
(1970) 12 MAD CK 0022
In the Madras High Court

S. Naganatha Ayyar and Others

APPELLANT

Vs

The Authorised Officer and Others

RESPONDENT

Date of Decision : 11-12-1970

Acts Referred:

Citation : (1971) 84 LW 69 : (1971) 1 MLJ 274

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—In all the above revisions the scope of Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, has come up for consideration and so they are dealt with together. Before dealing with the common legal issue involved in these cases, it is necessary to set out briefly the facts relating to each of these revisions.

2. C.R.P. Nos. 1824 and 1825 of 1965.--One Naganatha Iyer, whose family consisted of his wife and three daughters, submitted a return u/s 10 declaring his holding as 83-09 ordinary acres = 73.74 standard acres as on 6th April, 1960. The Authorised Officer held that his family was entitled to 60 standard acres and as Naganatha Iyer's family was in possession of 13 acres in excess, he was liable to surrender the same. He was called upon to surrender the said excess extent. The said Naganatha Iyer pleaded that one of his daughters was given in marriage on 6th September, 1961, and she has passed into the family of her husband and as such her stridhana property of 10-36 standard acres would vest in the family of her husband and that the Authorised Officer was not right in including the said stridhana property in his holding. He also pleaded that an extent of 4.71 acres sold by his wife Savithri Ammal to one Hamsu Ammal on 15th March, 1962, for a sum of Rs. 16,000 for the discharge of a debt due to the latter should be excluded from the holding of the family and if the said two items are excluded there will be no excess to be surrendered by the family. The transferor Savithiri Ammal and the transferee Hamsu Ammal under the sale deed, dated 15th March, 1962, also filed their objections. The Authorised Officer after considering all the

objections held that the crucial date for calculating the ceiling area of a family is the date of the commencement of the Act, that is, 6th April, 1960 and that any transfer of the agricultural land after 6th April, 1960, by any member of the family which is hit by the provisions of Madras Act (LVIII of 1961), will have to be declared void u/s 22 of the Act. The Authorised Officer also held that the transfer resulting from the marriage of the daughter of her stridhana properties to the family of her husband is also void u/s 22.

3. On appeals by Naganatha Iyer and Hamsu Ammal the Land Tribunal held that the sale in favour of Hamsu Ammal between the dates of commencement and before the notified date is void as the sale defeated the provisions of the Act, but that the transfer if any of the stridhana property of the daughter by virtue of her marriage after the commencement of the Act but before the notified date to the husband's family cannot be said to be a transfer violating the provisions of the Act. Both Naganatha Iyer and Hamsu Ammal have filed the above revision petitions contending that the bona fide transactions entered into by the parties may not be hit by Section 22 of the Act.

4. C.R.P. Ms. 2293 and 2294 of 1963.--The first petitioner in both these revisions and his wife constituted a family. Both of them held 42.86 standard acres as on 6th April, 1960. The family was eligible to hold only for 35 standard acres on 6th April, 1960. The Authorised Officer, therefore, after exempting 17 cents of land called upon the first petitioner to surrender the excess extent of 7.69 standard acres. The claim of the Authorised Officer was resisted on the ground that the first petitioner was holding only to 31.65 standard acres on 6th April, 1960, that his wife became entitled to 11.20 standard acres by virtue of a bequest in her favour by her mother-in-law, Janaki Ammal, which will take effect only after the death of Janaki Ammal on 1st October, 1961, that the accrual on 1st October, 1961, cannot be taken as the holding of the family as on 6th April, 1960, that there have been certain bona fide sales by him as executor under the will of Janaki Ammal in favour of one Abdul Karim of 1.54 acres on 27th June, 1961 and in favour of Dr. Balasubramaniam of 11.52, acres on 5th February, 1961 and that if the lands sold are excluded, he will not be bound to surrender any excess extent. The Authorised Officer overruled the objections and upheld his demand. In the appeals filed against the orders of the Authorised Officer, his orders were confirmed by the Land Tribunal. The above revisions have been filed on the ground that the Authorised Officer had no jurisdiction to act u/s 22 in respect of the sales made after the notified date and that the Tamil Nadu Act LVIII of 1961, is not a valid piece of legislation.

5. C.R.P. No. 44 of 1966.--There was a sale of certain lands by the petitioner in favour of one Appukutty Pillai on 20th April, 1962, to pay off his debts in Malaya and to purchase a house in the name of his wife at Thiruthuraipoondi. As the petitioner was a person who held on 6th April, 1960, more than the ceiling area, the Authorised Officer called upon him to submit his objections u/s 22 of the Act. In this statement, the petitioner stated that the lands were sold bona fide for

discharging the debts and for purchasing a house at Thiruthuraipundi and the purchaser also filed a statement that the sale in question was effected by the vendor to discharge his debt and his purchase was bona fide and that if the sale is declared void u/s 22 it will result in serious hardship to him. The Authorised Officer issued a notice on 4th June, 1965, notifying that the enquiry will be held on 10th June, 1965. The vendor and the vendee were served with the notice on 6th June, 1965 and the vendee appeared by Counsel and the vendor filed a statement in person on 10th June, 1965. The Authorised Officer passed an order on the same day holding that the vendor has not attempted to prove that he was in debts in Malaya, that he had no other means to discharge the said alleged debt and that in the circumstances the transfer should be deemed to have been made to circumvent the provisions of the Act and to diminish the surplus to be declared u/s 12. In that view he declared the said transfer of lands to be void u/s 22. On appeal by the petitioner and his vendee, the Tribunal felt that the Authorised Officer did not give a reasonable opportunity for the parties to put forward their defence, but that a further opportunity need not be given as the wording of Section 22 does not warrant the investigation of the bona fides or otherwise of the transferor or of the transferee in entering into the transaction as the questions as to whether the transfer was otherwise lawful and valid, whether the sale was supported by consideration, whether it was for a binding necessity or whether the deed was engrossed on stamp papers and registered etc. are foreign to the scope of the enquiry u/s 22. According to the Tribunal a plain reading of Section 22 showed that the enquiry contemplated in Section 22 was only to find out whether the transaction defeats any provision of the Act, and if it did, no other question such as bona fides of the parties or the intention with which the transaction is entered into could arise in that enquiry. The Tribunal felt that "if the Legislature had the intention of excluding bona fide transfers or transfers effected out of necessity, there would have been a clear expression of this intention also as in Section 53 of the Transfer of Property Act where reference is made to bona fide transfers for value. In the view it took about the scope of Section 22, the Tribunal held that, the transaction in this case, being after the notified date, 2nd October, 1962, defeated the provisions of the Act and as such it had been properly declared to be void by the Authorised Officer. It is against the said decision of the Tribunal the above revision has been filed.

6. The common question that arises in these revisions is whether the view taken by the Authorised Officer and the Land Tribunal that the considerations as to whether the transaction has been bona fide entered into or whether the transfer was otherwise lawful or valid could not be gone into in an enquiry u/s 22, and that the only function of the Authorised Officer u/s 22 is to find out whether the transfer defeated the provisions of the Act and if so to declare the sale void, is correct.

7. The learned Counsel for the petitioners contend that the scope of Section 22 has not been properly understood by the Authorised Officer or the Tribunal, that, on a proper understanding of Section 22 its scope should be restricted only to

nominal, sham and bogus transfers intended to defeat the provisions of the Act, that the section will not affect bona fide transfers made between 6th April, 1960 to 2nd October, 1962, though they may have an impact on the provisions of the Act, that the word "may" occurring in Section 22 shows that the power given to the Authorised Officer is discretionary and that the section does not provide for an automatic setting aside of all transfers made during that period. It is pointed out that the Act nowhere prohibits or invalidates a transfer made between 6th April, 1960 and 2nd October, 1962, that Section 22 in terms does not say as to what are the rights of parties under the transfer when declared void, nor does it provide for any reverter as between the parties, that the Act being a confiscatory legislation, the public authority who is invested with the power to enquire into and to invalidate a transfer should act reasonably, and that such a power should be construed beneficially in favour of the subject who is affected by the statute. It is also urged that even the transfers entered into after the notified date are not declared void but are merely ignored for the purpose of calculating the ceiling area, u/s 33 of the Act, that even sections 19 and 20 which also deal with the situations after the notified date do not invalidate the transfers as such, and that when the statute does not purport to prohibit transfers effected even after the notified date, a legislative intention to invalidate all transfers that have taken place between the commencement of the Act and the notified date if they offended the provisions of the Act, cannot be inferred. The learned Counsel also point out that, if total prohibition of transfers which are likely to defeat the provisions of the Act had been" intended, the language of Section 22 would be quite different, and that in construing the provisions of the statute which operate retrospectively, the Court should proceed on the basis that no penalties were intended to be imposed by the statute for transactions effected bona fide before the notified date. According to the learned Counsel, the enquiry contemplated u/s 22 should relate to the nature of the transaction, whether it is genuine or nominal and the Authorised Officer is enabled to declare only such transfer as if found to be nominal as void, and the mere fact that the transfer affects or has an impact on the provisions of the Act, the transfer cannot be declared void as such, as Section 22 does not in terms say that the transfer as such is void but has directed the Authorised Officer to find out whether the transaction is intended to defeat the provisions of the Act. It was also contended that if the Legislature intended to invalidate all transfers between the relevant dates if they defeat the provisions of the Act, it would have used clear and express language for the purpose and that the legislative history shows that whenever it intended to invalidate a transaction, it made a specific and express provision invalidating the transaction generally or under particular circumstances. The learned Counsel referred to certain statutes which have specifically declared the transfers having the effect of defeating the provisions of the statute either void or voidable. Reference was also made to certain statutes which specifically saved certain bona fide transactions notwithstanding the express invalidation of the transaction as defeating the statutory provisions. In substance what the learned Counsel contend is that Section 22 is only intended to cover cases where a person with a

view to defeat the provisions of the Act either nominally transfers his lands to another or makes a bogus transfer with a view to hold an extent in excess the ceiling area by such devices, that is when a person holds more than the ceiling area contemplated by Section 7 by making sham, nominal or bogus transfers in favour of third parties or fictitious persons.

8. The learned Government Pleader appearing on behalf of the respondents, on the other hand, contends that all transfers whether bona fide or not entered into between 6th April, 1960 and 2nd October, 1962, would have to be declared void by the Authorised Officer u/s 22 if those transfers defeat any of the provisions of the Act, and that the enquiry contemplated by the Authorised Officer was only as regards the effect of the transaction on the provisions of the Act, and not as regards the intention of the parties in making the transfers. According to him, Section 22 is intended to declare void only genuine transfers and not any sham, nominal or bogus transfers, which in law do not convey any title to the transferee and which do not require to be avoided, and there is no necessity to declare sham, nominal and bogus transactions to be void as in their nature they do not convey any title to the transferee and are of no effect, and in effect the statute itself makes all the genuine and bona fide transfers between 6th April, 1960 and 2nd October, 1962, void if their effect is to defeat the provisions of the Act, leaving to the Authorised Officer only the power to investigate whether those transfers had in fact defeated the provisions of the Act. It is contended for the State that if Section 22 is construed as affecting only sham, nominal and bogus transactions and not true and genuine transactions, the object of the provision in Section 8 will stand defeated, that Section 22 is intended to bring in the property transferred by divesting the title of the transferee and revesting it on the transferor, so that Section 7 can be properly applied to the transferor and that even if Section 22 were not there, Section 18 which extinguishes all right, title and interest of all persons in the excess land notified u/s 18 serves to carry out the mandate of Section 7. Section 22 in substance and in effect is said to declare all transactions which have the effect of defeating, the provisions of the Act as void, leaving it to the Authorised Officer only to find out if the transactions have, in fact, defeated the provisions of the Act. It is said that it is not within the province of the Authorised Officer to consider whether the transactions are bona fide and that he is powerless to uphold even bona fide transfers if they defeat the provisions of the Act. It is in the face of these rival contentions the scope of Section 22 has to be considered.

9. For a proper appreciation of the scope of Section 22 it is necessary to refer to certain provisions of the Act which are relevant. Section 3(7) defines "ceiling area" to mean the extent of land which a person is entitled to hold u/s 5. Section 3(45) defines "surplus land" as the land held by a person in excess of the ceiling area and declared to be surplus land under sections 12, 13 and 14. "Person" is defined in Section 3(34) as including any trust, company, family, firm, society or association of individuals, whether incorporated or not. The date of the commencement of the Act has been fixed as 6th April, 1960, u/s 3(11) and

notified date has been defined u/s 3(31) as the date specified in the Government notification. Section 4 of the Act states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a Court or other authority. Section 5 fixes the ceiling area in the case of every family consisting of not more than five members generally to be 30 standard acres, before its amendment by the Amending Act of 1970. Section 7 is as follows:

On and from the date of commencement of this Act, no person shall, except as otherwise provided in this Act, but subject to the provisions of Chapter VIII, be entitled to hold land in excess of the ceiling area; Provided that in calculating the total extent of land held by any person, any extent in excess of the ceiling area and not exceeding half an acre in the case of wet land and one acre in the case of dry land shall, irrespective of the assessment of such land, be excluded.

Section 8 directs every person, who, on the date of the commencement of the Act held or deemed to have held, land in excess of 30 standard acres in submit a return within 90 days from the notified date in respect of lands held or deemed to have been held by such a person on the notified date to the concerned Authorised Officer containing the following particulars:

(1) Particulars of all the land (2) particulars of members of the family and of the stridhana land held by each female member of the family, and (3) the particulars of the land which such person desires to retain within the ceiling area and of the land which he desires to be declared as surplus land. Section 9 enables the Authorised Officer to collect such information as are referred to in Section 8 in the event of the person failing to furnish the return as contemplated in Section 8 or to find out whether the return submitted u/s 8 by the person is correct and complete. Section 10 then directs the Authorised Officer to prepare and publish a draft statement as regards the land in excess of the ceiling area held by a person on the basis of the return filed by the person u/s 8 or on the basis of the materials collected by the Authorised Officer u/s 9 and such draft statement has to contain, among others, particulars regarding (1) the total extent of land held by such person, (2) the members of the family and of the stridhana land held by each female member of the family, (3) the extent of the ceiling area of the person, and (4) the lands which may be comprised within the ceiling area. Sub-section 3 of Section 10 enabled the Authorised Officer to specify in the draft statement the land which is capable of easy and convenient enjoyment as the land to be retained by such person within his ceiling area. Sub-section 4 provides that if any person has specified the particulars of the land, which he desires to retain within his ceiling area, the Authorised Officer shall, as far as practicable, declare the same land as comprised within his ceiling area. Sub-section 5 directs that the draft statement shall be published and a copy thereof shall be served on the persons concerned, the tenants, creditors and all other persons who in the opinion of the Authorised Officer are interested in the land to which such draft

statement relates, and their objections, if any, filed within 60 days from the date of service have to be considered after giving them a reasonable opportunity of being heard, and of adducing evidence, if any. Section 12 provides for the publication of a final statement after the disposal of the objections, if any, filed by the persons interested, u/s 10(5) specifying therein the entire land held by the person, the land to be retained by him within the ceiling area and the land declared to be surplus land. Section 18(1) provides that after the publication of the final statement u/s 12 or its amendment u/s 14, the Government shall, subject to the provisions of Sections 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose. Section 18(3) states that on the publication of the notification under Sub-section (1), the lands specified in the notification together with the trees and structures thereon shall, subject to the provisions of the Act, be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land shall, with effect from the said date, be deemed to have been, extinguished.

10. Then comes Chapter III headed "ceiling on future acquisition and restriction on certain transfers." Section 19 prohibits, after the notified date, registration of any document relating to any transfer of land either by sale, gift, exchange, lease, possessory mortgage, surrender, agreement, settlement, or otherwise unless a declaration in writing is made by the transferee in such form as may be prescribed as to the total extent of land held by him, and requires the registering authority to forward such declarations to the Authorised Officer, within the time prescribed, and the Authorised Officer is authorised to take such action as he deems fit in accordance with the provisions of the Act on the basis of such declaration. It should be noted here that the obligation to file a declaration is only on the transferee and not on the transferor. Section 20 then provides a penalty for future acquisition by the transferee in contravention of Section 7. It says that, if, as a result of any transfer of land referred to in Section 19 made after the notified date, the right, title or interest accrued in favour of the transferee by virtue of such transfer in the land in excess of the ceiling area shall, as a penalty for contravention of the provisions of Section 7, stand transferred to the Government with effect from the date of such transfer, on a declaration made by the Authorised Officer to that effect. The provisos to Section 20 provide that the transferee has to pay the entire consideration for the transfer, the transferor cannot have any claim against the Government, and that no suit or other proceeding by the transferee shall lie in any Court for the refund of the consideration for any such transaction. Then comes Section 21 which provides for a ceiling on future acquisition by inheritance, bequest or any sale in Court auction in execution of decree or by an order of civil Court or any award or order of any other lawful authority, of any land in excess of his ceiling area directing the person so acquiring to furnish to the Authorised Officer a return within 90 days from the notified date or from the date of such acquisition giving

the details of the lands which he desires to retain within his ceiling area and other particulars. Section 22 deals with transfers made after the date of the commencement of this Act, but before the notified date. It states that if a person has transferred any land held by him by sale, gift, exchange, settlement, surrender or in any other manner whatsoever except by bequest between the said two dates, the authorised officer may, after notice to such person or other persons affected by such transfer and after such enquiry as he thinks fit to make, declare the transfer to be void if he finds that the transfer defeats any of the provisions of the Act. It is the scope of this provision which has come up for consideration in these provisions. Section 23 deals with transfers and subdivisions effected after the notified date, and it states that subject to the provisions of Section 23 for the purpose of fixing, for the first time, the ceiling area of any person on the date of the commencement of the Act, the authorised officer shall not take into consideration any transfer or any sub-division whether by partition or otherwise effected on or after the notified date and before the date of publication of the final statement u/s 12. Section 94 enables the Government to dispose of land acquired by the Government u/s 18 in accordance with the prescribed manner under the rules. It may be also necessary in the context of the present discussion to refer to Form 2 which is the prescribed form of return to be furnished u/s 8(1) and that form gives annexures A to J containing various particulars. Column 13 of Form 2 sets out the details of lands included in annexure A but disposed of after 6th April, 1960, and the particulars are to be furnished under Annexure I. Annexure I sets out the particulars of the lands so disposed of including the details as to how, when and to whom they were disposed of. It is in the light of the provisions set out above the object and true scope of Section 22 has to be considered. A few dates which are relevant for the purpose of further discussion are given below.

6-4-1960 date of commencement of the Act.

30-4-1962 assent of the President.

2-5-1962 Publication of the Act in the-Official Gazette.

2-10-1962 Notified date.

It is seen that there is no statutory provision prohibiting any transfer expressly or by necessary implication either before or after the notified date. Even transfers made after the notified date which are likely to defeat the provisions of the Act have not been prohibited, nor declared void statutorily but the Authorised Officer is only authorised to declare the lands acquired by the transferee in excess of the ceiling area as having been transferred to the Government under the transfer. If a person acquires either by sale, gift, etc. any land which together with the land already held by him exceeds his ceiling area, that portion of the land in excess of the ceiling area is deemed to have been transferred to the Government from the date of the transfer and not to the transferee. The transfer as such has not been prohibited nor invalidated. Section 20 merely restricts

future acquisitions without prohibiting the transfer as such. Section 21 dealing with acquisition by inheritance, bequest or any sale in execution of a decree after the commencement of this Act also does not invalidate the transactions but merely enables the Authorised Officer to take into account those transactions for finding out the ceiling area of the transferee and to acquire the excess over the ceiling area for the State. Section 19 also compels a transferee after the notified date, to give a declaration regarding the lands held by him before the contemplated acquisition. Where the transferor effects such a transfer after the notified date but before the fixation of his ceiling area for the first time under the Act, it has not been invalidated but the Authorised Officer is empowered to ignore the same while fixing the ceiling area of the transferor u/s 23. Even here so long as the transferor is willing to include the lands so transferred within his ceiling area, the transfer will be fully elective in all respects. If the transferor is unwilling to include the lands transferred within his ceiling area, the Authorised Officer will ignore the transfer and treat the lands transferred as part of his holding for fixing his Ceiling area and for finding out the surplus lands. Subject to this, the transfer is fully effective as between the transferor and the transferee.

11. A close scrutiny of Sections 19 to 21 shows that the main intention of the statute is to see that no person acquires land in excess of the ceiling area which he is entitled to hold u/s 7, without invalidating the transfers as such. Read in that light Section 22 cannot be construed as one intended to invalidate all the transfers made between the commencement of the Act and before the notified date if they in fact defeat the provisions of the Act. If that were the intention of the Legislature, it would have used clearer language and would have stated that all transfers which defeat the provisions of the Act are void, leaving the authorities constituted under the Act to decide the question whether the transfers in fact defeat the provisions of the Act. Section 22 does not in terms invalidate such transfers effected after the commencement of the Act but authorises the Authorised Officer to declare the same to be void if it defeats the provisions of the Act. On a fair reading of Section 22 it has to be construed as one intended to invalidate transfers entered into only with a view to defeat the provisions of the Act, without a bona fide intention to transfer title under the document of transfer.

12. Normally a transaction is said to be void when it is prohibited by law either expressly or by necessary implication, or when the Consideration and object of the transaction is unlawful either in whole or in part. Legislatures have been adopting roughly three modes or devices for invalidating a transaction which is likely to defeat the provisions of the Act. One method is by invalidating the transaction expressly. Such a device has been adopted in Section 5 of the Madras Act V of 1895, Section 4(1) of Madras Act XIV of 1947, Section 58(6) of Madras Act XXVI of 1948, Section 34 of the Madras Act XXIX of 1959, Section 59(3) of Madras Act XXVI of 1963 and Section 38(3) of Madras Act XXX of 1963. Another device usually adopted by the Legislature is to presume that a document is void as violating the provisions of the statute until it is rebutted by the person

affected. Section 6 of Madras Act V of 1964 is illustrative of such a device. The third method adopted by the Legislature is to make the transactions voidable as defeating the provisions of the Act, giving the persons affected the option to treat the sale either as valid or as invalid, and illustrations of this type can be had from Section 8(3) of the Hindu Minority and Guardianship Act, 1956, Section 4 of Madras Act II of 1904 and Sections 53 and 54 of the Provincial Insolvency Act. None of the devices aforesaid had been adopted here. Section 22 does not invalidate a transaction either expressly or by necessary implication, nor is there any presumption of its invalidity on the ground that it had the effect of defeating the provisions of the Act. Nor does it say that the transfers during that period will be voidable as defeating the provisions of the Act. It merely enables the Authorised Officer to declare it void as defeating the provisions of the Act and that suggests that the Authorised Officer has to find out as to what is the intention behind the transfer. If he finds that the transfer has been entered into bona fide, the transfer cannot be declared void merely because it infringes some of the provisions of the Act. If, on the other hand, he finds that the transaction was intended to defeat the provisions of the Act, without the parties not bona fide intending to transfer title, the Authorised Officer has to declare it as of no effect. In other words, Section 22 seems to cover only those sham, nominal and bogus transfers which are only intended to defeat the provisions of the Act. If the legislative intention is also to invalidate all bona fide transactions during the relevant period, it would have made certain consequential provisions as to what are the rights of the transferor and the transferee in relation to the property conveyed, and how the resultant equities between the transferee and the transferor have to be worked out. This view that. Section 22 will cover only transactions of sham, nominal and bogus character which are intended only to defeat the provisions of the Act, will not be inconsistent with object provided in Section 7. The object of Section 7 is to see that no person holds more than the ceiling area, and when the Authorised Officer fixes the ceiling area of a person after the notified date he has to naturally see what is the extent which he should be allowed to hold u/s 12 and what is the extent of the excess land to be acquired from him u/s 18. At the time of fixing the excess area the Authorised Officer has to naturally consider whether such a person in fact holds more than the ceiling area on the relevant date, i.e., when the ceiling area is fixed. The transfers made by that person before the notified date will naturally come into the picture and the Authorised Officer has to see whether notwithstanding the transfer, he still possesses lands in excess of the ceiling area. To take an illustration a person who held 40 standard acres on the date of the commencement of the Act had sold for bona fide purposes the entire extent before the notified date and as a result of that sale he was not in possession of any extent on the notified date. There is no question of fixing ceiling area for him u/s 12 or of acquisition of any excess area u/s 18. If Section 22 is intended to invalidate that sale though bona fide entered into, the entire 40 standard acres transferred should be taken as having reverted to the transferor so as to enable the Government to acquire the excess 10 standard acres. If that is so, the

transferor gets back all the entire forty acres sold by him and has to part with only 10 acres to the State. There is no consequential provision for working out the rights of the transferee in such an event and even if Section 65 of the Contract Act were to apply, the transferee may not be able to recover the entire purchase price from the transferor. There are other anomalies also arising out of the invalidation of a bona fide transaction. In the same illustration if the transferor continues to possess the 40 standard acres notwithstanding the transfer, the transfer has to be held either as sham and nominal or bogus created only to evade the provisions of the Act, and the Authorised Officer can declare that transfer void and proceed to fix the ceiling area and the surplus for the transferor.

13. Further, Section 23 of the Contract Act also cannot be applied to this case as between the two relevant dates there was no statutory prohibition of transfer, nor was there any existing law at all till 2nd October, 1962. The transactions entered into in anticipation of a law to come into existence will not be hit at by Section 23. As a matter of fact Clause 33 of the Bill which is a forerunner to Section 22 of the Act provided for the grant of permission and of imposing restrictions on the intended transfers from the notified date of the Bill and before the publication of the Act. But under the section as enacted, the date of publication has been omitted but notified date has been inserted. If the intention of the Legislature is to invalidate all transfers between the two relevant dates, such an alteration from the publication date to the notified date seem to be unnecessary. One further fact also can be noted. Even assuming that Section 22 applies even to genuine and bona fide transactions, if the transferor is inclined to treat the lands transferred by him during the interval within his ceiling area and declare his other lands as excess, the Authorised Officer cannot declare it as void, for the transaction cannot be said to have been intended to defeat the provisions of the Act. This gives a clue as to the untenability of the submission made on behalf of the State that the statute in effect declares all transactions entered into during the interval having the effect of defeating the provisions of the Act void, that the Authorised Officer has no jurisdiction to go into the genuineness of the transaction and that he has to merely consider the question whether it defeats the provisions of the Act and if it did, to declare the same to be void.

14. Section 10(2) also throws some light on the question. It says that for the purpose of calculating the ceiling area of the family after the commencement of this Act the Authorised Officer shall take into account only those members of that family who are alive on the notified date and for the purpose of calculating the ceiling area of the family for the second or for any subsequent time, the Authorised Officer shall take into account only those members of that family who are alive on the date of the preparation of the draft statement u/s 10(1). This seems to suggest that, though Section 7 provides that on and from the commencement of the Act no person shall be entitled to hold land in excess of the ceiling area, for fixing the ceiling area, the events that had taken place after

the commencement of the I Act but before the notified date have to be taken into account by the Authorised Officer.

15. The word "defeat" normally means "overcome, thwart, evade, frustrate, circumvent, bypass, disappoint, prevent, the accomplishment of...." The word "defeat" in Section 22 has to be taken as having been used to import sinister motive. Maxwell on the Interpretation of Statutes, Twelfth Edition, after stating that the Courts will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net, that the statute has to be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of falling outside the Act, and that the Courts if they find an attempt at concealment, should brush away the cobweb varnish, and show the transactions in their true light, has said at page 143:

It is, however, essential not to confound what is actually or virtually prohibited or enjoined by the statutory language with what is really beyond the enacting part, though it may be within the policy, of the Act; for it is only to the former case that the principle under consideration applies, and, not to cases where, however, manifest the object of the Act may be, the language is not fairly co-extensive with it. An act of Parliament is always subject to evasion in this sense, for there is no obligation not to do what the Legislature has not really prohibited nor to do what it has not really commanded. It is not evading an Act to keep outside it.

In *Sundaram Industries Private Ltd. v. Commissioner of Income Tax* (1969) 2 I.T.J. 809 : (1969) 78 ITR 243, while construing the scope of proviso to Section 12-B of the Income Tax Act of 1922, which brought to charge capital gains, that is gains made from sale, exchange or or transfer of capital assets, expressed that the said proviso does not discourage or avoid honest transactions made out of love and affection or for other conceivable reasons on pain of being hauled up for having attempted to avoid or reduce the tax liability and on that basis made liable to tax on the difference between the consideration for the transaction and the fair market value, nor does it treat what is not an actual capital gain as a deemed capital gain, but that it must be limited to escaped capital gain, which is so in truth and in fact, and that it is not intended to bring about a fictional gain on an assumption and charge the same. In that case the assessee purchased shares for a sum of Rs. 93,660 in 1954 and sold the same in 1959 for Rs. 66,900 at a concessional price to three ladies incurring a loss of Rs. 26,760, treating the difference between the cost price and the sale price as a gift to the purchasers. The Income Tax Officer determined the market value of the shares u/s 12-B (2) and treated the difference between the actual sale price and the market price as the capital gain liable to be taxed. The Tribunal treated the sale as a real transaction which was given effect to and acted upon by the parties, and which was not made with the object of avoidance or reduction of the tax liability but made for the purpose of benefiting the ladies. This view of the Tribunal was upheld. In that case it was held that though the intention of the statute is to tax

the capital gain, the Officer cannot fix the market value ignoring the sale value if the sale is a bona fide transaction, and that the market value has to be fixed only when the transaction is held to be not bona fide.

16. In *Simms v. Registrar of Probates* L.R. (1900) A.C. 323, a deceased covenanted under a deedpoll to pay some amount to his children with interest at 1 1/2 per cent, per annum the debt being payable at call. He regularly paid the interest, but no portion of the principal. The Registrar of Probates on behalf of the Crown thought that the debt was incurred only with intent to evade the payment of duty under the South Australian Succession Duties Act, 1893, and that therefore double duty was payable in respect of the property accruing to the children under the deed--poll. On the question whether the deed-poll executed by the deceased under the circumstances was with intent to evade payment of duty under the Act and is therefore liable to double duty, the Judicial Committee held that it was not chargeable with double duty u/s 27 of the Act as one made "with intent to-evade the payment of duty hereunder" in the absence of evidence of some device or contrivance for that purpose, and that it was not possible to presume an intention to evade the payment of duty. Dealing with the scope of the word "evade" their Lordships observed:

It does not appear to their Lordships that an examination of the decisions in which the word "evade" has been the subject of comment leads to any tangible result. Everybody agrees that the word is capable of being used in two senses; one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable. Beyond this, nothing is to be found having much bearing on the construction of the word, which depends entirely upon its use in the Colonial Acts.... It is quite true, as Bunday, J., intimates when he is pointing out the severity of the law, that Courts must nevertheless construe it according to its true meaning. But where there are two meanings each adequately satisfying the language, and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other. Now, if the word evade be taken to signify some contrivance between donor and donee, that which is pointed out as the greatest harshness of the enactment would be removed or substantially reduced, seeing that the donee would be a party to the transaction which causes loss to him. It is more probable that the Legislature should have intended to use the word in that interpretation which least offends our sense of justice.

It was also expressed in that case that the enquiry in such a case should be to find out whether an apparent transfer is also a real one, that once it is found to be real the Courts need not go into the question as to the motive, unless the Legislature forces them to undertake an enquiry of a vague and indefinite kind as to the motive with which the transaction was entered into and that "other things being equal" it is preferable to suppose that the Legislature contemplated the more ordinary and tangible kind of judicial enquiry, rather than the vague and more elusive one.

17. In *Ram Sarun v. Kishanlal* I.L.R.(1907) All. 327, an occupancy tenant executed a usufructuary mortgage of his occupancy holding, and then executed a kabuliat undertaking to pay the rent for the mortgaged land. On a suit by the mortgagee for rent under the terms of the kabuliat the Court held that the agreement between the parties was of a nature which, if permitted, would defeat the provisions of the Tenancy Act, 1901; and that it was unlawful within the meaning of Section 23 of the Contract Act, and hence void. But there the parties had brought about certain apparent and nominal transactions only to defeat the provisions of the Tenancy Act by camouflaging the same as one of usufructuary mortgage and lease back while they were not really intended to be so. In *Saleh Abraham v. Manekji Gowsaji* I.L.R.(1923) Cal. 491 parties with a view to defeat the provisions of the Calcutta Rent Act, 1920 connived at an arrangement by which the tenant agreed to pay a rent which he knew was higher than that which could be lawfully be demanded under the provisions of the Rent Act, and such an arrangement was held to be hit at by Section 23 of the Contract Act. This decision was based on the fact that the arrangement was not a bona fide one but was one connived at with a view to defeat the provisions of the Act.

18. In *Subrahmanyam Chetty v. Authorised Officer, Land Ceilings* (1967) 1 M.L.T. 313 : 80 L.W. 105, a Division Bench of this Court while dealing with the validity of the transactions which were effected after the Madras Act LVIII of 1961 was struck down as invalid by the Supreme Court and before it was validated, had expressed?

The authorities should take a reasonable view of the provisions of the Act and exercise restraint in rigidly enforcing them in such cases," keeping in view all the circumstances including the fact that at the time when the transactions were effected the Act was not in force. It is true that when once the law is declared to be retrospective, it may touch the transactions. But it does not follow from it that when the enforcement of the relative provisions will involve a penalty and a forfeiture, the provisions will be enforced strictly. Whenever by reason of Article 31-B of the Constitution and the retrospective validation of the Act, the transactions which took place at the time when the Act was considered to be invalid are affected, a liberal view will have to be brought to bear in respect of those transactions and the matter dealt with as such. In other words, the provisions of the Act should not be enforced in relation to such transactions with a view to invoke penalty or forfeiture, the reason being that at the time the transactions were entered into, they were entered into bona fide and on the view rightly held that Madras Act LVIII of 1961 was not in force.

The above observations seem to suggest that Section 22 of the Act cannot be invoked to invalidate a true and bona fide transaction. In a recent decision in *S. Narayanaswami v. The State of Madras and Anr.* W.P. No. 1699 of 1967, the learned Chief Justice speaking for the Bench had expressed that u/s 22 the Authorised Officer has to enquire whether the transaction is shani, nominal, fictitious or bogus or whether it is real, genuine and bona fide and that only

those transactions which are sham, nominal, fictitious or bogus which he can declare as void and the relevant observations are as follows:

There may be several relevant considerations, which will have to be borne in mind and taken into account in the process of arriving at a finding, whether the sales were intended to defeat, any of the provisions of the Act. The policy of the law fixing the ceiling of land holding is to limit the extent of holding which means to that extent concentration of holding is directed to, be fragmented. It is this policy which is the core of the purpose of the enactment, which has got to be borne in mind in deciding the question whether the given sale deeds were intended to get over the ceiling.

19. *Smt. Kalawati Vs. Bisheshwar*, , dealt with the scope of Section 23 (1)(b) of the U.P. Zamindari Abolition and Land Reforms Act, 1951, which imposed a ban against recognition of a transfer made after 7th July, 1949, for the purpose of assessing rehabilitation grant payable to an intermediary, and the Supreme Court had expressed that there is a clear distinction between a transaction being void and one though valid and existent which is not to be recognised or acknowledged, that, the Legislature having imposed only a ban on recognition u/s 23(1), it is impossible to construe the transactions as void. In *Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanammannavar*, , the Supreme Court was concerned with a contract of purchase of land which the parties entered into with the full knowledge that the purchaser will be in possession of the lands in excess of his ceiling u/s 5 of Bombay Tenancy and Agricultural Lands Act, and they rejected a contention that the contract could not be specifically enforced as the purchaser was already owning more than the ceiling area and that by acquiring the land under the contract he would be holding far in excess of the ceiling fixed by the statute. On the question whether the enforcement of the contract would result in transgression of the provisions of the Act and whether Section 23 of the Act disabled the purchaser from enforcing the contract, the Supreme Court expressed that the 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 that the seller cannot resist enforcement thereof on the ground that, if permitted, it will result in transgression, of the law. In that case the Supreme Court considered the scope of Section 35 which is similar to Section 20 of the Madras Act LVIII of 1961. The Supreme Court points out that there was nothing to indicate that the Legislature has prohibited a contract to transfer land, that 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 and that the statute has only imposed a forfeiture in the event of the transferee coming to hold land in excess of the ceiling and this does not invalidate as such a transfer between the parties. The above two decisions of the Supreme Court which have been rendered under the provisions of the analogous statutes give an indication that so long as the statute does not prohibit a transfer it is not possible to declare void transactions of true and bona fide character entered into between the parties before the notified date, and that while it is the duty of the Court not

to render its aid to the enforcement of transactions, which are illegal, it is at the same time incumbent that the illegality should be sufficiently proved and the facts constituting illegality duly established. As already stated even after the notified date the statute does not impose any prohibition but merely directs the Authorised Officer (1) not to take into account those transactions while fixing the ceiling area or (2) to take, away the excess, if any, over the ceiling area of the transferee. It is not possible to accept the contention advanced on behalf of the State that the intention of parties entering into the transaction is immaterial for the application of Section 22 and that even if the transaction is true and bona fide if they have the effect of defeating the provisions of the Act, they should be declared invalid.

20. In the light of the statutory provisions which do not prohibit any transfer as such, but merely impose a restriction on the acquisition of the property by a transferee over the ceiling limit, when a person anticipates the law and transfers a portion of his holding truly and bona fide so as to bring his holding; with the ceiling limit can it, be said that he has defeated the provisions of the Act such as Section 7 which impose a ceiling limit on a person's holding? I am of the view that such a bona fide transfer in anticipation of the law can not be said to defeat the provisions of the Act, especially when the statute, does not in terms prohibit a transfer as such. Anantanarayanan, J., (as he then was) in *Sakthi alias Thayammal Vs. Kuppathammal and Another*, has expressed the view that there was nothing illegal nor opposed to public policy in the sale by a landlord of surplus extents of land in anticipation of a land ceiling legislation. In that case a guardian filed an application u/s 29 of the Guardians and Wards Act for permission to sell the lands of the ward on the ground that the land ceiling legislation is impending that the compensation payable under the impending legislation for the lands in excess of the ceiling area would be quite inadequate, and that the sale of the excess lands would be beneficial to the minor. The District Court dismissed that application on two grounds : (1) nothing definite was known about the anticipated legislation and (2) that the avowed object of the proposed sale appeared to be to get over the legislation which may amount to contravention of a public policy and no Court can countenance such a proposal. Dealing with the second ground of rejection given by the District Court, the learned Judge observed:

The argument of the learned District Judge that this is opposed to the spirit of the legislation, and amounts to some kind of circumvention of the law, is clearly based on a misconception. On the contrary, the sales, by private owners of land, of surplus areas above the probable ceiling are by themselves, an effective instrumentation of the reform. This is a mode by which a more equitable distribution of landed property is effected, even before the enactment itself comes into force. Had it been otherwise, the State would have declared a prohibition similar to a moratorium upon sales of land, which it has advisedly refrained from. To anticipate a law, and to take certain measures dictated by prudence, which are legally permitted, is not at all in contravention of public

policy.

21. Ultimately the District Court's order was set aside on the ground that the refusal of the permission sought for by the guardian was unsustainable and the reason given for such refusal was fallacious.

22. On a due consideration of the matter, I hold that u/s 22 of the Act the Authorised Officer is entitled to declare as void only those transfers which are sham and nominal entered into with the avowed object of defeating the provisions of the Act, without any bona fide intention to transfer title. In the light of the view expressed above the facts of each case have to be considered.

23. In Civil Revision Petition, No. 1824 of 1965 though the Authorised Officer did not go into the question whether the sale effected by the petitioner's wife in favour of Amsu Ammal on 15th March, 1962, for a sum of Rs. 16,000 was bona fide entered into to discharge certain debts, the Tribunal has specifically found in C.M.A. No. 1.9 of 1965 on its file that the impugned sale had been made for valuable consideration for discharging certain pressing debts of the vendor but in the view it took of the scope of Section 22 it held that the transaction though bona fide having been effected, between the commencement of the Act and before the notified date, it had to be struck down as void. Following the view expressed above the order of the Authorised Officer as confirmed by the Tribunal holding the transactions to be void u/s 22 of the Act has to be set aside. Hence C.R.P. No. 1825 of 1965 is allowed. But C.R.P. No. 1824 of 1965 which is directed against C.M.A. No. 18 of 1956 which related only to the exclusion of the stridhana property of the petitioner's daughter after her marriage in respect of which he has succeeded before the Tribunal has to be dismissed.

24. In C.R.P. No. 2293 of 1965 the petitioner has challenged the demand of the Authorised Officer for surrendering 7.69 standard acres and C. R. P. No. 2294 of 1965 is directed against the order of the Authorised Officer declaring the sales dated 27th June, 1961, and 5th October, 1961 in favour of Abdul Karim and Balasubrahmaniam respectively as void. The Tribunal has found that the petitioner owned 31.65 standard acres as on 6th April, 1960, that on 1st November, 1959 a bequest of 11.20 standard acres was made by his mother in favour of his wife to be taken by her after her lifetime, his mother-in-law died only on 1st October, 1961, and the property vested in the petitioner's wife only thereafter. On 1st October, 1961, the petitioner and his wife, in the aggregate held 42.86 standard acres. The petitioner as executor under the will of his mother sold 11.52 acres to one Dr. Subramaniam on 5th October, 1961, and another extent of 1.54 standard acres to one Abdul Karim on 27th June, 1961. These two sales are admittedly after the commencement of the Act but before the notified date and the Tribunal held that these sales are hit by Section 22 of the Act. But neither the Authorised Officer nor the Tribunal has given any finding as to whether the transactions were entered into bona fide and whether they are real. If the sales are real and not sham or bogus, the transactions have to be upheld in the view expressed above. Further, whether the bequest made by the petitioner's mother in favour

of his wife will attract the provisions of Section 21 of the Act has also to be fully considered. Hence the matters are remitted to the Tribunal for fresh consideration in the light of the observations made above. These civil revision petitions are ordered accordingly.

25. In G.R.P. No. 44 of 1966 there has been an alienation on 20th April, 1962 by the petitioner for discharging certain debts which he had incurred in Malaya. The petitioner has adduced proof to show that he remitted a sum of Rs. 21,000 out of the sale consideration to Malaya through the State Bank of India after getting the permission from the Reserve Bank of India. It is stated that the petitioner was forced to effect the sale as there were pressing debts and that he had no other means to discharge those debts. But the Authorised Officer says that these facts have not been proved. But from the facts set out earlier it is seen that the Authorised Officer did not give any reasonable opportunity; to the petitioner to put forward his case. The petitioner appeared in person on 10th June, 1965, after service of notice on 6th June, 1965, but without giving any further opportunity the Authorised Officer passed an order on the same day saying that the vendor has not attempted to prove his debts in Malaya and that he had no other means to discharge those debts. The petitioner filed his statement on 10th June, 1965 and the Authorised Officer should have given him an opportunity to prove the facts set out in the statement. This point was considered by the Tribunal and the Tribunal says:

I should be inclined to hold that this is not a reasonable opportunity at all for the parties to prepare their defence and conduct their case. But in this case, as it happens, nothing turns upon that factor, for the fact of sale being subsequent to the date of the commencement of the Act is not in dispute.

26. On the view it took of the scope of Section 22 the Tribunal held that the transaction, even if it is true, bona fide and genuine, it will be void u/s 22 as it has come into existence after the commencement of the Act and before the notified date and its effect is to reduce the ceiling area of the petitioner. In the light of the opinion expressed above as to the true scope of Section 22, the matter has to be remanded to the Authorised Officer for a fresh enquiry in the light of the observations made in this judgment. The Civil Revision Petitions are accordingly allowed.

27. There will, however, be no order as to costs in any of these petitions.