

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2019

PRONOUNCED ON : 22.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.17430, 19595, 19596 and 30448 of 2018 and 3484, 11779, 11788 of 2019

W.M.P.No.20709 of 2018 in W.P.No.17430 of 2019

W.M.P.No.23021 of 2018 in W.P.No.19595 of 2018

W.M.P.No.20322 of 2018 in W.P.No.19596 of 2018

W.M.P.No.35517 of 2018 in W.P.No.30448 of 2018

W.M.P.No.3786 of 2019 in W.P.No.3484 of 2019

W.M.P.No.11990 of 2019 in W.P.No.11779 of 2019

W.M.P.No.12007 of 2019 in W.P.No.11788 of 2019

W.P.No.17430 of 2018:-

V.Murali

Petitioner

Vs

1.State of Tamil Nadu,
Represented by its Secretary,
Agricultural Department,
Fort St. George,
Chennai – 600 009.

2.The Principal Secretary/Commissioner,
Agricultural Marketing and Agri Business
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600 032.

3.The Secretary,
Nagapattinam Market Committee,
Nagapattinam.

4.The Secretary,
Tiruvarur Market Committee,
Tiruvarur.

...

Respondents

Prayer:- This writ petition is filed under Article 226 of the Constitution of India for a writ of declaration declaring that the demand and forcible collection of market fee in respect of purchase and sales of paddy, grams and other agricultural produce for the transaction of purchase and sale by the petitioner herein where there is no notification under section 6(2) of the Tamil Nadu Act 27 of 1987 as illegal, arbitrary and ultra vires and without jurisdiction and consequently forbear the respondents from resorting to any demand and forcible collection of market fee for sale and transaction of paddy, grams and other agricultural produce in the absence of declaration of notified market area under Section 6(2) of the Tamil Nadu Act 27 of 1987.

For Petitioner : Mr.B.Ramamoorthy

For Respondents : Mr.S.R.Rajagopalan,
Additional Advocate General
for Mr.V.Jayaprakash Narayanan,
Special Government Pleader

COMMON ORDER

The petitioners are either Association or individuals dealing with commodities like paddy, red gram, black gram, etc. The common grievance agitated in these writ petitions is that, the respondents have not declared through a notification, the notified market area under Section 6(2) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (Tamil

Nadu Act 27 of 1989) (hereinafter referred to as "the New Act") therefore, they cannot demand and collect market fee in respect of purchase and sales of paddy, grains and other agricultural produce by the Traders done outside the notified market.

2.The case of the petitioners is that, after bifurcation / trifurcation of Madurai, Salem, Trichy, South Arcot and Thanjavur Districts, under the New Act, fresh notification is required to collect market fee for the commodities traded outside the four walls of notified market. Only after declaration of area around the market as notified market area, market fee can be collected by the Market Committee from the Traders carrying on trade outside the market. As far as the case of the petitioners in W.P.Nos.11779 & 11788 of 2019 are concerned, the respondents have only notified the area commodities and market. Therefore, the respondents are entitled to collect market fee only from the Traders of those commodities within the four walls of the market and not from the Traders who have their establishments outside the market till the declaration of notified market area under Section 6(2) of the New Act.

3.The learned Senior Counsel appearing for the petitioners in W.P.Nos.19595, 19596 and 30448 of 2018 and 3484, 11779, 11788 of

2019, to buttress his submission would rely upon the judgment in **Madurai Maanagar Paruppu Thayarippalargal and Virpanaiyalargal Sangam v. The State of Tamil Nadu rep. By its Secretary to Government** (W.P.(MD) No.10609 of 2006 dated 23.12.2014) wherein, the Madurai Bench of this Court has considered the consequence of non declaration of notified market area after bifurcation of the area.

4.The learned Senior Counsel appearing for the petitioners would further contend that by saying redgrams in all forms and black grams in all forms, the produce is not defined explicit and categoric. Further, it is also contended by the petitioners that, the respondents have not produced any service facility for the market fee collected. There is no *quid pro quo* for the fees collected. Hence, on that ground also, the respondents are not entitled to collect market fee from the petitioners.

5.The above contention of the petitioners is resisted by the respondents on the ground that, the issues agitated by the petitioners are no more *res integra*. The validity of G.O.Ms.No.11 dated 08.01.1998 and G.O.Ms.No.3 dated 03.01.2003 have already been upheld by this Court in W.P.No.29023 of 2005. The provisions of the New Act has been upheld by a Division Bench of this Court in **Rajapalyam Paruthi Panchu Sangam vs**

State Of Tamil Nadu And Others Etc. (AIR 1996 MADRAS 29).

Alteration of existing notified area and notified market area is permissible under Section 9 of the New Act. After alteration, no fresh notification in so far as market area is required.

6.The Division Bench of this Court in **Thiruvavur Agricultural Marketing Committee vs. The State of Tamil Nadu** (W.A.No.2232 of 2013) by judgment dated 22.07.2015 has held that, by virtue of Sections 16 & 17 of the New Act, the Market Committee is deemed to continue inspite of alteration of notified area. Under Section 9(1) of the New Act, the composition of 'Market Committee' alone gets dissolved and the Market Committee being a body corporate have perpetual succession. When notified area or notified market area defined under Sections 2 (12) and (13) of the New Act respectively are altered by notification under the provision of Section 9 of the New Act, there is no necessity for issuance of any fresh notification in respect of market area.

7.As an sample case, the learned Additional Advocate General, appearing for the respondents, in respect of Madurai District, would demonstrate that the aricultural produce like paddy, redgrams, blackgrams etc., were notified under Section 19(1) of the New Act, in G.O.Ms.No.11

Agricultural AM-2 Department dated 08.01.1998. Under Section 5(4) of the old act, 1959, 15 kilometer radius area around Theni regulated market declared to be notified market area vide G.O.Ms.No.298 dated 19.08.1972.

8.All notifications issued under The Tamil Nadu Agricultural Produce Markets Act, 1959 (Act 23 of 1959) (hereinafter referred to as the "old Act") are saved under Section 67 of the New Act. As per the definitions under the New Act, the agricultural produce means, any produce of agriculture 'whether processed or unprocessed specified in the schedule of the New Act'. 'Blackgram in all forms' and 'redgram in all forms' is in the list under the schedule. In respect of erstwhile composite Madurai, notification for market area has been issued by the Market Committee. Even after bifurcation of the District, by virtue of the saving clause, the market area around Theni market which is within the notified area falls within the purview of the New Act and Traders in paddy, redgrams and blackgrams (in all forms) are liable to pay the market fees.

9.The Government has already notified to regulate redgrams and blackgrams (in all forms) in the notified area of 20 regulated markets in composite Madurai District which was earlier under the control of Madurai Market Committee. After trifurcation fresh notification for new market

committee for respective area has been issued. Therefore, there is no necessity to issue a fresh notification for change of location of the market.

10.Regarding the plea of *quid pro quo*, it is contended that substantial infrastructure facilities have already been provided in the regulated market of Theni and weighing machine also provided with weighing facilities and godowns are also available in the regulated Theni Market Committee. The transactions shed sanitary facilities, godowns, drying yards and water facilities have also been provided in the regulated markets.

11.It is further contended that, for the past 5 years, nearly rupees five crores have been spent for improving the infrastructure facilities. In **Srinivasa General Traders v. State of A.P** (AIR 1983 SC 746), the Hon'ble Supreme Court has held that the traditional view of *quid pro quo* for a fee has undergone a sea change in subsequent decision.

12.The Division Bench of this Court in **Raja Palyam Paruthi Panchu Sangam vs State Of Tamil Nadu And Others Etc.**, (cited supra) in W.A.No.2232 of 2013 by judgment dated 22.07.2015, has specifically dealt with the provisions of the New Act and applicability of the New Act on Traders of notified commodities within and outside the market.

13.Further, the learned Additional Advocate General appearing for the respondents with regard to the order in **Madurai Maanagar Paruppu Thayarippalargal and Virpanaiyalargal Sangam** case cited by the petitioners would submit that, the learned Single Judge order is presently under intra court appeal.

14.Before advertng to the judicial pronouncements, this Court first venture to consider the notifications issued by the Government and relied by the learned Special Government Pleader appearing for the respondents to justify the demand of market fee from the petitioners.

15.Under G.O.Ms.No.2198 Agriculture Department dated 19.08.1972, the Government has accepted the request of the Director of Agriculture to issue notification under Section 5(4) of the Old Act, declaring the notified market area for Theni market for the purchase and sale of paddy, cotton, ground nut and chillies. Under this Government Order, the area of 16 kilometer radius of Theni market were notified as notified market area. It includes villages under Periyakulam Taluk, Theni firka, Aandipatti, Usilampatti, Kovilpatti, Bodinayakanur, etc.

16.Under G.O.Ms.No.458, Agriculture dated 30.10.1996, the objections and suggestions were invited from the public to notify the markets and

agricultural produce. The markets situated at Madurai, Theni, Bodinayakanur and Dindigul District and few other markets were mentioned as market area and among the produce, redgram in all forms, blackgram in all forms, sugarcane in all forms Tamarin in all forms and few other produces were included.

17.As notified, pursuant to this Government Order, on 08.01.1998, G.O.Ms.No.11, Agriculture (AM2) has been issued. Similarly, after bifurcation of the Agriculture Department has issued G.O.Ms.No.60 dated 17.02.1999 excluding the areas of the new district from the erstwhile composite district and notified the market and Market Committee. Under, G.O.Ms.No.3 dated 03.01.2003, separate Market Committee for Theni and Dindigul Districts were notified. In the said notification, agriculture produce for which fee leviable were also listed. In the said notification, Theni and Dindigul districts declared to be notified area for the purpose of the New Act in respect of cotton, groundnut, paddy, chilli, redgram in all forms blackgrams in all forms, etc.

18.Similar Government Orders passed by the Government time to time for other Districts also. The Government Orders and the dates on which area, market, commodities and market area declared and notified is tabulated below:-

G.O.No/ Date	Subject	Notification	Notification II	Notification III	Notificatio n IV	Notificati on V	Notificatio n VI
167 Agriculture Dept 15.04.1997	Bifurcation of Cuddalore Market Committee into Cuddalore and Villupuram MCs	Exclusion of Markets of Villupuram District from Cuddalore MC U/s 9(1)(a)	Declaration for notified crops for Villupuram district U/s 4(1)	Establishment of Villupuram Market Committee U/s 5(1)	Establishme nt of Villupuram Market Committee U/s 5(1)	--	--
03 Agriculture Dept 03.01.2003	Trifurcation of Madurai Market Committee into Madurai, Theni and Dindigul MCs	Exclusion of Markets of Theni and Dindigul Districts from Madurai MC U/s 9(1)(a)	Declaration for notified crops for Theni and Dindigul districts U/s 4(1)	Establishment of Theni Market Committee U/s 5(1)	Establishme nt of Dindigul Market Committee U/s 5(1)	--	--
04 Agriculture Dept 03.01.2003	Trifurcation of Thanjavur Market Committee into Thanjavur, Thiruvavur and Nagapattina m MCs	Exclusion of Markets of Nagapattinam and Thiruvavur Districts from Madurai MC U/s 9(1)(a)	Declaration for notified crops for Nagapattinam and Thiruvavur district U/s 4(1)	Establishment of Nagapattinam Market Committee U/s 5(1)	Establishme nt of Thiruvavur Market Committee U/s 5(1)	--	--
06 Agriculture Dept 09.01.2012	Bifurcation of Salem Market Committee into Salem and Namakkal MCs	Exclusion of Markets of Namakkal District from Salem MC U/s 9(1)(a)	Declaration for notified crops for Namakkal district U/s 4(1)	Establishment of Namakkal Market Committee U/s 5(1)	Establishme nt of Salem Market Committee U/s 5(1)	Declaratio n of notified market area for markets of Namakkal MC U/s 6(2)	Declaration of notified market area for Markets of Salem MC U/s 6(2)
42 Agriculture Dept 21.02.2014	Bifurcation of Trichirappalli Market Committee into Trichirappalli and Perambalur MCs	Exclusion of Markets of Perambalur and Ariyalur Districts from Trichy MC U/s 9(1)(a)	Declaration for notified crops for Perambalur and Ariyalur districts U/s 4(1)	Establishment of Trichirappalli Market Committee U/s 5(1)	Establishme nt of Perambalur Market Committee U/s 5(1)	Declaratio n of notified market area for Markets of Trichy MC u/s 6(2)	Declaration of notified market area for markets of Perambalur MC U/s 6(2)

19.The petitioners contention is that, to collect market fee, outside the market, exclusive notification under Section 6(2) of the New Act is required. Referring the notification issued in the other districts, like Karur, Perambalur,

Ariyalur, Virudhunagar, Rajapalayam where after bifurcation of the Revenue district specified notification under Section 6(2) of the New Act been issued declaring notified market area, it is contended that, absence of such notification under Section 6(2) of the New Act disables the respondents from collecting the market fee.

20.It is an admitted fact that as far as Theni, Thiruvarur, Kallakurichi, Villupuram Districts are concerned, where the petitioners are carrying on trade, the Government has not issued any exclusive notification under Section 6(2) of the New Act, declaring notified market area. However, it is contended on behalf of the Government that those areas already declared as 'notified area' and 'notified market area' so, no fresh declaration is required. Since, even before bifurcation, by virtue of Government Order, notified area has already been declared and in view of Section 9 and 67 of the New Act, the alteration of area will not take away the right of collecting market fee from the Traders carry on business in the area around the notified market.

21.To appreciate the above submissions, it is necessary to refer certain provisions of the New Act. Hence,they are extracted below:-

"2. Definitions. - In this Act, unless the context otherwise requires,-

(1) "*agricultural produce*" means any produce of agriculture, whether processed or unprocessed, specified in the Schedule;

.....

(10) "*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;

(11) "*market committee*" means any market committee established under subsection (1) of section 5;

(12) "*notified agricultural produce*" means any agricultural produce specified in the notification under section 3;

(13) "*notified area*" means any area notified under section 4 as altered by any notification under sub-section (1) of section 9;

(14) "*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;

.....

4. Declaration of notified area. - (1) After the expiry of the period specified in the notification under section 3 and after considering such objection and suggestion as may be received before such expiry, the Government may, by notification, declare the area specified in the notification under section 3 or any portion thereof to be a notified area for the purposes of this Act in respect of any agricultural produce specified in the notification under that section.

A copy of the notification shall also be published in such other manner as may be prescribed.

(2) A notification under section 3 or under sub-section (1) shall have full force and effect notwithstanding any irregularity or defect in the publication of a copy of such notification.

5. Establishment of market committee. -

(1) The Government shall establish a market committee for every notified area. It shall be the duty of the market committee to enforce the provisions of this Act and the rules and by-laws made under this Act in such notified area.

(2) Where, after the establishment of a market committee under sub-section (1), any agricultural produce is notified in relation to the notified area for which the market committee has been established, then, the market committee shall be deemed to have been established in respect of that agricultural produce also.

6. Establishment of markets. - (1) Every market committee shall establish in the notified area such number of markets providing such facilities, as the Government may, from time to time, direct for the purchase and sale of the notified agricultural produce.

(2) The Government shall, as soon as may be, after the establishment of a market by a market committee under sub-section. (1), declare, by notification, the area of the market and such area around the market as may be specified in the notification to be a notified market area for the purposes of this Act in respect of any notified agricultural produce.

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9. 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 areas;

(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 notified 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;

(d) there shall be transferred 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.

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24. Levy of fee by market committee. - (1)

The market committee shall levy a fee on any notified agricultural produce bought or sold in the notified market area at a rate not less than one rupee, but not exceeding two rupees for every hundred rupees of the aggregate amount, for which the notified agricultural produce is bought or sold

whether for cash or for deferred payment or other valuable consideration:

Provided that when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into such notified market area for buying and selling, and shall be subject to the levy of fee under this section on the value of the agricultural produce, as if it had been bought and sold therein.

Explanation I. - For the purposes of this sub-section, all notified agricultural produces taken out or proposed to be taken out of a notified market area shall, unless the contrary is proved, be presumed to be bought or sold within such area.

Explanation II. - In the determination of the amount of the fee payable under this Act, any fraction of ten paise less than five paise shall be disregarded and any fraction of ten paise equal to or exceeding five paise shall be regarded as ten paise.

(2) The fee referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce concerned:

Provided that where the purchaser of a notified agricultural produce cannot be identified, the fee shall be paid by the seller.

(3) If any notified agricultural produce liable to payment of fee under subsection (1) is found to have been processed without payment of fee payable in respect of that produce, the fee shall be levied and recovered on the equivalent quantity of the notified agricultural produce notwithstanding such process.

(4) (a) The fee payable under sub-section (1) shall be determined and collected in such manner as may be prescribed.

(b) The burden of proving that any notified agricultural produce is not liable for the levy of fee or the fee payable has already been paid under this section shall lie on the person claiming such exemption or non-liability find till it is established with sufficient records to the satisfaction of the market committee that the notified agricultural produce has already suffered the liability, the fee due on such produce shall be paid.

(5) Any notified agricultural produce taken or proposed to be taken out of a notified market area exceeding such quantity as may be prescribed shall

be accompanied by a permit issued by the Secretary of the market committee subject to the by-laws made in this behalf by the market committee

.....

67. Repeal and savings. - (1) *The Tamil Nadu Agricultural Produce Markets Act, 1959 (Tamil Nadu Act 23 of 1959) (hereafter in this section referred to as the said Act) is hereby repealed.*

(2) *The repeal by sub-section (1) of the said Act shall not affect-*

(a) *the previous operation of the said Act or anything done or duly suffered thereunder; or*

(b) *any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or*

(c) *any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or*

(d) *any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued*

or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(3) Subject to the provisions of sub-section (2), anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, or any rule, regulation or form framed, certificate granted or registration effected, under the said Act shall be deemed to have been done or taken under this Act and shall continue to have effect accordingly, unless and until superseded by anything done or any action taken under this Act.

(4) Notwithstanding the repeal of the said Act, any area declared to be a notified area under the said Act shall be deemed to be a notified area under this Act; any market committee established for the said notified area under the said Act and holding office immediately before the date of the commencement of this Act shall be deemed to be a market committee established under this Act for the said notified area; all the members of such market committee shall be deemed to be members nominated by the Government under this Act and

any market established under the said Act shall be deemed to be a market established under this Act.

[The Schedule]

[See sections 2(20) and 65]

Class of agricultural produce	Name of agricultural produce
I. Cereals.	1. Paddy. 2. Rice in all forms. 3. Wheat in all forms. 4. Cholan (Jowar) in all forms. 5. Cumbu (Bajra) in all forms. 6. Ragi in all forms. 7. Maize in all forms. 8. Thina. 9. Kudiraivali. 10. Varagu. 11. Samai.
II. Pulses.	1. Redgram (Thuvarai) in all forms. 2. Blackgram (Ulundu) in all forms. 3. Greengram (Pachaipairu) in all forms. 4. Bengalgram (Kondakadalai) in all forms. 5. Peas (pattani) in all forms. 6. Lab (Mochai) in all forms. 7. Cowpea (Karamani) in all forms. 8. Soya Beans in all forms. 9. Horsegram (Kollu) in all forms.
III. Oil seeds.	1. Groundnet (Pods and Kernals) whole or split. 2. Gingelly or Seasamum seed or Ellu.

	3. Castor (Pods or seeds). 4. Sunflower seeds or Kernals. 5. Coconut in all forms except Tender Coconut. 6. Cotton seed 7. Mustard (Kadugu) seeds. 8. Nigar seeds. 9. Sunflower seeds. 10. Neem seeds. 11. Pungam seeds.
IV. Fibres.	1. Cotton (Kapas, lint, waste). 2. Coconut coir.
V. Vegetables.	1. Brinjal. 2. Bhendi. 3. Potato. 4. Onion. 5. Gourds (Snake gourd or Pudalai, Bitter gourd or Pagal, Bottle gourd or Surai, Pumpkin or Parangikai, Ribbed gourd or Peerkankai, Ash gourd or Pusanikai). 6. Tomato. 7. Moringa (Murungai). 8. Greens (Keeraigal). 9. Green chillies. 10. Yams (all kinds). 11. Lab Lab Avarai. 12. Cabbage. 13. Cauliflower. 14. Radish (all kinds).

	15. Carrot. 16. Beans (all kinds). 17. Sweet Potato. 18. Green Banana (Valaikkai). 19. Chow Chow. 20. Kari leaf (Karuveppilai). 21. Knol-khol. 22. Turnip. 23. Green peas. 24. Cluster beans (Kothavarakai). 25. Beetroot. 26. Agathi.
VI. Fruits.	1. Banana. 2. Mango. 3. Guava. 4. Grapes (Kodimundhari). 5. Citrus (Sathugudi, Loose Jacket Orange, Lime, Lemon and Grape). 6. Pomegranate (Mathulai). 7. Jack. 8. Melons. 9. Pine Apple. 10. Apple. 11. Pears. 12. Plums. 13. Papiya. 14. Sapota (Chikoo). 15. Cucumber.
VII. Drugs & Norcotics.	Tobacco in all forms.

VIII. Tubers.	Tapioca-tubers, tapioca chips tapioca flour, tapioca starch
IX. Condiments and spices.	1. Chillies or red chillies. 2. Garlic. 3. Turmeric in all forms (bulb in finger). 4. Coriander (Dhania seeds). 5. Cardamom. 6. Arecanut (whole or splits). 7. Tamarind in all forms. 8. Cashewnuts in all forms. 9. Ginger in all forms (Ingi, Sukku, etc.). 10. Betal leaves or Vetrilai.
X. Animal husbandry products.	1. Butter. 2. Cattle. 3. Eggs. 4. Ghee. 5. Goat. 6. Hides and Skins. 7. Milk. 8. Pig. 9. Poultry. 10. Sheep. 11. Wool.
XI. Apiculture.	Honey.
XII. Pisciculture.	Fish
XIII. Forest products.	1. Bamboo. 2. Bidi leaves. 3. Lac.

	4. Gum.
	5. Kadukai (Myrobalan) (gali nut).
XIV. Sericulture.	1. Cocoons
	2. Silk yarn.
XV. Miscellaneous.	1. Sugarcane Jaggery in all forms Jaggery powder, brown sugar, etc.).
	2. Palmgur Jaggery in all forms.
	3. Raw rubber in all forms, pale latex crepe sole crepe and centrifuged latex rubber, Manufacturers Association grades on rubber sheets and estates brown crepe grades.

22.The petitioners are aggrieved upon the attempt made by the Market Committee to levy fee which the Market Committee empowered under Section 24 of the New Act. The reading of these sections indicate that the Market Committee shall levy a fee on any notified agriculture produce brought or sold in the notified market area (emphasis added). The words 'market committee' 'agriculture produce' and 'notified market area' are defined under the New Act and the same been extracted above. Paddy, blackgram in all form and redgram in all form are some of the agriculture produce falling under the cereals and pulses categories mentioned in the schedule. Therefore, the contention of the petitioners that, referring black gram and red gram in all form is not explicit and categoric, is not factually

correct. Further, these agricultural produces already been declared as the notified agricultural produce by the State under various Government Orders, listed and referred above. Hence, there is no difficulty or legal impediment for the Market Committee to levy market fee.

23.The other issue remains to be decided is 'whether without declaring the market area by notified under Section 6(2) of the New Act, the Market Committee can levy fee on the agricultural produce bought and sold outside the four walls of the market'.

24.In this connection, the Division bench of this Court in **Thiruvarur Agricultural Marketing Committee vs. The State of Tamil Nadu** (cited supra) in paragraph Nos.42 and 43 has held as follows:-

"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 New 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."

25. In **Madurai Maanagar Paruppu Thayarippalargal and Virpanaiyalargal Sangam v. The State of Tamil Nadu rep. By its Secretary to Government** (cited supra), when an identical issue brought before the learned Single Judge of this Court, the learned Single Judge has held as follows:-

" Without establishing the new Market Committee, the question of enforcing any declaration to regulate the marketing of agricultural produces in either of the notified area or notified market area does not arise herein. In the absence of new Market

Committee consisting the new committee members, a vacuum is created and without filling up the same, no further action shall be initiated or notified in the name of the erstwhile Market Committee and fresh notification ought to have been issued. The saving clause of Section 67 does not deal with the situation arising out of alteration of the limits of notified area effected under Section 9(1). Even otherwise, the repealed and saving clause Section 67 cover the issue relating to any notified area, Market Committee and the Office of such Market Committee notified under the old Act.”

26.The observation made in the said judgment has been implicitly overruled by the Division Bench of this Court in its judgment rendered in **Thiruvarur Agricultural Marketing Committee vs. The State of Tamil Nadu** (cited supra) wherein, the Division Bench has appreciated the other provisions of law namely Sections 16 & 17 of the New Act and has held that the Market Committee is a perpetual body corporate, what is dissolved is only the committee of management and not committee itself. Thus, it is clear that the market declared under the old Act as well as the agricultural produce notified under the old act are saved under Section 67 of the New Act. This can be further amplified as below:-

(i)Under Section 4 of the Old Act, the Government, by notification, had

declared the Madurai District as notified area for the purpose of the Old Act. Thereafter, under Section 5 of the New Act, the Market Committee has been constituted and agricultural produce were also notified. As far as Madurai District is concerned, the Market Committee has notified 20 markets located at various places at Madurai, Theni and Virudhunagar. Area around these markets were declared as market area. Subsequent to trifurcation of the District, the Government Orders have been issued excluding certain areas under Theni and Virudhunagar Districts from Madurai under Section 9 of the New Act and further notification has been issued declaring those excluded areas as area of newly formed district. As held by the Division Bench of this Court in **Thiruvapur Agricultural Marketing Committee vs. The State of Tamil Nadu** (cited supra), in the said process, except dissolution of the Market Committee administration, nothing is changed and by virtue of Section 67 of the New Act, the notifications, orders, instructions directions issued under the Old Act are all saved. Therefore, the contention of the petitioners that after bifurcation and trifurcation of Districts, the State has to issue fresh notification for declaring the market area and the notified market area is untenable. Fresh notification under Section 6(2) of the New Act is not necessary since, Sections 9 and 67 of the New Act does not mandate to re-issue fresh notification in respect of the market area already notified.

(ii) Once a market area been notified and declared. If the said area is

bifurcated or trifurcated or amalgamated subsequently then, the earlier notification will not get lapsed provided the alteration of the territory is notified subsequently as per Section 9 of the New Act. What more is required is to constitution of Market Committee. In this case, the notification under Section 9 r/w 4 of the New Act has been issued. Once such notification is issued then, by virtue of section 67 of the New Act, the earlier notifications regarding declaring the market and the market area is saved. Demand for fresh notification under Section 6(2) of the New Act will be only an superfluous action.

27. Reading the saving clause Section 67(4) of the New Act, we find the expression "market" is employed and not the expression "market area" is employed. Section 67 (4) of the New Act specifically say that the "market" established under the Old Act is deemed to be "market" established under the New Act. The definition of "market" under the New Act is an inclusive definition. It includes market established under Section 6(1) of the New Act and the area around the market as declared under Section 6(2) of the New Act and subsidiary markets. Therefore, once an area around the market is declared as market area, 'whether under the Old Act or under the New Act, such area shall always be considered as "market". Notification for market will be sufficient to include the area around the said market already notified.

That is the reason why in the New Act both in Sections 9 as well as 24, the expression "market area" is used and not the word 'market' is used which is contrary to Section 67(4) of the New Act. Sections 9 and 24 of the New Act are the enabling and empowering sections respectively. Sections 9(1)(a) to 9(1)(d) of the New Act enable the Government to alter the market area. Whereas, section 24 of the New Act empowers the Market Committee to levy fee on any notified produce bought or sold in notified market.

28. Section 9(1)(d) of the New Act throw light and gives quietus to the issue. If the intention of the Government to delete any market area or to regulate any new market area after alteration of notified area then alone, declaration by notification regarding change in market area (either exclusion or inclusion) will arise. If no area is included or excluded after alteration of notified area, the necessity to notify the market area, which is already notified does not arise.

29. Once the market area is notified, any alteration if takes place invoking section 9(1) of the New Act, the earlier notification under the Old Act get saved under Section 67 of the New Act unless and until the authorities decides to alter the extend of the market area. In the present case, there is no such intention. Therefore, the Government has not issued

any fresh notification under Section 6(2) of the New Act. Since, no declaration of cessation of existing market area is notified under Section 9(1)(d) of the New Act, after alteration of notified area, it is implicit that the earlier notification identifying the market area holds good.

30. In view of the above said reasons, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2019

jbm

Index: Yes

Speaking order/non speaking order



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To

1.State of Tamil Nadu,
Represented by its Secretary,
Agricultural Department,
Fort St. George,
Chennai – 600 009.

2.The Principal Secretary/Commissioner,
Agricultural Marketing and Agri Business
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600 032.

3.The Secretary,
Nagapattinam Market Committee,
Nagapattinam.

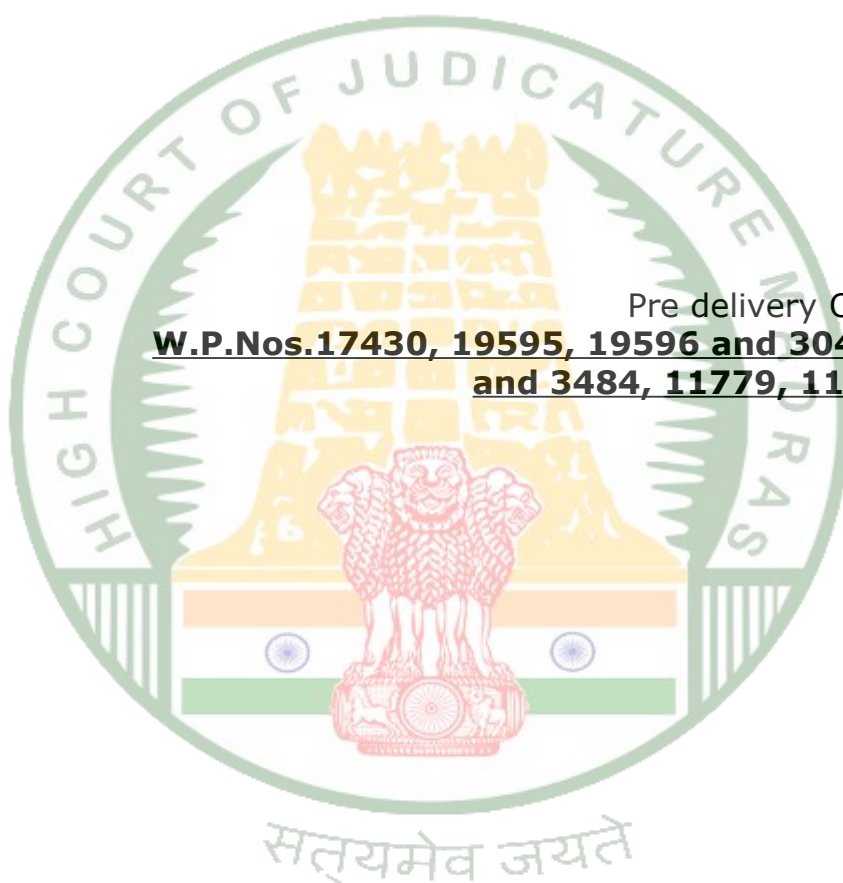
4.The Secretary,
Tiruvarur Market Committee,
Tiruvarur.



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G.JAYACHANDRAN.J.,

jbm



Pre delivery Order made in
W.P.Nos.17430, 19595, 19596 and 30448 of 2018
and 3484, 11779, 11788 of 2019

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22.08.2019