
(1980) 03 MAD CK 0050

In the Madras High Court

Case No : Civil Revision Petitions No's. 3141 of 1977 and 2581 of 1978

The Authorised Officer, (Land Reforms)

APPELLANT

Vs

Muthukumar and Others

RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 22, 3(19)
Transfer of Property Act, 1882 — Section 55

Citation : (1980) ILR (Mad) 415

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : P.D. Dhinakaran, for Additional Government Pleader, for the Appellant; S. Sethuratnam, for Respondent first, for the Respondent

Final Decision : Allowed

Judgement

Natarajan, J.—Both these revisions have been filed by the same Petitioner viz., The Authorised Officer, (Land Reforms) Erode, and they raise a common question of law for consideration. Both these cases arise under the Tamil Nadu Land Reforms (Fixation of ceiling on land) Act 1961, hereinafter referred to as the Act. In the former case one Muthukumar was holding an extent of 49-335 ordinary acres equivalent to 17-164 standard acres of land as on 15th February, 1970 when the Act came into force. Under the Act he is entitled to hold only an extent, of 15 standard acres. However, subsequent to the Act coming into force the first Respondent purported to sell an extent of 12-09 ordinary acres to the second, Respondent, who is his mother. The Authorised Officer held the sale to be void in view of Section 22 of the Act, which interdicts the transfer of land by sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by bequest or by partition of the holding or part thereof after coming into force of the Act.

2. In the latter of the revisions the facts have not been set out correctly in the order of the Subordinate Judge, But, as per the order of the Authorised Officer,

they are as follows: One E.P. Kannan, who is the first Respondent in this revisions was a minor at the time when the Act came into force on 15th February, 1970. On that day he was holding an extent of 41.68 1/3 ordinary acres equivalent to 16.15 standard acres of land. Subsequent to the Act coming into force the Respondents, mother acted on his behalf and sold 5.17 ordinary acres in favour of the second Respondent and 3.50 ordinary acres in favour of the third Respondent. It appears that there was an agreement of sale in favour of one Ramaswamy in respect of some further extent of land, but we are not concerned with that in these proceedings. The Authorised Officer refused to recognize the validity of the sales in favour of Respondents 2 and 3, as according to him, the transfers were hit by Section 22 of the Act.

3. The first Respondent in each of the petitions assailed the order of the Authorised Officer and preferred appeals before the Tribunal, viz., Principal Subordinate Judge of Erode. The learned Subordinate Judge accepted their contention that they had not effected the sales with a view to defeat the provision of the Act. He applied the ratio laid down by Ramanujam J., in *Naganatha Iyer v. Authorised Officer* (1970) 84 L.W. 69 and held that the sales were not sham and nominal or void transactions and consequently they were not affected by Section 22 of the Act, since there was no finding by the Authorised Officer that the sales had been effected to defeat the provisions of the Act. Aggrieved by the order of the Tribunal in each of the cases, the Authorised Officer has preferred these two revisions.

4. In view of the decision of the Supreme Court in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, wherein the judgment in 84 Madras Law Weekly 69 has been reversed, these revisions have to be allowed without any discussion whatever. It has been pointed out in the judgment of the Supreme Court that Section 22 (of the Act) literally read leads only to one conclusion, viz., that any transfer of land during 6th April, 1960 to 2nd October, 1962 i.e. the period between the date of commencement of the Act, [the Act referred to being The Tamil Nadu Land Reforms (Fixation of ceiling on land) Act LVIII of 1961 and the notified date, bonafide executed or not, is liable to be declared void by the Authorised Officer, if he finds that the transfer defeats any of the provisions of this Act. Elaborating further, the judgment states that the three requirements that warranted notice were: (i) a transfer or other alienation, (ii) the said transfer or alienation had taken place during the period mentioned in the section and (iii) the transfer having the effect of defeating any of the provisions of the Act, and apart from these factors, there is no room for importing a fourth principle that the transfer should be sham, nominal or bogus or that the transfer was not bona fide for family necessity or other urgency. Therefore, even assuming that the transfer effected by the first Respondent in each of the cases was a bona-fide transactions and was for the benefit of the family, still they would fall within the mischief of Section 22.

5. Mr. S. Sethuratnam, learned Counsel for the first and second Respondents

however submitted that the sale of the land in each case was preceded by an agreement of sale and the said agreement had come into existence before the Act came into force. He concedes that the sale agreement by themselves would not create any interest in land in favour of the intending purchasers but however, states that in pursuance of the sale agreement the vendees had paid a substantial portion of the sale consideration to the vendors and had also obtained possession of the land agreed to be sold to them in part performance of the agreement of sale and in those circumstances, they had acquired a charge or interest in the land. Placing reliance on these facts, Mr. S. Sethuratnam would contend that the ratio contained in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, would not apply to the facts of the Respondents in each of the cases. In support of his argument Mr. S. Sethuratnam places reliance on *Rabindra Nath Banerjee Vs. Harendra Kumar Chakravarty and Others*, wherein it was held that, if a person, who had entered, into an agreement of sale of immovable property under attachment, had paid the earnest money to the judgment-debtor before proclamation of sale and paid the balance of purchase amount subsequent to the sale and the judgment-debtor had utilized the payment to satisfy the decree obtained by the decree-holder, then (he person who had obtained the agreement of sale must be deemed to have acquired the seller's interest in the property u/s 55(vi)(b) of the Transfer of Property Act. Applying the ratio contained in the judgment, the learned Counsel states that the purchasers had acquired the seller's interest in the extent of the land agreed to be sold to them and placed in their possession and, therefore, these extents may be excluded from the holding of lands of the transfer for the purposes of the Act. It is true that the facts in these two cases are different from those considered by the Supreme Court in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, . However, the contention of Mr. S. Sethuratnam cannot be accepted because, the provisions of the Act do not afford scope for the acceptance of the contention. Section 22 of the Act is comprehensive in its scope and operational force. It interdicts all kinds of conveyances such as transfers by sale, gift, exchange, surrender, settlement or in any other manner and includes also a transfer by partition. The only kinds of transfers that are excepted are a gift made in contemplation of death and bequest. When even a partition has been treated as a transfer in spite of the fact that parties to the partition would undoubtedly have a right and interest as coparceners or co-owners in the properties that are partitioned, a person who has obtained an agreement of sale cannot be heard to say that the sale in his favour subsequent to the coming into force of the Act will not amount to a transfer within the meaning of Section 22 of the Act. Merely, because he had an agreement of sale in his favour or had paid major portion of the consideration or had been put in possession of the property agreed to be sold, the position will not become different in so far as the transfer of land under the deed is concerned. He may have acquired some rights in law and equity to obtain specific performance and also to safeguard his possession of the land, but that will not mean that the transfer of interest amounting to a sale had taken place

even before the sale deed was executed in his favour. The resultant position is that the first Respondent in each of the cases had continued to be the owner of the land till the sale was effected in favour of the transfers. Once this conclusion is reached then it follows that the extent of the land that was sold also to be included in the holding of the seller because Section 3(19) of the Act which defines the words to hold land clearly states that land, owned by a person as owner possessed or enjoyed by him as possessory mortgagee or as tenant or as intermediary or in one more of these capacities, will constitute holding of land. Therefore, there is no escape for the Respondents from the operation of Section 22 of the Act.

6. For the aforesaid reasons, both the revisions have to succeed. The order of the Tribunal in each of the cases will stand set aside and the order of the Authorised Officer will stand restored. However, there will be no order as to costs.