

**2012 M L D 737**

**[Lahore]**

**Before Malik Shahzad Ahmad Khan, J**

**MUHAMMAD SHAFIQ and 2 others---Petitioners**

**Versus**

**SECRETARY TO GOVERNMENT OF PUNJAB and 2 others---Respondents**

Writ Petition No.13831 of 2010, decided on 27th July, 2011.

**(a) Punjab Local Government (Auctioning of Collection Rights) Rules, 2003---**

---Rr. 3, 27-A & Second Sched., Part-III, Item No. 2---West Pakistan Municipal Committees (Cattle Market) Rules, 1969, R. 6---Constitution of Pakistan, Art. 199---Constitutional petition---Auction of lease of collection of fee of Cattle Market---Order of authority directing petitioner to hand over charge of such market on expiry of one year--Plea of petitioner (highest bidder) was that such lease was given for three years as approved by Tehsil Nazim, Town Municipal Council and Provincial Government---Validity---Period of such lease as advertised and mentioned in contract document was one year---Petitioner had knowingly participated in auction proceedings that period of such collection rights was one year and not three years---Such auction was held under Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 and not under West Pakistan Municipal Committee (Cattle Market) Rules, 1969---Record showed that such lease had been approved by the Town Municipal Council for a period of one year---Under R. 3 of West Pakistan Municipal Committee (Cattle Market) Rules, 2003, such lease could not be awarded beyond period of one year---Under R. 27-A of said Rules no extension in such contract could be granted beyond period of one year---Lease would be illegal and void, if executed for a period of three years in violation of law/rules---Local Government itself had no authority to extend such contract beyond period of one year,

thus, Provincial Government had no power to approve its extension for three years---  
High Court dismissed constitutional petition in circumstances.

Writ Petition No.24544 of 2009 ref.

Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others PLD 2001  
SC 169 and Tanveer Hussein v. Divisional Superintendent, Pak Railways PLD 2006 SC  
249 rel.

Ahmad Khan Niazi v. Town Municipal Administration, Lahore through Town Municipal  
Officer and 2 others PLD 2009 Lah. 657 distinguished.

### **(b) Administration of Justice---**

---Anything required to be done in a particular manner must be done in such manner  
and not otherwise.

### **(c) Punjab Local Government (Auctioning of Collection Rights) Rules, 2003---**

---Rr. 3, 27-A & Second Sched., Part-III, Item No. 2---Constitution of Pakistan, Art.  
199---Constitutional petition---Contract for collection of fee of Cattle Market,  
cancellation of---Contractor's plea that he shifted market to another village due to  
reason that area acquired by Town Municipal Administration was not enough for  
holding such market---Validity---Contractor had no lawful authority to take on lease any  
other land for holding of a cattle market and shift market from place acquired by  
authority to such other place---High Court dismissed constitutional petition in  
circumstances.

### **(d) General Clauses Act (X of 1897)---**

----S. 23---West Pakistan General Clauses Act (VI of 1956), S.22---Publication of new Rules under a statute---Effect---Previous Rules would be deemed to be expressly repealed, if same were obviously and vividly inconsistent with such new Rules.

**(e) Interpretation of statutes---**

----Special Law would prevail over general law.

Neimat Ali Goraya and 7 others v. Jaffar Abbas, Inspector/ Sargent Traffic through S.P., Traffic, Lahore and others 1996 SCMR 826 and Dur Muhammad v. Abdul Sattar PLD 2003 SC 828 ref.

**(f) Estoppel---**

----No estoppel against law/statute.

**(g) Civil Procedure Code (V of 1908)---**

----S.11---Res judicata, applicability of---Scope---Decision on a question of law without proper adjudication would not operate as res judicata.

Muhammad Saleemullah and others v. Additional District Judge, Gujranwala and others PLD 2005 SC 511 and Noor Muhammad v. Muhammad Iqbal Khan and 7 others 1985 CLC 1280 rel.

Ali Sibtain Fazli for Petitioners.

Mahmood A. Sheikh for Respondents Nos. 2 and 3.

Ch. Muhammad Maqsood-ul-Hassan, A.A.-G. for Respondent No.1

**ORDER**

**MALIK SHAHZAD AHMAD KHAN, J.**---This petition has been filed with the prayer that the impugned order dated 13-4-2010, passed by the Tehsil Officer (Finance), Tehsil Municipal Administration, Sheikhpura (respondent No.3) and the letter dated 7-12-2009, issued by the Secretary to the Government of Punjab, Local Government and Community Development Department Punjab, Lahore (respondent No.1), may be declared to be illegal, without lawful authority and of no legal effect.

2. Brief facts of the instant case as given in the present petition are, that the respondents decided to establish a new cattle market at village Kadlathi, District Sheikhpura. Accordingly, TMA Sheikhpura gave advertisement dated 12-8-2009 in the daily newspapers 'Pakistan' and 'Nawa-i-Waqt', for auction of collection rights of cattle market at Kadlathi, for a period of one year. The petitioners along with other bidders, allegedly gave application on 13-8-2009 to TMA (respondent No.2) requesting therein that the above mentioned period may be increased from one year to three years with 10% annual increase as provided in Rule 6 of West Pakistan Municipal Committees (Cattle Market) Rules, 1969. It is also claimed by the petitioners that the area acquired by the TMA was just 18 kanals 4 marlas, which was not enough for holding and operating a proper cattle market, therefore, the petitioners requested respondent No.2 that at least 25/30 acres of more land at some proper place be allowed to be taken on lease to hold cattle market at the said place. Anyhow, the auction was held on 21-8-2009 and the petitioners along with other bidders participated in the said auction in which the bid of Rs.3,48,00,000 of the petitioners was accepted being the highest one. The said bid was approved by the Nazim as well as by the House and a contract dated 7-9-2009 was also executed between the parties. As per terms and conditions of the said contract, the same was for a period of three years with annual increase of 10%. It is also claimed by the petitioners that they obtained on lease another area measuring 18 acres situated in village Jewan Pura adjacent to village Kadlathi, Teshsil and District, Sheikhpura vide lease deed dated 22-3-2010 and shifted the market to the said place. The Secretary to the Government of Punjab, Local Government and Community Development, Punjab, Lahore (respondent No.1) vide impugned letter dated 7-12-2009 intimated all the Town Municipal Administrators, that

West Pakistan Cattle Market Rules, 1969 stood repealed on the promulgation of Punjab Local Government Ordinance, 2001. The Tehsil Officer (Finance), Tehsil Municipal Administration Sheikhpura (respondent No. 2), thereafter, vide impugned work order dated 13-4-2010 informed the petitioners that the period of contract has been curtailed to one year. The petitioners were directed to hand over the charge of the above mentioned cattle market on the expiry of period of one year; hence, the present petition.

3. It is contended by the learned counsel for the petitioners that under proviso to Rule 6 of West Pakistan Municipal Committees (Cattle Market) Rules, 1969, in case of a new cattle market, the contract for collection of fee for cattle market could be awarded for a period of three years with 10% annual increase; that agreement between the petitioners and respondent No.2 was executed for a period of three years in terms of proviso to Rule 6 *ibid*; that it has been wrongly held in the impugned letter that West Pakistan Municipal Committees (Cattle Market) Rules, 1969 stood repealed after the promulgation of Punjab Local Government Ordinance, 2001; that under section 23 of the West Pakistan General Clauses Act, 1897, it has been provided that if a law is repealed and then re-enacted with or without modification then all rules and notifications etc. issued under the previous law shall continue to be in force unless repealed under the new law; that as under section 196 of Punjab Local Government Ordinance, 2001, the above mentioned rules had not been expressly repealed, therefore, the same continued to be in force; that the Government of Punjab also approved the grant of contract to the petitioners for three years vide its letter dated 7-9-2009, hence, the respondents after the execution of the agreement, cannot change their stance to adversely effect the rights already created in favour of the petitioners; that the judgment passed by this Court in another case reported as Ahmad Khan Niazi v. Town Municipal Administration, Lahore through Town Municipal Officer and 2 others (PLD 2009 Lahore 657) may kindly be distinguished because certain legal points were not taken note of by this court while passing the above mentioned judgment and the same is distinguishable from the facts of the present case; that the West Pakistan Market Committees (Cattle Market) Rules, 1969 have not been expressly repealed under the Punjab Local Government Ordinance, 2001, therefore, the same are still in force; that

the above mentioned rules of 1969 are not inconsistent with the Punjab Local Government Ordinance, 2001, therefore, said Rules of 1969 have survived; that above mentioned Rules of 1969 are special rules, whereas, Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 are general in nature, therefore, the above mentioned rules of 1969, being special law, will prevail over general rules of 2003; that in view of the above, the contract was rightly awarded to the petitioners for a period of three years; that the grant of contract to the petitioners was challenged by other bidders, but the same was upheld by this Court vide its judgment dated 22-1-2010, passed in Writ Petition No.24544 of 2009; that this Court has already held in the above judgment dated 22-1-2010 that under Rule 6 of the Cattle Market Rules, 1969, a contract can be given for a period of three years in case of a New Cattle Market; that an identical Writ Petition No.14031 of 2011 has been disposed of by another Bench of this Court vide order dated 21-6-2011 and the case has been referred to respondent No. 1 for decision on merits, therefore, the impugned order dated 13-4-2010 and the impugned letter dated 7-12-2009, may kindly be set-aside. He learned counsel for the petitioners in support of his contentions has relied upon the judgments reported as Neimat Ali Goraya and 7 others v. Jaffar Abbas, Inspector/Sargent Traffic through S.P., Traffic, Lahore and others (1996 SCMR 826), Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others (PLD 2001 Supreme Court 169), Tanveer Hussain v. Divisional Superintendent, Pak Railways (PLD 2006 SC 249) and Dur Muhammad v. Abdul Satter (PLD 2003 SC 828).

4. On the other hand, the learned counsel for respondents Nos.2 and 3 has vehemently opposed this petition on the grounds that the petitioners are guilty of concealment of facts inasmuch as the petitioners earlier filed Writ Petition No.12171 of 2010, which was dismissed as having been withdrawn vide order dated 23-6-2010 and this fact has been concealed by the petitioners; that on the basis of same facts and same prayer, the instant petition is not maintainable in the eyes of law; that the instant writ petition has been filed with malicious intent of protecting the gain received through fraud and forgery in connivance with the then Tehsil Nazim and T.M.O., etc.; that it was specifically mentioned in the advertisement dated 12-8-2009, published in the daily newspapers 'Pakistan' and 'Nawa-i-Waqt' for auction of rights to collect fee of cattle market, that the

same was for a period of one year; that the petitioners knowingly, that the period of said auction was only for one year, had participated in the above mentioned auction proceeding; that before the start of auction proceedings, all the intending participants were shown the terms and conditions of the auction; that as per said terms and conditions of the auction, which contains the signatures of the petitioners as well, the auction was meant for one year only; that under clause 32 of the above mentioned terms and conditions, the Punjab Local Government Rules, 2003, were applicable on the said auction proceedings and not above mentioned Rules of 1969; that the House of Tehsil Council on 25-8-2009 approved the auction for 'one year' through resolution No.10, dated 26-8-2009 (Annexure/R-5); that it is absolutely incorrect that the auction was held for a period of three years; that a contractor had no authority under the law to shift the market from the proposed place to another place and he has no lawful authority to retain on lease or otherwise any other land for holding of cattle market; that West Pakistan Municipal Committees (Cattle Market) Rules, 1969 stood repealed on the promulgation of Punjab Local Government Ordinance, 2001 and particularly under the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003; that the auction was held under above mentioned Rules of 2003 and there was no provision authorizing the Tehsil Municipal Administration to grant lease of collection rights beyond the period of one year; that the provisions of section 23 of the General Clauses Act, 1897 are not attracted in this case as the cattle market rules of 1969 have been replaced by Punjab Local Government (Auctioning of Collection Rights) Rules, 2003; that the impugned revised work order dated 13-4-2010, passed by respondent No. 3 and the impugned letter dated 7-12-2009, passed by respondent No. 1, have been passed strictly in accordance with law; that the earlier order of this Court dated 22-1-2010 passed in Writ Petition No.24544 of 2009 was passed at limine stage and the respondents were not heard, therefore, the petitioners cannot take benefit of the said order, thus, the instant writ petition may kindly be dismissed.

5. The learned A.A.-G. appearing for respondent No. 1 has also supported respondents Nos. 2 and 3 on the above mentioned propositions.

6. Arguments heard and record perused.

7. After arguing the case at some length, learned counsel for the parties have agreed that order dated 21-6-2011, in Writ Petition No.14031 of 2011, passed by this Court, is not applicable in respect of the issues involved in the instant writ petition, because this Court has referred the case vide the above mentioned order to the Secretary to Government of Punjab, Local Government and Community Development, Punjab, Lahore (respondent No.1), whereas the question of repeal of West Pakistan Municipal Committees (Cattle Market) Rules, 1969 is involved in this case, therefore, the said question, being purely a question of law, cannot be resolved by respondent No. 1 and the same can only be decided by this Court. In view of the above, the order of this court dated 21-6-2011 in Writ Petition No. 14031 of 2011 is not relevant for the decision of issues involved in the instant petition.

8. As per facts of the present case, TMA, Sheikhpura (respondent No.2) intended to establish a new cattle market at village Kadlathi. The said respondent, on 12-8-2009 advertised in the daily newspapers "Pakistan" and "Nawa-i-Waqt" for holding an auction of collection rights of the said cattle market. The said advertisement has been placed on record of present petition as (R/1). The petitioners in the light of said advertisement participated in the auction proceedings. The period of above mentioned rights is specifically mentioned as, one year in the said advertisement. The petitioners knowingly participated in the said auction, that the period of collection rights of the above said cattle market was only for one year and not three years. The document containing terms and conditions of the above mentioned auction has also been placed on record as (R/2). The period of 'one year' has been specifically mentioned in the said document as well. The said document (R/2) is signed-by the petitioners and other bidders. Under clause (32) of the said document (R/2); it was clearly mentioned that the contract would be governed by the Punjab Local Government Rules, 2003. It is evident from the said document (R/2), that the above said auction was held under the rules 2003 of Punjab Local Government Ordinance, 2001 and the same was not held under the West Pakistan Municipal Committees (Cattle Market) Rules, 1969. There is force in the arguments of the learned counsel for respondents Nos.2 and 3 that later on the petitioners in connivance with the then Tehsil Nazim, had got executed an agreement for a period of



three years. It is also evident from the document (R/5) dated 26-8-2009 that the agreement was approved in the house of Tehsil Municipal Council, Sheikhpura, for a period of one year w.e.f. 1-9-2009 to 31-8-2010. Under Rule 3 of Auctioning of Collection Rights Rules, 2003, the collection rights cannot be handed over to a contractor for a period exceeding one financial year. Similarly, under Rule 27-A of the said rules, no extension in a contract can be granted beyond the period of one year, therefore, a contract for three years, which has been executed in violation of the law/rules on the subject, is an illegal and void contract. It is settled law that when anything is required to be done in a specific manner, it must be done in that way and not otherwise. The learned counsel for the petitioners has contended that grant of contract in favour of the petitioners, for a period of three years was later on approved in the meeting of Tehsil Municipal Council and the same was also approved by the Government of Punjab through letter dated 7-9-2009. There is no force in the said arguments of the learned counsel for the petitioners, because according to the provisions of Rules 3 and 27-A of Punjab Local Government (Auctioning of Collection Rights) Rules, 2003, Local Government, under no circumstances, shall have any power to grant the extension of contract beyond the period of one year. The Local Government itself having no authority to extend the contract beyond the period of one year, therefore, Government of the Punjab had no power to approve the same. The learned counsel for the petitioners has also argued that the area acquired by the TMA was just 18-kanals 4-marlas which was not enough for holding and operating a proper Cattle Market, therefore, the petitioners obtained on lease, another area measuring 18 acres situated in village Jewanpura adjacent to village Kadlathi and as the petitioners have invested a huge amount for the establishment of the Cattle Market in question, therefore, their lease agreement for three years may not be cancelled. The instant petition cannot be accepted on the above mentioned ground. The contractors had no authority under the law to shift the market from the place acquired by the respondents to another place and they have no lawful authority to take on lease or otherwise any other land for holding of a Cattle Market.

9. So far as the question as to whether the West Pakistan Municipal Committees (Cattle Market) Rules, 1969 are still in force or not and as to whether the extension of time

beyond the period of one year in respect of the contract for Rights to Collect Fee in a cattle market, is permissible or not, is concerned, I find that the West Pakistan Municipal Committees (Cattle Market) Rules, 1969 were framed under section 121 read with Item No.35(f) of the Fourth-Schedule of the Municipal Administration Ordinance, 1960. The above mentioned Ordinance was firstly repealed under the provisions of section 229 of the Punjab Local Government Ordinance, 1975 (Ordinance VI of 1975) and finally by virtue of section 233 of the Punjab Local Government Act, 1975 (XXXIV of 1975) ("the Act, 1975"). The Ordinance VI of 1975 along with some other enactments was also repealed vide section 237 of "the Act 1975". Section 235 of "the Act 1975" is the validation clause whereas section 4 of the said act is the saving clause. Section 4 of "the Act, 1975" provides as under:--

"Where an enactment, stands repealed under section 233, any appointment, rules, regulations or bye-laws made or saved, notification, order or notice issued, tax imposed or assessed, scheme prepared or executed, contract entered into, suit instituted, rights acquired, claims made, legal or administrative proceedings or action taken under such enactments, shall so far as it is not inconsistent with the provisions of this Act, be deemed to have been respectively made, saved, issued, imposed or assessed, prepared or executed, entered into, instituted, acquired, made or taken under this Act."

The protection/validation has been given under above mentioned sections 4 and 235 of "the Act 1975" to the orders, proceedings, actions taken or done under the repealed enactments, the rules, by laws etc, framed thereunder. It is evident from the reading of above mentioned sections that rules framed under the Municipal Administration Ordinance, 1960, so far as the same were not inconsistent with the provisions of above mentioned act were deemed to have been respectively made and saved under the said Act. The above mentioned Act of 1975 was also repealed under section 182 of the Punjab Local Government Ordinance 1979 (the Ordinance, 1979). Finally the above mentioned Ordinance, 1979 has also been repealed under section 196 of the Punjab Local Government Ordinance, 2001. Section 182 of the Punjab Local Government Ordinance, 1979 is hereby reproduced as under:-

"Repeal of the Punjab Local Government Act, 1975.---(1) The Punjab Local Government Act, 1975 (XXXIV of 1975) is hereby repealed.

(2) Notwithstanding the repeal of the Punjab Local Government Act, 1975, any appointments, rules, regulations or bye-laws made or saved, notifications, order or notice issued, tax imposed or assessed, scheme prepared or executed, contract entered into, suit instituted, rights acquired, claims made, legal or administrative proceedings or action taken under the said Act, or under such enactments as were repealed by the said Act, shall so far as it or they are not inconsistent with the provisions of the Ordinance, be deemed to have been respectively made, saved, issued, imposed or assessed, prepared or executed, entered into, instituted, acquired, made or taken under the Ordinance."

Section 196 of the Punjab Local Government Ordinance, 2001 reads as follows:--

**"Repeal and Savings.**---(1) On commencement of this Ordinance,--

(i) the Punjab local Government Ordinance, 1979 (VI of 1979), shall be repealed;

(ii) the Punjab Local Government Elections Ordinance, 2000 (V of 2000) shall be repealed; and

(iii) all Metropolitan Corporations, Municipal Corporations, District Councils, Municipal Committees, Town Committees and Union Councils created under the Punjab Local Government Ordinance, 1979 (VI of 1979) shall stand dissolved.

(2) Save as otherwise specifically provided, nothing in this Ordinance, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken investigation or proceedings commenced, order, rule, regulation, appointment, conveyance, mortgage deed, document or agreement made, fee levied, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of any law repealed or amended by this Ordinance and any such thing,

action, investigation, proceedings, order, rule, regulation, appointment, conveyance, mortgage deed, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Ordinance and not inconsistent with any of the provisions of this Ordinance, continue to be in force, and have-effect as if it were respectively done, taken commenced, made, directed, passed, given, executed or issued under this Ordinance."

It is evident from reading of section 182 of "the Ordinance, 1979" that notwithstanding the repeal of Punjab Local Government Act, 1975, the rules made under the said enactment, so far as the same were not inconsistent with the provisions of the Ordinance, 1979 were deemed to have been respectively made under the said Ordinance. The learned counsel for respondents could not show from any provision of the Act of 1975 or of the Ordinance of 1979 that the rules of 1969 were inconsistent thereto thus stood repealed and were not accordingly saved. Similarly the learned counsel for the respondents could not point out that any rules contrary to the rules of 1969 were framed under the above mentioned laws. The Punjab Local Government Ordinance, 2001 (the Ordinance, 2001) is the final legislation on the subject so far. The Government can frame rules as provided in section 191 of the Ordinance, 2001, subsection (2) of section 196 of the Ordinance, 2001 is however, differently worded as compared to the relevant provisions of two earlier enactments. The said provision of the Ordinance, 2001 provides two different modes of saving or repeal. It is evident from the perusal of said provision that firstly, earlier rules can be done away by virtue of some specific provision of the Ordinance, 2001 and secondly the earlier rules shall stand repealed if the same are inconsistent with the rules made by the Government under section 191 of the Ordinance, 2001. The Governor on 3-5-2003, in the light of power as available under section 191 of the Ordinance, 2001 enforced the Punjab Local Government (Auctioning of Collection Rights) Rules 2003. Prior to the enforcement of the 2003 Rules the 1969 rules in my humble view were kept intact because no rules inconsistent to the 1969 Rules were framed under the above mentioned enactments. 1969 Rules, therefore, in light of the above mentioned provisions of law were not repealed and the same were kept intact on the touchstone of consistency. Anyhow, after the enforcement of the Punjab Local Government (Auctioning of

Collection Rights) Rules 2003, the Rules of 1969 in my humble view stood repealed, as the said rules were inconsistent with "the 2003 Rules". The learned counsel for the petitioners has argued that the 1969 Rules are not in consistent with "the 2003 Rules". The said argument of the learned counsel for the petitioners is not convincing because it is evident from the perusal of above mentioned rules that both are inconsistent with each other.

The Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 are comprehensive, conclusive, vast in nature, which covers the entire field of the collection of the TMA income regarding the items mentioned in the second schedule to the Ordinance and admittedly cattle market is (item No.2) of Part III thereof. A complete mechanism has been provided for the award of the contracts for such purpose. Rule 3 provides:--

"Auction of collection rights.---A Local Government may prefer to collect any of its income as specified in the Second Schedule of the Ordinance and duly approved and notified in the official Gazette, through contractor by awarding collection rights to him for period not exceeding one financial year."

Similarly Rule 4 of 2003 Rules provides that no contract of Collection Rights of an income of Local Government shall be awarded to the contractor except in the manner provided under the said rules. Rules 5 to 8 of the Rules, 2003 provides a detailed and comprehensive procedure about the collection of the income of Local Government. The only concept and legal permission thus available in the 2003 Rules about the collection of the income of a local government on the items mentioned in the second schedule is through a public auction; after a public notice in the prescribed manner; the award of the contract only to a highest bidder; the contract should not exceed the period of one financial year. This all is not prescribed by the 1969 Rules rather alien thereto, therefore, such rules are vitally, fundamentally and manifestly inconsistent to the 2003 Rules, thus are repealed on account of the enforcement of these Rules by the express mandate of the law. To attribute this kind of the repeal governed by the concept/doctrine of implied repeal shall be a misnomer, rather shall fall within the domain of the rule of "express

repeal", obviously on the criteria of inconsistency; where the inconsistency is obvious and evident, the repeal shall be deemed to be express by all means.

15. The 2003 Rules do not permit any extension in the period of one year as given in section 3 of the said rules, even on the ground of establishment of a new Cattle Market as provided under the proviso of Rule 6 of 1969 Rules. Under Rule 27-A of the 2003 Rules no extension in a contract can be granted beyond one year on any ground whatsoever. It is in exercise of such power that the impugned order and letter have been issued, suffice it to say that this new rule has been subsequently added on 20-10-2003 and forms part of Chapter-IV of the 2003 Rules, which chapter primarily deals with the terms and conditions of the contract, the eligibility of the contractor, the liability of the contractor to abide by the procedure and the bye-laws, the restraint about the overcharging etc., the rights and responsibilities of the contractor, the cancellation of the contract, and the prohibition about Rebates; etc. Rule 27-A constructed in the context of its placement at the end of this Chapter, when unlike proviso to Rule 6 of 1969 has not been added as proviso to Rule 3 of the 2003 Rules, would mean that it shall not be considered or operated as an exception to the period prescribed by this rule, rather by adding it just after Rule 27, disallowing the contractor the Rebates, it is reiteration that the contract cannot go beyond one year even by virtue of an extension. It may be pointed out that if the extension was intended by the legislature, the rule should have been a proviso, like the one under Rule 6 of 1969 Rules. Otherwise, if the extension is taken to be permissible, then Rules 3 to 5 shall all be rendered redundant, which can never be the intention and the spirit of the law. In fact, Rule 27-A has been introduced subsequently with an object to remove any ambiguity, about the extension and it is not a permissive, rather a restrictive provision, placing a complete circumvention upon the grant of any extension, in the period of the contract beyond one year of whatever grounds it may be sought. Therefore, the local government under no circumstances shall have any power to grant the extension. As there is no permission about the extension of period under the 2003 Rules, therefore, I am not convinced if on account of the establishment of a new market, the extension can be granted either as per the Rules of 1969 or on the basis of Rule 27-A of 2003 Rules. The learned counsel for the petitioners could not point out any legal proposition which

was not taken care of in the above mentioned case of Ahmad Khan Niazi v. Town Municipal Administration, Lahore through Town Municipal Officer and 2 others (PLD 2009 Lahore 657).

16. The judgments cited by the learned counsel for the petitioners are distinguishable on their own facts. The learned counsel for the petitioners in support of his contentions that as the West Pakistan Municipal Committees (Cattle Market) Rules, 1969 are not in conflict with Rules, 2003, therefore, the same are still in force, has cited judgments reported as "Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others" (PLD 2001 Supreme Court 169) and "Tanveer Hussain v. Divisional Superintendent, Pakistan Railways and 2 others" (PLD 2006 Supreme Court 249).

It was held in the above mentioned judgment of "Tanveer Hussain v. Divisional Superintendent, Pakistan Railways and 2 others" as under:--

"When provision of former statute is inconsistent and in conflict with a provision of a later statute and the two, cannot be reconciled or harmonized so as to stand together, then the provision of the earlier statute will give way to similar provision in the later statute on the doctrine of implied repeal."

Similar view was taken in the above mentioned case of "Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others" (PLD 2001 Supreme Court 169).

The judgments referred by the learned counsel for the petitioners are not helpful to the petitioners, because as observed earlier, Rules 1969 are in conflict with 2003 Rules, therefore, it cannot be held that "the 1969 Rules" are still in force.

17. The learned counsel for the petitioners has also contended that West Pakistan Municipal Committees (Cattle Market) Rules, 1969 is a special law, therefore, the same will prevail over general provisions of "the 2003 Rules". In support of his contentions he has relied upon cases reported as "Neimat Ali Goraya and 7 others

v. Jaffar Abbas, Inspector/Sargeant Traffic" (1994 SCMR 6826) and "Dur Muhammad and others v. Abdul Sattar" (PLD 2003 Supreme Court 828).

It was held in the said judgments that special provision of statute is to prevail upon general provisions. There is no cavil with this preposition that special law will prevail over general law but, as held earlier the West Pakistan Municipal Committees (Cattle Market) Rules, 1969 stood repealed after promulgation of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 thus "the 1969 Rules", which are not in existence; cannot be given preference over "the 2003 Rules", on account of special law, therefore, the above mentioned judgments referred by the learned counsel for the petitioners are not applicable in present case.

17. In so far as the earlier order of this court dated 22-1-2010, passed in Writ Petition No.24544 of 2009 is concerned, though it was observed in the said order that under Rule 6 of West Pakistan Municipal Committees (Cattle Market) Rules 1969, a new Cattle Market can be leased out for a period of three years, but I find that the said writ petition was filed by the other bidders. The above mentioned order was passed at limine stage without providing an opportunity of being heard to the respondents, therefore, the present petitioners cannot take advantage of the said order. Above all as mentioned in Para No. 7 of the present judgment that the learned counsel for the parties have agreed that pure question of law is involved in the instant case, therefore, the above mentioned order cannot operate as res judicata or estoppel against the respondents. Needless to say that there can be no estoppel against statutes/law. Similarly a decision on question of law, without proper adjudication would not operate as res judicata. I am also fortified in my views by cases reported as "Muhammad Saleemullah and others v. Additional District Judge, Gujranwala and others" (PLD 2005 Supreme Court 511) and "Noor Muhammad v. Muhammad Iqbal Khan and 7 others" (1985 CLC 1280).

18. In the light of above discussion, this petition is without any substance and the same is hereby DISMISSED.

S.A.K./M-309/L

Petition dismissed.