

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Constitution Petition No.2194 of 2023
(CC# 100107605725)

Asmatullah & others

Vs.

Government of Balochistan, through its Chief Secretary and others

Date of hearing: 24.11.2025 Announced on: 26-11-2025

Petitioners by: Mr. Salman Khan Kakar, Advocate.

Official respondents
1,2, 5 to 7 and 15 by: Mr. Nasruminallah, Additional Advocate General.

Respondent No.3 by: Muhammad Akram Shah, Advocate.

Respondent No.4 by: Waheed Khan Kakar, Advocate.

JUDGMENT

Sardar Ahmad Haleemi, J. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”) with the following relief:

“It is therefore respectfully prayed that impugned order dated 10/02/2023 passed by Chairman Market committee Quetta and impugned order passed by Assistant Commissioner dated 2/6/2023 and order passed by Commissioner Quetta Division dated 19/12/2023, may kindly be set aside and remand the matter with direction to be decided on merit after following the proper procedure shown and directed by law, in the interest of justice.”

2. As per contents of the instant petition, the petitioners are Mashakhors operating in the Hazar Ganji Fruit & Vegetable Market. In 1998, the Government of Balochistan shifted the market from

Satellite Town to Hazar Ganji and allotted 37 acres of land for Commission Agents and 23 acres of land for Mashakhors. According to the petitioners, although 23 acres were reserved for them, only 2 acres exist on the ground, while the remaining 21 acres have allegedly been encroached upon or occupied by Commission Agents and outsiders. The petitioners further allege that the auction ground, intended to be a joint business place, has been illegally leased exclusively to Commission Agents. Previously, the petitioners had approached this court, but their petition was dismissed on the grounds of laches. Thereafter, the Hon'ble Supreme Court, in CPLA No. 4348/2019, directed them to approach the Chairman of the Market Committee for redressal. Pursuant thereto, the petitioners filed their grievance application on 14.12.2022. However, the Chairman dismissed their application without issuing notice to the respondents on account of the limitation being time-barred, vide order dated 10.01.2023 ("**impugned order**"). The appeal before AC Sariab was dismissed on 02.06.2023 on the ground of res judicata, and the revision petition was disposed of by the Commissioner without addressing the actual issues raised vide order dated 19.12.2023 ("**impugned order**"). Aggrieved, the petitioners have invoked constitutional jurisdiction.

3. Learned counsel for the petitioners argued that the impugned orders dated 10.01.2023, 02.06.2023, and 19.12.2023 are illegal, arbitrary, and violative of natural justice, having been passed without affording a fair hearing or considering the relevant record,

documents, and statutory provisions. The Chairman Market Committee erred by issuing notice only to the petitioners and not to the necessary respondents, rendering the entire proceedings void for lack of notice, absence of reply, missing record, and failure to conduct proper hearings; that the Chairman's finding regarding limitation is patently incorrect, as the petitioners had approached the forum pursuant to the Supreme Court's order dated 18.11.2022 in CPLA No.4348/2019. Once the Supreme Court directed the petitioners to file the grievance application, limitation did not apply, and the contrary view reflects mala fide exercise of jurisdiction; that the Assistant Commissioner wrongly dismissed the appeal on the ground of res judicata, overlooking that the earlier petition before the High Court of Balochistan was dismissed on laches, not on merits; therefore, res judicata was inapplicable. The Commissioner's order dated 19.12.2023 is non-speaking, vague, and demonstrates complete non-application of mind, as it neither affirms nor sets aside the subordinate orders nor addresses the core legal issues raised; that the auction ground is a joint public facility under the Balochistan Agricultural Produce Markets Act, 1991, and neither the Act nor the Rules permit its lease to Commission Agents. The respondents' actions are ultra vires and constitute abuse of authority of the 23 acres reserved for Mashakhors, 21 acres have been illegally encroached upon by Commission Agents and outsiders with official connivance, leaving only 2 acres available. Documentary evidence of this illegality was ignored by all forums; that the 866 unauthorized Mashakhors were enlisted in violation of statutory procedure,

adversely affecting the original 380 license-holders. The minutes of the meeting dated 09.04.2004 were misconstrued, as Mashakhors were not present, and even the Commission Agents had undertaken not to exceed limits, sublet portions, or lease common areas yet the Auction Ground was illegally leased; that the Chairman also manipulated dates: no hearing occurred after 22.12.2022, yet the order was shown as announced on 10.01.2023 and later issued on 14.02.2023, which alone vitiates the proceedings.

4. Conversely, Learned Additional A.G representing the respondents Nos.1, 2, 5 to 7 and 15 opposed the petition and contended that the auction platform is reserved exclusively for Commission Agents under the Balochistan Agricultural Produce Markets Act, 1991 and General Rules, 1995; that the petitioners have encroached upon the said platform after selling their allotted plots; that the contempt proceedings in CP No.917/2021 are pending against petitioners; that the administrative authorities acted strictly as per law; no illegality is apparent. These respondents adopted the arguments of the other respondents and added that the petitioners' claim is based on misrepresentation of facts and that the authorities have already provided ample opportunity to them. He prayed for dismissal of the petition.

5. Learned counsel appearing on behalf of Respondent No. 3 contended that the petitioners have distorted facts before this court and that no right of the petitioners has been violated; that the land within the Hazar Ganji Market was allotted strictly in accordance

with the Balochistan Agricultural Produce Markets Act, 1991 and the Rules framed thereunder, and Respondent No.3 has been operating strictly within the area earmarked for Commission Agents; that the petitioners have no lawful claim over the auction platform, and their presence there constitutes an encroachment; that the auction platform is meant exclusively for licensed Commission Agents whereas the petitioners, being Mashakhors, cannot legally conduct their business there; that the petitioners' allegation that 23 acres were earmarked for Mashakhors but reduced to 2 acres is misconceived; Respondent No. 3 had no role in any such alleged reduction, and no mala fide or unlawful act can be attributed to him; that the grievance raised by the petitioners pertains to administrative allocation of land, in which Respondent No.3 has no authority, and therefore, the petition cannot be maintained against him; that the impugned orders were passed after due consideration of the material available and suffer from no illegality; the petitioners are merely attempting to reopen concluded issues. He therefore prayed that the petition be dismissed.

6. Learned counsel for the respondent No.4 opposed the petition and contended that the petitioners have approached this court with unclean hands because most of them had already disposed of their own plots or are occupying areas not originally allotted to them, which disentitles them to any equitable relief under Article 199; that the Respondent No.4 has at all times acted within the jurisdiction conferred by the statute and has not interfered with any area or land reserved for Mashakhors, the allegations that Respondent No.4 is part

of an encroachment or illegal allotment are baseless and unsupported by evidence; that the petitioners' claim regarding 21 acres of missing land is a matter requiring factual inquiry and evidence, which cannot be adjudicated in constitutional jurisdiction. Thus, the petition is not maintainable against Respondent No.4; that the proceedings of CP No.917/2021 and the conduct of the petitioners therein show that they repeatedly violate market regulations, and the present proceedings are an attempt to avoid compliance with lawful directions already issued against them; that the administrative orders challenged in this petition do not cause any adverse civil consequences to the petitioners; instead, these orders maintain discipline within the market area. Respondent No.4 has neither benefited from nor influenced those orders. He therefore supported the impugned orders and sought dismissal of the petition with costs.

7. We have heard the learned counsel for the parties and have gone through the record. A perusal of record reveals that the petitioner filed a case/appeal bearing No.1/2013 under section 21 of the Balochistan Agriculture Produce Market General Rules, 1995 (Rules 1995) before Assistant Commissioner Sariarb, which was dismissed vide impugned order dated 02/06/2013 on the ground that a Constitution Petition No.917/2021 regarding the same issue is pending before this court. However, the learned Assistant Commissioner/Collector Saryab did not decide the petitioners' grievance raised pursuant to the Supreme Court's direction on merits; as such, the impugned order is a non-speaking order and a violation

of the Hon'ble Supreme Court's directions. Thereafter, the learned Additional Commissioner, Quetta Division, disposed of the Petitioners' Revision under Section 21(5) of the Rules 1995 vide order dated 19/12/2023("impugned order") in the following manner:

"Now the above recorded reasons and placed on record order dated 28.11.2023 passed by the Hon'ble Supreme Court of Pakistan, this court reached the conclusion to vacate the interim stay, which was granted in favor of the petitioner, furthermore, the parties are directed to consider the list of legal registered Mashakhors as provided to this court, furthermore the Mashakhors to be shifted to their legal allotted land. However, the concerned Market Committee is directed to protect the legal rights of Mashakhors for running their business legally on allotted land according to the provided list."

8. It is manifest from the impugned orders that the petitioners' grievances have not been addressed pursuant to Hon'ble Supreme Court decision, which indicates that the lower forums have to examine the petitioners' allotment orders, the land specified for Mashakhors, the status of encroached land etc, thus the impugned orders are non-speaking order, passed without issuing notice to the respondents and without addressing the grievances. The impugned orders are legally flawed, as no earlier proceedings were shown to have been decided on the merits or to involve the respective parties on the subject matter; therefore, the doctrine was misapplied. The revisional impugned order is also vague and non-speaking, showing

no application of mind and failing to examine the legality of the earlier orders or the substance of the petitioners' grievance. The core dispute relating to the alleged non-availability of Mashakhors' land, alleged encroachment, and use of the auction platform was not adjudicated by any of the authorities, despite clear directions of the Hon'ble Supreme Court. Although certain factual issues may require determination, interference under Article 199 is justified because the impugned orders suffer from procedural irregularity, lack of reasoning, and violation of due process.

For the above reasons, Constitution Petition No.2194 of 2023 is partly allowed. The impugned orders dated 10.01.2023, 02.06.2023, and 19.12.2023 are hereby set aside. The matter is remanded to the Assistant Commissioner, Sariab, who shall decide the petitioners' grievance afresh, strictly in accordance with law, after providing due notice and opportunity of hearing to all concerned. The Assistant Commissioner shall ensure that the proceedings are concluded expeditiously and preferably within two (02) months from the date of receipt of this judgment. No opinion is expressed on the merits of the case; all questions of fact and law are left open.

Announced in open Court:
Quetta, on 26th November, 2025

Judge

Judge