

JUDGMENT

MOHSIN AKHTAR KAYANI, J.-----Through this writ petition, the petitioner has prayed for the following relief:

"It is therefore, respectfully prayed that the writ of this Honourable Court may graciously be issued declaring that;

- (i) As per provisions of Islamabad Capital Territory Agricultural Produce Markets Ordinance, 2002 Rules and byelaws made thereunder, the Petitioner is competent to manage, establish, control and regulate the sale, purchase, dealership, weighing, marketing and all other activities fully defined thereunder in respect of agricultural produce within the market area notified on 22.12.2014.
- (ii) The petitioner alone is entitled to regulate, establish, manage and control the whole sale markets, shops, etc. outlets, Bazaars not confined to but including Weekly Bazaars, Sasta Bazaars, Juma Bazaars, Eid Bazaars and other special bazaars set up and established under any name whatsoever where agricultural produce is dealt with in any manner given in the Islamabad Capital Territory Agricultural Produce Markets Ordinance, 2002 Rules and byelaws made thereunder.
- (iii) That MCI and CDA have no authority whatsoever under the Islamabad Capital Territory Agricultural Produce Markets Ordinance, 2002 Rules and byelaws made thereunder and any other law for the time being in force to exercise any authority or power with respect to the management, control and regulation of agricultural produce, in markets, retailer shops, Rehri, Thela and Thurra etc, any such Bazaars of all kinds, operating permanently, periodically, timely or occasionally within the notified market area.
- (iv) The resistive behavior on behalf of the hierarchy of MCI and CDA in handing over agricultural produce markets and bazaars to the petitioner amounts to transgression into the lawful domain and authority of a statutory body which act is without wisdom, without reasonableness and the same may jeopardize the balance between the domain, authorities and jurisdictional spheres of different public bodies/institutions.
- (v) The petitioner is lawfully entitled to take over the control of the management, establishment and administration of all or any kind of but including Weekly Bazaars, Sasta Bazaars, Juma Bazaars, Atwar Bazaars, Ramzan Bazaars, Eid Bazaars and other special bazaars set up and established under any name including those at 1-9, H-9, G-11 and G-6, Islamabad, used for the activities, businesses, sale, purchase and handling etc of the agricultural produce in the notified market area.
- (vi) No other authority other than petitioner is empowered to issue daily price list of the agricultural produce for the notified market area and get it implemented as per provisions of the Islamabad Capital Territory Agricultural Produce Markets Ordinance, 2002 Rules and byelaws made thereunder.
- (vii) The MCI and CDA authorities may graciously be directed to immediately handover the control of any or all markets, bazaars etc along with their logistics and properties, dealing with the sale, purchase and all other acts incidental thereto in respect of the agricultural produce within the market area, to the petitioner for regulation of the same in accordance with law.

Any other relief which this Honourable Court deems fit and proper may also be granted."

2. Bare perusal of the prayer clause referred above gives a detailed insight regarding the proposition raised in the instant writ petition, therefore, brief facts are not mentioned.

3. Learned counsel for petitioner contends that the petitioner is a Market Committee established under Section 7 of the Islamabad Capital Territory Agricultural Produce Markets

Ordinance, 2002 (hereinafter referred to as "ICTAPMO, 2002") and regulated under the Islamabad Capital Territory Agricultural Produce Markets Rules, 2014 (hereinafter referred to as "ICTAPMR, 2014"); that besides agricultural produce items defined in Section 2 of the Ordinance, any other commodity may be declared an agricultural produce by way of notification and the petitioner has sole authority to issue/renew licenses to dealers, brokers, weigh men, measurers, surveyors, warehousemen, changers, palledars, boriotas, tollas, tokrewalas and rahriwalas, etc., who fall within the definition of Section 2(b) of the Ordinance; that Section 21 of the Ordinance read with Rule 33 of the Rules empowers the petitioner to levy and collect the fees on sale and purchase of agricultural produce within notified market areas; that on 22.12.2014, Ministry of Interior/respondent No.5 while exercising powers under Section 4 of the Ordinance has been pleased to issue SRO(I)/2014 declaring the revenue limits of the Islamabad Capital Territory as market area for the purpose of the Ordinance; this Court in earlier round of proceedings carried in W.P. No.3462/2015 and W.P. No.3835/2016 has decided the authority of the petitioner within the notified areas of Islamabad; that on 11.01.2017, the Chairman, CDA through a letter addressed to Chief Commissioner, Islamabad/respondent No.6 has refused to hand over the weekly bazaars establish in Sectors I-9, H-9, G-11 and G-6, Islamabad to the petitioner with the plea that the same have been established by the CDA being a civic body to provide basic/daily use commodities on competitive rates and the said bazaars do not fall within the ambit of the Ordinance, which gives rise to filing of the instant writ petition.

4. Conversely, learned counsel for CDA contends that CDA has been establish under the CDA Ordinance, 1960 and its municipal functions have been run under the Municipal Administration Ordinance, 1960; that Section 51 of the CDA Ordinance, 1960 empowers the CDA to make its rules, by-laws and regulations and while exercising the said powers, the CDA has established the weekly bazaars to facilitate the residents of Islamabad i.e. establishment of weekly bazaar in Aabpara on 25.01.1980 followed by the Mingal Bazaar in Sector I-9 in the year 1980 and Itwaar Bazaar in Sector G-9 in the year 1982, and even the places on which the said bazaars have been established belong to the CDA; that the said weekly bazaars also contain products other than agricultural products referred in the Ordinance; that after establishment of the Metropolitan Corporation Islamabad (hereinafter referred to as "MCI") pursuant to the Islamabad Capital Territory Local Government Act, 2015, the issue regarding division of assets and employees between CDA and MCI is subjudice before this Court, however the Directorate of Municipal Administration (hereinafter referred to as "DMA") was transferred to newly established MCI and all public markets fall within the schedule of the Islamabad Capital Territory Local Government Act, 2015 (hereinafter referred to as "ICTLGA, 2015"), which has nothing to do with the Ordinance and claim of petitioner is not maintainable.

5. I have heard the arguments advanced by learned counsel for the parties and perused the record.

6. Perusal of record reveals that Market Committee ICT through its Chairman/ petitioner claims control of all the wholesale market shops, outlets, weekly bazaars, Sasta bazaars, Juma bazaars, Eid bazaars and other special bazaars set up by the CDA and MCI in Sectors I-9, H-9, G-11 and G-6 in terms of the ICTAPMO, 2002 with the contention that after the promulgation of the ICTAPMO, 2002, no authority is left with the CDA or the MCI to regulate the affairs of shops dealing with agriculture produce as defined in Section 2-A of the ICTAPMO, 2002 in the notified market area defined in Section 4(2) of the ICTAPMO, 2002, whereas the CDA as well as MCI has resisted the instant writ petition mainly on the ground that the CDA has been established under the CDA Ordinance, 1960 (hereinafter referred to as "CDA Ordinance, 1960") with inherent powers to regulate the affairs of markets established in the ICT being the master regulator. The respondent side further took the stance that CDA bye-laws also empower the CDA to deal with all kinds of trades and regulate the licensing of the traders, whereas Chapter 13 deals with the hawkers, while Schedule-I provides the licensable trades such as fruit, vegetable meat, fish, poultry, ghee, ice cream, etc., even otherwise, Schedule 4 provides the conditions of license for sale of fruits, vegetable, meat, etc.

7. Besides the above referred background, there is a third legislation in the field i.e. the

Islamabad Capital Territory Local Government Act, 2015, which also provides the establishment of Union Councils and Metropolitan Corporation with functions as defined in 2nd and 3rd Schedule of the Act, 2015, respectively.

8. In order to resolve the controversy as to whether the ICTAPMO, 2002 supersedes the provisions of the ICTLGA, 2015 and the CDA Ordinance, 1960, the same has to be considered with reference to their preamble, structure, functions, powers as well as their timeframe when the same have been promulgated.

9. With reference to above question, I have gone through the CDA Ordinance, 1960 at the first instance, which has been promulgated to establish the CDA for the planning and development of Islamabad within the framework of regional development plan and as such, CDA is authorized to perform municipal functions with view to provide for cleanliness, health, education facilities, supply of goods, article of food, to promote different sectors of public. The CDA is also authorized to perform functions of municipal functions and as such, interest of public of ICT has to be looked into by the CDA as per Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed upon PLD 2011 SC 619 (Suo Motu Case No.13/2019). Even otherwise, CDA is a statutory organization and has to act in the public interest being the master regulator as held in 2015 SCMR 294 (Muhammad Ikhlaq Memon v. CDA).

10. The CDA has to submit the planning scheme for the development of ICT in the area notified in Schedule issued by the Federal Government and Section 3 gives a declaration of the capital site and the CDA has been run under the power and authority, which is constituted under Section 6 of the CDA Ordinance, 1960 comprising of different individuals including the official members and the said power is headed by Chairman. In terms of Section 11, the CDA shall prepare a master plan and a phased master program for the development of ICT, while Section 12 empowers the CDA to prepare schemes in accordance with the master plan and master program by local bodies or agencies.

11. Keeping in view the above background, the CDA being master regulator has developed sectors of Islamabad with reference to the requirement of general public, whereas layout plan has been approved on sector to sector basis and execution of the schemes in ICT, even the CDA can acquire any land, called for objections from general public, enter upon any land, proceeds with the survey, pay compensation for damages and acquire any property for the development of ICT, even powers to apply penalties are available to the CDA, who can take any legal action provided under Section 49-C of the CDA Ordinance, 1960 and can recover dues against any person under the law.

12. This entire background substantiates that the CDA is the master regulator and all subsequent legislation have notified the powers of the CDA being the master regulator of the ICT. The ICT Municipal Bye-Laws 1968, which have been made under the powers provided in terms of Section 15-A of the CDA Ordinance, 1960 read with Municipal Administration Ordinance, 1960, has been established in order to further strengthen the issues dealing with the parking facilities, fruit and vegetable markets, sanitation, registration of births and death infectious or disease, burial or burning places, dangerous and offensive trades, encroachments, and nuisance, which also provides the licensing of trades like sale of fruit and vegetable, meat, therefore, the said bye-laws are considered to be dependent upon the functions and powers of CDA and has no independent effect.

13. Besides the above referred difference of statutes related to issue in hand, it is important to mention here that the market area has been notified in pursuance of order dated 09.02.2013, passed in W.P. No.3348/2013, wherein the ICTAPMR, 2014 were notified on 15.04.2014, market area was notified on 22.09.2014, however after notification of market area, the administrator was appointed by Government under Section 36 of the ICTAPMO, 2002, who issued notices to different shopkeepers and dealers for the purpose of registration under the ICTAPMO, 2002 and levy of the market fee. Majority of the dealers and shopkeepers have challenged the matter before Hon'ble High Court in W.P. No.3466/2015, which was decided

vide order dated 23.11.2015, whereby it was held that market committee shall be responsible to exercise the authority under the Ordinance and direction was passed by this Court to constitute a market committee under Sections 7 and 8 of the ICTAPMO, 2002. In pursuance of the direction of this Court, first ever market committee of the ICT was established on 08.12.2016, whereas the Chairman and Vice-Chairman were notified on 25.01.2017. On the other side, the tug of war is going on between the CDA and MCI for distribution of their directorates, however the Ministry of Interior distributes the directorates on 06.01.2017 leaving the control of the weekly bazaars under the MCI. In order to resolve the controversy as to whether all three legislations i.e. CDA Ordinance, 1960, ICTAPMO, 2002 and ICT Local Government Act, 2015 could be implemented at the same time in the ICT and what are their jurisdiction and powers with respect to issue in hand.

14. The question of jurisdiction has to be settled on the principle of interpretation of statute in which two special laws or more than two special laws have been dealt and in this regard I have gone through cases reported as 2017 SCMR 1218 (Syed Mushahid Shah v. Federal Investment Agency and others), 2019 CLC 347 (FECHS v. DG FIA, Islamabad), PLD 2019 Islamabad 1 (FGEHF v. Malik Ghuman Mustafa), 2006 PCr.LJ 921 Karachi (References by Judge Special Court-II (CNS)), 2002 PCr.LJ 216 Peshawar (Muhammad Saleem v. The State), PLD 1985 SC 159 (IG of Police, Punjab v. Mushtaq Ahmad Warraich), PLD 1991 SC 258 (Packages Limited v. Muhammad Maqbool), 2013 SCMR 85 (Muhammad Mohsin Ghuman v. Government of Punjab), PLD 2014 Peshawar 170 (Muhammad Sheraz v. Chief Secretary, Government of KPK), PLD 1972 Lahore 41 (Abdul Samad v. Iqbal Ahmad Khan Lodhi, PCS District Tribunal, Lahore), PLD 2001 SC 169 (Mumtaz Ali Khan Rajban v. Federation of Pakistan), and PLD 1997 Quetta 69 (Khudai Dad v. The State).

15. While dealing with the above referred judgments, following principles have been settled:

- (a) When there were two special laws both of which contained overriding clauses, and there was a conflict between them, generally the statute later in time would prevail over the statute prior in time.
- (b) Special law has to be applied in case of two similar subjects in field even otherwise when there is any inconsistency special law has to prevail or if there is any gap then provisions of general law has to be applied for understanding by reference.
- (c) Preference is to be given to new law and implied repeal of earlier law can be inferred only when there was an enactment of later law which had power to override earlier law and was totally inconsistent with earlier law.
- (d) When there was conflict between two special Acts, each of which could be described as special in some particular sense.
- (e) Special law shall have precedence over the general law and where there are two special laws and they are inconsistent on any matter or subject then the one which is later in point of time shall prevail over the earlier one.
- (f) Where special provision is made in a special statute that special provision excludes the operation of a general provision in the general law, general provisions will not abrogate special provisions.
- (g) *Generalia specialibus non derogant*---Special provisions will control general provisions.
- (h) "Non obstante" clause had to read in the context of what the legislature intended in the enacting part of the provision.
- (i) where a special statute dealing with a special subject created special liabilities as also provided a special remedy or procedure for the enforcement of that liability then in order to bring about the consequences contemplated by that statute for the breaches of

its provisions recourse should be had to that statute and to no other statute.

- (j) Repeal of earlier law---Law having not been expressly repealed cannot be inferred to have been impliedly repealed, unless it is shown that the former and the latter laws are inconsistent and they cannot co-exist.
- (k) When the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights.

16. I have also gone through the specific powers and duties of the committee provided under the ICTAPMO, 2002 read with its Rules, wherein Section 6 empowers the market committee to issue and renew licenses, while Section 21 of the Act empowers the market committee to levy and collect fee. Similarly, the relevant rules also extend the concept of renewal of license and Rule 13 deals with the administration of the market committee, whereas Rule 21 gives a control over the market and sale/purchase of agricultural produce. However, the entire law is silent regarding issues of administrator as to how and when the market committee can impose its decision as there was no specific legal authority for taking administrative action against the individual, who violates the law and in this regard, the decision of the market committee is dependent upon the exercise of authority by the Magistrate 1st Class in terms of Section 40 of the ICTAPMO, 2002 as all the punishments and penalties provided in Section 30 of the ICTAPMO, 2002 read with Rule 53 are only available to the concerned Magistrate. Such structure of the law gives rise to the situation that it has no independent workforce to collect the fee/levy or funds rather it is dependent upon some quasi judicial authority to deal with such kind of issues. However, Rule 59 gives an exclusive authority to the market committee to exhibit rates and daily price list in the notified market areas with reference to specific market created/establish under the Ordinance, 2002.

17. In comparison to the above law, the Islamabad Capital Territory and Local Government Act, 2015 comes later in time and Section 3(4) of the said Act specifically deals with conflict of laws and this legal framework shall without derogation to the existing laws and regulations of the ICT and CDA and segments not covered by the prevalent law shall be covered by the respective local Governments, as determined by the Government. Wherever there is a clash between the existing law and provisions of this Act, the existing law shall prevail unless clearly specified or repealed, and as such Section 132 deals with the repeal of laws. Even otherwise, the law itself provides a mechanism to the Local Government to regulate market/services and issue licenses as referred in 3rd Schedule, item (v) with reference to Section 32 of the Act. Section 121 of the Act extends general powers to the Local Government which have been given in details in 9th Schedule of the Act, in which Local Government may provide and maintain public markets, slaughter houses within its own local area, charge fee for grant of license to any person to open a private market, deals with selling and import of milk, manufacture butter or ghee or any other product and no person shall carry on any trade for which license is required under Item 44 of the 9th Schedule.

18. In comparison to above referred provisions, in terms of the principles discussed above, while dealing with the interpretation of two special laws, in my estimation, the ICTAPMO, 2002 is a specific legislation, which deals with the term "agricultural produce" as defined in Section 2(a) of the ICTAPMO, 2002, which is the root subject of the entire law and anything which falls within the definition of agricultural produce, the same has to be dealt under the said Ordinance. In this regard, the learned counsel for petitioner has heavily relied upon PLD 1976 Lahore 1284 (Kohinoor Sugar Mills v. Market Committee Jauharabad, District Sargodha), wherein the Hon'ble High Court has been pleased to hold that prior Act has wider scope and it provides better guidance on the subject while deciding the question of jurisdiction within the Punjab Agriculture Produce Markets Act, 1939 and Sugar Factories Control Act, 1950. Similarly, the question has also been taken in PLD 1976 Lahore 1334 (Hyesons Sugar Mills Ltd. Karachi v. Market Committee Khanpur) in which market fee can be collected on the sale/purchase within the market area. Similarly, PLD 1989 SC 449 (Noor Sugar Mills Ltd. v. Market Committee and others) gives detailed insight on the issue, wherein the apex Court has

upheld the judgment reported as PLD 1976 Lahore 1284 (Kohinoor Sugar Mills v. Market Committee Jauharabad, District Sargodha) and PLD 1976 Lahore 1334 (Hyesons Sugar Mills Ltd. Karachi v. Market Committee Khanpur), in which notified market area and markets have been defined. I have also gone through 1992 SCMR 1403 (Market Committee Kundian v. Town Committee, Khudian), in which provisions of Local Government Ordinance, 1979 and Punjab Agricultural Produce Market Committee Ordinance, 1978 have been discussed with the view that market committee holds a wider field.

19. While considering the above provisions, the most important factor is the interpretation of notified market area under the ICTAPMO, 2002, i.e. as defined in Section 2(j) of the Ordinance, which means any area notified under Section 4 of the ICTAPMO, 2002. The powers conferred under this Ordinance lies with the Federal Government with reference to Section 2(g) of the Ordinance, whereby a declaration is required by way of notification in conjunction with Section 3 of the Ordinance. Similarly, after the notification of notified market area, the Government has to notify and establish a Market Committee in terms of Section 7 of the Ordinance. However, in this respect Section 4(3) of the Ordinance plays a key role in settlement of the question raised, which has been reproduced as under:

"Section 4(3) --- After the date of issue of such notification and on the establishment of market committee under section 7, no local authority, notwithstanding anything contained in any other law entitling such local authority to establish a market and no person for himself or on behalf of the another person unless exempted by rules made under this Ordinance, shall, within the notified market area, set up, establish or use any place for the purchase or sale of the agricultural produce or purchase such agricultural produce except under and in accordance with, the terms and conditions of a, licence granted under the provisions of this Ordinance.

- Provided that a licence shall not be required by a grower who either himself, or through a bona fide agent, sells his own agricultural produce or the produce of his tenant or by a person who purchases any agricultural produce for his private or domestic use.
- Provided further that in the case of a market committee established for the first time under this Ordinance, no person shall be deemed to have violated this provision if he has made an application to the market committee for grant of a licence.

20. The legislature has used the phrase, "no local authority, notwithstanding anything contained in any other law", which refers mandatory concept and exclusive authority to the Market Committee under ICTAPMO, 2002 to perform all functions in the notified market area, to establish or use any place for the purchase or sale of agricultural produce or set up for this purpose. Hence, this Court is of the view that no other authority is vested with any such function in the notified area. However, the intention of legislature conveyed in Section 4(1) of the Ordinance is also clear for the purpose of notified area, wherein it has been referred as "notified market area for the purposes of this Ordinance and the agricultural produce over which control is to be exercised in that area". Similarly, Section 4(2) of the Ordinance further confers the authority vested to the Federal Government to include or re-include any area for the purpose of this Ordinance to be a notified market area by way of procedure defined in Section 3 of the Ordinance, whereby prior to issuance of notification by the Federal Government, all objections or suggestions, which may be received by Deputy Commissioner through Extra Assistant Director of Agricultural within a period to be specified in the notification will be considered.

21. Keeping in view the above background, I have no hesitation to hold that the role of the Federal Government plays a key role under all three statutes, therefore, it is necessary to separately discuss the role of Federal Government in the said three statutes in order to understand the authority of the Federal Government.

22. In CDA Ordinance, 1960, the Federal Government has to issue notification in official gazette to declare specified areas in terms of Section 3, whereas the Federal Government has to notify the management of the CDA Board as well as its constitution for the purpose of

development, town planning, housing and on question of policy. Similarly, the CDA shall submit master plan as well as master programme to the Federal Government for its approval in specified areas, while the financial approval also requires the assent of the Federal Government, even in case of dispute between the CDA and the local authority/ body the Federal Government plays the role of an umpire. In terms of Sections 42 and 43 of the CDA Ordinance, 1960, the CDA fund shall be formed to meet the charges in connection with its functions under the Ordinance through grants/loans by the Federal Government together with foreign aids/loans obtained from international bank subject to approval of Federal Government. Similarly, budget of the authority requires an approval of the Federal Government including the expenses and the audit shall be submitted to the Federal Government.

23. The Islamabad Capital Territory Local Government Act, 2015 defines the concept of the Federal Government with reference to Section 2(t) as "Government" means "the Federal Government". The areas have to be notified by the Government in terms of Section 4 for the purpose of Metropolitan Corporation and union councils. All the taxes within the local area in terms of Section 92 fall within the ambit of Local Government, however the same can only be collected as per the direction of the Government on its provided guidelines as well as the policy for promoting economic, social and environmental security. The Local Government is under the direct command of the Federal Government in terms of Section 93 and they are bound by such directions, even the Federal Government can notify any specific task in terms of Section 94 to the Local Government to perform certain functions. The properties of the Federal Government shall also be regulated in the policies directives of the Federal Government and all the By-laws or the Rules under the Local Government Act shall be made, if required by the Government. In terms of Section 119 of the Act, the Government may impose a condition or delicate any of its function under the said Act to the officer subordinate to it except the power to make rules, suspend or remove a Mayor or Chairman or to dissolve the Local Government. The Local Government besides their own levy of taxes, fee or rates is also dependent upon the grants given by the Government.

24. In the Islamabad Capital Territory Agriculture Produce Market Ordinance, 2002, the Government means Federal Government with reference to Section 2(g) and the declaration of notified area has been issued by the Federal Government in terms of Section 4 after adopting its procedure in terms of Section 3 subject to invitation of objections or suggestions for determination of market area. The market committees have to be notified by the Government in terms of Section 7 and subject to rules the Government may make in this behalf such provisions and delicate functions to the market committee or remove the members, even can appoint officers and servants in the market committee, wherein the levy of fee in terms of Section 21 is also subject to the rules prescribed by the Government. The Government shall determine the cost of special or additional staff employed by the market committee and market committee has to pay specific percentage of its income to be credited in the fund maintained by the Government. The market committee can purchase any vehicle for bringing agricultural produce of farmers to the market. The disputes of dealers and persons related to agricultural produce shall be referred to board of arbitrators on the direction of the Government.

25. The Government in the public interest can also dissolve the market committee and the assets of market committee shall then vest to the Government, even otherwise, the Government can appoint an Administrator for the market committee. Furthermore, any land can be acquired for the purpose of market committee to carrying out its functions under the Ordinance subject to prior approval of the Government, even the emergency powers have also been notified in terms of Section 36 of the ICTAPMO, 2002, which can be exercised by the Government, if necessary or desirable. At last, the Government may either generally or specially, for any notified market area, make rules consistent with the Ordinance as well as with the By-laws for the management of market area.

26. The comparative analysis of powers and functions of Government in all three laws as discussed above shows the subordination of market committee to the Federal Government and as such, no specific power is available to the market committee under the ICTAPMO, 2002 for

levy of any tax, charge or fee at their own in the notified area, rather they are dependent on the directions of the Government for each and every functions they need to perform. There is no cavil to proposition that the market committee for its management and control is not independent, rather dependent as a subordinate establishment to perform functions enumerated in the Ordinance. Whereas, in conjunction to the said law, the Islamabad Capital Territory Local Government Institution has its wider scope where public participate in election of the Union Council as well as of the Metropolitan Corporation for a specific term of the office. The concept of adult franchise principles has been applied in the constitution of the Local Government, where a person elected as Member or Chairman of the Union Council or for that matter a Mayor has to exercise the executive powers and conduct business of the Union Council as well as of the Metropolitan Corporation. Under Chapter-X of the ICTLGA, 2015, the concept of Local Government Taxation has been explained and subject to this Act, the Local Government may, by notification, levy any tax, fee, rate, rent, toll, charge or surcharge specified in the aforesaid schedule in terms of Section 88. However, the proposal of the Local Government for levy of tax requires prior approval of the Government only to ensure that the same is reasonable and is in accordance with law. The Metropolitan Corporation can also collect property tax as it has been empowered to recover the same as arrears of land revenue in terms of Section 90(3), which shows the financial autonomy as well as quasi judicial powers to recover tax, fee or any other charges from any individual, whereas such kind of powers are not available to the market committee. Similarly, the Local Government can own immovable properties in terms of Section 100 and manage their properties independently, which power is also not available to the market committee, even otherwise, the Local Government can acquire any property, if it considers necessary or expedient, for the public purpose and can directly purchase such property in this regard.

27. Chapter-XIII of the ICTLGA, 2015 provides offences and punishments as well as cognizability, whereby the 5th and 6th Schedule prescribe the punishment by way of imprisonment, fine, seizure, forfeiture, confiscation and impounding as well as other penalties as are provided in the said Act. The Mayor or the Chairman with prior approval of the Local Government can also appoint Inspectors to control and administer the provisions of the Act in the areas. All these concepts show the independent executive authority available to the Local Government to deal with the issues of trades in the 1st schedule and even the functions of the Union Council as well as of the Metropolitan Corporation provided in 2nd and 3rd Schedule explain their enlarged scope for betterment of the area. Similarly, the concept of taxation has fully been explained in 4th Schedule, which deals with the following subjects:

Part-I

Taxes and other levies by Union Councils

- (1) Entertainment tax on dramatical and the atrical shows.
- (2) Fees for registration and certification of births and marriages.
- (3) Fee on the services provided by the Union Council.
- (4) Rate for the execution or maintenance of any work of public utility like lighting of public places, drainage, conservancy and water supply operated by Union Council.
- (5) Community tax for the construction of public work of general utility for the inhabitants of the union.
- (6) Fee for licensing of professions and vocations as prescribed.
- (7) Any other tax or levy authorized by the Government.

Part-II

Taxes and other levies by Metropolitan Corporation

- (1) Water rate.
- (2) Drainage rate.

- (3) Conservancy rate.
- (4) Fee for approval of building plans, erection and re-erection of buildings.
- (5) Fee for change of land use of a land or building as prescribed.
- (6) Fee for licenses, sanctions and permits.
- (7) Fee on the slaughter of animals.
- (8) Tax on professions, trade, callings and employment.
- (9) Market fees.
- (10) Tax on sale of animals in cattle markets.
- (11) Toll tax on roads, bridges and ferries maintained by the Metropolitan Corporation.
- (12) Fee at fairs and industrial exhibitions.
- (13) Fee for specific services rendered by the Metropolitan Corporation.
- (14) Tax for the construction or maintenance of any work of public utility.
- (15) Parking fee.
- (16) Water conservancy charge from the owner or occupier of a house or any other building, except an educational institution having a swimming pool with a minimum surface area of 250 square feet.
- (17) Tax on installation of Base Transceiver Station/Tower.
- (18) Any other tax or levy authorized by the Government.

28. While considering the above powers of the Local Government, the market committee seems to be a smaller entity in the notified area to deal with the agricultural produce referred in Section 2(a)(i) to (xix) of the ICTAPMO, 2002, therefore, the market committee can neither go beyond such subjects nor enforce directly their authority as market committee is not empowered to independently enforce provisions of the Ordinance, rather they are dependent upon the provincial authorities i.e. Chief Commissioner Islamabad in ICT. The scope of the market committee can also be seen in the light of preamble of the said Ordinance, which reads as under:

"Whereas, it is expedient to provide for better regulation of purchase and sale of agricultural products and for that purpose to establish markets for agricultural products in Islamabad Capital Territory."

29. The above referred jurisdiction of the law clearly expresses the limited scope to the extent of agricultural products defined in Section 2(a)(i) to (xix), however the agricultural products can only be regulated for the purpose of sale and purchase in the notified markets established for such purposes. This aspect clearly defines the legislative intent as if the market has been established by the market committee under the ICTAPMO, 2002, only then the provisions of the Ordinance can be applied in the said market area. Accordingly, I have no hesitation to hold that the market committee constituted under the ICTAPMO, 2002 can establish their own market independently and can regulate the sale and purchase of agricultural produce within that market as they have no jurisdiction to enter into any other area, which is being regulated by the Union Councils, Municipal Corporation or the Capital Development Authority.

30. In order to conclude the above discussion, following are the directions of this Court while deciding the question of jurisdiction of the CDA, Municipal Corporation Islamabad, Union Councils and the Market Committee.

- a) Market Committee under the ICTAPMO, 2002 has limited jurisdiction to regulate the prices of agricultural produce defined in the said law within the market area notified by

the Federal Government with exclusive power to deal with the affairs of the markets established by them.

- b) Market Committee is authorized and empowered to deal with affairs under the said law regarding agricultural produce within Sector I-11 Sabzi Mandi, which is notified market for the agricultural produce and in any other market, which has been established by the market committee under this law.
- c) Market Committee can notify daily price list of agricultural produce in notified market areas within the notified markets only established by them.
- d) Any agricultural produce under the ICTAPMO, 2002 when exits from the notified market (established by the Market Committee) and shifts to other markets, shops, bazaar, weekly bazaar or any other bazaar notified by Municipal Corporation Islamabad or the Union Councils, as the case may be, its pricing factor could only be monitored under the ICTLGA, 2015 by the Municipal Corporation Islamabad or under its regime.
- e) Market Committee has no jurisdiction to manage and control other markets, shops, outlets, bazaars, including special bazaar, Eid bazaar, weekly bazaars, sasta bazaar, juma bazaar, Itwar bazaar, Ramzan bazaars or Cattle Markets, situated in any sector or area of Islamabad, including Sectors I-9, H-9, G-11 and G-6, as all these bazaars have initially been established by the CDA and are not in exclusive jurisdiction of Municipal Corporation Islamabad for its regulations and management.
- f) The Market Committee within their notified market (Sector I-11 Sabzi Mandi) and the markets notified can report violation of any law, provisions of ICTAPMO, 2002 or the Rules to the District Administration/notified Magistrate of the ICT for the purpose of Challan as they have no power or force to proceed against any individual by themselves, rather they can seek help from the Provincial Government i.e. Chief Commissioner ICT in Islamabad, who shall notify the Magistrate for the execution of any challan, notice or violation of the law.
- g) The Municipal Corporation Islamabad is empowered to issue licenses and regulate the licensing trades within the Islamabad Capital Territory, including the Union Councils, except the markets notified (established by the Market Committee).
- h) The Union Councils cannot charge any levy or tax on any market or sale of animals or cattle in market as it falls within the domain of Metropolitan Corporation Islamabad.
- i) The Union Councils within their territorial jurisdiction can impose taxes or charge fee only authorized/notified by the Government in the official gazette and they are not authorized to give open tender at their own or collect any sale proceeds by auction of any of the rights in the Union Councils territory for establishment of any market.
- j) Municipal Corporation Islamabad can charge any amount, fee, tax, etc. as prescribed in 4th Schedule, Part-II of the ICTLGA, 2015 and subject to conditionalities of the said law.
- k) Union Councils Islamabad can charge the tax, fee, or any other amount, if authorized by the Government under the 4th Schedule, Part-I of the ICTLGA, 2015.
- l) The Federal Government can settle the powers, functions and jurisdiction of the Market Committee, Union Councils, Metropolitan Corporation Islamabad as well as of the CDA under the relevant laws independently.
- m) After establishment of Municipal Corporation Islamabad under the ICTLGA, 2015, the municipal functions previously controlled by the Capital Development Authority now stand transferred by efflux of law to the Municipal Corporation of Islamabad and the overlapping jurisdiction for those specific trades/licenses now fall within the administrative control of Municipal Corporation Islamabad. The CDA will neither issue any such license or perform such functions nor regulate in future any license earlier

issued prior to promulgation of ICTLGA, 2015.

- n) The Municipal Corporation Islamabad shall register all trades, business, under ICTLGA, 2015 with the collaboration of concerned Union Councils and transfer the financial share of those levy, fee, taxes or recoverable amounts to the concerned Union Councils in accordance with law for improvement of infrastructure, water supply schemes, roads, or any other development within the notified area of the Union Councils. However, the recovered amount from any Union Councils shall only be spent within the said Union Councils under the law.

31. The petition stands DISMISSED in the above terms.

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