



WEB COPY



S.A.No.441 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.441 of 2003

M/s.Arasu Rubber Corporation Limited,
Nagercoil, rep. by
its Managing Director,
Vadaseri Village,
Agastheeswaram Taluk,
Kanyakumari District.

.. Appellant

Vs.

Kanyakumari Market Committee, Nagercoil,
rep. by its Secretary,
Vadasery, Vadasery Village,
Agastheeswaram Taluk,
Kanyakumari District.

.. Respondent

Second Appeal filed under Section 100 CPC against the judgment and decree dated 27.09.2002 made in A.S.No.83 of 1999 on the file of the Principal District Court, Kanyakumari District at Nagercoil, confirming the judgment and decree dated 31.03.1997 made in OS.No.78 of 1990 on the file of the Principal Subordinate Judge at Nagercoil.

For appellant : Mr.M.Azeem

For respondent: No appearance

Page No.1/18



S.A.No.441 of 2003

WEB COPY

JUDGMENT

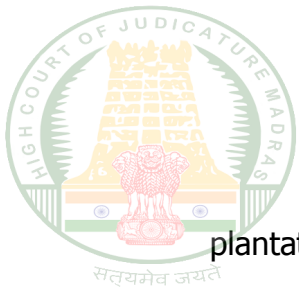
This Second Appeal has been filed challenging the judgment and decree dated 27.09.2002 passed in A.S.No.83 of 1999 on the file of the Principal District Court, Kanyakumari District at Nagercoil, confirming the judgment and decree dated 31.03.1997 in O.S.No.78 of 1990 on the file of the Principal Subordinate Judge, Nagercoil.

2. The prayer in the suit was for a declaration that the defendant Market Committee had no authority to levy and collect market fee from the plaintiff in respect of the natural rubber produced in his estate and transported for sale, and for a consequential direction to refund the sum of Rs.1,35,703.07 already collected, together with interest thereon.

3. For the sake of convenience, the parties are referred to as per their status before the trial Court.

4. The short case of the plaintiff is as follows:-

4.1. The plaintiff–Company is a public limited Company owned by the Government of Tamil Nadu. It manages about 4,800 hectares of rubber



S.A.No.441 of 2003

plantations belonging to the State, having taken over the assets and liabilities of the erstwhile Forest Department. The plantations consist of both mature and immature rubber trees, and the Company undertakes the entire cultivation process, including planting, manuring, fertilising, and tapping latex. Cover crops are raised for young plants, and seedlings are also sold. The plaintiff is assessed under the Agricultural Income Tax Act for income from its operations, is registered with the Rubber Board under the Rubber Act, 1947, and produces about 2,800 tonnes of raw rubber annually. Its factories are located at Mylar and Keeriparai, and the plantations are spread across Thovalai, Kalkulam, and Vilavancode Taluks, with the registered office at Nagercoil.

4.2. The defendant is the Market Committee constituted under the Tamil Nadu Agricultural Produce Markets Act, 1959, with its office at Nagercoil. It is empowered to administer and enforce the provisions of the Act within Kanyakumari District. By G.O.Ms.No.1850, Agriculture Department, dated 21.11.1978, the Government of Tamil Nadu declared raw rubber of all varieties as "agricultural produce" under Section 2(1) of the Act, and by G.O.Ms.No.1893, dated 04.10.1979, the district was notified as a market area for raw rubber.

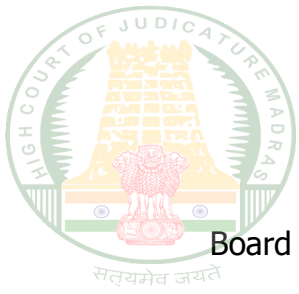


S.A.No.441 of 2003

WEB COPY

4.3. The plaintiff contends that the cultivation and production of rubber are already governed by the Rubber Act, 1947, a Central enactment, under which the Rubber Board regulates registration, licensing, production, replanting, processing, and transport. Being a registered owner under the Central Act and holding permits in Form N1 for inter-State movement, the plaintiff submits that the State has no power to declare rubber as a notified produce under the Tamil Nadu Act. Any such attempt is repugnant to the Central law under Article 254 of the Constitution. Reliance is placed on ***Madan Raj Bhandari v. State of Rajasthan*** (AIR 1970 SC 436) **and** ***State of Orissa v. M.A. Tulloch*** (AIR 1964 SC 1284). It is therefore argued that the Government Orders and consequent levy of market fee are without authority.

4.4. The plaintiff further submits that Section 6 of the Tamil Nadu Act prohibits the use of any place for purchase, sale, storage, or processing of notified produce without a licence, but exempts agriculturists selling their own produce. The plaintiff claims exemption both from licensing and market fee, as it is an agriculturist. Section 18 of the Act empowers the Market Committee to collect fee only on sales taking place within the notified market area. Inter-State despatches without a concluded sale do not attract the levy. According to the plaintiff, its inter-State transactions are made directly with buyers under Rubber



S.A.No.441 of 2003

Board permits, and ownership remains with it until delivery; hence, no fee is payable. It is also argued that any restriction on such transactions would violate Articles 301 to 304 of the Constitution, as inter-State trade is within Parliament's exclusive domain. The plaintiff's grievance is that, despite this legal position, the defendant compelled it to obtain permits and pay market fee on inter-State sales up to 17.03.1987.

5. The short facts of the defendant are as follows:-

5.1. In its written statement, the defendant denies the claim and contends that the Rubber Act, 1947, and the Tamil Nadu Agricultural Produce Markets Act, 1959, operate in distinct fields. The Tamil Nadu Act was enacted to regulate trade in commercial crops, eliminate middlemen, ensure proper weighment and storage, and protect growers. The levy is not a tax but a regulatory fee used for providing market facilities, and quid pro quo in strict terms is not required. The State is competent under Entry 20 of List II to legislate in this field, and rubber was validly notified as an agricultural produce.

5.2. It is further contended that the plaintiff is not merely an agriculturist but also a dealer in rubber, and hence not entitled to exemption under Section 6. Under Section 18, market fee is payable on sales concluded within the notified

Page No.5/18



S.A.No.441 of 2003

area, irrespective of the place of delivery. The plaintiff's plea of inter-State sales

is not acceptable, as the transactions were finalised within the notified area.

Having paid market fee for several years, the plaintiff is estopped from disputing its liability. It is further stated that the civil court, cannot go into the constitutional validity of the statute. The fee is regulatory, not a tax, and the plaintiff's claim for refund and declaration is untenable. By way of additional written statement, the defendant also contends that a civil suit for declaration of exemption is misconceived, as the Act is welfare legislation which cannot be bypassed even by a State undertaking.

6. Before the Trial Court, on the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A-1 to A-381 were marked. On the side of the defendant, D.W.1 was examined and Exs.B-1 to B-41 were marked.

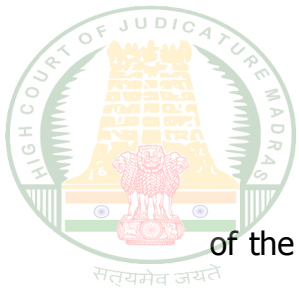
7. The trial Court held that the plaintiff does not have any warehouse or branch outside Kanyakumari district, and in the absence of any proof of sales beyond the district, the plea that goods were transferred elsewhere cannot be accepted. The invoices marked as Ex.A-345 to Ex.A-353 clearly establish that the goods were delivered to the buyers within the district, and the alteration of delivery details in later invoice books supports the defendant's case that the



S.A.No.441 of 2003

sales were completed locally. The testimony of the plaintiff's witness was also found to be contradictory while stating that the price per ton was fixed before collecting advance, he further deposed that the price would be settled only at the time of delivery. The trial Court therefore held that such inconsistent and unsupported evidence makes it clear that all transactions were concluded within Kanyakumari district, and accordingly accepted the defendant's argument that ownership of the goods had passed to the buyers there. On consideration of the entire evidence, it was further held that the plaintiff is a rubber cultivator. However, on the issue of license and transport, the claim that he need not obtain a license from the defendant or that he could transport the rubber produced in his estate without obtaining permission is not acceptable. Since all the sales in question had taken place within the notified market area, the liability to pay market fee squarely arises. As the fee was in fact paid by the plaintiff and receipts were obtained, he is not entitled either to a refund of the same or to the declaratory relief sought in the pleadings.

8. The appellate Court held that since the sales were completed within the notified area, the plaintiff is liable to pay the market fee and cannot claim exemption under the Markets Act. The trial court had rightly decided these issues against the plaintiff and in favour of the defendant. The further claim for refund



S.A.No.441 of 2003

of the fee was also not sustainable before the civil court, and the trial court was correct in rejecting the reliefs sought. Exs.A40 and 41, and Exs.A376 and 378, confirm that the goods were transported to the buyers within Kanyakumari district, with lorry hire and insurance charges borne by the buyers, further supporting the conclusion that ownership passed within the notified area. The plaintiff's claims that sales were completed outside the district or that market fee was not payable were therefore rejected. Accordingly, the appellate Court affirmed the judgment and order of the trial court and dismissed the appeal, without costs.

9. Aggrieved by the concurrent Judgments and Decrees passed by the Courts below, the present Second Appeal has been filed.

10. While admitting the Second Appeal on 28.03.2003, this Court has formulated the following substantial question of law:-

When the activities of the plaintiff stands statutorily exempted under Section 6 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act 27 of 1989, which would mean that the Marketing Committee cannot make any demand on the plaintiff for its operations, is not the plaintiff entitled to get reimbursement of the money collected by the said Marketing Committee in exercise of the power under the said Act 27 of 1989.



S.A.No.441 of 2003

11. The learned counsel would submit that the old Act 23 of 1959 having been repealed and replaced by Act 27 of 1989, the provisions of the new Act govern the present case. He would further submit that the Division Bench of this Court in ***Rajapalayam Paruthi Panchu Sangam Vs. State of Tamil Nadu and others*** (AIR 1996 Madras 29) has held that the permit for transport of agricultural produce is required only for traders and not for producers of agricultural produce. A producer transporting his own produce, whether within or outside the notified area, is not required to obtain a permit, and the objective of the Act is to secure fair prices for producers, not to levy market fee on them.

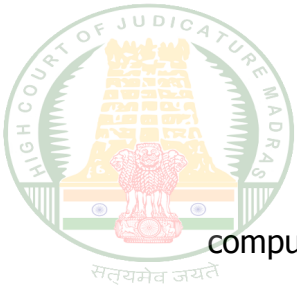
12. The learned counsel would further submit that in the present case, the defendant has admitted that the plaintiff is an agriculturist-producer of raw rubber and that the plaintiff sells only the produce grown on his estate. The plaintiff has produced Exs.A-354 to 357 (agricultural income tax assessment orders) and Exs.A-358 to 360 (Rubber Board registration and other records) to establish beyond doubt that he is a bona fide producer. He would submit that under Section 6 of Act 23 of 1959 (Section 8 of Act 28 of 1989), a producer selling his own produce is not required to obtain a license from the Market Committee, yet the lower courts failed to consider the declaratory relief sought.



S.A.No.441 of 2003

13. The learned counsel would further point out that the collection of market fee of Rs.1,35,703/- by the defendant was only for issuing permits for inter-State transport of raw rubber, as is evident from Exs.A-1 to 146, Exs.A-364 to 367, and letters Ex.A-368, 369, 370, which confirm that the plaintiff was not otherwise liable to pay market fee or obtain permits for transporting his produce. He would draw attention to Exs.A-147 to 344 (Form N1 permits) and Exs.A-345 to 353 (invoice books), showing that the goods were billed from the estate and dispatched by the plaintiff to inter-State destinations, with Ex.A-379 (insurance policy) accompanying the transport. He would submit that Exs.A-371 to 381 clearly establish the mode of sale: advance payment is received, price is fixed based on market rates, invoices are raised at the Divisional Office, and goods are dispatched by the plaintiff through carriers. The purchasers or their agents did not themselves collect the goods, and even the permit application and payment of market fee were made by the plaintiff.

14. The learned counsel would further contend that payment of market fee was made under compulsion since the defendant would not permit the transport without a permit, and such compelled payment amounts to coercion under Section 72 of the Contract Act. Reliance is placed on **AIR 1970 Gujarat 59 and AIR 1990 SC 313**, which recognize that where payment is made under



S.A.No.441 of 2003

compulsion or mistake of law, the payer is entitled to recovery on the principle of unjust enrichment. The plaintiff paid the entire market fee from his own funds and did not recover it from his customers, as evident from Exs.A-1 to 146, Exs.A-345 to 353, and Ex.A-361 (ledger). Consequently, he is entitled to recover the amount along with interest. He would further submit that the courts below failed to appreciate that an agricultural producer can sell his produce on his own account without liability to pay market fee, that the appellant/plaintiff effected inter-State sales while retaining ownership until delivery, and that advance payment does not alter the inter-State nature of the transaction. He would further submit that the defendant has never required the plaintiff to obtain a license under the Act. In view of the above, the learned counsel would urge that the declaratory relief and recovery of market fee with interest ought to have been granted in favour of the appellant/plaintiff and that the courts below erred in failing to do so.

15. Though several adjournments were granted, there was no representation on behalf of the respondent. Considering the pendency of the case since 2003 and the respondent's continued non-appearance, this Court is constrained to proceed with the hearing and has heard the arguments of the learned counsel, having perused the materials available on record, including the written statement filed by the respondent and the submissions made by the



S.A.No.441 of 2003

counsel appearing for the respondent before the trial court.

WEB COPY

16. It is an admitted fact that the appellant company, being a producer of rubber, is operating within the area notified under the Tamil Nadu Agricultural Produce Markets Act, 1959, and its successor Act 27 of 1989. The plantations are situated in Kanyakumari District, which was declared a notified market area for raw rubber through Government Orders dated 21.11.1978 (G.O.Ms.No.1850) and 04.10.1979 (G.O.Ms.No.1893). The appellant argues that its sales of raw rubber were made for inter-State purposes, that invoices were issued in advance, and that the actual delivery of goods took place outside the notified area. It is, therefore, contended that the market fee levied by the defendant is not legally valid.

17. According to the defendant, as stated in the written statement and reiterated by the learned counsel before the trial court, the appellant's transactions were concluded within the notified area itself. The invoices reveal that, although advance payments were collected and invoices prepared at the appellant's Divisional Office, the actual transfer of ownership and delivery of goods took place within the district. The trial Court, upon examining these invoices, observed that subsequent alterations in the delivery details

Page No.12/18



S.A.No.441 of 2003

corroborated the position that the sales were effected locally. Moreover, the inconsistencies in the testimony of the appellant's witnesses regarding price fixation and advance payments further weakened their claim of inter-State sales.

18. After examining both oral and documentary evidence, the trial Court held that the appellant is a rubber cultivator and recognized the statutory character of its operations. However, the trial Court found that the appellant was not entitled to exemption from payment of market fee, since the sales were completed within the notified area. The Court also held that the claim of exemption from obtaining a licence for transport or sale was untenable. As the market fee had already been paid and receipts were issued, the claim for refund was rejected.

19. On appeal, the appellate Court, reappreciating the entire evidence, concurred with the findings of the trial Court. The records clearly demonstrated that the goods were delivered to the buyers within Kanyakumari District, and the buyers themselves bore the transport and insurance costs. This made it clear that ownership and risk had passed to the buyers within the notified area. Therefore, the appeal was dismissed.



S.A.No.441 of 2003

WEB COPY

20. As far as the substantial question of law is concerned, it is to be noted that a close reading of the relevant statutory provisions, namely Section 6 of the 1959 Act and Section 8 of the 1987 Act (Act 27 of 1989), shows that they deal with licensing and exemptions applicable to producers in a notified market area. Section 6 exempts producers from taking a licence for selling their own produce, subject to Government withdrawal, but it does not exempt them from payment of market fee if the sale takes place within the notified area. Similarly, the Amended Section 8 (Act 27 of 1989) allows exemption from licensing, but not from market fee unless such exemption is specifically granted. At this juncture, the relevant provisions are reproduced below:

*"Section 6 of the Tamil Nadu Agricultural Produce Markets Act, 1959
(Trading in agricultural produce in notified area):-*

(1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase or sale, storage, weighment, pressing or processing of any notified agricultural produce, except under and in accordance with the condition of a license granted to him by the market committee

Provided that the market committee may except from the provisions of sub-section any person who carries on the business of purchasing or selling any notified agricultural produce in any quantity not exceeding that prescribed:

Provided further that a producer selling his notified agricultural produce which has been grown, reared or produced by him, or a cooperative marketing



WEB COPY



S.A.No.441 of 2003

society selling notified agricultural produce which has been grown, reared or produced by any of its members, shall be exempt from the provisions of this sub-section, but the Government may withdraw for such period as may be prescribed such exemption in respect of any such producer or cooperative marketing society or all of them impose such penalty as may be prescribed.

Section 8 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, (Trading in Agricultural produce in notified area) :-

(1) No person shall, within a notified area. -

(a) Set up, establish or use, or continue or allow to be continued, any place for the purchase or sale, storage, weighing, measurement or processing of any notified agricultural produce, or

(b) operate as a broker, weighman, measurer, trader, warehouseman or in any other capacity in relation to the buying and selling of any notified agricultural produce.

except under, and in accordance with the conditions of, a license granted to him by the market committee:

Provided that the market committee may exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling, storing, weighing, measuring or processing any notified agricultural produce in any quantity not exceeding such quantity as may be prescribed.

Provided further that a producer selling, storing, weighing, measuring or processing any notified agricultural produce which has been grown, reared or produced by him, or a cooperative marketing society selling, storing, weighing, measuring or processing, any notified agricultural produce which has been grown, reared, or produced by any of its members, shall be exempt from the provisions of this sub-section, by the Government may withdraw, for such period as may be prescribed, such exemption in respect of any such producer or co-operative marketing society or all of them."

The language of both provisions makes it clear that transactions completed within the notified area attract market fee unless a valid exemption is shown. In

Page No.15/18



S.A.No.441 of 2003

this case, the appellant has not produced any Government notification or Market Committee order granting exemption from market fee. The invoices prove that prices were fixed, advances were collected, and bills were raised at the Divisional Office within the district. The appellant's lack of any branch or godown outside the district further supports the finding that ownership passed within the notified area, even though the goods were later transported to buyers outside the State.

21. The trial Court carefully analysed the oral testimony and found material contradictions in the evidence of the P.Ws. regarding price fixation and advance payments. While some witnesses stated that the prices were fixed at the time of delivery, the invoices on record showed that billing had been done in advance. This contradiction, supported by the documentary evidence, led the Court to hold that legal ownership and completion of the sale had taken place within the notified area. The appellate Court concurred with this finding, holding that the contention that the sale was effected only upon delivery was untenable. It also recorded the admission of the plaintiff that no branch was in existence. Consequently, the appellate Court affirmed that the trial Court, having properly appreciated the evidence, had rightly rejected the plaintiff's case, which required no interference. Further, both the Courts below rightly interpreted the facts and held that the transactions were liable to market fee, and the appellant failed to



S.A.No.441 of 2003

establish any right to exemption.

WEB COPY

22. The substantial question of law is therefore answered against the appellant. The appellant is liable to pay market fee for sales effected within the notified area, and its claim for exemption or refund cannot be accepted. The concurrent judgments of the Courts below, based on proper appreciation of evidence, are affirmed.

23. In conclusion, the Second Appeal has no merit and is dismissed. There will be no order as to costs.

28/ 08/2025

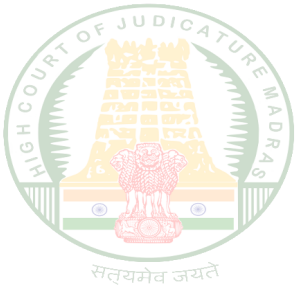
Index: Yes/No.

Speaking Order : Yes/No.

Neutral Citation Case : Yes/No.

r n s

Page No.17/18



WEB COPY



S.A.No.441 of 2003

P.VELMURUGAN, J.

r n s

To

1. The Principal District Court, Kanyakumari District at Nagercoil,
2. The Principal Subordinate Judge at Nagercoil.

Pre-Delivery Judgment made in
S.A.No.441 of 2003

28/ 08 /2025

Page No.18/18