

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.435 of 2020

1. The Commissioner cum Secretary to Government,
Agricultural Production Department,
Fort St. George, Chennai - 600 009.
2. The Secretary,
Coimbatore Market Committee,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045.
3. Superintendent of Market,
Regulated Market,
Sirumugai Road, Shastri Nagar,
Karamadai - 641 101,
Coimbatore District. ... Appellants/Respondents

Vs

M/s.Sri Vasudeva Textiles Ltd,
Represented by its Chairman,
Unit I, Kovai Main Road,
Thekkupalayam Post Office,
Coimbatore -641 020 ... Respondent/Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned Judge made in W.P.No.39464 of 2006 dated 06.08.2019.

Prayer in WP.39464/2006: This Writ Petition is filed Under Article 226 of constitution of India praying to call for the records of the 1st respondent in GO.No.212 dated 25.08.2006 and quash the same and forbear the respondents from collecting the cess Under Sec.24(1) of the Act.

For Appellants : Mr.V.Jayaprakash Narayanan
Government Pleader
For Respondent : ---

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The question for consideration in this appeal is whether the Coimbatore Market Committee (the Market Committee) was entitled to impose a market fee at 1% of the sale charges on the value of cotton procured by the Respondent/Petitioner from the National Cotton Corporation of India (the Cotton Corporation). The imposition of market fee was challenged by the Respondent/Petitioner by filing a revision petition before the Commissioner of Farm Produce and Secretary to Government of Tamil Nadu. The said revision petition was rejected by order dated 25.08.2006, G.O. MS. No.212, on the ground that the sale of cotton was not concluded in Warangal but was concluded within the jurisdiction of the Market Committee in Coimbatore, Tamil Nadu. The said order dated 25.08.2006 was challenged in W.P. No.39464 of 2006. By order dated 06.08.2019, the learned Judge allowed the Writ Petition on the basis that the sale transaction was concluded in Warangal notwithstanding the fact that the balance sale consideration was paid subsequently and the goods were stored at the godown in Coimbatore. On that basis, the Court concluded that the demand made on behalf of the Market Committee is not tenable in as much as the Market Committee is entitled to levy market fees only if the notified agricultural produce is bought or sold in the notified market area. The said order is impugned in this appeal.

2. We heard Mr. Jayaprakash Narayanan, the learned Government Pleader on behalf of the Appellants.

3. Mr. Jayaprakash Narayanan contended that the Market Committee is entitled to levy fee on any notified agricultural produce that is bought or sold in the notified market area. Cotton is admittedly a notified agricultural produce. Accordingly, as per Section 24(1) and (4) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (the TNAPMR Act), the Market Committee is entitled to collect a fee. The said Section 24(1) and (4) is as under:

"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.

(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 and 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.

4. Mr. Jayaprakash Narayanan submitted that the sale of cotton, in the present case, was concluded at Coimbatore, which is a notified market area. At the hearing on 07.08.2020, Mr. Jayaprakash Narayanan requested for and was granted time to produce the contract relating to the sale of cotton. At the subsequent hearing on 17.08.2020, he produced a contract dated 11.01.2005 between the Cotton Corporation and Sangeeth Textiles Limited (the Contract). According to Mr. Jayaprakash Narayanan, the Contract is only an agreement to sell. In support of this contention, he points out that only 10% of the price was paid at Warangal in terms of the contract dated 11.01.2005; the cotton remained in the godown of the Cotton Corporation at Coimbatore; and the insurance policy in respect of such cotton was in the name of the Cotton Corporation, which had paid the insurance premium. According to him, in the revision proceeding, the authority duly considered all these aspects and correctly concluded that the contract between the sister concern of the Respondent, namely, Sangeeth Textiles Limited and the Cotton Corporation is an agreement to sell and not a sale. However, the learned single Judge misconstrued the Contract, concluded that the sale had been completed in Warangal and, consequently, held erroneously that the sale and purchase did not occur within the notified market area.

5. We considered the submissions of the learned Government Pleader and examined the records.

6. On perusal of the Contract produced by the learned Government Pleader, we find that it relates to the supply of a specified quantity of a specific variety of bales of cotton. The contract provides as follows:

"It is confirmed that the Cotton Corporation of India Ltd., hereinafter referred to as "the Seller" has

sold and the M/s.Sangeeth Textiles Ltd., having its Registered Office at Coimbatore hereinafter referred to as "the Buyer" has purchased from the Seller 1000 Bales of indigenous cotton on the terms and conditions set out herein below:-

Indent No.	date	Quantity in Bales	Variety	Branch	Crop Year	Spot Rate per Candy
CBE-494	11.01.05	1000	BUNNY/ BRAHAMA PRM.PLUS	ARICHUR	2004 - 2005	17,700 /- SPC

10% ADVANCE IN SEVEN DAYS, GSF MILLS GODOWN, NO BROKER, FIRM SALE." (emphasis added).

It is pertinent to note that the past tense 'sold' and 'purchased' is used and not the words 'agree to sell and purchase', which are ordinarily contained in an agreement to sell. Moreover, the expression "firm sale" is used thereby emphasizing that it is neither subject to conditions nor contingent. In addition, a specific quantity of ascertained goods are sold thereunder at a spot rate of Rs.17,700/- per candy. In addition, Clause 7 of the Contract specifies that sales and delivery shall be on spot basis. The said Clause 7 is as under:

"(7)WEIGHTMENT, DELIVERY AND PAYMENT:

100% weightment of bales shall be carried out at spot within the free period. In case of no advance weightment by the buyer, payment shall be worked out for weight calculation at the rate of 48 candies per 100 bales. All sales and delivery shall be on spot basis and expenses after weightment shall be on buyer's account. All payments shall be made in crossed A/c payee demand draft, pay orders, banker's cheque. In case of payment by cheques, delivery shall be allowed to take place only on confirmation of realization of payment in the seller's account."

7. Clause 11 deals with payment of penal interest on delayed payment and also enables the seller to cancel the contract in case of default in payment and resell the goods at the risk and cost of the buyer. The above clauses of the Contract, therefore, contain many indications that it is a sale and not an agreement to sell. Nonetheless, before drawing definitive conclusions as

to whether the sale was concluded in Warangal, which is outside the notified market area, or in Coimbatore, where the goods were stored at the godown of the Cotton Corporation, we propose to examine the law on the subject. In view of the fact that a sale of movable property is being dealt with, the Sale of Goods Act, 1930 (the Sale of Goods Act) should be examined. The Sale of Goods Act deals with contracts for the sale of goods. A sale and an agreement to sell are defined in Section 4(3), which is as under:

"(3) When under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a further time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

8. On perusal of Section 4(3), it is clear that the distinction between a sale and an agreement to sell is drawn by ascertaining as to when the property in the goods is transferred from the seller to the buyer. The more inclusive term 'contract of sale', which would cover both a sale and an agreement to sell is dealt with in Section 5 and sub-section (1) is as under:

"5. Contract of sale how made- (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed."

As stated earlier, the Contract discloses, in no uncertain terms, that it is a contract for the sale of specific, ascertained goods. Therefore, Sections 19 and 20 of the Sale of Goods Act assume significance. The said Sections 19 and 20 read as under:

"19. Property passes when intended to pass--

(1) when there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstance of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to

the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state:- Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed."

Section 19 specifies that the property in ascertained goods passes to the buyer at such time as the parties to the contract intend it to be transferred, and that such intention can be gleaned by examining and applying Sections 20-24 unless a different intention appears. Section 20 provides that if it is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. The above provisions were interpreted, in the specific context of the imposition of a market fee on agricultural produce, in two judgments of the Hon'ble Supreme Court, namely, Agricultural Market Committee v. Shalimar Chemical Works Ltd (1997) 5 SCC 516 (Shalimar Chemical Works) and Arihant Udyog v. State of Rajasthan and others (2017) 8 SCC 220 (Arihant Udyog). In Shalimar Chemical Works, the Hon'ble Supreme Court held as follows in paragraphs 36,37,39 to 42:

"36. We may, before analysing the provisions of Sections 19 and 20, observe that the Indian Sale of Goods Act is based largely upon the English and American Acts. Under these Acts, namely, the English Sale of Goods Act, the American Uniform Sales Act and the Indian Sale of Goods Act, the relevant factor for determining where the sale takes place, is the intention of the parties. A contract of sale, like any other contract, is a consensual act inasmuch as parties are at liberty to settle, amongst themselves, any terms they may choose.

37. Section 19 attempts to give effect to the elementary principle of the Law of Contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of the making of contract. It all depends upon the intention of the parties. It is, therefore, the duty of the court to ascertain the intention of the parties and in doing so, they have to be guided by the principles

laid down in Section 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

39. Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of "specific goods" in a "deliverable state", the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased.

40. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, "Unless a different intention appears" occurring in Section 19(3). In *Hoe Kim Seing v. aung Ba Chit* AIR 1935 PC 182 : 62 IA 242 : 39 CWN 1217] it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case.

41. This Court in *Consolidated Coffee Ltd.v. Coffee Board* [(1980) 3 SCC 358 : 1980 SCC (Tax) 279 : AIR 1980 SC 1468] has held that in an auction-sale of chattels, property passes to the purchaser on the acceptance of his bid. This occurs not because of Section 64(2) but because of the rule contained in Section 20.

42. In the instant case, the goods which were the subject-matter of sale were ascertained goods. They were also in a deliverable state. On the order being placed by the respondent, the seller in the State of Kerala, loaded the goods on the lorry and despatched the same to Hyderabad. It is at this stage that the conduct of the parties becomes extremely relevant. It was one of the terms of the contract between the parties that the seller would not be liable for any future loss of goods and that the goods were being despatched at the risk of the respondent. The respondent had also obtained insurance of the goods and had paid the policy premium. He, therefore, intended the goods to be treated as his own so that if there was any loss of goods in transit, he could validly claim the insurance money. The weighing of the goods at Hyderabad or the collection of documents from the bank or payment of price through the bank at Hyderabad were immaterial, inasmuch as the property in the goods had already passed at Kerala and it was not dependent upon the payment of price or the delivery of goods to the respondent."

Similarly, in ARIHANT UDYOG, the Hon'ble Supreme Court held as follows in paragraphs 18, 19, 22 and 23:

"18. Sub-section (3) of Section 19 is another significant provision which mentions that rules contained in Sections 20 to 24 are the rules for ascertaining the intention of the parties, unless a different intention appears in the contract for the sale of specific or ascertained goods. It means, if such an intention as to when the parties to the contract intend the property in goods to be transferred cannot be gathered from the contract, rules contained in Sections 20 to 24 would be applied.

19. Section 20 deals with a situation where specific goods are in a deliverable state. In that case property in goods passes to the buyer when the contract is made, even when time of payment of the price or the time of delivery of the goods or both is postponed. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable (see Shalimar Chemical Works Ltd. [Agricultural Market

Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516]).

22. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to the buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.

23. In the case of Arihant Udyog, intention is to be gathered from the terms and conditions, which have already been noted above. It mentions that responsibility of the seller ceases as soon as goods are delivered, which means the seller remained responsible till the delivery of goods. Therefore, intention was to retain the title in the goods till its delivery inasmuch as till that time it is the seller who was responsible for the goods. This condition would clearly spell out that if the goods are destroyed or lost in transit i.e. before their delivery, responsibility will be that of the seller. Such a responsibility can be only if the ownership remains of the seller. No other document was produced by Arihant Udyog which could demonstrate the intention that property in goods passed in their favour before these goods were delivered."

9. Thus, Shalimar Chemical Works lays down the principle that if it is an unconditional sale of specific ascertained goods in a deliverable state, Section 20 would become applicable unless a contrary intention appears from the transaction. In Maruti Udyog, the Court concluded that the intention of the parties, as gleaned from the contract, governs.

10. The learned Special Government Pleader contended that the Contract is an agreement to sell and not a sale both on the basis that only 10% of the sale consideration was paid at the time of entering into the transaction and on the basis that insurance had been taken by the seller and not by the buyer. As is evident from Section 4(3) of the Sale of Goods Act, the determining factor with regard to whether it is an sale or an agreement to sell is whether the transfer of the property in the goods takes place under the contract or at a future time and subject to the fulfillment of some condition. In this case,

there is no doubt at all that it is a contract for the sale of specific or ascertained goods. In addition, on perusal of the Contract, as stated earlier, we observe the following: the words 'sold' and 'purchased' and not 'agree to sell and purchase' are used; the words 'firm sale' are used; Clause 7 of the terms and conditions thereof stipulates that the sale is on spot sale basis; and Clause 11 refers to cancellation and resale in case of default. These clauses militate strongly against the conclusion that the property in the goods is to be transferred at a future time. When viewed holistically, there is every indication that the parties intended that the property in the goods shall pass from the seller to the buyer at the time when the contract was made, notwithstanding the fact that a substantial part of the sale consideration was paid subsequently and delivery also happened later. The learned Government Pleader contended that the goods were insured by the Cotton Corporation but the pleading of the Respondent/Petitioner, on this issue, is that the Respondent/Petitioner entered into an ancillary contract with the Cotton Corporation and paid transportation and insurance charges in terms thereof. In any event, this is only one factor in the overall transactional matrix.

11. The subject matter of the sale transaction herein is cotton bales. The sales contract clearly specifies the nature of goods and the quantity. Therefore, it is a sale of specific or ascertained goods. Consequently, Section 19 would certainly apply and, as per Section 19, the property in the goods would be transferred at such time as the parties to the contract intended it to be transferred. This intention is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Moreover, unless a different intention appears, the rules contained in Sections 20 to 24 would be the basis for ascertaining the intention of the parties as to the time at which the property in the goods would pass from the seller to the buyer. If Section 20 is examined, it indicates that the property in the goods would pass from the seller to the buyer when the contract is made and that it is immaterial that the time of payment of the price or the time of delivery of the goods, or both, is postponed. Apart from the requirement that the sale should be of specific goods in a deliverable state, it is necessary that the contract should be unconditional for Section 20 of the Sale of Goods Act to be applicable. Section 20 makes it abundantly clear that the payment of balance sale consideration or the delivery of goods at a later time is not a reason to conclude that it is a conditional contract. In this connection, the learned Special Government Pleader also pointed out that the seller is entitled to a lien over the goods and that this indicates that it is a conditional contract if not an agreement to sell. An unpaid

seller has a statutory lien under Section 46(1)(a) of the Sale of Goods Act to the extent of the unpaid consideration. The existence of such lien does not lead to the inference that a sale was not concluded or that it is an agreement to sell. In fact, this is clear from the language of Section 46(1)(a) which reads as under:

"46. Unpaid seller's rights - (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, unpaid seller of goods, as such, has by implication of law-

(a) a lien on the goods for the price while he is in possession of them." (emphasis added).

12. From the above, it is abundantly clear that such lien may be exercised even after the property in goods may have passed to the buyer. Therefore, it cannot be said that the existence of an unpaid seller's lien indicates that it is a conditional sale or an agreement to sell and not a sale. Upon examining the contractual and transactional context, we conclude that the Contract is for an unconditional sale of ascertained goods and, therefore, Section 20 applies and the property in the goods passed on the date of Contract. Even otherwise, the contractual and transactional intention is also to such effect and, therefore, in terms of Section 19 also the same conclusion follows.

13. The learned Single Judge examined the contract between the parties, albeit a contract dated 18.03.2004, and Section 24 (1) and (4) of the TNAPMR Act and concluded that the Market Committee did not have the authority to levy a market fee because the sale of cotton bales was concluded in Warangal, Andhra Pradesh, which is outside the jurisdiction of the Market Committee.

14. For the reasons set out above, we are of the view that the said order does not suffer from any infirmity. Consequently, we conclude that the Appellants have failed to make out a case for interference with the impugned order.

15. In the result, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

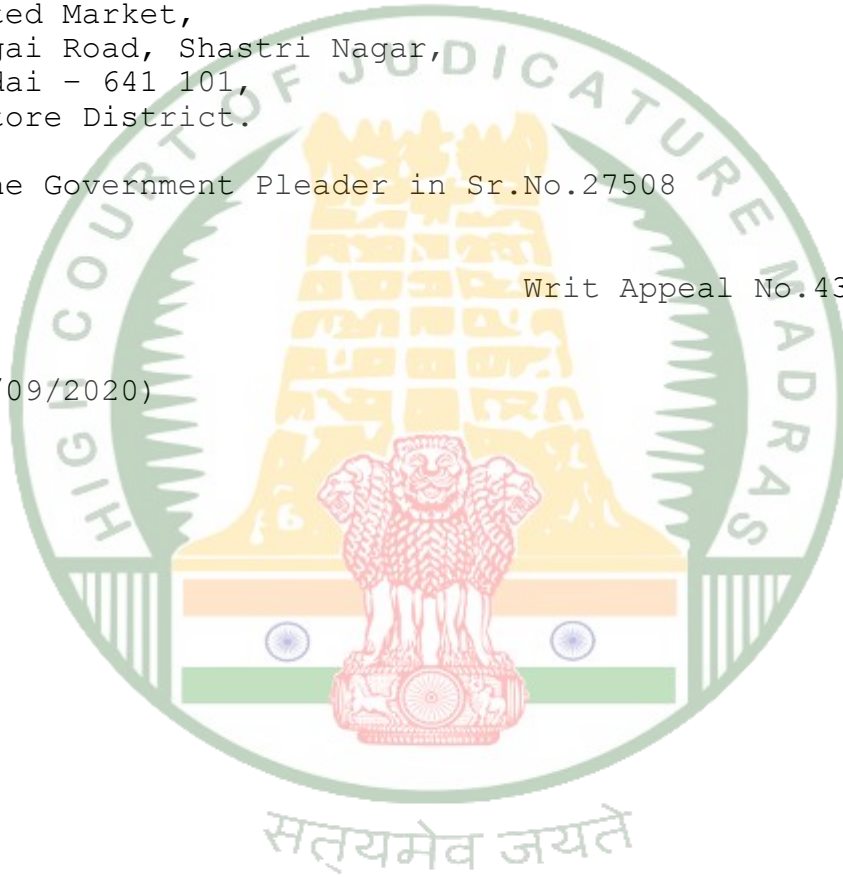
To

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+lcc to the Government Pleader in Sr.No.27508

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