



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2020

Delivered on : 06.05.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.1028 of 2019

and

W.M.P.No.1154 of 2019

Kachirapalayam Paddy & Rice Merchants &
Rice Mill Owner Association,
rep. by its President Durai Selvam,
S.No.108/16B L.F.Road,
Kachirapalayam-Vadakkanandhal,
Chinnasalem Taluk,
Villupuram District.

Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Agricultural Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Commissioner of agricultural
Marketing & Agri. Business,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai 600 032.

3. The Secretary,
Villupuram Market Committee,
Nethaji Road, Villupuram 605 602.
Villupuram District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration to declare the demand and forcible collection of market fee in respect of agricultural produce Paddy for the transactions of purchase and sale by the members of the petitioner Sangam where there is no notification under Section 6(2) of the Act, 1987 as illegal, arbitrary, ultra vires and without jurisdiction and to forbear the respondents for renewal of licence, from resorting to demand and collect market fee for sale and transactions of paddy in the absence of declaration of notified market area under Section 6 (2) of the Act, 1987.



For Petitioner : Mr.R.K.Kumaravel
For Respondents: Mr.V.Jayaprakash Narayanan,
Government Pleader

WEB COPY

ORDER

The petitioner, which is an Association of Rice Merchants and Rice Mill Owners trading with Paddy in Villupuram District by purchasing the Paddy outside the premises of regulated market area at Kallakurichi and other places in Villupuram District and also various other States, filed this writ petition as against demand of market fee by the 3rd respondent Market Committee for the purchase and sale of Paddy even in the non-notified market areas.

2. The case of the petitioner is that as per the provisions of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 and the Rules made thereunder, the respondents do not have any authority of law and jurisdiction to collect any market fee beyond the notified market area.

3. As per the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, any market area has to be declared as per Section 6(2) of the Act.

4. The learned counsel appearing for the petitioner submits that after the advent of New Act 1987, it is incumbent for the 1st and 2nd respondent authorities to notify the "notified market area" in respect of notified agricultural produce under Section 6(2) of the New Act. In the absence of any fresh notification under the New Act, 1987, there is no "notified market area" to invoke the provisions of the Act and Rules and to apply the charging Section under Section 24 of the Act, 1987. Therefore, any demand or levy of market fee after 01.02.1991 for the sale and purchase of notified agricultural produce under Section 24(1) of the new Act, 1987 is ultra vires and without jurisdiction, since 01.02.1991.

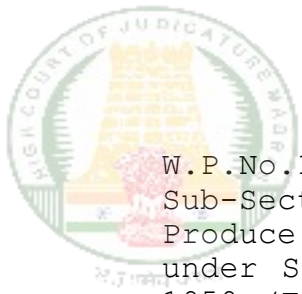
5. The learned counsel for the petitioner further submits that the erstwhile composite South Arcot District was bifurcated as South Arcot Vallallar District (Now renamed as Cuddalore District) and Villupuram Ramasamy Padayatchiar District (Now renamed as Villupuram District) prior to the year 1995 and consequently, the 1st respondent issued Notification under Section 9(i)(d) read with Section 3 of the Act declaring the intention to form separate Market Committee for the above Districts vide G.O.Ms.No.404 Agricultural (AMII) Department dated 18.07.1995. Further in the said Government Order, there was a preliminary notification for exclusion of "notified market areas" of the Villupuram, Tirukoilur, Ulundurpet, Tindivanam,



Gingee, Vanur, Kallakurichi and Sankarapuram (i.e.,) to exclude "notified market area" of 8 regulated markets only as against the "notified market areas" of 17 regulated markets that now exists under the present Villupuram Market Committee (i.e.,) the then Villupuram Ramasamy Padayatchiar District; from the notified area of the South Arcot Market Committee. He would further submit that no regulated market is in existence at Vanur now, which included at the time of issue of the intention and declaration of notification as listed in the notification and the "notified market area" of the following regulated markets at Chinnasalem, Thiyagadurgam, Avalurpet, Marakkanam, Vikiravandi, Valathy, Ananthapuram, Thiruvannainallur, Manalurpet, and Mungilthuraipet were not included for the purpose of exclusion from the notified area of the then South Arcot Market Committee so as to include the same to the proposed notified area of Villupuram Ramasamy Padayatchiar Market Committee.

6. The learned counsel for the petitioner would further submit that in the event of bifurcation of District, when the notified area / notified market area is altered by excluding any "notified market area", it is incumbent for the 1st and 2nd respondents to notify the "notified market area" afresh under Section 6(2) of the Act 1987 and this procedure is duly complied with when Salem District was bifurcated into Salem and Namakkal Districts; Coimbatore and Erode Districts were reformed into Coimbatore, Erode and Tirupur Districts; Ramanathapuram District was trifurcated into Ramanathapuram, Sivagangai and Virudunagar District; and Trichy, Karur, Perambalur and Ariyalur Districts were reformed into Ariyalur and Perambalur Districts and Trichy and Karur Districts for the purpose of establishment of Market Committee under the Act by making notification afresh for the "notified market area" under Section 6(2) of the Act in respect of the newly formed notified areas for Salem, Namakkal, Coimbatore, Erode, Tirupur, Ramanathapuram, Sivagangai, Virudhunagar, Trichy and Perambalur of the concerned Districts and therefore, the learned counsel for the petitioner would seek for a declaration to declare the demand and forcible collection of market fee in respect of agricultural produce Paddy for the transactions of purchase and sale by the members of the petitioner Sangam where there is no notification under Section 6 (2) of the Act 1987 as illegal, arbitrary, ultra vires and without jurisdiction and to forbear the respondents from resorting to demand and collect market fee for sale and transactions of Paddy, in the absence of a declaration of notified market area under Section 6(2) of the Act, 1987.

7. In response to the writ petition, Mr.V.Jayaprakash Narayanan, learned Government Pleader appearing for the respondents would submit that the issue has already been decided by a Division Bench of this Court in W.A.No.2232 of 2013 and



W.P.No.1868 of 2015 dated 22.7.2015 holding that by virtue of Sub-Section (3) of Section 67 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, notification issued under Section 3 of Tamil Nadu Agricultural Produce Markets Act, 1959 (Tamil Nadu Act 23 of 1959) directing the establishment of market in various places for the purpose of cotton etc., would continue to be in force and therefore, the issue of separate notification under Section 3 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act 1987 (Tamil Nadu Act 27 of 1989) is not necessary.

8. The learned Government Pleader would further submit that the Government has issued notifications for formation of separate market Committees for Villupuram from the erstwhile Market Committees under Sections 3, 4(1), 5(1) and Section 9(1) (a) of the said Act and the Division Bench of this Court, in its order dated 22.07.2015 in W.A.No.2232 of 2013 filed by the Thiruvarur Market Committee, held that by virtue of Sections 16 and 17 of the Act, a Market Committee is deemed to continue in spite of alteration of notified area under Section 9(1) and what is dissolved under section 9(2)(a) is the composition of the Market Committee and the Market Committee itself being a body corporate perpetual succession. He would further submit that the expressions "notified area" or a "notified market area" have been defined under sections 12 and 13 of Section 2 the said Act and if "notified area" or a "notified market area" are altered by any notification under the provisions of Section 9, there is no necessity for issuance of any fresh notification notwithstanding the alteration of the "notified area" or "notified market area" and the markets established in a notified market area will continue to remain the same.

9. The learned Government Pleader would further submit that under Section 8(3) of the said Act, the Government may issue notification to have control over the purchase or sale of any notified agricultural produce in a notified market area outside the market in that area and issuance of notification under Section 8(3) is a policy of the Government and the petitioner cannot insist the Government to issue a separate notification. He would further submit that by virtue of Sub-Section (3) of Section 67 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, notification issued under Section 3 of the Tamil Nadu Agricultural Produce Markets Act, 1959 (Tamil Nadu Act 23 of 1959) directing the establishment of market in various places for the purpose of cotton etc., would continue to be in force and therefore, the issue of separate notification under Section 3 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act 1987 (Tamil Nadu Act 27 of 1989) is not necessary.



10. The learned Government Pleader has also relied upon the decision of the Bombay High Court in Zilla Parishad, Bhandara vs. Agricultural Produce Market Committee (AIR 1974 BOMBAY 128) wherein it has been held as follows:-

"3. It cannot be disputed that under the old Act a market or a market area was constituted and established. By Section 64(1) of the Act No.XX of 1964 the Act of 1935 has been repealed, but, sub section (2) of Section 64, which is in the nature of the saving clause, the market and the market area as well as the place declared under the enactment so repealed on the commencement of the new Act is deemed to be the market area or the market declared under this Act. By this deeming provision the declarations made under the repealed Act have been treated to be the declarations as if they are issued under the new Act. This legal fiction will have to be carried out to its logical conclusion. Therefore, by virtue of this saving clause it will have to be held that the declarations made under the Act of 1935 by notifications dated : 10.10.1961 and 10.02.1962 establishing the market will be the market declared under the provisions of the Act No.XX of 1964 for all purposes."

11. The learned Government Pleader would submit that the fee levied is very nominal i.e., only 1% of the aggregate purchase amount of agricultural produce and even that small amount will be passed on to the consumers by the traders and as such, the traders will not be affected in any way, but, on the other hand, if the market fee is dispensed with, it will affect the provision of infrastructural facilities to the farmers and result in the denial of remunerative prices to farmers and ultimately it will go against the object of the said Act.

12. This Court paid its anxious consideration to the rival submissions and perused the materials available on record.

13. The petitioner association, dealing with Paddy and Rice as whole sale merchants in Villupuram District, has filed this writ petition for a declaration that collection of market fee for Paddy where there is no notification under Section 6(2) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, is illegal and without jurisdiction.

14. The Tamil Nadu Agricultural Produce Marketing Act, 1959, has been amended as Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, with effect from 01.02.1991. As per Section 6(2) of the Act, the Government after the establishment of a market by a market committee under Sub-Section (1) may declare, by notification, the area of the market



and such area around the market as "notified market area" for the purpose of the Act by way of a specific notification. The expression "notified area" or "notified market area" have been defined under Sections 12 & 13 of Section 2 of the Act. The notified area or notified market area can be altered by any notification under Section 9 of the Act. The South Arcot District was bifurcated as Cuddalore and Villupuram District. The Government has issued notification for formation of separate market committee for Villupuram from the erstwhile market committees under Section 9(1)(a) of the Act.

15. Thiruvavur Agricultural Marketing Committee and similarly placed another person have filed a writ appeal and a writ petition in W.A.No.2232 of 2013 & W.P.No.1868 of 2015, to forbear the respondents therein from enforcing the provisions of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, in respect of purchase of any notified agricultural produce effected outside the notified market area. The case of the petitioners therein was that a market fee under Section 24 of the 1987 Act can be levied only with regard to the notified agricultural produce cultivated inside the notified area and purchased and sold within the market area. Therefore, the Act cannot be extended to the purchases made outside the notified area and sold inside or outside the notified area. The petitioners have also raised a ground that once an alteration in the limits of a notified area is made under Section 9(1) of the Act, the market committee constituted in relation to that notified area stands dissolved under Section 9(2)(a) and that therefore, unless a whole set of procedure starting from a notification under Section 3, a declaration under Section 4 and the establishment of a market committee under Section 5 takes place afresh, no levy can be made by the abolished market committee under Section 24.

16. The Division Bench of this Court, while disposing of the petitions, by judgment dated 22.07.2015, has held that the question as to whether a particular item is a notified agricultural produce; whether it was bought and sold in a notified market area; and whether the notified agricultural produce was brought into the notified area only for the purpose of processing or for the purpose of export are all questions of fact, which have to be decided as and when the occasion arises and at the time of every transaction. In a writ petition under Article 226, such disputed claims are not open to scrutiny. Therefore, the Court held that the writ petitioners cannot seek a Mandamus on the ground that they are buying and selling notified agricultural produce outside the notified market area. Whether or not, the writ petitioners are buying and selling the notified agricultural produce outside the notified area is a question of fact, on which, no adjudication can be made by the



Court for the purpose of issuing a Mandamus to forbear the respondents from enforcing the provisions of the Act.

17. The Division Bench has further held that despite the alteration of the notified area under Section 9(1), the market committee constituted continues to have perpetual succession. The members appointed under Section 10 lose their tenure and a new set of members are appointed under Section 10. This will not have the effect of the market committee completely ceasing to exist. When a district is bifurcated or trifurcated, leading to the necessity for the alteration of the notified area under Section 9(1), the Division Bench has held that Section 9(1) can be invoked even under the 1987 Act without reference to what happened in the 1959 Act. By virtue of Sections 16 & 17 of the Act, the market committee is deemed to continue in spite of alteration of notified area under Section 9(1) of the Act.

18. In view of the fact that the issue has already been settled by the decision of the Division Bench (supra), this Court is not inclined to entertain the present writ petition. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssk

To

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Agricultural Department, Secretariat, Fort St. George,
Chennai 600 009.

2. The Commissioner of agricultural
Marketing & Agri. Business,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai 600 032.

3. The Secretary,
Villupuram Market Committee,
Nethaji Road, Villupuram 605 602.
Villupuram District.

+lcc to the Government Pleader, S.R.No. 27152

W.P.No.1028 of 2019

LN(CO)
GN(20/07/2021)