

(1974) 03 MAD CK 0003
In the Madras High Court
Case No : C.R.P. No. 2598 of 1972

M.K. Harihara Iyer

APPELLANT

Vs

The Authorised Officer Land Reforms, Tirunelveli

RESPONDENT

Date of Decision : 21-03-1974

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 9(2)

Citation : (1974) 03 MAD CK 0003

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Advocate : K.C. Rajappa, for the Appellant; S. Krishnamurthy for Addl. Govt. Pleader, for the Respondent

Judgement

N.S. Ramaswami, J.—This revision petition is filed by the land owner against the decision of the Land Tribunal (Subordinate Judge,

Tirunelveli dismissing Civil Miscellaneous Appeal (Land Tribunal) No. 42 of 1970 filed by him. In the enquiry held by the Authorised Officer Land

Reforms under S.9(2) of the Madras Land Reform (Fixation of Ceiling on Land) Act (Act 58 of 1961) hereinafter, referred to as the Act, the

revision petitioner raised several objections but they had been overruled. Then the revision petitioner filed the abovesaid Civil Miscellaneous

Appeal before the Land Tribunal under S.78 (1) of the Act. The Land Tribunal concurred with the view of the Authorised Officer and has

dismissed the Civil Miscellaneous Appeal.

2. I am dealing with the points raised by the learned counsel for the revision petitioner seriatim. The first point raised is in respect of the lands

alienated under four documents. Two of those documents are dated 1-10-1970 and both of them are settlement deeds in favour of unmarried

daughters. The third is a sale deed dated 26-4-1970 in favour of a third party and the fourth is another sale deed dated 23-4-1969, in favour of

another third party. The learned counsel pressed this point only in respect of the two settlement deeds dated 1-10-1970 and the sale deed dated

26-4-1970 which are between the date of commencement of the Act after the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act,

1970 (Act of 17 of 1970) hereinafter referred to as the Amending Act, came into force and 2-10-1970 the notified date thereof. Admittedly the

proceedings before the Authorised Officer commenced very much prior to the coming into force of the Amending Act. Under S.3 (1) of the

Amending Act, all proceedings taken under the provisions of the Act (Principal Act) before the date of the publication of the Amending Act may

be continued or enforced after the said date in accordance with the provisions of the Act (Principal Act) as if the Amending Act had not been

passed. This provision is subject to sub S.(2) of the said section which says that nothing in sub S.(1) shall be deemed to entail any person to hold

after the 15th February, 1970 Land in excess of the dealing area under the Principal Act as modified by S.(2) of the Amending Act and the

provisions of the Act (Principal Act) as modified by S.(2) of the Amending Act, Shall after, the said date, apply to such person. S.2 of the

Amending Act modified several provisions of the Act (Principal Act) and one of the provisions modified is regarding the ceiling limit. While under

the Act, the ceiling limit was 30 standard acres, according to the modification effected by the Amending Act, the ceiling limit is reduced to 15

standard acres. The same section (S.2 of the Amending Act) also introduced Awxrion 21-A in the Act. The effect that provision is that though

under S.22 of the Act, in fixing the ceiling area, transfers effected by the land owners have to be ignored under certain circumstances, under S.21-

A introduced by the Amending Act, certain transfers effected after the date of commencement of the Act but before the notified date are not to be

ignored and they should be held valid. The date of commencement of the Act and the notified dated referred to in this section would be 15-2-1970

and 2-10-1970 respectively though under the Act as it originally stood before the coming into force of the Amending Act the relevant dates were

6-4-1960 and 2-10-1962. The two settlement deeds both dated 1-10-1970 and one sale deed 26-4-70 are between the date of commencement

namely, 15-2-1970, and the notified date namely 2-10-1970. It has been held in *Fakir Mohamed and another v. The State of Tamil Nadu*

represented by the Collector of Tanjavur CRP. No. 1197 of 1971, by a bench of this Court to which I was a party that even in respect of

proceedings which commenced prior to the coming into force of the Amending Act, an affected person can take advantage of the provisions

contained in S.21-A. In interpreting sub-S.(2) of S.3 of the Amending Act, the Division Bench had held that as S.2 of the Amending Act effected

modification to the Act by reducing the ceiling area but at the same time introduced S.21-A of the Act (Principal Act) the reduction of the ceiling

should be read with S.21-A. It has been held that the reduction is subject to S.21-A introduced by the Amending Act which meant that even in the

respect of proceedings which commenced earlier to the coming into force of the Amending Act which meant the affected person can take

advantage of the provisions contained in S.21-A. Therefore, the Authorised Officer cannot ignore the two settlement deeds both dated 1-10-1970

and the sale deed dated 26-4-1970 in fixing the ceiling area. However, if these transfers are meant to defeat any of the provisions of the Act, then

the Authorised Officer may declare the said transfers to be void under S.22 of the Act. In *Naganatha Iyer v. Authorised Officer* 84 L.W. 69=

1971 I M.L.J. 274, Ramanujam, J. has pointed out that all transfers effected between the date of commencement of the Act and the notified date

cannot be declared to be void as defeating the provisions of the Act. It has been pointed out that only if the transfers are really not transfers but

sham and nominal transactions or bogus transactions they would be defeating the provisions of the Act and that only then they can be declared to

be void under S.22 of the Act. Bearing the principles laid down in that judgment, the authorised officer has to make further enquiries regarding the

said three transactions namely the two settlement deeds both dated 1-10-1970 and the sale deed dated 26-4-70 and pass suitable orders thereon.

3. The sale deed dated 23-4-1969 is outside the two dates, namely, 1-2-1970 and 2-10-1970. The learned counsel for the revision petitioner did

not press his point regarding this sale deed.

4. The second contention raised by the learned counsel is under S.10(2) read with S.3(14) of the Act, the son of the revision petitioner by name

Lakshminarayanan is said to have attained majority on 1-10-1970. On his attaining majority he is not to be treated as a member of the family of the land owner as per the definition contained in S.3 (4) of Act. Under S.10 (2) of the Act, the Authorised Officer, in fixing the ceiling area of a family has to take into account only those members of that family who are alive on the notified date. The contention of the learned counsel is that the notified date being 2-10-1970 and Lakshminarayanan having become a major prior to that date he should not be taken into account in fixing the ceiling area of the family of the revision petitioners. This contention is not correct. As already seen, the proceedings in this case had started very much prior to the coming into force of the Amending Act and under S. 3 (1) of the Amending Act, the proceedings have to be concluded as if the Amending Act has not been passed before the Amending Act, the notified date is 2-10-1962. Then Lakshminarayanan was admittedly a minor.

The principle enunciated by the Division Bench in (Fakir Mohamed and another v. The State of Tamil Nadu represented by the Collector of Thanjavur) C.R.P. No. 1197 of 1971, regarding the interpretation of S.3(2) of the Amending Act cannot be extended further and there is no warrant for the contention that in the present case even though proceedings had commenced very much prior to the coming into force of the Amending Act the notified date should be taken to be 2-10-1970 and not 2-10-1972. The revision petitioner fails on this contention.

5. The third point raised is regarding certain lands in litigations. The Authorised Officer and the land Tribunal have refused to exclude those lands on the ground that the litigation was started only 1962 and such litigation was not pending on the date of commencement of the Act, namely 6-4-1960. This conclusion is not correct. The relevant provisions are S.11 and 13 (1) (i) of the Act. S.11 says that the Authorised Officer, if questions of title are raised, is to decide the same summarily. S.13(1)(i) says that notwithstanding what is stated in S.11 and 12 of the Act the Authorised Officer shall in calculating the extent held by any person exclude the land in respect of which a litigation before a competent Court or the land Tribunal or other authority is pending. This provision does not say that the question should be pending before a competent court etc, even on the date of the commencement of the Act. A plain meaning of the provision is that if litigation is pending at the time when the Authorised Officer goes

into the question of fixation of the ceiling area, he is to exclude the land under litigation. The Authorised Officer has to calculate the extent of the

land held by the revision petitioner in the light of what is stated above.

6. The learned counsel raised two other points but he fails on both of them. One is regarding certain lands said to be in the possession of

mortgagee. The learned counsel referred to S.16(1) & (2) and 18 and contended that those lands ought to be excluded in calculating the extent of

land held by the revision petitioner. But those provisions have nothing to do with the present question. They relate to fixation of the ceiling area in

the possession of a possessory mortgagee. Here we are concerned with the fixation of the ceiling area of the revision petitioner who claims to be

the mortgagee, It is not contended that the mortgage had been executed between 15-2-1970 and 2-10-1970. The said alienations are prior to 15-

2-1970. It was not claimed by the learned counsel that even alienations effected outside the period between the commencement and the notified

dates are not to be ignored.

7. The last point raised is under S.73 (vii) of the Act. That provisions says that land so converted on or before the 1st day of July 1959 into

orchards or topes or arecanut gardens, whether or not such lands are continuous or scattered are exempt from the provisions of Act, subject to the

provisions contained in sub-Ss.(2) and (3) of S.5 and those in S.6 of the Act. In the present case certain lands are claimed to be topes and

exemption is claimed regarding the same. But there is nothing to show that the said lands had been converted into topes prior to first day of July

1959. Therefore, the Tribunals below are correct in not exempting the said lands. The result is the revision petition is partly allowed and the matter

remitted back to the authorised Officer for disposal of the matter according to law and in the light of the observations above. There will be no

order as to costs.