

(1971) 03 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 4028 of 1966

Mohamad Nachiar

APPELLANT

Vs

The Authorised Officer (Land Reforms), Mayuram and
Another

RESPONDENT

Date of Decision : 18-03-1971

Acts Referred:

Constitution of India, 1950 — Article 31

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 6

Citation : AIR 1972 Mad 146 : (1971) 84 LW 860

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

1. In the Writ Petition the constitutional validity of sections of the Madras Land Reforms (Fixation of Ceiling on Land) Act, (Act LVII of 1961) is questioned. In the direction in N. Krishnaraju Reddiar and Others Vs. Authorised Officer, Land Reforms, Vellore and Others, the validity of the Act has been upheld. It has been held that the matter falls under entry 18 in the State List. This Act is included in the Ninth Schedule to the Constitution, but Article 31-B saves the validity of Acts included in the Ninth Schedule, only in as far as they contravene any of the fundamental rights. What is now urged on behalf of the petitioner is that Section 6 is beyond the legislative competence of the State Legislature. I am personally convinced that there is no substance in this contention. Section 6 is an incidental provision. That apart, even if it should be held to be a legislation with regard to charitable or religious endowments, it will fall under entry 10 or entry 28 as well as entry 5 of the Concurrent List, if it should be considered to be in relation to Mahomadan Law. But as such a question has been raised. I think it is better that the matter is disposed of by a Bench instead of myself disposing of it and the matter again going before a Bench and thereafter to the Supreme Court. The matter will, therefore, be placed before my Lord the Chief Justice for being posted before a Bench.

This petition coming on for hearing pursuant to the aforesaid reference on

Wednesday the 17th day of March 1971 and this day the Court made the following order:

K. Veeraswami, C.J.

1-A. The petition is to quash a notice of the Authorised Officer dated September, 17, 1958, that was issued to the petitioner u/s 6 of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. He has called upon the petitioner by that notice to make representations and adduce documentary and oral evidence on or before the stipulated date against the proposal to treat an extent of 7 acres 50 cents in Madirvelur Village, Sirkali Taluka, as detailed in Annexure D to the notice, as the extent to give the income required to run the charities, and that that extent would be treated as trust properties and excluded from the holding of the person, for the purpose of working out the ceiling area under Chapter II of the Madras Land Reforms (Fixation of Ceiling on Land) Act. Reference is made to the other facts including a family settlement dated June 5, 1951.

2. The petitioner appears to have made representations but at that stage approached this Court for a rule that the Authorised Officer has no jurisdiction to proceed in the matter. This is on the basis that the deed made no reservation of any benefit in favour of the petitioner.

3. Section 6 is by no means a credit to draftsman'ship. We wish that it had been phrased in a more clear and intelligent manner. We are especially not happy about the phraseology used, to wit, "the authorised officer shall declare the extent of the land which bears to the total extent of land in respect of which the trust is created." It is however, not necessary to go further into the structure and scope of the section. It will suffice to say that it will apply only to cases of reservation of any benefit in favour of the founder or any other person. That means that if in the settlement deed there is any reservation of benefit to the petitioner, that reservation may be taken into account for purposes of Section 6. But, if on the other hand, there is no reservation in his favour in the deed, Section 6 will have no application. If any reservation is made in favour not of the petitioner but any other person, notice will have to go to such other person. The proceedings against the petitioner can be continued only if the Authorised officer, on a proper consideration of the terms of the settlement deed of June, 5, 1951, of the view that there is any reservation of benefit to the petitioner. Another question which has been raised before us is that it is not open to the Authorised Officer in exercise of his power u/s 6 to make allocation. That is, of course, an important point which in the first instance, the Authorised Officer himself should decide, for it is that authority that is vested with the initial jurisdiction. If and when the petitioner felt aggrieved by any decision in this respect, he will have his remedy. As the moment it is only at the proposal stage. We have no doubt that the Authorised Officer will consider the other objections raised by the petitioner. The proceedings being quasi-judicial in nature, the Authorised Officer will bring to bear his own unbiased mind over the issues arising in the proceeding. He should not in any way be guided by the views expressed in the counter-affidavit

filed on behalf of the Government in this petition.

4. Subject to the above observations, the writ petition is dismissed. But the dismissal of the petition will not be considered as in any way a decision against the petitioner. No costs.

5. Writ petition dismissed.