

(1981) 10 MAD CK 0047

In the Madras High Court

Case No : C.R.P. 2243, 2244 and 2245 of 1979

The Authorised Officer (Land Reforms), Erode

APPELLANT

Vs

N. Ramaswamy Gounder and others

RESPONDENT

Date of Decision : 23-10-1981

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (1981) 10 MAD CK 0047

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Advocate : G. Jermiah for the Addl. Govt. Pleader, for the Appellant; K. Ramamurthy and N.S. Nandakumar, for the Respondent

Judgement

Balasubrahmanyam, J.—These revisions arise out of proceedings started by the Authorised Officer under S. 22 of Act 58 of 1961 (Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961, as amended by Act 17 of 1970. The Act was passed to provide for the fixation of ceiling on agricultural land holdings and for certain other matters connected herewith. S. 22 of the Act may be characterised as an anti-avoidance provision. Under this section any transfer made by any person of land held by him by sale or otherwise on or after the commencement of the Act but before the notified date, may be declared to be void by the Authorised Officer if he finds that the transfer by sale defeats any of the provisions of the Act. This section was invoked by the Authorised Officer in the present case in order to avoid two transactions of sale of land by the respondent, N. Ramaswami Gounder—one, of the extent of 1.95 acres and the other, of an extent of 5.82 acres. It may be observed that the date of commencement of the Act was 15th February, 1970 and the notified date was 2nd October, 1970. The two sales by conveyances in the present case took place under two sale deeds, dated 15th May, 1970. They were registered with the Sub-Registrar of Assurances on 23rd May, 1970. The Authorised Officer held that the two sales had been effected by the land owner, Ramaswami Gounder with intent to defeat the provisions of the Act. On appeal, the Land Tribunal went into all the

surrounding facts and circumstances and recorded its findings. The Tribunal found that the sale deeds were preceded by an agreement of sale between the respondent and the purchasers. The stamp paper for the agreement had been purchased in the name of one of the purchasers and the agreement bore the date, 4th February, 1970. The Tribunal found that under the agreement the total consideration for the two sales amounted to Rs. 19,000 and as between them the purchasers had paid a total advance of Rs. 3,500. The Tribunal further found that on the execution of the agreement of sale and the receipt of advance, the respondent-landowner delivered possession of the lands to the purchasers. The Tribunal referred to the documentary evidence in the case which showed that delivery of possession had been effected to the purchasers. Reference was made to transfer of patta, entries in the chitta, and the like. That the possession had already been handed over and remained with the purchasers was also found from the fact that with respect to a portion of the land one of the purchasers was recognised as the claimant in certain land acquisition proceedings and appropriate compensation was paid to him. Having regard to all these material facts, the Tribunal recorded a finding to the effect that the two sales effected by the land owner were genuine transactions and not sham and nominal. The Tribunal also rendered a finding to the effect that they were not intended to defeat the provisions of the Act. The Tribunal accordingly reversed the decision of the Authorised Officer and held that the two sale deeds were not void under S. 22 of the Act. In these three revisions brought at the instance of the Authorised Officer the one and the only point raised is whether the sales effected under the two transactions in question are his by S. 22 of the Act and whether the Tribunal was right in reversing the order passed by the Authorised Officer holding the transactions to be void under S. 22 of the Act.

2. I have earlier set out the gist of the provisions of S. 22 of the Act. While holding that the section did not apply to the present case, the Land Tribunal had made reference to a decision of this Court in *Naganatha Aiyar v. Authorised Officer* 84 L.W. 69. The learned Government Pleader in the forefront of his argument submitted that this decision of our Court had been reversed in appeal by the Supreme Court in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, . Analysing S. 22 of Act, the Supreme Court observed that for this section to apply, three requirements must be satisfied ; (i) There must be a transfer or other alienation ; (ii) the transfer must have taken place in between the date of commencement of the Act and the notified date ; and (iii) the object of the transaction must be found to be to defeat one or other provisions of the Act. The Supreme Court held that the Authorised Officer must void the transfer if these three elements were present in any given transfer. According to the Supreme Court, apart from these elements, there is no room for importing a fourth principle to the effect that the transfer to be avoided should be sham or that it should be nominal or bogus. The Supreme Court further observed that if a transfer defeats the provisions of the Act, it would fall under S. 22 even though it might be regarded as having been effected by the vendor for

family necessity or for any other bona fide reason.

3. Standing four-square on this decision of the Supreme Court, the learned Government Pleader submitted that the conclusion of the Tribunal in the present case must be set aside and the order of the Authorised Officer restored on the findings rendered by the Tribunal. Mr. Nandakumar, learned counsel for the respondent-landowner, however, sought to support the decision of the Tribunal, inviting a different approach to the facts found. Learned counsel submitted that quite apart from everything else in this case, the fact remained that the two transactions had been completed on 4th February, 1970 although the formal conveyances happened to have been executed on 15th May, 1970. Learned counsel pointed out that the landowner and the purchasers had entered into an agreement for sale in writing as early as 4th February, 1970 under which the purchasers had paid a portion of the consideration in advance and had obtained delivery of possession of the lands in question. Learned counsel submitted that the course of transaction carried out in this manner constituted a classic case of transfer by part performance of the contract for which the law has made appropriate provision in S. 53-A of the Transfer of Property Act, 1882. Learned counsel pointed out that the evidence relating to the agreement in writing, the receipt of advance of purchase price, and the take over of possession by the purchasers are all matters of record and their truth could not be questioned in these revisions. Learned counsel granted that the agreement of sale had not been registered but that, under the law, was not necessary for the purpose of invoking the doctrine of part performance imbedded in S. 53-A of the Transfer of Property Act.

4. I think, I must accept the force of the submissions made by learned counsel for the respondent on the basis of S. 53-A of the Transfer of Property Act. This section in the Transfer of Property Act provides that where any person contracts to transfer, for consideration, any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has, in part performance of the contract, taken possession of the property and the transferee has performed or is willing to perform his part of the contract, then notwithstanding that the contract has not been registered in the manner prescribed therefor by the law, the transferor or any person claiming under him shall be barred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession. There is a proviso to this section which says that the rights conferred on the transferee under this section shall be without prejudice to the rights of a subsequent bona fide transferee for value without notice.

5. The total effect of S. 53-A is to effectuate a transfer as fully and as completely as if a conveyance had been effected although all that the parties have is a mere agreement in writing for the transfer of property followed by delivery of possession and a willingness on the part of the parties to complete the

transaction, In the present case, the evidence on record shows that the agreement was in writing on stamp paper, that it contained the details of the terms of the conveyance including the consideration, the advance received, the price of the lands to be conveyed and the time for completion of the transaction. The record also contains the materials to show that clearly following on the heels of the agreement in writing, possession was handed over by the landowner to the purchasers. What is more, subsequently, as contemplated in the agreement of sale, regular conveyances were executed in which specific mention was made of the precedent agreement of sale dated 4th February, 1970, and the sale transaction was completed by payment of the balance of the purchase price. Having regard to all these facts which has been adverted to in the order of the Tribunal, I am satisfied that this is case a to which the provisions of S. 53-A of the Transfer of Property Act fit to perfection. The result is that in point of law the lands must be held to have been transferred on 4th February, 1970, or, at the latest, when possession had been handed over pursuant to the agreement. It is not suggested that either of these events happened within the crucial period, namely, between 15th February, 1970 and 2nd October, 1970, which represent the dates of commencement of the Act and the notified date respectively. It follows, therefore, that S. 22 which contemplates transactions, which fell within this period, and not outside, cannot apply to the two sales in question in the present case so as to render them void.

6. The learned Government Pleader urged that the mere execution of the agreement of sale does not confer title on the transferee. The learned Government Pleader is in a sense right in urging this pure conception of the property law of India. In our country, we do not have such a thing as an equitable title which a transferee under an agreement for transfer of immovable property acquires merely on the execution of that agreement in his favour. Our law knows no such thing as the transfer of an equitable title. A transferee under an agreement of sale may have, in certain circumstances, a right to sue for specific performance of the contract of sale against the other party. But what he possesses is by no means a title or interest in the land in it equitable or call it by any other name. All this is not, however, to say that S. 52-A of the Transfer of Property Act does not bring about a transfer of the property in the truest sense of that expression. If the section does not bring about that result, it has no business to have a place in the Transfer of Property Act at all.

7. The learned Government Pleader then referred to the language of S. 22 of the Act and said that the subject-matter of proceedings by the Authorised Officer under that section are transfers by sale, gift, exchange, surrender, settlement and the like in all of which there is an element of passing of title from one person to another. His point was that even in a case where S. 53-A of the Transfer of Property Act can properly be applied, the kind of situation brought about by that provision cannot be brought within the expression "sale", "exchange" and the like since what is contemplated under S. 22 are full-fledged transfers by way of sale effected by a valid conveyance and other kinds of transfers completed under

the law after observing all formalities to the fullest extent. I do not accept this contention as well founded on the terminology of S. 22. The section deals not with the mere documents, but with substantial transactions of sale, gift and the like. Under the general law, a sale can be effectuated and can become complete either by a registered conveyance or, short of that, under the provisions of S. 53-A of the Transfer of Property Act. S. 22 of the Tamil Nadu Act 53 of 1961, as subsequently amended, deals not so much with documents or parchments, as with real transactions recognizable by law as such. Therefore, it stands to reason that the transaction of sale dealt with by that section must include not merely a regular registered sale by conveyance, but also a sale which is as equally effective under the provisions of S. 53-A of the Transfer of Property Act.

8. The learned Government Pleader submitted that the Act being a special enactment must override the provisions of the general enactment such as the Transfer of Property Act. This familiar doctrine of the special overriding the general can only be applied in a case where both deal with the same subject-matter. If, apart from the Transfer of Property Act, which is a general enactment there is either a local or special enactment dealing with transfer of property, as such, then this doctrine can properly be applied and the special can be regarded as overriding the general. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, can by no means be regarded as a special enactment devoted to transfer of property. It is, on the contrary, an Act to provide for the fixation of ceiling on agricultural holdings. It may be that S. 22 was enacted as an ancillary provision intended to be an anti-avoidance measure. But that will not render the conceptions to be found in that section as having something of a special meaning different altogether from the meaning the law assigns to them. The expression "sale", "transfer", "exchange", "settlement" and the like which occur in S. 22 of that Act must bear the same meaning as the law assigns to them under the general law. In no other terms can that section work. It is intended to avoid regular transfers of this kind. If we give a special meaning to those transfers, the danger is that ordinary transfers which are avoidance transactions cannot be brought within the not of S. 22. How the present transfer gets out of S. 22 is because under the general law the sale must be regarded as having been completed long before the formal conveyance had been executed and got registered by the parties. Having regard to the considerations I have set out in the foregoing paragraphs I am satisfied that the conclusion of the Tribunal was right, although for the quite different reason I have given on the contentions urged before me at the bar. The result is that the civil revision petitions are dismissed. In the circumstances of the case there will be no order as to costs.