

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21035 of 2008

ORDER:

In the present writ petition, challenge is to the proceedings Roc.No.S.II (1) 5-67/2006 dated 13.02.2008 issued by the Commissioner and Director of Agricultural Marketing/first respondent herein and the consequential notices dated 23.06.2008 issued by the Agricultural Market Committee/second respondent herein.

2. Heard Sri P.Gangaiah Naidu, learned Senior Counsel appearing for Sri N.Bharat Babu, the learned counsel on record for the petitioners, learned Government Pleader for Agriculture and the learned Standing Counsel apart from perusing the material available before the Court.

3. Filtering the unnecessary details, the particulars that are essential and relevant for the purpose of adjudication of the issue in the present writ petition are, as *infra*.

4. Petitioners have been carrying on business in fruits as commission agents at Gaddiannaram Fruit Market, Hyderabad and they obtained licenses as required under Section 7 (1) of the Andhra Pradesh Agricultural (Produce and Livestock) Markets Act, 1966 (hereinafter called 'the Act') from the respondent Agricultural Market Committee. Earlier, the petitioners filed W.P.No.11494 of 1997 and this Court disposed of the said writ petition, by way of an order dated 07.03.2007, and the operative portion of the said order reads as under:

“i) In case the Market Committee decides to allot open space in the fruit market yard, it shall formulate the said norms and in such event, the case of the petitioners shall also be considered along with other eligible candidates;

ii) It, on the other hand, it is decided that open space be not allotted to any licensee, the petitioners shall be given the time of not less than two months to vacate the premises and such action shall not be selective.”

5. Subsequently, in terms of the above referred judgment and in pursuance of the orders of the Government dated 16.01.2008, the respondent Agricultural Market Committee, in its meeting held on 24.01.2008, regularized the possession of open spaces in favour of the petitioners and subsequently vide proceedings dated

25.01.2008, the respondent Agricultural Market Committee asked the petitioners herein to enter into rental agreement on Rs.100/- non-judicial paper and to pay arrears of rent as fixed by the Executive Engineer, Marketing. In terms of the said proceedings dated 25.01.2008, on 30.01.2008, petitioners herein submitted the non-judicial stamp paper followed by a representation dated 06.02.2008 requesting the further course of action in the matter. Thereafter, the Commissioner and Director of Agricultural Marketing/first respondent herein, issued an order vide proceedings Roc. No.S.II (1)

5-67/2006 dated 13.02.2008, suspending the orders of the Agricultural Market Committee dated 25.01.2008. As a sequel to the said orders passed by the first respondent, the respondent Agricultural Market Committee issued notices dated 23.06.2008, asking the petitioners to vacate the spaces.

6. Assailing the above said orders of the first respondent dated 13.02.2008 and the consequential notices dated 23.06.2008 issued by the second respondent Agricultural Market Committee, the present writ petition came to be filed.

7. This Court, issued *Rule Nisi* on 25.09.2008 and granted interim suspension as prayed for in WPMP.No.27487 of 2008. Responding to the *Rule Nisi* issued by this Court, a counter affidavit has been filed on behalf of respondents 2 and 3, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

8. It is contended by the learned Senior Counsel that the order passed by the first respondent dated 13.02.2008, suspending the proceedings of the Agricultural Committee dated 25.01.2008, is highly illegal, arbitrary and violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India. It is further contended by the learned counsel that the first respondent/Director of Marketing has absolutely no jurisdiction to take up the matter *suo motu* under Section 27 of the Act in view of the orders passed by the Government on 16.01.2008. It is further contended that the orders passed by the Director of Marketing/first respondent herein is in contravention of the mandatory provisions of Section 27 (2) of the Act.

9. On the contrary, it is vehemently contended by the learned Government Pleader and the learned Standing Counsel that there is no illegality nor any arbitrariness in passing the impugned orders and in the absence of the same, present writ petition is not maintainable and the petitioners herein are not entitled for any relief from this

Court under Article 226 of the Constitution of India. It is also contended that under the provisions of Section 27 of the Act, the first respondent is competent to pass the impugned orders. It is also contended that the petitioners herein instead of approaching the first respondent by way of filing implead and vacate petitions, have rushed to this Court under Article 226 of the Constitution of India.

10. In the above background, now the issues that boil down for consideration of this Court in the present writ petition are:

1. Whether the orders passed by the first respondent dated 13.02.2008 under Section 27 and the consequential notices issued by the second respondent/Agricultural Market Committee on 23.06.2008 are in conformity with the provisions of the Andhra Pradesh Agricultural (Produce and Livestock) Markets Act, 1966?

2. Whether the petitioners are entitled for any relief from this Court under Article 226 of the Constitution of India?

11. For the purpose of answering the above issues, it would be highly essential to refer to the provisions of Section 27 of the Act. Section 27 of the Act, reads as under:

“27. (1) The Director of Marketing may, of his own motion or on application made to him, call for and examine the record of any market committee and the Government may, of their own motion or on application made to them, call for and examine the record of the Director of Marketing, in respect of any proceeding, [other than a proceeding relating to assessment and recovery of market fees under Sections 12-A to 12-F (both inclusive)], to satisfy himself or themselves as to the regularity of such proceeding, or the correctness, legality or propriety of any decision passed or order made therein; and, if in any case, it appears to the Director of Marketing or the Government, that any such decision or order should be modified, annulled, reversed or remitted for reconsideration he or they may pass orders accordingly:

Provided that every application to the Director of Marketing or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceeding, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section(1) unless such person has been given an opportunity of making his representation.

(3) The Director of Marketing or the Government, as the case may be, may

suspend the execution of the decision or order pending the exercise of his or their power under sub-section(1) in respect thereof.

(4) The Director of Marketing or the Government may award costs in proceedings under this section to be paid either out of the funds of the market committee or by such party to the application for revision as the Director of Marketing or the Government may deem fit.”

12. Under the above provision of law, the power of revision is conferred on the Director and the Government. The said power can be exercised either *suo motu* or on an application. In the instant case, by *suo motu* exercising the said power, the Director of Marketing passed the impugned orders, suspending the proceedings issued by the respondent Agricultural Market Committee.

13. As evident from the proceedings dated 25.01.2008 issued by the Agricultural Market Committee whereunder the petitioners were instructed to enter into rental agreement, the Market Committee issued the said proceedings basing on the orders of the Hon'ble Minister of Marketing on 16.01.2008 and pursuant to a resolution passed by the Market Committee on 24.01.2008. According to the provisions of Section 27 of the Act, the Director of Marketing is empowered to exercise the power of revision against the orders of the Marketing Committee only. In the present case, since the Marketing Committee issued the proceedings dated 25.01.2008 pursuant to the orders of the Hon'ble Minister of Marketing dated 16.01.2008, in the considered opinion of this Court, the orders passed by the Director of Marketing on 13.02.2008 are totally one without jurisdiction. Another infirmity pointed out by the learned Senior Counsel is that no opportunity was given by the Director of Marketing to the petitioners herein before passing the impugned orders dated 13.02.2008.

14. It is significant to note that as per sub-Section (2) of Section 27 of the Act, no orders prejudicial to any person shall be passed under sub-Section (1) unless such person has been given an opportunity of making his representation. In the instant case, it is the categorical plea of the petitioners herein that without giving any opportunity to the petitioners, the first respondent passed the impugned orders. This aspect is not disputed by the first respondent nor is disputed by the respondents 2 and 3 in their counter. On the other hand, in the counters filed on behalf of the respondents 2 and 3, it is stated that the petitioners herein have approached this Court without filing applications to implead and vacate before the

Director of Marketing/first respondent herein. This contention in the definite opinion of this Court is neither justified nor fair.

15. In view of the reasons narrated *supra*, the writ petition is allowed and the impugned proceedings bearing Roc.No.S.II (1) 5-67/2006 dated 13.02.2008 issued by the Commissioner and Director of Agricultural Marketing/first respondent herein and the consequential notices dated 23.06.2008 issued by the Agricultural Market Committee are hereby set aside. As a sequel, pending miscellaneous petitions, if any, stand disposed of. No order as to costs.

A.V.SESHA SAI, J

Date:15.04.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

M/s.Mohd Abdul Jabbar & Company,
Fruit Market, Gaddiannaram, Hyderabad,
represented by its Proprietor – Jabbar,
son of Walli Mohammed, aged about 43 years and others.

... Petitioners

and

The Director of Marketing,
A.P., Hyderabad and two others.

... Respondents

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