

(1976) 11 MAD CK 0050
In the Madras High Court

K.V. Radhamani Ammal

APPELLANT

Vs

The Authorised, Officer, Land Reforms

RESPONDENT

Date of Decision : 03-11-1976

Acts Referred:

Citation : (1977) 90 LW 618 : (1977) 2 MLJ 149

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The petitioner was holding an extent of 19.974 standard acres and her unmarried daughter was holding an extent of 24.574 (standard acres. Thus the total standard acres under the holding of the revision petitioner was 44.548. By an order dated 7th November, 1969 the Authorised Officer declared 14.548 standard acres as surplus of the ceiling extent of 30 standard acres as the Jaw stood, on 2nd October, 1962, the notified date of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as the Parent Act). Aggrieved by this declaration of surplus of 14.548 standard acres, the matter was taken up in appeal by the petitioner to the Tribunal constituted under that Act. The Tribunal by an order dated 28th April, 1972 set aside the order of the Authorised Officer stating that the mother's holding of 19.974 standard acres could not be included for purposes of computation of surplus since she had nothing more than a life estate, and that she was not a full owner. While the matter stood thus, on 1st March, 1972 Tamil Nadu Act XXXIX of 1972 was enacted. The date of commencement of the Act was 1st March, 1972. The notified date thereafter became 1st January, 1973. Purporting to act under the provisions of the Amending Act XXXIX of 1972, a notice was issued by the Authorised. Officer on 24th February, 1973 as to why the holding of the revision petitioner viz., 19.974 standard acres should not be included for purposes of computation of the surplus over the alleged ceiling. The petitioner filed her objections on 12th March, 1973. On a consideration of the objections, they were overruled and on 16th March, 1973, the Authorised Officer passed an order declaring 14.546 standard acres as surplus. Thereupon an appeal was preferred

to the Tribunal in L.T.A. No. 426 of 1973. By an order dated 24th September, 1973 that was dismissed. It is under these circumstances, the present civil revision petition has been preferred.

2. Mr. S. Ramalingam, learned Counsel for the petitioner strenuously urges that having regard to the language of Section 3-D(i) of the Amending Act XXXIX of 1972 wherein it has been categorically laid down that the date of commencement of this Act means the 1st day of March, 1972, if, after the order of the Land Tribunal, dated 24th September, 1973 having become final proceedings are sought to be invoked to include the holding of the petitioner, it must be with reference to the definition of family u/s 10(2) as it stood on 1st March, 1972, or at any rate, the notified date; the daughter having got married in 1963, there is no scope for including the holding of the daughter viz., 24.574 standard acres. Of course, the mother's holding could be included in view of Section 5 of the Amending Act XXXIX of 1972. But the question here is, if ceiling is sought to be computed as on 1st January, 1973, the daughter's holding cannot by any stretch of imagination be included. Therefore the declaration of surplus of 14.574 standard access by the Authorised Officer is illegal and by the same test, the order of the Tribunal also becomes illegal and they are liable to be quashed. In support of his submission, he relies on Rajagopal Pillai Vs. State of Tamil Nadu, by the Collector of South Arcot and Another, .

3. The learned Additional Government Pleader would however, urge that the argument of the petitioner ignores the unambiguous language of Section 5 of the Amending Act as a result of which the holding of the life estate owner Or a life estate holder came to be included with effect from 6th April, 1960. The logical consequence is, as if from 2nd October, 1962, the notified date of the Parent Act, the petitioner's holding ought to have been included. Therefore, the impugned orders are perfectly valid. Even otherwise, Section 7 of the Amending Act which speaks of validation of all the proceedings would clearly go to show that the intention was to include such of those lands like the holding of the petitioner even from 2nd October, 1962. Therefore, looked at from any point of view, no exception could be taken to the impugned orders.

4. The date of commencement of the Parent Act is 6th April, 1960 and the notified date is 2nd October, 1962. While this date of commencement was modified as 1st March, 1972, the notified date became 1st January, 1973. Section 5 of the Amending Act reads as follows:

The principal Act shall on and from the 6th day of April, 1960, have effect as if, in Section 6 of the principal Act, to Clause (28) the following Explanation had been added, namely:

Explanation--A person who has a right to enjoy the land during his lifetime shall be deemed to be a limited owner notwithstanding that he has no power to alienate the land.

A plain reading of that section makes it clear beyond any controversy that this

Explanation should be incorporated under the Parent Act and the rights of the parties will have to be worked out accordingly. What is contended now is, on 1st January, 1973, the family of the petitioner consisted of only herself and the unmarried daughter, having got married as early as 1963, her holding cannot be included. The fallacy in this argument lies in ignoring the retrospective effect of Section 5. Even under the Parent Act, the daughter's holding could not be excluded since the computation of surplus was with reference to the notified date of the Parent Act viz. 2nd October, 1962 and the daughter got married only in 1963. Therefore, by no stretch of imagination could it be contended that by the passing of Tamil Nadu Act XXXIX of 1972, her holding would get excluded. It would simply mean this; Originally, the holding of a life estate holder was excluded from the purview of the Parent Act. It was brought within the ambit of that Act by Amending Act XXXIX of 1972. The question of definition of family as on 1st January, 1973 does not arise at all in this case, in view of the retrospective operation of Section 5 of the Amending Act since the definition, u/s 3(28) stood amended even from 6th April, 1960 thereby bringing the holding of the limited owner within the purview of the Parent Act.

5. Rajagopal Pillai Vs. The State of Tamil Nadu and Another, , does not in any way advance the contention of the petitioner, since that was a case in which between the date of the commencement of the principal Act and the notified date viz., 6th April, 1960 and 2nd October, 1962 respectively, a change had taken place in that the daughter who was unmarried got married before the notified Act. That makes all the difference. In the instant case, it has to be noted, as seen above, the daughter got married only after the notified date of the Parent Act viz., 2nd October, 1962. At this stage it is necessary for me to also mention that Act XXXIX of 1972 sought to take away the exemption in respect of lands used for dairy farming and livestock breeding. With reference to such of those lands alone which could not be brought within the ambit of the Parent Act for purpose of calculation of ceiling, the date of commencement would be 1st March, 1972 and the notified date will be 1st January, 1973 and it is this which is very much pressed by the petitioner without taking note of the retrospective operation of Section 5. I am fortified in my conclusion in view of the language of Section 7 of the Amending Act. That section reads;

Notwithstanding anything contained in any judgment, decree or order of any Court or other authority, all acts done and proceedings taken by any Officer or authority under the Principal Act before the date of the publication of this Act in the Tamil Nadu Government Gazette, on the basis that a person who had a right to enjoy the land during his lifetime but had no power to alienate the land was a limited owner under the principal Act shall, for all purposes be deemed to be and to have always been validly done or taken in accordance with law as if Section 5 of this Act had been in force at all material times when such acts or proceedings were done or taken.

What has to be noted is, if an order had been passed including the holding of the

life estate holder or a limited owner, that will be deemed to have been validly done and in accordance with Section 5 of the Amending Act. Therefore, even assuming for a moment that the orders of the Authorised Officer dated 16th March, 1973 and that of the Tribunal dated 24th September, 1973 are invalid for some reason or other, the original order of the Authorised Officer dated 7th November, 1969 would be perfectly legal, and all other arguments are purely academic in character. Therefore, from any point of view, I am unable to agree with the petitioner. Consequently, I hold there are no merits and the petition will stand dismissed. No costs.