

(1969) 07 MAD CK 0011
In the Madras High Court

V.S. Swaminatha Pillai

APPELLANT

Vs

The Authorised Officer (Land Reforms) and Others

RESPONDENT

Date of Decision : 03-07-1969

Acts Referred:

Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Rules, 1962 — Rule 9(i)

Citation : (1970) 1 MLJ 238

Hon'ble Judges : A. Alagiriswami, J

Bench : Single Bench

Judgement

A. Alagiriswami, J.—Petitioner had taken on lease an extent of 45 acres 48 cents of wet land and 7 acres 22 cents of dry land from the third

respondent for a period of 25 years from Kollam Andu 1122 corresponding to 1945-46. The Authorised Officer took the view that he was a

cultivating tenant under the third respondent--Trust within the meaning of the term under the Madras Public Trusts (Regulation of Administration of

Agricultural Lands) Act, 1961. Under the Act a cultivating tenant's ceiling area is five standard acres and any extent in excess reverts to the lessor.

The Authorised Officer therefore took the view that the petitioner should surrender lands in excess of five standard acres to the Trust. He ordered

notice under Rule 9 (i) of the Madras Public Trusts (Regulation and Administration of Agricultural Lands) Rules, 1962 for selecting the excess

lands that have to be surrendered by the petitioner. The petitioner took up the position that by Section 4 of the Holdings (Stay of Execution

Proceedings) Act of 1960, he could not be evicted and that in any case before being evicted he should be paid as compensation the amount which

he had spent on improving these lands. The Authorised Officer overruled this

contention and held that the provisions of the Madras Public Trusts

(Regulation and Administration of Agricultural Lands) Act applied to this case and the petitioner is bound to surrender the excess area to the Trust

on the ground that the petitioner was a cultivating tenant. He held that he would be taking proceedings under the other provisions of the Act. The

petitioner filed an appeal to the Collector who dismissed his appeal.

2. Before this Court three contentions were raised by the petitioner : (1) That the Act is unconstitutional; (2) that he is not a cultivating tenant but an

intermediary; and (3) that in any case he is entitled to the benefits of the Travancore Holding (Stay of Execution Proceedings) Act. The first

contention is easily dealt with because the Supreme Court has held that all Acts included in the Ninth Schedule to the Constitution are valid and this

is one such Act. It is not necessary to deal with the third contention in the view that I am taking of the second contention, that the petitioner is not a

cultivating tenant.

3. According to the petitioner all the lands which he had taken on lease from the third respondent have been sub-leased to various tenants. None

of them is in possession of any extent over five acres. This contention of the petitioner is in a way supported by the counter-affidavit filed by the

third respondent wherein he says that the various persons who had been let in as tenants by the petitioner have subsequently attorned to him, and

that the petitioner is not in possession of any of the lands of which he had taken on lease. Now, the Madras Public Trusts (Regulation and

Administration of Agricultural Lands) Act, 1961 defines a cultivating tenant as below:

Section 2 (5) : " Cultivating tenant"--(i) means a person who contributes his own physical labour or that of any member of his family in the

cultivation of any land belonging to another, under a tenancy agreement, express or implied ; and

(ii) includes:

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land ; or

(c) a sub-tenant if he contributes his own physical labour or that of any member

of his family in the cultivation of such land ; but (iii) does not include a mere intermediary or his heir.

Clause (14) of that section describes an intermediary as below:

"Intermediary" means any person who not being an owner or a possessory mortgagee, has an interest in land, and is entitled, by reason of such interest, to possession thereof but has transferred such possession to others.

As admittedly the petitioner is not contributing his own physical labour or that of any member of his family in the cultivation of the land belonging to

the third respondent, though he may have a tenancy agreement with the third respondent, he is not a cultivating tenant. But the persons who have

taken lands on sub-lease from the petitioner and are cultivating them, would be cultivating tenants under Sub-clause (c) of Section 2 (5). This Act,

when it deals with a cultivating tenant, is really dealing with a person who is cultivating the land and not with a person who has merely taken a lease

of land and has sub-leased it to others for purposes of cultivation. There is no provision in the Act which enables any of the authorities concerned

to deal with a mere lessee who will be an intermediary under sub-section. (14) of Section 2. The two authorities below who held otherwise are

clearly in the wrong, but they cannot be blamed because the petitioner did not raise this question in that form before them. In a sense the petitioner

cannot be said to be a person aggrieved because he is not in possession of any land and no land could be taken possession of from him. The lands

will be taken possession of only from his sub-tenants under the Act and they apparently have no grievance because they are said to have attorned

to the third respondent. It is unnecessary to consider whether this allegation which is denied by the petitioner is true or not; and, in any case, the

consequences that arise from such a situation are beyond the scope of these present proceedings. We are not concerned in these proceedings with

the rights which the petitioner may have against his sub-lessees or with the remedies the sub-lessees will have against the petitioner. Suffice to say

for the purpose of this writ petition that the basis on which the two authorities below have dealt with the question is clearly wrong. The writ petition

is therefore allowed and the order of the Authorised Officer as well as the Collector are set aside ; but any remedies which the petitioner may be

entitled to will have to be worked out only in a civil Court. There will be no order

as to costs, as the petitioner has not taken up the position before the subordinate authorities, which he has taken before this Court.