

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)

Mondy, the 18th of December, 1978

PRESENT:

The Honourable Mr. Justice Natarajan

W. P. No. 1119/72.

G. D. Narendra

... Petitioner

-Vs-

1. State of Tamil Nadu by
Secretary Revenue Department.

2. The Authorised Officer
(Land Ceiling), Madurai.

... Respondent

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a Writ of Mandamus for hearing the respondents from taking any proceedings under the Madras Land Reforms (Fixation of Ceiling on Land) Act pertaining to the petitioners lands mentioned in the Gazette Notification No. 9 Part III dated 29-3-72 pursuant to the notification issued under Section 12 of the said act:

ORDER: This writ petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court, dated 9-5-72 and made herein, and the counter and Reply affidavits filed herein and in the records relevant to the prayer aforesaid on the file of the Respondents comprised in the return of Respondents to the Writ made by N. Srinivasan Mani, Advocate for the petitioner, and Mr. V. Ramajagadeesan for the Government Pleader on behalf of the Respondents 1 and 2, the Court made the following order:-

These proceedings have referred to an order issued by the Second Respondent under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 hereinafter referred to as the Act.

One Mounaguruswami Naicker, who had large extent of the lands conferred on the petitioner by means of a registered deed a right of enjoyment for life over his properties. The vested remainder was granted to the children of the petitioner and in the event of the petitioner not having any issues, the properties were to pass on to the petitioner's sisters. Then came the Act in question and the petitioner submitted returns in the prescribed forms in conformity with the provisions of the Act. The second respondent published a statement under Section 10 of the Act and called for the objections of the petitioner with regard to the particulars contained therein. The petitioner filed his objections and thereafter the second respondent published the official statement under Section 12 of the Act. The grievance of the petitioner is that some of the items of lands for which he had prayed for exclusion from the statement had not been excluded. The case of the petitioner is that the estate of Mounaguruswami Naicker had to pay several lakhs of rupees towards estate duty, income tax, wealth tax, land revenue and agricultural income tax. Apart from those public charges, the petitioner had also to incur a huge amount by way of the probate duty. Place in that uneviable position, the petitioner was forced to sell some items of land given to him for life enjoyment. The entire proceeds from those sales were utilised for payment of taxes and other public charges. In such circumstances, the petitioner pleaded with the second respondent to exclude from the statement, the land which had been sold to third parties as excess lands fit to be include in the draft and final statement under Section 10 and 12 of the Act. According to the petitioner the sales of these lands were not effected by him to defeat the purposes of the Act and therefore, these sales should have found acceptance with the second respondent, as genuine sales. In as much as his plea was not needed and those lands have also been included in the final statement published under section 12 of the Act, the petitioner has prayed for the issue of a Writ of Mandamus to direct the respondents to forbear from taking any proceedings pursuant to the notification made under Section 12 of the Act.

The respondents have filed a detailed counter affidavit and have refused therein the averments contained in the petitioner's

affidavit. It is stated in the counter affidavit that the petitioner was holding more than 5000 acres of land in Madurai and Coimbatore Districts by virtue of a will executed in his favour by his grand father Mounaguruswami Naicker of Neikarapatti village. During the petitioner's minority some of the lands were sold by the petitioner's father after obtaining court's permission in order to pay estate duty, public duty and some taxes payable by the estates. As on 6-4-1960, the petitioner was holding 4,271.20 ordinary acres of land equivalent to 1348.225 std. acres. A draft statement was published under Section 10(1) of the Act. It was then noticed that the petitioner had disposed of certain lands between 6/4/1960 and 2-10-1962. After the publication of statement under Section 10, petitioner's objections were received and an enquiry was held. The enquiry revealed that an extent of 1074-55 $\frac{1}{4}$ acres was rocky eroded by river or uncultivable for other reasons and hence this extent of 1074-55 $\frac{1}{4}$ acres was deducted from the total holdings of the petitioner. Some of the vendees of the petitioner preferred appeals to the Land Tribunal, Madurai. The Land Tribunal allowed the appeals of some of them. The extent covered by the sales which were upheld by the Land Tribunal totalled upto 64.68 acres and hence they were also excluded from the holdings. In addition, the sales effected by the petitioner of 25.90 acres were given exemption under Section 73(vii) of the Act and hence those lands also were excluded from the holdings. After giving effect to all the exclusions, the balance holdings by the petitioner was found to be 3105-26 $\frac{3}{4}$ ordinary acres equivalent to 1038.94 standard acres and this extent was published in the Gazette dated 29-3-1972. Excluding the ceiling of 30 standard acres allowed to the landowner under the Act, and the lands for which exemption was granted under Section 73(vii) the total surplus lands in the hands of the petitioner was declared as 3040-03 $\frac{3}{4}$ ordinary acres or 997-396 standard acres.

So far as the petitioner's prayer for recognition of the sales effected by him for raising funds to pay public charges is concerned, the respondents have stated that it is not a recognisable ground and as such the sales have to be ignored under Section 22 of the Act.

Mr. N. Srivatsamani, the learned counsel for the petitioner submits that though section 22 restricts the grant of exemption to alienations made between the date of commencement of the Act and the notified date only to gifts made in contemplation of death, yet the sales effected by the petitioner should also be given exemption in as much as the object of the Section is only to nullify such transfers which have been effected for defrauding the provisions of the Act and such a stigma cannot be attached to the sales effected by the petitioner, because the sales were distress sales and had to be restored to by the petitioner to raise funds to pay off public charges. For appreciating the contentions of Mr. Srivatsamani, Section 22 of the Act needs extraction:-

"Where on or after the date of the commencement of this 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 whatsoever except by bequest or has effected a partition of his holding or 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 the partition to be void if he finds that the transfer or the partition as the case may be, defeats any of the provisions of this Act".

On the scrutiny of the section, it may be seen that the Authorised Officer has necessarily to declare as void all sales, gifts, exchange, surrenders, settlements and partitions made after the date of commencement of the Act and before the notified date, if the alienations or transfers are found to defeat any of the provisions of the Act. The only exception made is that if any gift has been made in contemplation of death, then such a transaction will attract exemption and will be declared void by the Authorised Officer.

In the instant case, it may be true the sales were effected by the petitioner to discharge public charges. But can that be

construed to mean that it was not, done with intent to defeat the provisions of the Act? Under the Act, a ceiling area has been fixed and all surplus lands have to be taken over by the Government for distribution among the landless poor, etc. To the extent the sales have resulted in those lands being taken out of the category of surplus land, the sales must be held as contravening section 22 of the Act. Opportunity was also given to the petitioner as well as the Vendees to prove that the sales were not effected to defeat the provisions of the Act. Against the orders of the Authorised Officer, the Vendees preferred appeals. But the petitioner did not avail the opportunity given to him and did not file any appeal to the Land Tribunal. On that one ground alone the petitioner's case can be disposed of. But even otherwise, it is noticed that the Tribunal has accepted the claims of the Vendees, wherever the sales in their favour were found to be not in conflict with the provisions of the Act. In such circumstances, there is hardly any scope for the petitioner to contend that the second respondent had committed an illegality in not excluding all the sales effected by him from the ceiling area published under Section 12. The grievance of the petitioner is clearly misconceived. The rule nisi will stand discharged. There will however be no order as to costs.

Sd/- K. P. MADHAVAN,
Assistant Registrar.