

CASE NO.:
Appeal (civil) 4965 of 1997

PETITIONER:
The Land Commissioner Madras & Anr.

RESPONDENT:
Rajeswari

DATE OF JUDGMENT: 03/04/2003

BENCH:
K.G. Balakrishnan & G.P. Mathur.

JUDGMENT:

JUDGMENT
G.P. Mathur, J.

This appeal by special leave has been filed by the Land Commissioner, Madras & Anr. challenging the judgment and order dated 13.2.1997 of a Division Bench of Madras High Court by which the writ appeal filed by the appellants was dismissed and the judgment and order dated 15.11.1989 of a learned Single Judge passed in favour of the respondent was affirmed.

Proceedings under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as "the Act") were initiated against R. Vivekananda Reddiar, who is the husband of the respondent, Rajeswari. The Authorised Officer declared 3.06 standard acres of land as surplus and a final statement was published in the Gazette on 13.8.1980. R. Vivekananda Reddiar preferred a revision petition under Section 82 of the Act, which was dismissed by the Land Commissioner vide order dated 7.5.1981 on the finding that the family consisted of six members and the respondent, Rajeswari, was holding more than 5 standard acres of land and, therefore, she was not to be considered as a member of the family in view of Section 5(4)(b)(i) of the Act. The respondent Rajeswari preferred a writ petition under Article 226 of the Constitution before Madras High Court challenging the judgment and order of the Land Commissioner by which the final statement published in the Gazette was affirmed. The writ petition was allowed by a learned Single Judge on 15.11.1989 and the order declaring 3.06 standard acres of land as surplus was quashed. The writ appeal preferred by the Land Commissioner and the Authorised Officer (Land Reforms) against the said judgment was dismissed by a Division Bench on 13.2.1997.

Learned counsel for the appellants has submitted that the family of R. Vivekananda Reddiar consisted of six members including his wife Rajeswari who in her own right held 25.15 ordinary acres equivalent to 13.06 standard acres of land as her stridhana land while R. Vivekananda Reddiar held 15.19 ordinary acres equivalent to 8.23 standard acres of land. The family consisted of husband, wife and four children and in normal course the ceiling limit would be 20 standard acres but as Rajeswari had in her own right stridhana land in excess of 5 standard acres, therefore, by virtue of Section 5(4)(b)(i) of the Act, she shall not be deemed to be a member of the family and, therefore, she had to be excluded from consideration. Learned counsel has further submitted that in view of Section 5(4)(a) of the Act only a maximum extent of 10 standard acres can be included in the holding of the family as stridhana land and where the stridhana land to the extent of 10 standard acres held by a female member has been included in the family holding, the said female member is not entitled to hold any stridhana land in addition to the extent which has been allowed to be included under Section 5(4)(a) of the Act. Learned counsel for the respondent, on the other hand, has submitted that proceedings had

been initiated against R. Vivekananda Reddiar and not against the respondent Rajeswari and as such the land held by her as her stridhana land could not have been declared as surplus. Learned counsel has further submitted that in view of Section 5(4)(a) of the Act, additional benefit is given to the family member holding stridhana land and the only effect of Section 5(4)(b)(i) is that a female member holding stridhana land may not claim double benefit both under Sections 5(1)(b) and 5(4)(a) of the Act and not that she shall not be deemed to be a member of the family.

Before we examine the contentions raised by the learned counsel for the parties, it is necessary to set out the relevant provisions of Act, which read as under :

"Sec. 3(14) "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.

Explanation I - xxx xxx (Omitted as not relevant)

Explanation II - xxx xxx (Omitted as not relevant)

Sec. 5. Ceiling area (1) (a) Subject to the provisions of sub-sections (3-A), (3-B) and (3-C) and of Chapter VIII, the ceiling area in the case of every person (other than the institutions referred to in clauses (c) and (d) and subject to the provisions of sub-sections (3-A), (3-B) (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 15 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 [(3-A), (3-B), (3-C)] (4) and (5) and of Chapter VIII, be 15 standard acres together with an additional 5 standard acres for every member of the family in excess of five.

(c) xxx xxx (Omitted as not relevant)

(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) xxx xxx (Omitted as not relevant)

(4) (a) Subject to the provisions of sub-section (5), where the stridhana land held by any female member of a family together with the other land held by all the members of that family, is in excess of 15 standard acres, the female member concerned may hold, in addition to the extent of land which the family is entitled to hold under sub-section (1), stridhana land not exceeding 10 standard acres :

Provided that where any extent of stridhana land held by a female member is included in the extent of land which the family is entitled to hold under sub-section (1) and in case where the extent so included is

- (i) 10 or more than 10 standard acres, she shall not be entitled to hold any stridhana land in addition to the extent so included; or

(ii) less than 10 standard acres, she may hold in addition to the extent so included an extent of stridhana land, which together with the extent so included, shall not exceed 10 standard acres.

(b) Where the extent of stridhana land held under clause (a) by any female member of a family consisted of more than five members

(i) is 5 or more than 5 standard acres, she shall not be deemed to be a member of that family for the purposes of clause (b) of sub-section (1); or

(ii) is less than 5 standard acres, the additional extent of 5 standard acres allowed under clause (b) of sub-section (1) be reduced by the same extent as the extent of stridhana land so held.

(5) Notwithstanding anything contained in sub-section (1) and in sub-section (4) and in Chapter VIII the total extent of the land held or deemed to be held by any family shall in no case exceed 30 standard acres."

A plain reading of the above quoted provisions of the Act would show that under Section 5(1)(a) and (b), the ceiling area in case of a family consisting of not less than 5 members is 15 standard acres and where the family consists of more than 5 members, subject to the provisions referred to in sub-clause (b), the family will be entitled to additional 5 standard acres of land for every member of the family in excess of 5. In view of Section 5(5) of the Act, the total extent of the land held by a family shall in no case exceed 30 standard acres. Section 5(2) lays down that all 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. Section 5(4)(a) provides that where the stridhana land held by any female member of a family together with the other land held by all the members of that family is in excess of 15 standard acres, the female member concerned may hold, in addition to the extent of land which the family is entitled to hold under sub-section (1), stridhana land not exceeding 10 standard acres. It is important to note that the language used in this provision is that the female member concerned may hold additional stridhana land not exceeding 10 standard acres and, therefore, this provision has been enacted to give an additional advantage to the family where the female member holds stridhana land in her own right.

Learned counsel for the appellants has submitted that as the respondent Rajeswari had stridhana land in her own name, which was more than 5 standard acres, she could not be deemed to be a member of the family for the purposes of Clause (b) of sub-section (1) and, therefore, in the present case though the family consisted of six members (husband, wife and four children), in view of the aforesaid provision the family would be entitled to only 15 standard acres of land. In our opinion the contention raised is wholly misconceived. The clear import of Section 5(4) (a) of the Act is that where the stridhana land held by any female member of a family together with the other land held by all the members of that family is in excess of 15 standard acres, the female member concerned may hold an additional 10 standard acres of stridhana land. It may be noted that this provision, namely, Section 5(4)(a) does not make any reference to the number of members of the family and this advantage of allowing a female member to hold additional stridhana land not exceeding 10 standard acres is given in every case. The purpose of enacting Section 5(4)(b)(i) is that a female member having stridhana land may not get double advantage, namely, by claiming 5 standard acres of additional land under Section 5(1)(b) and also 10 standard acres of additional land under Section 5(4)(a) of the Act. The legislature has made it more than clear by using the expression "for the purposes of clause (b) to sub-section (1)" in Section 5(4)(b)(i) of the

Act. The combined effect of Section 5(1) (a), Section 5(4)(a) and Section 5(4)(b) (i) is that the family is entitled to hold 15 standard acres of land and in addition, the wife Rajeswari in her own right is entitled to hold stridhana land to the extent of 10 standard acres. In the case in hand the total holding of the family is less than the prescribed ceiling limit of 15 standard acres plus 10 standard acres and, therefore, the surplus declared by the Authorised Officer which was upheld by the Land Commissioner is clearly illegal.

Learned counsel for the appellants has next urged that in view of Section 5(4)(a) and the proviso to this sub-section, the female member cannot hold stridhana land in excess of 10 standard acres and since the respondent Rajeswari had stridhana land in excess of 10 standard acres, the same was rightly declared as surplus and the High Court erred in holding to the contrary and in quashing the order by which 3.06 standard acres of land of the respondent was declared as surplus. In our opinion, the contention raised has no substance. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as the Preamble shows, has been enacted to provide for the fixation of ceiling on agricultural land holdings and for certain other matters connected therewith. Chapter II of the Act deals with fixation of ceiling on land holdings. Section 5 has fixed the ceiling area with respect to a family and the word "family" has been defined in Section 3(14) of the Act. The Scheme of the Act clearly shows that the ceiling area has to be determined with reference to a family keeping in view the number of members thereof and the provisions of the Act. The fact that Section 5 makes reference to a female member having stridhana land in her own name would not mean that any ceiling on land holding can be applied to or surplus land can be determined of an individual female member of a family having stridhana land. Such a female member having stridhana land in her own name is also a member of the family within the meaning of the main part of Section 3(14) of the Act and there is absolutely no scope or occasion for interpreting Section 5(4)(a) of the Act in a manner which may have the effect of applying any ceiling to only stridhana land held by a female member. If the contention raised by learned counsel for the appellants is accepted, it may lead to queer results. In a case where the family consists of six members and a female member holds 5 standard acres as her stridhana land, while the remaining members hold 15 standard acres, no surplus land will be declared but if the female member holds 15 standard acres as her stridhana land while the remaining members hold 5 standard acres, 5 standard acres of the female member will be declared as surplus though in both the cases the total land held by the family is only 20 standard acres. This kind of interpretation will make the provisions of the Act wholly arbitrary and must be avoided. The appellants, therefore, cannot treat the respondent's holding as a separate unit and after taking into account 10 standard acres of land out of her stridhana land treat the balance as surplus in her hand.

For the reasons mentioned above, we are of the opinion that the view taken by the learned Single Judge and also by the Division Bench in writ appeal, which was filed by the appellants is perfectly correct and calls for no interference. The appeal is accordingly dismissed with costs.