In the High Court of Judicature at Madras

Reserved on: 14.07.2015

Delivered on: 22.07.2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian
and
The Hon'ble Mr.Justice T.Mathivanan

W.A.No.2232 of 2013 and W.P.No.1868 of 2015
& M.P.Nos.1 of 2013 and 1 of 2015

1. Thiruvarur Agricultural Marketing Committee,
rep. by its Secretary, Thiruvarur.

2. The Superintendent,
Agricultural Marketing Committee,
Thiruvarur. ... Appellants/Respondents 7 and 8

Versus

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Agricultural Department,
Fort St. George, Chennai-9.

2. The Tamil Nadu State Agricultural
Marketing Board, rep. by the
Commissioner, Agricultural
Department Marketing,
Guindy, Chennai-32.

3. The Agricultural Marketing Committee,
Kanyakumari District Vadasary
Nagercoil, rep. by its Secretary.

4. The Agricultural Marketing Committee,
Marthandam, Kanyakumari District,
rep. by its Secretary.

5. The Ramanathapuram Agricultural
Marketing Committee, Virudhunagar
rep. by its Secretary, Virudhunagar.

6. The Superintendent,
Agricultural Marketing Committee,
Rajapalayam, Virudhunagar District.

7. The Thirunelveli Agricultural
Marketing Committee,
rep. by its Secretary, Thirunelveli.

8. The Superintendent,
Agricultural Marketing Committee,
Alngulam, Thirunelveli District.

9. The Superintendent,
Agricultural Marketing Committee,
Thirunelveli.

10. The Superintendent,
Agricultural Marketing Committee,
Srivaikundam, Thoothukkudi District.

11. M/s National Traders,
rep. by its Proprietor Mr.A.Paul Raj,
4-157b (5), Ooramba junction,
Kollemcode, Vilavancode,
Kanyakumari - 629 160.

12. M/s Cholamandala Nel Arisi Peru
Vanikarkal Nala Sangam, rep. by
its Secretary M.Padmanaban.
(Impleaded as per order dated 14.7.2015
made in M.P.No.1 of 2015) ... Respondents/Respondents
1 to 6 & 9 to 12/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent seeking to set aside the order of the learned Judge made in W.P.No.33206 of 2012, dated 19.12.2012. Writ Petition filed U/A. 226 of the Constitution of India for the issuance of a Writ of Mandamus for bearing the Respondents and their Subordinate Officials from enforcing the provisions of the Tamil Nadu Agricultural produce Marketing (Regulation) Act 1987 and the Rules made there under or Bye-Laws by any marketing committee in respect of purchase of any notified agricultural produce effected outside the notified Market area and sold inside or outside the Market area as per the Government Gazette in G.O.Ms.No.3 dated 04/01/2003 issued by the first respondent.

M/s. Krishna Traders rep. by its
Proprietor, Mr.R.Krishnamoorthy
Kuttalam,
Myladuthurai District. ... Writ Petitioner

Versus

1. The State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Agricultural Department,
   Fort St. George, Chennai-9.
2. The Tamil Nadu State Agricultural
   Marketing Board, rep. by the
   Commissioner, Agricultural
   Department Marketing, Guindy, Chennai-32.

3. Mayiladuthurai Agricultural Marketing
   Committee, rep. by its Secretary,
   Mayiladuthurai, Nagapattinam District.

4. The Superintendent,
   Agricultural Marketing Committee,
   Nagapattinam, Nagapattinam District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of mandamus to forbear the respondents from enforcing the provisions of the Tamil Nadu Agricultural Produce Marketing (Regulations) Act, 1987 and the Rules made thereunder or Bye-laws by any Marketing Committee in respect of purchase of any notified agricultural produce effected outside the notified market area and sold inside or outside issued in the Government Gazette in G.O.Ms.No.3 & 4 dated 03.01.2003 issued by the first respondent, the market area.

For Appellants : Mr.A.L.Somayaji,
Advocate General, assisted by
Mr.V.Jayaprakash Narayanan
Spl. Government Pleader
for the Appellants in Writ Appeal &
for Respondents 2-4 in W.P.

For Respondents 1&2 : Mrs.A.Srijayanthi, Spl.G.P.

For Respondent-12
in the Writ Appeal and
For Petitioner in W.P. : Mr.K.M.Vijayan, Sr. Counsel
for Ms.R.T.Shyamala.

COMMON JUDGMENT

One M/s. National Traders, which is the 11th respondent in the writ appeal, filed a writ petition in W.P.No.33206 of 2012, praying for the issue of a writ of mandamus to forbear the respondents from enforcing the provisions of the Tamil Nadu Agricultural Produce Marketing (Regulations) Act, 1987 and the Rules made thereunder, by any Market Committee in respect of the purchase of any notified agricultural produce effected outside the notified market area and sold inside or outside the market area as per the Government Gazette in G.O.Ms.No.3 dated 4.1.2003.

2. The claim of National Traders in its writ petition W.P.No.33206 of 2012 was that it was carrying on the trade of sale of wheat, rice, pulses etc., purchased both from inside and outside the notified area as raw material and that the Local Market Committee was not entitled to levy market fees and launch prosecution for non payment of fees, in terms of the power conferred under Section 24(1) of the Tamil Nadu Agricultural Produce Marketing (Regulations) Act, 1987 and in terms of Rules 32 and 33 of the Rules.

3. The said writ petition was disposed of by a learned Judge, by an order dated 19.12.2012, on the basis of a previous order dated 18.11.2006 passed by a Division Bench of this Court in W.P.No.30016 of 2003.

4. The order passed by a Division Bench of this Court in W.P.No. 30016 of 2003 on 18.11.2006 which was extracted by the learned Judge in his order dated 19.12.2012 passed in W.P.No.33206 of 2012 reads as follows:-

> "The writ petition is preferred by the petitioners for issuance of a writ of mandamus, forbearing the respondents from enforcing the provisions of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 and the Rules made thereunder or bye-laws of any Marketing Committee in respect of purchase of any notified agricultural produce effected outside the 'notified market area' and sold inside or outside the market area.
>
> 2. Learned Senior Counsel appearing for the petitioners submitted that in many cases, though 'notified area' has been notified under Section 4, but 'notified market area' has not been notified under sub-section (2) to Section 6 of the Act. According to him, the agricultural produce which is not grown or cultivated in the area and are brought from outside or outside the 'notified area' and are sold inside or outside the 'notified market area', therein, the market fee cannot be charged. It was further submitted that in many of the cases, the agricultural produce is brought from area outside the 'notified area', but is neither purchased nor sold in the 'notified market area' and for that, no demand for market fee can be made by the authorities.
>
> 3. It appears that the aforesaid facts have already been brought to the notice of the Commissioner of Agricultural Department by the petitioner as back as March/ May 2003, but no specific decision has been taken therein and in the absence of any purchase or sale of one or other agricultural produce made by one or other petitioners, within or outside the 'notified market

area', it is not possible for this Court to give a finding in one or other way with regard to demand stated to have been made from the second petitioner or any one or other member of the first petitioner-Association. In such circumstances, no relief can be granted as sought for in the present writ petition.

4. However, if no notification has been issued under Sub-Section (2) to Section 6 of the Act notifying any one or other 'notified market area' and the petitioner-Association or any of its member is in a position to show that particular agricultural produce has neither been purchased nor sold within the 'notified area', and having been brought from outside, has only been exported to some place outside the 'notified area', then in that case, the members of the first petitioner/Association may bring the same to the notice of the competent authority and claim for relief as may be entitled to under Section 24 of the Act and/ or may pray that he is not entitled to pay the market fee with regard to such transaction. If any such individual application is filed by one or other member of the first petitioner-Association with specific evidence that the purchase or sale was made outside the 'notified area'and that no purchase or sale was made within the 'notified area'/ 'notified market area' and is entitled for the benefit under Section 24 of the Act and in such case, the competent authority or the Market Committee concerned will decide the claim by reasoned order, preferably within one month from the date of such representation, after affording an opportunity of hearing to the claimant. On such decision, if it is found that one or other demand notice was wrongly issued, then the authority may recall such demand notice, if made during the pendency of this application."

5. From the operative portion of the order of the Division Bench in W.P.No. 30016 of 2003 dated 18.11.2006, which the learned Judge chose to follow in W.P.No.33206 of 2012, it is clear that a mandamus as prayed for by the 11th respondent herein was not granted. What was granted was only a liberty to the 11th respondent herein to show that a particular agricultural produce was neither purchased nor sold within the 'notified area' and that they are not obliged to pay the market fee. In other words, the learned Judge did not issue a blanket mandamus to prohibit the respondents from enforcing the provisions of the Act and the Rules. The learned Judge merely gave liberty to the writ petitioner therein show to the respondents that they are not covered by the notification.

6. But taking exception to the said order of the learned Judge dated 19.12.2012 passed in W.P.No.33206 of 2012, the Thiruvarur Agricultural Marketing Committee and its Superintendent, who were the

respondents 7 and 8 in the writ petition have come up with the above writ appeal W.A.No.2232 of 2013.

7. On 3.12.2013, the above writ appeal was admitted and it appears that an interim stay was granted.

8. Subsequently, another trader by name M/s. Krishna Traders came up with a writ petition in W.P.No.1868 of 2015 praying for the very same relief namely a writ of mandamus to forbear the respondents from enforcing the provisions of the aforesaid Act and the Rules. On 28.1.2015, this writ petition came up for admission before the concerned Court. At that time, the learned Judge passed an order directing this writ petition to be tagged along with the above writ appeal W.A.No.2232 of 2013. Accordingly, it was tagged along with the writ appeal.

9. Thereafter, an Association by name Cholamandala Nel Arisi Peru Vanikarkal Nala Sangam came up with a miscellaneous petition in M.P.No.1 of 2015, seeking to implead themselves as the 12th respondent in the writ appeal, on the ground that the 11th respondent in the writ appeal, who filed the writ petition and succeeded, was not interested in pursuing the writ appeal and that therefore, this Association had to be impleaded, so as to protect the interest of the traders.

10. Therefore, without going into the merits, we allowed the miscellaneous petition for impleadment and we heard Mr.A.L.Somayaji, learned Advocate General appearing for the appellants in the writ appeal and the respondents in the writ petition. We have also heard Mr.K.M.Vijayan, learned senior counsel appearing for the writ petitioner herein and the newly impleaded 12th respondent in the writ appeal.

11. Before considering the rival contentions, we are unable to resist our temptation to record our surprise at the maintainability of the prayer with which the writ petitioners have come up. Our common understanding of the scope of a Writ of Mandamus is that it can be issued either to direct the State or any Authority to perform a duty cast upon them statutorily or to forbear them from acting in contravention of a statutory prescription. But in the case on hand, the writ petitioners have sought a Mandamus to forbear the respondents from enforcing the provisions of a statutory enactment and the rules framed thereunder. In other words, what the writ petitioners want is virtually a direction to the respondents not to act in accordance with law. The law itself is not under challenge.

12. With this prelude in mind, if we get back to the case on hand, it is seen that the only issue raised in this writ petition is that as and when a district is bifurcated or trifurcated, the market committee notified earlier gets dissolved in terms of Section 9(2) of the Act and that therefore, without a fresh declaration, no fee can

be levied or collected under Section 24.

13. In order to test the correctness of the above contention, it may be necessary to look at the historical background of market committees and the marketing regulations imposed by the State, from time to time.

HISTORICAL BACKGROUND :

14. In order to provide for the better regulation of buying and selling of commercial crops and for the establishment of markets for commercial crops in the Presidency of Madras, the then Madras Legislative Council enacted "The Madras Commercial Crops Markets Act, 1933". Primarily, the focus of this Act was only upon cotton, groundnut or tobacco and any other crop or product notified by the State Government as a commercial crop. The Act contained a scheme, under which, the State Government was entitled, by Section 3, to notify their intention of exercising control over the purchase and sale of such commercial crops in such area specified in the Notification. The Notification should invite objections. After considering the objections, the State Government may, by Notification issued under Section 4, declare the area specified in the Notification under Section 3 to be a notified area. After notifying an area as a notified area, the State Government should establish a market committee under Section 4A for such area. Those market committees, in turn, should establish such number of markets within the notified area, as the State Government may prescribe from time to time, for the purchase and sale of commercial crops.

15. Once an area is notified under Section 4 after following the procedure under Section 3, once a market committee is established for such notified area under Section 4A and once the markets are established by every market committee, then no person, within a notified area, can set up, establish or use or continue any place for the purchase or sale of a notified commercial crop, except under and in accordance with the conditions of a licence granted by the Collector.

16. The Madras Act XX of 1933 defined the expressions 'notified area' and 'market'.

17. After India attained independence, the Legislative Assembly passed a fresh enactment known as Tamil Nadu Agricultural Produce Markets Act, 1959. By this Act, the Madras Act XX of 1933 stood repealed. The object of this Act was to provide for better regulation of buying and selling of agricultural produce (in contra distinction to commercial crops under the 1933 Act) and for the establishment of markets for agricultural produce. Under Section 3 of this Act, the State Government was empowered to declare, by Notification, their intention of exercising control over the purchase and sale of such agricultural produce and in such area as may be specified. This Notification should also invite objections from the members of the public. This Section 3 of the 1959 Act was in pari materia with

Section 3 of the 1933 Act. However, instead of the expression 'commercial crop' as found in the 1933 Act, the expression 'agricultural produce' was used in the 1959 Act.

18. Under Section 4 of the 1959 Act, the Government may, by Notification, declare the area specified in the Notification issued under Section 3, to be a notified area for the purpose of this Act, in respect of any agricultural produce. This Section 4 was identical to Section 4 of the 1933 Act.

19. After following the procedure under Section 3 and thereafter declaring an area as a notified area under Section 4, the Government shall establish a market committee under Section 5, for every notified area. This Section 5 of the 1959 Act was similar to Section 4A of the 1933 Act.

20. Once a notified area is declared under Section 4 and once the market committees are established under Section 5, no person can establish any place for the purchase or sale, storage, weighment, etc., of any notified agricultural produce except in accordance with the conditions of a licence granted by the market committee. This Section 6 of the 1959 Act was similar to Section 5 of the 1933 Act.

21. After nearly 30 years of the issue of the 1959 Act, the Legislative Assembly of the State replaced the 1959 Act with a new one titled as Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987. The professed object of this Act was to amend and consolidate the law relating to and to make better provisions for the regulation of buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce in the State of Tamil Nadu.

22. Under this 1987 Act, the Government may declare their intention of regulating the marketing of any agricultural produce in an area, by issuing a Notification under Section 3(1) and calling for objections. Thereafter, the Government may issue a Notification under Section 4 declaring such area to be a notified area for the purposes of the Act. After the declaration of a notified area under Section 4, the Government should establish a market committee for every notified area. Such market committees shall establish in the notified area as many number of markets as they may desire, under Section 6.

23. Once an area is declared as a notified area and a market committee is established, no person can set up, establish or use any place for the purchase or sale or storage or measurement of any notified agricultural produce within the notified area, except under and in accordance with the conditions of a licence granted to him by the market committee.

24. Under Section 9(1) of the 1987 Act, the Government may alter the geographical limits of operation of a notified area, by a

Notification. Such alteration may take any form such as (i) inclusion of any area (ii) exclusion of any area (iii) division of any notified area into two or more separate notified areas (iv) amalgamation of two or more notified areas into one notified area (v) declaration that regulating the marketing of any notified agricultural produce in any notified market area shall cease and (vi) declaration that the marketing of any agricultural produce hitherto unregulated shall be regulated in any notified market area.

25. But, the power of the Government to alter a notified area, in any one of the above forms under Section 9(1) is made subject to the provisions of Section 3 under the Proviso to Section 9(1). In other words, the procedure of issuing a Notification under Section 3 (1) and calling for objections should be followed, before such alteration takes place.

26. Sub-Section (2) of Section 9 contemplates certain consequences to flow out of the alteration of a notified area under Section 9(1). These consequences are as follows :

(i) The market committee will stand dissolved

(ii) A new market committee should be constituted as per Sections 5 and 10

(iii) The licence already granted by the dissolved market committee will continue to hold effect for the remainder of the term as if it was granted by the new committee and

(iv) The funds of the dissolved market committee will stand transferred to the new market committee and all rights and liabilities, contracts, agreements, etc., will vest in the new committee.

27. Section 9, around which, the entire argument of the writ petitioners rest, requires to be reproduced. Hence, it is reproduced as follows:

> "Alteration of notified area, etc. :- (1) The Government may, by notification, with effect on and from such date as may be specified in the notification:-
>
> (a) include any area in, or exclude any area from, any notified area or any notified market area;
>
> (b) divide any notified area into two or more separate notified area;
>
> (c) amalgamate two or more notified areas into one notified area;
>
> (d) declare that regulating the marketing of any notified agricultural produce in any notified market area shall cease or that the marketing of any agricultural produce hitherto not regulated shall be regulated in any notified market area :

Provided that the power conferred by this section shall, in relation to any notified area or agricultural produce, be subject to the provisions of Section 3.

(2) When the limits of the notified area for which a market committee is established are altered under Sub-Section (1), the following consequences shall, with effect on and from such date as may be specified in the notification, ensure namely :-

(a) the market committee shall stand dissolved and its members shall vacate their offices as such members;

(b) a new market committee shall be established and constituted for the new modified area in accordance with the provisions of Section 5 and Section 10 :

(c) the licence, if any, granted by the dissolved market committee, shall be deemed to have been granted by the new market committee having jurisdiction and shall continue to have effect accordingly for the remainder of the period for which it was granted; and

(d) there shall be transfer to the new market committee such portion of the dissolved market committee's funds and other assets, debts and obligations as the Government may, by order, direct and the rights and liabilities of the dissolved market committee in respect of civil and criminal proceedings, contracts, agreements and every other matter or thing arising in, or relating to, any part of the notified area within the jurisdiction of the new market committee, shall vest in the new market committee."

28. Section 9 of the 1987 Act was a new invention. The power to alter a notified area was conferred upon the Provincial Government itself under Section 5A of the Madras Act XX of 1933, by virtue of an amendment introduced under the Madras Act IX of 1936. But, Section 5A of the 1933 Act was not as elastic as Section 9 of the 1987 Act.

29. Even under the 1959 Act, the State Government was conferred with the power to alter the limits of a notified area, under Section 7. Therefore, the power conferred under Section 9 of the 1987 Act was not a new invention.

30. But, there were two significant distinctions between the power conferred under the 1933 and 1959 Acts and the power conferred under the 1987 Act. The first is that under the 1933 and 1959 Acts,

the power of alteration was limited to (i) exclusion of any area from a notified area and (ii) inclusion of a new area in any notified area. But, under Section 9 of the 1987 Act, the power of alteration extends even to division of a single notified area into two or more and the amalgamation of two or more notified areas into one. The second distinction between the pre-1987 scenario and post-1987 scenario is that after 1987, any alteration of a notified area results in the automatic dissolution of the market committee. Therefore, we may have to keep in mind the historical development from 1933 till 1987, before considering the grievance of the writ petitioners.

CASE OF THE WRIT PETITIONERS :

31. The case of the petitioner in W.P.No.33206 of 2012, out of which, the writ appeal arises and that of the petitioner in W.P.No.1868 of 2015, is that a market fee under Section 24 of the 1987 Act can be levied only with regard to the notified agricultural produce cultivated inside the notified area and purchased and sold within the market area. According to the writ petitioners, the Act cannot be extended to the purchases made outside the notified area and sold inside or outside the notified area.

32. A careful look at the affidavit filed by the writ petitioners in support of W.P.No.33206 of 2012 and 1868 of 2015 would show that the only grievance projected by them in their written brief is that the market committees are not entitled to levy any fee under Section 24 in respect of the sale or purchase completed outside the notified area.

33. But, in the course of arguments, Mr.K.M.Vijayan, learned Senior Counsel appearing for the writ petitioner developed a new contention. His contention was that once an alteration in the limits of a notified area is made under Section 9(1) of the Act, the market committee constituted in relation to that notified area stands dissolved under Section 9(2)(a) and that therefore, unless a whole set of procedure starting from a notification under Section 3, a declaration under Section 4 and the establishment of a market committee under Section 5 takes place afresh, no levy can be made by the abolished market committee under Section 24.

34. In other words, the grievance of the writ petitioners is two fold, one projected in the pleadings and another projected in the course of arguments. What is projected in the pleadings is that when the purchase or sale takes place outside the notified area, no fee can be levied. What is projected in the course of arguments is the effect of Section 9(2)(a).

35. The first contention of the writ petitioners is capable of being disposed of without much ado. A cursory glance at Section 24 would show that the market committee is entitled to levy a fee on any

notified agricultural produce bought or sold in the notified market area. Explanation I to Sub-Section (1) of Section 24 makes it clear that all notified agricultural produce taken out or proposed to be taken out of a notified market area shall be presumed to be bought or sold within such area. Therefore, the very availability of a notified agricultural produce in a notified market area raises a presumption that it was bought or sold within such area. It is a rebuttable presumption and consequently, the obligation to rebut the presumption is upon the person claiming that he is not liable to pay the fee. Clause (b) of Sub-Section (4) of Section 24 also makes it clear that the burden of proving that any notified agricultural produce is not liable for the levy of fee shall lie upon the person claiming non-liability.

36. The proviso to Sub-Section (1) of Section 24 deals with the very claim made by the writ petitioners relating to exports. It says that if an agricultural produce brought into any notified market area only for the purpose of processing or for the purpose of export is not processed or exported within 30 days from the date of arrival, it will be presumed to have been bought and sold in the notified market area. Therefore, the very provisions of Section 24 take care of objections that an individual trader may have with regard to levy of fee or his liability to pay fee or his claim for exemption.

37. The question as to whether a particular item is a notified agricultural produce, the question as to whether it was bought and sold in a notified market area and the question as to whether the notified agricultural produce was brought into the notified area only for the purpose of processing or for the purpose of export are all questions of fact, which have to be decided as and when the occasion arises and at the time of every transaction. In a writ petition under Article 226, such disputed claims are not open to scrutiny. Therefore, the writ petitioners cannot seek a Mandamus on the ground that they are buying and selling notified agricultural produce outside the notified market area. Whether or not, the writ petitioners are buying and selling the notified agricultural produce outside the notified area is a question of fact, on which, no adjudication can be made by this Court for the purpose of issuing a Mandamus to forbear the respondents from enforcing the provisions of the Act.

38. In Rajapalayam Paruthi Panchu Sangam Vs. State of Tamil Nadu [AIR 1996 Madras 29], a Division Bench of this Court was concerned with a challenge to the provisions of the 1987 Act and the Rules issued thereunder. After pointing out in paragraph 3 of its decision that the Act is aimed at securing a fair and reasonable price to the producers of the notified agricultural produce and that this object was sought to be achieved by regulating the trade by providing a special market yard and other facilities, this Court held in paragraph 30 that the proviso to Sub-Section (1) of Section 24 contained only a rule of evidence. Therefore, in a writ petition

filed under Article 226, we cannot go into questions of fact such as whether the writ petitioners herein have brought the material for export or brought the material from outside the notified area. Hence, the first contention based on disputed questions of fact, cannot be adjudicated.

39. Coming to the argument that was developed by Mr.K.M. Vijayan, learned Senior Counsel appearing for the writ petitioner herein, it is seen that the same is based upon Section 9(2)(a). As we have pointed out earlier, the power of the Government to alter a notified area flows out of Sub-Section (1) of Section 9. The consequences of such alteration are found in Sub-Section (2) of Section 9. We have already extracted Section 9.

40. To understand the effect of Section 9(2), it is first necessary to take note of the definitions of a few expressions. The expression 'market' under Section 2(10) reads as follows :

> "Market means any market established under Sub-Section (1) of Section 6 and shall, except in Sub-Sections (1) and (2) of that Section, include a subsidiary market."

The expression 'market committee' is defined under Section 2(11) as follows:

> "Market committee means any market committee established under Sub-Section (1) of Section 5. "

The expression "notified area" is defined under Section 2(13) as follows :

> "Notified area means any area notified under Section 4 as altered by any notification under Sub-Section (1) of Section 9."

The expression "notified market area" is defined in Section 2(14) as follows :

> "Notified market area means any area notified under Sub-Section (2) of Section 6 as altered by any notification under Sub-Section (1) of Section 9."

41. As seen from the above definitions and the sequential order in which, Sections 3 to 9 flow, the power available to the Government is to exercised in the following sequence :

(i) to notify the intention to declare any produce of agriculture, processed or unprocessed, as a notified agricultural produce under Section 3

(ii) to notify the intention to regulate the marketing of such agricultural produce in a specified area

(iii) to receive objections both with regard to such agricultural produce and with regard to the area, for which the market is sought to be regulated

(iv) to declare under section 4, after considering the objections, the particular agricultural produce as a notified produce and the specified area as a notified area and to publish the declaration

(v) to establish a market committee for every notified area under section 5 and leave it to such market committees to establish such number of markets within the notified area as they may deem fit under section 6

(vi) to alter the notified areas as provided in Clauses (a) to (d) of Sub-Section (1) of Section 9, subject to the provisions of Section 3.

42. Keeping mind the sequential order in which, the power is to be exercised by the Government, if we look at the scheme of the Act, it can be understood that a notified area is a huge place such as a district or an conglomeration of two or more districts, within which, a market committee is constituted. The market committee in turn, establishes as many number of markets within the notified area as they may deem fit. In other words, the markets established by the market committee are to be located in a notified area, for which, the market committee is established under Section 5.

43. What happens when a notified area is altered under Section 9 is that the markets do not get dissolved, but the market committees alone get dissolved. A careful look at Clauses (a) to (d) would show that as and when a notified area is altered either by inclusion of a new area or by exclusion of an area or by division or amalgamation, it is the market committee that gets dissolved. The markets established by those committees under Section 6(1) do not stand dissolved.

44. A market committee is what is constituted under Section 10 of the 1987 Act. A market committee constituted under Section 10 is to comprise of 8 producers, 3 nominees of the State Government, one producer nominated by the Government and residing in the notified area and three officials nominated by the Government from the Department of Agriculture, Animal Husbandry, etc. This market committee has a tenure of about three years. A market committee is declared to be a local authority under Section 17 and it is to be incorporated as a body corporate under Section 16. Section 16 states that every market committee is a body corporate with a common seal and perpetual succession. It can hold and dispose of movable and immovable properties. This is why Section 20 of the Act declares that a market committee shall have power to act, notwithstanding any vacancy in membership or any defect in constitution.

45. Therefore, Sections 16 and 17 would make it clear that what is dissolved under Section 9(2)(a) is only the committee of 16

members who manage the market committee. If any one has any doubt about the same, it is clarified by Clause (b) of Sub-Section (2) of Section 9, which states that upon dissolution of the market committee, a new market committee shall be established in accordance with Sections 5 and 10.

46. Therefore, it is clear that the dissolution that Section 9 (2)(a) talks about is not akin to the dissolution of a company under Section 481 of the Companies Act, 1956, after the company is wound up. The argument of Mr.K.M.Vijayan, learned Senior Counsel for the writ petitioner herein would be correct only if the expression 'dissolved' appearing in Section 9(2)(a) is understood to have the same meaning as the expression 'dissolution' appearing in Section 481 of the Companies Act, 1956. What actually happens under Section 9(2)(a) is the dissolution of the committee of management and not the body corporate. The market committee, which gets the status of a body corporate with perpetual succession and common seal under Section 16 of the 1987 Act, does not and cannot get dissolved under Section 9(2)(a). If it would get dissolved every time there is an alteration of a notified area, it could never have perpetual succession. It is only the committee of 16 members, who manage the market committee that gets superseded by Section 9(2)(a). This is why Clauses (c) and (d) of Sub-Section (2) of Section 9 stipulate that any licence granted by the dissolved market committee will be deemed to have been granted by the new market committee and that all the funds, assets, debts and obligations as well as the rights and liabilities of the dissolved market committee will stand transferred to the new market committee. Once this is clear, the second contention of the writ petitioners would automatically fall to ground.

47. What actually happened in these cases was that the district of Thanjavur was a composite district once upon a time before its trifurcation into Thanjavur, Nagapattinam and Tiruvarur districts. By G.O.Ms.No.2982 Food and Agriculture dated 19.8.1961, the Government issued a Notification under Section 3 of the 1933 Act declaring their intention to exercise control over the purchase and sale of paddy in Thanjavur district. Objections were received from the Madras State Ryotwari Owners Association and the Madras Provincial Food grains Merchants Association, both for notifying paddy as a commercial crop and for declaring Thanjavur as the notified area.

48. After considering those objections, the Government issued G.O.Ms.No.919 dated 5.3.1962 under Section 4 of the 1933 Act declaring Thanjavur district as a notified area in respect of paddy.

49. Subsequently, by another order in G.O.Ms.No.2673 Food and Agriculture dated 31.7.1965, a Notification under Section 3 of the 1959 Act was issued declaring the Government's intention to exercise control over the purchase and sale of red gram, green gram and black gram in Thanjavur district. After considering the objections received, the Government issued a Notification under Section 4 of the

1959 Act in G.O.Ms.No.1165 dated 3.4.1968.

50. Following G.O.Ms.No.919 dated 5.3.1962, a market committee was directed to be established under Section 4A of the 1933 Act and a committee comprising of about 12 members was in fact constituted under G.O.Ms.No.2156 Food and Agriculture dated 19.6.1962. The market committee so established, which came to be known as Thanjavur market committee, was permitted by a further Notification issued under Section 5(3) of the 1959 Act, under G.O.Ms.No.2048 dated 29.6.1963, to establish markets for the purchase and sale of paddy at Mannargudi, Kuthalam, Tiruvarur, Kumbakonam, Papanasam, Koradachery and Kandharvakottai in Thanjavur district.

51. Thereafter, by G.O.Ms.No.1513 Food and Agriculture dated 6.5.1964, another Notification under Section 5(4) of the 1959 Act was issued, declaring the area of Tiruvarur market and the area of 8 Km around Tiruvarur market to be notified market areas for Tiruvarur market. A similar Notification was issued for Papanasam market area and other areas.

52. From the above, it will be clear that despite the alteration of the notified area under Section 9(1), the market committee constituted continues to have perpetual succession. The members appointed under Section 10 lose their tenure and a new set of members are appointed under Section 10. This will not have the effect of the market committee completely ceasing to exist. Hence, the second contention of the writ petitioners is also liable to be rejected.

53. Arguments were advanced on both sides on the application of Sub-Sections (3) and (4) of Section 67 of the 1987 Act. While Sub-Section (3) of Section 67 was relied upon by the learned Advocate General, Sub-Section (4) was relied upon by Mr.K.M.Vijayan, learned Senior Counsel.

54. But, we are of the considered view that Section 67 has no application to the issue raised in these writ petitions. The only question raised in the cases before us is as to the effect of Section 9(2)(a) of the 1987 Act, when a district is bifurcated or trifurcated, leading to the necessity for the alteration of the notified area under Section 9(1). Section 9(1) can be invoked even under the 1987 Act without reference to what happened in the 1959 Act. We are not concerned in these cases with the question as to what happened to the Notifications issued under the 1959 Act, after the 1987 Act was issued. We are concerned here with the question as to what happens to the declaration of a notified area when Section 9(1) is invoked. To decide this question, Sections 16 and 17 of the 1987 Act themselves are sufficient.

55. In view of the above, W.P.No.1868 of 2015 is dismissed. W.A.No.2232 of 2013 is allowed. No costs. Consequently, the above MPs are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To
1.The Secretary to Govt., Agricultural Department, Fort St. George, Ch-9.
2.The Commissioner, Agricultural Department Marketing,Guindy, Chennai-32.
3.The Secretary Agricultural Marketing Committee, Kanyakumari District,
Vadasary, Nagercoil.
4.The Secretary Agricultural Marketing Committee, Marthandam,
Kanyakumari District.
5.The Secretary, Ramanathapuram Agricultural Marketing Committee,
Virudhunagar.
6.The Superintendent, Agricultural Marketing Committee, Rajapalayam,
Virudhunagar District.
7.The Secretary, Thirunelveli Agricultural Marketing Committee, Thirunelveli.
8.The Superintendent, Agricultural Marketing Committee, Alngulam,
Thirunelveli District.
9.The Superintendent, Agricultural Marketing Committee, Thirunelveli.
10.The Superintendent, Agricultural Marketing Committee, Srivaikundam,
Thoothukkudi District.
11.The Secretary, Mayiladuthurai Agricultural Marketing Committee,
Mayiladuthurai, Nagapattinam District.
12.The Superintendent, Agricultural Marketing Committee, Nagapattinam,
Nagapattinam District.

+2 ccs to Mr.U.Jayaprakash Narayanan, Advocate, sr.36941
+1 cc to Government Pleader, sr.37285
+2 cc to M/s.R.T.Shyamala, Advocate, sr.37768, 37767 (16/09/2015)

W.A.No.2232 of 2013
and W.P.No.1868 of 2015

pvr co
kra 10/9