(1979) 01 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1454 of 1978

Ramjee Prasad and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 09-01-1979

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 18, 21, 4(1), 4(2), 52
Bihar Agricultural Produce Markets Rules, 1975 — Rule 66
Constitution of India, 1950 — Article 277, 372, 372(1)

Citation : AIR 1979 Patna 234 : (1979) PLJR 185

Hon'ble Judges : K.B.N. Singh, C.J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Jai Narayan, Kapildeo Singh and Ansuiya Jaiswal, for the Appellant; K.N. Singh, Standing Counsel No. 4, J.D. Singh, Jr. Counsel (for Nos. 1 and 3), B.C. Ghose and Satish Chandra Surya, (for No. 5), Janardan Prasad Singh, (for No. 2), Basudeo Prasad and Dhananjoy Kumar, (for No. 4) and R.B. Mahto and Narendra Prasad, (for No. 6), for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—In the present writ application, under Articles 226 and 227 of the Constitution of India, the petitioners have stated that in April, 1978, they purchased several commodities from some grain merchants in Siwan town and paid, in addition to the price, sales tax as well as fee payable under the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as ''the Markets Act''). Subsequently, the respondents 4 and 5 acting on behalf of the respondents 2 and 3 respectively realised additional toll from them. The petitioners have challenged the right of the respondents 2 and 3 or their agents to collect any fee, toll or tax, on transactions of sale and purchase of agricultural produce within the area notified under the Act as Siwan Agricultural Produce Market area and have prayed for a writ against them restraining them to make any collection. The respondent No. 2 is the Siwan Municipality and the respondent No. 3 is the Land Reforms Deputy Collector, Siwan, under the respondent No. 1 and the respondents 4 and 5 claimed to be their respective lessees in regard to the Siwan market.

2. The preamble of the Markets Act indicates that the Legislature passed this Act with the object of providing better regulation of buying and selling agricultural produce and for establishment of markets for that purpose and Chap. II of the Act deals with the constitution of markets and Market Committees. In Section 5, it is mentioned that the State Government may, by notification, declare its intention of regulating the purchase, sale etc. of specified agricultural produce in a particular area, invited (sic) any objection or suggestion within the specified period. After expiry of the specified period and consideration of disposal of any objection or suggestion received, the State Government may, by a notification u/s 4 of the Act, declare the area mentioned in the notification u/s 3 (or any portion thereof) to be a market area for the purposes of the Act; and Sub-section (2) of the Section 4 declares that on the publication of the said notification, no Municipality or other local authority or other persons notwithstanding anything contained in any law for the time being in force shall within the market area or within a distance thereof, so notified set up, establish or continue any place for purchase, sale, etc. of the notified agricultural produce. According to the case of the petitioners, such a market has been established for Siwan town which is collecting the fees payable u/s 27 of the Act and the respondents 2 and 5 have no right whatsoever to collect any toll.

3. This application has been mainly contested on behalf of the respondents 4 and 5. The respondent No. 5 has stated that he is a lessee in respect of the market held by the State Government in Siwan town and collects tolls, taxes etc. on the strength of a lease for the year 1978-79, which was granted to him after holding a public auction. It has been further stated that the Sub-Divisional Officer, Siwan, is the Chairman of the Agricultural Produce Market Committee. Siwan and it was he who held the auction for the settlement of Siwan market in which the respondent No. 5 was the highest bidder. The right of the Agricultural Produce Market Committee to realise any toll or tax has been seriously challenged on the ground that the market has not been transferred by the State Government to the Committee. The allegations in the writ application about payment of the fees by the petitioners to the Market Committee have been denied and it has been pointed out that this question does not arise since no Market Committee is functioning in the area.

4. The case was taken up for hearing on 18th July, 1978 when a preliminary objection was taken by Mr. B. C. Ghose, appearing for the respondent No. 3 that the writ application was not maintainable in absence of the Agricultural Produce Market Area Committee, Siwan. The petitioners, therefore, filed an application for adding the Market Area Committee as a party respondent and after hearing the learned counsel of the parties, we added the Market Area Committee as the respondent No. 6 by our order dated 20th July, 1978. Mr. Rambalak Mahto, Government Pleader No. 4, appeared in court and stated that he has got

instruction on behalf of the Area Committee to appear in the case and that he will be filing a Vakalat-nama and, in that view, it was not necessary to issue a notice to the added respondent. The hearing of the case was later adjourned several times on the prayer of one party or the other and was resumed in September, 1978, after a Vakalatnama executed by the Secretary of Market Area Committee was filed by Mr. Mahto. The Market Area Committee also filed its show cause supporting the case of the petitioners. Mr. Mahto further relied upon the statements made in the writ application, the rejoinder dated 7-7-1978 (pages 40 to 50 of the brief) filed on behalf of the petitioners in reply to the petition of the respondent No. 5, and the petitioner''s application for addition of the respondent No. 6 as a party respondent filed on 20-7-1978 (at pages 64 to 86 of the brief). A counter affidavit on behalf of the respondents 1 and 3, that is, the State and the Land Reforms Deputy Collector Siwan was filed for the first time on 31-7-1978 which is at pages 87 to 93 of the brief stating that in 1974 the Revenue Department of the State Government had issued a general order for the transfer of such markets throughout the State of Bihar which were covered under the provisions of the Market Act; but by its letter dated 12-7-1975, a copy whereof has been annexed to the counter-affidavit as Annexure ''A'', it reviewed its earlier direction and stayed the transfer of the markets to the different Agriculture Produce Market Committees. It is further stated that the Revenue Department had been settling the Siwan market, the subject matter of the present case, since the date of the vesting of the zamindari under the provisions of the Bihar Land Reforms Act and continues to do so. Proceeding further, it is asserted that since the Siwan Market had not been transferred to the Market Committee, the Revenue Department continues to settle the same. During the course of the argument, Mr. Standing Counsel No. 4 appearing for the respondents Nos. 1 3 stated that he does not want to say anything further than placing the said counter affidavit.

5. Mr. Janardan Prasad Singh asserted on behalf of the Siwan Municipality that it has got the right to collect the tolls since the Market Committee is not functioning.

6. The main contention of the petitioners and the respondent No. 6 is that both the State Government and the Siwan Municipality were deprived of the right to maintain any market within the notified area by mere declaration of the area to be market area u/s 4 of the Market Act. No other step is necessary for the establishment of the market area and since there has been issued such a notification in the present case, the respondents 2 and 3 have lost their previous rights in this regard. The answer to the question depends on a construction of Section 4 of the Act. But before I proceed to consider this aspect, it is desirable to decide another objection mentioned below raised on behalf of the respondent No. 5.

7. Mr. Ghose challenged the right of the Secretary of the respondent Market Area Committee to authorise Mr. Rambalak Mahto to appear on behalf of the

committee. He urged that Mr. Mahton''s appearance and arguments are fit to be ignored. In reply Mr. Mahton relied upon several provisions of the Market Act and Bihar Agricultural Produce Market Rules 1975 (hereinafter referred to as ''the Rules''). Section 6 of the Act states that a Market Committee shall be established for a market area and Section 8 deals with the constitution of the first Market Committee. The procedure in regard to the constitution of the second and subsequent Market Committees is dealt with in Section 9. Section 18 declares that it shall be the duty of a market committee to implement the provisions of the Act, the Rules and by-laws and to provide facilities for marketing of the agricultural produce and to do such other acts as may be required in that connection. The Sub-section (2) of the Section 18 has by way of illustration enumerated some of the works of the Market Committee including the duty to defend any legal proceeding. Section 17 enjoins that''every Market Committee shall be a body corporate which may sue or be sued and further declares that subject to the Act, Rules and by-laws, it shall be competent for it to do all other things necessary for the purposes for which it is established. Section 21 provides that the Secretary of the Market Committee shall exercise such powers and perform such duties as are conferred or imposed on him by or under the Act and the rules. Rule 66 of the Rules, which has been framed u/s 52 of the Act deals with the powers and functions of the Secretary who has been described as Chief Executive Officer of the Market Committee. Clause (xiv) of Rule 66 says that the Secretary shall conduct legal proceedings in all courts and Tribunals on behalf of the market committee. In view of these provisions, it has to be held that the Secretary is empowered to appear on behalf of the Market Committee and to instruct its lawyer to present its case before the court. It is relevant at this stage to mention that there is nothing on the records of the case to suggest that Siwan Market Committee or its Chairman has taken a decision contrary to the steps which are being taken by the Secretary in the present case. I, therefore, overrule the objection raised on behalf of the respondent No. 5.

8. Before coming to the main question argued on behalf of the parties, it may be necessary to examine the provisions of Section 4 of the Markets Act in some detail, which is in the following terms:

"4. Declaration of market area -- (1) 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 and after holding such enquiry as it may consider necessary, the State Government may by notification, decree the area specified in the notification u/s 3 or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the notification u/s 3.

(2) On and after the date of publication of the notification under Sub-section (1), or such later date as may be specified therein; no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to

be notified in the Official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation.-- A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage, or processing of agricultural produce within the meaning of this sec-tio, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale of such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce, is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of Section 3, the State Government may, at any time, by notification, exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-section (1).

(4) Nothing in this Act shall apply to a trade whose daily or annual turn over does not exceed such amount as may be prescribed,"

The effect of a notification u/s 4 (1) of the Markets Act is dealt with in Sub-section (2) and it will be observed that the mandate of law prohibiting purchase, sale, storage, or processing of notified agricultural produces flows from the publication of the notification itself without waiting for any other steps to be taken by anybody else. If any person is maintaining a market from before such notification, the operation of Sub-section (2) is not kept in abeyance till that person transfers the market to the Market Committee or takes any other steps in that regard. In that view, the affidavit filed on behalf of the respondents 1 to 3 to the effect that the Siwan bazar has not been transferred to the Market Committee is of no consequence. If the necessary conditions mentioned in Section 4(2) of the Markets Act are proved to have been satisfied, it has to be held that any other market which was in existence from before, if covered by the provisions of the Markets Act, must cease to continue. It has been asserted in paragraph 3 of the show cause of the respondent No. 6 that a notification u/s 4 dated 10-10-1975 was made, as evidenced by Annexure ''A'' to the show cause and that there has been further extensions of the area covered by the notification subsequently. The notifications have been published in Extraordinary issues of the Bihar Gazette. The admitted position now is that the notified area covers that area in respect of which the present writ application has been filed. It must, therefore, be held that the effect mentioned in Sub-section (2) of Section 4 of the Markets Act has come into play.

9. Mr. B. C. Ghose contended on behalf of the respondent No. 5 that Section 4 (2) of the Markets Act cannot, in any event, affect the right of the State

Government and consequently its agent, respondent No. 5, as the language thereof although referring to municipalities, other local authorities or other persons, does not refer to the State Government. However, I should mention here that no such interpretation has been pressed by Mr. Kame-shwari Nandan Singh, appearing for the State. The question, therefore, arises as to whether the State Government can be included in the expression other ''person'' within the meaning of the sub-section. It is true that the popular use of the term ''person'' is in regard to human beings, but the meaning of the word given in the Dictionary also include ''personality'' in the larger sense of the term. It cannot be laid down as a general rigid proposition that the word ''person'' can never include the State and it may be useful to refer to the decision in the Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, . u/s 218 (1) of the Calcutta Municipal Act, 1951, it is enjoined that every person who carried on certain business in Calcutta should take out a licence and in default thereof he is liable to fine. The question arose as to whether the State of West Bengal was included within the said sub-section and the answer was given by the Supreme Court in the affirmative. It is, therefore, a question of the interpretation of Section 4 of the Markets Act which will decide the issue. The object of the Markets Act is to provide for a regulated system of markets for agricultural produce, and in furtherance thereof Section 4 has abolished double control of the markets which could understandably lead to confusion and in many cases inconsistency. The Market Committees which are established u/s 6 of the Market Act (in the present case also a market committee has been established by notifications which are on the record of this case) have been authorised u/s 27 of the Markets Act to levy and collect market fees and Section 4 (2) takes care that nobody is subject to double fee. The language used in the sub-section is wide in terms. In view of the object of the legislature, the scheme of the Act and the language of the section, it is hardly likely that any discrimination between the State on the one hand and the citizens and other authorities on the other is being made in the present context. This is specially so because if such a discrimination is to be brought about through a construction suggested by Mr. Ghose, it may result in an anomalous situation in many cases. Applying the guide line for the purpose of interpretation, as indicated by the Supreme Court in paragraph 12 of the judgment in Union of India (UOI) Vs. Jubbi and Dunia, etc., . I am of the view that the Section 4 of the Market Act includes in its terms the State of Bihar.

10. Mr. Ghose also faintly suggested that the provisions of Section 4 (2) of the Markets Act are ultra vires the Constitution of India. But since the vires of the Act has been considered in great detail by several decisions of this court, both reported and unreport-ed, I do not propose to deal with the question except by following the earlier decisions upholding the Act.

11. Another argument attempted on behalf of the respondent No. 5 has been that the petitioners have not proved that they have been adversely affected so as to maintain the writ application and the allegations of fact are too vague about

the realisation of the fee by the Market Committee. During the course of the hearing, certain prayers were also made by the respondents for orders directing for the production of certain documents and examination of certain authorities of the State. Having regard to my view on the question agitated, I do not consider it either expedient or desirable to direct production of any evidence and the application made by the respondent No. 5 is rejected. The petitioners have asserted that they were made to pay the fee realisable u/s 27 of the Markets Act and the allegations have not been denied in the show cause of the Market Committee. The Committee, instead, asserted that it has been realising market fee within the notified area and details of the collections have been given in paragraph 10 of the show cause. During the pendency of this application, while dealing with the question of stay, this court permitted the Market Committee to continue to collect fees on the condition that proper accounts should be maintained so that in case of dismissal of the writ application, materials could be available for the successful respondents to claim damages. I, therefore, hold that there is no substance in the objection raised to the maintainability of the writ application.

12. Appearing on behalf of the respondent No. 4 who claims authority to realise tolls on behalf of the, Municipality, Mr. Basudeva Prasad contended that in view of the power bestowed on the Municipality by Section 82 (1) (ff) and Section 275 of the Bihar and Orissa Municipal Act, 1922, read with Article 277 of the Constitution of India, the provisions of the Markets Act so far as they purport to take away the right of the Municipalities are ultra vires. The Article is in the following terms:

"Any tax, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any Municipality or other local authority or body for the purposes of the State, Municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

It is manifest that the Article, covers only such cases in which the fees are mentioned in the Union List and not to other cases and it has been firmly established that the Markets Act is within the legislative competence of the State Legislature and deals with matters covered by the State List. It must, therefore, be held that Article 277 of the Constitution has no application in the present context. So far as clause (1) of Article 372 of the Constitution is concerned, it said that all the laws in force immediately before the commencement of the Constitution would continue in force. "Until altered or repealed or amended by a competent Legislature or other competent authority."

The protection to the earlier law given by the Article 372 is, therefore, available only so long there is no amendment of the law itself. It is well settled that besides express amendment of a statute, it may be modified by necessary implication by competent legislature and it can be so done even by a separate enactment. When two Acts are clearly inconsistent with or repugnant to each other, the former will be deemed to be altered, repealed or amended, as the last expression of the will of the Legislature must prevail. It is of course essential to show that the two provisions are really irreconcilable before an inference of implied repeal can be drawn. In the present case, Mr. Basudeva Prasad rightly contends that the power of the Municipality under Sections 82 (1)(ff) and 275 of the Municipal Act and the interpretation which I have put on Section 4 of the Markets Act are, consistent (sic). In that view, it must be held that the power of the Municipality under the Municipal Act has been cut down to the extent which is covered by Section 4 of the Markets Act. It must be held that to that extent the provisions in the Municipal Act are impliedly amended by the Markets Act and there is no question of the Markets Act being held ultra vires on the ground of inconsistency with the Municipal Act. The additional objection raised on behalf of the respondent No. 4 is also, in the circumstances, rejected.

13. It may further be observed that no claim by any of the respondents has been made on the basis of Sub-section (3) or (4) of the Section 4 of the Markets Act.

14. In the result, I hold that the State of Bihar and the Siwan Municipality have been deprived of the power to realise any tax or fee on the purchase, sale etc. of any agricultural produce notified in the notifications mentioned above within the areas specified in the said notifications to the extent covered by the provisions of the Bihar Agricultural Produce Markets Act, 1960 and the respondents 1 to 5 are restrained from realising any such tax or fee. The writ application is accordingly allowed, but in the circumstances of the case, without costs.

K.B.N. Singh, C.J.

15. I agree. Petition allowed.

