

(1997) 12 MAD CK 0069
In the Madras High Court
Case No : O.S.A. No. 93 of 1991

P. Gopirathnam and four others

APPELLANT

Vs

Ferrodous Estate (Pvt) Ltd.

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Contract Act, 1872 — Section 23, 5, 84

Specific Relief Act, 1963 — Section 14

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(3), 11(1), 17, 19, 20

Citation : (1998) 2 CTC 182

Hon'ble Judges : Shivaraj Patil, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Mr.R. Thiyagarajan, for Mr.P.N. Raman, for the Appellant; Mr.G. Subramanian, for Mr.V. Ramajagadeesan, for the Respondent

Judgement

Judgement Pronounced by Shivaraj Patil, J.—Heard the leaned senior counsel for the parties.

2. The defendants in the suit O.S. No.130 of 1981 have filed this appeal aggrieved by the judgment and decree dated 15.3.1991 made in the said

suit. In this order, we shall refer to the parties by the ranks as assigned in the suit itself for convenience.

3. The plaintiff filed the said suit O.S. No.130 of 1981 for specific performance of the agreement of sale dated 12.6.1980. It is not necessary for

us to refer to the averments made in the plaint in detail. The defendants in the written statement have raised various defences including the one that

the plaintiff is not entitled to purchase more than 500 sq.metres under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, and hence the

agreement was void as violating the provisions of the Statute.

4. On the basis of the pleadings, the learned single Judge raised the following issues:- (1) Whether the suit agreement of sale dated 12.6.1980 is true? (2) Whether the sale price agreed between the parties is Rs.5,40,000 and whether an advance of Rs.1,00,000 was paid to the defendants and whether out of it Rs.65,000 was received by the defendants? (3) Whether the agreement for sale is not valid and enforceable for the reason of material alteration in the agreement and that it is not a concluded contract? (4) Whether the suit agreement of sale is not binding on the 4th defendant? (5) Whether the plaintiff is not entitled to purchase more than 500 sq.metre under the Tamil Nadu Urban Land Ceiling Act and whether the suit agreement is void on that account? (6) Who among the parties have committed breach of the agreement? (7) Whether the plaintiff is entitled to the specific performance of the suit agreement of sale or to get only compensation? (8) To what relief are the parties entitled?

Issue No.5 relates as to whether the plaintiff was not entitled to purchase more than 500 sq.metres under the Tamil Nadu Urban Land Ceiling Act and whether the suit agreement was void on that account.

5. The learned single Judge after conducting the trial of the suit and on hearing the learned counsel for the parties, decreed the said suit and recorded a finding on issue 5 in favour of the plaintiff. As already stated above, the defendants have filed this appeal aggrieved by the judgment and decree of the learned single Judge dated 15.3.1991.

6. In paragraph 17 of the Appeal Memorandum, the ground raised is-"" The learned Judge has failed to appreciate the contention that the sale of vacant land of 8 Grounds 2354 sq.ft. being the excess of the ceiling limit prescribed under Urban Ceiling Act, is invalid and unenforceable."" Shri R.

Thiyagarajan, learned senior counsel for the defendants in the first place urged that the suit agreement itself was not enforceable being void, in view of the bar contained in Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. In support of his submission, he relied on the following Division Bench Judgments of this court.

1. Mariamma Varghese v. K.V. Balasubramaniam and 11 others, 1994 (1) LW 391 Government of India Vs. Jagadish A. Sadarangani,

Learned senior counsel submitted that if the agreement itself was not valid, the learned single was not right in granting a decree for specific

performance.

7. On the other hand, Shri G. Subramanian, learned senior counsel representing the plaintiff, submitted that on facts and circumstances of the case,

the learned single Judge was justified in granting a decree for specific performance; the provisions of the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, may not apply to the facts of this case; the plaintiff has established the agreement and also their readiness and willingness to

perform their part of the contract.

8. Having heard the learned counsel for the parties we are of the opinion that the question as to whether the specific performance decree could be

granted on the basis of the suit agreement in view of the bar contained in Section 6 of the Act, has to be decided first. Section 6 of the Act reads

thus:

Transfer of vacant land : - No person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall

transfer any such land, or part thereof, by way of sale mortgage, gift, lease or otherwise until he has furnished a statement u/s 7 and a notification

regarding the excess vacant land held by him has been published under sub-section (1) of Section 11; and any such transfer made in contravention

of this provision shall be deemed to be null and void.

8. (a) The Division Bench of this Court in the case of Mariamma Varghese v. K.V. Balasubramaniam and 11 others, 1994 (1) LW 391 has held

that a decree for specific performance cannot be obtained at the hands of the Court, which will be practically nullifying the statutory provision,

found in Section 6 of the Act. In the said judgment it is stated---

The impediment is that the transaction, assuming it could fructify through the hands of the Court, will come within the mischief of Section 6 of Tamil

nadu Urban Land (Ceiling and Regulation) Act 24 of 1978, hereinafter referred to as Act. That provision inhibits the coming into existence of any

such transaction as the present one and further says that such transaction will be null and void. The Court is not supposed to lend its hand for the

purpose of arriving at this result, assuming that the plaintiff has got a case on merits otherwise.

9. The learned single Judge of this Court in the case of Hamasaraj Bokaria and others v. The Government of Tamil Nadu, 1994 (1) LW 391

referring to Section 6 of the Act, in paragraph 17, stated thus:

Thus, it is seen that the admitted extent of land held by the third respondent was in excess of the ceiling limit and consequently, the prohibition u/s

6 of the Act applies to his land. The result that follows is that the Court could not have passed decree directing execution of a sale deed by the

third respondent in favour of the petitioner.

This decision of the learned single Judge was affirmed by a Division Bench of this Court in the case of Prabhavathi Jain and four others v. The

Government of Tamil Nadu rep. by the Commissioner and Secretary to Government. 1995 (2) LW 200. Paragraph 14 and 15 of the said

judgment read thus:

(14) Section 6 of the Act prohibits a person, holding vacant land in excess of the ceiling limit immediately before the commencement of the Act,

from transferring any portion of such land and further declares that any transfer made in contravention of this provision shall be deemed to be null

and void.

Section 6 reads thus: ""6. Transfer of vacant land - No person holding vacant land in excess of the ceiling limit immediately before the

commencement of this Act shall transfer any such land, or part thereof, by way of sale, mortgage, gift, lease or otherwise until he has furnished a

statement u/s 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 11; any such

transfer made in contravention of this provision shall be deemed to be null and void.

In the present case, as already pointed out, the subject matter of the sale agreement dated 10.1.1974 between the 3rd respondent and Hasraj

Bokaria was RS No. 143/1 measuring 3 grounds and 20 sq.ft. RS No.145 was introduced in the suit for the first time only on 24.9.1979, when

the application for amendment of the plaint and the memorandum of compromise were filed in CS No.202 of 1974. In these circumstances, it has

to be held that the sale agreement, so far as it relates to RS No.145 is concerned, came into existence only on 24.9.1979 when the memorandum

of compromise was filed in CS No.202 of 1974 after the Act came into force on 3.8.1979 and therefore the sale agreement, so far as it relates to

RS No. 145 is hit by Section 6 of the Act and it is void. It is a settled position of

law that a decree for specific performance cannot be granted in contravention of the provisions of Section 6 of the Act. Section 6 inhibits the coming into existence of any transaction, as the present one, and further says that such transaction will be null and void. Further, in view of section 43 of the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith in any agreement or decree or order of the Court.

15) In *B.P. Samiappan (died) and four others v. Arunthavaselvan and three others*, 1994 (1) LW 339 a question arose before a Division Bench of this Court, whether Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act, 58 of 1961, which is in pari materia with section 6 of the Act, will invalidate only a transfer and not an agreement for sale. Repelling the contention of the appellants in that case that an agreement is not a transfer and therefore section 23 of Act 58 of 1961 does not come into play and invalidate the agreement for sale, the Division

Bench held as follows:

The plaintiff seeks to have the agreement enforced by a court of law and get a sale deed in pursuance thereof. If the Court grants a decree in favour of the plaintiff and it leads to a sale deed in favour of the plaintiff, either by the party or by the Court, that sale is automatically void and it is deemed to be void always as per the provisions of the Act. The Court cannot be a party to a transaction which would be void in law. Hence, there is no substance in the contention that the agreements are not affected by the provisions of the Act.

10. In paragraph 14 extracted above, it is clearly stated that a decree for specific performance cannot be granted in contravention of the provisions of Section 6 of the Act. Section 6 inhibits the coming into existence of any transaction.

11. It follows from the judgment referred to above, no decree for specific performance can be granted having regard to the bar contained in Section 6 of the Act relating to the transfer of urban vacant land and that such an agreement cannot be enforced.

12. We are finding some difficulty, with respect, in subscribing to such a view in the light of the following judgment and on the face of the very language contained in Section 6 of the Act. The Apex Court in *Jambu Rao*

Satappa Kocheri Vs. Neminath Appayya Hanammannaver, has stated

thus:-

(6) By section 23 of the Contract Act, consideration or object of an agreement is unlawful if it is forbidden by law; or is of such a nature that, if

permitted, it would defeat the provisions of any law; or is fraudulent. Both the parties to the contract are agriculturists. By the agreement the

appellant agreed to sell jirayat land admeasuring 41 acres 26 gunthas for a price of Rs.32,000. The consideration of the agreement per se was not

unlawful, for there is no provision in the Act which expressly or by implication forbids a contract for sale of agricultural lands between two

agriculturists. Nor is the object of the agreement to defeat the provisions of any law. The Act has imposed no restriction upon the transfer of

agricultural lands from one agriculturists to another. It is true that by Section 35 a person who comes to hold, after the appointed day, agricultural

land in excess of the ceiling, the lands having been acquired either by purchase, assignment, lease, surrender or by bequest, the acquisition in

excess of the ceiling is invalid. The expression ""acquisition of such excess land shall be invalid"" may appear some what ambiguous. But when the

scheme of the Act is examined, it is clear that the Legislature has not declared the transfer or bequest invalid, for Section 84-C provides that the

land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is

therefore only to the extent to which the holding exceeds the ceiling prescribed by Section 5, and involves the consequence that the land will vest in

the Government.

(8) An agreement to sell land does not under the Transfer of Property Act create any interest in the land in the purchaser. By agreeing to purchase

land, a person cannot be said in law to hold that land. It is only when land is conveyed to the purchaser that he holds that land. Undoubtedly the

respondent was holding some area of land at the date of the agreement and at the date of the suit, but on that account it cannot be inferred that by

agreeing to purchase land under the agreement in question his object was to hold in excess of the ceiling. It was open to the respondent to transfer

or dispose of the land held by him to another agriculturist. The Act contains no general restrictions upon such transfers, and unless at the date of the

acquisition the transferee holds land in excess of the ceiling, the acquisition to the extent of the excess over the ceiling will not be invalid. There is nothing in the agreement, nor can it be implied from the circumstances, that it was the object of the parties that the provisions of the Act relating to the ceiling should be transgressed. The mere possibility that the respondent may not have disposed of his original holding at the date of the acquisition of title pursuant to the agreement entered into between him and the appellant will not, in our judgment, render the object of the agreement such, that, if permitted, it would defeat the provisions of any law. The Court, it is true, will not enforce a contract which is expressly or impliedly prohibited by statute, what ever may be the intention of the parties, but there is nothing to indicate that the Legislature has prohibited a contract to transfer land between one agriculturist and another. The inability of the transferee to hold land in excess of the ceiling prescribed by the statute has no effect upon the contract, or the operation of the transfer. The statutory forfeiture incurred in the event of the transferee coming to hold land in excess of the ceiling does not invalidate the transfer between the parties.

(9) We hold that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void, and the seller cannot resist enforcement thereof on the ground that if permitted, it will result in transgression of the law.

13. As can be seen from the paragraphs extracted above, the Apex Court has considered Section 23 of the Contract Act, in order to say whether such an agreement is prohibited under law and held that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void and the seller cannot resist enforcement thereof on the ground that if permitted, it will result in transgression of the law. It is appropriate for us to mention here itself that the Division Bench of this Court referred to above, has taken a view that even any agreement which would defeat the provisions of law under the Act, could not be enforced.

14. The Full Bench of Gujarat High Court in Shah Jitendra Nanlal Vs. Patel Lallubhai Ishverbhai, , while dealing with that case, refers to certain provisions of the Urban Land (Ceiling and Regulation) Act. In Paragraph 11 of the said judgment it is stated thus:

So long as the provision declaring the transfer u/s 5 (3) as void is subject to the right to move for exemption, obtain exemption and transfer the property, the power of an owner of vacant land in excess of the ceiling limit to "alienate" such land is dormant in him and such power could be exercised by him in case he seeks exemption, satisfied the Government that the grounds for exemption obtains such exemption. That being the case, a decree cannot be defeated on the ground that "transfer" inter panes would not be possible. The possibility of obtaining exemption survived till the notification u/s 10 (3) of the Act is issued. That being the situation, until then, a plaintiff seeking specific performance cannot be told that the terms of the contract cannot be fulfilled, once it is said so, the plaintiff loses his right to get a decree for specific performance, though, invoking the provisions of the very Act, based on which the plaintiff was told that he could not get conveyance of the property agreed to be sold to him, the owner of excess land obtained exemption and continues in possession of property and perhaps even alienates it later. We see no reason either in law or in logic to countenance such a situation. There is nothing prohibiting a decree being passed for specific performance, with, of course, such alternative remedies as may be called for in a situation where that decree may become inoperative. The decree for specific performance may be made conditional on the exemption u/s 20 (1) (a) or (b) operating. Of course, it is not for us in this reference to envisage how safeguards should be built in, in such a decree. Resourcefulness, of course, must necessarily find answer to possible situations.

As can be seen from the paragraph extracted above, the decree for specific performance may be made conditional on the exemption u/s 20 (1) (a) or (b) operating. It cannot also be disputed that a conditional decree for specific performance can be granted, of course, depending on the facts and circumstances of each case.

15. Section 4 of the Act states that no person shall be entitled to hold any vacant land in excess of the ceiling limit, except as otherwise provided in the Act. Section 7 of the Act makes it obligatory on the person holding excess land to file statement. u/s 11 of the Act, excess land could be acquired. Section 17 of the Act places ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decree etc. Section 19 of

the Act provides for penalty for concealment etc., of particulars of vacant land. Even u/s 6 of the Act, there is prohibition to transfer the excess

vacant land unless such person has filed a statement and notification regarding the excess vacant land held by him, has been published under sub-

section (1) of section 11 of the Act. The said section farther declares that any transfer made in contravention of the provisions of the Act, shall be

deemed to be null and void. As can be seen from the various provisions contained in the Act, Section 21 deals with power of exemption. A plain

reading of Section 6 goes to show that what is prohibited is a transfer of excess vacant land and the consequence of such transfer in contravention

of the provisions contained in the said section viz., such transfer shall be deemed to be null and void. In other words, it speaks of a completed

transaction of transfer. It does not refer to the agreements at all. We are not able to read any prohibition in the said provision prohibiting the parties

from entering into agreement of sale. In the decision of the Division Bench of this Court aforementioned, a view is taken that Courts in passing a

decree for specific performance, cannot lend support to the parties to enforce the agreement so as to defeat the provisions of the Act, in particular

Section 6 of the Act. We are unable to agree with this view. There may be a decree for specific performance subject to certain conditions, to be

complied with the provisions of Section 6 itself or subject to grant of exemption and in the light of the judgment of the Supreme Court in the case of

Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanammannaver, , it cannot be said that such an agreement is hit by section 23 of the Act.

Under the circumstances, we are of the view that this question is required to be decided by a larger Bench, hence we refer this case for hearing

and disposal by a larger Bench including the question as we have stated above.

16. Papers may be placed by the Registry before the Honourable the Chief Justice for constitution of a larger Bench for consideration and disposal

of this appeal.