

(1973) 01 MAD CK 0018
In the Madras High Court
Case No : Writ Appeal No. 159 of 1969

B.E. Kaliyaperumal Nattar

APPELLANT

Vs

The Authorized Officer (Land Reforms), Tiruchirapalli

RESPONDENT

Date of Decision : 23-01-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 39

Citation : AIR 1973 Mad 389 : (1974) ILR (Mad) 182 : (1973) 86 LW 446 : (1973) 2 MLJ 95

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—This appeal raises the question as to the validity of a sale of an extent of 2 acres and 32 cents comprised in S. No. 40/5

and made on 14-5-1964 in favor of the appellant. The vendor filed a return under Madras Act 58 of 1961 on 15-7-1963, disclosing an extent of

3 acres and 91 cents as surplus out of 4 acres and 94 cents covered by survey field No. 40/5 in Bishandarkoil village, Lalgudi Taluk. A draft

statement was published, as required by Section 10 on 29-1-1964, and the final statement u/s 12 followed on 28-1-1965. A notice of the final

statement was served on the vendor on 29-11-1965. An appeal arising from it failed on 10-6-1966. On 5-10-1966 notification u/s 18(1) was

made and, on 13-10-1966, the vesting of the surplus was proclaimed u/s 18(2). We may mention that, on 9-3-1964, the Supreme Court struck

down the Act itself as violative of the fundamental rights relating to property. Then came, with effect from 20-6-1964, 17th Amendment of the

Constitution which gives deemed validity to the Act from the date of its original commencement, namely, 6-4-1960.

2. The purchaser who impugned the validity of the vesting of the land covered by the sale deed in his favor, failed in his petition under Art. 226 of

the Constitution, Alagiriswami, J. taking the view that the intendment of the Act was to invalidate such a sale deed as well. With respect, we are

unable to share this view.

Madras Act 58 of 1961 provides for fixation of ceiling on agricultural land holdings and for certain other matters connected therewith. It gives

effect to the objectives underlying in clauses(b) and (c) of Art. 39 of the Constitution of India. While fixing a ceiling at the extent mentioned in the

Act on holding agricultural land, the Act contains provisions for vesting in Government of surplus land and distribution thereof by it to the landless.

We have already mentioned that the Act commenced to operate with effect from 6-4-1960. Section 7 says that, on and from the date of the

commencement of the Act, no person shall, except as otherwise provided in the Act, but subject to the provisions of Chapter VIII, be entitled to

hold in excess of the ceiling area. We are not, at the moment, concerned with the proviso to the section. Section 8 provides for furnishing of return

by person holding land in excess of the ceiling. That section itself fixes ceiling at 30 standard acres, a term which is defined. The liability to make a

return is within 90 days from such date as may be specified in the Notification issued by the Government. The term "notified date" is defined by

Section 3 as the date specified in the notification issued by the Government u/s 8(1). Section 9 relates to collection of information detailed therein.

When a return is furnished on the basis of the information under sub-sec(1) of Section 8 as well as the representation and evidence under the

proviso to Explanation III to sub-section(1) of Section 8 the representation and evidence under the proviso or on the basis of the information under

sub-section(1) of Section 9 and the additional particulars, if any, or on the basis of the information obtained by the authorized officer, he shall

prepare a draft statement in respect of each person holding or deemed to have held land in excess of the ceiling area. Such statement should

contain particulars detailed in sub-sec.(1) of S. 10 which includes also particulars of the land proposed to be declared as surplus land. Before

proceeding further, the authorized officer is given jurisdiction to decide, in certain circumstances, questions of title. After disposal of objections, if

any, preferred u/s 10(5) to the draft statement published, the Authorized Officer, u/s 12, makes necessary alterations in the draft statement and

declares surplus land as held by each person. This is regarded as the final statement to be published. Then follows the provision for acquisition of

surplus land which is provided for by S. 18. After publication of the final statement u/s 12, the Government shall publish a notification to the effect

that surplus land is required for a public purpose. Once that is done, and due publicity thereof has been given as provided by sub-sec.(2) of

Section 18, the land specified in the notification, together with the trees standing on such land and buildings, shall vest in the Government free from

all encumbrances from the date of publication and all right, title and interest of all persons in such land, with effect from the said date, shall be

deemed to have been extinguished. In order to effectuate the scheme of the ceiling, Chapter III of the Act contains provisions for ceiling of future

acquisition and restrictions on certain transfers. Section 19 enjoins that, when a transfer is made in his favor of agricultural lands, the transferee

should declare the total extent of land held by him. In the absence of such declaration, no document of transfer could be registered. The penalty for

future acquisition in contravention of Section 7 fixing the ceiling is that the transfer effected shall be deemed to have been in favor of the

Government with effect from the date of transfer. Section 22 deals with transfers between the date of commencement of the Act and the notified

date. In such a case of transfer, the Authorized Officer may declare, after following the prescribed procedure, the transfer to be void, but only if he

finds that it defeats any of the provisions of the Act. Then comes Section 23:--

Subject to the provisions of Sec. 20, for the purpose of fixing, for the first time, the ceiling area of any person holding land on the date of the

commencement of this Act, in excess of 30 standard acres, the authorized officer shall not take into consideration-

(a) any transfer, whether by sale (including sale in execution of a decree or order of a civil Court or of an award or order of any other lawful

authority) or by gift (other than gift made in contemplation of death), exchange, surrender, settlement or otherwise; or

(b) any sub-division (including sub-division by a decree or order of a civil Court or any other lawful authority) whether by partition or otherwise,

effected on or after the notified date and before the date of the publication of the final statement u/s 12 or 14.

The direction in the section is to the authorized officer which is that, for the purpose of fixing, for the first time, the ceiling area of any person

holding land on the date of the commencement of the Act in excess of 30 standard acres, he shall ignore any transfer, whether by sale or by gift

etc., effected on or after the notified date and before the date of the publication of the final statement u/s 12 or 14. In sharp contrast to Section 22,

the authorized officer, while acting u/s 23, has not been given any power to declare such sale deed to be void. The section also does not say that

the transfer by itself will be bad for any reason. The transfer is not rendered void either expressly or by any statement in the section. The section

does not deal with the transferee's rights.

3. It is true the several possibilities may be contemplated with reference to Section 24. One of them, to take an extreme case, may be of a person

holding agricultural land in excess of 30 standard acres at the commencement of the Act. After filing a return but before the vesting of surplus land,

he has transferred the entirety of the land in his holding. The question may arise what should be done in such a case. If the Authorized Officer is to

ignore the transfer made by the transferor, the transferee's rights will come in the way of actually taking the land, and be it noted that the State's

right to take the land will arise from the date of vesting on notification under S. 18(3). Section 23 cannot be read or understood as conferring

power upon the Authorized Officer to take land which has not vested in the Government as provided under the provisions of the Act, particularly

Section 18(3), and then distribute such land. Yet, another instance may be examined. Instead of transferring the entire land, the transferor conveys

just an extent in excess of the ceiling limit. In that case, the effect of ignoring the transfer would be that the Authorized Officer may be entitled to

take over what could have been regarded as excess before the transfer out of the lands still in the hands of the transferor; but be it noted that this,

he can do only when the land which he proposes to take has, by a notification u/s 18(3), vested in the Government. As we think the approach to

Section 23 should also be from the standpoint of the main objective of the Legislation, namely, fixing a ceiling. Too much emphasis cannot be given

to distribution. We are aware that the position u/s 23, as it is worded for the moment, may be anomalous and may even lead to difficult situations.

But that, in our view, should not stand in the way of finding the true scope of Section 23 and the Court is not entitled to fill up gaps in Section 23

by visualizing strange situations in providing for them.

4. As we read Section 23, we are unable to hold that the sale in favor of the appellant is by any means invalid. It follows, therefore, that his title or possession cannot be interfered with. The appeal is allowed with costs. Counsel's fee Rs. 200.

5. Appeal allowed.