

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeals Nos. 2542 to 2544 of 1972

(Appeals by Special Leave from the Judgement and order dated the 11th December 1970 of the Madras High Court in Civil Revision Petitions Nos. 1824, 1825/65 and 44/66).

The Authorised Officer,
Thanjavur and another

.. Appellants

Vs.

S. Naganatha Ayyar, etc.

.. Respondents

The 4th day of

PRESENT:

Honourable Mr. Justice V.R. KRISHNA IYER

Honourable Mr. Justice A.P. SEN.

For the Appellant

..

Mr. V.P. Raman,
Advocate-General and
(Mr. A.V. Rangam,
Advocate with him).

For Respondent in
C.A. 2542.

..

Mr. A.T.M. Sampath

For Respondent in
O.A. 2543

..

Mr. K.S. Ramamurthi,
Senior Advocate,
(Mrs. Saroja Gopalakrishnan,
Advocate with him).

For R.1 in C.A. 2544

..

Messrs. K. Jayaram and
K. Ramkumar, Advocates.

For R.2 in C.A. 2544

..

Mr. K. Rajendra Choudhry,
Advocate.

JUDGMENT.

The following Judgement of the Court was delivered by

IN THE SUPREME COURT OF INDIA
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Civil Appeals Nos. 2542 to 2544 of 1972.

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..

Petitioners

Vs.

S. Naganatha Ayyar

..

Respondent

JUDGEMENT

Krishna Iyer, J.

The short point of law decided in the long judgement under appeal may justly be given short shrift. But the batch of Civil Revision Petitions allowed by the High Court involves a legal issue of deep import from the angle of agrarian reform and surplus land available for distribution under its scheme that the deem it proper to discuss the core question at some length. If the statutory construction which found favour with the High Court be correct the risk of reform legislation being condemned to functional futurity is great, and so the state has come up in appeal by special leave challenging the High Court's interpretation of S.22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (for short, the Ceiling Act) presently, we will set out the skeletal facts relating to the civil appeals and the scheme of the Act designed for distributive justice in the field of agricultural land ownership. Sufficient to disclose the purpose of the legislation, the mischief it intends to suppress, the reverse effect of the construction put on the key section (S.22) in the judgement under appeal and the consequent stultification of the objective of the Ceiling Act. While dealing with welfare legislation of so fundamental a character as agrarian reform, the Court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation. For, the story of agrarian re-distribution in Tamil Nadu, as elsewhere, has been tardy and zigzag, what with legislative delays, judicial stays and invalidations, followed by fresh constitutional amendments and new constitutional challenges and statutory constructions, holding up, for decades, irgent measures of rural economic justice which was part of the pledges of the Freedom struggle. It is true that judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the constitution being one of the thirtnity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The judiciary, in its sphere, shares the revolutionery purpose of the constitutional order, and when called up on to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that Courts

are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so similar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme.

The Ceiling Act, its structure and process, follow the common pattern. The object is equitable distribution of land to the landless by relieving those who hold more than the optimum extent fixed by the law. The success of the scheme depends on maximisation of surplus land to be taken over by the state from large land holders. The strategy of fixing a severe ceiling on land holdings was expected to be paralysed by anticipatory stratagems by landholders and so the legislature sought to outwit them and clamped down pre-emptive restrictions on transfers whereby the surplus take over would be sabotaged. Chapter II prescribes the Ceiling on land holdings and Chapter III prescribes certain types of deleterious transfers and future acquisitions. One such provision is S.22 which falls for immediate dissection. The machinery for working out the scheme includes 'authorised Officers' as defined in S.3(5) of the Ceiling Act. The rest of the infra-structure for implementation of the statutory scheme is not material for our case nor the other chapters relating to compensation, exemptions and the like Chapter XI provides for appeals and revisions and the High Court, by virtue of S.83 read with S.115 of the code of Civil procedure has jurisdiction to entertain revisions against orders of Land Tribunals which enjoy appellate in revisions against orders of authorised Officers in the manner provided. The present appeals are against a common order of the High Court allowing several revision petitions under S.115 C.P.C.

Now, the respondents before us, in the several appeal are persons whose transfers have been held void by the authorised Officer and the Land Tribunal but upheld by the High Court on a narrow construction of S.22 of the Ceiling Act. The alienations took many forms ranging from stridhana to bonafide sale but shared one common attribute that they were executed during the suspect spell, if one, may say so, between the date of commencement of the Act and the notified date. The Legislature, in its realistic anxiety and pragmatic wisdom demarcated a lethal zone viz., the period between the two dates stated above when all landholders with lands in excess of the ceiling would

separately salvage their surplus by resort to devices, some bonafide some not but all having the effect of frustrating the legislative objective of freezing holdings as on the date of commencement of the Act and seizing the surplus in terms of the Act for vential equitable distributions after payment of statutory compensation.

Before, embarking on any further discussion of the project of interdicting transfer, as spelt out in S.22 we may read the provision:

"Where on or after the date of commencement of the 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 except by bequest or, has effected a partition of his holding or part thereof, the Authorised Officer within whole jurisdiction such land holding of 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 partition as the case may be, defeats any of the provisions of this Act".

Three semantic alternatives compete for Judicial acceptance. The first which appealed to the Land Tribunal, is that all alienations during the dubious period specificated in S.22 executed by a holder who, but for such shedding operation or alienation, would have had lands in excess of the ceiling prescribed by the Act, are void because they are sure of defeat the 'surplus' provisions of the Act. The second alternative, which swings to the other extreme but has met with the High Court's approval, virtually salvages all such transfers save sham and Malafide ones, for only if they are obnoxious in that sense can they be caught in the coils of S.22. The third possible constructions, which is in between the two extreme and has been forcefully pressed before us by Shri K.S. Ramamurthy, validates bonafide transfers even during the offending period, the reason being that regardless of their impact on the scheme of the Act or its provisions the primary object is bonafide fulfilment of the alienor's purposes such as discharge of pressing debits or borrowing to perform necessitous obligations and not to defeat or thwart the purposes or provisions of the Act.

The judicial choice from among these triple possible depends on the rules of statutory interpretation. In the present case, the basic

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fact are beyond dispute. In the legislature had a defined plan of providing for a ceiling on land holding, taking over the balance and distributing it among the landless according to priorities. In this perspective it defined the date of the commencement of this Act in S.3(11) as meaning the 15th day of February 1970. It also defined Ceiling Act had a chequered career in Court and, indeed, at one stage the whole Act was struck down as unconstitutional. However, now it is immune to attack having been included in the Ninth Schedule and there is no challenge to its vires before us. On account of extensive mischief done by alienations on a considerable scale calculated to undo the public policy behind agrarian reforms the legislature felt the necessity to provide in S.22 that transfers made between 6th April 1960 and 2nd October 1962 would be void if they defeated the provisions of the Act. In all the cases before us the transfers which have been ignored by the Authorised Officer fall within this interregnum. That being admitted, the only question is whether the lethal effect of S.22 operates only in the case of transfers which are otherwise bonafide or is so perrasive that if the effect of the transfer is to defeat the provisions of the Act, whatever the intent of the parties, the transfer is void and can be ignored vis-a-vis the Ceiling Act and the Authorised Officer may legitimately proceed to compute the surplus area on this basis.

The learned judge adverted to an argument that the Act being confiscatory one, the public authority "invested with the power to enquire into and to invalidate a transfer should act reasonably and that such a power should be constructed beneficently in favour of the subject who is affected by the statue" (emphasis added). This approach, sanctified by tradition and vintage jurisprodence, is inept and inapplicable when we consider agrarian reform legislation whose allowed purpose is to take away as much extent of land as policy dictates so that distribution thereof among the land less may be achieved. When a whole legislation is geared to deprivation of property, subject to payment of compensation, rules which have frownd upon confiscatory of compensation, legislation cannot apply at all. We are concerned with a Republic created by the people of India, with a social transformation where the State is not antagonistic to the citizen but harmonises individual interest with community good. The jurisprudential principles in such a situation cannot be the same as have been interited from a culture which postulates the State versus the subject. We do not explore

aspect of the law further as were satisfied that the answer to the specific question raised before us flows directly from a reading of the Section in the light of well-established rules of interpretation.

Section 7 is a key provision and runs as follows:-

"On and from the date of commencement of this Act, no person shall except as otherwise provided in this Act but subject to the provisions of Chapter VIII be entitled to hold land in excess of the ceiling area.

Provided that in calculating the total of land held by any person, any extent in excess of the ceiling area and not exceeding half an acre in the case of wet land and one acre in the case of dry land shall, irrespective of the assessment of such land, be excluded".

Section 8 directs every person who holds land in excess of 30 standard acres to submit a return with specified particulars. Section 18 is the culmination and provides for the publication of a notification to the effect that the surplus land with each landholder is required for a public purpose. There upon such land shall be deemed to have been acquired for a public and shall vest in the Government.

Chapter III is a protective armour created by the statute with prohibitions and prescriptions. In particular, S.22 which we have quoted earlier, containing an interdict. If any transfer, contrary to its to or is created it can be voided by the Authorising Officer. The whole purpose is to make available land with Government for its equitable disposition according to the statutory plan. Section 94 is relevant in this context.

6th April 1960 is the date of commencement of the Act. 2nd October 1962 is the notified date. Transfers in between these two dates have been executed by the respondents in the various appeals before us. The concrete question is whether S.22 has the effect of rendering such transfers invalid if so fact or whether there is need for further proof that such transfers are "sham nominal and bogus".

The view taken by the High Court is that—

"Section 22 seems to cover only these sham, nominal and bogus transfers which are only intended to defeat the provisions of the Act. If the Legislature intention is also to invalidate all bonafide transactions during the relevant period, it would have made certain consequential provisions as to which are the rights of the transfer or and the transferee in relation to property conveyed, and how the resultant equities between the transferee and the transferor have to be

worked out. This view that Section 22 will cover only transactions of sham nominal and bogus character which are intended only to defeat the provisions of the Act will not be inconsistent with the object provided in section 7".

The learned judge seems to take liberal view that transactions entered into in anticipation of the Ceiling Act will not be hit by the provisions preventing such transfers except where they are malefide or colourable. The reason partly turns on semantics and the Court argues with lexical support.

"The word 'defeat' normally means overcome, thwart, evade, frustrate, circumvent, by pass, disappoint, section 22 one to be taken as having been used to import sinister, motive, Maxwell on the interpretation of statute 12th edition after stating that the Courts will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net, that the statute has to be applied to the substance rather than the mere form of transactions thus defeating any shams and contrivances which parties may have devised in the hope of falling outside the Act".

The conclusion categorically reached by the High Court virtually emasculates S. 22 as we understand its object and import. The learned Judge winds up with those words.

'On a due consideration of the matter, I hold that under section 22 of the 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 bonafide intention to transfer title. So in the light of the view expressed above the facts of each case have to be considered.

Section 22, literally read, leads only to one conclusion that any transfer, bonafide executed or not, is liable to be declared void by the Authorised Officer if he finds that the transfer defeats any of the provisions of this Act." There is not the slightest doubt that severally and cumulatively the provisions of the Act seek to make available the maximum extent of land, in excess of the ceiling, to be vested in Government or fulfilment of its purposes. Chapter II contains a fasciculus of provisions in this behalf and if any transfer carves out of the surplus area some land, protanto, the provisions of the Act are defeated. Indeed, it is not seriously disputed that

such will be the conclusion if we do not read into the provisions either the condition that it does not apply to bonafide transfers as Shri Ramamurthy would have it, or does not apply to any transfers other than sham, nominal or bogus transfers, as the High Court would have it. A policy oriented interpretation tallies with the literal construction in the present case. The mischief rule in Heydon's case and the grammatical construction which is the Golden Rule converge to the same conclusion in the present case.

The policy of the law of land reform with drastic limit on holding after drives large holders to evade by manuvres. They make gifts execute sales or settlements enter into other dealings to save their properties from being taken by this State. May be in a few cases, the owner has real necessity. But why sell only on the eve of land legislation? Why execute deeds though for good purposes, only there the bill fixing is round the corner? By and large the stratagems of extrication of holdings from the arm of the law is the reason that prompts sudden affection for making gifts, sudden realisation of debts due and sudden awariness of family necessity. The legislature, enough not to be outwitted in its objective, puts a blanket ban on transfers which in effect, defeat its provisions. This may cause hardship to some but every cause claims martyrs. Individual trauma is inevitable while ushering in a new economic order. This is the rationale of Section 22 of the Ceiling Act. To allow the sense of the text and to mis alien concepts is to debase the statutory metal. Likewise, laws are not value-free and so he reads the symbols of words best who projects in the process the values of the legislation as distinguished from his own. Reading other value into the legislatures' words may judicially demonstize the statue and break the cimity between constitutional instrumentalities.

The current and correct view of the interpretative process is that words must be given their 'literal' or 'ordinary' meaning unless there are compelling reasons, recognised by canons of constructions, to the contrary. It must be remembered that the judicial rule of law for interpreting statues applies the grammatical approach thereby to bring out the value judgement incorporated in the statue itself. Some times it is called the 'equity of the statue'. As Prof. R.B. Stevens of the Yale University has pointed out.

"Whenever the judges purport to depart from the literal or ordinary meaning, and apply in the mischief rule or the golden rule, there is a danger that in place of those irrelevant criteria to canons of construction, they have more obviously substitute their own (Perhaps more harmful) oppressions, views, prejudices or predisposition such conflicts between what Parliament intended and what the judges assumed Parliament to have intended have long been appreciated".

Those who have reflected on the meaning of meaning have said that—
Words—'Mean' nothing by themselves... 2.

They convey policy and the Judge who interprets must seek the intent of the Legislature by gaining an insight into this policy and making it manifest through the process of construction. Looking at the words of 2 in the light of the scheme of prohibition of transfers to preserve the surplus lands for distribution we have no justification for importing into S.22 more than the words convey. The sections what it means, nothing more nothing less. A simple scan of the provision reads that any transfer, gift surrender settlement or other alienation referred to in the section may be declared void by the Authorised Officer 'if he finds that the transfer or the partition defeats any of the provisions of this Act'. The trichotomy is obvious. There must be a transfer or other alienation. It must have taken place during the period mentioned in the Section. It must have effect of defeating any of the provisions of the Act if these three elements are present, the Authorised Officer must void the transfer. There is no room for importing a fourth principle that the transfer should be sham, nominal or bogus nor indeed is there any additional consideration that if the transfer is bonafide for family necessity or other urgency then it is good, even though it defeats the provisions of the Act. We cannot amend the section or dilute its imperatives, scared by the eloquences or moved by extraenuous sympathies Sub-conscious forces and individual prepossessions have a subtle of entering the interpretative verdict of the Judge. We have to be constantly careful to exclude such instructions moreover,

1. Modern Law Review Vol. 28, 1965 & 525

2. C.Ogden and I Richards. The meaning of meaning 9(10th Edn. = 956)

When the whole purpose of the section is to prevent any alienation which defeats any of the provisions of the Act it is impermissible to

introduce any requirement, other than is mentioned in the section as a condition for its operation. Obviously the provisions seeks to provide social justice for the landless and it defeats the purpose if, by the interpretative process, soft justice to large landowners is brought about. We consider the 'literal' meaning of the section to be that any transfer or other alienation mentioned in the section which reduces or impairs the otherwise available extent of surplus land beyond the ceiling 'defeats. the provisions of this Act'. This is the plain meaning of the Section which gives no room for doubt or justification for importation if any further condition like sham, bogus, etc.

A return to the rules of strict construction when the purpose of the statute needs it, is desirable especially with a view of give effect to the intention of the legislature. We are reminded to Lord Denning's interesting remarks in his recent book 'The Discripline of Law' under the heading 'I am a portia Man'.

In justification of his view Russell quoted a passage from Shakespeare. It is worth recording because there are lessons to be drawn from it as there often are from Shakespeare.

'I may perhaps be forgive for saying **that** it appears to me that Lord Denning MR has acceded to the appeal of Bassanio in the Merchant of Venice.

Basanio

"And, I beseech you.

Wrest once the law to your authority:

To do a great right, do a little wrong".

But Portia retorted:

"It must not be; there is no power in Venice

Can alter a decree established:

It will be recorded for a precedent

And many an error by the same example,

Will rush into the State: it cannot be'

Then said Russell L.

'I am a Portia man'.

I cannot believe that Russell L would be a 'Portia Man' if it meant ligning himself with shylock-in support of a strict law of penalties which could not be relieved by equity.

To be truly 'Portia Man' the lawyer:

Should follow the way in which Portia avoided an unjust decree. Not to let the words of the deed be the masters; but so construe them adapt them as the occasion demands so as to do what justice and equity require. This is how she turned the tables on shylock.

It is in this denouncement that I would follow the example of Portia - I too an a portia man.

In the interpretation of S.22 we too are portia men. For this reason we reverse the view of the High Court that S.22 will not apply to nullify any transaction of transfer or partition unless it is further shown that it is sham nominal or bogus. Nor do we agree with Shri Ramamurthi that even if a transaction defeats the ceiling provisions it may still be valid if the transfer is, from an individual point of view bonafide. The short reply is that from the community's angle especially the landless community's angle hungering for allotment the alienation however necessary for the individual, is not bonafide vis-avis the community.

Therefore we allow the appeal in the light of the interpretation we have adopted restore the tribunal's holding and rule that if any transfer defeats the provisions of the Act by reducing the extent of surplus land in excess of the ceiling available from any person such transaction, bonafide or not is void in the matter of computation of the permissible area and the surplus area. May be, that the transaction may be good for other purposes or may not be. The Authorised Officer is within his power if he ignores it as void for purposes of S.22, S.7 and other ceiling related provisions.

The detailed discussions of the High Court on many other aspects of the Act do not affect the core of the matter and cannot deflect us from the conclusion we have arrived at. The appeals are allowed but in the light of the earlier direction of the Court the state will pay costs of the respondents.

New Delhi
May 4, 1979

V.R. Krishna Iyer
(A.P.S.)

Advocates on Record

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