

---

**(1971) 02 MAD CK 0028**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 801 of 1969

Ganapathi Padayachi

APPELLANT

Vs

The Authorised Officer, Land Ceilings, Thanjavur

RESPONDENT

---

**Date of Decision :** 08-02-1971

**Acts Referred:**

**Citation :** AIR 1971 Mad 384 : (1971) 84 LW 237

**Hon'ble Judges :** Ramanujam, J

**Bench :** Single Bench

---

## Judgement

Ramanujam, J.

1. The petitioner herein owned an extent of 4.87 standard acres and he had taken on lease an extent of 5.07 standard acres. The Authorised

Officer, (Land Reforms), Thanjavur after enquiry held that the petitioner held an extent of 4.94 standard acres in excess of the cultivating tenant's

ceiling area and declared it to be surplus u/s 61(3)(b) of Madras Act 58 of 1961. Aggrieved against that decision the petitioner went before the

Land Tribunal. Before the land Tribunal it was contended by the petitioner that though he owned an extent of 5.07 standard acres, that extent is

not in his actual cultivation, but that it has been leased out to one Chinnappa Padayachi, his brother's son. On that ground the petitioner wanted

exclusion of the said extent of 5.07 standard acres from his cultivating tenant's ceiling area. The Tribunal considered the evidence adduced in the

case on behalf of the petitioner and found that the enquiry by the filed staff of the Authorised Officer had revealed that the petitioner alone was in

enjoyment and personally cultivating the entirely of the lands owned by him, that the petitioner himself in his evidence had only stated that an extent

of 4.03 acres out of the lands owned by him is in enjoyment of Chinnappa Padayachi, his brother's son, and that he does not refer to any lease under which the land owned by him have been let out. On those facts the Tribunal has taken the view that even if the properties owned by the petitioner had been cultivated by his brother's son, he should be treated as being in possession of the property through his agent especially when no lease deed was forthcoming to show that the lands have been leased out to his brother's son. The Tribunal therefore held that the petitioner's plea that the lands owned by him were not in his enjoyment and cultivation and not been established. The Tribunal also said that even assuming that the lands owned by him have been let out, the petitioner cannot seek to exclude those lands from his "cultivating tenant's" ceiling areas. That decision of the Tribunal is being assailed in this revision.

2. The learned counsel for the petitioner contends that on a proper reading of Section 40 of the Act, the lands owned by the petitioner but no in his possession have to be exclude from the "cultivating tenant's" ceiling area as defined in that section. According to the learned counsel it is only those lands which are in actual possession of the petitioner which will go into the "cultivating tenant's ceiling area" and that in this case the petitioner, though owned an extent of 5.07 standard acres, those lands cannot be included within the "cultivating tenants" ceiling areas as he is out of possession, the lands being enjoyed by a lessee. I am not able to uphold this contention. Section 60 defines "cultivating tenant's ceiling area" as five standard acres held by any person partly as cultivation tenant and partly as owner or wholly as cultivation tenant and the explanation thereto provides that, for the purpose of Chapter VIII of the Act, the "cultivating tenant" includes any tenant who is in actual possession of the land but does not contribute his own physical labour or that of any member of his family in the cultivation of such lands.

The attempt of the learned counsel for the petitioner is to introduce the definition of the "cultivating tenant" occurring in the explanation into the definition of "cultivating tenant's ceiling area" occurring in the main section. Once "cultivating tenant's ceiling area" is defined as five acres held by any person partly as cultivation tenant and partly as owner or wholly as cultivating tenant, it is not possible to exclude the lands owned by the

persons but not cultivated by him. The submission that in view of the definition of "cultivating tenant" under the explanation, it is only such person

who is in actual possession of the land and who can be treated as cultivating tenant in respect thereof cannot be taken exception to. But the

question is whether the lands owned by a person have to be excluded from the "cultivating tenant's ceiling area" merely because they have not

been cultivated by the owner. The definition of "cultivating tenant's ceiling area" u/s 60 clearly shows that a combined ceiling is fixed both in

respect of the lands cultivated by a person as a cultivating tenant and the lands owned by him as an owner. That definition cannot be rewritten as to

mean five standard acres held by any person partly as a cultivating tenant and partly as owner-cultivator or wholly as a cultivating tenant. In my

view, the purpose of the explanation to Section 60 is merely to give a wider and extended meaning to the words "cultivating tenant" than the

definition of "cultivating tenant" occurring in Section 3(10) of the Act, for the purpose of Chapter VIII.

3. I, therefore, reject the said legal contention put forward on behalf of the petitioner. Even of the facts, both the Authorised Officer and the

Tribunal found that the petitioner has not established the fact that the lands owned by him are not in his possession. On those facts, which I find,

are supported by the materials on record, it is had to be held that the petitioner continues to possess and cultivate the entirety of the lands, that is

the lands owned by him as owner and the lands taken by him on lease. The orders of the authorities below have, therefore, to be upheld.

4. In the result the civil revision petition is dismissed, but, without costs.

5. Petition dismissed.