section 8 of the Agriculture Produce Markets Act, 1939, did not include local growers and dealers as required under the said provision; that the names proposed by the association of the Petitioners for inclusion in the Market Committee were not considered; and therefore, it was prayed that the said notification dated 23.01.2020 be declared unlawful.

The said notification dated 23-01-2020 constituting the Market Committee is filed as Annexure I to the petition at page 283. It lists the names of growers and dealers from various talukas of District Hyderabad as members of the Market Committee. Therefore, the averment that local growers and dealers are not made part of the Market Committee, is not only vague, but the Petitioners have also not demonstrated how and which of the members of the Market Committee have been appointed contrary to section 8 of the Agriculture Produce Markets Act, 1939.

25. For the foregoing reasons, C.P. No. D-244/2020 is dismissed for prayers (a) and (c). For prayer (a), the Petitioners may avail alternate remedies available at law. For the remaining prayers, the petition is disposed of as having served its purpose.

JUDGE

JUDGE

Dated: 22nd December, 2021.