

(1984) 06 MAD CK 0020
In the Madras High Court

Tirumathi Manoranjitham

APPELLANT

Vs

The Authorised Officer (Land Reforms) and Another

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Citation : (1984) 97 LW 362 : (1984) 2 MLJ 474

Hon'ble Judges : Gokulakrishnan, O.C.J.

Bench : Single Bench

Judgement

Gokulakrishnan, O.C.J.

1. The appellant filed W.P. No. 997 of 1972 for the purpose of calling for the records comprised in the notification in G.O. Ms. No. 584,

Revenue, dated 25-2-1972, on the file of the Secretary to Government of Tamil Nadu, Revenue Department, Madras - 9, by the issue of a Writ

of Certiorari and for quashing the order of the second respondent, dated 25-2-1972.

2. By the impugned order dated 25-2-1972, the lands in S. No. 130/1 measuring 4.72 acres, in S. No. 129/2 measuring 1.08 acres and in S. No.

78/IB measuring 48 cents, in all measuring 6.28 acres were declared as surplus u/s 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on

Land) Act, 1961 (hereinafter called Tamil Nadu Act 58 of 1961). According to the appellant herein, these lands declared as surplus and other

lands, in all measuring 21.58 acres were settled on her by her husband Arunachalam Pillai on 20-10-1959 by a valid settlement deed. The

commencement of the Act in question is dated 6-4-1960. The Notification dated is 2-10-1962. As per Section 22 of Tamil Nadu Act 58 of 1961,

the transfer can be avoided by the authorities concerned if that is done in

between the date of commencement of the Act and the notifying date.

Section 22 of the said Act reads as follows:

Transfer or partition made on or after the date of the commencement of this Act but before the notified date. - Where, on or after the date of the

commencement of this Act, but before the notified date, any person has transferred any land held by him by sale, gift (other than gift made in

contemplation of death), exchange, surrender, settlement or in any other manner whatsoever 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 the partition, as the case may be, defeats any of the provisions of this Act.

3. The appellant herein unsuccessfully agitated the order passed u/s 22 before the Tribunal, and the Appellate Authority. Subsequently, when the

declaration u/s 10 has been made, the appellant has come forward with the present writ petition.

4. According to the appellant, the property declared as surplus belongs to her absolutely as per the settlement deed in her favour, dated 20-10-

1959 effected by her husband Arunachalam Pillai and that she did not receive any notice u/s 10(5) or u/s 12 of the Act.

5. The learned single Judge of our Court observing that the appellant has kept back valid information from Court and then she has made false

statement in the affidavit, dismissed the writ petition in limine with costs of Rs. 250/-. It is as against this order the present appeal has been filed.

6. Mr. D. Raju pointing out the affidavit filed by the appellant in the writ petition and also the relevant provisions in the Act stated that there is

absolutely no suppression of facts in the affidavit filed by the appellant herein and that the proceedings are vitiated for want of proper notice to the

appellant u/s 10(4) and Section 12.

7. Mr. Desabandu, the learned Government Pleader has to accept that there is absolutely no false statement in the affidavit filed by the appellant

herein in the writ proceedings. It is clear from the arguments of both the counsel appearing for the appellant as well as for the respondents that the

learned Judge has misunderstood the affidavit filed by the appellant herein and that has vitiated the order passed by the learned single Judge of this Court.

8. In the affidavit filed by the appellant, she has specifically stated in paragraph-2 that the land in dispute was validly settled on her as early as on 20-10-1959 by her husband and that the respondents cannot ignore the said settlement and treat the lands of the appellant as that of her husband

Arunachalam Pillai. In paragraph-4 of her affidavit, the appellant has specifically stated thus:

... The petitioner is a person interested and is actually the absolute owner in undisputed possession and enjoyment and any proceedings under the

Act without notice to the petitioner will be illegal, non est and void in law. The impugned proceedings are without jurisdiction and is liable to be set

aside by this Honourable Court.

The learned single Judge of our Court has extracted this portion of the pleadings in his order and observed that such a settlement is not correct.

We do not find from the averments made in the affidavit filed by the appellant in support of her writ petition that she has suppressed any facts

regarding the proceedings u/s 22 of the Act or the settlement affected in her favour by her husband as early as 20-10-1959.

9. Section 10(5) of the Act reads as follows:

... 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 settlement relates, together with a notice stating that any

objection to the draft statement shall be preferred within thirty days from the service of such notice. The authorised officer shall duly consider any

objection received within the time specified in the said notice from the persons on whom a copy of the draft statement has been served or any

objection received within thirty days from the date of the publication of the draft statement from any other person. The authorised Officer shall,

after giving the objector a reasonable opportunity of being heard and of adducing evidence, if any, and subject to such rules as may be made pass

such orders, as he deems fit....

It is clear from this section 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.

10. Section 12 of the Act deals with the publication of the final statement. It reads as follows:

... Publication of final statement: After the disposal of the objections, if any, preferred under Sub-section (5) of Section 10 and after passing the order, if any, under Sub-section (1) of Section 11, the authorised Officer shall, subject to the provisions of this Act and the rules made thereunder, make necessary alterations in the draft statement in accordance with the order passed on the objections aforesaid and the order, if any, passed under Sub-section (1) of Section 11, and shall declare the surplus land held by each person. The Authorised Officer shall thereafter publish a final statement 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 and such other particulars as may be prescribed and cause a copy thereof to be served on the persons referred to in Sub-section (5) of Section 10. Such a statement shall, subject to the provisions of Section. 14, be conclusive evidence of the facts stated therein.

11. This statement according to the section, must be published with details of the holding and a copy thereof has to be served on the persons referred to in Sub-section (5) of Section 10.

12. As far as the present case is concerned, the appellant has a settlement deed in her favour in respect of the lands in dispute. Both as per Section 10(5) and Section 12 of the Act, the authorities concerned ought to have served a copy of the draft statement and also the final statement upon the appellant herein. No such thing has been done. It is admitted by the Government Pleader that no such notice was served upon the appellant since the authorities treated this land as that of her husband Arunachalam Pillai and hence the notices contemplated u/s 10(5) and 12 of the Act were not served upon the appellant herein. Thus it is clear from the facts of the case that there is clear violation of the mandatory provisions contained in Sections 10(5) and 12 of the Act and hence the final statement issued u/s 18 has to be quashed. Under these circumstances, the writ appeal is allowed and the Notification referred in the writ petition is quashed with a

direction that the matter is remanded to the file of the first respondent for starting the proceedings from the stage of Section 10 of the Act for the purpose of fixing the ceiling limit in respect of the lands in question. No costs.