

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18577 of 2017
and W.M.P.Nos.20125 of 2017,
35195 of 2018 and 23980 of 2019

GTN Enterprises Limited,
Spinning Division,
Dharapuram Road, Indira Nagar,
Tungavi PO, Udumalpet - 642 203
Rep. by its Authorized Signatory
A.Sudhakaran ...Petitioner

Vs.

The Superintendent of Market,
Department of Agricultural Marketing
and Agri Business,
Tirupur Market Committee,
Regulated Market,
Udumalaipettai - 642 128. ... Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari to
call for the records relating to the impugned demand notice
issued by the respondent in Letter No.337/2008 dated 27.10.2016
and to quash the same.

For Petitioner : Mr.A.Sriram
for Mr.R.N.Amarnath

For Respondents : Mr.G.Rajesh
for Mr.V.Jayaprakash Narayanan

ORDER

Heard Mr.A.Sriram, learned counsel for Mr.R.N.Amarnath,
learned counsel for the petitioner and Mr.G.Rajesh, learned
counsel for Mr.V.Jayaprakash Narayanan, learned counsel for the
respondent.

2.The petitioner has sought for issuance of writ of
Certiorari to quash the proceedings of the respondent dated

27.10.2016, by which the petitioner has been directed to pay the market fee which was demanded by the respondent. In the impugned order, there is a reference to an order passed in the writ petition filed by the petitioner in W.P.No.2650 of 2009 which was dismissed. As against which, the petitioner file a writ appeal before the Hon'ble Division Bench in W.A.No.69 of 2012 and the same was dismissed by judgment dated 14.10.2011. Therefore the respondent has issued the impugned demand.

3.Now, the petitioner has come forward with the second round of litigation contending that the impugned demand suffers from lack of jurisdiction in respect of levy of market fee for sale of cotton and cotton waste in the absence of the notification under Section 6(2) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 for declaration of notified market area. Further, it is contended that Section 5(4) notified in the erstwhile 1959 Act cannot be the basis for levy of market fee in respect of cotton by the respondent since after the advent of 1987 Act, the notified market area as declared under Section 5(4) of the Old Act is repealed and not saved.

4.This Court need not labour much to decide the controversy because the very same question has been considered in a batch of cases by this Court and very recently, in the case of V.Murali vs. State of Tamil Nadu and others [2019 (2) WritLR 321]. In paragraph 23 of the said order, the contention raised by the present writ petitioner was taken up for consideration and the learned Single Bench after taking note of the decision of the Hon'ble Division Bench in the case of Thiruvarur Agricultural Marketing Committee and others vs. The State of Tamil Nadu and others [2015 (7) MLJ 187] dismissed the writ petition. The operative portion of the order reads as follows:

"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 *Thiruvavur 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 Thiruvavur 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 reissue 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."

5. The learned counsel for the petitioner contended that opportunity should have been given to the petitioner to establish that their manufacturing activities are outside the jurisdiction of the market committee. This contention cannot be permitted to be raised by the petitioner in this writ petition. Firstly, because the writ petitioner did not raise such a contention when they filed an earlier writ petition praying for issuance of writ of Mandamus to forbear the respondents from levying market fee on the sale of cotton waste where such sale takes place in the course of export of cotton waste out of the territory of India. It is not clear as to whether the plea raised before this Court with regard to the jurisdiction within which the factory is situated was canvassed in the earlier writ petition specifically. Nevertheless, the petitioner is deemed to have canvassed all the issues when they sought for a direction to forbear the respondents from levying market fee. The writ petition was dismissed by a common order dated 14.10.2011 which was affirmed by the Hon'ble Division Bench in W.A.Nos.69 and 70 of 2012 dated 23.09.2016. Therefore, at this juncture, the petitioner cannot commence a second round of litigation with regard to the location. Further, the learned counsel submitted that an opportunity should have been granted to the petitioner to contest the demand. Such a plea is not available to the petitioner at this distance of time especially after having lost in the first round of litigation and having not been able to convince this Court in the second round of litigation.

6. Thus, for all the above reasons, the petitioner has not make out any case for interference. Accordingly, the writ petition fails and is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

cse

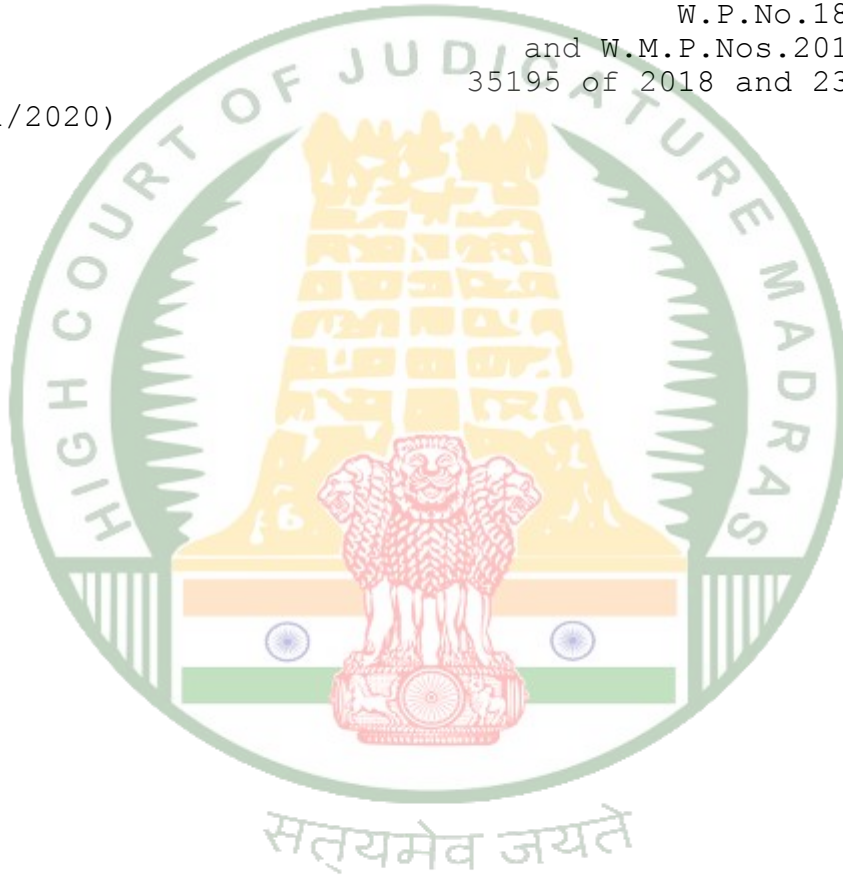
To

The Superintendent of Market,
Department of Agricultural Marketing
and Agri Business,
Tirupur Market Committee,
Regulated Market,
Udumalaipettai - 642 128.

+lcc to Mr.R.N.Amarnath , Advocate SR.No. 102344

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A.SK(28/01/2020)



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