

(2003) 09 KAR CK 0095

In the Karnataka High Court

Case No : Regular Second Appeal No. 803 of 1991

Shankaragouda Yallanagouda Patil (since dead by L. Rs.) and
Another

APPELLANT

Vs

Hubli Dharwad Municipal Corpn.

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Karnataka Municipal Corporations Act, 1977 — Section 369 (2), 371, 372, 374, 377

Citation : AIR 2004 Kar 283 : (2004) 2 KCCR 853

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; C.R. Jadhav and K.N. Puttegowda,
Amicus Curie, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—This case calls for interpretation of static provisions of law to keep in tune with the changing market and commercial conditions of the society. The Karnataka Municipal Corporations Act, although, brought into effect from the year 1976, but most of the provisions are borrowed from the erstwhile enactments of the yore. The idea of Municipalities and Corporations came to be evolved with rapid urbanisation as consequence of industrial revolution. The Karnataka Municipal Corporations Act defines the word "Market" at Section 2(19) and the regulation of private markets are dealt at Sections 371 to 377. The relevant provisions for consideration in this case would be the definition of the "market" and Sections 371, 372, 374, which are extracted hereunder for convenient reference:

Section 2(19):

"Market" includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, livestock, food for livestock, meat, fish, fruits, vegetables, flowers, animals intended for human food or any other articles of

human food whatsoever, with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business of or the persons frequenting the market by the owner of the place, or any other person;

Section 371 : Establishment of private Markets :-- (1) The Corporation shall determine whether the establishment of new private markets for, the sale of or for the purpose of exposing for sale, animals intended for human food or any article of human food shall be permitted in the city or any specified part of it.

(2) (a) No person shall establish any new private market without or otherwise than in conformity with a licence issued by the Commissioner with the sanction of the Standing Committee which shall be guided in giving or refusing sanction by the resolutions of the Corporation passed under Sub-section (1).

(b) Applications for such licence shall be made by the owner of the place in respect of which the licence is sought not less than thirty days before such place to open as a market.

372. Licensing private markets. No person shall without or otherwise than in conformity with an annual licence granted by the Commissioner in this behalf continue to keep open a private market.

Application for the renewal of the Licence shall be made not less than thirty days before the commencement of the year for which licence is sought. The Commissioner may by an order subject to such regulations as to supervision and inspection and to such conditions to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used and rents and fees to be charged in such markets, as he thinks fit--

(a) grant or refuse to grant or renew such licenses; or

(b) withhold the licence until the owner or occupier executes such works as may be specified in the order :

Provided that the Commissioner shall not refuse or withhold such licence for any cause other than the failure of the owner or occupier thereof to comply with some provisions of this Act or some regulation made u/s 422 or some bye-law made u/s 423 without the approval of the Standing Committee.

(1) The Commissioner shall cause a notice that the market has been so licensed to be affixed in english and in Kannada in some conspicuous place at or near the entrance to the premises.

374 : Licence fee for private markets.--When a licence granted u/s 372 permits the levy of any fee or fees of the nature specified in Sub-section (2) of Section 369 a fee not exceeding fifteen per cent of the gross income of the owner from the market in the preceding year shall be charged and levied by the Commissioner for such licence.

2. The Corporation has on obligatory function to maintain public market. But however, the Corporations can allow constructions and maintenance of private markets by the private individuals subject to the conditions and regulations under Sections 371 to 377.

3. In the instant case, the appellant constructed a shopping complex consisting of 10 tenements in a row and let out for running different types of trading activity. The Corporation considered the entire shopping complex as a private market and issued notice calling to pay license fee as required u/s 374. The appellant aggrieved by the said notice filed a suit, in O. S. 134/83 on the file of I Addl. Munsiff, Hubli, which came to be, allowed holding that the commercial complex is not a private market within the definition of Section 2(19). The first appellate Court set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff. Hence the second appeal.

4. I. A. Nos. 1 to 3 are filed for in bringing the legal representatives of the appellant on record. For the reasons stated in the application the delay condoned, abatement set aside and the legal representatives are permitted to be come on record.

5. Since the interpretations of the word "Market" seems to have bearing on the other Municipal Corporations, counsel for the Bangalore Mahanagara Palike was notified to appear and to assist the Court as amicus-curie.

6. The following substantial question of law is framed for consideration:

(1) Whether a commercial complex is a private market within the provisions of Sections 2(19) and 371 of the Karnataka Municipal Corporations Act? If so, u/s 374 liable for payment of special licence fee?

(2) Whether in a commercial complex where some of the tenements carry on the activity defined under Sections 2(19) and 371 of Municipal Corporations Act would be private market and whether to such of the tenements Section 374 could be applied for collecting special license fee?

7. Sri C. H. Jadav relied on the ruling of Supreme Court in Afzal Ullah Vs. The State of Uttar Pradesh, . In the said decision in a private land the owner allowed sale of food grains. Tanda Municipality demanded payment of market fee interpreting the provisions of Sections 241, 298 and relevant bye-laws of the Uttar Pradesh Municipalities Act 2 of 1916, Supreme Court held that the provisions of Section 298 are wide enough to cover the activity in question and therefore the bye-laws framed for collection of market fee from the owner of land who permits the sale of food-grains in his plot is held to be valid and bye-laws envisaging collection of market fee was also held to be valid.

9. The word "market" in-Law Lexicon is defined as follows :

MARKET : A market connotes freedom of bargain. There may be a market, completely circumscribed as regards the rates by price control, but within the

limit set by relevant rule or order, the area of operation would still be a commercially free area. Even where a control price is fixed, it is generally the ceiling, which is fixed, and not an invariable price, be that as it may, to say that when agents of the State seize paddy, grown by subjects, under the authority of some law or regulation and pay for it at some rate fixed by themselves and much below the rate in the open market, they create a regulated or any kind of market at all, is a misuse of language. Commissioner of Agricultural Income Tax, West Bengal Vs. Manmatha Nath Mukherjee, . The definition of "market" given by Jevons in the Encyclopedia Britannica, Vol. 17, P. 731 (Edn. 13).

Definition in Encyclopaedia. Any body of persons who are in intimate business relations, and carry on extensive transactions in any commodity.

Interpretation in judicial decisions.--

In the petition of Raja Paba Khoji ILR (1885) Bom 272, it was held that selling vegetables on the of a of a house was not using the of a "as a market" within the meaning of Section 66, Municipal Act (Bombay) 6 of 1873. In Queen Empress v. Magan Jarjivan ILR (1886) Bom 106, it was held that the shop used by the accused for the sale of their own commodities was not a "market" within the meaning of Section 66, Bombay Act 6 of 1873. West, J. in considering the question relied on the case of Mayor, etc, of Manchester v. Lyons (1882) 22 Ch. D. 287 and referring to other cases, adopted the view that the mere selling in a private shop not within the limits of a market place, marketable articles on market days was not an injury to the market in point of law. This view was followed by the Madras High Court in Queen Empress v. Badur Bhai (1887) 10 SLR MAD 216 : I Weir 741. It would, therefore, follow that a single shop selling fruit would not constitute a market. Does a row of shops dealing in the same commodity, i.e., fruity, constitute a market? In Bombay, there are several rows of shops dealing in the same commodity and owned by the same individual. Such a row of shops would hardly constitute a private market unless the owner had control over the actions of the shop-keepers and the right to compel the shopkeepers to sell a particular commodity at particular hours. It had not been suggested in the instant case that the accused had bargained with the several tenants that they should sell fruit. The shopkeepers are monthly tenants and are not bound to sell a particular commodity, nor are they bound to keep the shops open at stated hours. The public have no access to the interior of the shops.

Dictionary meanings :-- In Stroud's Judicial Dictionary, a market is defined as a public time and appointed place of buying and selling ; also purchase and sale.

10. The decision of the Supreme Court cited does not appear to have any bearing on the facts on hand.

11. The trading activities covered in the definition of market refers only to the activity of sale and display for sale, the live-stocks intended for human food and any articles of human food. But does not include sale of articles like consumer durables, electrical appliances, textiles etc. The provisions of the Act insist that

before constructing a private market necessary licence has to be obtained from the Corporation. The provisions insist that a private market there should be a necessary lay out with provision for drains and convenient passage. In the case of commercial complex also similar requirements are insisted. The construction of private commercial complex in the cities has become a quite common feature.

12. The trading activity visualised in the definition of "market", under the Act is one akin to weekly sandy markets conducted once in a week on the out-skirts of the towns and cities where only live-stock and food articles are sold. The advent of industrial revolution brought about Paradigm shift in the concept of trade. The growth of science and technology has offered varieties of consumer durables and trade items. The definition of market under the Act is too small to envelop trade and commercial activities of the present day. In the cities and townships building commercial complex has become common place. In the commercial complex the tenements are rented/let-out to various trade and commercial activities. Some of the tenements might be used as restaurants, and for sale of food articles and food items and in other tenements consumer durables and non-food items of human use and comforts and other articles like textile, cosmetics etc., are offered for sale and sometimes medical clinics, tailoring shops, beauty parlour are run in the tenements of the commercial complex. Therefore all that variety and voluminous activity carried on in any of the tenements of commercial complex may not fit into the definition of market. Therefore singling out such of those tenements where food items and articles are sold for collecting special license fee would be an unjustifiable discrimination. Unless the definition of the market under the Act is amended to cover all the commercial and trading activities. Therefore, notwithstanding the fact some of the tenements in the commercial complex might be used for store and sale of human food articles. The commercial complex cannot be considered as private market and no special license fee could be collected u/s 374 of the Act. Questions of law are answered in the negative.

Appeal is allowed. The judgment and decree of the trial Court is set aside.