

(2016) 01 AP CK 0022

In the Andhra Pradesh High Court

Case No : W.A. No. 1323 of 2003, W.P. Nos. 6364 of 2001, 5060 of 2004 and 7822 of 2008

Bhattiprolu Gram Panchayat and Others

APPELLANT

Vs

The District Collector (Panchayat Wing) Guntur and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12, Section 2, Section 29, Section 29(1), Section 30, Section 4, Section 4(3)(a), Section 4(4)

Andhra Pradesh Panchayat Raj Act, 1994 — Section 104, Section 105, S

Citation : (2016) 11 ADJ 14 : (2016) AIR(Hyderabad) 92 : (2016) 2 ALT 294 : (2016) 2 AndhLD 214 : (2016) 2 KLT 18 : (2016) 5 RCRCivil 854

Hon'ble Judges : D.B. Bhosale, Actg. C.J., S.V. Bhatt and U. Durga Prasad Rao, JJ.

Bench : Full Bench

Advocate : P.V.A. Padmanabham, for the Appellant; The Advocate General and Chintapalli Srinivas, for the Respondent

Final Decision : Disposed Off

Judgement

D.B. Bhosale, Actg. C.J.

1. The question referred to this Bench is whether the provisions contained in Sections 104, 105 and 106 of the A.P. Panchayat Raj Act, 1994, have an overriding effect on the provisions of A.P. (Agricultural Produce and Livestock) Markets Act, 1966, irrespective of non obstante clause contained in Section 30 thereof in view of the provisions of Article 243-G of the Constitution of India?.

2. The question was referred by the Division Bench presided over by the then Chief Justice in Writ Appeal No. 1323 of 2003 vide order dated 18.08.2003.

3. The appellants writ petition was dismissed by learned single Judge, placing reliance upon the judgments of two Division Benches of this Court in Agricultural Market Committee, Shankerpally v. Gram Panchayat, Shankerpally, R.R. District

and another , 1997 (5) ALD 798 (D.B.) and unreported judgment in W.P. No. 16733 of 1985, in Agricultural Market Committee, Anantapur, v. Gram Panchayat, Samarladdodi decided on 26.09.2001. Learned counsel for the appellant, in support, had, however, placed reliance upon another judgment of this Court in Velpur Gram Panchayat v. Assistant Director of Marketing, Samaladoddi AIR 1988 AP 142. Reliance on this judgment was, however, turned down on the ground that against the said decision, appeal was carried before the Division Bench, which by its order dated 27.09.2001 passed in W.A. No. 1211 of 1997 (in Assistant Director of Marketing, Guntur v. Velpur Gram Panchayat, Samaladoddi) set aside the same by placing reliance upon the decision dated 26.09.2001 in W.P. No. 16733 of 1985. The submission of the learned counsel for the appellant was that without adverting to the reasons, which learned single Judge had assigned in decision rendered in Velpur Gram Panchayat (supra), the Division Bench proceeded to dispose of the appeal arising out of the said decision by placing reliance upon its decision in W.P. No. 16733 of 1985. It was contended that A.P. Panchayat Raj Act, 1994, (for short P.R. Act) was enacted pursuant to the powers conferred under Article 243-G of Constitution of India and will have an overriding effect on the provisions of the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 (for short Markets Act) and since there is a specific provision contained in Section 104 read with 105 of the P.R. Act authorizing/enabling the Gram Panchayat to levy fee as mentioned in Section 104, the said provision must give way to the provisions contained in Markets Act.

4. The Division Bench presided over by the then Chief Justice in the reference order 18.08.2003 observed that since the reasons on which the writ petition was allowed by learned single Judge of this Court in Velpur Gram Panchayat (supra) were not noticed when the said decision was set aside on 27.09.2001 placing reliance upon the decision in W.P. No. 16733 of 1985, the questions raised in this appeal deserve to be referred to a Larger Bench. Thus, the question was referred for a decision to the Larger Bench.

5. The facts leading to the question that falls for our consideration, in brief, are that the appellant-Gram Panchayat had filed a writ petition assailing action of the Agricultural Marketing Department, proposing to shift public market from the control of petitioner-Gram Panchayat and locate the same in the Market Yard and thereby allegedly obstructing business activity at the market maintained by the Gram Panchayat. The Gram Panchayat, which, at the relevant time, was having a total population of about 20000, had provided a public market in the village since more than 50 years for sale of vegetables, fruits and various other agricultural produces including livestock to cater to the needs of villagers and other surrounding areas. The appellant-Gram Panchayat claims that they had taken various measures to improve the conditions of the market from time to time and had allocated a sum of Rs. 3,00,000/- vide resolution dated 28.06.2002 for its further improvement. It is the case of Gram Panchayat that as per the P.R. Act, the Gram Panchayat is obliged to provide a space for use as public market and they are empowered to levy one or more fees in any public market at such rates

as they may think fit. Thus, according to the Gram Panchayat, they have exclusive control over its territory and can regulate various activities within its jurisdiction.

5.1 The Agricultural Marketing Committee, Repalle, Guntur District, established an Agricultural Market Yard branch at the outskirts of the village 15 years before. However, for want of accommodation and godown facility they could not and did not start trading activity in the market yard. For the first time, in February, 2001, the Assistant Director, Agricultural Marketing Department, Government of Andhra Pradesh, Guntur District, and Agricultural Market Committee, Repalle, decided to shift marketing activity in the village from its present location and also to take over control of the market in purported exercise of the powers under the provisions of the Markets Act. The Gram Panchayat was, accordingly, served with a letter dated 17.02.2001 to which they submitted objections reiterating their right of control over public markets. Despite the objection, on 16.11.2001, few commission agents/shops dealing with sale of some of the agricultural produce were forcibly shifted. It is alleged that they were also constantly interfering with the business of vendors and farmers, who were marketing their produce in the market of Gram Panchayat. This action of the Assistant Director, Agricultural Marketing Department, and Agricultural Marketing Committee was challenged in the writ petition being arbitrary, illegal and contrary to the provisions of the P.R. Act.

6. It is not in dispute that a Market Yard was established in village under the provisions of the Markets Act. The contention of the Gram Panchayat, however, is that for more than 50 years, they were maintaining the market for sale of agricultural produce and livestock within their territory under the provisions of the P.R. Act and, therefore, they are having exclusive control over the territory and to regulate any activity including maintaining markets.

7. The Division Bench in W.P. No. 16733 of 1985 considered identical situation and the question whether the provisions of the Markets Act would prevail over the provisions of the P.R. Act?. The incidental question whether the Gram Panchayat is prohibited from collecting any fee on the notified agricultural produce or conducting any auction of agricultural s? was also considered. The Market Committee, in that writ petition, contended that under the provisions of Markets Act, they alone have authority to regulate business in agricultural produce and livestock.

8. The Market Committee claims that they alone have authority to regulate the business in agricultural produce and livestock as per the provisions of the Markets Act. Whereas, according to the Gram Panchayat, under Section 104 of the PR Act, they have power to establish public market and to collect fees. These submissions of the parties were considered and dealt with by the Division Bench in W.P. No. 16733 of 1995 in the light of relevant provisions both under the Markets Act as well as PR Act. It would be relevant to notice the observations made by the Division Bench in the said writ petition, which read thus:

"The Market Act is a special Act, whereas the Gram Panchayat Act is a general Act. Section 12 of the Market Act embraces within its fold control of the market area as regards sale or purchase of the produce mentioned therein in relation to a market area. The fee is levied by the mc not only for regulation of market but also for development of market.

Unless market fee is allowed to be collected by the Market Committee it may not be in a position to regulate the market area or develop it. Section 104 of the Panchayat Raj Act operates in a different field i.e., providing places for use as public market. Whereas in terms of the Market Act, the operating provision gets attracted only on sale and purchase of agricultural produce, livestock or produce of livestock in a market established under sub-section 4(3)(a) of the Act in the area notified by the Government in relation to a Market Committee established under Section 4(1) of the Act. The provisions contained in Section 104 of the Panchayat Raj Act can be taken recourse to even if no sale or purchase of cattle is made. Thus, in our considered view, the Gram Panchayat cannot realize market fee from any market situate within the notified area of a Market Committee. It can, however, realize such other charges, which do not come in conflict with the provisions of the Market Act.

A true construction of the provisions of Sections 3, 4, 29 and 30 of the Act would make it clear that once a Market Committee has been constituted and a notification has been issued notifying the area of the Market Committee as per tender provisions of the Market Act, the Market Committee has exclusive right to establish the cattle market under sub-section 3(a) of the Market Act and to collect levy of fees as provided under Section 12 of the said Act."

(emphasis supplied)

9. In Agricultural Market Committee, Shankarpally (supra) the Division Bench considered a challenge to the action of Gram Panchayat in not handing over the cattle market at Shankarpally village to the petitioner agricultural market committee. The contention urged before the Division Bench on behalf of the market committee was that the Gram Panchayat did not have jurisdiction in conducting cattle market and collecting market fee therefor since the place, where the cattle market was being conducted, fell within the notified area of the market committee and that in any event, the cattle market had to be held only by the petitioner-market committee in view of Section 29(1) of the Markets Act. While dealing with the question and the arguments, the Division Bench observed thus:

"a bare reading of Section 30 of A.P. Act 16 of 1966 leaves no doubt that A.P. Act 16 of 1996 overrides any other law providing for either establishment of market or collection of fee and the said act has to be done only by the Agricultural Market Committee concerned and not by any other authority. In view of Section 29(1) read with Section 30 of A.P. Act 16 of 1966, the petitioner Agricultural Market Committee has got exclusive right to conduct the cattle market in

Shankarpally village and the respondents are not entitled to conduct such cattle market."

10. In Velpur Gram Panchayat (supra) the purport of Article 243G of the Constitution of India and the powers conferred on the Panchayats being self-government, were considered in detail and it was observed that it is the PR Act which would prevail over the Markets Act in relation to the subject matter of markets. This judgment was carried in an appeal bearing W.A. No. 1211 of 1997. The Division Bench following the judgment in W.P. No. 16733 of 1995, decided on 26.09.2001, allowed the appeal in terms of the said judgment. While doing so, the Division Bench added that in the event, concerned Gram Panchayats approach the concerned market committee in terms of Section 29 of the Markets Act, an appropriate action should be taken in accordance with law. Learned Single Judge while dealing with W.P. No. 20659 of 2002, vide order, dated 10.04.2003, from which the instant appeal arises, upheld the action of the Assistant Director, Agricultural Marketing Department and of the Marketing Committee, Repalle, and as held by the Division Bench in W.P. No. 16733 of 1995, observed that in the event of Gram Panchayat approaching the Assistant Director and Market Committee in terms of Section 29, an appropriate action shall be taken in accordance with law.

11. We have heard learned counsel for the parties and with their assistance gone through the entire materials placed before us including the judgments referred to above and the judgment of the Supreme Court in Talcher Municipality v. Talcher Regulated Market Committee and another , (2004) 6 SCC 178 and in D.R. Yadav and another v. R.K. Singh and another , (2003) 7 SCC 110.

12. At the outset, learned Advocate General for the State of Telangana invited our attention to the judgment of the Supreme Court in Talcher Municipality (supra) and submitted that the legal position is settled by the Supreme Court and question referred to the Full Bench, in view thereof, will have to be answered in the negative. In other words, he submitted that the provisions of Markets Act will have overriding effect on the provisions of PR Act and in view thereof, the Market Committee alone will have an authority to regulate business in agricultural produce and livestock and to collect fee on the notified agricultural produce or conducting any auction of such agricultural produce including livestock.

13. On the other hand, Sri Padmanabham, learned counsel for the appellant, submitted that the judgment of the Supreme Court in Talcher Municipality (supra) will not come in their way to contend that it is PR Act which would have overriding effect on the provisions of the Markets Act. He invited our attention to Article 243G of the Constitution to contend that PR Act has been enacted by the State Legislature in exercise of its powers under this Article read with Eleventh Schedule which empowers and authorizes them to make a law for the functioning of institutions of self-government containing the provisions for devolution of powers and responsibilities upon the Panchayats at the appropriate level. He also

invited our attention to Entry 22 of the Eleventh Schedule, which deals with Markets and Fairs. He submitted that such power is not conferred on the State Legislature insofar as Article 243W of the Constitution, which deals with Powers, Authority and Responsibilities of Municipalities. Our specific attention was invited to the Twelfth Schedule to contend that an entry such as Markets and Fairs which finds place in Eleventh Schedule, does not find place in the Twelfth Schedule. He therefore submitted that the powers, authorities and responsibilities conferred on the Panchayats under the provisions of PR Act are conferred as constitutional mandate, and therefore, the provisions of, in particular, Sections 104, 105 and 106 of the PR Act would prevail or have an overriding effect on the provisions of Markets Act. He further submitted that in Talcher Municipality (supra), the Supreme Court was not dealing with similar situation or did not have an occasion to notice the difference between the entries in the Eleventh and Twelfth Schedules of the Constitution. Mr. Padmanabham, learned counsel for the appellant, in support of his contentions placed reliance upon the following judgments: Bhanumati and Others v. State of Uttar Pradesh , (2010) 12 SCC 1, State of Uttar Pradesh and another v. Zilla Parishad, Ghaziabad , (2013) 11 SCC 783, Usha Bharti v. State of Uttar Pradesh and others , (2014) 7 SCC 663, Village Panchayat, Calangute v. Additional Director of Panchayat-II and Others , (2012) 7 SCC 550.

14. Before we deal with the submissions advanced by the learned counsel for the parties, we would like to look into the judgments relied upon by Mr. Padmanabham, learned counsel for the appellant.

14.1 In Bhanumati (supra) the Supreme Court had an occasion to deal with the 73rd amendment of the Constitution under which Panchayat became an institution of self- governance. Before the amendment, Panchayat was a mere unit under Article 40 of the Constitution. In this case the Supreme Court has described the 73rd amendment as a very powerful tool of social engineering. After referring to the statement of objects and reasons behind the amendment, in paragraphs 34 and 35, the Supreme Court observed thus:--

"34. The changes introduced by the Seventy-third Amendment of the Constitution have given Panchayati Raj institutions a constitutional status as a result of which it has become permanent in the Indian political system as a third Government. On a careful reading of this amendment, it appears that under Article 243-B of the Constitution, it has been mandated that there shall be panchayat at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution.

35. Article 243-C provides for composition of panchayat which contemplated the post of Chairperson. Article 243-D provides for reservation of seats and Article 243-E provides for duration of panchayat. Article 243-F enumerates the grounds of disqualification of membership of the panchayat and Article 243-G prescribes the powers, authority and responsibilities of panchayat. There are several other provisions relating to powers of the panchayat to impose taxes and for

constitution of Finance Commission in order to review financial position of the panchayat. The accounts of the panchayat are also to be audited as per constitutional mandate under Article 243-J. There are detailed provisions for elections of panchayat under Article 243-K. Article 243-O imposes the bar to interference by courts in electoral matters of the panchayat.

(emphasis supplied)

14.2 The Supreme Court in *Usha Bharti* (supra) considered the question whether Bhanumati is per incuriam?. This question was considered in the light of the submission that the Supreme Court in *Bhanumati* had not considered the provisions with regard to special protection to be given to the members of the Scheduled Castes, Scheduled Tribes and the Backward Classes. After noticing that such submission was not made before the Supreme Court in *Bhanumati*, the Supreme Court in paragraph 60 of the judgment did not find force in the submission that there was any occasion for reconsideration of the judgment of this Court in *Bhanumati*.

14.3 In *Zilla Parishad, Ghaziabad* (supra) the Supreme Court considered Article 243-G of the Constitution and in paragraphs 23 and 24, after considering the observations made by the High Court, observed thus:--

"23. the provision of Article 243-G is merely an enabling provision and it is not a source of legislation. This view seems to be in consonance with the law laid down by this Court in *U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj* [, (2007)2 SCC 138 : (2007) 1 SCC (L&S) 773] wherein an observation has been made that Article 243-G is an enabling provision as it enables the Panchayats to function as institutions of self-government. Further, this Court noted that such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relations to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider conditions and to make laws accordingly. It is also open to the State to eliminate or modify the same.

24. Therefore, it is apparent that Article 243-G read with the Eleventh Schedule is not a source of legislative power, and it is only an enabling provision that empowers a State to endow functions and devolve powers and responsibilities to local bodies by enacting relevant laws. The local bodies can only implement the schemes entrusted to them by the State.

(emphasis supplied)

15. In this backdrop, now we would like to consider the question that falls for our consideration.

15.1 Before we proceed further, it would be relevant to have a glance at Articles

243G and 243W of the Constitution in the light of the above judgments, which read thus:

"243G. Powers, authority and responsibilities of Panchayats,- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243W. Powers, authority and responsibilities of Municipalities, etc.--Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

- (i) the preparation of plans for economic development and social justice.
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

16. The Legislature of a State, under Article 243G of the Constitution, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to the preparation of plans for economic development and social justice; and the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. It is true that the Eleventh Schedule has a specific entry No. 22, namely; Markets and Fairs. Such entry does not find place in Twelfth Schedule referred to in Article 243W of the Constitution of India. We therefore looked into Entry 28 of List II of the Seventh Schedule of the Constitution whereunder, it is apparent, the Markets Act has

been enacted. This Act was enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and establishment of markets in connection therewith. Section 29 of the Markets Act with which we are concerned deals with payment of compensation in respect of markets in Municipalities and in areas within the jurisdiction of other local authorities. Under this provision, in pursuance of Section 3, the State Government, which is empowered to notify any area comprised within the local limits of the jurisdiction of a Municipality or other local authority such as Panchayats, shall have power to levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified area. It further provides that the market committee of the notified area shall out of its funds pay every year to the municipality or other local authority, which was levying such fees immediately before the notification of the area, a sum equivalent to the licence fees levied by such municipality or other local authority during the period of one year immediately before the notification of the area, for a period of ten years as compensation for the loss of income of the municipality of the local authority on account of the establishment of markets in the area by the market committee. Thus, it is clear that the Legislature has taken all care while establishing markets/market yards under the provisions of the Markets Act so as to entitle local authority for the benefit of compensation under this Act for a period of ten years. In other words, it cannot be stated that the local authority would suffer a loss in the circumstances as fallen for our consideration in the present case.

17. If we have a close look at the language employed in Article 243G of the Constitution, it begins with the expression Subject to the provisions of this Constitution. The Legislature of a State, by law, endow the Panchayats with the powers and authority to enable them to function as institutions of self-government. The Legislature of a State is entrusted with the responsibility to make law in relation to matters listed in the Eleventh Schedule. This power is Subject to the provisions of Constitution. Entry 28 of List II of the Seventh Schedule also empowers the State Legislature to make law in respect of Markets and Fairs under Article 246(3) of the Constitution. The State Legislature under this provision has exclusive power to make laws with respect to any of the matters enumerated in List II of the Seventh Schedule. Thus, it is clear that the power to make law in respect of the matters listed in the Eleventh Schedule as contemplated by Article 243G is subject to the power of the State Legislature to make law in respect of the matters enumerated in the List II of the Seventh Schedule.

18. It would be necessary to notice the difference between the powers conferred on the State Legislature to make law in respect of Entry 22 of the Eleventh Schedule and Entry 28 of List II of the Seventh Schedule. Both these entries confer independent power to the State Legislature to make law/provision in the Act to regulate Markets and Fairs within their jurisdiction.

19. The word Market is defined by sub-clause (vi) of clause (ii) of Section 2 of the Markets Act to mean a market established under sub-section (3) of Section 4 and includes market yard and any building therein. Section 4 deals with constitution of market committee and declaration of notified market area. The Markets Act, as observed earlier, was enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. This was introduced to bring within the scope of the legislation all agricultural commodities, both processed and unprocessed, livestock and products of livestock; to empower the market committee to issue licences to traders in a notified area; to fix the minimum and maximum strength of the members of a market committee at twelve and sixteen respectively so as to accommodate various interests in proper proportions; to nominate representatives of growers of agricultural produce and owners of livestock and products of livestock up to fifty percent of the total strength of a market committee with a view to give adequate representation to the interests concerned; and to pay to the municipalities or other local authorities compensation for the loss of income of the local authority on account of the establishment of markets in the notified area by the market committees. From the very intent of the Legislature in introducing the Markets Act, it is absolutely clear that it is a special legislation brought to regulate purchase and sale of agricultural produce and establishment of markets for the said purpose.

20. On the other hand, A.P. Panchayat Raj Act is general legislation enacted to provide for constitution of Gram Panchayats, Mandal Parishads and Zilla Parishads and for matters connected therewith or constitutional thereto. This Act does not define Market or Market area. Section 104 of the PR Act undoubtedly speaks about public markets. Under this provision, the Gram Panchayats are supposed to provide places for use as public markets and, with the sanction of the Commissioner, close any such market or part thereof. It is also empowered to levy one or more of the fees enumerated in clauses (a) to (e) of sub-section (2) of Section 104 in any market area such as fees for the use of shops, stall, pens or stand in such markets or licence fees on brokers, commission agents, weighmen and measures practicing their calling in such market. Section 105 provides that no person shall open a new private market or continue to keep open a private market unless he obtains from the Gram Panchayat a licence to do so. Section 106 deals with fee for licence.

21. From the scheme of both the Acts it is apparent and could not be disputed that the Markets Act is a special legislation whereas PR Act is a general legislation and the sphere in which they work are totally different. In other words, the Markets Act contains special provisions to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Section 30 of this Act clearly states that it overrides other laws. It is relevant to reproduce Section 30, which reads thus:

"30. Act to override other laws:-- Nothing in any law providing for the establishment, maintenance or regulation of a market or the levy of fees therein shall apply to any market established under this Act or affect in any way the powers of a market committee, in respect of such market."

22. From bare perusal of this provision, it is clear that it would override all other laws providing for the establishment, maintenance or regulation of a market or the levy of fees therein shall apply to any market established under the Markets Act or affect in any way the powers of a market committee, in respect of such market. The provisions of Section 30 operate notwithstanding anything to the contrary contained in any other law for the time being in force. As a matter of fact, a bear reading of this provision, it is clear that it would prevail over the provisions of the PR Act.

23. On a plain reading of Section 30, there cannot be any doubt whatsoever that it would prevail over other laws or it has an overriding effect on the provisions of the PR Act. It is well settled that in the event two conflicting provisions are operating in the same field, the doctrine of *generalia specialibus non derogant* shall apply. (See *Chandra Prakash Tiwari v. Shakuntala Shukla* (, (2002) 6 SCC 127).

24. The Supreme Court in *Talcher Municipality* (supra) considered the provisions of Orissa Agricultural Produce Markets Act, 1956. The question that fell for consideration was whether the land and building of a daily market owned by a Municipality or a Gram Panchayat where notified agricultural produces are brought and sold is liable to be transferred to the market committee, if requisition therefore is made? While dealing with the question, the Supreme Court, after considering Entry 5 of List II of the Seventh Schedule of the Constitution, whereunder the Orissa Municipal Act has been enacted observed that it would be subject to the provisions of Entry 28 as the power to establish a market is a separate and distinct one. In paragraph 19 observed thus:

"19. The Act, however, contains special provisions. The provision of Section 4(4) of the said Act operates notwithstanding anything to the contrary contained in any other law for the time being in force. The provisions of the said Act, therefore, would prevail over the provisions of the Orissa Municipal Act. The maxim *generalia specialibus non derogant* would, thus, be applicable in this case. (See *D.R. Yadav v. R.K. Singh* , (2003) 7 SCC 110), *Indian Handicrafts Emporium v. Union of India* , (2003) 7 SCC 589 and *M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board* , (2004) 9 SCC 755.)"

25. It is true that primary object of the Markets Act, as has been observed by the Supreme Court in *M.C.V.S. Arunachala Nadar v. State of Madras* , AIR 1959 SC 300 and *Belsund Sugar Co. Ltd. V. State of Bihar* , (1999) 9 SCC 620, is to protect the producers *inter alia* from being exploited by the middlemen but the State has the requisite legislative competence to establish a market and in that view of the matter the said Act falls within the ambit of markets and is covered

by Entry 28 of List II of the Seventh Schedule. It may be true that Gram Panchayat had provided a public market in the village for sale of vegetables and fruits and various other agricultural produces including the livestock to cater the needs of villagers and other surrounding areas. Further, it may be true that the Gram Panchayat had taken various measures to improve the conditions of the market from time to time and also to provide space for use as public market and they were levying one or more fees as contemplated by Section 104 of the PR Act. It is equally true that once a market area has been declared, the provisions of the Markets Act will bring within its sweep even such markets, as established by local authority.

26. In the result, we hold that the provisions contained in Sections 104, 105 and 106 of the PR Act shall not have an overriding effect on the provisions of Market Act in view of the language employed in Section 30 thereof. In other words, the question as framed in the first paragraph of the judgment is answered in the negative.

27. The registry is directed to place this judgment before the Court dealing with the appeal and writ petitions for their disposal in the light of this judgment.