IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

APPEAL SUIT No.722 of 1997

Between:

ITC LIMITED ….Appellant/Plaintiff

And

Agricultural Market Committee
Udayagiri, Nellore Dist.
Rep. By its Secretary .… Respondent

DATE OF JUDGMENT PRONOUNCED: **15.07.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

THE HON'BLE SRI JUSTICE M. SATYANARAYANA

MURTHY

APPEAL SUIT No.722 of 1997

JUDGMENT:

The unsuccessful plaintiff in O.S.No.13 of 1988 on the file of Subordinate Court at Kavali, Nellore District, preferred this appeal against the judgment and decree dated 21st day of April, 1997, wherein the suit filed by the plaintiff for declaration that the defendant is not entitled to levy or collect any fee or penalty under Sections 12 and 23 of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 16 of 1966 (for short "the 1966 Act") or under Bye-law No.24 from it and for consequential permanent injunction restraining the defendant and their men from levying or collecting any fee or penalty under Section 12 and 23 of the 1966 Act either by filing suit or by launching prosecution, is dismissed.

2. For convenience of reference, the parties to the appeal are ranked as arrayed in O.S.No.13 of 1988 before the trial Court.

3 (a). The plaintiff filed the suit, for the above said reliefs, alleging that the plaintiff is a company incorporated under the Indian Companies Act and carrying on its business of purchases and sales of tobacco and it exports the same to foreign countries also. In the process of purchases and sales, the plaintiff established branches and buying points at several places like Duttalur, Narawada and Marripadu.

(b) The Government of Andhra Pradesh has constituted Market Committees under the 1966 Act. The defendant is one of such committee constituted under the said 1966 Act having jurisdiction over the area. The plaintiff is carrying on its business operations by establishing buying points. The plaintiff has obtained licence from the defendant and it has been paying Rs.150/- towards licence fee to the defendant for carrying on trade in tobacco. The defendant has no right to collect market fee from the plaintiff as the defendant did not provide any facilities to it. But the Defendant served notices on plaintiff for furnishing return of purchases for payment of market fee @ Rs.1/- per Rs.100/-. The Market Committee has unilaterally enhanced the fee of Rs.1/- per every Rs.100/-, which is maximum leviable under Section 12(1) of the Act, 1966. Such levy of fee is illegal and unjust. The defendant did not establish the Auction Halls, Grading of Agricultural Produce and Weighment Scheme, regulation of credit transactions, fixation of minimum prices, Dissemination of information and publication of journals or bulletins etc., on tobacco platforms and weighmen by appointing supervisory staff etc. The said obligations are statutory obligations interpreted as services to be rendered by the defendant committee in return for the levy of fee under Section 12 of the 1966 Act. But, without providing any facilities, the defendant issued notices calling for production of the statements of purchases for payment of market fee at Rs.1/- per Rs.100/-. Therefore, the issuance of demand notices are illegal and arbitrary.

(c) (a) The plaintiff is neither the grower nor the dealer transacting any tobacco business operations in any storage sheds created by the defendant;

(b) that the purchases or sales of tobacco are not conducted in the auction halls of defendant committee;

(c) that the weighment of tobacco transactions is done in the premises of dealers only and not in the market yards;

(d) that the weighment is done by the labour employed by the defendant only and not by the weighmen employed by the defendant;

(e) that for the purpose of checking of weighment and measures, there is a separate department of weights and measures;

(f) that no supervision over the purchases and sales of tobacco is done by the supervisory staff of the defendant;

(g) that neither the growers nor the dealers ever stored their tobacco in any sheds belonging to the defendant;

(h) that unlike other committees like Chilies and

Coriander etc., tobacco requires special storage facilities to avoid deterioration of colour and quality, which facility is not available with the defendant;

(i) that the growers and dealers never enjoyed any amenities like drinking water, shelter sheds etc., but grading of tobacco is never introduced or taught to the growers of defendant;

(j) that there was no supply of seeds or seedlings or fertilizers or bulletins, furnishing knowledge and information etc., by the defendant;

(k) that no journals relating to tobacco production nor industry are circulated to the trade or growers by the defendant;

(l) that the defendant has no sheds or halls or other premises licenced under the Central Excise Rules as L-2 Licences or otherwise;

(m) that the defendant never promoted sales of tobacco or clearance of old stocks;

(n) that the defendant has not provided for the entry or handling of tobacco in any of their premises at all nor have they provided any other amenities or services;

(o) that the defendant does not have any premises except a small rented portion for transacting their business, which practically is intended only for collecting fees for licences etc.,

(p) that the defendant does not have either staff or infrastructure to provide even a single facility to any of the traders;

(q) that the tobacco is a commodity, which has got to be separately and individually handled and if it is stored with any other agricultural commodity, it looses its value by contamination i.e., it gives its odour to the other commodities and takes the odour of other commodities and therefore, tobacco needs to be separately handled, which facility could not be provided by the defendant committee.

d) In the absence of providing any of the facilities stated above, the defendant is not entitled to levy market fee of Rs.1/- per Rs.100/- and therefore, such levy is illegal and the defendant is not entitled to collect market fee, in view of the Tobacco Board Act, 1975 (for short " the 1975 Act"). Hence, the suit.

4. The defendant resisted the claim of plaintiff by filing Written Statement denying the material averments, *inter alia,* contending that the plaintiff is a licenced dealer of defendant Market Committee from 1979-1980 till date and the defendant has acquired an extent of Ac.12.42 cents of private land at Udayagiri at the cost of Rs.38,292-24 ps in the year 1982 for establishment of market yard. The defendant committee further proposed additional site of

Ac.5.00 at Udayagiri and estimates for minimum amenities are prepared by engineering cell.

b) The defendant denied the allegation that no services are provided to the plaintiff as the defendant committee had established Bulletin Boards and prices of various commodities are being exhibited through the boards. The "Market Samacharamulu" magazine was supplied. The check posts are maintained to stop and check the vehicles suspected to carry unauthorisedly, notified agricultural products, livestock or products of livestock from any place within the limits of any notified market area. It is further contended that the defendant appointed staff to render services of all types as per the provisions of the Act and carry on its objectives and implement the same effectively.

c) The market committee is entitled to levy market fee on transaction of sales by purchasers of notified agricultural produce within the market area. It is further stated that collection of market fee within the market area is not illegal, as per Section 12 of the 1975 Act, as the market committee has issued licences to the weighmen, who applied for market committee for licence. The committee staff are also authorized regarding weighment and measures as per Rule 57 of the Market Committee Rules, eventhough the Weights and Measures Department is meant for it. The executive staff of the committee are supervising on the sales stocks, weighment etc., whenever they visit the licenced dealers premises. The defendant denied that grading tobacco is not introduced or taught to the growers of the defendant. It is further stated that the executive staff of the committee are prorogating the advantages of grading in market yards and canvassing news through All India Radio regularly for the benefit of traders and for the public at large.

d) The defendant committee never received information at any time about the clearance of old stocks and the levy of fees by the plaintiff at Rs.1/- per hundred on the commodity of unmanufactured tobacco is not illegal and in accordance with the provisions of Section 12 of 1966 Act, the Tobacco is also one of such notified commodity, thereby the plaintiff is liable to pay the market fee. The Hon'ble Supreme Court of India by its judgment dated 06.09.1993 in various Writ Petitions upheld the provisions of the Act and negatived various contentions similar to that of plaintiff. Hence, the defendant is entitled to recover the market fee and the plaintiff is liable to pay the fee, as per the provisions of Section 12 and 23 of the 1966 Act. Finally, it prayed to dismiss the suit with costs.

5) Basing the above pleadings, the trial Court framed the following three issues:

> i) Whether the plaintiff is entitled for declaration that the defendant is not entitled to levy or collect any fee or penalty under Section 12 or 23 of the Act 16 of 1966 and for consequential permanent injunction?

ii) Whether the defendant is not competent to levy any fee in respect of the tobacco commodity under Section. 20 of AP (Agricultural Produce and Livestock) Markets Act after coming into force of the Tobacco Board Act,1975?

iii) To what relief?

6. During the course of trial, none were examined and no documents were marked on behalf of plaintiff. On behalf of defendant, K. Venkateswarlu was examined as DW.1 and Exs. B.1 to B.12 were marked.

7. Upon hearing the arguments of both the counsel, considering oral and documentary evidence on record, the trial Court held that the plaintiff is not entitled for any of the reliefs claimed by it on the ground that it is carrying on business operations by setting up a point within the limits of defendant market committee and accordingly dismissed the suit.

8. Aggrieved by the Judgment and Decree, the unsuccessful plaintiff preferred the appeal, on various grounds, mainly on the ground that the judgment relied on by the appellant's counsel rendered in ***I.T.C. Ltd. v. State of Karnataka***[1] pertaining to the Karnataka Market Committee Act, is an error apparent on the face of the record and the provisions of Andhra Pradesh Market Committee Act and the Karnataka Market Committee Act are totally dissimilar to each other. The trial Court also did not appreciate the judgment of our Hon'ble Division Bench rendered in

Agricultural Market Committee, Narasaraopet vs. Golden Tobacco Company Limited, Guntur and another[2], wherein the Hon'ble Division Bench of this Court held that the market committee is denuded of the power to levy and collect any market fee against the appellant/plaintiff company with effect from 01.01.1976 on which date the 1975 Act came into force.

(a) The trial Court without applying its mind to the provisions of Andhra Pradesh Market Committees Act and Karnataka Market Committees Act erroneously dismissed the suit and hence, it prayed to allow the appeal.

9) During the course of arguments, the learned Senior Counsel Sri S.Sridharan, while reiterating the contentions raised in the grounds of appeal, drawn the attention of this Court to several provisions of the 1975 Act and various notifications issued by the Government of India by which certain provisions of the Act like Sections 10,11,12,14 and 15 came into force in the State of Andhra Pradesh and Karnataka on 28.08.1976 and that Section 13 of the 1975 Act, came into force in the State of Andhra Pradesh from 05.02.1985 vide notification in Gazette of India Extraordinary Part-II, Section 3 (ii), dated 12.02.21985. It is further contended that in view of the provisions of 1975 Act, no person shall grow Virginia tobacco except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with

the rules made under this Act. Similarly, according to Section 13 of the 1975 Act, 1975, no registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with the rules made under this Act and similarly 13(a) of the said Act says that "no registered dealer or registered exporter shall purchase or cause to be purchased virginia tobacco elsewhere". In view of these two provisions referred to above, the transactions regarding sales and purchases cannot be taken except on the platform registered with the Board in accordance with the rules made under the1975 Act and in such case, the defendant is not entitled to collect any market fee though the premises of the plaintiff is situated within the jurisdiction limits of the defendant.

b) The learned Senior Counsel further drawn my attention to Section 25 of the Tobacco Board Act, 1975, which deals with penalties for contravention of any provisions of the Act. Therefore, sales or purchases taken outside the platform established by Tobacco Board is nothing but contravention of provisions by the person who is liable for punishment under Section 25 of the said 1975 Act.

c) On the strength of the above said proviso, it is contended by the learned Senior Counsel that the defendant is not competent to levy market fee on the sales and purchases taken place on the platforms arranged by the plaintiff. In support of his contention, he also brought to the notice of this Court G.O.Ms.No.NIL, dated 10.07.2008 issued by the Principal Secretary to Government (C&AN) (FAC), Agriculture and Cooperation (AM-I) Department, omitting the Tobacco (Virginia and Natu) at Serial No.64 in the notified commodities with effect from 10.07.2008.

d) The learned Senior Counsel further submitted that a similar question came up for consideration before the Hon'ble Division Bench of this Court in **Agricultural Committee**'s case (2 supra), the Hon'ble Division of this Court placing reliance on earlier judgment of the Hon'ble Apex Court in ***ITC's*** case(1 supra) held that the Market Committee is not entitled to levy market fee.

e). Finally he has drawn the attention of this Court to latter Judgment of the Hon'ble Apex Court in ***I.T.C.Ltd.,v. Agricultural Produce Market Committee and others***)[3], wherein the larger bench of Hon'ble Apex Court overruled the earlier judgment of the Apex Court in ***ITC's*** case (1 supra) and held that from the date of notification of Sections 10 and 13 of the 1975 Act, the market Committee is not entitled to levy market fee in the State concern. In the present case, Sections 10 and 13 of the 1975 Act have already come into force within the Sate of A.P and thereby, the defendant is not entitled to levy market fee and issue of such demand calling upon the plaintiff to furnish the statements of sales and purchases and also payment of market fee at the rate of Rs.1/- per hundred is illegal. He finally prayed to allow the appeal by setting aside the decree and judgment of the Trial Court.

10. Though the name of Sri Chintalapalli Srinivas, Standing Counsel for the Defendant—A.P Agricultural Market Committee is printed, he neither appeared before the Court nor represented the matter for more than five times though it was listed for " judgment". This Court having no other alternative option, proceeded to decide the appeal on merits.

11. Considering the contentions, after perusing the grounds of appeal, decree, judgment under challenge and the oral and documentary evidence available on record, the points that arise for consideration are as follows:

1) Whether the defendant is entitled to levy market fee on the sales and purchases of Tobacco (Virgina and Natu) after Section 10, 11 and 13 of the Tobacco Board Act, 1975 came into force? If so, whether the plaintiff is liable to pay market fee at Rs.1/- per hundred under Section 12 of A.P. Market Committees Act?

2) Whether the plaintiff is entitled for declaration that the defendant is not entitled to collect market fee under Section 12 of the AP Act 16 of 1966?

3) Whether the plaintiff is entitled to perpetual injunction restraining the defendant from collecting the market fee either by filing the suit or

by launching the prosecution, as per the provisions of the 1966 Act?

12. **POINT NO.1**: Undisputedly, the plaintiff is a Company incorporated under the Companies Act carrying on its business of sales and purchases of various items including Tobacco. The sales and purchases of Tobacco are governed by the provisions of the Tobacco Board Act, 1975, which came into force with effect from 27.12.1975 published in Gazette of India Part II on 21.12.1975. Sections 10 and 11 of the 1975 Act came into force in the State of Andhra Pradesh and Karnataka and Sections 12,14 and 15 of the Act in the entire India came into force with effect from 28.09.1976 when it was published in Gazette of India Part-II. Whereas Sections 10 and 11 of the 1975 Act came into force in other States like Maharasthra, West Bengal, Gujarat, Tamilnadu and Uttar Pradesh on 31.05.1980. Similarly, Section 13 of the 1975 Act came into force in the State of Andhra Pradesh on 05.02.1985 when it was notified on 12.02.1985 in the Gazette of India extraordinary Part-II, Section 3 (ii).

13. In view of the specific contentions of the plaintiff, I feel that it is apposite to extract certain provisions of the 1975 Act, for better appreciation and they are as follows:

(a) Section 10 of the 1975 Act, which came to into force in the State of AP on 28.08.1976 vide Notification in Gazette of India Part II Section 3 (II) dated 28.08.1976 reads as follows:

> "(1) no person shall grow virginia tobacco except under, and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act".
>
> 2) " In granting or refusing a certificate of registration, the Board shall have regard to the demand for Virginia tobacco in India and abroad and the suitability of the land in relation to which the certificate is applied for and such other factors as may, having regard to the need of the Virginia tobacco industry, be prescribed".
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> 3) A certificate of registration granted in pursuance of this Section shall be valid for such period as may be prescribed.
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> 4) Every application for such certificate or registration shall be accompanied by such fees (not exceeding one rupee for 0.4 hectare of the land in relation to which such application has been made) as may be prescribed".

14. In view of Section 10 of the 1975 Act, unless a certificate of registration was issued, no ryoths are entitled to grow tobacco (Virginia or Natu) in any of the areas in the State of Andhra Pradesh.

15. At the same time, Section 13 of the 1975 Act, which came into effect in the State of A.P on 05.02.1985 vide Notification of GOI Extraordinary Part-II, Section 3 (ii) dt. 12.02.1985 reads as follows:

> "No registered grower or curer shall sell or cause to be sold Virginia tobacco elsewhere than at an auction platform registered with the Board in accordance with

the rules made under this Act”.

16. **Section 13(A):** “No registered dealer or registered exporter shall purchase or cause to be purchased Virginia tobacco else where”.

(a) than at an auction platform registered with the Board in accordance with the rules made under this Act or established by the Board under this Act;

Provided that in relation to any state in which the provisions of Section 13 are not in force, the condition specified under clause (1) shall not apply.

17. A conjoint reading of Sections 13 and 13(A) of Tobacco Board Act, 1975 makes it clear that the Act almost taken away the powers of any authority under any Local or Central Act to deal with tobacco platforms for sales and purchases established by the Tobacco Board. Since Sections 10, 13 and 13(A) of 1975 Act already came into force in the State of Andhra Pradesh on 28.8.1996, 5.2.1985 and 6.09.1985 respectively. Hence no sales or purchases shall take place at any pace than the platform established under the provisions of the Tobacco Act. If for any reason any one violates the provisions of this Act, they are liable for penalties under Section 25 of the 1975 Act. Hence, no grower or trader shall transact the business of sales and purchases of Tobacco in the State of AP other than on the platforms established under the 1975 Act.

18. A similar question came up before the Hon'ble Apex Court in ***ITC's*** case (1 supra). In the present case, the Advocate, who appeared before the trial Court brought to the notice of the trial Court about the law declared by the Hon'ble Apex Court in the said judgment. However, the trial Court held that the provisions of Andhra Pradesh Market Committee Act and the Karnataka Market Committee Act are dissimilar and not inclined to place reliance on the judgment and accordingly dismissed the suit. However, the law laid down by the Apex Court in the above referred judgment, is no-more good law. A similar question came up before this Court in reported Judgment of this Court in ***Agricultural Committee's*** case (2 supra), the Division Bench of this Court placing reliance on the earlier judgment of the Apex Court in ***ITC's*** case (1 supra) held that the Market Committees are denuded of the power to levy market fee in respect of the sales and purchases of tobacco from 01.01.1976. This view is contrary to the view expressed by the larger bench of the Hon'ble Apex Court in ***ITC's*** case (3 supra).

19. The learned Senior Counsel contended that the Government of Andhra Pradesh while issuing G.O dated 10.07.2008 relating to Agricultural Market Committees Act omitted the Tobacco (Virginia and Natu) from the notified commodities in Serial No. 64 in Schedule (2). Even according this G.O., the Tobacco Board is not entitled to

levy market fee at least with effect from 10.07.2008.

20. The latter authoritative judgment pronounced by five judges of the Hon'ble Apex Court in ITC's case-II (3 supra) clarified as to the powers of the Market Committees to levy fees. In the said Judgment, the provisions of Bihar Agricultural Produce Markets Act and Karnataka Agricultural Produce Marketing (Regulation) Act and the Tobacco Board Act were considered inextenso and held in para No.43 as follows:

> "The State legislations and parliamentary legislations cannot co-exist is apparent from various provisions of the two legislations. To illustrate in this regard, reference may be made on one hand to Section 4(2) of Bihar Act and similar provision in other State legislations and on the other to the provisions of Section 13 of the Tobacco Board Act in States wherein this section has been enforced and also to Section 8(2)(cc). Reference can also be made to Rule 32 of the Tobacco Board Rules, 1976 framed in exercise of powers conferred by Section 32 of the Tobacco Board Act regarding purchase of Virginia tobacco in comparison to Section 15 of Bihar Act requiring the agricultural produce, which tobacco is, to be brought to the market yard and sold by means of an auction or tender to the highest bidder. The power of the Tobacco Board to purchase from growers as provided in Rule 32 cannot co-exist with sale by auction or tender. Even in regard the price and manner of payment, licensing and auction procedure under two legislations and Rules made thereunder show that they cannot co-exist. In this regard reference can also be made to the Tobacco Board (Auction) Rules, 1984 and Tobacco Board (Auction) Regulation, 1984. It is evident that the compliance with the provisions of one would involve non-compliance of the provisions of the other. The provisions of the two legislations have been referred to in the judgment of Brother Pattanaik, J. I am in respectful agreement with the opinion of Justice Pattanaik that the two cannot operate and co-exist simultaneously. In this view, the question about the legislative competence of the State Legislatures will have to be examined."

21. In view of the conflict between State Act and Central Act pointed by the Hon'ble Apex Court in the above referred paras, the larger bench of the Hon'ble

Apex Court went on deciding the legislative competence to levy market fee. In para No.180 and 182, the larger bench of Hon'ble Apex Court observed as follows"

> "A further compelling circumstance to uphold the levy of market fee is the fact that several provisions of chapter III of the Tobacco Act particularly those dealing with the setting up of auction platforms namely Sections 13 and 13A, and Section 14A relating to the levy of fees on the sale of tobacco have not been brought into operation in any State in Indian except for the State of Karnataka. I have already stated the reasons why the provisions relating to sale of tobacco in the Tobacco Act do not come within the definition of 'industry' and are not covered by the declaration under Entry 52 of List I. But granting or the sake of argument that the sale of tobacco comes within the definition of industry until the Central Government chooses to actually occupy the field by effective legislation, it would remain open for the State Legislature to cover that field under Entry 24 of List II. It is difficult to adopt an interpretation which would debar the States from the right to provide for the sale of tobacco only within market Areas and levy market fees although Parliament does not now and may never seek to bring Sections 13 13A and 14A into operation in those States. This view finds support in the pronouncement of a Constitution Bench in **Ishwari Khetan Sugar Mills (P) Ltd.** v. **State of Uttar Pradesh (supra)** when it was construing the impact of a declaration under Entry 52 of List I, it was said that legislation for assuming control containing the declaration under entry 52 of List I must spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted spelling out the degree of control assumed".
>
> "Therefore, even if none were to concede that there is a conflict between the provisions in the Markets Act prohibiting sale of tobacco otherwise than in a market area and the setting up of auction platforms under the Tobacco Act, and between the States power to levy market fee under the Markets Act and the levy of fee on the sale of tobacco under the Tobacco Act, at least in those States where Sections 13 13A and 14A of the Tobacco Act are not operative, the provisions of the Markets Act must prevail" .

The observations made in para Nos. 180 and 182 of the Judgment referred above, are the opinions of an individual judge. But those observations will have no precedence over the final decision in Para No. 193 of the

Judgment. The Hon'ble Apex Court ultimately concluded that the State Legislatures are competent to enact legislation for the levy and collection of market fee on the sale of tobacco in a market area. Consequently, the State Legislations will prevail over the Tobacco Board Act. For brevity, para No.193 of Judgment is extracted hereunder:

> " In keeping with the conclusions of the majority, expressed in the Judgments of Sabharwal, Ruma Pal and Brijesh Kumar, JJ, it is held that
>
> 1) ITC's case (1985 Supp. (1) SCC 476) was not correctly decided.
>
> 2) The State Legislatures are competent to enact legislation providing for the levy and collection of a market fee on the sale of tobacco in a market area. Consequently, the Market Acts enacted by the States are valid.
>
> 3) The State Legislations and the Tobacco Board Act, 1975, to the extent that they relate to the sale of tobacco in market areas, cannot co-exist and the former prevail over the latter".

Therefore, in view of the principle laid down therein, the defendant is entitled to collect market fee on the sales and purchases of Tobacco though the transactions took place in the platform maintained by the Tobacco Board.

22. Though the plaintiff raised several contentions regarding failure of defendant to provide necessary amenities, no evidence was let in to prove such plea. On the other hand, the defendant produced evidence in support of its contentions. Therefore, the plaintiff's

contention that the defendant failed to provide amenities was not substantiated. Consequently, the defendant cannot be denuded to collect market fee.

23. In view of the above discussion and the law declared by the larger bench of the Hon'ble Apex Court, I find no merits to meddle with the findings of the trial Court. Accordingly, the Point is answered in favour of the defendant and against the plaintiff.

24. **POINT No.2**: The plaintiff also sought for declaration under Section 34 of Specific Relief Act, which is purely a discretionary in nature and according to Section 34 of the Act, the Court may in its discretion grant a declaration as to legal character or any right as to any property, made on statement of any person denying or interested to deny title or right subject to controversy annexed to it. Here, the declaration sought for is in the form of negative declaration. But, there is no bar to grant negative declaration. In view of the findings recorded on Issue No.1, the plaintiff is not entitled to discretionary relief under Section 34 of Specific Relief Act in view of the law declared by the Hon'ble Apex Court. Hence, I hold that the plaintiff is not entitled to claim relief that the defendant is not entitled to levy or collect any fee or penalty under Sections 12 and 23 of 1966 Act or under Bye-law No.24.

Accordingly, the point is answered in favour of defendant and against the plaintiff.

25) **POINT No.3:** The plaintiff also claimed perpetual injunction restraining the defendant from levying and collecting market fee either by filing the suit or by launching prosecution. But, such perpetual injunction cannot be granted in view of the bar under Section 41-b of the Specific Relief Act, which created an interdict to grant such relief by the Courts restraining any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought. The suit was filed before Senior Civil Judge instead District Court. In any view of the matter, granting of perpetual injunction under Section 38 of the Act is purely discretionary and equitable relief. However, in view of the bar under Section 41-b and denial of declaratory relief, I am not inclined to grant perpetual injunction. Accordingly, this point is answered in favour of defendant and against the plaintiff.

26. In view of the foregoing reasons, the Appeal is dismissed confirming the Judgment and Decree passed in O.S.No.13 of 1988 on the file of Subordinate Court at Kavali, Nellore District.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 15 .07.2015

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[1] AIR 1985 (supp) SCC 476

[2] 1988 (1) ALT 44

[3] AIR 2002 SC 852