

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR  
AND  
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.A. NOS. 760 & 761 OF 2013  
AND

M.P. NOS. 1 & 2 OF 2013

S.Vaitheeswaran .. Appellant in WA 760/2013

S.Bhuvaneswaran .. Appellant in WA 761/2013

- Vs -

1. Union of India  
Union Territory of Puducherry  
rep. by Secretary to Government  
Revenue Department  
Puducherry.
  2. The Sub Collector  
Office of the Sub Collector (Revenue)  
North-cum-Authorised Officer  
(Land Reforms)  
Puducherry.
  3. R.K.Selvaraj
- ... Respondents in both  
the appeals

Appeals filed under clause 15 of Letters Patent Act against the order dated 09.11.2011, passed by the learned single Judge in W.P. Nos. 26790 & 26791 of 2009. Writ petitions under Article 226 of the constitution of India praying for the issuance of Writ of Mandamus directing the respondents to consider the representation dated 30.09.2009 and release the lands situate in R.S.No.217/11,210/6, 211/3 and 217/3 belonging to the petitioner in WP 26790/2009 and R.S.No.212/1, 210/6, 211/3 belonging to the petitioner in WP No.26791/2009 from the Land ceiling Proceedings and direct the respondents 1 and 2 to take possession of the land equal in areas from out of the remaining lands belonging to the third respondent, in accordance with the provisions of the Pondicherry Land Reforms Act.

For Appellant : Mr. Srinath Sridevan

For Respondents: Mr. A.Tamilvanan, GA (Pondy) for R-2  
No Appearance for R-1

COMMON JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

The unsuccessful writ petitioners have filed these appeals challenging the order of the learned single Judge.

2. The brief facts, relevant for the disposal of these appeals, are as hereunder :-

The 3<sup>rd</sup> respondent herein, R.K.Selvaraj, originally held certain extent of agricultural lands in excess of the limit specified under Section 4 of the Pondicherry Land Reforms (Fixation of Ceiling of Land) Act, 1973 (for short 'Pondicherry Act'). As a result, the Authorised Officer initiated proceedings to vest control of the excess lands and prepared a final statement in terms of Section 11 (1) of the Pondicherry Act and declared certain extent of lands, which was being held by the 3<sup>rd</sup> respondent as surplus lands. That order came to be passed on 13.9.1978. The 3<sup>rd</sup> respondent preferred an appeal in LT C.M.A. Nos., 4, 5 and 6 of 1978, which came to be dismissed against which he filed C.R.P. Nos. 2164, 2190 and 2191 of 1978 before this Court, wherein, this Court, partly allowed C.R.P. No.2164/1978 and dismissed the other two petitions vide order dated 13.10.1987. As a result, the Authorised Officer issued fresh draft statement in terms of Section 9 (1) of the Pondicherry Act on 28.9.1988, which was published in the Gazette of Pondicherry. On 4.4.1990, final statement under Section 11 (1) of the Pondicherry Act came to be published in the Pondicherry Extraordinary Gazette. Thereafter, no action was taken by the Authorised Officer for more than 18 years, i.e., till 18.2.2008.

3. The Pondicherry Act requires that the Authorised Officer shall, after declaring the certain extent of lands held by a person as surplus, cause publication of the final statement in the prescribed manner specifying the lands to be retained by such person within the ceiling limit and the lands declared to be surplus and such other particulars as has been prescribed and a copy of the final statement has to be served on the person, i.e., the 3<sup>rd</sup> respondent herein, under Sub-Section (5) of Section 9 of the Pondicherry Act.

4. In the present case, after the publication of the final statement in terms of Section 11 (1) of the Pondicherry Act on

4.4.1990, the matter was put in cold storage for more than 18 years and, therefore, the 3<sup>rd</sup> respondent for reasons best known to him, sold certain extent of lands to third parties on 18.9.06 by five sale deeds and such properties were, in turn, sold to the present appellants. After conveyance as above, on 18.2.08, final statement as contemplated under Section 11 (2) of the Pondicherry Act was published. For better clarity, Section 11 (1) and (2) of the Pondicherry Act are extracted hereinbelow :-

"11 (1) After the disposal of the objections, if any, preferred under sub-section (5) of Section 9, and after passing the order, if any, under sub-section (1) of section 10, the authorised officer shall, subject to the provisions of this Act and the rules made thereunder, make necessary alterations in the draft statement in accordance with the order passed on the objections aforesaid and the order, if any, passed under sub-section (1) of section 10, and shall declare the surplus land held by each person.

(2) The authorised officer shall thereafter publish in such manner as may be prescribed a final statement specifying therein 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 such other particulars as may be prescribed and cause a copy thereof to be served on the persons referred to in sub-section (5) of section 9."

5. The land owner, the 3<sup>rd</sup> respondent herein, made a representation on 16.4.08 to the Authorised Officer offering certain extent of lands in lieu of the lands sold to third parties vide different sale deeds, which were termed as surplus lands by the Authorised Officer. Thereafter, on 2.12.08, notification under Section 17 (1) of the Pondicherry Act was published in the name of the 3<sup>rd</sup> respondent stating that the surplus lands are required for public purpose. As a result, the properties would vest with the Government. On 26.02.09, proclamation was issued under Section 17 (2) of the Pondicherry Act and publication of notification for possession in terms of Section 17 (4) of the Pondicherry Act was also issued.

6. On receipt of the same, the appellants, who are the transferees of the lands, gave a representation to the Authorised Officer seeking to invoke the provisions of Sections 22 (2) of the Pondicherry Act. For better appreciation of the matter, Section 22 (1) and (2) of the Pondicherry Act are extracted hereinbelow :-

"22. (1) Except where a person is permitted in writing, by the authorised officer, a person, holding land in excess of the ceiling area applicable to him under section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is to be acquired by the Government under section 17, has been determined and taken possession of by or on behalf of the Government.

(2) (a) If any person makes any transfer, whether by sale, gift or otherwise, of any land in contravention of the provisions of sub-section (1); the Government may, in the first instance, take possession of land, equal in area to the land which is to be acquired by the Government, from out of the land held by such person, and where such recovery from the person is not possible from the transferee."

Since there was no response to the same, the writ petitions were filed for mandamus directing the respondents to consider the representation dated 30.09.2009 and release the lands situate in R.S. Nos.217/11, 210/6, 211/3 and 217/13 belonging to the petitioner in W.P. No.26790/09 and R.S. No.212/1, 210/6, 211/3 belonging to the petitioner in W.P. No.26791/09 from the land ceiling proceedings and direct the respondents 1 and 2 to take possession of the land equal in area from out of the remaining lands belonging to the third respondent in accordance with the provisions of the Pondicherry Land Reforms Act.

7. The said writ petitions came to be disposed of by the learned single Judge, vide order, wherein it has been observed as under :-

"6. In fact the final statement having been published in the year 1990, any sale, transfer or other dispossession of the land declared as surplus will be invalid in terms of Section 22 (1) of the Land Reforms Act. Section 22(1) of the Land Reforms Act reads as follows:-

"22 (1) Except where a person is permitted in writing, by the authorised officer, a person, holding land in excess of the ceiling area applicable to him under Section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is

to be acquired by the Government under Section 17, has been determined and taken possession of by or on behalf of the Government."

7. In the present case, the petitioners are third parties and purchase of the lands by the petitioners' vendor from the original owner itself is illegal and void. The nature of the sale referred to by the petitioners under Section 22 is related to original sale, which means the petitioners' vendor himself could not have purchased the same from the third respondent. Infact the impact of such provision came to be noticed in respect of the Land reforms Act of Tamil Nadu by the Supreme Court in Authorised Officer and another v. S.Naganatha Ayyar and others reported in (1979) 3 SCC 466. In paragraphs 16 and 17, the Supreme Court held as follows:

"16. In the interpretation of Section 22 we too are Portia men. For this reason we reverse the view of the High Court that Section 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 Shree 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 bona fide. 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 bona fide vis-a-vis the community.

17. 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, bona fide 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 Section 22 Section 7 and other ceiling-related provisions."

8. The Supreme Court also held that the Division Bench's judgment under appeal holding that the said provision only hits malafide transfer and not bonafide transfer was not proper as the Act is intended to prevent any kind of transfer to defeat the purpose of land ceiling laws. Even otherwise, the only person who has locus standi to question such action of the authorities under the Act is the owner of the land who has been issued with the final statement in the year 1990. As noted in the counter affidavit, the third respondent has not asked for any exchange. He has not only sold the surplus land but even the land which are to be retained to him as per the request. Hence, this Court do not consider the petitioners have made out any case."

8. The present appeals have been filed contending that the learned single Judge dismissed the writ petitions primarily on the ground that transfer by sale, gift or otherwise is impermissible until the excess lands, which have to be acquired by the Government under Section 17 of the Pondicherry Act have been determined and taken possession of by and on behalf of the Government. It is the further plea that the learned single Judge held that the transfer of the lands by the 3<sup>rd</sup> respondent is illegal and void as the transfer by way of sale or gift is impermissible as per law. Learned single Judge, for arriving at the conclusion, relied upon the decision of the Supreme Court in the case of Authorised Officer & Anr. - Vs - S.Naganatha Iyer & Ors. (1979 (3) SCC 466). It is further pleaded that the said case before the Supreme Court arose out of an interpretation of Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act, 1961 (for short 'Tamil Nadu Act'), wherein it is found that any form of transfer or partition, which defeats any of the provisions of the Act could be declared as void. Learned counsel appearing for the appellants submitted that the said decision would not be applicable to the facts of the present case, as the Pondicherry Act acts on a totally different setup. Further, under Section 22 (2) (a) of the Pondicherry Act there is a provision to deal with bona fide transfer. To drive home the point, learned counsel appearing for the appellants, laid emphasis on para-16 and 17 of the judgment of the Supreme Court in Naganatha Iyer's case (supra) and at the risk of repetition, the said portion of the order is extracted hereinbelow :-

"16. In the interpretation of Section 22 we too are Portia men. For this reason we reverse the view of the High Court that Section 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 Shree 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 bona fide. 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 bona fide vis-a-vis the community.

17. 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, bona fide 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 Section 22 Section 7 and other ceiling-related provisions."

9. Learned Government Advocate appearing for the 2<sup>nd</sup> respondent reiterated the stand taken before the learned single Judge in the counter affidavit, wherein it has been stated that the transfer having been effected in contravention of the laws, it is void. Learned Government Advocate further states that there is nothing in the hands of the 3<sup>rd</sup> respondent herein, for the Government to recover.

10. Heard the learned counsel appearing for the appellants and the learned Government Advocate appearing for the 2<sup>nd</sup> respondent and perused the materials available on record as also the decisions relied on by the learned single Judge and the learned counsel on either side.

11. Before proceeding to decide the merits of the matter, it would be useful to refer to Sections 22 (1) and (2) of the Tamil Nadu Act vis-a-vis the provisions of Section 22 (1) and 22 (1) (a) of the Pondicherry Act, which are very relevant for determining the applicability of the judgment of the Supreme Court in Naganatha Iyer's case (supra) to the facts of the present case. For useful reference Sections 22 (1) and (2) of the Tamil Nadu Act vis-a-vis the provisions of Section 22 (1) and 22 (2) (a) of the Pondicherry Act are extracted

hereinbelow :-

"Sections 22 (1) and (2) of the Tamil Nadu Act :-

22. Transfer (or partition) made on or after the date of commencement of this Act, but before the notified date.-

(1) 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.

(2) For the purpose of sub-section (1), if any transfer or partition has the effect of reducing the extent of surplus land in excess of the ceiling area, such transfer or partition, whether bona fide or not, shall be constructed as defeating the provisions of this Act."

Section 22 (1) and 22 (2) (a) of the Pondicherry Act :

"22. (1) Except where a person is permitted in writing, by the authorised officer, a person, holding land in excess of the ceiling area applicable to him under section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is to be acquired by the Government under section 17, has been determined and taken possession of by or on behalf of the Government.

(2) (a) If any person makes any transfer, whether by sale, gift or otherwise, of any land in contravention of the provisions of sub-section (1); the Government may, in the first instance, take possession of land, equal in area to the land which is to be acquired by the Government, from out of the land held by such person, and

where such recovery from the person is not possible from the transferee."

12. In the case of Naganatha Iyer (supra), on and after the commencement of the Tamil Nadu Act 58 of 1961, but before the notified date, if any person has transferred any land held by him by way of sale, gift or exchange, surrender, settlement or any other manner, or by way of partition, the Authorised Officer concerned shall, after notice to such persons and other persons affected by the transfer made, declare the transfer or partition to be void if he finds the transfer or partition, as the case may be, defeats any provisions of the Act. Clause (2) also provides further that for the purpose of sub-section (1) if the transfer or partition has the effect of reducing the surplus land in excess of the ceiling or such transfer or partition, whether bona fide or not, shall be considered as defeating the provisions of the Act and that has been interpreted by the Supreme Court to hold that if the purpose of the transfer is to defeat the object of the welfare Act, i.e., for equitable distribution of the lands to the landless people, the transfer is void.

13. On the contrary, Section 22 of the Pondicherry Act (9 of 1974), operates on a totally different platform. Section 22 provides that any person, who is holding lands in excess of the ceiling area applicable under Section 22 shall not, after the commencement of the Act transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is to be acquired by the Government under section 17, has been determined and taken possession of by or on behalf of the Government. Section 22 (1) also provides that such person holding lands in excess could transfer by way of sale, gift or otherwise, if a permission in writing is given by the Authorised Officer. This is a departure from Section 22 (1) of the Tamil Nadu Act. Section 22 (2) (a) provides the manner in which the Government should take possession of the lands, if there is a transfer by way of sale, gift or otherwise of any lands in contravention of the provisions of Section 22 (1). The Government, at the first instance, should take possession of the lands equal in area to the lands to be acquired by the Government from the lands of such person, meaning the owner of the lands, who is found to be holding lands in excess of the ceiling area. It further provides that where such recovery from the person is not possible, then the Government may resort to recovery of possession from the transferee. Therefore, while Section 22 (1) provides that there shall be no transfer by sale or gift or otherwise of the lands, which has been determined and taken possession by and on behalf of the Government, in certain circumstances, transfer is

permissible with the permission in writing by the Authorised Officer. But if there is a transfer by sale, gift or otherwise of the lands in contravention of the provisions of sub-section (1) to Section 22 of the Pondicherry Act, the Government is bound to follow the procedure as contemplated under Section 22 (2) (a), i.e., to recover the lands from the person concerned, namely, the 3<sup>rd</sup> respondent herein, and where such recovery is not possible, then from the transferee, i.e, the present appellants. Therefore, the distinction between the Tamil Nadu Act and the Pondicherry Act is writ large and these provisions work in different fields altogether.

14. In the context of the above distinction between the two Acts, viz., the Tamil Nadu Act and the Pondicherry Act, the decision of the Supreme Court in Naganatha Iyer's case (supra) will have no relevance to the facts of the present case as the provision which we are dealing with is not akin to Section 21 of the Tamil Nadu Act.

15. Further, on fact, in para-8 of the order, learned single Judge has noted that in the counter affidavit filed by the respondents, there is a specific statement by the Government that the 3<sup>rd</sup> respondent herein has not sought for exchange and that the third respondent has not only sold the surplus lands, but even the lands that are to be retained by him on his request. On facts, the question that arises is whether appellants/transferees are entitled to move the Government to recover the lands in excess of the ceiling limit from the transferor, viz., 3<sup>rd</sup> respondent and if it is not possible, then to seek recovery of the lands from the transferees, the appellants herein.

16. In such view of the matter, the appellants/transferees have moved the Government, which is evident from the letter of the appellants dated 30.09.09, which has been acknowledged by the Government. However, the said representation has neither been considered in the affirmative nor has it been rejected. The prayer made in the writ petitions is also only to the said effect, to consider the representation made by the appellants herein. Therefore, in view of Section 22 (1) and 22 (2) (a) of the Pondicherry Act, the order passed by the learned single Judge holding that transfer is impermissible and, therefore, the sale or transaction is illegal or void, is per se not correct.

17. Section 22 (1) of the Pondicherry Act though puts a bar that person holding lands in excess of ceiling shall not transfer by sale, gift or otherwise to clear excess lands, which is acquired by the Government under Section 17 of the Pondicherry Act, that has been determined and taken possession

of, also provides that the Authorised Officer has the power to permit in writing such transfer by sale, gift or otherwise.

18. In this case, such an exercise has not been done. Therefore, Section 22 (1) would not directly have any impact insofar as the claim of the present appellants is concerned. All that is sought for by the present appellants, viz., the transferees is that they are entitled to move the Government in terms of Section 22 (2) (a) of the Pondicherry Act seeking the benevolence of the Government to recover lands from such person, who is in law, bound to seek permission before parting with the property and if he has parted with any portion of the lands, such recovery should be first done at the hands of the said person, viz., the transferor and, thereafter, if it is not possible, then recovery should be made from the transferee. In this case, such an exercise has not been taken by the Government though a specific request was made. All that the appellants seek is a mandate to the Government to exercise its power in terms of Section 22 (2) (a) and that right cannot be breached by placing reliance on Section 22 (1) of the Tamil Nadu Act, which is not applicable to the case on hand.

19. To buttress the argument that Section 22 (1) of the Pondicherry Act should not be read in isolation, but it should have a harmonious construction read with Section 22 (2) (a), reliance is placed on the decisions in J.K. Cotton Spinning & Weaving Mills Co. Ltd. - Vs - State of Uttar Pradesh (1961 (3) SCR 185 :: AIR 1961 SC 1170) and Sultana Baig - Vs - Prem Chand Jain (1997 (1) SCC 373). A harmonious reading of the above two sections reveals that while there is a restriction on transfer in terms of Section 22 (1) of the Pondicherry Act, if and when such a transfer takes place, Section 22 (2) (a) provides the manner in which the property should be recovered from such persons, viz., the transferor, and if there is no such property, then only it should be recovered from the transferee.

20. In view of the above legal position, we have no hesitation to hold that the learned single Judge has not taken into consideration the relevance of Section 22 (2) (a) of the Pondicherry Act and merely on the reasoning that Section 22 (1) of the Tamil Nadu Act is a bar, held the transfer illegal and void and has dismissed the writ petition, and therefore the same deserves to be set aside. We further hold that the appellant has made out a case for a mandamus as sought for seeking the benevolence of the Government to exercise its power under Section 22 (2) (a) of the Pondicherry Act.

21. In the result, the writ appeals are allowed and there will be a writ of mandamus as prayed for in the writ petitions.

Consequently, connected miscellaneous petitions are closed.  
However, in the circumstances of the case there shall be no  
order as to costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Secretary to Government  
Union Territory of Puducherry  
Revenue Department  
Puducherry.
2. The Sub Collector  
Office of the Sub Collector (Revenue)  
North-cum-Authorised Officer  
(Land Reforms)  
Puducherry.

+1 cc to Mr.Srinath Sridevan, Advocate, sr.18734  
+1 cc to Government Pleader, Pondicherry, sr.18515

W.A. NOS. 760 &  
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kra 22.04.2016

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