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M.K. HARIHAR IYER

v.

AUTHORISED OFFICER LAND REFORMS, TIRUNELVELI

FEBRUARY 14, 1990

B [SABYASACHI MUKHARJI, CJ., T.K. THOMMEN AND A.M. AHMADI, JJ.)

Tamilnadu Land Reforms (Fixation of Ceiling on Land) Act 1961—Sections 3(2), 3(31), 5(2), 10(B), 21A, 22, 23(vii)—Whether 'affected person' can avail of Section 21A in respect of proceedings commenced prior to the 1970 Amending Act.

C

The appellant land-owner held lands in excess of 30 standard acres as on 6.4.1960. He filed a return as required by the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and an enquiry was initiated by the Authorised Officer concerned under Section 9(2)(b)

D **of the Act. Several objections raised by the appellant were rejected and the Authorised Officer came to the conclusion that the family of the appellant could be reckoned to be of five members between 6.4.1960 and 2.10.1962 and thus the appellant was entitled to 30 standard acres; his wife and daughter however could hold 10 and 7.71 standard acres respectively as stridhana. The appellant was asked to elect which lands**

E **he wished to be included in his holding and state which lands should be treated as surplus. Feeling aggrieved by the said determination, the appellant preferred an appeal under Section 78(1) to the Land Tribunal. The appellant contended (i) that the Authorised Officer had wrongly included the lands of his minor sons, unmarried daughter and wife gifted to them long before 1960; (ii) that subsequent to the filing of**

F **the appeal, the Act was amended as a consequence whereof his rights and liabilities with regard to the fixation of ceiling area were required to be worked out on the basis of the revised date of commencement of the Act i.e. 15.2.1970; notified date being 2.10.1970. It was also urged by the appellant that the lands of his eldest son Laxminarayanan could not be included in his holding. On those grounds amongst others relating to**

G **the effect of subsequent transactions the appellant prayed that the matter ought to be remanded to the Authorised Tribunal for a *de novo* consideration. The appellant authority rejected all the contentions and dismissed the appeal, whereupon the appellant preferred a revision application before the High Court. Before the High Court his plea regarding subsequent transactions was confined to the documents**

H **executed between 15th February 1970, the date of commencement of the**

Act, and 2nd October 1970, the notified date; contentions regarding other transactions were not pressed. The High Court accepted this contention and took the view that even in respect of proceedings which commenced prior to the coming into force of the Amending Act, an affected person can take advantage of the provisions contained in Section 21A. The High Court held that while Section 2 of the Amending Act reduced the ceiling area to half, benefit was conferred by Section 21A and hence both the provisions had to be read together. On that reasoning the High Court opined that the three documents relating to subsequent transactions executed between the said date, could not be ignored in fixing the ceiling area unless it was found that the documents were executed to defeat the provisions of the Act, in which case the transactions may be declared void under Section 22 of the Act. The High Court accordingly directed the Authorised Officer to make further inquiries regarding the three transactions in question and pass appropriate orders. The High Court rejected the other contentions. The appellant being aggrieved with the rejection of other points raised before the High Court has preferred this appeal by special leave.

Dismissing the appeal, this Court,

HELD: The proceedings in this case had started and concluded before the Authorised Officer long before the Amending Act saw the light of the day. Under Section 3(1) of the Amending Act, any action taken (including any order made, decision or direction given, proceeding taken, etc.) under the provisions of Act before the date of publication of the Amending Act, can be continued and enforced after the said date in accordance with the provisions of the Act as if the Amending Act had not been passed. This is however, subject to sub-section (2) which carves out an exception to sub-section (1) insofar as the reduction of the ceiling area from 30 standard acres to 15 standard acres is concerned. [367E-G]

B.K.V. Radhamani Ammal v. *Authorised Officer, Land Reforms, Coimbatore,* [1985] 2 SCC 46, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 695 of 1975.

From the Judgment and Order dated 21.3.1974 of the Madras High Court in Civil Revision Petition No. 2598 of 1972.

G. Viswanatha Iyer and N. Sudhakar for the Appellant.

A V. Krishnamurthy for the Respondent.

The Judgment of the Court was delivered by

AHMADI, J. This appeal by special leave is filed against the judgment and order of the High Court of Madras whereby it remitted B the matter to the Authorised Officer for disposal in accordance with law and in the light of the observations made therein. The facts giving rise to this appeal are as under:

The appellant-land owner held lands in Kanyakumari District in excess of 30 standard acres as on 6th April, 1960. He filed a return in Form No. 2 as required by the Tamil Nadu Land Reforms (Fixation of C Ceiling on Land) Act, 1961 (Act 58 of 1961), hereinafter called 'the Act'. An enquiry was initiated by the Authorised Officer, Land Reforms, under Section 9(2)(b) of the Act. The appellant raised several objections but they were overruled. The Authorised Officer came to the conclusion that the family of the appellant could be D reckoned to be of five members between 6th April, 1960 and 2nd October, 1962 and accordingly the land owner was entitled to 30 standard acres while his wife and daughter could hold 10 and 7.71 standard acres respectively as stridhana lands. The appellant was directed to state which lands he wished to be included in his holding and identify the lands which fell surplus, failing which the Authorised E Officer said he would be constrained to select the surplus lands. The appellant was given five days time to make the option.

Feeling aggrieved by the decision of the Authorised Officer, the appellant preferred an appeal under Section 78(1) to the Lands Tribunal. The appellant complained that the Authorised Officer had F wrongly added the lands of his minor sons, unmarried daughter and wife gifted to them long before 1960 in his holdings for determining if his total holdings exceeded the ceiling limit fixed under Section 5(2) of the Act. According to him the lands covered under the registered gift deed ought to have been excluded from his holding under the Explanation to Section 3(14) as a gift stood on par with a partition. As a limb of G the same argument the appellant contended that subsequent to the filing of the appeal, the Act was drastically amended by Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Act 17 of 1970), hereinafter called 'the Amending Act', whereby under Section 3(2), 'the date of commencement of this Act' came to be fixed as 15th February, 1970 and the 'notified date' came to be fixed as 2nd H October, 1970 under Section 3(31) of the Act. Consequently, argued

the appellant, his rights and liabilities with regard to the fixation of ceiling area were required to be worked out on the basis of the state of affairs existing on the revised date of commencement of the Act i.e. 15th February, 1970, fixed by virtue of the amendment in the Act. He also relied on the fact that his eldest son who was a minor on 10th April, 1968 had attained majority on 1st January, 1970 (in the High Court judgment the date is 1st October, 1970) i.e. before the commencement of the Act on 15th February, 1970, and also before the notified date i.e. 2nd October, 1970, and hence his land could not be included in his holding as was done by the Authorised Officer. It was also pointed out that his son had created a trust in respect of a portion of the land which would be exempt from the operation of the Act by virtue of Section 73(2)(b) of the Act. It was, therefore, submitted that his eldest son Laxminarayanan was a necessary party and the proper course would be to set aside the impugned order of the Authorised Officer and remand the matter for a *de novo* consideration after notice to his son. The second submission made was that on 10th April, 1968 when the impugned order was made the appellant's wife was pregnant, she had since delivered a daughter and had gifted to her 5.71 acres of Vadaseri land on 1st October, 1970 and later an additional 5.06 acres of the land from the same village, which developments had to be taken into account as subsequent events touching the determination of the appellant's ceiling area. Thirdly, it was pointed out that the appellant had transferred 2 acres 48 cents of S. No. 2221, 0.82 cents of S. No. 2208-A and 1 acre 66 cents of Vadaseri lands to a third party on 26th April, 1970 for services rendered to him. Similarly a portion of S. No. 2224 admeasuring 0.31 cents was sold to yet another third party on 23rd April, 1969 for valuable consideration and it was necessary to give effect to these transactions which were subsequent to the impugned order. It was lastly contended by the appellant that his property bearing S. Nos. 1387-A and 1363-A which was subject to mortgage had to be sold on 1st July, 1968, a development subsequent to the impugned order which too had to be noticed in fixing the ceiling area. These transactions, it was said, were protected by Section 21A of the Act. It was, therefore, submitted that since an appeal was a continuation of the original proceedings it was obligatory on the part of the appellate authority to examine the impact of these subsequent developments and refix the ceiling area. The appellant, however, contended that as third parties would have to be heard before deciding the issue, the proper course was to direct the Authorised Officer to consider the matter afresh in its entirety. The appellate authority negatived all the contentions and dismissed the appeal with costs.

A B C D E F G H

A Thereupon, the appellant approached the High Court by way of a revision application. Before the High Court the contention in regard to the subsequent transactions was confined to the documents executed between 15th February, 1970, the date of commencement of the Act, and 2nd October, 1970, the notified date. That included the two settlement deeds dated 1st October, 1970 made in favour of the B unmarried daughters and the sale deed dated 26th April, 1970 executed in favour of a third party. The contention was not pressed in respect of the transaction evidenced by the sale deed dated 23rd April, 1969 in favour of a third party. This contention found favour with the High Court. The High Court took the view, relying on an earlier Division Bench judgment in C.R.P. No. 1197 of 1971 (*Fakir Mohmad* C v. *The State of Tamil Nadu*), that "even in respect of proceedings which commenced prior to the coming into force of the Amending Act, an affected person can take advantage of the provisions contained in Section 21A". It was held that while Section 2 of the Amending Act reduced the ceiling area to half, benefit was conferred by Section 21A and hence both the provisions had to be read together. It was, there- D fore, held that the three documents could not be ignored in fixing the ceiling area unless it is found that the documents were executed to defeat the provisions of the Act, in which case the transactions may be declared void under Section 22 of the Act. In this view of the matter, the High Court directed the Authorised Officer to make further inquiries regarding the said three transactions and pass appropriate E orders. The High Court, however, rejected the rest of the contentions by which exclusion was sought, viz., (i) on the conjoint reading of Section 10(8) and Section 3(14) insofar as it concerned Laxminarayanan as a member of the appellant's family; (ii) in regard to lands which were locked in litigation; (iii) in regard to lands in the possession of mortgagees; and (iv) the lands which are covered under Section F 73(vii) of the Act. In this view that the High Court took, the matter was remitted to the Authorised Officer in regard to the aforesaid three transactions.

The appellant, feeling aggrieved by the rejection of his other contentions by the High Court, has preferred this appeal by special G leave. The main grievance of the appellant is that the High Court fell into an error in limiting the benefit of Section 21A to three transactions only and by directing an enquiry under Section 22 overlooking the fact that it was not subject to Section 22. He further contends that the High Court was wrong in thinking that the contention in regard to the sale deed dated 22nd April, 1969 was not pressed. In brief the H contention is that the High Court failed to appreciate the impact of the

amendments introduced by the Amending Act on the two settlements of 1st October, 1970 and the sale deed of 26th April, 1970 and erred in holding that the relief under Section 21A must be determined after an enquiry under Section 22 of the Act. This was the main thrust of the submissions made at the hearing of this appeal.

The Act (Act 58 of 1961) was notified on 2nd October, 1962 but the date of its commencement was fixed as 6th April, 1960. The present proceedings had commenced under the said Act. Th Act was amended by Act 17 of 1970 whereby the ceiling area was reduced from 30 standard acres for a family not exceeding five member to 15 standard acres and the date of commencement of the Act was shifted to 15th February, 1970 and the notified date to 2nd October, 1970. There can be no doubt that after the passing of Act 17 of 1970 the family's holding had to be determined with reference to the notified date i.e. 2nd October, 1970. See: *B.K.V. Radhamani Ammal* v. *Authorised Officer, Land Reforms, Coimbatore,* [1985] 2 SCC 46.

The Act was enacted to provide for the fixation of ceiling on agricultural land holdings and matters connected therewith. Section 5 fixes the ceiling area in the case of every family consisting of not more than five members at 15 standard acres after the amendment made in the provision by virtue of Section 2(2)(a) of the Amending Act. Section 7 lays down that on and from the date of commencement of the Act, no person shall, except as otherwise provided by the Act, be entitled to hold land in excess of the ceiling area. The family of the appellant consisted of himself, his wife, two minor sons and an unmarried daughter at the date of commencement of the Act and on the notified date as they stood before the Amending Act. One son had become a major w.e.f. 1st January, 1970. In the High Court judgment the date is stated to be 1st October, 1970. That will not make any difference so far as the submission is concerned.

We may first notice Sections 21A and 22 of the Act as amended by the Amending Act. They read as under:

> "21A. 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.
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> (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; or

(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 institution or hospital, the land transferred absolutely vests in the institution or hospital and the entire income from such land is appropriated for the institution or hospital."

"22. 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, the authorised officer within whose jurisdiction such land, holding or 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 the partition, as the case may be, defeats any of the provisions of this Act."

Section 21A begins with a non-obstante clause and limits its application to partition or transfer mentioned in clauses (a) to (c) effected between 15th February, 1970 and 2nd October, 1970. The settlement deeds, both dated 1st October, 1970 and the sale deed dated 26th April, 1970 fall within the two termini points fixed by Section 21A but the sale deed dated 23rd April, 1969 is clearly outside the scope of Section 21A and therefore it seems the learned counsel for the appellant in the High Court rightly did not press the claim in regard to the

land covered under the said document. However, the learned counsel for the appellant before us pointed out that while the High Court rightly came to the conclusion that the appellant was entitled to the benefit of Section 21A insofar as the two settlement deeds of 1st October, 1970 and the sale deed of 26th April, 1970 are concerned, it fell into an error in holding—"However, if those transfers are meant to defeat any of the provisions of the Act, then the Authorised Officer may declare the said transfers to be void under Section 22 of the Act"—thereby totally overlooking the opening words of Section 21A which are intended to override Section 22. The further observations of the High Court based on decision in *Naganatha Ayyar* v. *Authorised Officer,* [1971] 1 M.L.J. 274 make it clear that the High Court misread the observations of Ramanujam, J. when it said:

> "Ramanujam, J. pointed out that all transfers effected between the date of commencement of the Act and the notified date cannot be declared to be void as defeating the provisions of the Act. It has been pointed out that only if the transfers are really not transfers but sham and nominal transactions or bogus transactions, they would be defeating the provisions of the Act and that only then they can be declared to be void under Section 22 of the Act".

The above observations are somewhat confusing. A sham, nominal or bogus document may not necessarily be one intended to defeat any provision of theAct. A partition or transfer evidenced by such a document would be of no avail to seek the benefit of Section 21A regardless of Section 22. Section 21A, which begins with the words—notwithstanding anything contained in Section 22—clearly overrides Section 22 and therefore the transactions referred to in Section 21A cannot be the subject-matter of enquiry under Section 22. Section 21A refers to only three types of transfers viz., (i) transfer of holding by a registered partition deed; (ii) transfer of land to specified individuals on account of natural love and affection; and (iii) transfer in favour of an educational institution or hospital of a public nature solely for the purposes of such institution or hospital provided the transferred land vests absolutely in the institution or hospital and the entire income from such land is appropriated for the institution or hospital. Even though the transactions referred to in Section 21A cannot be declared void under Section 22 as defeating any of the provisions of the Act, the Authorised Officer would be entitled dehors Section 22 of the Act, to find out if the instruments of transfer or partition though answering the description of transactions under Section 21A, are in fact genuine

A transactions and not sham, nominal or bogus ones. Similarly the Authorised Officer would be entitled to determine if the instruments of transfer even if genuine answer the description of documents referred to in Section 21A, and if not, he would be justified in invoking Section 22 of the Act. To put it differently when any party seeks the benefit of Section 21A, he must show, if a doubt arises, that (i) the B instrument on which he relies is a genuine one and not a sham, nominal or bogus one and (ii) it answers the description of the documents referred to by Section 21A. If the document is not found to be genuine, the Authorised Officer will not act on it, if it is genuine, the Authorised Officer will determine if it is one referred to in Section 21A and if not he will resort to Section 22 of the Act. On this consi- C deration the sale deed dated 26th April, 1970 in favour of a third party clearly falls outside the purview of Section 21A and the Authorised Officer will be entitled to embark on an enquiry under Section 22 of the Act, if the instrument is otherwise genuine. In regard to the two settlements in favour of unmarried daughters also the Authorised Officer will have to consider if the settlements answer the description D of the documents referred to in Section 21A even if they are genuine. If he answers both these points in the affirmative he need not test the documents on the additional requirement of Section 22 but if he comes to the conclusion that the documents do not fall within Section 21A, he would be required to test their validity on the touchstone of Section 22 of the Act. We have thought it necessary to clearly define the scope of E the enquiry before the Authorised Officer on remand to clear the doubt, if any, arising from the observations of the High Court and to avoid unnecessary complications.

The next contention urged by the learned counsel for the appellant is based on the plain language of Section 10(2) read with the F definition of 'family' in Section 3(14) of the Act. The appellant's son Laxminarayanan is stated to have attained majority on 1st January, 1970, i.e. before the date of commencement of the Act on 15th February, 1970 and the notified date of 2nd October, 1970. Even if the date stated by the High Court is correct, he attained majority before 2nd October, 1970. On his attaining majority he ceased to be a G member of the appellant's family. Under Section 10(2), the Authorised Officer has to take into account only those members of the family as are covered by the definition of Section 3(14) of the Act. Although Laxminarayan was undoubtedly a member of the appellant's family on the date on which the Authorised Officer first determined the ceiling area, the submission of the appellant's counsel is that he having ceased H to be a minor son, he cannot be included in the appellant's family when

the Authorised Officer reconsiders the ceiling area on remand. The High Court negatived this contention and in our opinion rightly. The submission overlooks the provision contained in Section 3 of the Amending Act by which the date of commencement of the Act and the notified date were revised. Section 3 reads as under:

> "Saving—
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> (1) Subject to the provisions of sub-section (2), any action taken (including any order made, notification issued, decision or direction given, proceeding taken, liability or penalty incurred and punishment awarded) under the provisions of the Principal Act before the date of the publication of this Act in the Fort St. George Gazette, may be continued or enforced after the said date in accordance with the provisions of the Principal Act as if this Act had not been passed.
>
> (2) Nothing in sub-section (1) shall be deemed to entitle any person whether or not such person is a party to any proceeding mentioned in sub-section (1), to hold after the 15th day of February 1970, land in excess of the ceiling area under the Principal Act as modified by Section 2 and the provisions of the Principal Act as modified by Section 2 shall, after the said date, apply to such person."

The proceedings in this case had started and concluded before the Authorised Officer long before the Amending Act saw the light of the day. Under Section 3(1) of the Amending Act, any action taking (including any order made, decision or direction given, proceeding taken, etc.) under the provisions of Act before the date of publication of the Amending Act, can be continued and enforced after the said date in accordance with the provisions of the Act as if the Amending Act had not been passed. This is, however, subject to sub-section (2) which carves out an exception to sub-section (1) insofar as the reduction of the ceiling area from 30 standard acres to 15 standard acres is concerned. The High Court was, therefore, right in rejecting this contention.

Lastly, it was submitted that lands which were converted into orchards of topes before 1st July, 1959 are exempt from the provisions of the Act by virtue of Section 73(vii) of the Act. The High Court has rejected this contention on the following finding:

A "In the present case certain lands are claimed to be topes and exemption is claimed regarding the same. But there is nothing to show that the said lands had been converted into topes prior to first day of July, 1959.

B Since the factual foundation is not laid we cannot entertain this contention.

These were the only contentions urged before us. In view of the above discussion we see no merit in this appeal and dismiss the same with costs.

C Y. Lal Appeal dismissed.