A. P. Krishnasami Naidu Etc vs State Of Madras(With Connected ... on 9 March, 1964

Equivalent citations: 1964 AIR 1515, 1964 SCR (7) 82, AIR 1964 SUPREME COURT 1515, 1965 (1) SCJ 239, 1964 7 SCR 82, 1964 (1) SCWR 580

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar, J.C. Shah, N. Rajagopala Ayyangar, S.M. Sikri

PETITIONER:
A. P. KRISHNASAMI NAIDU ETC.

Vs.

RESPONDENT:
STATE OF MADRAS(With connected Petitions)

DATE OF JUDGMENT:
09/03/1964

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA
SIKRI, S.M.

CITATION:
1964 AIR 1515 1964 SCR (7) 82
CITATOR INFO :
RF 1965 SC 845 (13)
RF 1967 SC1643 (227,259)
RF 1972 SC 425 (5,8)
RF 1980 SC1789 (36)
RF 1980 SC2097 (10)
RF 1981 SC 234 (31)

ACT:
Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Mad. 58 of 1961) ss. 5(1), 50-Provisions for land ceiling and compensation-If violative of Art. 14-Constitution of India, Arts. 14, 19, 31(2).

HEADNOTE:
The constitutionality of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 was attacked on the ground that it violated Arts. 14, 19, 31(2) of the Constitution.
Held (i) The provisions of s. 5(1) of the Act result in discrimination between persons equally circumstanced and are thus violative of Art. 14 of the Constitution. As this section is the basis of Chapter II of the Act, the whole chapter must fall along with it.
The ratio of Karimbil Kunhikoman v. State of Kerala [1962] Supp. 1 S.C.R. 829 applies with full force to the present case.
(ii)The provisions in s. 50 read with Sch. III of the Act with respect to compensation are discriminatory and violate Art. 14 of the Constitution.
Karimbil Kunhikoman v. State of Kerala [1962] Supp. S.C.R. 829, followed.
(iii)Ss. 5 and 50 are the pivotal pro-visions of the Act, and as they fall, the whole Act must be struck down as unconstitutional.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions 1, 7, 8, 10, 53 and 76 of 1963.

Petitions under Art 32 of the Constitution of India for the enforcement of Fundamental Rights.

R.V. S. Mani and K. R. Shama, for the petitioner (in W.P. Nos. 1 and 76 of 1963).

R. V. S. Mani and T. R. Y. Sastri, for the petitioner (in W.P. Nos. 7, 8, 10 and 53).

A.V. Ranganadham Chetty and A. Y. Rangam, for the respondent (in the petitions).

I.N. Shroff, for the interveners Nos. 1 and 5 (in all the petitions).

M. C. Setalvad, N. S. Bindra and R. H. Dhebar, for inter- vener No. 2 (in W.P. No. 1 of 1.963).

C. P. Lal, for intervener No. 3 (in W.P. No. 1 of 1963). R. H. Dhebar, for intervener No. 4 (in W.P. No. 1 of 1963).

S. V. Gupte, Additional Solicitor-General, N. S. Bindra and R. H. Dhebar, for intervener No. 6 (in W.P. No. 1 of 1963).

March 9, 1964. The Judgment of the Court was delivered by WANCHOO, J.-These six petitions under Art. 32 of Constitution raise a common question about the constitution- ality of the Madras

Land Reforms (Fixation of Ceiling on Land Act, No. 58 of 1961 (hereinafter referred to as the Act), which was assented to by the President on April 13, 1962 and came into force on publication in the Fort St. George Gazette on May 2, 1962. The constitutionality of the Act is attacked on the ground that it violates Arts. 14, 19 and 31(2) of the Constitution. It is not necessary to set out in full the attack made on the constitutionality of the Act in these petitions. It will be enough if we indicate the two main attacks on the constitutionality of the Act under Art. 14. The first of these is with respect to s. 5 of the Act which lays down the ceiling area. The second is on s. 50 of the Act read with Sch. III thereof, which provides for compensation. It is urged that the Act is not protected under Art. 31-A of the Constitution and is therefore open to attack in case it violates Art. 14, 19 or

31. The petitioners in this connection rely on the judgment of this Court in Karimbil Kunhikoman v. State of Kerala(1). Before we consider the two main attacks on the constitu- tionality of the Act we may briefly indicate the scheme of the Act. Chapter 1 is preliminary, Section 3 thereof provides for various definitions, some of which we shall refer to later. Chapter 11 deals with fixation of ceiling on land holdings. Section 5 thereof fixes the ceiling area. The other sections provide for determining surplus land, and s.18 provides for the acquisition of surplus land which vests in the Government free from all encumbrances. Chapter III provides for ceiling on future acquisition and restriction on certain transfers. Chapter IV provides for the constitution and functions of the land board. Chapter V provides for the constitution and functions of the sugar factory board. Chapter VI provides for compensation. Section 50 thereof read with Sch. III lays down the mode for determining compensation for the land acquired by the Government and other ancillary matters. Chapter VII provides for survey and settlement of lands in the transferred territory which came to the State of Madras by virtue of the States Reorganisation Act of 1956. Chapter VIII provides for cultivating tenants' ceiling area. Chapter IX provides for exemption of certain lands from the application of the Act. Chapter X provides for land tribunals and Chapter XI for appeals and revision. Chapter XII provides for certain penalties and procedure while Chapter XIII provides for disposal of land acquired by the Government under the Act. Chapter XIV deals with miscellaneous provisions, including s.110, which provides for the framing of rules (1) [1962] Suppl. 1 S.C.R. 829.

The main purpose of the Act is to provide for a ceiling on land holdings, for determining surplus land which would be acquired by Government and for payment of compensation therefor. The Act is applicable to agricultural land as defined in s. 3(22) and is mainly concerned with persons holding lands in ryotwari settlement or in any other way subject to payment of revenue direct to the Government. It is not in dispute that the Act is not protected under Art. 31-A of the Constitution and it is in this background that we shall consider the attack based on Art. 14 on the two main provisions of the Act relating to ceiling area under s. 5 and compensation under s. 50 read with Sch. III of the Act.

It is first necessary to read certain definitions in s 3. Section 3(14) defines family as follows--

> "family" in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her-
>
> (i) minor sons and unmarried daughters; and

(ii) Minor grandsons and unmarried grand daughters in the male line, whose father and mother are dead."

It is unnecessary to refer to the explanation of s. 3(14), for present purposes. Section 3 (34) is in these terms: -

person' includes any trust, company, family, firm, society or association of individuals, whether incorporated or not."

Section 3 (45) is as follows: -

" 'surplus land' means the land held by a person in excess of the ceiling area and declared to be surplus land under sections 12, 13 or 14."

Section 5 is in these terms: -

"5. (1) -(a) Subject to the provisions of Chapter VIII, the ceiling area in the case of every person and, subject to the provisions of sub-sections (4) and (5) and of Chapter VIII, the ceiling- area in the case of every family consisting of not more than five members, shall be 30 standard acres

(b) The ceiling area in the case of every family consisting of more than five members shall, subject to the provisions of sub-

sections (4) and (5) and of Chapter VIII, be 30 standard acres together with an additional 5 standard acres for every member of the family in excess of five.

(2) For the purposes of this section, all the lands held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family.

(3) (a) In calculating the extent of land held by a member of a family or by an individual person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family, a Marumakkattayam tarwad, an Aliyasanthana family or a Nambudiri Illom shall be taken into account.

(b) In calculating the extent of land held by a family or by an individual person, the share of the family or of the individual person in the land held by a firm, society or association of individuals (whether incorporated or not) or by a company (other than a non-agricultural company) shall be taken into account.

Explanation-For the purposes of this section-

(a) the share of a member of a family or of an individual person in the land held by an undivided Hindu family, a Marumakkattayam tarwad, an Aliyasanathana family or a Nambudiri Illom, and

(b) the share of a family or of an individual person in the land held by a firm, society or association of individuals (whether incorporated or not), or by a company (other than a non-agricultural company), shall be deemed to be the extent of land-

(i) which, in case such share is held on the date of the commencement of this Act, would have been allotted to such member, person or family had such land been partitioned or divided, as the case may be, on such date; or

(ii) which, in case such share is acquired in any manner whatsoever after the date of the commencement of this Act, would be allotted to such member, person or family if a partition or division were to take place on the date of the preparation of the draft statement under sub-section (1) of section 10.

"(4)....."

It is unnecessary to consider the rest of s. 5 for present purposes.

The attack on s. 5 (1) is that it is hit by Art. 14 inasmuch as it denies equality before the law or equal protection of law to persons similarly situate, and reliance is placed in this connection on the decision of this Court in Karimbil Kunhikoman(1). In that case this Court was considering the Kerala Agrarian Relations Act, 1961 (hereinafter referred to as the [1962] Suppl. 1 S.C.R. 829.

Kerala Act). The argument is that as in the Kerala Act, so in the present Act, the word "family" has been given an artificial definition which does not conform to any kind of natural families prevalent in the State, namely, Hindu undivided family, Marumakkattayam family, Aliyasanathana family or Nambudiri Illom, and that a double standard has been fixed in s. 5(1) in the matter of providing ceiling. It is therefore urged that the ratio of that decision fully applies to the present Act. Therefore, s. 5(1) should be struck down as violative of Art. 14 in the same manner as s. 58 of the Kerala Act was struck down.

We are of opinion that this contention is correct and the ratio of that case applies with full force to the present case. It was observed in that case that "where the ceiling is fixed ..... by a double standard and over and above that the family has been given an artificial definition which does not correspond with a natural family as known to personal law, there is bound to be discrimination resulting from such a provision". In the present case also "family" has been given an artificial definition as will immediately be clear on reading. 3(14), which we have set out above. It is true that this definition of "family" in s. 3(14) is not exactly the same as in the Kerala Act. Even so there can be no doubt that the definition of the word "family" in the present case is equally artificial. Further in the Kerala Act s. 58 fixed a double standard for the purpose of ceiling; in the present case s. 5(1)(a) fixes a double standard though there is this distinction that in s. 5(1) the same ceiling is fixed in the case of a person as in the case of a family consisting of not more than five members, namely, 30 standard acres while in the Kerala Act, the ceiling fixed for a family of not more than five was double that for an adult unmarried person. But that in our opinion makes no difference in substance. The provision of s. 5(1) results in discrimination between persons equally circumstanced

and is thus violate of Art. 14 of the Constitution. This will be clear from a simple example of an undivided Hindu family, which we may give. Take the case of a joint Hindu family consisting of a father, two major sons and two minor sons, and assume that the mother is dead. Assume further that this natural family has 300 standard acres of land. Clearly according to the personal law, if there is a division in the family, the father and each of the four sons will get 60 standard acres per head. Now apply s. 5(1) to this family. The two major sons being not members of the family because of the artificial definition given to "family" in s. 3(14) of the Act will be entitled to 30 standard acres each as individuals and the rest of their holdings i.e. 30 standard acres in the case of each will be Surplus land. But the father and the two minor sons being an artificial family as defined in s. 3(14) will be entitled to 30 standard acres between them and will thus lose 150 standard acres, which will become surplus land. This shows, clearly how this double standard in the matter of ceiling read with the artificial definition of "family" will result in complete discrimination between these five members of a natural family. Under the Hindu law each member would be entitled to onefifth share in the 300 standard acres belonging to the family. Under the Act however the two major sons will keep 30 standard acres each while the father and the two minor sons together will keep 30 standard acres which work out to 10 standard acres each. The two major sons will thus lose 30 standard acres each while the father and the two minor sons will lose fifty standard acres each. No justification has been shown on behalf of the State for such discriminatory treatment resulting in the case of members of a joint Hindu family; nor ;.ire we able to understand why this discrimination which clearly results from the application of s. 5 (1) of the Act is not violative of Art. 14 of the Constitution. Examples can be multiplied with reference to joint Hindu families which would show that discrimination will result on the application of this provision. Similarly we are of opinion that discrimination will result in the case of Marumakkattayam family, Aliyasanthana family and a Nambudiri Illom, particularly in the case of the former two where the husband and wife do not belong to the same family. We are clearly of opinion that as in the case of s. 58 of the Kerala Act so in the case of s. 5 (1) of the Act discrimination is writ large on the consequences that follow from S. 5(1). We therefore hold that s. 5(1) is violative of the fundamental right enshrined in Art. 14 of the Constitution. As the section is the basis of Chapter 11 of the Act, the whole Chapter must fall along with it.

Next we come to the provisions as to compensation contained in s. 50 read with Sch. III of the Act. Here again we are of opinion that the decision of this Court in Karimbil Kunhikoman's(1) case fully applies to the scheme of compensation provided in the Act which is as discriminatory as was the scheme in the Kerala Act. Learned counsel for the respondent however contends that Sch., III does not provide for any cut in the purchase price as was the case in the Kerala Act, and therefore the provisions in the Act are not discriminatory. If we look at the substance of the matter, however, we find that there is really no difference between the provisions for compensation in the Kerala Act and the provisions in respect thereof in the Act, though the provisions in the Act are differently worded. What was done in the Kerala Act was to arrive at the figure of compensation on certain principles, and a cut was then imposed on the figure thus arrived at and this cut pro- gressively increased by slabs of Rs. 15,000. In the present [1962] Suppl. 1 S.C.R. 829.

case , a converse method has been adopted and the provision is that first the net annual income is arrived at and thereafter compensation is provided for slabs of Rs. 5,000 each of net income. For the

first slab of Rs. 5,000, the compensation is 12 times the net annual income, for the second slab of Rs. 5,000 it is II times, for the third slab of Rs. 5,000 it is -ten times and thereafter it is nine times.

Let us now work out this slab system. Take four cases where the net annual income is respectively Rs. 5,000, Rs.10,000, Rs. 15,000 and Rs. 20,000. The firstperson whose net annual income is Rs. 5,000 will get Rs.60,000 as compensation, the second person whose net annualincome is Rs. 10,000 will -et Rs. 1,15,000, the third personwith a net annual income of Rs. 15,000 will get Rs. 165,000 and the person with a net annual income of Rs. 20,000 will -et Rs. 2,10,000. If the same multiplier had been applied as in the case of the first slab of Rs. 5,000 to the other three slabs also, these persons would have got compensation of Rs. 1,20,000, Rs. 1,80,000 and Rs. 2,40,000. This will show that in effect there is a cut of about 4 per cent on the total compensation which corresponds to the purchase price in the Kerala Act in the case of a person with a net annual income of Rs. 10,000, of about 8 per cent in the case of a person with a net annual income of Rs. 15,000 and about 12 per cent in the case of a person with a net annual income of Rs. 20,000. Though the manner of arriving at the total com- pensation is ostensibly different from that provided in the Kerala Act, its effect is the same, namely, as the total net income goes up after the first slab of Rs. 5,000 there is a progressive cut in the total compensation just as was the case in the Kerala Act. The argument that the cut is justified on the same basis as higher rates of income-tax on higher slabs of income has already been rejected by this Court in Karimbil Kunhikoman's case(1). Therefore, for the reasons given in that case, we are of opinion that the provisions contained in s. 50 read with Sch. III of the Act with respect to compensation are discriminatory and violate Art. 14 of the Constitution.

Sections 5 and 50 are the pivotal provisions of the Act, and if they fall, then we are of opinion that the whole Act must be struck down as unconstitutional. The working of the entire Act depends on s. 5 which provides for ceiling and s. 50 which provides for compensation. If these sections are unconstitutional, as we hold they are, the whole Act must fall.

We therefore allow the petitions and strike down the Act as unconstitutional. The petitioners will get their costs from the State of Madras-one set of hearing fee. Petitions allowed.

(1) [1962] Suppl. 1 S.C.R. 829.