

(1982) 01 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 5456 of 1981

R.M. Muthiah

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-01-1982

Acts Referred:

Tamil Nadu Debt Relief Act, 1980 — Section 3

Citation : AIR 1983 Mad 69 : (1982) ILR (Mad) 342 : (1984) 97 LW 618 : (1982) 95 LW 618 : (1983) 1 MLJ 167

Hon'ble Judges : Ramanujam, J;Maheswaran, J

Bench : Division Bench

Advocate : K. Doraiswami, for the Appellant; S. Jagadeesan, for Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The petitioner herein advanced a sum of Rs. 6500 on the mortgage of a house of respondents 4 and 5 under a document dated 5-3-1971. After the coming into force the Tamil Nadu Act XIII of 1980, respondents 4 and 5, the mortgagors filed an application u/s 6 of the said Act, claiming a certificate of discharge from the Special Tahsildar, Debt Relief, Kumabakonam on the ground that they would come within the definition of debtor as defined in the Act, as their annual household income was less than Rs. 4800/-. The said application was resisted by the creditor, the petitioner herein on two grounds - viz., (1) that the household income of respondents 4 and 5 is more than Rs.4,800/- and therefore they cannot claim the benefits of the Act, and (2) that the house property which is the subject matter of the mortgage, owned by respondents 4 and 5 was more than Rs. 30,000/- and therefore they cannot claim the benefits of the Act in view of proviso (vi) to Section 3(d), which excludes persons owning immovable property (other than agricultural land) worth Rs. 25,000/- and more from the definition of "debtors". The initial authority, the Special Tahsildar, Kumbakonam, who is the third respondent herein, granted a certificate of discharge from the mortgage as the creditor remained ex-parte. The petitioner, however, filed an appeal before the appellate authority, the second respondent

herein, and the second respondent gave a fresh opportunity to the petitioner as well as respondents 4 and 5 to adduce evidence in support of their respective contention. Taking advantage of the order of the appellate authority giving opportunity to adduce evidence, the petitioner filed a certificate from the Tahsildar, Papanasam, stating that the house property owned by respondents 4 and 5 was worth about Rs. 30,000/-. The appellate authority, however, held, after considering the evidence adduced before it, that the annual household income of respondents 4 and 5 was only Rs. 2,250/- and that the house property owned by them has not been shown to be worth more than Rs. 25,000/-. It specifically rejected the certificate given by the Tahsildar, which was marked as Ex. P-1 on the ground that it could not be taken into account as the Tahsildar was not the competent authority to give such a certificate and that even otherwise the certificate merely estimated the value of the property as Rs. 30,000/-, approximately. If the annual household income of respondents 4 and 5 is only Rupees 2,250/- as found by the appellate authority and if they do not own a house property worth more than Rs. 25,000/-, they are entitled to claim the benefits of the Act, as has been held by the appellate authority. But, the petitioner herein seeks to question the order of the appellate authority on the ground that the certificate given by the Tahsildar, Papanasam (Ex. P-1) giving the value of the house property as Rs. 30,000/-, should have been accepted by the appellate authority as he is the competent authority to give such a certificate, and the contrary opinion expressed by the appellate authority is incorrect. Thus, the main question that arises in this writ petition is whether the certificate Ex. P-1, produced by the petitioner before the appellate authority should have been acted upon by the appellate authority.

2. The appellate authority as already stated, has given two reasons as to why Ex. P. 1 cannot be accepted. They are: (1) that the Tahsildar, Papanasam, is not the competent authority to give such a certificate, and (2) that Ex. P. 1 gives only the approximate value and not the exact value of the property.

3. The certificate as to the value of the property is contemplated by the explanation to proviso (vi) to Section 3(d). The said proviso excludes from the definition of "debtors" persons who own immovable property other than agricultural lands, whose market value exceeds Rs. 25,000/-. The explanation under the said proviso and proviso (vii) says that the market value of the immovable property or both the agricultural lands and other immovable property, as the case may be, shall be estimated to be the price, which, in the opinion of the authority prescribed in this behalf, such immovable property or both the agricultural lands and other immovable property, as the case may be would have fetched if sold in the open market on the 19th April 1980. Thus, the explanation contemplates the valuation certificate being issued by an authority prescribed in that behalf. Section 13 of the Act confers on the State Government, the rule making power for the purpose of carrying out all or any of the purposes of the Act. The rules have been framed in G. O. Ms. 1067 Revenue dated April 21, 1980, u/s 13, and those are called the Tamil Nadu Debt Relief Rules 1980. Those

rules enable the concerned Tahsildar to give a certificate of discharge u/s 5 or u/s 6 . They do not prescribe any authority to issue the certificate of valuation for the purpose of Section 3(d) proviso (vi). However it is seen that by G. O. Ms. 2614 Revenue dated November 24, 1980, the State Government has appointed the Tahsildar or the Deputy Tahsildar of the sub-taluk as the prescribed authority, and the prescribed authority has to follow the guidelines issued to the Registration department for determining the market value of the property. In this case, the certificate Ex. P-1 has been given by the Tahsildar, Papanasam, in whose jurisdiction the property is situate. Therefore, the appellate authority is not justified in making an observation that the said Tahsildar is not the prescribed authority to give the value of the property as he does not have the requisite engineering knowledge and experience. Therefore, the certificate Ex. P. 1 cannot be rejected on that ground outright. However, we find there is another obstacle in relying on that certificate. The certificate merely says that the house owned by respondents 4 and 5 is in the opinion of the Tahsildar, worth about Rs. 30,000/-. But under proviso (vi) read with the explanation, the market value of the property has to be determined as on 19-4-1980. The certificate given by the Tahsildar (Ex. P. 1) does not say that in his opinion the value of the building was Rupees 30,000/- as on 19-4-1980. Therefore, Ex. P.1, cannot be taken as an aid to determine the value of the house property owned by respondents 4 and 5. However, even if the certificate is not produced by the petitioner, the appellate authority can determine value of the house property owned by respondents 4 and 5, for the purpose of finding out whether they have ceased to be debtors under the proviso (vi) to Section 3(d). Since the appellate authority has not attempted to determine the value of the house property of respondents 4 and 5 and as it merely rejects the certificate given by the Tahsildar as of no value, the order of the appellate authority has to be set aside with a direction to him to determine the market value of the house property of respondents 4 and 5 as on 19-4-1980.

4. The writ petition is, therefore, allowed and the order of the appellate authority is quashed with a direction to consider the petitioner's appeal afresh after giving an opportunity to both parties to adduce evidence as regards the market value of the property, with reference to the provision in Section 3(d) proviso (vi) read with the explanation. No costs.

5. Petition allowed.