

(1981) 09 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No. 4390 of 1978

K.P. Sivasundara Pillai

APPELLANT

Vs

C.P. Jagannatha Thevar and Others

RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:

Tamil Nadu Debt Relief Act, 1976 — Section 3(L), 3(O)

Citation : AIR 1983 Mad 34

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : V. Krishnan, for the Appellant; R.N. Kothandaraman and Sivaji for Govt. Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—The proceedings, which are challenged by the petitioner in this writ petitioner are those of the authorities exercising

powers under the Tamil Nadu Debt Relief Act, 1976 (Act 31 of 1976), hereinafter referred to as the Act. The first respondent wanted relief under

the Act in respect of a mortgage debt in favour of the petitioner under a deed of usufructuary mortgage dated 30-1-1976. The first respondent

claimed himself to be a small farmer within the meaning of Section 3(1) of the Act so as to come within the definition of `debtor" under S. 3(f) of

the Act. The portion of S. 3(1) of the Act, relevant for the present purpose reads as follows:

(1) `small farmer" means a person whose principal means of livelihood is income derived from agricultural land and who holds, whether as owner,

tenant, or mortgagee with possession, or partly in one capacity and partly in another.

(i) not more than two units of land, in a case where such person is a member of

any of the Scheduled Tribes; and

(ii) not more than one unit of land, in any other case.

It is admitted that Clause (ii) above will be attracted. "Unit of land" has been defined u/s 3(o) of the Act as follows: "(o) 'Unit of land' means

(i) two hectares of unirrigated land; or

(ii) half hectare of land having facilities for growing one irrigated crop; or

(iii) half hectare of land used for growing any plantation crop or grapes or coconut or areca nut or mulberry; or

(iv) Quarter hectare of land having perennial irrigation facilities, or having facilities for growing more than one irrigated crop in a year.

The land covered by the deed of mortgage dated 30-1-1976 is in R. S. No. 338/1 of Paravakottai villages and is of an extent of 93 cents. Besides

this, the first respondent owned an extent of 72 cents in R. S. No. 633/18 of the same village. Of this, the first respondent sold away 43 cents,

leaving the balance of 35 cents still with him. If the extent of 93 cents in R. S. No. 338/1 as well as the extent of 35 cents in R. S.No 633/18 are

taken into account and the total extent is held to be having facilities for growing one irrigated crop within the meaning of Cl. (ii) of S. 3(o) of the

Act, then, the first respondent will fall outside the ambit of the Act, as he will be holding more than one unit of land and he cannot be classified as a

"small farmer" and hence he cannot claim any relief under the Act.

1-A. Both respondents 2 and 3 have countenanced the plea of the first respondent that he is a small farmer and has accorded him the relief as

prayed for with reference to the mortgage debt. The petitioner impugned the orders of respondents 2 and 3 in the present writ petition.

2. Mr. V. Krishnan learned counsel for the petitioner, submits that so far as R.S. No. 338/1-93 cents is concerned, the third respondent, the

appellate authority, has found that the extent is being cultivated with the aid of Cauvery Mettur Project water; the adangal extracts show that paddy

crop has been grown as a first crop and afterwards, ground-nut crop has been grown. The learned counsel further points out that even with regard

to R.S. No. 633/18, there are observations in the order of the third respondent indicating that irrigation facilities are available that irrigation facilities

are available for growing one crop in the said land.

3. As against this, Mr. R.N. Kothandaraman, learned counsel for the first respondent, would state that the observations of the third respondent cannot be called out of context and they, in fact, relate only to R.S. No. 338/1 and not to R.S. No. 633/18.

4. I have gone through the order of the third respondent and I find out that the third respondent has not categorically expressed an opinion that the land in R.S. No. 633/18 does or does not have facilities for growing one irrigated crop as stated in Clause (ii) of Section 3(o) of the Act. The

discussion is more on the question as to whether it is feasible to raise two irrigated crops as claimed by the petitioner herein. It is admitted that

Paravakottai village is one of the villages taken up for irrigation by Cauvery Mettur Project. But then the question is as to whether R.S. No. 633/18

is a land which has the facilities of irrigation by the said Project for growing at least one crop. Merely because the concerned village is covered by

the Project, it will not ipso facto follow that a particular land in the village will definitely have the factual facilities for growing one irrigated crop. The

set of expression "having facilities for growing one irrigated crop" is important. It cannot be taken to mean that the concerned land must have been

actually cultivated to grow one irrigated crop. There is the possibility that though the said land has the facility for growing one irrigated crop, the

person concerned could allow the same to lie fallow. It would suffice the purpose, if irrigation facilities are available for growing one crop, though

they may not have been actually exploited to grow one such crop. In this connection, Mr. V.K. Krishnan, learned counsel for the petitioner, draws

my attention to some of the meanings attached to the expression "facility" in the Shorter Oxford English Dictionary :

(1) the fact or condition of being easy or easily performed; freedom from difficulty;

(2) Opportunity for the easy or easier performance of anything.

Similar meanings have been given to the expression "facility" in the Law Lexicon of British India by Ramanathan Aiyar, and they are as follows:

Facility. The quality of being easily performed; absence of difficulty; ease in performance; that which promotes the case of any action.

Hence for the purpose of finding out as to whether a particular piece of land use facilities for growing one irrigated crop within the

meaning of Clause (ii) of Section 3(o) of the Act, there should be an attempt to find out as to whether irrigation facilities are available, which would enable the performance of growing of at least one crop without difficulty; or in other words, the growing of one such crop would be easily enabled by the existence of the necessary irrigation facilities. The presence of difficulties which would rule out the growing of one such irrigated crop, should also be taken note of. The concentration must be with reference to the particular land or lands and not with reference to the whole area or village where the land or lands are situate. Only if the matter is concerned in this light, it is possible to reach the appropriate conclusion one way or the other. I find that neither of the authorities under the Act, namely, respondents 2 and 3 herein, had considered the matter in the proper perspective. This obliges me to interfere in writ proceedings. Accordingly, this writ petition is allowed and the orders of respondents 2 and 3 are quashed and the matter will stand remitted to the third respondent for him to consider the same afresh in the light of the above observations. The parties are at liberty to place fresh materials either by way of oral or documentary evidence on this question alone. There will be no order as to costs. Petition allowed and the case remanded.