
(1974) 01 MAD CK 0033
In the Madras High Court

T.M Abdul Gani

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 02-01-1974

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 10(5)

Citation : (1975) 1 MLJ 67

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—As on and October, 1962, the date relevant for the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the family of the petitioner consisted of himself, his wife, three minor sons and two unmarried daughters, and they together held lands of an extent of 193.93 ordinary acres, corresponding to 131.37 standard acres. The Authorised Officer, Land Reforms, Mayuram, prepared a draft statement u/s 10 (1) of the said Act, and published the same stating that the family consisting of six members was eligible to hold 48.97 ordinary acres equivalent to 35 standard acres and 14.06 ordinary acres, equivalent to 10 standard acres of stridhana. Against the draft statement published u/s 10 (1) of the Act, the land owner filed an objection petition, and after considering the objection, the Authorised Officer passed orders u/s 10 (5) of the Act on 21st April, 1969. Against this order of the Authorised Officer, the petitioner preferred an appeal before the Land Tribunal, Mayuram, in C.M.A. No. 35 of 1969. The said Tribunal by its order, dated 28th August, 1970 upheld the finding of the Authorised Officer that all the seven members constituted the family of the petitioner herein and also regarding the determination of surplus of 83.46 acres. However, regarding the selection of surplus land, the Land Tribunal directed the landowner to file a list of lands which he wished to surrender within three weeks from the date of the issue of the order and directed the Authorised Officer to consider such a list before the preparation of the final statement u/s 12 of the Act afresh in this case. The petitioner filed the list of lands which he wished to retain within the ceiling of the family. The petitioner has filed the

present writ petition praying for the issue of a writ of certiorari to quash the order of the Land Tribunal as well as the Authorised Officer.

2. Mr. Abdul Hadi, the learned Counsel for the petitioner, contends that the Tamil Nadu Act XVII of 1970, which came into force on 23rd June, 1970, has amended the definition of the term "family" in Section 3 (14) of the principal Act, 1961, and that the amended definition read with Section 3 (2) of the Tamil Nadu Act XVII of 1970 will lead to the conclusion that in calculating the surplus of the family, the property settled on the three minor sons and one unmarried daughter prior to the notified date should be excluded from the holding of the family, and the family itself should be treated as including only the petitioner, his wife and the other unmarried daughter. In my opinion, this argument is without substance. Section 3 (14) of the principal Act of 1961, so far as it is relevant, reads that "family" in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her minor sons and unmarried daughters. An Explanation has been added to this definition by Section 2, Sub-section (I), Clause (c) (ii) of the Tamil Nadu Act XVII of 1970. That Explanation, so far as it is relevant, states:

For the purpose of this clause:

(a)

(b) in the case of persons governed by any law other than Hindu Law, " minor sons ", " unmarried daughters ", " minor grand-sons " and " unmarried grand-daughters" shall not include "minor sons ", " unmarried daughters", "minor grand-sons " and " unmarried grand-daughters ":

(i) in whose favour any land has been voluntarily transferred by either of whose parents or grand-parents on account of natural love and affection ; or

(ii) ...before the notified date.

One other statutory provision that has to be considered in this connection is Section 3 of the Tamil Nadu Act XVII of 1970, which is as follows:

3(1). Subject to the provisions of Sub-section (2) any action taken (including any order made, notification issued, decision or direction given, proceeding taken, liability or penalty incurred and punishment awarded) under the provisions of the principal Act before the date of the publication of this Act in the Fort St. George Gazette, may be continued or enforced after the said date in accordance with the provisions of the principal Act as if this Act had not been passed.

(2) Nothing in Sub-section (1) shall be deemed to entitle any person whether or not such person is a party to any proceeding mentioned in Sub-section (1), to hold after the 15th day of February, 1970, land in excess of the ceiling area under the principal Act as modified by Section 2 and the provisions of the principal Act as modified by Section 2 shall, after the said date, apply to such person.

The contention of the learned Counsel for the petitioner is that by virtue of Sub-section (2) of Section 3 of the Tamil Nadu Act XVII of 1970, the petitioner herein will be entitled to hold the 15 standard acres of land as provided in the Act, and in arriving at the ceiling of the petitioner herein, the family of the petitioner should be taken to mean only himself, his wife, one unmarried daughter and the three minor sons and one unmarried daughter on whom properties had been settled should be excluded. As I pointed out already, this contention is without substance. Sub-section (1) of Section 3 of the Tamil Nadu Act XVII of 1970, which I have extracted, clearly shows that any action taken prior to the coming into force of the Tamil Nadu Act XVII of 1970 will have to continue and will take effect under the provisions of the principal Act, as if that Act had not been amended by the Tamil Nadu Act XVII of 1970. Consequently, in this case, since the Authorised Officer has passed orders u/s 10 (5) of the principal Act prior to the coming into force of the Tamil Nadu Act XVII of 1970, and at the time when that Act came into force, the appeal preferred by the petitioner to the Land; Tribunal was pending, the Land Tribunal could determine the surplus only on the basis of the principal Act LVIII of 1961 without reference to the Tamil Nadu Act XVII of 1970.

3. However, Mr. Hadi contends that Sub-section (1) of Section 3 of the Tamil Nadu Act XVII of 1970 is subject to the provisions contained in Sub-section (2) of that section, and the petitioner's case will fall within the scope of Sub-section (2) of Section 3. I am unable to accept this contention for the simple reason that Sub-section (2) of Section 3 of the Tamil Nadu Act XVII of 1970 merely provides that even with regard to a person whose case falls within the scope of Sub-section (1), he will not be entitled to hold after the 15th day of February, 1970, land in excess of the ceiling area under the principal Act as modified by Section 2 and the provisions of the principal Act as modified by Section 2 shall, after the said date, apply to such person. The principal object of Act XVII of 1970 is to reduce the ceiling limit of 30 standard acres provided for in the principal Act of 1961 to 15 standard acres. The object of Sections 3 (2) of the Act XVII of 1970 is to give effect to this reduced ceiling limit with effect from 15th February, 1970, and, therefore, provides that even when the ceiling limit of any person is determined with reference to the provisions of the principal Act of 1961 u/s 3 (1) of Act XVII of 1970, still because of the overriding effect flowing from Section 3 (2) of the latter Act, such person can hold land after 15th February, 1970, only subject to the reduced ceiling limit prescribed in Act XVII of 1970. The Land Tribunal has rightly applied Sub-section (1) of Section 3 of the Tamil Nadu Act XVII of 1970, and, therefore, no interference is called for with the order of the Land Tribunal.

4. The writ petition is dismissed. There will be no order as to costs.