

(1994) 12 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 30674 of 1992

Parvathareddy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Agricultural Produce Marketing Regulation (Amendment) Act, 1991 —
Section 144, 4, 9

Citation : (1995) ILR (Kar) 1856 : (1994) 5 KarLJ 186

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K. appa Rao, for the Appellant; N. Devadas, Government Advocate for R1 and R2 and B.G. Sridharan, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—The petitioner has filed this Petition under Articles 226 & 227 of the Constitution seeking the following reliefs:

Quashing of Annexure-B, that is, the notification No. CMW 25 MDS. 91(11) dated 28.6.1992, issued by 1st respondent - State of Karnataka, whereby the State of Karnataka, has amalgamated the two market committees of Saidapur Market Area and Yadgir Market Area into one bearing the name of one of the Market Committees, namely, Yadgir Agricultural Produce Market Committee.

Before I proceed further, I think it proper to mention that an application was moved on behalf of the Agricultural Produce Market Committee, Yadgir, Gulbarga District, through its Secretary, for its impleadment as Respondent No. 3. I have allowed that application after having heard the Counsel for the parties vide my order dated 12.5.1994, thereby, the learned Counsel carried out the amendment by incorporating the name of Agricultural Produce Market Committee, Yadgir, Gulbarga District, as Respondent No. 3. Sri N. Devadas, learned Government for the State of Karnataka and for the Director of Agricultural Marketing,

Bangalore-1, as well as Sri. B.G. Sridharan, Counsel for the newly added party, that is, Respondent No. 3, urged that the Petition may be heard and disposed of finally, as there is no need to file any counter affidavit. The arguments as such have been heard on merits as made by the. Counsel for the parties.

2. The facts of the case in brief are as hereinafter: That as per allegations made in this Writ Petition, the petitioner claims himself to be a permanent resident of Village Saidapur as well as to be an Agriculturist by profession. He has alleged that he felt aggrieved from the Notification dated 28.9.1992, issued by Respondent No. 1, as such, he has preferred the present Writ Petition. According to him, the 1st respondent established a market yard in Saidpur Village sometime in 1969, covering whole of Saidpur and Yadgir as well as areas covered within 5 miles radius. That Saidapur Market Yard has been the biggest Market Yard in that area, having its own land with a number of Shops, Commission Agents, Stockists, Exporters and Godowns in the Market Yard. It has been further asserted in this Writ Petition that Saidapur is one of the centres of business carried on by the Traders of the entire area of Revenue Circle of Saidapur and this market yard has got all facilities. The petitioner's grievance is that Saidapur Yard is 3 Kilometres away from Yadgir Market Yard and as such, the Agriculturists or the persons i.e., the agricultural producers will have to come to Yadgir after having covered a distance of more than 40 to 60 kms and in such a situation, they may not be in a position to bear the transportation expenses and as such, they may have to fall back on the middlemen which will totally defeat the purposes of establishing the market area or market yard. That earlier, the petitioner was the Chairman of the Market Committee and being a permanent resident and the Chairman of the Market Committee, filed objections to the proposed amalgamation on 14.3.1992 and copy of that objection has been annexed to this Writ Petition as Annexure-A. The 1st respondent without having taken into consideration the objections filed by the petitioner and the other Traders and agriculturists of the area and without assigning any reasons, issued a Notification amalgamating the Saidapur Market Area, that is, as mentioned in this Writ Petition with that of Yadgir Market Yard vide Notification dated 28.9.1992 - Annexure-B to this Writ Petition. That on account of amalgamation of Saidapur Market Yard with Yadgir Market Yard, the established business and Commission Agents, who have got shops and other shops in Saidapur will be put to great loss, injury and harassment. It has also been alleged that there will be no effective control and the agriculturists will be put to lot of inconvenience.

With these allegations, the petitioner has challenged the Notification-Annexure-B stating that the amalgamated Market Yard is not only illegal, but whimsical exercise of powers vested with the authorities and therefore, liable to be quashed.

3. No counter affidavit as mentioned earlier has been filed. The learned Government Advocate as well as the Counsel for the Marketing Committee submitted that there is no need to file any counter affidavit and the petition be

disposed of even without counter affidavit. I have heard Sri. K. Appa Rao, Counsel for the petitioner as well as Sri. B.G. Sridharan, learned Counsel for Agricultural Produce Market Committee, Yadgir, Gulbarga District and Sri. N. Devadas, the learned Government Advocate.

On behalf of the petitioner, it has been submitted that the provisions of Section 144 of the Karnataka Agricultural Produce and Marketing Act, for short, "Marketing Act" deals with the amalgamation of the Marketing Committee has got to be read with Sections 3 and 4 of the Agricultural Marketing Regulation Act, 1966. By making a reference to Section 133 of the Marketing Act, the learned Counsel for the Petitioner submitted that the petitioner being the permanent resident and the Chairman has been entitled to file the objections and make suggestions even in the matter of amalgamation of the Market Committee and further submitted that it was the duty of the State to have applied its mind and should have considered the objections and suggestions received from the persons concerned in the Village or in the Market Yard. But, this has not been done. That Government has also not applied its mind to the difficulties of the procedures of Agricultural Committees. That in the light of the distance of the Saidapur Market from Villages and the amalgamated Market, namely, Yadgir Market Yard, the Notification is bad and is of a nature that will not subserve the purpose and object of the Act. The object is to get rid of the middlemen in order to avoid exploitation of producers, purchasers and the consumers and increase in price. Therefore, the learned Counsel laid great emphasis on this aspect and submitted that when the market will be at a distant place of 40 to 60 kms from the place of the producers, cost of transportation may be exorbitant and this may compel the producers to fall back upon the middlemen and as such, the Notification is illegal and bad on account of its running counter to the letter and spirit of the Karnataka Agricultural Produce Marketing Regulation Act, 1966, for short, "Marketing Act".

This Writ Petition has been opposed by the learned Government Advocate - Sri.N. Devadas as well as Sri. B.G. Sridharan, learned Counsel for the Respondent No. 3 - the Agricultural Produce Marketing Committee concerned,

4. It is contended by the two opposite party Counsel as mentioned above, opposing this Writ Petition that the power is vested with the State Government to amalgamate the Market Committee. The learned Counsel submitted that the Government has been conferred power u/s 144 of the Act to amalgamate with a view to secure efficient regulation of marketing of any agricultural produce in a Market Area. Further, that Section 144 provides for consultation by the Government with Market Committees which Market Committees concerned are to be amalgamated into a single Market Committee for the Market Area before making and providing for amalgamation of such Market Committees into one single Market Committee. That consultation has been arrived at by the State Government with regard to the question, if in order to secure sufficient regulation of the marketing of agricultural produce, whether it is necessary to

amalgamate the two or more Market Committees therein and if Government is satisfied after consultation, it has got power to do so by the process described u/s 144. That firstly petitioner himself is not a Committee, which can say that it has not been consulted or has not been given opportunity of being heard. That the petitioner is an ordinary man in the Village, he might have been the Chairman, is immaterial which person has got to be consulted, that is and has been specified in the Marketing Act, There was no requirement to consult petitioner in amalgamating one or two Market Committees and submitted that this Writ Petition at the instance of the present petitioner has not been maintainable as petitioner cannot be said to be aggrieved. That had the Legislature considered that in the process of action u/s 144 of the Act, the Legislature would have beyond doubt considered to include as in Sections 3 & 4 of the Marketing Act that objections can also be made by persons other than the Market Committees, but, it has not so been provided in Section 144. In other words, it has specifically been provided and that State Government has been conferred with power to divide a Market Area into two or more separate Market Areas but subject to the provisions of Sections 3 and 4 and not otherwise, use of different expressions is provided in the two provisions of Sections 144 and 145. According to the learned Counsel for the respondents, there is indication of the distinct and different intentions, namely, where it thought it fit, it did so. That as such, that in judging the validity of Notification u/s 144, Sections 3 and 4 of the Marketing Act cannot and need not be taken into consideration nor power of the Government has got to be considered or be taken to be subject to Sections 3 and 4. They submitted that if the Act is construed in the manner suggested by the learned Counsel for the petitioner, it may amount to Courts entering into the field of legislation and amending the language of Section 144.

On behalf of respondent No. 3 - Sri. B.G, Sridharan, the learned Counsel further pointed out that though the two Committees are being amalgamated into one as Saidapur Sub-Market Yard will be maintained and it has been pointed out from the Notification dated 28.9.92, that Saidapur Market Yard has been maintained as Sub-Market Yard and therefore, the Agricultural Producers will be at liberty to come there and do the business of selling their goods. The learned Counsel for the opposite parties read Notification before me and submitted that the Notification satisfies the necessary requirements of Section 144 and as such, it is valid.

5. I have applied my mind to the contentions of the learned Counsel for all the parties. Before I proceed with this matter, it appears to me just and proper to mention that the expressions, Market, Market Area, Market Committee, Market Yard and Sub-Market Yard connote distinct and separate meanings. In Section 2 Sub-section 18 of the Agricultural Produce Marketing Act, the expression Market has been defined to mean any "notified area" declared or deemed to be declared to be a Market under Sub-section 2 of Section 6. Section 2(19) of the Karnataka Agricultural Produce Marketing Regulation Act also defines Market Area, it provides that Market Area means "any area declared to be market area u/s 4 "of

the Marketing Act." whereas, the expression "Market Committee" or the "the Committee" has been defined to mean Marketing Committee constituted for a Market Area. The Sub-Market Yard has been defined in Sub-section 22 of Section 2 and means the specified place declared or deemed to be declared as Sub-Market yard under Sub-section 2 of Section 6", and the expression "Market Yard" under Sub-section 23 of Section 2 of the Marketing Act means the specified place declared or deemed to be declared to be a Market Yard under Sub-section 2.

6. That Chapter II of the Marketing Act deals with the establishment of the Markets. Section 4 of the Act deals and provides for declaration of Marketing of specified agricultural produce therein. Section 4 of the Marketing Act (The Karnataka Agricultural Produce Marketing Regulation Act, 1966), Section 40 of the Act reads as under:

"Section 4:- Declaration of Market Area and of Regulation of Marketing of specific agricultural produce:-

After the expiry of the period specified in the notification issued u/s 3, and after considering such objections and suggestions as may be received before such expiry, the State Government may, by another notification, declare the area specified in the notification issued u/s 3 of any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued u/s 3 shall be regulated under this Act in such market area. A notification under this Section may also be published in Kannada in a news paper circulating in such area."

Provided that a market area shall not be less than a Taluk and more than a District:

Provided further that if on the commencement of the Karnataka Agricultural Produce Marketing (Regulation) and certain other laws (Amendment Act, 1991), any market is more than a District or less than a Taluk such Market area shall be altered and Market Committees of such Market Area shall be amalgamated so that the Market Area shall not be more than a District or less than a Taluk and that the provisions of Sections 5, 142, 143 shall, mutatis mutandis apply for such alteration of limits and amalgamation."

A perusal of Proviso to Section 4 per se shows that a Marketing Area shall not be less than a Taluka and shall not be more than a District. This Proviso per se prescribes the minimum and maximum limits of the Market Area. This shows that there can be more than one Market Area in a District and there may be more but their number, if more than one, must coincide with the number of Taluks in a District. That there can also be a Market Area for entire District, instead of for being one Taluk but a Market Area cannot be less than the area of a Taluka and, there cannot be more than one Market Area in a Taluka, The second Proviso to Section 4 further directs and provides that with effect from the commencement of the Karnataka Agricultural Produce Marketing (Regulation) and, certain other laws (amendments) Act came into existence in 1991. If a Market Area on that

date has been consisting of more than a District or if the Market Area consisted of an area less than that of a Taluk, then, such Market Area shall be altered or the Market Committees of such area shall be amalgamated, so that the Market Area may not be more than a District nor it shall be less than a Taluk, where provisions of Sections 5, 142 and 143 mutatis mutandis apply for such alteration of limits or amalgamation. In the matter of regulating agricultural produce, Section 5 provides that Government has got power to deal with Market Yard, sub-Market Yard. The material portion of Sub-section 1 of Section 6 of the Market Act reads as under:

6 (1)(a):-For every market area:-

- i) there shall be market, and
- ii) there may be one or more sub-markets;

(b) for every market

- i) There shall be a market yard, and
- ii) there may be one or more market sub-yards;

(c) For every sub-market there shall be one or more sub-market yards.

6. Section 9 of the Act provides that except as provided in Chapter-9, for every Market Area, there shall be a Market Committee which Committee shall have jurisdiction over the entire Market Area. Sub-section 1 of Section 9 reads as under:

9(1); Save as provided in Chapter IX, for every market area, there shall be a market committee having jurisdiction over the entire market area. A perusal of the provisions of Sub-section 1 of Section 9 of the Marketing Act per se indicates that Marketing Committee is an entity distinct from the Market Area or sub-Market Yard. Section 144 really runs in consonance with the letter and spirit of the first Proviso to Section 4, namely, that there shall be one Market area in a Taluk and there will be one Market Area for entire-District and that each Market Area shall have only one Marketing Committee. If there are two or more Market Areas or two or more Market Committees in a Taluk, then those Committees have got to be amalgamated into one and Section 144 confers power on the State Government.

7. Section 144 of the Act reads as under:

Where the State Government is satisfied that for securing efficient regulation of marketing of any agricultural produce in any market area, it is necessary that two or more market committees therein should be amalgamated, then the State Government may, after consulting the market committees concerned provide for the amalgamation of such market committees into a single market committee for the market area in respect of the agricultural produce specified in the notification, with such constitution, property, rights, interests and authorities and

such liabilities, duties and obligations (including provisions in respect of contracts, assets, employees, proceedings, and such incidental, consequential and supplementary matters as may be necessary to give effect to such amalgamation as may be specified in the notification.

A bare reading of this Section per se reveals that two things have got to be shown before a Notification is to be published for amalgamation of two or more Marketing Committees into one, namely, the satisfaction of the State Government to the effect that in order to secure the efficient regulation of the marketing of the agricultural produce in a Market Area, it is necessary that two or more Marketing Committees therein should be amalgamated and after this satisfaction has been arrived at, the State Government has to consult the Marketing Committees concerned. It is after these two conditions are fulfilled, the Government has been empowered to amalgamate such Marketing Committees into a single Market Committee for the Market Area in respect of the agricultural produce specified in the Notification. When I read this Section along with Section 4 particularly, Provisos 1 and 2 thereto, I find that in addition to the cases covered by Section 144, the law requires the amalgamation to be made of the Market Committees in cases, wherein, in a Taluk, on the date of commencement of Act No. 16 of 1991, there did exist two or more Committees for which marketing area has been declared or has been altered to be of a Taluk. Therefore, it can be held that it shall be open to the Government to amalgamate two or more Committees which have been existing in one Taluk. Therefore, in my opinion, it cannot be said that there had been no power in the Government to amalgamate two Marketing Committees Saidapur and Yadgir into one Marketing Committee for the entire area of Yadgir Taluk. Here, I may mention that Saidapur is part and parcel of Yadgir Taluk. These ingredients have been satisfied in the Notification which has been read over to me.

8. The petitioner's apprehension that the business and agricultural producers will be subject to harassment and difficulties by amalgamation of the two Marketing Committees. This apprehension appears to be baseless. The Notification provides that there shall remain a sub-Market Yard in Saidapur. At present, the State itself has provided a sub-Market in Saidapur and if the business activity therein requires more than one Market Yard in Saidapur it may be looked and provided.

The learned Counsel for Respondent No. 3, has also informed me that the representative of Respondent No. 3, has told him that business activity is continuing as usual in Saidapur Market.

9. In my opinion as such the petitioner's Writ Petition is misconceived and is based on misapprehension. The Notification-Annexure-B does not suffer from any error of law or jurisdiction, instead, it appears to be in consonance with the letter and spirit of Provisos 1 & 2 to Section 4 as well as Sections 6, 9 and 144 of the Act.

Having thus considered, in my opinion, this Petition has got no merits. As such, it

is hereby dismissed. No order as to costs.