

PETITIONER:
RAMAKRISHNA HARI HEGDE & ANR.

Vs.

RESPONDENT:
MARKET COMMITTEE, SIRSI & ORS.

DATE OF JUDGMENT 15/01/1971

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
SIKRI, S.M.
DUA, I.D.

CITATION:
1971 AIR 1017 1971 SCR (3) 370
1971 SCC (1) 349

ACT:
Bombay Agricultural Produce Markets Act (22 of 1939), as amended in 1954, ss. 4 and 4A-Notification changing Principal Market Yard Time insufficient for persons carrying an business to shift to new yard Notification, if violates their fundamental right to carry on business.

HEADNOTE:
Under the Bombay Agricultural Produce Markets Act, 1939 as amended in 1954, a Market area is first declared under s. 4(1), after which, under s. 4A, a Principal Market Yard and one or more sub-Market Yards may be constituted for the area. The effect of constituting the Market Area and Market Yard is that the purchase or sale of agricultural produce in any place in the area is prohibited except in the Principal and sub-Market Yards. Under s. 5 the State Government may establish a Market Committee for the market area. In 1951, the town in which the appellants were carrying on business in :agricultural produce was declared, along with surrounding villages, as the .Market Area. In 1954, after the Act was amended by the addition of s: 4A, the Government notified the area in which the appellants were carrying on business as the Principal Market Yard of the Market area. On 5th January 1965, the Government issued a Notification by which land granted to the Market Committee established under the Act for the Market Area, was declared to be the Principal Market Yard with effect from 15th January 1965. The appellants challenged the Notification, but the High Court dismissed their writ petition.

In appeal to this Court :

HELD : (1) The Government has the power to issue the Notification in public interest, but the prohibition on the appellants, implicit in the Notification, was unreasonable and to that extent violated the fundamental rights of the appellants to carry on their business, because, it was impossible for them to shift their business to the new Principal Market Yard within ten days. [376 A-C, D-F]

(2) The Government could have declared the area in which the appellants were carrying on the business as a Sub-Market Yard and rectified the Notification, but this Court cannot assume the functions of the Government and direct the

Government to do so. [376 F-G]

(3) Since the Market Committee had however agreed to grant a reasonable period of one and a half years time to the appellants to enable them to shift to the Principal Market Yard and to permit them to continue their business in the old Market Yard during that period, the Notification need can be struck down. F376 G-H, 377 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1072 of 1966.

Appeal by special leave from the judgment and order dated July 30, 1965 of the Mysore High Court in Writ Petition No. 141, of 1965.

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(Jagunohan Reddy, J.)

V. M. Tarkunde and Naunit Lal, for the, appellants.

R. B. Datar, for respondent No. 1.

S. K. Dholakia and S. P. Nayar, for respondent No. 2.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J. This Appeal is by Special Leave against the Judgment of the Mysore High Court dismissing the Writ Petition filed by the Appellants and Respondent No. 3 against Respondents 1 and 2, the Market Committee Sirsi and the State of Mysore respectively, by which they challenged the Notification of the Govt. of Mysore No. DPC 203 CMD 64(i) dated 5th January 1965. The Town of Sirsi in the North Canara which was once part of the Bombay State is one of the leading markets for Areca, Cardimom and Pepper. The Appellants have been carrying on business in these 3 commodities on a large scale for many years in this town mainly in the localities comprising Channapattan Galli, Basti Galli and Nadged Galli, while the Respondent 3 who is a dealer in the said commodities was carrying on business in Nadged Galli. In the Channapattan Galli there are nearly 20 Commission Agents who own shops and godowns who also deal in these commodities. It was stated that the three Gallis constitute the main Market where wholesale business in the aforesaid commodities is being carried on for more than a century.

The Bombay Legislature had passed the Bombay Agricultural Produce Markets Act 1939 (Act XXII of 1939) and thereafter made rules under the Act known as Bombay Agricultural Produce Market Rules hereinafter referred to as the Act and Rules respectively. In 1951 under the provisions of Section 4(1) of the Act the Govt. of Bombay declared the town of Sirsi and various surrounding villages, 59 in number as a market area in respect of Arerca Pepper and Cardimon and by Notification dated 24th April 1951 had also declared the 3 Gallis referred to above as the Market Yard under the Act. In 1954 the Act was amend by the addition of Section 4A to which a reference will be made presently. After the amendment of the said Act, on 31-8-1954 the Govt. of Bombay Notified the three Gallis of Channapattan, Basti and Nadged which previously had been declared as a Market Yard, as the Principal Market Yard of the said Market area under Section 4-A(2) proviso. After this, declaration it is said the Appellants invested large amounts in buildings which are worth ten lacs of Rupees and improved their trade. Similarly in the Nadged Galli the properties of Commission Agents are worth about Rs. 5 lacs and in the Basti Galli the business premises are worth about Rs. 2 lacs.

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It is alleged that Shri Hegde Kadve is a Congressman and as the Chairman of the Market Committee and also as the Chairman, of the Sirsi Totgars Cooperative Society and President of the Taluka Board had considerable personal influence over the Congress Ministry & consequently prevailed on the Government to grant to the Market Committee free of cost land measuring about 10 acres and 37 gunthas for a market at a distance of more than a mile from the present market, which was divided into plots, on which he managed to get shops, godowns and offices constructed with the money secured by the Society as a loan from the Government at a very low rate of interest. The Market Committee disposed of eleven sites to private parties and also allowed the Cooperative Society to construct premises for a Rice mill, but notwithstanding these constructions the new site for the Market has no amenities. The impugned Notification had the effect of prohibiting persons from carrying on business in the said three main commodities at the old market Yard, and has thus destroyed the business of traders including that of the Appellants. The new site it was said was only so declared with a view to confer on the Cooperative Society a monopoly in trade as it would not be possible for traders to invest money and construct new buildings and godowns for carrying on trade at the new market site. The Notification was thus challenged as being ultra vires of the provisions of the Act, illegal, arbitrary, capricious and discriminatory, violating Articles, 14, 19 (1) (g) and 31 of the Constitution.

The Respondents denied the several allegations made against them. Respondent 1 stated that the Market Committee having felt as early as 1958 that the area of the three Gallis was insufficient to cope with the expanding business and made efforts to acquire a more convenient and spacious area to house the market. In furtherance of this desire and with the object of providing better facilities to the Agriculturists, the Committee from time to time made representations to the Government, which ultimately granted in all 35 acres-29 gunthas of land. Thereafter steps were taken for the development of the said area by leasing out plots to Commission Agents and traders who were induced to build premises for the purpose of sale and purchase of the Agricultural produce in the Market Yard. The Committee thereafter resolved on 13-7-1964 to request the Government to declare the new area as the Principal Market Yard while at the same time permitting the traders to continue their business in the existing place for a period of one or two years. It was also pointed out that the Market Committee of which the Appellant No. 1 was a Member had never objected to the shifting of the Market Yard since 1958 but on the contrary had applied for the grant of plots and was complaining that the Government was delaying the issue of the

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necessary Notification. Besides the Appellant there were 14 others, who had obtained leases of the plots and constructed buildings on these plots. The allegation that there are no Roads or well was incorrect. The new site was only about half a mile from the 3 Gallis and was centrally situated within the Municipal limits of Sirsi as is evident from the fact that the Totgars Society itself was transacting 30% of the entire business of Sirsi Market Committee in the-regulated commodities with an annual turnover of more than a crore of Rupees within that area. These allegations were considered by the High Court which held that it was open to

the Government under Section 4 to alter the declaration regarding the Principal Market Yard. After setting out the history of the legislation it was of the view that the impugned Notification was issued in the public interest, and not with any ulterior purpose and consequently rejected the Writ Petition.-

The short point in this appeal is whether by reason of the impugned Notification the Appellants have been prevented from exercising their right to trade and whether it is discriminatory and affects in any manner his right to property.

The Act under which the Notification is issued deals with the regulation of purchase and sale of agricultural produce in, the State of Bombay including the area which has now become part of Mysore State as a consequence of the States Reorganisation Act 1956. An examination of the provisions of the Act would show that there is no warrant for holding that there is anything which affects the freedom to carry on trade or business nor is there anything which can be said to be discriminatory. Section 2 of the Act is in so far as relevant defines Market, Market Area, Principal Market Yard, Sub-Market Yard. Section 3 provides for the constitution of Markets and Market Committees and confers power on the Commissioner by Notification to declare his intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified and inviting objections and suggestions within a month of the publication of the Notification. The Commissioner may after considering the objections and suggestions if any received by him during that period and after holding such enquiry, as may be necessary declare the area under Section 4-A to be Market area for the purposes of the Act. Section 4(2) provides that after the Market area is declared, no place in the said area shall, subject to the provisions of Section 5A be used for the purchase or sale of any agricultural produce specified in the Notification. Section 5 confers power on the State Government after the declaration of the Market area to establish a Market Committee for every Market area and under Section 5AA it becomes the duty of the Market Committee to en-

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force the provisions of the Act and also to establish a Market therein on being required to do so by the State Government. In as much as there may be a time lag between the declaration of a Market area and establishment of a Market; the proviso to Sec. 4(2) lays down that pending the establishment of a market in a Market area the Commissioner may grant a licence to any person to use any place in the said area for the purpose of purchase and sale of any such agricultural produce and it is the duty of the Market Committee under Sec. 5AA to enforce the conditions of the licence granted under Section 4(2). Section 26 confers power on the State Government to frame rules for the purpose of carrying out the provisions of the Act, and Section 27 confers power on the Market Committee to frame bye-laws with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government under Sec. 26. The State Government has power under Sec. 29 to add to, amend or cancel any of the items of agricultural produce specified in the Schedule to the Act.

The Act was amended in 1954 by the addition- of Sec. 4A which under sub-s. (1) makes it necessary for each Market area to have one Principal Market Yard and one or more sub-Market Yards as may be necessary. Sub-s. (2) of the said Section empowers the Commissioner by Notification to declare

any enclosure, building or locality in any market area to be a Principal Market Yard for the area and other enclosures, buildings or localities to be one or more sub-Market Yards for the area. The proviso requires that one of the enclosures, buildings or localities declared to be market yards before the commencement of the amendment of that section, shall be declared to be the Principal Market Yard for the Market area and others, if any, to be one or more SubMarket Yards for the area, subject to such variation as may be necessary.

The effect of these provisions is that a Market area is first declared under Sec. 4(1) after which a market yard may be constituted for the market area as Principal Market Yard and sub-Market Yard or yards if any. The declaration of the Market area subject to Sec. 5A has the effect of prohibiting the purchase or sale of agricultural produce in any place in that area except in the area declared as a Principal Market Yard or sub-Market yard or yards, if any. This Court had earlier in Mohammed Hussain Gulam Mohammad & Anr. v. The State of Bombay & Anr.(1) held Section 4, 4A, 5, 5A and 5AA to be constitutional and that none of the said provisions imposed unreasonable restrictions on the right to carry on trade in the agricultural produce

(1) [1962] 2 S.C.R. 659.

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regulated under the Act and as such were not violative of Art. 19(1)(g) of the Constitution.

It is, however, contended that the impugned Notification violative of Articles 19 (1) (g), 14 and 31 of the Constitution.

The Notification as we have already stated was issued on 5-1-1965 under Section 4(A) of the Act and is in the following terms :

"In exercise of the powers conferred by Sub-Section (2) of Section 4A of the Bombay Agricultural Produce Markets Act 1939 (Bombay Act 22 of 1949) as in force in the Bombay area, and in supersession of Bombay Government notification Development Department No. APM 4554, dated 31-8-1954, the Government of Mysore hereby declares the following locality in the market area of the Agricultural Produce Market Committee, Sirsi of Sirsi Taluka of North Kanara District, to be a Principal market yard for the area with effect from the 15th January, 1965, namely:-

Locality :

An area measuring about 35 acres and 29 gunthas and 4 acres, of Sirsi Totagaras' Cooperative Sales Society Ltd., Sirsi in R.S. No. 116, 117, 59 and 60 of Sirsi Taluka.

On the North by :-Sirsi-Yellapur Main Road & R. S. No. 11 6

On the South by:-R.S. Nos. 55, 57 and portion of R.S. No.

299. On the East by :-Portion of R.S. Nos. 299, 58, 129-A &

118. On the West by :-R.S. Nos. 61, 64 and 68."

It may be mentioned that the earlier Notification of 31-8-1954 also made in exercise of the Powers conferred by sub-Section (2) of Section 4-A of the Act had declared as the Principal Market Yard all godowns, storage places and open places lying within the limits of the Sirsi Municipality and approved by the Agricultural Produce Market Committee, Sirsi for storage and for the purpose of sale of commodities under regulation including the area locally known as Channapattan Gali, Basti Galli and Nadger Galli which had earlier been declared by Notification of the Government in the Development Department dated 24-4-1951 to be a Market Yard. The affect of the supersession of this Notification by the impugned Notification is that as from 15-1-1965 the area of

the 3 Gallis ceased to be the Principal Market Yard, and as such no business could be transacted therein on and after that date.

This position could not be seriously controverted by the learned Advocate for the Respondents. In our view the prohibi-

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tion implicit in the Notification was unreasonable and to that extent violated the fundamental rights of the Appellants and Respondent 3 to carry on their business because it could not have been postulated that they could immediately in 10 days shift their business to the Principal Market Yard declared by the impugned notification. The learned Advocate for the Market Committee however pointed out that it was never their intention to prohibit at-once any business being conducted in the Market Yard in the Gallis, but they had in fact in their proposals to the Government suggested the business in the Gallis should be allowed to be continued for a year or two. Whatever their proposals may have been we have no doubt that the effect of the Notification as long as it is in force is to prohibit the Appellants and Respondent 3 from carrying on business in the Market Yard of the Gallis.

It is submitted by the learned Advocate for the Respondents that the Appellants and Respondent 3 had sufficient time till now to make arrangements to shift their business, as such they are not entitled to complain, but the contention on behalf of the Appellants is that they were entitled to challenge the Notification and as they had invested large amounts in buildings etc. in the 3 Gallis they are justified in asking this Court to direct Respondents to have these areas declared as a sub-Market area. While the Government has the power to issue a Notification in public interest & to declare the area specified in the impugned Notification as the Principal Market area, without necessarily declaring other areas simultaneously as sub-Market area, in our view sufficient time should have been given for the Appellants, Respondent 3 and other persons doing business in the area of the 3 Gallis to shift their business. As long as the Notification prohibited them from doing business in those Gallis they had a right to challenge the validity of that Notification. No doubt the Govt. could have declared the 3 Gallis as sub-Market Yard but it is not for this Court to arrogate to itself the functions of the Govt. and direct them to do so merely because that would be one of the ways in which the impugned Notification can be rectified. The learned Advocate for the Market Committee, however, consistent with the stand taken by the Market Committee in its counter before the High Court that it had requested the Govt. to allow the business in the Gallis to be carried on for one or two years agrees to give one and a half years time for the Appellants and Respondents to enable them to shift during this period, to the Principal Market Yard declared under the impugned Notification and till then permit them to continue their business in the 3 Gallis. The period agreed to in our view is a reasonable period within which the Appellants and Respondents 3 can shift their business to the new Market Area and till then they should not be prohibited from

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doing business in the Market area of the 3 Gallis as heretofore. In view of this agreement except to give the above direction there is no need to strike down the Notification.

The Appeal is accordingly allowed subject to the above directions. There will be no costs in this Appeal.
V.P.S. Appeal allowed and directions given.
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JUDIS