
(1987) 04 KAR CK 0004
In the Karnataka High Court
Case No : C.R.P. No's. 875 to 899 of 1987

Agricultural Produce Market Committee	APPELLANT
Vs	
Siddeshwara Industries	RESPONDENT

Date of Decision : 16-04-1987

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 114, 115, 116, 132, 132 (2)

Citation : (1987) ILR (Kar) 1989

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; T.S. Ramachandra, Jayakumar S. Patil, M. Raviprakash, T. V. Ananthamurthy and Vasan Associates, for the Respondent

Final Decision : Allowed

Judgement

Kulkarni, J.—All the Advocates submitted that the revisions may be heard finally on merits. Accordingly arguments on the final merits of the revisions are heard and they are disposed of.

2. These revisions by the plaintiff in O.S. Nos. 127,128,130, 131, 133, 134, 135, 136, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147,148, 150, 154, 155, 156 and 157 of 1985, are directed against the common order dated 30 7-1986 passed by the Principal Munsiff, Chitradurga, holding that the jurisdiction of the Civil Courts in such cases is impliedly barred u/s 9 of the CPC and consequently dismissing all these suits and counter claims in O.S No. 135 and 157 of 1985 as not maintainable.

3. As all these revisions involve common questions of law relating to the jurisdiction of the Civil Courts to entertain and try such suits and relating to the question as to whether such suits are maintainable in the Civil Court or not, they are clubbed together with the consent of the Advocates and they are disposed of by a common Judgment.

4. These suits have been instituted by the plaintiff Agricultural Produce Market Committee, Challakere, who is common in all the suits, for recovery of arrears of market fees due from the defendants in these various suits.

5. Initially before the amendment Act of 1980 the market fee was being collected from the buyers of the agricultural produce in the market area of the plaintiff at the rate of one per cent u/s 65(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. The Karnataka State by the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 1980, amended the various provisions of the said Act including Section 65 whereby it increased the rate of the market fee from one per cent to two per cent on the agricultural produce purchased by the buyers. The defendants in all these suits who are the buyers, felt aggrieved by the increase of the market fee from one per cent to two per cent. The defendants being dissatisfied with the increase in the market fee from one per cent to two per cent, approached this Court with various Writ Petitions challenging the constitutional validity of Section 65(2) of the Act and also the raising of the market fee from one per cent to two per cent. In the said Writ Petitions, the defendants in these suits had obtained an interim stay restraining the plaintiff-Market Committee from collecting the market fee in excess of one per cent. This Court by its Judgment dated 25-1-1982 upheld the revision of the market fee at 2 per cent as provided by the Amendment Act, and dismissed the Writ Petitions. The defendants being aggrieved by the order passed by this Court in various Writ Petitions, approached the Supreme Court. The Supreme Court by its Order dated 10-1-1983 did not grant stay regarding recovery of the market fee at 2 per cent. However as regards the arrears of market fee, due from the defendants from 12-7-1979 the supreme Court granted two equal instalments for the payment of the same and directed the defendants to pay the first instalment of arrears within four months from 10-1-1983. The defendants failed to pay the said arrears. Hence the Agricultural Produce Market Committee, Challakere, filed these suits for recovery of the market fee.

6. The defendants in the said various suits contended that they were not due any sum to the Market Committee Challakere, at all and that the amount claimed was not due by way of market fee. They further contended that the Civil Court had no jurisdiction to entertain the suits filed for the recovery of the market fee or the arrears thereof.

7. The Trial Court treated the question of jurisdiction as a preliminary issue and after hearing the parties and their Advocates came to the conclusion that the jurisdiction of the Civil Courts were barred by implication as per Section 132 read with Section 126 and other provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and as a consequence of this conclusion it dismissed the suits. Hence these revisions by the plaintiff in the various suits.

8. The main arguments were advanced by the Learned Counsel Shri T. S. Ramachandra appearing for the respondent in C.R.P. No. 899/87, Shri Jayakumar Patil and Shri Ravi Prakash and other Advocates appearing for the respondents in

the various revisions, adopted the arguments advanced by the Learned Counsel Shri Ramachandra.

9. The Learned Counsel Shri Ramachandra referred me to Section 65 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. It reads as :

"65(2): The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area at such rate as may be specified in the bye-laws (which shall not be more than two rupees per one hundred rupees for the value of such produce brought except in case of live stock where the market fee shall not be more than two rupees per head of cattle other than sheep or goat and in the case of sheep or goat, shall not be more than twenty live paise per head) in such manner and at such time as may be specified in the bye laws.

(2A) The Market fee payable under this section shall be realised as follows, viz.,

(i) if the produce is sold through a commission agent the commission agent shall realise the market fee from the purchaser and shall be liable to pay the same to the Committee.

(ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee ;

(ii) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the Committee.

(iii) if the produce is purchased by a trader from another trader, the trader, selling the produce shall realise it from the purchaser and shall be liable to pay the market fee to the committee; and

(iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee."

10. Shri Ramachandra contended that the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was a special Act and that the levy of the market fee was a special creature created by the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and that therefore the procedure laid down by the special Act for the recovery of the amount was alone to be followed and that, it is only the authorities constituted under the said special Act that alone would have the jurisdiction and that the ordinary Civil Court would not have the jurisdiction to entertain the suits for the recovery of the market fee or the arrears thereon.

11. Section 132 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, reads as :

"Recovery of sums due to market committee or_ Board :

(1) Any sum due to a market committee or the Board on account of any charge,

costs, expenses, fees, rent or any other account under the provisions of this Act or any rule, regulation or bye-law made thereunder shall be recoverable from the person from whom such sum is due, in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is due to the market committee or the Board within the meaning of Sub-section (1), it shall be referred to the Chief Marketing Officer or an officer subordinate to him authorised by him, and the Chief Marketing Officer or the Authorised Officer shall after such enquiry as he deems fit, and after giving to the person from whom the sum is alleged to be due an opportunity of being heard, decide the question ; and his decision shall be final and shall not be called in question in any Court or before any other authority."

12. According to the learned Counsel Shri Ramachandra, the defendants in these suits have raised a contention that the amounts claimed in the various suits were not due from them at all and that were not due in any sum by way of market fee to the Market Committee. Thus, according to him, in view of this contention, a question had arisen in the suits as to whether any sum is due to the Market Committee within the meaning of sub Section (1) of Section 132. According to the learned Counsel Shri Ramachandra when such a question has arisen, it will have to be referred to the Chief Marketing Officer or any other Officer authorised by the Chief Marketing Officer and he alone after issuing notice to the defendants and after hearing them, shall have to decide the question. According to him, such a decision that may be rendered by the Chief Marketing Officer or an Authorised Officer shall be final and shall not be called in question in any Court or before any other authority. For that purpose he relied on *The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.*, it has been stated as :-

"In the present case what is contended is not that any provision in the Act had been ignored by the assessing authority but that Section 72 thereof has not been properly interpreted by that authority. If the provisions of the Act form a precise, self-contained code, as we hold them to be, the assessee cannot be permitted to challenge the levy on the ground that the levy imposed on him is excessive. It must be remembered that the levy under the Act is imposed by a special law which law also provides its own remedies for correcting the errors that may be committed by the assessing authority. Where a liability not existing previously is created by a statute which statute at the same time provides a special or particular remedy for correcting any mistake that may occur in its enforcement the aggrieved party must adopt the form of remedy given by the statute and no other. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, our present Chief Justice speaking for the Court has formulated the circumstances under which the jurisdiction of the Civil Court can be invoked in the matter of a levy of tax. Therein this Court has laid down that where the statute gives a finality to the orders of the special tribunals, the Civil Courts' jurisdiction must be held to be excluded, if there is adequate remedy to do what

the Civil Court would normally do in a suit. It is further laid down in that case that questions of the correctness of the assessment apart from their constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authority are declared final or there is an express prohibition under the particular Act. We do not think that the Civil Courts have jurisdiction to examine the correctness of the computation of the net profits made by the authorities under the Act."

It was a case arising under the Bengal Cess Act. Under the said Act, the mode of computation of the net profits was left to the final decision of the authority mentioned therein and if there was any mistake committed in computing, a procedure had been laid down in the said Act for rectification of the same. The said Act was a precise and self-contained Act laying down that the order of the authority concerned was final and if there was any mistake committed by him, the authority concerned under the Act alone should be approached and thereby the jurisdiction of the Court was ousted. Therefore the said Act gave a finality to the orders of the Special Tribunals and therefore the jurisdiction of the Civil Courts stood excluded.

13. He then relied on *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, . The Supreme Court considered all its earlier decisions on the aspect and Said down the following propositions :-

"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts" jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

Therefore the said decision makes it absolutely clear that whenever a special statute bars the jurisdiction of the Civil Court by an express provision or by implication and makes the decision of such authority not liable to be questioned in any Civil Court, then the jurisdiction of the Civil Court would be excluded. If there is any express bar created in the Special Act or if the Special Act creates a

Special Tribunal and makes its decision final and not liable to be questioned in any Civil Court at all then the jurisdiction of the Civil Court would stand barred. This is the sum and substance laid down in the said *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, .

14. Relying on Section 132(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, the Learned Counsel Shri Ramachandra contended that in these cases the defendants had contended that they were not due in any sum by way of market fee to the Marketing Committee and that the amounts claimed were not correct. Thus, according to him, the question as to whether the sum claimed in the suits is due to the Market Committee within the meaning of Subsection (1) had arisen in the present cases and therefore the only thing is that the matter had to be referred by the Market Committee to the Chief Marketing Officer or the Officer authorised by him and it was the exclusive jurisdiction of the Chief Marketing Officer or the Authorised Officer to issue notice to the defendants and to make enquiries after hearing them and the decision of such Chief Marketing Officer or the Authorised Officer shall be final and cannot be called in question in any Court or before any other authority. Thus in short he contended that looking to the dispute raised by the defendants, the question has to be referred to the Chief Marketing Officer and it was within the exclusive jurisdiction of the Chief Marketing Officer to decide that question. Therefore, according to him, the jurisdiction of the Civil Courts in the present suits was barred. On the other hand, the learned Counsel Shri Sridharan for the plaintiff urged that Section 132(1) read along with Section 132(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, only prescribed one of the modes by which the market fee has to be recovered. According to Shri Sridharan, there was nothing in Section 132 to indicate that the jurisdiction of the Civil Court was excluded either expressly or by implication. According to him, the Market Committee has got a right to approach the Civil Court to recover the dues due to it by resorting to Section 9 of the Civil Procedure Code. Section 9 of the CPC reads as : --

"The Court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

A plain reading of Section 9 of the CPC makes it clear that the Civil Court has got the jurisdiction to try all suits of a civil nature unless its jurisdiction is taken away either expressly or by implication. Therefore the important question that would arise in these cases is whether the jurisdiction of the Civil Courts is barred by expressly or by implication in such matters. Therefore, the question that has to be decided in these cases is whether the jurisdiction of the Civil Courts has been ousted expressly or by necessary implication in such matters. According to him there is nothing in the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, to exclude the jurisdiction of the Court either expressly or by implication. The Learned Counsel Shri Sridharan submitted that the Market

Committee may resort to Section 132(1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, and may recover it as arrears of land revenue. According to him, the second mode is one prescribed by Sections 114 to 116 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, by approaching the Magistrate. According to him the third mode is to file a suit in ordinary Civil Court for the recovery of the same.

15. So far as the relief prescribed by Sections 114, 115 and 116 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, is concerned, the Market Committee has got a right to move the Magistrate to take action against the person concerned who has failed to pay the market fee. Under those Sections, the Magistrate has been empowered to impose a fine on such a person guilty of the offence of non payment of the market fee and he has been also given a right to recover the amount of the market fee due to the Market Committee. This is only one of the modes prescribed by the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, for the recovery of the money. We are not concerned in this case with the procedure prescribed by Sections 114 to 116.

16. We are concerned in this case with the mode of recovery prescribed by Section 132. Section 132 has been extracted in detail above by me. If there is anything in Section 132 to indicate the exclusion of the jurisdiction of the Civil Court in such matters even by implication, then the Civil Court would not have the jurisdiction to entertain the suit. If the wordings used in Section 132 (1) and (2) do not exclude the jurisdiction of the Civil Courts in such matters even by implication, then the party has got a right under the general law of the land and u/s 9 of the C.P.C. to maintain the suit for the recovery of the market fee.

17. I have already adverted to the strenuous arguments advanced by Shri Ramachandra in the matter. The gist of his arguments is, that as the party had disputed the quantum of the money due to the Market Committee and as the party had contended that he did not owe any money to the Market Committee, a dispute arose within the meaning of Section 132 (2) and if such a dispute arose, then the Market Committee had no other alternative but to refer the matter to the Chief Marketing Officer and it was only the exclusive jurisdiction of the Chief Marketing officer to issue the notice and hear the parties and then pass the final order. On the basis of these wordings used in Section 132 (2), Shri Ramachandra contended that the jurisdiction of the Civil Court was excluded in such cases by implication. The rulings referred to by him in such cases have been adverted to above in great detail by me above.

18. A useful reference can be made to the ruling in *Khadi and Village Industries Commission v. N.S. Pai* 1976 (1) KLJ 151 which was rendered by late Govinda Bhat, CJ and Venkatachaliah J. Section 19B of the Khadi and Village Industries Commission Act came up for interpretation in the said case. Section 19B of the said Act reads as :-

"(1) Any sum payable to the Commission under any agreement express or

implied, or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Commission within the meaning of Sub-section (1), it shall be referred to a Tribunal constituted by the Central Government for the purpose which shall, after making such inquiry as it may deem fit and after giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question ; and the decision of the Tribunal shall be final and shall not be called in question by any Court or other authority."

The rest is not material.

19. Section 19B(2) of the Khadi and Village Industries Commission Act is in pari materia with Section 132(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. It has been laid down in the said decision on page 155 as :-

"Consistent with the objects and purposes of the Act and with a view to providing a speedy procedure for recovery of sums payable to the Commission, provision is made under the Act for recovery of the sums payable to the Commission in the same manner as area's of land revenue. An examination of the provisions of the Act does not disclose that Section 19B envisages the Tribunal contemplated by it as a special and exclusive forum for the enforcement of any right specifically conferred by the Act."

In the said Khadi and Village Industries Commission's case 1976(1) KLJ 151, a reference has been made to *Kamaraja Pandiya Naicker v. Secretary of State* (1935) 69 MLJ 698. It reads as :-

"The ordinary rule is that where a person's liberty or pro-party is interfered with, under colour of statutory powers, he has a cause of action which the Civil Courts are bound to entertain unless a bar to such entertainment has been enacted expressly or atleast by necessary implication. Where there is no question of a common law right and an infringement thereof, the position may be different, for in such cases, the ordinary Courts had prima facie no jurisdiction and therefore there is no question of any ouster of their jurisdiction."

A reference is made to AIR 1940 105 (Privy Council) in the said decision. After reviewing the case law on the point this Court held in the said Khadi and Village Industries Commission's case 1976(1) KLJ 151 in para II as :-

"What emerges from these enunciations is the principle that if a right is newly created by the statute and a special procedure is prescribed by the statute itself for its enforcement and a finality to that procedure is statutorily intended, then the jurisdiction of Courts stand impliedly barred in respect of the matter and that following as a corollary from that principle, the rule that a right created by statute has to be enforced in the manner prescribed by the statute has no application in respect of rights which are not created by but exist independently

of the statute."

The learned Counsel Shri Ramachandra relied on this passage and contended that the levy of market fee had been created by the Agricultural Produce Marketing (Regulation) Act, 1966, and it was created under the special Act viz., Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and that therefore the procedure prescribed by the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, for the recovery of such special fee must alone be followed and the jurisdiction of the Civil Courts cannot be pressed into service in such cases. In short, Shri Ramachandra contended that Section 132 authorised only the Chief Marketing Officer to decide the disputes and made his decision final. Thus according to him, the jurisdiction of the Civil Court was barred by implication. Section 132 (1) states that the amount of market fee shall be recovered as arrears of land revenue. If the Market Committee wants to recover the arrears of the market fee as arrears of land revenue which is one of the modes for the recovery of the amounts due, then it is bound to follow the procedure laid down by Section 132 (2) of the Karnataka Agricultural Produce Marketing (Regulation) Act 1966. But if the Market Committee wants to follow any other procedure for recovering the arrears of market fee, I do not think that there is anything in Section 132 (2) to exclude the jurisdiction of the Civil Courts. The view that I have expressed above, gains strength from the discussion on page 157 in para 12 of the Khadi and Village Industries Commission's case 1976(1) KLJ 151. Para 12 of the said Khadi and Village Industries Commission's case 1976(1) KLJ 151 reads as :-

"Turning to the present case, we are of the opinion that Section 19B consistently with the objects and purposes of the Act and with a view to protecting the financial interests of the Commission provides for a speedier and cheaper procedure enabling enforcement even of rights arising under the general law respecting sums payable to the Commission, in the same manner as arrears of land revenue. The Commission at its option may make an election to resort to this special procedure which, in our opinion, is merely enabling and not exclusively in nature. Sub-section (2) of Section 19B requires that if any question arises whether a sum is payable to the Commission "within the meaning of Sub-section (1)" the same shall be referred to the Tribunal. The expression "within the meaning of sub Section (1)" occurring in Sub-section (2) of Section 19B, renders the obligation to so refer an incident and concomitant of and ancillary to the provision enabling the sum payable to be recovered as an arrear of land revenue. Accordingly, in our opinion, reference to Tribunal contemplated in Sub-section (2) is necessarily confined to cases where the sum due is elected to be recovered as an arrear of land revenue under Sub-section (1) of Section 19B. The special procedure envisaged in Sub-sections (2), (3) and (4) of Section 19B and Rules 25A and 25B is confined to cases where appellant elects to adopt the procedure in Section 19B(1) of the Act and not otherwise. Section 19B does not bar a suit under the general law to enforce the same right if the appellant elects to do so. Where the Commission does not elect to have recourse to the special

procedure under the Act, but chooses to seek the remedy in a Court of law any sum decreed by the Civil Court cannot be recovered as an arrear of land revenue, such decree has to be executed like any other decree."

(underlining is mine)

Therefore the Division Bench ruling throws ample light on this aspect of the matter. The wordings used in Section 132 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, are akin to the wordings in Section 19B(1) of the Khadi and Village Industries Commission Act. The wordings used in Section 19B(2) of the Khadi and Village Industries Commission Act are similar to the wordings used in Section 132 (2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Therefore where the party disputes the quantum of the amount and if the Market Committee wants to recover that amount as arrears of land revenue, then alone Section 132 (2) prescribes that it should be referred to the Chief Marketing Officer and he shall decide the same. But if the Market Committee does not choose to recover the same as arrears of land revenue, then the provisions in Section 132(2) cannot be taken as excluding the ordinary jurisdiction of the Civil Court in matters of recovery of money. Therefore the argument of the learned Counsel Shri Ramachandra that Section 132 (2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1965, bars totally the ordinary jurisdiction of the Civil Court in such matters, does not appear to be correct.

20. Thus in view of the clear decision of this Court found in para 12 of the Khadi and Village Industries Commission's case and in view of the similarity of the language found in Section 19B of the Khadi and Village Industries Commission Act and Section 132(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act and in view of the fact that the suits have been filed in the ordinary Civil Court for the recovery of the money due, I do not think that the jurisdiction of the Civil Courts would be barred in such cases. If I may say so, the Court below has misread the said Khadi and Village Industries Commission's case and has not bestowed proper attention to the principle laid down in para 12 of the said case. It has only referred to para 11 of the said Khadi and Village Industries Commission's ruling. It has not referred to para 12. Had the lower Court read not only para 11 but also para 12, I think that it would not have come to the conclusion that the suits filed in the Civil Court were not maintainable.

21. The learned Counsel Shri Sridharan referred me to Raja Jagdish Pratap Sahi Vs. State of Uttar Pradesh, . It was a case where the arrears of agricultural income tax due from an assessee was sought to be recovered. It was also canvassed in the said suit that as the said U.P. Act provided a special procedure for the recovery of the same, the Civil Court had no jurisdiction. The Supreme Court has stated as :-

"A suit by the State of U.P. for recovery of Agricultural Income Tax due from an assessee under the U.P. Agricultural Income Tax Act is maintainable. The

summary remedy as provided in Section 32 of the U.P. Act is not the only remedy for recovery of the aforesaid tax.

The failure of the assessee to make payment of tax within time on receipt of notice of demand creates a debt in favour of the State. This debt can be recovered by the State in any of the modes under the general law."

22. As already indicated above by me, the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, has provided some modes for the recovery of the market fee. One mode is to recover them as arrears of land revenue and the second one is by filing a complaint under Sections 114 to 116. These two remedies are not exhaustive. These two remedies are in addition to the one available to the Market Committee under the general law of the land. It is open to the Market Committee to seek the remedy available to it under the general law or to seek the remedy available to it under Sections 114 to 116 or to seek the remedy prescribed by Section 132(1) and (2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. In these cases, the Market Committee has chosen to recover the amount due by way of market fee from the defendants by filing various suits against the defendants. This remedy, in my opinion, as already indicated above and for the reasons already given above, is available to the plaintiff Market Committee in these cases. Thus the jurisdiction of the Civil Court to entertain suits to recover the market fee is not ousted. Therefore the Court below committed an error in holding that the suits filed for the recovery of the market fee were not maintainable or triable in an ordinary Civil Court. Therefore, the finding recorded by the Munsiff cannot be sustained and it is set aside. It is held that the Civil Court has got the jurisdiction to entertain the suits for the recovery of the market fee due under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966.

23. The next question raised is that revisions u/s 115 C.P.C are not maintainable in such cases- The Trial Court has passed the following order :-

"The right sought to be enforced by the plaintiff in these suits being statutorily created by virtue of Section 65 of the Act, and a special mode of enforcement of the said right having been provided u/s 132 of the Agricultural Produce Marketing Committee Regulation Act, 1966, the jurisdiction of the Civil Court is impliedly barred u/s 9 C.P.C.

Hence the suits filed by the plaintiff Committee as well as the counter claims in O.S. No. 135/85 and 157/85 are all hereby dismissed as not maintainable."

The lower Court dismissed the suits only on account of the finding recorded by it that the Civil Court had no jurisdiction to entertain such suits and the jurisdiction of the Civil Courts in such matters was barred by implication by virtue of Section 132(1)(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Therefore it is only on the strength of this finding that the lower Court proceeded to pass the consequential resultant order viz., the dismissal of the suits.

24. Shri Patil referred me to *Albert D'Souza v. The Divisional Controller and Deputy General Manager, MSRTC* 1974 (2) Mys. LJ. 51. It was a case where the lower Court rejected the plaint under Order 7 Rule 11 C.P.C. The definition of the word "decree" given by Section 2 of the C.P.C. indicates that the rejection of the plaint amounts to a "decree". The word "decree" has been defined by Section 2(2) C.P.C. It reads as :

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include :

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default."

25. As the definition of the decree given by the CPC included the order of rejection of the plaint and as an appeal against the order rejecting the plaint had been provided, this Court held in the said *Albert D'Souza's* case that the High Court cannot exercise its jurisdiction u/s 115 C.P.C. But in these cases the suits had been dismissed only on the ground that the Civil Court has no jurisdiction to entertain the suits of the present nature. The dismissal of the suits is only a corollary or a consequence of the said finding recorded above. If the said finding on the basis of which the dismissal is based, is not sustainable in law, the resultant order of dismissing the suits will have to be also set aside by this Court. The Order passed by the Court below and impugned in all these revisions, does not amount to a decree within the meaning of Section 2(2) C.P.C. The decree means formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. The order passed by the Court below, does not adjudicate the rights of the parties finally at all. The only thing that has been decided by the Court below is that it has no jurisdiction. Therefore this finding does not result in the final adjudication of the rights of the parties and therefore it does not amount to a decree. Therefore the argument of the learned Counsel Shri Patil that only an appeal is permissible under such circumstances, cannot be accepted.

26. A similar matter came up for consideration in *Bhupender Kamal Vs. New Delhi Municipal Committee*, . It has been stated in the said case as :-

"The plaintiff filed a suit against Delhi Municipal Committee for restraining the latter from recovering the suit amount. He also filed an application under Order 39 Rules 1 and 2 for grant of injunction. The application was dismissed and hence the disputed amount was deposited. The plaintiff was permitted to amend the suit to one for declaration and injunction. One of the issues in the suit was "has the suit become infructuous by payment of tax due ?" This was decided as a preliminary issue and it WAS against the plaintiff find the suit was held to be non

maintainable. The plaintiff filed a revision.

Held, that the revision was maintainable. *Siri Krishan Bhardwaj Vs. Manohar Lal Gupta and Another*, , Applied.

Under the provisions of Section 115 a revision petition against such an order as is impugned is maintainable without attacking the consequential decree which decree would have to be reversed or modified if the order is revised.

In the amended CPC under Order 14 Rule 2, only two categories of issues can be decided as preliminary issue. These issues of law relate to (a) the jurisdiction of the Court or (b) a bar to the suit created by any law for the time being in force. Apart from those issues, no other issue can be tried as preliminary issue by the Court. The issue, which has been decided as a preliminary issue in the instant case does not fall in the category of the preliminary issues which are permissible to be tried as such under the provisions of Order 14. The jurisdiction vested in the Trial Court has not been properly exercised while deciding the said issue. The order, deciding that issue, if allowed, would occasion a failure of justice and in any case cause irreparable injury to the petitioners."

Therefore, under these circumstances, the argument of the learned Counsel Shri Patil that the revision u/s 115 C.P.C. is not maintainable in such cases and that an appeal only is competent, is rejected.

27. Then he relied on Order 43 Rule 1A C.P.C. in support of his contention that only an appeal was maintainable under such circumstances. It reads as :-

"Right to challenge non-appeasable orders in appeal against decrees :

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced."

Rule 1A of Order 43 C.P.C. does not apply to the facts of the case at all. If any interim order is passed and if it is not challenged by way of revision or appeal and if ultimately an appeal is filed against the decree, then the interim order passed even though not questioned by filing an appeal or revision, could be attacked in the course of that appeal. Therefore, Rule 1A of Order 43 C.P.C. does not apply to the facts of the present cases. Therefore, under these circumstances, the revisions in the present cases are maintainable.

28. In the result, the common order impugned in all these revisions, is set aside. All these revisions are allowed. The matters are sent back to the Court below for disposal according to law. The Court below should issue Court notices to the parties or their local Advocates and should thereafter proceed with the suits.