

(1988) 10 MAD CK 0023
In the Madras High Court

Smt. Shenbagavalliammal

APPELLANT

Vs

Authorised Officer, Land Reforms

RESPONDENT

Date of Decision : 12-10-1988

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 3(19)
Transfer of Property Act, 1882 — Section 53A

Citation : (1989) 2 LW 289 : (1989) 2 MLJ 168

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—This Civil Revision Petition has been preferred against the order of the Land Tribunal, Madurai in L.T.C.M.A. No. 62 of 1983,

confirming the order of the Authorised Officer (Land Reforms), Tirunelveli, holding that the sales effected by the petitioner on 25.2.1970 and

27.2.1970 in favour of one Dr. Muthukumarasami and one Milappa Pillai, respectively are void.

2. The petitioner held lands in excess of the ceiling area under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58 of 1961 as

amended by Act 17 of 1970 (hereinafter referred to as "the Act") on 15.2.1970. Between the date of the commencement of the Act, viz.,

15.2.1970 and the notified date, viz., 2-10-1970, the petitioner executed two sale deeds on 25.2.1970 and 27.2.1970 in relation to 1 acre and 64

cents and 7 acres and 56 cents of lands in favour of Dr. Muthukumarasami and S.Millappa Pillai. Proceedings were initiated u/s 22 of the Act with

reference to the sales so executed by the petitioner and the agent of the petitioner represented that the lands sold may be excluded from the holding

of the petitioner as the sales had been affected pursuant to agreements of sale

entered into prior to 15.2.1970 and for the purpose of paying the Estate Duty payable on the estate of the husband of the petitioner. On receipt of the notice by the purchasers under the sale deeds dated 25.2.1970 and 27.2.1970, they raised a plea in their representations that the lands has been purchased by them under agreements entered into on 19.1.1970 and 11.2.1970 and that they had also been put in possession of the property purchased even on the date of the respective agreements and the sales in question would not, therefore, be hit by Section 22 of the Act.

3. The authorities below on a consideration of the objections so raised and referring to the decision of the Supreme Court in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, held that though there might have been prior agreements for sale, pursuant to which the vendees had also been put in possession of the properties, yet, the sale deeds having been executed between 15.2.1970 and 2.10.1970, would be hit by Section 22 of the Act, and therefore, the sales effected by the petitioner have to be ignored and the extent of the lands sold should also be treated as part of the holding of the petitioner. It is the correctness of this that is questioned by the land owner in the Civil Revision Petition.

4. Learned Counsel for the petitioner strenuously contended that the sales in question, though executed between the date of commencement of the Act, viz., 15.2.1970, and the notified date, viz., 2.10.1970, they had been preceded by agreements for sale in favour of the purchasers and the purchasers had also been put in possession of the properties to be sold to them and therefore, the purchasers can invoke the benefit of the doctrine of part performance enshrined in Section 53-A of the Transfer of Property Act, and the petitioner, in turn, can also, on that footing, claim that those lands ought to be excluded from her holding. Reliance in this connection was also placed by the learned Counsel for the petitioner upon the decision in *Authorised Officer, Land Reforms Erode v. Ramaswamy Gounder* (1983) 1 M.L.J. 261.

5. Per contra, the Government advocate pointed out that though it may be that the sales in question had been preceded by agreements of sale, and the intending purchasers had also been put in possession of the properties agreed to be sold, at best, that may give rise to some rights or an equity in favour of the persons so put in possession, but that would not in any manner

affect or alter the position of the petitioner as holding the lands for purposes of the Act and as the sales had been effected between 15.2.1970 and 2.10.1970, there is no escape from Section 22 of the Act, and therefore, the sales were rightly held to be void by the authorities below. Strong reliance was placed by the Government advocate upon the decision in *Authorised Officer, Land Reforms v. Muthukumar* 93 L.W. 481.

6. It would be appropriate at this stage to notice some definitions as well as the terms of Section 22 of the Act. Section 3(19) defines "to hold

land" as meaning to own land as owner or to possess or enjoy land as possessory mortgagee or as tenant or as intermediary or in one or more of

those capacities. Section 22 of the Act states that if any person has transferred on or after the date of the commencement of the Act (15.2.1970),

but before the notified date 2.10.1970 any land held by him by sale, gift (other than gift made in contemplation of death), exchange, surrender,

settlement or in any other manner, except by bequest or has effected a partition of his holding or part thereof, the Authorised Officer, within whose

jurisdiction such land, holding or the major part thereof is situated, may after notice to such person and other persons affected by such transfer or

partition and after such enquiry as he thinks fit to make, declare the transfer or partition to be void, if he finds that the transfer or partition, as the

case may be, defeats any of the provisions of this Act. In the light of the aforesaid definitions, it has now to be considered whether the execution of

the agreements for sale by the petitioner in favour of the intending purchasers and putting them in possession of the property even on that date,

would have the effect of depriving the petitioner of her holding the land in question. There is no dispute that the petitioner inherited all the properties

from her husband on his death on 19.10.1969 and there cannot be therefore any dispute that the petitioner held land as owner on that date and

also continued to own the same within the meaning of Section 3(19) of the Act. She had entered into agreements for sale of some of the properties

so held by her and put the intending purchasers in possession thereof. The sale deeds purporting to transfer the title of the petitioner in those lands

in favour of the purchasers, were executed only after 15.2.1970. u/s 22 of the Act, if there is a transfer of land held by a person by sale after

15.2.70 and before 2.10.1970, such sale can be declared void, subject to the

prescribed procedure being followed, The question is whether the entering into by the petitioner of the agreements for sale, would in any manner enable her to claim that she was not holding lands within the meaning of Section 3(19) of the Act on 15.2.1970. u/s 54 of the Transfer of Property Act, it is provided that a contract for the sale of immovable property does not by itself create any interest in, or, charge over, such property. This provision clearly indicates that the English doctrine of transfer of an equitable estate to the purchaser is not recognised and the Supreme Court in Rambaran Prosad Vs. Ram Mohit Hazra and Others, has held that a contract for sale does not create any interest in the land. Thus, despite the agreements for sale entered into by the petitioner in favour of the intending purchasers, the purchasers did not acquire any interest in, or over the land and the petitioner continued to hold land for purposes of the Act as before. The circumstance that the intending purchasers were also put in possession of the properties agreed to be sold, would not in any manner affect the petitioner's continuing to hold the lands for the purposes of the Act. The reliance upon Section 53-A of the Transfer of Property Act, would not in any manner advance the case of the petitioner, for, it is well settled that Section 53-A of the Transfer of Property Act cannot assist a person to establish rights as owner of the property (Vide Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad, . Unless, therefore, there has been a parting by the petitioner of the ownership in the property prior to 15.2.1970, in a manner recognised by law, she cannot be heard to contend that by reason of the execution of the agreements, there had been a transfer of title to the properties in favour of the intending purchasers even on the dates of the agreements. It is in this connection, the decision in Authorised Officer, Land Reforms v. Muthukumar 93 L.W. 481 is relevant. In that case also, reliance was placed upon the circumstances that the intending purchasers had been put in possession of the properties and that would suffice to take the sale transactions out of Section 22 of the Act. Repelling this contention, it was pointed out that by a mere agreement of sale and putting the purchaser in possession, the position would not be any different in so far as the transfer of the land is concerned, as the intending purchasers might have acquired some rights in law and equity to obtain specific performance and

also to safeguard his possession; but that will not mean that the transfer of interest amounting to a sale, had taken place even prior to the execution of the sale deed. It was also further pointed out, referring to Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, that the three requirements for the purposes of Section 22 of the Act are (1) a transfer or other alienation; (2) transfer or alienation taking place during the period mentioned in the section; and (3) transfer having been effected to defeat any of the provisions of the Act, and apart from those three requirements, there is no room whatever for considerations of sham or nominal or bogus transaction or a transfer bona fide for family necessity or other urgency. It is thus seen that either the circumstances that the intending purchasers had been put in possession of the properties, pursuant to the agreements for sale in their favour or even bonofide nature of the transaction for meeting urgent family needs or necessities, would not save the transactions from the operation of Section 22 of the Act, if the transactions have taken place during the specified period. In this case, there is no dispute that the sale deeds were executed by the petitioner after 15.2.1970 and before 2.10.1970 and Section 22 of the Act would squarely stand attracted. It now remains to refer to the decision in Authorised Officer, Land Reforms v. M.Ramasami Gounder (1983) 1 M.L.J. 261, relied on by the learned Counsel for the petitioners. The decision proceeds on the ground that the expression "sale" u/s 22 of the Act, would also comprehend a sale, which is as equally effective under the provisions of Section 53-A of the Transfer of Property Act. It has also been noticed in that decision that Section 53-A of the Transfer of Property Act does not bring about a transfer of property in the truest sense of that expression. Even so, the decision has proceeded on the ground that a sale can be effectuated and be completed either by registered conveyance or under the provisions of Section 53-A of the Transfer of Property Act. Section 53-A of the Transfer Property Act has always been understood and construed as conferring rights on a person, who has been let into possession of the property by the owner pursuant to an agreement of sale and that right is only a limited right relating to protection of such possession and no more. With all respect to the learned Judge, there is no question of any element of transfer of title involved in Section 53-A of the Transfer of Property Act and indeed, this has also been recognised, and the learned Judge was also

fully aware of it, as noticed earlier. Even so, Section 22 of the Act had been interpreted also to take in cases of sales equally effective under the provisions of Section 53-A of the Transfer of Property Act. As pointed out earlier, there is no question of any sale or passing or transfer of title in the property by reason of the application of Section 53-A of the Transfer of Property Act, the use of the expression "sale" occurring in Section 22 of the Act has to be understood in the light of the definition of sale occurring in Section 54 of the Transfer of Property Act, and, if so understood, it would take in only sales involving transfer of ownership brought about in a manner contemplated therein and not to other kinds of transactions, by which, there is no parting with or transfer of title, as such, but merely of possession giving rise to certain equities in favour of persons in possession. In view of the aforesaid considerations, the, decision in *Authorised Officer, Land Reforms v. Ramaswami Gounder* (1983) 1 M.L.J. 261 cannot be accepted as laying down the correct position with reference to the definitions in the Act and its other provisions, considered in the light of the true scope and effect of the doctrine of part performance in Section 53-A and also Section 54 of the Transfer of Property Act. Consequently, the authorities below were quite right in holding that the sales executed by the petitioner in favour of the purchasers between 15.2.1970 and 2.10.1970, though such purchasers were put in possession of the properties even on the dates of the agreements entered into prior to 15.2.1970, would be void u/s 22 of the Act, and those extents should be treated as the holding of the petitioner. The Civil Revision Petition therefore fails and is dismissed. There will be, however, no order as to costs.

C.R.P. No. 3679 of 1985 - The Principal objection raised by the petitioner is that the conversion of the standard acreage from ordinary acreage based on the rate of assessment has been erroneously done, in that, while the rate of assessment has been 6.50 per acre, for purposes of calculating the standard acreage, it had been taken as 8.50 per acre. It is seen that the order of the Authorised Officer had been passed u/s 9(2)(b) of the Act and the petitioner had objected even at that stage to the conversion based on the revenue assessment. It is further seen that the petitioner had also raised an objection that some house-sites have been included in her holding. Four documents dated 30.3.1966, 8.7.1971,

8.7.1971 and 9.6.1972 were also relied upon by the petitioner in support of her objections. However, the Tribunal took the view that it would be undoubtedly open to the petitioner to raise these objections at the appropriate stage and the defects pointed out, if made good, could always be rectified at the stage of the proceedings u/s 10(5) of the Act. It is further seen from the order of the Tribunal that it is open to the petitioner to approach the Authorised Officer and pray for the exclusion of the house-sites, if any, included in the holding and also to get the other discrepancies rectified and defects remedied. Having regard to this direction given by the Tribunal in its order, it cannot be said that the petitioner is in any manner prejudiced by that order, as it is always open to her to approach the Authorised Officer at the later stages of the proceedings to exclude the house-sites and also to correctly arrive at the total holding and also the holding within the ceiling area with reference to the correct assessment as well. Consequently, C.R.P. No. 3679 of 1985 is also dismissed. There will be no order as to costs.