IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2023

DELIVERED ON: 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.Nos.784 & 785 of 2020

and

CMP.Nos. 10293 & 10294 of 2020

1. GTN Enterprises Limited,
Spinning Division,
Dharapuram Road,
Indira Nagar, Tungavi PO,
Udumalpet -642203 ..Appellant in W.A.No. 784 of 2020

2. Patspin India Limited,
2/85 –B Udumalai,
Tiruppur Road,
Ponneri, Kottamangalam (P.O),
Udumalpet 642201
Rep. by its General Manager
A.Sudhakaran
S/o.P.A.Janarthanan ..Appellant in W.A.No.785 of 2020

Vs

1.The Superintendent of Market,
Department of Agricultural Marketing and Agri Business,
Tirupur Market Committee,
Regulated Market,
Udumalpettai -642 129

2.The Tahsildar,
Udumalet Taluk,
Tiruppur District.
(R2 impleaded as per the order of
this Court dated 14.02.20323) ..Respondents in both WAs

Common Prayer: These Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 06.12.2019 in W.P.No.18577 of 2017 and W.P.No 18576 of 2017.

For Appellants : Mr R.N.Amarnath

For Respondents : Mr.J.Ravindran, AAG
Assisted by Mr A.Selvendran, Spl.GP

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

Aggrieved by the order passed by the writ court in W.P.No.

18577 of 2017 dated 06.12.2019, the present writ appeal has been filed.

2. Brief facts of the Case:

2.1 Challenging the demand of market fee made by the respondent as per the proceedings in letter No. 337/2008 dated 27.10.2016 and the subsequent proceedings in letter No. 337/2008 dated 10.01.2017, the appellant company has filed a writ petition in W.P.No. 18577 of 2017.

2.2 The case of the appellant before the writ court is that the Government issued orders in G.O.Ms.No. 316 Food & Agriculture Department, dated 04.02.1964 for declaration of notified market area under Section 5(4) of the Old Act (1959 Act) by which the area around Udumalpet Regulated Market has been declared as notified market area in respect of Cotton, Ground Nut and Tobacco. Even in the said notification, area of the Udumalpet Regulated Market is not specified and thereby, there is serious discrepancy which would vitiate the entire notification. Even otherwise, after the advent of 1987 Act, repealing the old Act, when the notified market area as declared in the old Act is not saved, there is no fresh notification of notified market area under Section 6(2) of the new Act.

2.3 It is the further case of the appellant before the writ court that as per notification, cotton does not include cotton waste. Accordingly, in the absence of specific notification in respect of the product cotton waste, it cannot be construed to be a notified agricultural produce to be subjected to levy of market fee even under the old Act. Without considering the vital aspect that the notified market area as declared under Section 5(4) of the Old Act in respect of the agricultural produce cotton vide G.O.Ms.No. 316 Food and Corporation Department, dated 04.02.1974 is not saved under the relevant provisions of Section 67 of New Act, the writ Court has dismissed the writ petition filed by the appellant herein.

3. The main grounds raised in the appeal are as follows;

- The writ court overlooked a critical point that the market fee demand by the respondent lacks a solid legal basis due to the absence of a declared notified market area under Section 6(2) of the New Act for agricultural produce cotton. The previously established notified market area under Section 5(4) of the Old Act is not saved under Section 67(4) of the New Act, which creates a legal void.

- The judgments relied by the writ Court, particularly a writ appeal in W.A. No.2232 of 2013, seems misplaced as it primarily focused on the impact of Section 9(2)(a) of the New Act on district bifurcation, rather than addressing the requirement of declaring a notified market area under Section 6(2) of the Act. The court's reference to Section 67(4) is also problematic, as it does not apply to alterations in notified areas under Section 9(1) of the New Act.

- The notification for "cotton" does not cover "cotton waste," as evidenced by the State Government's 2008 notification. This lack of proper notification for cotton waste underscores the legal inadequacy of the market fee demand. Therefore, the market fee demand should be deemed legally unsustainable and the impugned order passed by the writ court is liable to be set aside.

4. On overall consideration of the facts and circumstances of

the case, the points to be considered in the present writ appeal are as follows;

i. Whether the provisions under Section 5(4) of the old Act, which is specifically concerning the agricultural produce, cotton, is saved under the relevant provisions of Section 67 of the New Act.?

ii. Whether the demand made by the respondent for the market fee is sustainable due to the absence of a declaration of the notified market area under Section 6(2) of the new Act (1987 Act)?

iii. Whether the absence of a specific notification for cotton waste, as mandated by G.O.Ms. 361 Agricultural Department dated 12.12.2008, under Section 9(1)(d) of the Act, renders the demand made by the respondent legally questionable.?

I. Saving Clause:

Section 5(4) of Tamil Nadu Agricultural Produce Markets Act, 1959 (Old Act) is extracted as follows;

> **5. Establishment of market committee**
>
> .....
>
> .....
>
> (4) The Government shall, as soon as may be, after the establishment of a market by a market committee under sub-

section (3), 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***.

Provided that the Government shall include in the notification under this sub-section the area in respect of which any co-operative society which has established a market committee under sub-section (2), parties on its business.

Provided further that the Government may subject to such rules as may be made include in the notification under this sub-section the area in respect of which any co-operative marketing society carries on its business.

Section 67 of the New Act, 1989

67. Repeal and Saving:

....

....

(4) "Notwithstanding the repeat of the said Act, ***any area declared to be a notified area or a notified market area under the said Act shall be deemed to be a notified area or a notified market area, as the case may be, 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 are; 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"

5. From the above, it is clear that Section 5, subsection (4) of the old act (1959 Act) defines that ***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*** ". As regards repeal and saving under Section 67(4) of New Act 1987, it is declared that ***any area declared to be a notified area or a notified market area under the old Act shall be deemed to be a notified area or a notified market area, as the case may be, under this Act.*** Therefore, the contention of the learned counsel for the appellant that the notified market area declared under the old Act is not saved cannot be accepted and the said contention is liable to be rejected.

6. The writ Court in the impugned order, has rightly relied upon the decision rendered by this Court in the cases of ***V.Murali***

Vs.State of Tamil Nadu and others reported in [2019 92) Writ LR 321], wherein this Court by relying upon the decision of the Hon'ble Division Bench of this Court in the case of ***Thiruvarur Agricultural Marketing Commitee and Others Vs. The State of Tamil Nadu and Others [2015 (7) MLJ 187]***, has answered the ground raised by the learned counsel for the appellant with regard to the saving clause under Section 67 of the new Act. The relevant portion is extracted below;

> *"……*
> *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."

7. As discussed in the above judgment, once the market area is notified, if any alteration 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 decide to

alter the extent of the market area. Admittedly, it is not the case of the appellant for alteration of market area. It is the case of the appellant only with regard to the discrepancy between market and market area. In view of the discussions, we conclude that as per G.O.Ms.No. 316 Food & Agriculture Department, dated 04.02.1964 the Government declared the notified market area under Section 5(4) of the old Act (1959 Act) by which the area around Udumalpet Regulated Market has been declared as notified market area in respect of Cotton, Ground Nut and Tobacco. As per Section 6(2) of the new Act, the area around the notified area viz., Udumalpet is construed to be a notified market area. Accordingly, the contention of the learned counsel for the appellant with regard to the discrepancy in Market and Market area under the Act is rejected.

8. Inclusion of Cotton Waste

8.1 The further contention of the learned counsel for the appellant is that the notification of agricultural produce "cotton" does not encompass "cotton waste." Therefore, in the absence of a specific notification for cotton waste, as mandated by G.O.Ms. 361

Agricultural Department dated 12.12.2008, under Section 9(1)(d) of the Act, it renders the demand notice legally questionable.

8.2 It is to be noted that the Government has issued orders vide Tamil Nadu Government Extraordinary Gazette No.213, dated 29.05.2020 amending certain clauses of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act 1987. In the said order, the Government made certain amendments in Section 8 A of the New Act. The relevant portion of amendment is extracted below:

"…..

*5. In section 8-A of the principal Act, in sub-section (1), for the words "**any notified agricultural produce in any notified market area",** the words "**any agricultural produce"** shall be substituted.* After making amendments, Section 8-A(1) shall read as follows;

8-A. Trading in agricultural produce in the State:

(1) Notwithstanding anything contained in section 8, the Director or the officer authorised by him in this behalf may grant a licence to a person for buying or selling or operating in any other capacity in relation to buying or selling of "***any agricultural produce"*** and every application for grant of licence shall be made in such form, in such manner and accompanied by such fee, as may be prescribed.

9. In view of the above amendment, though the learned counsel for the appellant specifically contended that cotton waste was not included in the earlier notification, in view of the above said amendment of Tamil Nadu Government Extraordinary Gazette No.213, dated 29.05.2020, since the cotton waste which is only a byproduct of the agricultural produce, cotton and the source of revenue for the appellant company through its sale, is liable to pay the market fee for cotton waste as fixed by the Market Committee from time to time.

10. In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscelleneous Petitions are closed.

[D.K.K., J.,] [P.B.B., J.]
01 .11.2023

Index: yes/no
Internet:yes
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To
1.The Superintendent of Market,
Department of Agricultural Marketing and Agri Business,
Tirupur Market Committee,
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Udumalpettai -642 129

2.The Tahsildar,
Udumalet Taluk,
Tiruppur District.

D.KRISHNAKUMAR, J.,

&

P.B.BALAJI, J.

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Pre-Delivery Order in

W.A.No.784 & 785 of 2020

and

CMP.Nos. 10293 & 10294 of 2020

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