
(2004) 04 MAD CK 0173

In the Madras High Court

Case No : S.A. No. 2267 of 2003 and C.M.P. No. 21374 of 2003

Hariharaputhra Plantations Ltd.

APPELLANT

Vs

The Kanyakumari Market Committee

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 — Section 2(18), 24(1), 24(2), 24(5), 8

Citation : (2004) 4 LW 115

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : B. Rajendran, for the Appellant;

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—M/s. Hariharaputhra Plantations Limited (plaintiff) has lost in both the Courts below. Hence, it has filed this second appeal.

2. The plaintiff filed the suit, (i) for declaration against Kanyakumari Market Committee and another (defendants), that the plaintiff being agriculturist-producer of raw rubber, is exempted from taking licence from the defendants under the Tamil Nadu Agricultural Produce Marketing Regulations Act, 1987 and are not liable to pay any market fee on the sale and transport of raw rubber and has the right to transport the raw rubber grown by them in their estates, the course of inter-state sales and sales outside the notified area, without having any liability to get any permit from the defendants or to pay the market fee to the defendants, (ii) for permanent injunction restraining the defendants from insisting the plaintiff to get permits or on payment of market fees and (iii) for recovery of money which was paid as market fee earlier.

3. According to the plaintiff, it is an agriculturist-producer of raw rubber from the land belonging to them. As a producer of rubber, the agricultural product, the plaintiff is totally exempted from the purview of the Tamil Nadu Agricultural

Produce Marketing Regulation Act, 1989 (Act 27 of 1989) (hereinafter referred to as "the Act"). The plaintiff is only a grower and as such, it cannot be construed to be a trader and as provided u/s 24(5) of the Act, a permit is required for the transport to place outside the notified market area only from the trader and it would not apply to the producers. The defendants insist that the plaintiff should take permit and then collected the market fee also from the plaintiff. Therefore, the plaintiff sought for declaration and injunction.

4. The case of the defendants is as follows:

The rubber produced by the plaintiff was sold within the Kanyakumari District. When the transaction of sale is concluded within the notified area, then the liability of the market fee arises. The Act is not exempting the inter-state purchasers from the liability of payment of market fee for the purchase made in the notified market area. The Act empowers the Market Committee to levy and collect the market fee even from the producer-seller when the sale of produce is effected within the notified market area and consequently, the permit is required. Hence, the plaintiff would not be entitled to the reliefs sought for.

5. The trial Court framed necessary issues and on the basis of the above pleadings, dismissed the suit while considering the materials placed by both parties. Aggrieved by the same, the plaintiff filed an appeal before the lower appellate Court, which in turn confirmed the judgment and decree of the trial Court. Challenging the same, the second appeal has been filed.

6. Mr. B. Rajendran, learned counsel appearing for the appellant would elaborately argue and contend that the plaintiff is not a trader and as a producer of the agricultural product, namely rubber, the plaintiff is totally exempted from the purview of the Act. Under Rule 33(4) of the Rules framed under the Act and Section 24(5) of the Act, the tax is liable to be paid only by the purchaser and the permit is required for the transport of agricultural produce to the places outside the notified area only by the trader.

7. It is also contended by learned counsel for the Appellant that both the Courts below have failed to take into consideration that no sale is effected by the appellant within the notified area and as such, both the Courts have committed illegality in not passing a decree in favour of the plaintiff.

8. Placing reliance on the decision of this Court reported in Raja Palyam Paruthi Panchu Sangam and Vs. State of Tamil Nadu and others etc. etc., , learned counsel for the appellant contended that the intention of the Act is only to protect the interest of the producer and the permit u/s 24(5) of the Act for transport of agricultural produce outside the notified area, is only from the trader.

9. I have carefully considered the submissions made by learned counsel for the appellant and also gone through the judgments impugned.

10. There is no dispute in the fact that the plaintiff is a producer as per the definition u/s 2(18) of the Act. It is true that this Court would hold in Raja

Palyam Paruthi Panchu Sangam and Vs. State of Tamil Nadu and others etc. etc., that Section 24(5) of the Act would relate to traders and not to the producers. But the real question that arises for consideration is as to whether the sale has been effected in the notified area as per Section 8 of the Act.

11. As a matter of fact, the trial Court would hold that the plaintiff sent the rubber to Jalandhar under Exs. A-11,12,13,17 and 21 series. Even according to the plaintiff, as per the plaint, on 27.3.1998, he sold the rubber to Jalandhar party, i.e. Nareshkumar Jain and Company at Jalandhar, outside the State. It is contended that it is not necessary to take the permit or to pay market fee as a producer.

12. According to the defendants, a producer becomes seller when sale is effected within the notified area. In this context, Section 24(1) would be relevant, which reads as follows:

"Section 24: Levy of fee by market committee:

(1) The market Committee shall levy a fee on any notified agricultural produce bought or sold in the notified market area at a rate not less than rupee but not exceeding two rupees for every hundred rupee of the aggregate amount, for which the notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration:

Provided that, when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into such notified market area for buying and selling and shall be subject to the levy of fee under this section on the value of the agricultural produce, as if it had been bought and sold therein.

For the purpose of this sub-section, all notified agricultural produces taken out or proposed to be taken out of a notified market area shall, unless the contrary is proved, be presumed to be bought or sold within such area."

Abovesaid Section 24(1) would indicate that unless the producer has established that it is being taken to other places outside the area for some other purpose, it must be presumed that the sale has been effected in the notified area.

13. It would be appropriate to refer to Section 24(2) also, which reads thus:

"Section 24(2): The fee referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce concerned:

Provided that where the purchaser of a notified agricultural produce cannot be identified, the fee shall be paid by the seller."

As per this Section 24(2), when the purchaser is not able to be identified, then the market fee must be paid by the seller. Admittedly, in this case, the plaintiff

has not established the reasons mentioned in Section 24(1). As such, the requirements of Section 24 have not been satisfied.

14. As claimed by the defendants, when the plaintiff has taken the produce outside the notified area, after effecting sale, then the plaintiff ceases to be the producer and he becomes trader. On the basis of Exs.A-11,13,17 and 21 series, the defendants collected the levy of Rs.2,069/- from the plaintiff under Ex.A-23 receipt on 27.3.1998. This receipt was given in the name of the purchaser. Another receipt is Ex.A-29. This document would show that the plaintiff has obtained permit on payment of levy.

15. It is also clear from a reading of the entire Section 24(1) and (2) that the agricultural produce taken outside or proposed to be taken out of a notified market area, shall be presumed to be bought or sold within such area, unless the contrary is proved. As indicated above, if the requirements u/s 24(1) are not satisfied, then the fee can be collected from the purchaser or in his absence, the seller.

16. It is true that Section 8 gives exemption to producer. It puts no condition on the producer. As indicated above, when the sale is effected within the notified market area, it is clear that the purchaser must pay or in his absence, the seller (plaintiff) should pay. It is also clear that when the producer takes the product to outside the notified area, no permit is required. But when once the sale is effected in the notified market area and the sold produce is taken to outside the notified market area, the permit is required u/s 24(5).

17. On a perusal of the deposition of the witness, it is clear that P.W.1 himself would admit in the cross-examination that all the products that were supposed to be taken, were already sold and the defendants have collected 4% extra amount towards forwarding charges under Exs.B-1 and B-2. This shows that the sale is effected inside the notified area as claimed by the defendants.

18. Further, both the Courts have held on facts that the sale is effected inside the notified area. Therefore, insistence by the defendants for payment of levy and for permit, cannot be said to be illegal.

19. When a factual finding is given by both the Courts below that requirements of Section 24(1) and (2) have not been satisfied by the plaintiff and on the other hand, it has been held that the materials placed by the parties would prove that the sale is effected inside the notified area, the same cannot be disturbed in this second appeal, in the absence of any valid reasons.

20. No substantial question of law would arise for consideration in the second appeal and the same is dismissed at the admission stage itself. C.M.P.No.21374 of 2003 is also dismissed.