

Authorised Officer, Thanjavur and Another

Vs

S. Naganatha Ayyar and Others

Criminal Appeal Nos. 2542 to 2544 of 1972

(V. R. Krishna Iyer, A. P. Sen JJ)

04.05.1979

JUDGMENT

KRISHNA IYER, J. -

1. The short point of law decided in the long judgment under appeal may justly be given short shrift. But the batch of Civil Revision Petitions allowed by the High Court involves a legal issue of deep import from the angle of agrarian reform and surplus land available for distribution under its scheme that we deem it proper to discuss the core question at some length. If the statutory construction which found favour with the High Court be correct the risk of reform legislation being condemned to functional futility is great, and so the State has come up in appeal by special leave challenging the High Court's interpretation of Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (for short, the Ceiling Act). Presently, we will set out the skeletal facts relating to the civil appeals and the scheme of the Act designed for distributive justice in the field of agricultural land ownership, sufficient to disclose the purpose of the legislation, the mischief it intends to suppress, the reverse effect of the construction put on the key section (Section 22) in the judgment under appeal and the consequent stultification of the objective of the Ceiling Act. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation. For, the story of agrarian re-distribution in Tamil Nadu, as elsewhere, has been tardy and zigzag, what with legislative delays, judicial stays and invalidations, followed by fresh constitutional amendments and new constitutional challenges and statutory constructions, holding up, for decades, urgent measures of rural economic justice which was part of the pledges of the Freedom struggle. It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many, manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme.

2. The Ceiling Act, in its structure and process, follows the common pattern. The object is equitable distribution of land to the landless by relieving those who hold more than the optimum extent fixed by the law. The success of the scheme depends on maximisation of surplus land to be taken over by the State from large landholders. The strategy of fixing a severe ceiling on land holdings was

expected to be paralysed by anticipatory strategems by landholders and so the legislature sought to outwit them and clamped down pre-emptive restrictions on transfers whereby the surplus takeover would be sabotaged. Chapter II prescribes the ceiling on landholdings and Chapter III proscribes certain types of deleterious transfers and future acquisitions. One such provision is Section 22 which falls for immediate dissection. The machinery for working out the scheme includes 'authorised officers' as defined in Section 3(5) of the Ceiling Act. The rest of the infra-structure for implementation of the statutory scheme is not material for our case nor the other chapters relating to compensation, exemptions and the like. Chapter XI provides for appeals and revisions and the High Court, by virtue of Section 83 read with Section 115 of the Code of Civil Procedure, has jurisdiction to entertain revisions against orders of Land Tribunals which enjoy appellate powers over orders of authorised officers in the manner provided. The present appeals are against a common order of the High Court allowing several revision petitions under Section 115, CPC.

3. Now, the respondents before us in the several appeals are persons whose transfers have been held void by the authorised officer and the Land Tribunal but upheld by the High Court on a narrow construction of Section 22 of the Ceiling Act. The alienations took many forms ranging from stridhana to bona fide sale but shared one common attribute that they were executed during the suspect spell, if one may say so, between the date of commencement of the Act and the notified date. The legislature, in its realistic anxiety and pragmatic wisdom, demarcated a lethal zone viz., the period between the two dates stated above when all landholders with lands in excess of the ceiling would desperately salvage their surplus by resort to devices, some bona fide. Some not, but all having the effect of frustrating the legislative objective of freezing holdings as on the date of commencement of the Act and seizing the surplus in terms of the Act for eventual equitable distribution, after payment of statutory compensation.

4. Before embarking on any further discussion of the project or interdicting transfers, as spelt out in Section 22, we may read the provision :

Where on or after the date of 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 except by bequest or, has effected a partition of his holding or part thereof, the Authorized Officer within whose jurisdiction such land, holding of 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.

5. Three semantic alternatives compete for judicial acceptance. The first, which appealed to the Land Tribunal, is that all alienations during the dubious period specified in Section 22, if executed by a holder who, but for such shedding operation or alienation, would have had lands in excess of the ceiling prescribed by the Act, are void because they are sure to defeat the 'surplus' provisions of the Act. The second alternative, which swings to the other extreme but has met with the High Court's approval, virtually salvages all such transfers save sham and mala fide ones, for only if they are obnoxious in that sense can they be caught in the coils of Section 22. The third possible construction, which is in between the two extremes and has been forcefully pressed before us by Shri K. S. Ramamurthi, validates bona fide transfers even during the offending period, the reason being that regardless of their impact on the scheme of the Act or its provisions, the primary object is bona fide fulfilment of the alienor's purposes such as discharge of pressing debts or

borrowing to perform necessitous obligations and not to defeat or thwart the purposes or provisions of the Act.

6. The judicial choice from among these triple possibilities depends on the rules of statutory interpretation. In the present case the basic facts are beyond dispute. The legislature had a defined plan of providing for a ceiling on landholding, taking over the balance and distributing it among the landless according to priorities. In this perspective it defined the "date of the commencement" of this Act in Section 3(11) as meaning the 15th day of February, 1970. It also defined in Section 3(31) the notified date. As stated earlier, the Ceiling Act had a chequered career in court and, indeed, at one stage the whole Act was struck down as unconstitutional. However, now it is immune to attack having been included in the Ninth Schedule and there is no challenge to its vires before us. On account of extensive mischief done by alienations on a considerable scale calculated to undo the public policy behind agrarian reform the legislature felt the necessity to provide in Section 22 that transfers made between April 6, 1960 and October 2, 1962 would be void if they defeated the provisions of the Act. In all the cases before us the transfers which have been ignored by the Authorised Officer fall within this interregnum. That being admitted, the only question is whether the lethal effect of Section 22 operates only in the case of transfers which are sham and specifically intended to defeat the Act or does not affect transfers which are otherwise bona fide or is so pervasive that if the effect of the transfer is to defeat the provisions of the Act, whatever the intent of the parties, the transfer is void and can be ignored vis-a-vis the Ceiling Act and the Authorised Officer may legitimately proceed to compute the surplus area on this basis.

7. The learned Judge adverted to an argument that the Act being a confiscatory one, the public authority "invested with the power to enquire into and to invalidate a transfer should act reasonably, and that such a power should be construed beneficently in favour of the subject who is affected by the statute". This approach, sanctified by tradition and vintage jurisprudence, is inept and inapplicable when we consider agrarian reform legislation whose avowed purpose is to take away as much extent of land as policy dictates so that distribution thereof among the landless may be achieved. When a whole legislation is geared to deprivation of property, subject to payment of compensation, rules which have frowned upon confiscatory legislation cannot apply at all. We are concerned with a Republic created by the people of India, with a social transformation where the State is not antagonistic to the citizen but harmonises individual interest with community good. The jurisprudential principles in such a situation cannot be the same as have been inherited from a culture which postulates the State versus the subject. We do not explore the aspect of the law further as we are satisfied that the answer to the specific question raised before us flows directly from a reading of the section in the light of well-established rules of interpretation.

8. Section 7 is a key provision and runs as follows :

On and from the date of commencement of this Act, no person shall, except as otherwise provided in this Act but subject to the provisions of Chapter VIII be entitled to hold land in excess of the ceiling area :

Provided that in calculating the total of land held by any person, any extent in excess of the ceiling area and not exceeding half an acre in the case of wet land and one acre in the case of dry land shall, irrespective of the assessment of such land, be excluded.

Section 8 directs every person who holds land in excess of 30 standard acres to submit a return with specified particulars. Section 18 is the culmination and provides for the publication of a notification

to the effect that the surplus land with each landholder is required for a public purpose. Thereupon such land shall be deemed to have been acquired for a public purpose and shall vest in the Government.

9. Chapter III is a protective armour created by the statute with prohibitions and proscriptions. In particular, Section 22, which we have quoted earlier, contains an interdict. If any transfer, contrary to its tenor, is created it can be voided by the Authorised Office. The whole purpose is to make available land with Government for its equitable dispensation according to the statutory plan. Section 94 is relevant in this context.

10. April 6, 1960 is the date of commencement of the Act. October 2, 1962 is the notified date. Transfers in between these two dates have been executed by the respondents in the various appeals before us. The concrete question is whether Section 22 has the effect of rendering such transfers invalid ipso facto or whether there is need for further proof that such transfers are "sham, nominal and bogus". The view taken by the High Court is that

Section 22 seems to cover only those sham, nominal and bogus transfers which are only intended to defeat the provisions of the Act. If the legislative intention is also to invalidate all bona fide transactions during the relevant period, it would have made certain consequential provisions as to what are the rights of the transferor and the transferee in relation to the property conveyed, and how the resultant equities between the transferee and the transferor have to be worked out. This view that Section 22 will cover only transactions of sham, nominal and bogus character which are intended only to defeat the provisions of the Act will not be inconsistent with the object provided in Section 7.

11. The learned Judge seems to take a liberal view that transactions entered into in anticipation of the Ceiling Act will not be hit by the provisions preventing such transfers except where they are mala fide or colourable. The reason partly turns on semantics and the court argues with lexical support :

The word "defeat" normally means 'overcome, that, evade, the word "defeat" in Section 22 has to be taken as having been used to import sinister motive. Maxwell on the Interpretation of Statutes, twelfth edition, after stating that the courts will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net, that the statute has to be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of falling outside the Act.

The conclusion categorically reached by the High Court virtually emasculates Section 22 as we understand its object and import. The learned Judge winds up with these words :

On a due consideration of the matter, I hold that under Section 22 of the Act the authorised officer is entitled to declare as void only those transfers which are sham and nominal entered into with the avowed object of defeating the provisions of the Act, without any bona fide intention to transfer title. So in the light of the view expressed above the facts of each case have to be considered.

Section 22, literally read, leads only to one conclusion, that any transfer, bona fide executed or not,

is liable to be declared void by the Authorised Officer "if he finds that the transfer defeats any of the provisions of this Act". There is not the slightest doubt that severally and cumulatively the provisions of the Act seek to make available the maximum extent of land, in excess of the ceiling, to be vested in Government for fulfillment of its purposes. Chapter II contains a fasciculus of provisions in this behalf and if any transfer carves out of the surplus area some land, pro tanto, the provisions of the Act are defeated. Indeed, it is not seriously disputed that such will be the conclusion if we do not read into the provisions either the condition that it does not apply to bona fide transfers, as Shri Ramamurthi would have it, or does not apply to any transfers other than sham, nominal or bogus transfers, as the High Court would have it. A policy-oriented interpretation tallies with the literal construction in the present case. The mischief rule in Heydon case and the grammatical construction which is the Golden Rule converge to the same conclusion in the present case.

12. The policy of the law of land reform with drastic limit on holdings often drives large holders to evade by manouvres. They make gifts, execute sales or settlements, enter into other dealings to save their properties from being taken by the State, May be in a few cases, the owner has real necessity. But why sell only on the eve on land legislation ? Why execute deeds, though for good purposes, only where the bill fixing ceilings is round the corner ? By and large, the strategies of extrication of holdings from the arm of the law is the reason that prompts sudden affection for making gifts, sudden realisation of debts due and sudden awareness of family necessity. The legislature, astute enough not to be outwitted in its objective, puts a blanket ban on transfers which, in effect, defeat its provisions. This may cause hardship to some but every cause claims martyrs. Individual trauma is inevitable while ushering in new economic order. This is the rationale of Section 22 of the Ceiling Act. To allow the sense of the text and to mix alien concepts is to debase the statutory metal. Likewise, laws are not value-free and so he reads the symbols of words best who projects in the process the values of the legislation as distinguished from his own. Reading other values into the legislators' words may judically demonetize the statute and break the comity between constitutional instrumentalities.

13. The current and correct view of the interpretative process is that words must be given their 'literal' or 'ordinary' meaning unless there are compelling reasons, recognised by canons of construction, to the contrary. It must be remembered that the judicial rule of law for interpreting statutes applies the grammatical approach, thereby to bring out the value judgment incorporated in the statute itself. Sometimes it is called the 'equity of the statute'. As Prof. R. B. Stevens of the Yale University has pointed out :

Whenever the Judges purport to depart from the literal or ordinary meaning, and apply the mischief rule or the golden rule, there is a danger that in place of those irrelevant criteria, the canons of construction they have more obviously substituted their own (perhaps more harmful) impressions, views, prejudices or predispositions. Such conflicts between what parliament intended and what the judges assumed Parliament to have intended have long been appreciated; (Modern Law Review, Vol. 28, 1965, p. 525)

14. Those who have reflected on the meaning of meaning have said that, "Words 'mean' nothing by themselves" (C. Ogden and I Richards : Th Meaning of Meaning 9 (10th Edn. 1956). They convey policy and the Judge who interprets must seek the intent of the legislature by gaining an insight into this policy and making it manifest through the process of construction. Looking at the words of Section 22 in the light of the scheme of prohibition of transfers to preserve the surplus

lands for distribution, we find no justification for importing into Section 22 more than its words convey. The section says what it means, nothing more, nothing else. A simple scan of the provision reveals that any transfer, gift, surrender, settlement or other alienation referred to in the section may be declared void by the Authorised Officer "if he finds that the transfer or the partition .. defeats any of the provisions of this Act." The trichotomy is obvious. There must be a transfer or other alienation. It must have taken place during the period mentioned in the section. It must have the effect of defeating any of the provisions of the Act. If these three elements are present, the Authorised Officer must void the transfer. There is no room for importing a fourth principle that the transfer should be 'sham, nominal or bogus'. Nor indeed is there any additional consideration that if the transfer is bona fide for family necessity or other urgency then it is good, even though it defeats the provisions of the Act. We cannot amend the section or dilute its imperatives, scared by the consequences or moved by extraneous sympathies. Subconscious forces and individual prepossessions have a subtle way of entering the interpretative verdict of the Judge. We have to be constantly careful to exclude such intrusions. Moreover, when the whole purpose of the section is to prevent any alienation which defeats any of the provisions of the Act, it is impermissible to introduce any requirement, other than is mentioned in the section, as a condition for its operation. Obviously, the provision seeks to provide social justice for the landless and it defeats the purpose if, by the interpretative process, soft justice to large landholders is brought about. We consider the 'literal' meaning of the section to be that any transfer or other alienation mentioned in the section which reduces or impairs the otherwise available extent of surplus land beyond the ceiling "defeats . . . the provisions of this Act". This is the plain meaning of the section which gives no room for doubt or justification for importation of any further condition like sham, bogus, etc.

15. A return to the rules of strict construction, when the purpose of the statute needs it, is desirable, especially with a view to give effect to the intention of the legislature. We are reminded of Lord Denning's interesting remarks in his recent book "The Discipline of Law" under the heading "I am a Portia Man".

In justification of his view Russel. L.J., quoted a passage from Shakespeare. It is worth recording because there are lessons to be drawn from it - as there often are from Shakespeare.

I may perhaps be forgiven for saying that it appears to me that Lord Denning. M.R. has acceded to the appeal of Bassanio in the Merchant of Venice.

Bassanio

And, I beseech you,

Wrest once the law to your authority.

To do a great right, do a little wrong.

But Portia retorted :

It must not be; there is no power in Venice

Can alter a decree established :

It will be recorded for a precedent,

And many an error, by the same example,

Will rush into the State : it cannot be.

Then said Russel, L.J. :

'I am a Portia man'.

I cannot believe that Russel, L.J. would be a 'Portia man' if it meant aligning himself with Shylock - in support of a strict law of penalties which could not be relieved by equity.

To be truly a 'Portia man' the lawyer should follow the way in which Portia avoided an unjust decree. Not to let the words of the deed be the masters : but so construe them - adapt them as the occasion demands - so as to do what justice and equity require. This is how she turned the tables on Shylock :

It is in this denouement that I would follow the example of Portia - I too am a Portia man.

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.

18. The detailed discussion of the High Court on many other aspects of the Act do not affect the core of the matter and cannot deflect us from the conclusion we have arrived at. The appeals are allowed but in the light of the earlier direction of the court the State will pay costs of the respondents.

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