

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-6115 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Priority.

1. For hearing of CMA No.35749 of 2017.
2. For hearing of CMA No.25390 of 2017.
3. For hearing of Main Case.

09.05.2018

Mr. Ahmed Ali Ghumro, Advocate for Petitioner.
Mr. Abrar Hasan, Advocate for Intervener.
Mr. Ghulam Shabbir Shah, Additional A.G. Sindh along with
Mr. Bashir Ahmed Brohi, Additional Secretary, Government of
Sindh and Mr. Akhtar Kamal Khan, Region Director, AGRI,
Marketing Karachi.

The Petitioner has challenged the Notification dated 11th September, 2017, issued by the Secretary to Government of Sindh, Agriculture, Supply and Prices Department, whereby, in exercise of power conferred under Section 11 of Agriculture Produce Market Act, 1939, and with the approval of competent authority, i.e. Chief Minister, the Petitioner was removed as member from the Market Committee, who was appointed vide Notification No.SO (PMP)5/(364)/2004 dated 26.06.2015.

We have seen the order dated 13th September, 2017, when this matter was first fixed before the learned Division Bench of this Court. The order reflects that the Petitioner's counsel argued that no Show Cause Notice or opportunity of hearing was given to the Petitioner, therefore, the Impugned Notification is unlawful. On the basis of this argument, while issuing notice to the Respondents, the learned Division Bench suspended the operation of the Impugned Notification. Respondents No.1 and 2 filed their reply. The learned Additional Advocate General (Sindh) pointed out page-95 of reply, which is a first Show Cause Notice dated 1st June, 2017 to the Petitioner, the relevant portion of the same is reproduced as follows:

“You have failed to perform your obligatory duties as envisaged under the provisions of Agricultural Produce Markets Act, 1939, and no proper auctions of Agricultural Produce were conducted in the Markets, therefore, fair price to the grower has not been paid on one hand and on the other, the higher wholesale / retail rates have resulted in burden on the consumers to purchase the produce on higher prices.”

The Petitioner submitted his reply on 16.06.2017 to the Show Cause Notice, in which nothing was agitated as to whether he conducted auction in accordance with the Rules 28 of Agriculture Produce Market Rules-1940. The Section Officer (PMP), Agriculture Supply and Prices Department vide letter dated 05.07.2017 directed the Petitioner to clarify his position. The Petitioner submitted his reply on 11.07.2017, which is also annexed with the comments of the Respondents. Again on 1st August, 2017, a letter was written to the Petitioner, which was replied by him on 7th August, 2017, which is also available on record. The Petitioner in his reply dated 07.08.2017 stated that the provision of Rule-28 of APM Act, 1939, starts with the employment of Auctioneers. The seller (grower) may make an application for sale of his Agricultural Produce by auction in the Market. He made much emphasis in the reply that seller has to come to Market Committee for selling of his produce through open auction, but nothing has been focused regarding functions of the Chairman, who was bound to act as per Rule-28 (supra).

Learned Additional Advocate General (Sindh) argued that the interim orders were obtained on concealment of facts. After issuing of Show Cause Notice, the Petitioner was diligently

engaged with the communication and submitted his reply. He further argued that neither the principle of natural justice nor Article 10 of Constitution of Pakistan, 1973 have been violated.

At this juncture, Mr. Abrar Hasan, the learned counsel for Intervener, pointed out CMA No.35749 of 2017 filed under Order I Rule 10 CPC to implead Haji Shahjehan son of Abdul Rasheed. In the supporting Affidavit it is, inter alia, contended that the Petitioner is involved in corruption and he created problems for other members and workers of vegetable market. He further stated that the Intervener is ex-member of the Market Committee. It is further alleged in the affidavit that the members and workers of the vegetable market from time to time lodged their protests against the illegal acts and corruption of the Petitioner but the learned counsel for Petitioner vehemently denied all these allegations.

Since the Petitioner has suppressed / concealed the factum of show cause notice issued to him and under his misstatement he had obtained the interim order, therefore, he is not entitled to any equitable relief of injunction, which he is enjoying since 13.09.2017.

The action of removal has already been taken on 11th September, 2017. Since in the impugned notification dated 11th September, 2017, it is stated that the removal letter has been issued with the approval of the competent authority, i.e. Chief Minister Sindh, therefore, at the best the Petitioner may file representation to the Chief Minister through Chief Secretary, which shall be decided within a period of 20 (twenty) days. The Additional Advocate General Sindh shall ensure that the representation is decided in the stipulated period.

In view of the above, the Petition is disposed of along with all pending applications. The interim orders passed earlier are vacated.

JUDGE

JUDGE

Javid

