

(1974) 06 MAD CK 0016
In the Madras High Court

N. Swaminathan

APPELLANT

Vs

The District Revenue Officer and Others

RESPONDENT

Date of Decision : 25-06-1974

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 73

Citation : (1975) ILR (Mad) 7 : (1975) 88 LW 14 : (1974) 2 MLJ 438

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

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—These are appeals from a combined order of Palaniswami, J. The Appellant who is common to both the appeals, owned about 110.90 acres of land in Danishpet Village, Omalur Taluk, Salem District. The extent was requisitioned and taken possession of by the State Government on 18th March, 1960, under the provisions of Act XLII of 1956. The relevant notification for taking over the land was on 15th October, 1959. The land had since been developed as a seed farm. While the Government was in possession admittedly as a lessee, the Ceiling Act came into force with effect from 6th April, 1960. There were proceedings under this Act based on returns filled by the appellant. On 25th April, 1963, an extent of 70 acres 18 cents was declared to be surplus. The proceedings continued and reached the stage of a notification dated 5th November, 1967, u/s 18 (1). Eventually, a draft compensation order was sent to the appellant on 24th November, 1967. It was mentioned that the appellant had not taken objection to any of the steps leading to the draft compensation order. With reference to the balance of 40 acres found to be within the ceiling are with the appellant, proceedings again under Act XLII of 1956 were initiated and, on 2nd March, 1967, the compensation payable for this extent was notified. At that stage, the appellant intervened and objected on 28th April, 1976, to the proceedings and wanted arbitration to be applied. He also wanted compensation for the extent of 70 acres 18 cents under the provisions of Act (XLII of 1956, Palaniswamy, J., declined to quash the notification of the third respondent dated 8th November, 1965 and the order of the District Revenue Officer, Salem, dated

29th March, 1967 and the connected G.O. M.S. No. 3141 dated 28th September, 1966. There was also a prayer in one of the petitions before the learned Judge for mandamus directing the Government to award just compensation on the market value of the land.

2. The argument for the appellant centres round the scope of Section 73 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. It is said that because the entire extent was held by the State Government as a lessee, the Act itself would be inapplicable to the land. There was, therefore, neither any obligation on the part of the appellant to make return; nor was there any power in the Authorised Officer to proceed to declare the ceiling area and also the surplus land and take over the same. In order to appreciate this argument, it is necessary to see the definition of the words "to hold". Section 3 (19) defines the words "to mean to own land as owner or to possess or enjoy land as possessory mortgagee or as tenant or as intermediary or in one or more of these capacities". If the definition is split up, it will be seen that there are four classes of cases where a person can be said to hold land -- (1) Where he owns land as owner, (2) he possesses or enjoys land as possessory mortgagee, (3) as tenant and (4) as intermediary. Any person who possesses or enjoys in one or more of these capacities will come within the scope of the definition. The definitions will govern interpretation of the provisions of the Act unless the context otherwise requires. That statement is found at the opening of Section 3. Section 2 which was repealed by Tamil Nadu Act XXXVII of 1972 and substituted by a new section, provided before its amendment that subject to the provisions of Section 6, nothing contained in the Act shall apply to lands held by religious trusts of a public nature. So far as private trusts are concerned, they are covered by Section 6 which applies the Act to lands held in such trusts. Section 5 (1) prescribes the ceiling area. Sub-section (2) of that section directs that for the purpose of ceiling, lands held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family. The next sub-section by two clauses gives directions to calculate the extent of land held by a member of a family or individual person. Section 7 declares that on and from the date of the commencement of the Act, no person shall except as otherwise provided in the Act, but subject to the provisions of Chapter VIII, be entitled to hold land in excess of the ceiling area. Be it noted at this stage that this section is merely declaratory and does not vest all surplus lands in the Government. Then follows a number of provisions for working out the ceiling area and declaring surplus lands. Appeals and revisions are also provided at various stages before reaching the notification u/s 18 (1). Once a notification is made u/s 18 (3), the land declared to be in surplus shall vest in the Government free from all encumbrances and all right, title and interest of the persons in such land shall, with effect from the date of notification, be deemed to have been extinguished. Then we have Amending Act XXXVII of 1972. But we need not consider its provisions, as they are not relevant to the present appeals. Chapter III deals with ceiling on future acquisition and restriction on certain transfers,

Chapter VI with compensation, Chapter VII with survey and settlement of lands in the transferred territory and Chapter VIII with cultivating tenant's ceiling area. Then we come to Chapter IX in which exemptions are mentioned. Chapter XII deals with penalties and procedure. Chapter XIV contains miscellaneous provisions. Section 94 in Chapter XIII deals with disposal of land acquired by the Government, that is to say, under this section. Subject to the provisions of Sub-section (2) of Section 5 the Government may, after taking into consideration the objects specified in the preamble, make rules providing for the manner in which any land acquired by the Government under the Act shall be disposed of. The object of the Act, as adumbrated in the preamble thereto, is to reduce the disparity in the ownership of agricultural land in the State, acquire such land in excess of the ceiling area and distribute the same to the landless and other persons among the rural population. We have broadly surveyed the provisions of the Act and mentioned the preamble thereto merely for the purpose of better appreciating the scope of Section 73. That section contains a number of exemptions. It opens by saying that except as otherwise provided in sub Sections (2) and (3) of Section 5 and in Section 6, nothing contained in the Act shall apply to a number of things. Stopping there for a moment we may observe, that the non obstante clause does not need to be considered by us, as it has no significance so far as these appeals go in the interpretation to be placed on Clause (i) of the section. It says that nothing contained in the Act shall apply to "any land held by the Central Government or any State Government or any local authority". Similarly, the Act will have no application under Clauses (ii) and (iii) to any land held by charitable or educational institution of public nature, any trust, any university constituted by any law and by co-operative society. Before Clause (ii) was amended the Act was not applicable to any land held by any industrial or commercial undertaking under Clause (iv). The Act will have no application to plantations in existence. So also it will have no application to any land used exclusively for growing fuel trees. Lands converted on or before July 1, 1959, into orchards or topes or arecanut gardens, whether or not such lands are contiguous or scattered, are not attracted by the provisions of the Act. It is noteworthy that Gramdan land and land donated for purposes of the Bhoodan Yagna will not be affected by the Act. Any land interspersed among plantations or contiguous to any plantation is not affected by the provisions of the Act. The policy behind these exemptions, broadly speaking, appears to be that, where a public purpose is served from the standpoint of agricultural requirement or land is used as orchard, or tope or arecanut garden or the land is used exclusively for growing fuel trees for distributing to the poor as in the case of Gramdan land, the provisions of the Act are not attracted. Consistent with the definition of the words "to hold land", any land held by the State Government for the purposes of Section 73 would include land held by it as lessee.

3. The crucial question is whether there is anything in the context in any of the provisions of the Act to exclude from the scope of Section 73 (i) land held by Government as a lessee or as a tenant. In our opinion, having regard to the

object contained in the preamble, it will be reasonable to hold that lands held by individuals or joint families in excess of the ceiling area which can be taken over and distributed to the landless poor in order to avoid concentration of agricultural holding, will be within the purview of the Act. But, when land is held by Government as a lessee, and this is admitted, and the same is used by it as seed farm, we do not see why such lands should be excluded from Section 73 (i). So long as Government holds it for the purpose of seedbed under that arrangement, no question of taking over the excess and distributing the same to the landless poor would arise.

4. It is strenuously argued for Government that the definition of the expression "to hold" should not be literally applied in construing the scope of Section 73 (i). Learned Government Pleader says that the appellant, as owner, holds the land and, therefore, he is obliged to file a return and subject himself to the provisions of the Act. But we do not think that this approach is correct. The obligation to file a return arises when the person holds land in the definition sense. But, so far as Section 73 (i) is concerned, the exemption is based on the character of the land. The exemption applies to land of a particular category, in the instant case to land held by the State Government whether as owner or as mortgagee or as tenant. To such land none of the provisions of the Act, including the provision which would otherwise oblige an individual to file a return, will apply. The other contention of the learned Government Pleader is that if Section 73 (i) is construed as making differentiation between an individual who holds land and the Government it may be discriminatory and such interpretation may not normally be placed on this provision. Here again we are unable to agree with him. No discrimination would arise, because when land is held by Government as in this case for a seed farm, it serves a public purpose and such land is not available for distribution to the landless poor. So long as it is used as seed bed, the provision will not be hit by the inhibition against discrimination.

5. The provisions of the Act which we have set out at the outset of the judgment, when they are read with the object mentioned in the preamble to the Act, would show that when land in excess of the ceiling area is notified and taken over for the definite purpose of distributing the same to the landless poor and when the land is not available for the purpose on its being held by Government for a seed farm, Section 73 (i) will make the entire Act inapplicable to it.

6. For the appellant it was rightly contended that the method applied by Government in acquiring this land does not appear to be proper. So long as the land requisitioned under Act XLII of 1956 was held by Government and the same was not released from the provisions of the Act, the Ceiling Act could not properly be applied to it, for in that case there is no question of ceiling and taking over the surplus for the purpose of distribution to the poor. In fact, we are not able to visualise how in such a case the appellant could surrender the excess over the ceiling area. If the Government wanted to apply the Ceiling Act, the right and proper thing they have to do is to have released the land from the

provisions of Act XLII of 1956. In the instant case while the land was still under requisition, to part of the land which is within the ceiling area the provision of the Requisition and Acquisition Act was applied and to the surplus, the Ceiling Act was applied. In adopting this procedure, we are inclined to think that the authority apparently designed to short-circuit the entire matter without keeping in mind that the two Acts serve different purposes and will have to be applied in accordance with the intention of each of the Acts. It is not a matter of convenience or expediency, but is a question of proper application of the statutory provisions in order to achieve the desired result, namely, the Government continuing in possession and using the land as a seed farm.

7. On that view of the matter, we allow the appeals. No costs.