

(1974) 01 MAD CK 0041
In the Madras High Court
Case No : C.R.P. No. 371 of 1974

V.S. Velliappa Chettiar and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-01-1974

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 22

Citation : AIR 1980 Mad 4

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Advocate : S.V. Jayaraman and V. Kansan, for the Appellant; Addl. Govt. Pleader, for the Respondent

Judgement

Maheswaran , J.—This revision is against the order of the learned Land Tribunal confirming the order of the Authorised Officer (Land Reforms), Ramanathapuram and dismissing the appeal preferred by the revision petitioner. The facts are:

The estate called R. M. P. V. Estate owned by late Palaniappa Chettiar of Poolankurchi had extensive lands in Minnamalaipatti and Malavanniaruppu villages. After the death of the original owner Palaniappa Chettiar in the year 1920, his descendants were enjoying the income derived from the estate according to their shares. Some of the descendants of late Palaniappa Chettiar formed a new firm called V. S. R. M. Firm. but the Authorised Officer held that the properties owned by the new firm as well as R. M. P. V. Firm are joint family properties. Some lands owned by the said estate were sold to V. S. R. M. Firm during the period between 6-4-1960 and 2-10-1962. The partners of V. S. R. M. firm filed a joint statement before the Authorised Officer wherein they stated that the lands sold to V. S. R. M. firm could be included in their ceiling limit and one of the partners requested the Authorised Officer not to proceed with the enquiry u/s 22 of the Land Reforms Act. Those lands mentioned in. that petition were included within the ceiling limit of the said persons and the Authorised Officer dropped proceedings under Sec. 22 of the Act. The learned Authorised Officer

issued notice under S. 9(2) (b) of the Act to the partners of V. S. R. M. firm and also to R. M. P. V. Subramania Chettiar and Muthukaruppi Achi who are also the descendants of Palaniappa Chettiar for enquiry. The matter was enquired into and the Authorised Officer passed an, order declaring 83-04 standard acres as surplus lands to be surrendered by these persons. Aggrieved by the said decision, they filed an appeal before the Land Tribunal who dismissed the appeal observing that "there are no merits in the appeal". It is against that order of the Tribunal that this revision is filed.

2. Two points were raised before the Tribunal and one was that the enquiry should have been conducted under the amended Act and the next point was that the statement made by the partners of V. S. R. M. firm were not made voluntarily and that the partners were "under the erroneous impression that all the transfers made between the date of commencement of the Act and the notified date for void". Both these contentions were negated by the Land Tribunal. Now, it is contended by the learned counsel Mr. S.V. Jayaraman, appearing for the revision petitioners that these admissions in the statement were made by the petitioners in ignorance of law and on an erroneous impression that all the transfers made between the date of commencement of the Act and the notified date are void and as such those statements can never be called voluntary statements so as to bind the petitioners. The learned counsel further contended that the Authorised Officer (Land Reforms), failed to note that the enquiry u/s 22 was mandatory and that notwithstanding the statements made by the petitioners In regard to the alienations, the Authorised Officer ought to have proceeded with the enquiry under Section. 22 and should have determined whether the transfers would defeat the provisions of the Act.

3. It is necessary now to refer to, the statements filed in this case. (The statement at page 401 of the Authorised officers' file, Volume I is by Meenakshi Achi). The statement runs thus-

"In reply to your above notice, I submit that I have sold the following lands to the persons mentioned therein under duly registered sale deed. These sales of lands are bona fide and are not made contrary to the provisions of the Land Reforms Act. I agree that these lands may be Included in the land which will form part of the ceiling area for winch I am entitled under S. 5(1) of the Act. Necessary entries may be made and the sale of lands may be treated as valid. As I am willing to, keep all the lands sold after 6-4-1960, within my ceiling limit, I request that the enquiry u/s 22 need not be proceeded with." To the same effect is the statement of Valliappa Chettiar and also of Chokalingam, Chettiar, but both Valliappa Chettiar and Chockalingam, Chettiar have not stated that the enquiry under S. 22 need not be proceeded with. Only Meenakshi Achi has stated so. The question is whether the Authorised Officer could drop the proceedings under S. 22 of the Act

4. It is pointed out that under S. 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling an Land) Act. the Authorised Officer is entitled to declare as void only

those transfers which are sham and nominal entered into with the avowed object of defeating the Provisions of the Act without any bona fide intention to title. I earlier extracted the statement filed by the sharer. They have stated in their statements that the sales of lands were bona fide and are not made contrary to the provisions of the Land Reforms Act, But, they added that they agree "that those lands may be Included in, the lands which will form part of the ceiling area for which they are entitled under S. 5(1) of the Act". In *Naganatha Iyer v. Authorised Officer*, 1971(1) Mad LJ 274, Ramanujam J. has observed-

"It is seen that there is no statutory provision prohibiting any transfer expressly or by necessary implication either before or after the notified date. Even transfers made after the notified date which are likely to defeat the provisions of the Act have not been prohibited, nor declared, void statutorily but the Authorised Officer is only authorised to declare the lands acquired by the transferee in excess of the ceiling area as having been transferred to the Government under the transfer"

5. Then again, the learned Judge says-

"A close scrutiny of Sec.,19 to 21 shows that the main intention of the statute is to see that no person acquires land in excess of the ceiling area which he is entitled to hold under Sec. 7, without invalidating the transfers as such. Read in that light S. 22 cannot be, construed as one intended to invalidate all transfers made between the commencement of the Act and before the notified date if they in fact defeat the provisions of the Act. If that were the intention of the Legislature, it would have used clearer language and would have stated that all transfers which defeat the provisions of the Act are void, leaving the authorities constituted under the Act to decide the question whether the transfers in fact defeat the provisions of the Act. Section 22 does not in terms invalidate such transfers effected after the commencement of the Act but authorises the Authorised Officer to declare the same to be void if it defeats the provisions of the Act."

These observations, with which I respectfully agree, clearly show that an enquiry has to be held by the Authorised Officer under Sec. 22 to find out whether the transfers were entered into only with a view to defeat the Act without bona fide intention to transfer title under the documents of transfer.

6. In *S. Narayanasami v. State of Madras* (W. P. No. 1699 of 1977 unreported) the learned Judges of the Division Bench observed

" Sec. 22 does confer upon the Authorised Officer having jurisdiction power to declare void alienations by way of sale among other forms of transfer made on or after the date of the commencement of the Act, but before the notified date, if he finds that the sales defeat any of the provisions of the Act. But before he made such a declaration, there are two requisites which are mandatory, One is, he has to serve notice to all persons affected by such transfer by way of sale and secondly he has to make such enquiry as he thinks fit to make in order to find

that the transfer was such as would defeat any of the provisions of the Act. These are two independent steps. Merely because notice was served but was not responded, it does not follow that the second step can dispensed with. The second step casts an obligation on the Authorised Officer to hold an enquiry as he thinks fit. The words "as he thinks fit to make" mean that a duty is cast on the Officer to hold an enquiry. It is no doubt discretionary. But the discretion has got to be exercised according to law and reason. In that sense there is a duty on the officer, even though the parties to whom notices were sent did not respond thereto to apply himself to the documents themselves, or by making some other investigation to gather facts in relation to the sales so that he would be in a position to appreciate the merits and hold, that the sales were fictitious transactions, or they were not meant to be acted upon as they were bogus, or the documents were not supported by consideration. Even if the documents were not supported by consideration the sales would be quite good. There may be several relevant considerations, which will have to be borne in mind and taken into account in the process of arriving at a finding whether the sales were intended to defeat any of the provisions of the Act. The policy of the law fixing the ceiling of land holding is to limit the extent of holding which means to that extent concentration of holding is directed to be fragmented. It is this policy which is the core of the purpose of the enactment, which has got to be borne in mind in deciding the question whether the given sale deeds were intended to get over the ceiling. The procedure we have just now mentioned has not been adopted in this case."

These observations also show that the provisions of Sec. 22 has to be complied with strictly. It appears to me that the learned Authorised Officer erred in dropping the proceedings without considering whether the documents had the effect of defeating the provisions of the Act, because one of the partners had stated in her statement that the enquiry under S. 22 need not be gone into. In *Naganatha Iyer v. Authorised Officer*, 1971 1Mad LJ274, earlier referred to the learned Judge further observed-

"Even assuming that Section 22 applies even to genuine and bona fide transactions, if the transferor is inclined to treat the lands transferred by him during the interval within his ceiling area and declare his other lands as excess, the Authorised Officer cannot declare it as void, for the transaction cannot be said to have been intended to defeat the provisions of the Act. This gives a clue as to the untenability of the submission made on behalf of the State that this statute in effect declares all transactions entered into during the interval having the effect of defeating the provisions of the Act void, that the Authorised Officer has no jurisdiction to go into the genuineness of the transaction and that he has to merely consider the question whether it defeats the provisions of the Act and if it did, to declare the same to be void.

It is therefore manifest that a duty is cast on the Authorised Officer to find out whether the transfer was such as would defeat any of the provisions of the Act.

It is a mandatory provision and the Authorised Officer has to follow the pro laid down in Section 22. 1 earlier pointed out that only one of the partners has asked to drop the Proceedings u/s 22 and the other partners have not prayed to drop the proceedings. It has to be further noted that they do not say that the sale was void and was, made in order to defeat the provisions of the Act, but they say that "the sales of the lands are bona fide and are not, made contrary to the provisions of the land Reforms Act." It is all the more necessary that the Authorised Officer should consider the question whether the trans would defeat the provisions of the Act. That procedure has not been followed in this case. I do not find any thing on record to show that he has even dropped the proceedings u/s 22. Nothing is mentioned about the enquiry u/s 22. He has not come to the conclusion that the transfers had the effect of defeating the provisions of the Act. On that view, the order of the Authorised Officer is not sustainable. The proper course to be adopted under such circumstances is to remit the matter to the Authorised Officer for an enquiry afresh. As I am of the view that the Authorised Officer should have proceeded with the enquiry u/s 22 of the Act, I am abstaining from giving a finding as to whether the statements made by the partners were under an erroneous impression that all the transfers between the date of commencement of the Act and the notified date are void. The revision is allowed and the orders of the Land Tribunal and the Authorised Officer (Land Reforms), Ramnad at Madurai are set aside and the matter is remitted to the Authorised Officer (Land Reforms) Ramnad at Madurai, for hearing the petition afresh untrammelled by any observations made in this order. The Authorised Officer will also admit the petition for reception of additional documents, if any, and take into consideration the additional documents filed, while dealing with "the enquiry u/s 22, of the Act. There will be no order as to costs in this revision.

7. Revision allowed.