

(1973) 07 MAD CK 0027

In the Madras High Court

Case No : Civil Revision Petition No. 2607 of 1971

Palanisamy Gounder and Another

APPELLANT

Vs

Komaraswamy Gounder

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 4A(1), 4A(3)

Citation : AIR 1975 Mad 50 : (1978) 87 LW 224

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

Bench : Division Bench

Advocate : E. Padmanabhan, for V.C. Palanisami and M. Chenniappan, for the Appellant; G.M. Nathan, for the Respondent

Final Decision : Allowed

Judgement

K. Veeraswami, C.J.—The petitioners are landlords and the respondent has taken out a lease from them of"" an extent of 10 acres 15 cents,

of which 1-99 acres are wet and the rest, garden lands. The lease was dated 17-4-1964 and the rent reserved was Rs. 1000 per annum payable

by the respondent by 15th Purattasi every year. The Authorised Officer (Land Reforms), Coimbatore, has found that the petitioners did not own

lands in excess of the extent mentioned in Sub-section (3) of Section 4-A of the Madras Cultivating Tenants Protection Act, 1955. Nor have they

been found to pay Income Tax The Authorised Officer has also found that the petitioners are qualified to ask for resumption u/s 4-A (1), But, at

the hearing before the authority, the respondent made an offer to pay contractual rent and as a result the petition for resumption of one-half of the

lands covered by the lease was dismissed. To revise this order, this petition has been filed.

2. The petition initially came up before Kailasam, J., who, though aware of C. Rajammal Vs. V.P. Chinnakannu Ambalam, and Pichai Ammal v.

Sankaramuthiah Pillai, 1963 2 MLJ 361, in view of the contradictory effect of Sub-section (3) of Section 4-A, considered that it is a fit case to be

disposed of by a Division Bench.

3. In the first of these cases, Ramachandra Iyer. J., (as he then was) was of the opinion that a literal interpretation of Section 4-A (3) of the Act

giving the same meaning of the term "cultivating tenant" as in Sub-section (1) of the section would render nugatory the very provisions of the

section and the right conferred on the landlord and the machinery set up to enforce the right. To this extent, we agree. But the learned Judge went

further and held that, in view of the position, the term "cultivating tenant" in Section 4-A (3) will have to be given a more restricted meaning, that is,

those who will be entitled to the benefit of the Madras Cultivating Tenants (Fixation of Fair Rent) Act, 1956. The same approach was made by

1963 2 MLJ 361, to which Ramachandra Iyer, J., (who was then Chief Justice) was a party. A, cultivating tenant has been defined in Act 25 of

1955 as a person in relation to any land who carries on personal cultivation on such land, under a tenancy agreement, express or implied. The

definition includes any such person who continues in possession of the land after the determination of the tenancy agreement and the heirs of such

person are also treated as cultivating tenants. There is no controversy that the respondent satisfied this definition, because he came into possession

under a lease for a term and, after the expiry of the term, he continues to be in possession of the land himself cultivating the same. The opening part

of Section 2, no doubt, says, that the definitions therein will apply to the interpretation, of the Act, unless the context otherwise requires. u/s 4-A, a

limited right is recognised in the landlord to resume land for personal cultivation. Sub-section (1) gives the landlord a right to resume from any

cultivating tenant possession for personal cultivation of lands not exceeding one-half of the extent of lands leased out to the cultivating tenant. The

sub-section starts with the words "Notwithstanding anything contained in any other provision of this Act". It follows that the effect of the section is

overriding. In other words, the right of the landlord to resume as provided for in Sub-section (1) is absolute and is not controlled by any other

provision of the Act. We are of the view that this overriding effect cannot be lost sight of. That being the case, Sub-section (3), which neutralises

the landlord's right and allows the tenant to continue in possession on his offer to pay the contractual rent at the rate which was payable before

27th September, 1955, cannot override and negate the absolute right already created. Sub-section (3) does not say that, notwithstanding what is

stated in Sub-section (1), the direction under that provision will prevail. We are, therefore, of the view that Sub-section (3) cannot be given effect

in such a way as to take away the right of the landlord u/s 4-A (1). We are aware that the Legislature apparently was desirous of continuing a

cultivating tenant in possession if he offered to pay contractual rent as mentioned in Sub-section (3). But this intention cannot be given effect, in

view of the language used in Sub-section (1), namely, "notwithstanding anything contained in any other provision of this Act", by which an

indefeasible right has been created and no other provision in the Act can override it. This approach was not presented either in C. Rajammal Vs.

V.P. Chinnakannu Ambalam, .

4. On that view, we allow the petition which means the landlord is entitled to resume one half of the lands covered by the lease. The petitioners are

entitled to their costs. Counsel's fee Rs. 50/-.