
(1971) 01 MAD CK 0011

In the Madras High Court

Case No : Civil Revision Petition No. 1516 of 1967

A. Subbaiah Padayachi

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 27-01-1971

Acts Referred:

Citation : AIR 1971 Mad 417 : (1971) 84 LW 342 : (1971) 2 MLJ 324

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

Ramanujam, J.

1. The petitioner herein held 1.52 1/2 acres of land in his own name and his minor sons held an extent of 6.78 acres. The petitioner was cultivating on lease an extent of 4.51 acres belonging to a third party. The Authorised Officer clubbed all the three items and proposed to declare the said leasehold extent of 4.51 acres being in excess of the cultivating tenant's ceiling area as fixed u/s 60 of Madras Act 58 of 1961. The petitioner contended before the Authorised Officer that he is in possession of only 1.52 1/2 acres as owner and that the extent of 6.78 acres belonging to his minor sons cannot be clubbed with his extent for the purpose of fixing the cultivating tenant's ceiling area under Ch. VIII of the Act. But this objection was overruled by the Authorised Officer and he held that as the minor sons who held an extent of 6.78 acres are members of the petitioner's family, as defined in Section 3(14), the aggregate holding in the hands of all the minors have to be taken into account for the purpose of fixing the cultivating tenant's ceiling area of the petitioner. On appeal to the Land Tribunal, the Authorised Officer's view has been accepted as

correct.

2. Aggrieved against the decision of the authorities below the petitioner has come to this court and contends that the definition of "family" cannot be

imported into the proceedings arising under Ch. VIII and that the separate holdings of the members of the family cannot be grouped and

aggregated as u/s 5(2) for fixing the cultivating tenant's ceiling area. It is urged that there is no provision like Section 5(2) in Ch. VIII, enabling the

Authorised Officer to club the separate holdings of the members for fixing the cultivating tenant's ceiling area under Sections 60 and 61 of the Act.

The authorities below rejected the said contention on the ground that the definition of "person" in Section 3(34) of the Act included a family and

that a conjoint reading of Section 3(14) and 3(34) showed that for the purpose of Section 60 also such clubbing of the separate properties of all

the members of the family is authorised. But I am of the opinion that the view of the authorities below is not correct.

3. Section 60 defines a "cultivating tenant's ceiling area" as five standard acres held by any person partly as a cultivating tenant and partly as owner

or wholly as cultivating tenant, and the explanation to that Section defines "cultivating tenant" as including any tenant who is in actual possession of

land but does not contribute his own physical labour or that of any member of his family in the cultivation of such land. The above explanation

throws some light on the question whether the notion of family as defined in Section 3(14) can be imported for the purpose of Ch. VIII. A

cultivating tenant has also been defined in Section 3(10) of the Act as meaning a person who contributes his own physical labour or that of any

member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied, including the heir of such

person. If the heir contributes his own physical labour or that of any member of his family in the cultivation of such land. The definitions of

cultivating tenant both u/s 3(10) as well as in the explanation to Section 60 seems to suggest that it only contemplates an individual being a

cultivating tenant and not the family as such. The words a person who contributes his own physical labour or that of any member of his family" lead

to the inference that the term "cultivating tenant" is meant to refer to an individual and not a family as such. The reference to the words "his family"

in the above definitions can refer only to the family of the person who is contemplated under the definition. The words ""physical labour"" can only mean that it is the personal enjoyment of the individual that is contemplated and not the enjoyment of the family. Having regard to the definition of "cultivating tenant" both in Section 3(1) and in the Explanation to Section 60, it cannot be said that the legislature intended to include ""family"" within the definition of "cultivating tenant". The above view also gets support from the fact that there is no provision like Section 5(2) in Ch. VIII under which a cultivating tenant's ceiling area is determined and the excess is taken by the Authorised Officer u/s 62 of the Act. S. 5(2) specifically says that the aggregation of the separate holdings of the members is contemplated only for the purpose of Section 5. If the aggregation of separate holdings is intended to be for all purposes, the Legislature would have made a similar provision in Section 60 providing not only for aggregation of the individual holdings of the members but also for an additional extent for each of the members over and above certain minimum. But no such provision has been made. This shows the legislative intention to be clear that for purposes of Ch. VIII the notion of "family" cannot be brought in. Hence the authorities below are in error in taking the minors' properties also into account for purpose of fixing the cultivating tenant's ceiling area.

4. In the result, the civil revision petition is allowed and the Authorised Officer is directed to exclude the lands of the minors in fixing the cultivating tenant's ceiling area of the petitioner herein. No costs.

5. Petition allowed.