

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.2.2013

CORAM:

THE HONOURABLE MR. JUSTICE R. SUDHAKAR

W.P.No.13885 of 2004

1. Venkateshchalam
2. Sivakaj Karthikeyan

Petitioners

vs.

1. The District Revenue Officer
Land Tribunal, Chepauk
Chennai - 600 005.
2. The Authorised Officer
cum Assistant Commissioner
Land Reforms,
No.54, Thengaperumal Street
Anoor Complex, Erode
Erode District.

Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari to call for the records of the first respondent culminated in and by its proceedings in LTCMA 6/2002, dated 12.4.2004 and quash the same.

For Petitioners : Mr.V.Bharathidasan
For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

ORDER

The petitioner seeks issuance of a writ of Certiorari to call for the records of the first respondent culminated in and by its proceedings in LTCMA 6/2002, dated 12.4.2004 and quash the same. By the order under challenge, the first respondent rejected the claim of the petitioners seeking exemption from the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961 (Act 58 of 1961).

2.1. The brief facts of the case are as follows: The petitioners are father and son respectively. The brother of the first petitioner filed a suit in O.S.No.675 of 1970 on the file of the District Munsif Court, Dharapuram for partition against other siblings. A preliminary decree was passed on 30.2.1970. The subject matter of the property is about 42.157 standard Acres of agricultural land equivalent to 147.67 ordinary Acres situated in Mugalipalayam Village, Dharapuram Taluk, Erode District. The entire property belonged to the family

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and that has been partitioned under the preliminary decree as above

2.2. Despite the partition of the property as above, the Authorized Officer under Act 58 of 1961 issued a draft statement under Section 10(1) of Act 58 of 1961 on 4.7.1972. Objections were raised by the petitioners stating that as per the Civil Court decree there is no excess land. The said objection was not accepted and consequently a notice was issued in terms of Section 10(5) of Act 58 of 1961 and thereafter a final statement was issued on 30.3.1980 under Section 12 of Act 58 of 1961.

2.3. Challenging the final statement issued by the second respondent, the petitioner filed an appeal to the first respondent, who while allowing the appeal in part, accepted the preliminary decree dated 30.9.1970 as valid partition and ordered exemption of such land from the provisions of Act 58 of 1961. But insofar as other lands which are not the subject matter of the preliminary decree, the appellate authority remanded the matter to the second respondent for fresh adjudication.

2.4. Not agreeable to the order passed by the first respondent dated 20.12.1982, the second respondent authority filed C.R.P.No.2545 of 1984. The revision was allowed by this Court by order dated 11.8.1988 and the matter was remanded to the first respondent to reconsider the bona fide of the partition and the claim for exemption under the provisions of Act 58 of 1961. On remand the impugned order came to be passed and that is challenged by the petitioners.

3. Mr.V.Bharathidasan, learned counsel appearing for the petitioners, at the outset, contended that the entire exercise of the second respondent in this case cannot be justified in the light of Section 21-A of Act 58 of 1961 and, therefore, the order of the first respondent declining to exempt the petitioners' lands from the provisions of Act 58 of 1961 is bad.

4. Before advertng to the merits of the case, it is appropriate to refer to Section 21-A of Act 58 of 1961, which reads as follows:

"Section 21-A. Certain portions and transfers to be valid.- Notwithstanding anything contained in section 22 or in any other provision of this Act and in any other law for the time being in force, where after the 15th day of February 1970, but before the 2nd day of October 1970 -

- (a) any person has effected by means of a registered instrument a partition of his holding or part thereof; or
- (b) any parent or grand-parent has voluntarily transferred any land on account of natural love and affection to any minor son, unmarried daughter, minor grand-son, or unmarried grand-daughter in the male line;

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(c) any person has voluntarily transferred any land-
(i) to any educational institution; or
(ii) hospital
of a public nature solely for the purposes of such
institution or hospital;
such partition or transfer shall be valid;
provided that in the case of transfer to such
educational institutions or hospital, the land
transferred absolutely vests in the institutions or
hospital and the entire income from such land is
appropriated for the institution or hospital.

5. A perusal of the above provision would clearly go to show that despite the embargo contained in Section 22 of Act 58 of 1961, Section 21-A of Act 58 of 1961 holds as valid, transfer of land between 15.2.1970 and 2.10.1970 by any person effected by means of a registered instrument of his holding or part thereof and clause (b) provides for voluntary transfer during the said period as valid. In effect, Section 21-A of Act 58 of 1961 overrides all other provisions of Act 58 of 1961, including Section 22 of Act 58 of 1961. If the requirement of Section 21-A of Act 58 of 1961 is satisfied, then the benefit should flow automatically.

6. In this case, admittedly, a preliminary decree for partition has been passed on 30.9.1970 well within the period prescribed under Section 21-A of Act 58 of 1961 and that decree is in force. Section 21-A of Act 58 of 1961 holds valid any transfer within the said period and the partition of the property by way of preliminary decree dated 30.9.1970, would also fall within the mischief of Section 21-A of Act 58 of 1961. Therefore, a partition by proceedings before Court will be valid as per law, as Section 21-A of Act 58 of 1961 contemplates voluntary transfer as well. The respondents have no jurisdiction to go beyond the preliminary decree and come to the conclusion that it is a collusive decree or otherwise.

7. Where the partition is by a decree of a Court of law or inter se the parties, so long as the partition is properly done within the dates prescribed under Section 21-A of Act 58 of 1961, the benefit that flows out of the said provision will follow. It overrides all other provisions, including Section 22 of Act 58 of 1961, as Section 21-A of Act 58 of 1961 starts with a non-obstante clause. In such view of the matter, the entire exercise of the respondents is futile and contrary to the provisions of Section 21-A of Act 58 of 1961. If there is an attempt to create document beyond the period specified and seek exemption, then an enquiry will be justified. In the light of a preliminary decree before Court, such a doubt pales into insignificance.

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8. This view of the Court is fortified by a decision of the Supreme Court in Susila Devi Ammal and others v. State of Madras, 1993 Supp (1) SCC 462, wherein it is held as under:

"2. However, as is evident the High Court totally overlooked Section 21-A. If the case of the appellants falls squarely within Section 21-A it would reign supreme over any other provisions of the Act, inclusive of Section 23."

9. After referring to the above decision in Susila Devi Ammal case, the Supreme Court in Arul Nadar v. Authorized Officer, Land Reforms, (1998) 7 SCC 157 has held as under:

".... That apart, while the legislature intended to reduce the ceiling area from 30 standard acres to 15 standard acres, they themselves provided for a transfer holiday by inserting Section 21-A as has been held by this Court in Susila Devi case and there would be no justification to give any restrictive meaning to the said provision of Section 21-A where the legislature indicated that the aforesaid provision is notwithstanding anything contained in Section 22 or in any other provision of the Act or in any other law for the time being in force. In this view of the matter, it would not be appropriate for us to give any restrictive meaning to Section 21-A of the Act as contended by the learned counsel for the respondent."

(emphasis supplied)

10. The contention of the learned Additional Government Pleader appearing for the respondents that Section 21-A of Act 58 of 1961 will not cover a case of collusive or bogus partition cannot be accepted. The question of partition being collusive or bogus will not arise, as in the present case admittedly the partition is by way of a decree passed by a competent Civil Court. In any event, voluntary transfer during the period specified is also valid making Section 21-A special in contrast to the general provision. Therefore, the plea taken by the respondents that it is a collusive decree also cannot be accepted on the facts of the present case.

For the foregoing reasons, the writ petition is allowed and the impugned order is set aside. The second respondent is directed to conclude the proceedings by granting the benefit of Section 21-A of Act 58 of 1961 in respect of the properties which are the subject matter of the partition under the preliminary decree. Insofar as other properties are concerned, the second respondent is at liberty to proceed as per law. No costs.

Sd/-
Deputy Registrar.

/true copy/

Sub Asst. Registrar.

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1. The District Revenue Officer
Land Tribunal, Chepauk
Chennai - 600 005.

2. The Authorized Officer
cum Assistant Commissioner
No. 54, Thangaperumal Street
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Erode District.

1 CC To Mr. V. Bharathidasan, Advocate SR NO. 7803

1 CC to Government Pleader SR 7873

W.P. No. 13885 of 2004

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MRS - FCL
Sec. 21-A of the Act
Preliminary decree of partition
passed on 30.9.70 is eligible for
granting the benefit of Sec. 21-A of
the Act.