
(1981) 12 MAD CK 0007
In the Madras High Court
Case No : C.R.P. No. 1361 of 1981

M.M. Krishnamoorthy Chetty

APPELLANT

Vs

The Authorised Officer for Land Reforms

RESPONDENT

Date of Decision : 21-12-1981

Acts Referred:

Constitution of India, 1950 — Article 133, 136

Citation : (1981) 12 MAD CK 0007

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Advocate : T. Rangaswami Ayyangar and A. Venkatesan, for the Appellant;

Judgement

Sethuraman, J.—This is a revision petition to revise the judgment of the Land Reforms Tribunal (Principal Subordinate Judges),

Chengalpattu, dated 31st December, 1980. The Authorised Officer held that the land-holder was holding lands above the ceiling limit and declared

4.81 standard acres as surplus. Aggrieved by this finding, the landholder filed an appeal which was disposed of by the learned Principal

Subordinate Judge, Chengalpattu. He held, following the judgment of the Supreme Court in Authorised Officer, Thanjavur and Another Vs. S.

Naganatha Ayyar and Others, , that all the transactions made after the commencement of the Act, namely, 6th April, 1960, were void and,

accordingly, dismissed the appeal. The result was that the fixation of the surplus lands as being above the ceiling, stood. In the present revision

petition, it is contended that the court below is wrong in proceeding as if the matter was open for decision, so as to apply the decision of the

Supreme Court. In C.R.P. 2729 of 1974 which is a case between the same parties with reference to this identical matter, it was pointed out:

For coming to the conclusion that the sale deeds in favour of the aforesaid five persons are nominal sale deeds, the Authorised Officer appears to have obtained statements from the aforesaid five persons. But the revision petitioner has not been given an opportunity to cross-examine them. The statements of these five persons, recorded by the Authorised Officer, if at all, have not been put forward to this Court. These sale deeds will have the effect of defeating any of the provisions of the Tamil Nadu Land Reforms ACT only if they are nominal sale deeds and possession continues to vest in the revision petitioner and the sale deeds have been executed merely for the purpose of circumventing the provisions of the Act. For coming to this conclusion, the vendees should have been examined on oath and the revision petitioner should have been afforded an opportunity to cross-examine them. This has not been done in the instant case. Therefore, the findings of the Authorised Officer and of the learned Land Tribunal are not in accordance with law and are set aside, and the matter is remanded to the Authorised Officer for a fresh enquiry giving the revision petitioner an opportunity to cross-examine the five vendees who are alleged to have been examined by him.

It is in pursuance of the order of this Court that the matter went back and the order of the Authorised Officer came to be passed against which an appeal was filed and it was unsuccessful.

2. It is submitted by the learned counsel for the revision petitioner that in Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, this Court had held that S. 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act, 1961 covered only sham, nominal and bogus transfers which were intended to defeat the provisions of the Act. This judgment was taken on appeal to the Supreme Court and the Supreme Court in Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others,) reversed it. However, when the matter came up for consideration before this Court on the earlier occasion before Suryamurthy, J. the decision in Naganatha Ayyar v. The Authorised Officer, 84 L.W. 69, still held the field. It is only following this decision that the learned Judge, thought it necessary to enable the Authorised Officer to enquire into the matter in the light of his judgment. In the submission of the learned counsel for the petitioner, if really the respondent was aggrieved

by the judgment of Suryamurthy, J. he should have taken the matter on appeal to the Supreme Court and so long as he did not do so, he would not

be justified in invoking the later decision of the Supreme Court. In support of this proposition, reference was made to K. Mudaliar v. K. Pillai AIR

1970 Mad. 328= 84 L.W. 355. In that case, Alagiriswami J. as he then was, held that when a case comes back to High Court after disposal by

the lower appellate Court after remand, the High Court cannot take into consideration a later decision of the Supreme Court and go back on its

own earlier order of remand passed by it on a view that was disorted from by the Supreme Court in a different case. The decision of the High

Court in the order of remand operates as constructive res judicata.

3. In view of this decision, it has to be held that there is a bar of constructive res judicata against the question being argued in the light of the

decision of the Supreme Court in Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, A Division Bench of this Court

in Venkatarama Iyer v. Subramania Pandara Sannadhi 84 L.W.857 has held that:

The earlier decision in that case, is a "final order" and the first defendant could have filed an appeal to the Supreme Court under Art. 133 In any

case even if no appeal could have been preferred under Art. 133 he could have filed an appeal under Art. 136 of the Constitution, if he was

aggrieved by the Order of this Court. As no appeal have been preferred, that order of the High Court has become final and it was not liable to be

canvassed at a subsequent stage of the same proceedings.

Applying this decision, I have to hold that the decision of the Supreme Court in Authorised Officer, Thanjavur and Another Vs. S. Naganatha

Ayyar and Others, does not come in for application at this stage. The matter having been allowed to become final we have to proceed on the basis

of the decision of Suryamurthy, J., being correct. In the light of the decision of the learned Judge, the enquiry was limited to finding out whether the

transactions were sham and nominal and for this purpose, opportunity had to be given to the petitioner to cross-examine the respective witnesses.

As this has not been done, the matter has again to go back to the Court below in order to work out the directions of Suryamurthy, J.

The civil revision petition is accordingly allowed and the matter remanded for fresh enquiry in accordance with the direction of Suryamurthy, J. No

costs.