THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.14576 of 2018

O R D E R:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

> "To issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in issuing a Notification under Section 534 of Hyderabad Municipal Corporation Act 1955 vide Eluru District Gazette NO 14 Dated 12 3 2015 permitting Eluru Municipal Corporation or their Authorization person i e 3rd Respondent vide proceedings Roc No /2017/A1 Dated 31 3 2018 to tease out the right to collect Aseel tax from Ayaappa Wholesale Vegetable Merchants Welfare Association Eluru for the year commenced from 01 04 2018 to 31 3 2019 by way of conducting public auction so far as the petitioner association is concerned which is contrary to the provisions of the Andhra Pradesh Municipal Corporation Act illegal arbitrary violative of the principles of natural justice and to consequently restrain the 2nd respondent or his authorized person i e 3rd Respondent from collecting such Aseel tax on the vehicles to the vegetable goods being loaded and unloaded from such vehicles at the premises of the members of petitioners association in the near main market near Gajjalavari Cheruvu of Eluru."

2. Petitioner is a Wholesale Vegetable Merchants Welfare Association, which is a society registered under the A.P. Societies Registration Act, 2001. The second respondent Municipal Corporation issued a notification in Eluru District Gazettee No.15, dated 04.03.2018, under Section 534 of the Hyderabad Municipal Corporation Act, 1955, deciding to lease out the right to collect "Aseel" in respect of various markets and slaughter houses by way of public auction for the period commencing from 01.04.2018 to 31.03.2019. In terms of the said notification public auction was conducted, wherein the third respondent emerged as the highest bidder for a sum of Rs.38,07,000/-. The respondent Corporation issued the consequential order dated 31.03.2018 bearing Roc.No. /2017/A1 granting lease in favour of the third respondent. This writ petition challenges the validity and

the legal sustainability of the Gazettee Notification dated 04.03.2018 and the consequential order dated 31.03.2018, granting right to collect "Aseel".

3. Counter affidavits have been filed by the respondents 1 and 3, denying the averments made in the writ affidavit and in the direction of justifying the impugned action.

4. Heard Sri S.Shyam Sunder Rao, learned counsel for the petitioner, Sri Ancha Panduranga Rao, learned Standing Counsel for the second respondent and Sri V.V.Satish, learned counsel for the third respondent apart from perusing the material available on record.

5. Learned counsel for the petitioner contends that the impugned action is highly illegal, arbitrary, unreasonable, without jurisdiction and violative of Article 14 of the Constitution of India; that in view of Sections 3, 29 and 30 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 and Appendix IX (i) of the said Act, the impugned levy cannot be sustained; that Section 197 of the HMC Act, 1955 does not enable the Corporation to levy and collect any amount in the name of "Aseel" nor Schedule 'H' which deals with the Octroi also does not enable to levy "Aseel" nor there is any notification issued by the Government empowering the Municipal Corporation to levy the same.

In support of his submissions and contentions, learned counsel for the petitioner placed reliance on *BHATTIPROLU GRAM PANCHAYAT V. DISTRICT COLLECTOR (P.W), GUNTUR*[1].

6. Per contra, learned counsel for the second respondent Corporation Sri Ancha Panduranga Rao and learned counsel for the third respondent Sri V.V.Satish contend emphatically that there is no illegality nor there

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[1] 2016 (2) ALD 214 (FB)

exists any infirmity in the impugned action, as such, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India; that Section 534 of the HMC Act enables and empowers the Municipal Corporation to lease out the right to collect "Aseel" and the power conferred under the said provision of law cannot be negatived by referring to the provisions of the Agricultural Markets Act; that since the petitioner failed to file objections against the impugned notification before the Corporation, petitioner cannot maintain the present writ petition; that in view of the orders of this Court in W.P.No.13525 of 2013, dated 08.11.2013, it is open for the petitioner herein to file objections against the impugned action before the Corporation; that there are no pleadings, touching the provisions of Agricultural Markets Act and that the impugned imposition is only on the imports and not on the sale and purchase of vegetables. It is also the submission of the learned counsel for the third respondent that they paid so far a sum of Rs.13,00,000/- and had also given post-dated cheques towards security.

7. In the above background, now the issue that emerges for consideration of this Court is "Whether the impugned Gazettee Notification dated 04.03.2018 and the consequential proceedings dated 31.03.2018 issued in favour of the third respondent by the Municipal Corporation are sustainable and tenable in the eye of law?

8. The second respondent Corporation issued the impugned Gazettee Notification dated 04.03.2018 under Section 534 of the Hyderabad Municipal Corporation Act, 1955 and by virtue of the same the Corporation decided to lease out the right to collect "Aseel" in the municipal market on vegetables. In this context, it may be appropriate to refer to Section 534 of the HMC Act, 1955, which reads as under:

"Section 534 : Levy of Stallages, rents and fees in municipal markets and slaughter-houses

The Commissioner may (a) charge for the occupation or use of any stall, shop, standing, shed or open in a municipal market or slaughter-house and for the right to expose goods for sale in a municipal market, and for weighing and measuring goods sold in any such market and for the right to slaughter animals in any municipal slaughter-house such stallages, rents and fees as shall from time to time, be fixed by him, with the approval of the standing committee, in this behalf; or

(b) with the approval of the Standing Committee, from the stallages, rents and fees leviable as aforesaid or any portion thereof, for any period not exceeding one year at a time; or

(c) put up to public auction, or, with the approval of the Standing Committee, dispose of, by private sale the privilege of occupying or using any stall, shop, standing, shed or open, in a municipal market or slaughter-house for such term and on such condition as he shall think fit to impose."

9. Learned Standing Counsel for the respondent Corporation and learned counsel for the third respondent Contractor contend strenuously that the impugned collection of "Aseel" is permissible under the above provision of law.

10. On the other hand, it is the contention of the learned counsel for the petitioner that in view of the provisions of Section 3, 29 and 30 and Appendix IX (i) of the Agricultural Markets Act and the law laid down by Full Bench of this Court in the case of *BHATTIPROLU GRAM PANCHAYAT Supra*, the impugned action suffers from inherent lack of jurisdiction. Appendix IX of Agricultural Markets Act, deals with notifications and vide G.O.Ms.No.2095, (Food and Agriculture) (Agri-IV) Department, dated 29.10.1968, the State Government, in exercise of the powers conferred under Section 3 of the said Act, notified the entire Eluru Taluk apart from

other Taluqs in West Godavari District and there is no dispute on this aspect. Another important provision of law is Section 29 of the Agricultural Markets Act, which reads as under:

> "29. Payment of compensation in respect of markets in municipalities and in areas within jurisdiction of other local authorities: (1) Where in pursuance of Section 3, the Government notify any area comprised within the local limits of the jurisdiction of a municipality or other local authority, no such municipality or other local authority shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified area.
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> (2) The market committee of the notified area shall, out of its funds, pay every year to the municipality or other local authority, which was levying such fees immediately before the notification of the area, a sum equivalent to the license fees levied by such municipality or other local authority during the period of one year immediately before the notification of the area, a sum equivalent to the licence fees levied by such municipality or other local authority during the period of one year immediately before the notification of the area, for a period of ten years as compensation for the loss of income of the municipality or the local authority on account of the establishment of markets in the area by the markets committee.

11. It is very much evident from a reading of the above provision of law that the Municipalities and other local bodies have neither jurisdiction nor power to impose and collect any fee in the areas within the jurisdiction of the notified areas under the Markets Act. As per Section 30 of the Act, the provisions of agricultural Markets Act have overriding effect on other laws. In fact, when a similar issue cropped up in respect of Panchayats, a Full Bench of this Court in the case of *BHATTIPROLU GRAM PANCHAYAT Supra*, held at paragraphs 6 and 21 to 26, held as under:

> 6. It is not in dispute that a Market Yard was established in village under the provisions of the Markets Act. The contention of the Gram Panchayat, however, is that for more than 50 years, they were maintaining the market for sale of agricultural produce and livestock within their territory under the provisions of the P.R. Act and, therefore, they are having exclusive control over the territory and to regulate any activity including maintaining markets.
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> 21. From the scheme of both the Acts it is apparent and could not be disputed that the Markets Act is a special legislation

whereas PR Act is a general legislation and the sphere in which they work are totally different. In other words, the Markets Act contains special provisions to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Section 30 of this Act clearly states that it overrides other laws. It is relevant to reproduce Section 30, which reads thus:

30. Act to override other laws:- Nothing in any law providing for the establishment, maintenance or regulation of a market or the levy of fees therein shall apply to any market established under this Act or affect in any way the powers of a market committee, in respect of such market.

22. From bare perusal of this provision, it is clear that it would override all other laws providing for the establishment, maintenance or regulation of a market or the levy of fees therein shall apply to any market established under the Markets Act or affect in any way the powers of a market committee, in respect of such market. The provisions of Section 30 operate notwithstanding anything to the contrary contained in any other law for the time being in force. As a matter of fact, a bear reading of this provision, it is clear that it would prevail over the provisions of the PR Act.

23. On a plain reading of Section 30, there cannot be any doubt whatsoever that it would prevail over other laws or it has an overriding effect on the provisions of the PR Act. It is well settled that in the event two conflicting provisions are operating in the same field, the doctrine of generalia specialibus non derogant shall apply. (See Chandra Prakash Tiwari v. Shakuntala Shukla ((2002) 6 SCC 127).

24. The Supreme Court in Talcher Municipality (supra) considered the provisions of Orissa Agricultural Produce Markets Act, 1956. The question that fell for consideration was whether the land and building of a daily market owned by a Municipality or a Gram Panchayat where notified agricultural produces are brought and sold is liable to be transferred to the market committee, if requisition therefore is made? While dealing with the question, the Supreme Court, after considering Entry 5 of List II of the Seventh Schedule of the Constitution, whereunder the Orissa Municipal Act has been enacted observed that it would be subject to the provisions of Entry 28 as the power to establish a market is a separate and distinct one. In paragraph 19 observed thus:

> 19. The Act, however, contains special provisions. The provision of Section 4(4) of the said Act operates notwithstanding anything to the contrary contained in any other law for the time being in force. The provisions of the said Act, therefore, would prevail over the provisions of the Orissa Municipal Act. The maxim generalia specialibus non derogant would, thus, be applicable in this case. (See D.R. Yadav v. R.K. Singh (2003) 7 SCC 110), Indian Handicrafts Emporium v. Union of India (2003) 7 SCC 589 and M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board (2004) 9 SCC 755.)

> 25. It is true that primary object of the Markets Act, as has been observed by the Supreme Court in M.C.V.S. Arunachala Nadar v. State of Madras( ) and Belsund Sugar Co. Ltd. V. State of Bihar( ), is to protect the producers inter alia from being exploited by the middlemen but the State has the requisite legislative competence to establish a market and in that view of the matter the said Act falls within the ambit of markets and is covered by Entry 28 of List II of the Seventh Schedule. It may be true that Gram Panchayat had provided a public market in the village for sale of vegetables and fruits and various other agricultural produces including the livestock to cater the needs of villagers and other surrounding areas. Further, it may be true that the Gram Panchayat had taken various measures to improve the conditions of the market from time to time and also to provide space for use as public market and they were levying one or more fees as contemplated by Section 104 of the PR Act. It is equally true that once a market area has been declared, the provisions of the Markets Act will bring within its sweep even such markets, as established by local authority.
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> 26. In the result, we hold that the provisions contained in Sections 104, 105 and 106 of the PR Act shall not have an overriding effect on the provisions of Market Act in view of the language employed in Section 30 thereof. In other words, the question as framed in the first paragraph of the judgment is answered in the negative.

12. In the considered opinion of this Court, the law laid down in the above referred judgment is squarely applicable to the case on hand. Section 197 of the Corporation Act also does not empower the Corporation to collect "Aseel" nor Schedule 'H' of the HMC Act enables the Corporation to collect the amount even in the form of Octroi in the absence of any notification by the State Government. The contention that the present writ petition without filing any objections for the impugned notification is not maintainable in view of the orders of this Court in W.P.No.13525 of 2013 dated 08.11.2013 cannot be sustained in view of the Full Bench Judgment referred to *supra.* Therefore, this Court has absolutely no scintilla of hesitation to hold that the impugned action cannot be sustained and the same suffers from inherent lack of jurisdiction.

13. Accordingly, the writ petition is allowed, setting aside the impugned Gazettee notification No.15, dated 04.03.2018, issued by the second respondent herein to the extent of collection of "Aseel" on the vegetables in

the markets and so also the consequential proceedings of the respondent Corporation in Roc.No. /2017/A1, dated 31.03.2018. It is also made clear that if any excess amount is paid and if any cheques are given by the third respondent as security, the same shall be returned. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:05.09.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.14576 of 2018

Dated: 05.09.2018

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