

(1974) 04 MAD CK 0020
In the Madras High Court

Ramachandra Chettiar

APPELLANT

Vs

G.M. Ramaswami Chettiar and Another

RESPONDENT

Date of Decision : 15-04-1974

Acts Referred:

Citation : (1978) 87 LW 885 : (1974) 2 MLJ 320

Hon'ble Judges : N.S. Ramaswami, J

Bench : Division Bench

Judgement

N.S. Ramaswami, J.—This is a revision petition against the order of the Authorised Officer, Land Reforms, Cuddalore, overruling the

objections raised u/s 10 (5) of the Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), (hereinafter referred to as the Act)

the said order having been confirmed by the appellate Judge (Subordinate Judge, Cuddalore). The lands in question belonged to one G. M.

Ramaswami Chettiar. He had, amongst other lands a half share in nine survey numbers. The said half share in all the nine items came to be sold in

Court-auction and the revision petitioner herein purchased the same on 5th January, 1967. The total extent so purchased is 5.38 acres. He

obtained the sale certificate on 18th March, 1967.

2. The said Ramaswami Chettiar who has been impleaded as the first respondent in this revision petition had filed a return under the provisions of

the Act and the Authorised Officer prepared the draft statement u/s 10 (1) of the Act which is dated 18th October, 1967. In the said draft

statement only one of the nine items was shown as surplus. Notice u/s 10 (5) of the Act came to be served on the revision-petitioner as a person

interested in the land. The revision petitioner filed his objections on 10th

January, 1968. The Authorised Officer however, overruled his objections by his order, dated 16th March, 1968. Against that the revision-petitioner filed Civil Miscellaneous Appeal No. 66 of 1968 on the file of the Subordinate Judge, Cuddalore but the said appeal-came to be dismissed on 10th August, 1972. Hence this revision petition and! the same had been presented in this Court; on 22nd September, 1972.

3. Subsequently, that is during the pendency of this revision petition, final statement u/s 12 of the Act came to be published on 13th December, 1972, as no stay had been granted in the revision petition. On 7th March, 1973 notification u/s 18, vesting in the Government the lands declared to be surplus in the holding of Ramaswami Chettiar, came to be published. It is stated on behalf of the Authorised Officer who has been impleaded as the second respondent herein, that possession of surplus lands so notified has been taken on. 23rd April, 1973.

4. The question is whether the taking over of lands which the revision-petitioner purchased in the Court auction as surplus of the holding of

Ramaswami Chettiar is-valid. u/s 23 of the Act, the provision is that in fixing, for the first time after the date of the commencement of the Act, the

ceiling area of any person holding land in excess of 30 standard acres (since amended as 15 standard acres), the Authorised Officer shall not take

into consideration any transfer including a sale in execution of a decree. Admittedly, the Court auction sale under which the revision-petitioner

purchased the lands, being on 5th January, 1967, is after the notified date mentioned in Section 23. The Authorised Officer and. the learned

Appellate Judge have overruled the objections of the revision-petitioner on the ground that u/s 23 of the Act the Authorised Officer was to ignore

the sale. But it has been held by a Division Bench of this Court in B.E. Kaliyaperumal Nattar Vs. The Authorized Officer (Land Reforms),

Tiruchirapalli, , that as Section 23 does not say that the transfer (made after the notified date) is rendered. void and the section does not deal with

the transferee's fight, there is nothing in the Act to affect the rights of the transferee. In that case there was the draft statement u/s 10 followed by

the final statement u/s 12. Thereafter, there was a notification u/s 18 (1) and proclamation u/s 18 (2), in respect of the surplus lands which

according to the provisions of the Act vested in the Government. The Division

Bench has pointed out that as Section 23 does not say that the transfer by itself is bad for any reason and as the transfer is not rendered void either expressly or by any statement in the section and the section does not deal with the transferee's rights, the Authorised Officer had no right to take the land in the possession of the transferee.. The above decision. squarely applies to the facts of the present case.

5. However, it is contended on behalf of the Authorised Officer that while in the above reported decision the notification u/s 18 was sought to be quashed in writ proceedings, the present case is not for any such relief and that therefore in view of the subsequent events namely publication of the final statement u/s 12 and then the notification u/s 18 vesting the land in the Government, the revision-petitioner is without any remedy. This is not tenable. It may be noted that in the reported case, in spite of the fact that the notification u/s 18 had been published according to which the land vested in the Government, the Division Bench has observed in paragraph 4 of the judgment that the land had not vested in the Government as provided u/s 18 (3). This is on the basis that there is nothing in the Act to affect the transferee's right. It has already been noted that though Section 23 says that the transfer made after the notified date is to be ignored by the Authorised Officer while preparing for the first time the draft statement, the section does not say anything about the rights of the transferee. It is in that context the Division Bench has observed that in spite of there having been a notification u/s 18, the land had not vested in the Government.

6. Whatever that be, in the present case, the notification u/s 18 is very much subsequent to the filing of the revision petition in which the order of the Authorised Officer u/s 10 (5) is challenged. It is not right to contend that because of the subsequent events, namely the publication of the final statement u/s 12 and the notification u/s 18, the civil revision petition has become infructuous. On the contrary, the publication of the final statement u/s 12 and the notification u/s 18 can be only subject to the result of the revision petition which has been pending. Under such circumstances, the fact that in the present case no certiorari is prayed for does not mean that the revision-petitioner cannot get relief.

7. Further the notification u/s 18 itself does not appear to be in accordance with law. Section 12 makes it obligatory that a copy of the final

statement should be served on the persons referred to in Sub-section (5) of Section 10. Admittedly, the revision-petitioner is one such person. It is not disputed that a copy of the final statement u/s 12 had not been served on the revision-petitioner. Section 18 contemplates publication of notification in respect of surplus lands only after due publication of the final statement u/s 12 (or u/s 14). As no copy of the final statement u/s 12 had been served on the revision-petitioner which is a clear violation of the provision contained in Section 12 itself, it cannot be held that there had been proper publication of the final statement. The publication of notification u/s 18 would be proper only if there had been proper publication of the final statement u/s 12. This is one of the defects in the publication of the notification u/s 18. But that is not all. Under Rule 20 of the Madras Land Reforms (Fixation of Ceiling on Land) Rules, 1962, the notification to be published u/s 18 (1) shall be in form No. 12 and it shall be besides being published in the Fort St. George Gazette, be published in the District Gazette of the district in which the land specified in the notification or any part thereof is situated. Though in the present case a notification u/s 18 had been published in the Fort St. George Gazette, dated 7th March, 1973, it is not disputed that such notification had not been published in the District Gazette of the district concerned. Therefore, the notification u/s 18 has also not been properly published. Under such Circumstances, it cannot be contended, in any event, that due to subsequent events, namely the notification u/s 18 vesting the land in the Government, the revision-petitioner has to go without remedy.

8. The revision petition is allowed and the order of the Authorised Officer on the objection of the revision-petitioner as confirmed by the appellate authority is set aside. The matter is remitted back to the authorised officer for further proceedings, in the light of the observations above. I make no order as to costs.