

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITIONS NO. 6406 TO 6434 OF 2021

(Against the judgment dated 15.11.2021 passed by the Lahore High Court Multan Bench in W.P.Nos.805 to 808, 322 to 339/2020, 1906 to 1908/2019, 1139/2020, 7731 to 7733/2019)

Market Committee, Multan through its
Chairman and another

(In all cases)
...Petitioners

VERSUS

Additional Commissioner (Consolidation),
Multan and others

(In all cases)
...Respondents

For the Petitioners: Mr. M. Ramzan Khalid Joiya, ASC
(In all cases)

For the Respondents: N.R.

Date of Hearing: 13.06.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. The above-titled twenty-nine Civil Petitions for leave to appeal are directed against the common judgment dated 15.11.2021, passed by the learned Lahore High Court, Multan Bench in W.P. Nos. 805 to 808, 322 to 339/2020, 1906 to 1908/2019, 1139/2020, 7731 to 7733/2019, whereby the Writ Petitions filed by the petitioners were disposed of with certain directions to the Chairman, Market Committee.

2. The backdrop of the case is catalogued as under:-

A Plot No.161 in New Fruit & Vegetable Market, Multan was allotted to the Respondent No.2 on 08.07.2003 according to the terms & conditions enumerated in the Allotment Policy. The price of each plot was fixed as Rs.10,00,000/- and the allottee was called upon to pay some portion of the price on the spot before taking over possession, and the remaining amount was to be paid till 08.07.2004. The allottee had paid the first installment and had acquired possession but the remaining amount was not paid within time so the allottee was called upon to pay surcharge and, in case of non-payment, the plot would be cancelled with confiscation of

the already paid amount. The respondent No.2 filed a Writ Petition No.1404/2004 against the letter dated 20.02.2004, but the petition was dismissed and, against said order, an Intra Court Appeal No.199/2004 was filed. The fate of I.C.A.No.199/2004 was not different but the Court accorded a relaxation period of one year for payment of balance consideration. The respondent No.2 assailed the judgment in this Court through C.P.L.A No.1399-L/2005 which was dismissed as withdrawn. The Market Committee, Multan had also filed C.P.L.A No.1513-L/2005 against the same judgment dated 24.05.2006 but their CPLA was also dismissed on 18.03.2010 with the observation that, if the respondent No.2 will fail to pay the amount due to the petitioners in terms of the judgment of the High Court, the petitioners shall be free to take legal action. The Chairman Market Committee vide Notice dated 22.01.2016 cancelled the plots and confiscated the deposited amount. The respondent No.2's firm filed an appeal before the Additional Deputy Commissioner (Revenue), Multan, which was disposed of with a direction to the Respondent No.2 to deposit the outstanding principal amount in the account of Market Committee, Multan within 15 days. The petitioners filed a Revision application against the said order before the Commissioner Multan Division, Multan. The revision was partly accepted with directions to the allottee to deposit the total outstanding amount with surcharge at the rate of 11.25% per annum on the defaulted period with a penalty of 1% additional penalty of the total amount to be paid within two monthly installments up to 15.04.2019, failing which, the allotment shall stand cancelled automatically. The respondent No.2 & others as well as the petitioners both filed separate Writ Petitions in the High Court which were disposed of with a remand order to the Chairman, Market Committee to decide the matter afresh.

3. The learned counsel for the petitioners argued that the Market Committee, Multan cancelled the allotment of several shops/plots due to non-payment of the outstanding dues including the respondent No.2 who was also given several opportunities, but failed to comply therewith. The learned High Court overlooked the aspect that the respondent No.2 had been a defaulter for the last 13 years. It was further contended that the cancellation orders were passed by the Chairman for non-deposit of the outstanding amount. The order passed by the learned High Court is causing huge pecuniary losses to the Market Committee because the current market value of one plot or shop is more than Rupees 50 Million. It was further contended that, in the impugned judgment, the learned High Court erroneously directed the payment of sale consideration according to the market price prevailing in the year 2003. It was further contended that, despite cancellation, the amount was received by the Market Committee conditionally till the final decision of the case. He further argued that the learned High Court erred in passing the observation that the funds were mainly generated by the Commission agents to purchase the land for the New Fruit and Vegetable Market. On the

contrary, the Market Committee, Multan, in order to establish the market, took a loan from the Asian Development Bank and utilized its own capital to purchase the land for the New Fruit and Vegetable Market. It was further averred that no Commission agent had cleared their dues before the cancellation of the plots and shops. The outstanding dues were received due to orders passed by the Appellate Court and Revisional Court according to rates prevailing in the year 2003 which has caused huge pecuniary loss to the Market Committee.

4. Heard the arguments. The chequered history divulges that, in the erstwhile litigation, the High Court while hearing Intra Court Appeal No.199/2004 ("**ICA**") re-scheduled the payment of installments vide order dated 24.05.2005. The Market Committee approached this Court against the directions embodied in the ICA order and filed Civil Appeal No.1513-L of 2005, however the said appeal was dismissed vide order dated 18.03.2010, with the observation and elucidation that if the respondents have failed to pay the amount due to the petitioners in terms of the ICA judgment of the High Court, the petitioners (Market Committee) shall be free to take legal action against the delinquents as permissible under law. In a nutshell, the Market Committee called upon the respondent No.2 to discharge the liability but despite notices, no amount was paid, hence on 22.01.2016 the Chairman, Market Committee cancelled the allotments, whereas the right to cancel the allotment was given by this Court through the observation made in the order dated 18.03.2010 but such right was exercised by the Chairman very belatedly without any rhyme or reason. Nevertheless, the cancellation order was assailed by means of an appeal before the Additional Deputy Commissioner (Revenue), Multan who, vide order dated 29.05.2018, disposed of the appeal and allowed the occupant to deposit the outstanding amount along with the penalty. The Market Committee once more questioned the appellate order by dint of a Revision application before the Additional Commissioner (Consolidation). Since the Market Committee was dissatisfied by both the orders, hence, the Market Committee filed Writ Petitions in the High Court. As an aftermath of proceedings arising from the Writ Petitions, the learned High Court set aside the orders passed by the

Chairman, Collector, Provisional Authority and remanded the matter to the Chairman in order to determine, *inter alia*, the outstanding original sale price, surcharge as well as penalty after affording a right of audience to the occupants/auction purchaser, with a further direction that after conclusion of proceedings, the defaulters be provided a fair opportunity to clear their outstanding dues, including arrears of the original sale price, surcharge and penalty.

5. The purpose of Punjab Agricultural Produce Markets Ordinance, 1978 (the "**1978 Ordinance**"), is to provide for the better regulation of purchase and sale of agricultural produce and, for that purpose, to establish markets and make rules for their proper administration. According to Section 3 of this Ordinance, the Government may, by notification, declare its intention of exercising control over the purchase and sale of such agricultural produce and in such area as may be specified in the notification. The purpose and rationale of such notification is to invite objections and suggestions which may be received by the District Coordination Officer within the period as may be specified in the notification; thereafter, under Section 4 of the the 1978 Ordinance, the notification of the market area is issued. According to Section 5 of the 1978 Ordinance, subject to such rules as the Government may make in this behalf, the Market Committee concerned shall be the authority to issue licences to the dealers and renew such licences. The duty of the Market Committee under Section 9 is to provide facilities for persons visiting it in connection with the purchase, sale, storage weighment, pressing and processing of agricultural produce as the Government may from time to time direct and no broker, weighman, measurer, surveyor, warehouseman, changer, palledar, boriota, tola, tokrewala and rehriwala shall, unless duly authorized by the licence, carry on his occupation in a notified market area in respect of agriculture produce. In line with Section 21 of the 1978 Ordinance, the market fund may be expended for different purposes as jotted down in Section 21 of the Ordinance which, *inter alia*, includes the acquisition of land for the establishment of a market, or markets. If we go through the scheme of this Ordinance, its essential purpose is not only to help the growers, but also to regulate the trade of various items of agricultural produce and to give protection to the growers from unscrupulous

businessmen and to afford them facilities so that they may obtain a fair price for their produce. One of the most important duties of the Market Committee is to set up a market for which it may acquire some site, either for a new Market or for extending an existing market and, in order to achieve this purpose meaningfully, the procedure for acquisition of land is also provided under Section 29 of the 1978 Ordinance. Whereas, in exercise of powers conferred under Section 35 of the 1978 Ordinance, the Governor of Punjab was pleased to make the Punjab Agricultural Produce Markets (General) Rules, 1979, in which the duties and powers of the Chairman and Vice Chairman of the Market Committee, as well as the duties and powers of the Market Committee are provided in Rules 14 and 15, respectively and the Chairman is designated as Chief Executive Officer of the Market Committee. The niceties of Rule 21, enlighten that an order passed by the Market Committee, other than in a service matter, is appealable to the Assistant Commissioner of the respective notified market area, whereas in Sub-Rule (5) a remedy of preferring Revision is also provided against an order passed in appeal by the Assistant Commissioner to the Commissioner of the division concerned.

6. The memo of the Writ Petition filed by the Market Committee in the High Court discloses that the Market Committee challenged the order passed by the respondent No.4 on 29.05.2018 whereby the allottee was directed to deposit the principal amount as calculated by the Market Committee within fifteen days, with a penalty of Rs.10,000/-. On filing a Revision application against the aforesaid order, the Additional Commissioner (Consolidation), Multan Division partly accepted the Revision application vide order dated 19.1.2019 and set aside the impugned order, but in one fell swoop, also issued directions to the allottee to deposit the total outstanding principal amount surcharge @ 11.25% per annum for the defaulted period with one percent additional penalty of the total amount in two monthly installments up to 15.04.2019, failing which the allotment shall be cancelled automatically. The chronicle of events unveils that instead of allowing time to the allottees in terms of the aforesaid orders, the Market Committee itself challenged both the orders in the High Court on the grounds, *inter alia*, that both the authorities passed the

impugned orders on misreading and non-reading of the record. After providing an ample opportunity of hearing, the learned High Court held that the act of cancellation by the Chairman was not justified and, more particularly, that despite cancellation, dues were received which act also nullified the resumption/cancellation, however, the learned High Court set aside the impugned orders and the matter was remanded to the Chairman, Market Committee to pass appropriate orders after providing an opportunity of audience to the occupants in order to determine the outstanding amount.

7. The learned counsel for the petitioners argued that since the court order was still in field, hence the Market Committee had received the outstanding amount from a few Commission agents and they cleared a major portion, but some other allottees are still defaulters to some extent. Nothing was produced before us to show that any such amount was received or accepted under objection from the alleged defaulters, or without prejudice to the plea of the petitioners put forward in the High Court proceedings. On the contrary, the learned High Court in fact jotted down in the impugned judgment that, during the pendency of Writ Petitions, the Market Committee issued payment challans and received the outstanding amount from the alleged defaulters and the Chairman, Market Committee also appeared in the High Court and even he confessed that some Commission agents have cleared their dues but the majority are still defaulters in the payment of the original price, surcharge as well as the penalty. We are sanguine that this Court much earlier observed vide order dated 18.03.2010, passed in CPLA No.1513-L/2005 that if the defaulters failed to pay the amount in terms of the ICA judgment of the High Court, then the Market Committee shall be free to take legal action against such delinquents as permissible under law. Despite clear observations by this Court on 18.3.2010, no prompt or swift action was taken by the Market Committee and cancellation notice was issued at belated stage on 22.01.2016 which exhibits the reckless and cavalier conduct of the Market Committee which waited for such a long time and postponed setting the law into motion for initiating cancellation move at their own will and conscience. The Market Committee received the amount without demur and also issued payment challans, therefore, in such a situation, we are also of

the firm view that the action of outrightly cancelling the shops/plots was unfair and inequitable, therefore, it would be apposite and befitting in the interest of justice and fair-mindedness that the Chairman, Market Committee should determine the gravity of the default, reconcile from the record the amount paid by the occupants including those who have already paid full amount and also determine the liability of the accrued surcharge and penalty, if any, unpaid which crucial subject matter could not be reconciled or adjudicated in the Writ jurisdiction but can be decided by the Chairman Market Committee so that the matter may attain finality after such protracted litigation. The expression "remand" connotes that something has to be done by the lower Court or Authority on the subject of the matter remanded to it. Of course in the Constitutional jurisdiction, the High Court cannot adjudicate disputed facts or controversial issues but can examine the exactitudes of the orders assailed before it and after examining the legality and propriety of the impugned orders passed by lower *fora*, the learned High Court has rightly remanded the matter with specific points necessitating adjudication by the Chairman, Market Committee. If the matter is reconsidered within the realm of the directions issued by the High Court, no prejudice will be caused to anyone, rather it would be beneficial to all and easier for the Authority to reconcile from the record the quantum of payment made so far by the alleged defaulters, the defaulted amount as well as the determination of the up-to-date surcharge and penalty as per the terms and conditions of the allotment and pass order in accordance with law for further proceedings.

8. The conduct of the petitioners is also hit by doctrine of estoppel and acquiescence. According to the maxim "*qui approbat non-reprobat*", one who approbates cannot reprobate. Concomitantly, the doctrine of estoppel is based on the maxim "*allegans contraria non est audiendus*", which means a person alleging contradictory facts should not be heard. The plea of estoppel can be entreated to hold the Government to honor its assurances and undertakings, whether executive or administrative. Public bodies are as much obligated as a private person to live up to the promises made by them. Article 114 of the Qanun-e-Shahdat Order, 1984 defines the doctrine of estoppel, under which when a person has, by his declaration, act or omission,

intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This tenet is set up on the concept of evenhandedness and fairness with a sole intent to prevent fraud. The doctrine of acquiescence is founded on a conduct in which, if a person spots another person about to commit an act of infringing his rights who might otherwise have abstained from it and causes him to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. Under the Doctrine of Acquiescence, as well as the Legal maxim "*Qui non negat, fatetur*", which denotes that "silence shows consent" (Barb. [N.Y.] 2B, 35) or alternatively, that "He who does not deny, agrees,".

9. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment. Consequently, the Civil Petitions are dismissed and leave is refused.

Chief Justice

Judge

Islamabad the
13th June, 2022
Khalid
Approved for reporting