

Supreme Court of India

Govt.Of U.T. Of Pondichery vs Mohammed Husain on 30 June, 1994

Equivalent citations: 1994 SCC (5) 121, JT 1994 (7) 1

Author: S Agrawal

Bench: Agrawal, S.C. (J)

PETITIONER:

GOVT.OF U.T. OF PONDICHERY

Vs.

RESPONDENT:

MOHAMMED HUSAIN

DATE OF JUDGMENT 30/06/1994

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

PUNCHHI, M.M.

JEEVAN REDDY, B.P. (J)

CITATION:

1994 SCC (5) 121 JT 1994 (7) 1

1994 SCALE (3) 77

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.C. AGRAWAL, J.- Leave granted in SLP (C) No. 6468 of 1980.

2. These appeals raise a common question involving the interpretation of Section 9(2)(a) of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (hereinafter referred to as 'the Act'). The question is : Whether Section 9(2)(a), which provides that for the purpose of calculating, after the appointed day, the ceiling area of a family holding land on the appointed day in excess of 6 standard hectares, the authorised officer shall take into account only those members of that family who are alive on the notified date, requires that in cases where on the appointed day one of the members of the family is an unmarried daughter or a minor son and the said unmarried daughter gets married or the minor son attains majority after the appointed day and before the notified date, the share of the said daughter or son in the family holding should be excluded for the purpose of

fixing the ceiling area of the family.

3. The Act has been enacted to provide for the fixation of ceiling on agricultural land holdings and for certain other matters connected therewith in the regions of Pondicherry and Karaikal. Under sub-section (4) of Section 2, the expression "appointed day" has been defined to mean the 24th day of January 1971. The expression "family" has been defined in sub-section (10) of Section 2 as under :

"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 minor sons and unmarried daughters."

4."Notified date" has been defined in Section 2(24) to mean the date specified in the notification issued by the Government under sub-section (1) of Section 7. Section 4 fixes the ceiling area as 6 standard hectares in the case of every person and in the case of every family consisting of not more than five members. Where the family consists of more than five members the ceiling area is enhanced by 1.2 standard hectares for every member of the family in excess of five but the total extent of land held by any family shall in no case exceed twice the ceiling area, i.e., 12 standard hectares. In subsection (4) of Section 4 it has been laid down "4. (4) In calculating the extent of land held by any person, any land which was transferred by sale, gift or otherwise or partitioned by that person after the appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred or partitioned as the case may be."

Section 6 provides as under:

"6. On and from the appointed day, no person shall, except as otherwise provided in this Act, but subject to the provisions of Chapter VI, be entitled to hold land in excess of the ceiling area :

Provided that in calculating the total extent of land held by any person, the authorised officer may, for reasons to be recorded in writing permit any person to hold land in excess of the ceiling area if the extent of excess of land does not exceed 0.2 hectare in the case of wet land and 0.4 hectare in the case of dry land."

5. Section 7 requires that within thirty days from such date as may be specified in the notification issued by the Government in this behalf, every person, who, on the appointed day, held land in excess of the ceiling area shall, in respect of all land held by such person on such day, furnish to the authorised officer within whose jurisdiction the holding of such person or the major part thereof is situated, a return containing the particulars specified in clauses (i) to (viii) of sub-section (1). In case where a person who has held land in excess of the ceiling area fails to furnish the return under Section 7 or furnishes an incorrect or incomplete return sub-section (1) of Section 8 empowers the authorised officer to issue a notice requiring such a person to furnish the return or the additional particulars, as the case may be, within the time specified in the notice. Where a person on whom notice has been served under sub-section (1) of Section 8, fails to furnish the return, or the additional particulars, as the case may be, within the time specified in that notice, or within the further time allowed by the authorised officer, the authorised officer is empowered by sub-section (2) of Section 8 to obtain necessary information either by himself or through such agency as he

thinks fit. Under sub-section (1) of Section 9 the authorised officer is required to prepare a draft statement in respect of each person holding or deemed to have held land in excess of the ceiling area. The said draft statement is required to contain the particulars mentioned in sub-clauses (i) to (xi) of clause (b) of Section 9(1).

6. Sub-section (2) of Section 9 provides as under

(a)For the purpose of calculating after the appointed day the ceiling area of a family holding land on the appointed day in excess of 6 standard hectares, the authorised officer shall take into account only those members of that family who are alive on the notified day.

(b)For the purpose of calculating after the appointed day, the ceiling area of any other family, the authorised officer shall take into account only those members of that family who are alive on the date of the preparation of the draft statement under sub-section (1)."

7.The draft statement prepared under sub-section (1) of Section 9 is required to be published under sub-section (5) of Section 9 and a copy of the same is required to be served on the person concerned as well as on persons who in the opinion of the authorised officer are interested in the land together with a notice stating that any objection to draft statement shall be preferred within 15 days of such notice. Sub-section (6) of Section 9 prescribes that the objections that are received must be considered by the authorised officer and the objector should be given a reasonable opportunity of being heard and of adducing evidence, if any. Section 11 prescribes that after the disposal of objections, if any, the final statement specifying the entire land held by each person, the land to be retained by him within the ceiling area and the land declared to be surplus land, shall be published. Section 17(1) provides for acquisition of surplus land after the publication of the final statement and for that purpose a notification is required to be issued by the Government to the effect that the surplus land is required for a public purpose. Section 17(3) provides that on the publication of such notification the land specified in the notification together with the trees standing on such land and buildings, machinery, plant, apparatus, wells, filter points or power lines constructed, erected or fixed on such land and used for agricultural purposes shall, subject to the provisions of the Act, be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of ail persons in such land shall, with effect from the said date, be deemed to have been extinguished. Section 21 deals with ceiling on acquisition by inheritance bequest or by sale in execution of decree, etc., after the appointed day and prescribes for filing of a return by the person who has thus acquired the land before the authorised officer. Subsection (2) of Section 21 provides as under :

"(2) If, as a result of marriage or adoption on or after the appointed day, the extent of land held by any person exceeds in the aggregate the ceiling area, then, he shall, within thirty days from the notified date or from the date of marriage or adoption, as the case may be, whichever date is later, furnish to the authorised officer within whose jurisdiction his holding or the major part thereof is situated, a return containing the following particulars, namely :

- (i) particulars of the land held before the date of the marriage or adoption;
- (ii) particulars of the land held after the date of marriage or adoption;
- (iii) such other particulars as may be prescribed." The facts in all the three appeals are similar. We will briefly refer to the facts in CA No. 135 of 1979.

8. According to the draft statement published under Section 8 of the Act, an extent of 18.10.08 standard hectares was shown in excess of the ceiling area as on the appointed day. Respondent, Mohammed Hussain, filed an objection that the holding of his minor sons, Sharafudeen and Abdul Hameed, who had become major on the notified date should be excluded from the ceiling area of the family. The said objection was rejected by the authorised officer but on appeal the Land Tribunal (Subordinate Judge), Karaikal, upheld the said objection and held that the holdings of the minor sons who became major in between the appointed day and the notified date should be excluded from the holdings of the family of the landowner in computing the ceiling area. In this connection, reliance was placed on the decision of the Madras High Court (Kailasam J., as the learned Judge then was) in *Rajagopal Pillai v. State of T.N.*¹ The revision petition filed by the appellant against the said order of the Land Tribunal was rejected by the High Court (Ismail, J.) on the view that the order of the Tribunal is in accordance with the judgment of the High Court.

9. In the other two appeals also there was a minor son on the appointed day who attained majority before the notified date and it was claimed that his share in the family lands should be excluded while fixing the ceiling area of the family. The said objections have been allowed by the Land Tribunal and the revision petitions against the orders of the Land Tribunal have been dismissed by the High Court.

10. In *Rajagopal Pillai v. State of T.N.*¹, the provision under consideration was Section-10(2)(a) of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. In that case the family included a daughter who was unmarried on the appointed day but got married thereafter but before the notified date. It was held that since Section 10(2) postulates that the authorised officer shall take into account only those members of the family who are alive on the notified date which means that the ceiling area of the family should be fixed with reference to the state of affairs on the notified date and that just as in the event of a death in the family between the date of the commencement of the Act and the notified date, that person will have to be excluded in fixing the family holding similarly it would logically mean that the authorised officer could fix the members of the family as on the notified date by taking into account the subtraction by the minor becoming major or by the unmarried daughter getting married who are by virtue of the definition 'family' excluded from the said definition. In taking this view the learned Judge has placed reliance on an earlier unreported judgment of the High Court (Ramanujam, J.) in CRP No. 854 of 1967 wherein it was held that when a minor on the date of the commencement of the Act becomes a major before the notified date, his share should be excluded in fixing the family ceiling area. It appears that in *Thirumathi Rajam Sivasubramaniam alias Muthu Meenakshi Veeralakshmi Nagammal v. Authorised Officer (Land Reforms) Tirunelveli*², Ismail, J. has taken the same view as was taken by Kailasam, J. in *Rajagopal Pillai v. State of TN.*¹

11. In the appeal arising out of SLP (C) No. 6468 of 1980 the High Court has observed that the provisions of Section 9(2)(a) and (b) are in pari materia with the provisions of Section 40(2)(a) and (b) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which were considered by Kailasam, J. in *Rajagopal Pillai v. State of TN.* 1 and that by reading of the provisions contained in Section 9(2)(a) and (b) of the Act and Section 10(2)(a) and (b) of the Tamil Nadu Act, the conclusion is inescapable that whatever changes or alterations in situation take place between the appointed day and before the notified date they will have to be recognised and calculations must be done on the basis of these changes and alterations in the situation. It has been held that Section 6 of the Act, which makes a reference to the appointed day, merely provides statutory bar against future acquisition and that the relevant date for the purpose of computation, preparation and publication of the draft statement under Section 9 is only the notified date.

12. Shri A.S. Nambiar, the learned Senior Counsel appearing for the appellants, has urged that the High Court was in error in ignoring the significance of the appointed day and in laying emphasis on the notified date and on that basis in holding that a change which takes place in the family between the appointed day and the notified date on account of a minor son attaining majority or unmarried daughter getting married has to be taken into account while calculating the extent of land which can be retained by a landowner. The submission of Shri Nambiar is that in view of the clear provisions contained in Sections 6 and 7(1) of the Act the surplus land has to 2 1979 LW 527 be determined with reference to the appointed day only and any change in the family subsequent to the appointed day will not have any effect on the ceiling area that can be retained by the members of the family and that the High Court was in error in construing the provisions of Section 9(2)(a) to mean that the ceiling area has to be calculated by taking into account the change in the family that takes place after the appointed day but before the notified date by reason of a minor son attaining majority or an unmarried daughter getting married. On the other hand, Shri G. Vishwanatha Iyer, the learned Senior Counsel appearing for the respondents, has supported the view of the High Court and has urged that the High Court has rightly construed the provisions of the Act and in holding that a change in the family occurring after the appointed day but before the notified date has to be taken into account while calculating the ceiling area of the family.

13. The High Court was, in our opinion, in error in not attaching sufficient importance to the expression "appointed day" in the matter of calculation of the ceiling area and determination of the surplus land. It has to be borne in mind that even though the Act came into force on 5-10-1973 the appointed day is 24-1- 1971, a date much anterior to the date of the coming into force of the Act. The reason being that the Act has been enacted in pursuance of the recommendations made by the Central Committee on Land Reforms regarding the fixation of ceiling on agricultural holdings. 24-1-1971, which has been fixed as the appointed day, has reference to the said meeting of the Central Committee on Land Reforms. The significance of the appointed day in the matter of calculation of ceiling area and determination of the surplus land is evident from the provisions contained in Section 6 of the Act which prescribes that on and from the appointed day no person shall, except as otherwise provided in the Act, be entitled to hold land in excess of the ceiling area. Similarly sub-section (1) of Section 7 requires a person who on the appointed day held land in excess of the ceiling area to furnish to the authorised officer return in accordance with the provisions of the said section. Sub-section (4) of Section 4 excludes land which was transferred by sale, gift or

otherwise or partitioned by a person after the appointed day but before the commencement of the Act. The aforesaid provisions clearly indicate that the crucial date for determination of the ceiling area that can be retained by a person holding land in excess of the ceiling limit is the appointed day.

14.The Act envisages consideration of changes taking place after the appointed day in the following provisions :

(i)Section 9(2)(a) which applies to a family holding land on the appointed day in excess of 6 standard hectares and requires the authorised officer to take into account only those members of the family who are alive on the notified date for the purpose of calculating, after the appointed day, the ceiling area of the family;

(ii)Section 9(2)(b) which applies to a family other than that covered by Section 9(2)(a) and requires the authorised officer to take into account only those members of the family who are alive on the date of the preparation of the draft statement for the purpose of calculating after the appointed day the ceiling area of the family;

(iii)Sub-section (1) of Section 21 which deals with acquisition of land by a person after the appointed day either by inheritance or bequest from any person and acquisition after the appointed day but before the notified date by sale in execution of a decree or order of a civil court or of an award or order of any other lawful authority and provides that if such land together with the land, if any, already held by him exceeds in aggregate the ceiling area then he shall within 30 days from the notified date or from the date of such acquisition, whichever is later, furnish to the authorised officer within whose jurisdiction his holding or the major part thereof is situated, a return containing the particulars mentioned to in clauses (i) to

(vii) of sub-section (1).

(iv)Sub-section (2) of Section 21 which deals with a situation where the extent of land held by any person exceeds in the aggregate the ceiling area as a result of marriage or adoption on or after the appointed day. Such a person also must within 30 days from the notified date or from the date of marriage or adoption, as the case may be, whichever is later, furnish to the authorised officer within whose jurisdiction his holding or the major part thereof is situated, a return containing the particulars set out in that sub- section.

15.From the aforesaid provisions it would appear that while clauses (a) and (b) of sub-section (2) of Section 9 seek to curtail the ceiling area of the family by taking into account the death of a member of the family after the appointed day, sub- sections (1) and (2) of Section 21 deal with cases where holding of a person exceeds the ceiling area after the appointed day on account of acquisition of land by inheritance or bequest or sale in execution of a decree, etc., or as a result of the marriage or adoption and require such a person to file return to the extent of land in excess of the ceiling area. There is no provision in the Act which provides for recalculation of the ceiling area as a result of a change taking place in the family after the appointed day on account of a minor son attaining majority or an unmarried daughter getting married before the notified date. Section 9(2)(a) which

deals with changes in the family on account of death of a member of the family after the appointed day but before the notified date cannot be construed to cover a change in the family on account of a minor son attaining majority or an unmarried daughter getting married after the appointed day but before the notified date. Moreover the object underlying Section 9(2)(a) is to further reduce the ceiling area by taking into account a change taking place between the appointed day and the notified date on account of death of a member of a family. The said provision cannot be invoked so as to enlarge the ceiling area by taking into account a change in the family as a result of a minor son attaining majority or an unmarried daughter getting married. We cannot lose sight of the fact that the Act is a piece of legislation enacted with a view to achieve a more equitable distribution of land for common good so as to subserve the Directive Principles contained in Article 39 of the Constitution. The provisions of such a legislation have to be so interpreted as to further the object of the legislation and not defeat the same. The construction placed by the High Court on the provision of Section 9(2)(a) of the Act runs counter to the object of the Act and we do not find any indication in the provisions of the Act which justifies placing such an interpretation on Section 9(2)(a). We are, therefore, unable to uphold the view taken by the High Court. In our view any change in the family on account of a minor son attaining majority or an unmarried daughter getting married after the appointed day is not required to be taken into account while calculating the ceiling area of the family.

16. In the result, the appeals are allowed, the judgments of the High Court under appeal as well as the orders passed by the Land Tribunal holding that the share of the minor son attaining majority after the appointed day must be excluded from the holding of the family are set aside and the orders passed by the authorised officer are restored. No orders as to costs.