

(1954) 12 AP CK 0012
In the Andhra Pradesh High Court
Case No : Case Ret. No. 54 of 1954
Estates Abolition Act

Date of Decision : 17-12-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151, 49

Citation : AIR 1957 AP 169

Hon'ble Judges : Umamaheswaram, J;Chandra Reddy, J

Bench : Division Bench

Advocate : M. Seshachalapathy, Addl. Govt. Pleader, for the Appellant;

Judgement

Chandra Reddy, J.—The reference is made by the Chairman, Estates Abolition Tribunal on the question of the validity of the present practice of disbursing the advance compensation amounts and interim payments without waiting for the expiry of appeal time, except in cases where orders of stay are obtained by the parties either from this Court or from the Tribunal. It is stated in the letter of reference by the Chairman that a doubt has been raised in his mind with regard to the correctness of this procedure, having regard to the provisions of Section 53 of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1943.

2. Section 53 of the Act recites that "all payments made out of the compensation deposited in the office of the Tribunal u/s 41 shall be made by it in accordance with its orders and decisions subject to the modifications, if any, made on appeal u/s 51". The question posed by the Chairman is whether, in view of the provision that payment should be made in accordance with its orders and decisions of the Tribunal, subject to modifications, if any, made on appeal u/s 51, the disbursements should not be postponed till the expiry of the appeal time or till the result of the appeal is known, if an appeal is filed against the order or the decisions of the Tribunal.

3. In my opinion, the existing practice is quite valid and does not need any change. All that Section 53 means is that the orders passed by the Tribunal in regard to payments are subject to the result of an appeal, if any, against such orders. This does not require the postponement of the payment just as a decree

of a civil Court, against which an appeal is filed and pending does not require to be stayed, merely by reason of such an appeal being filed. Under o. 49, it. 5, Civil P. C, the filing of an appeal does not operate as stay of proceedings under a decree or order appealed, from, except so far as the appeal. late Court may order nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree. It is only in cases where stay is granted by the appellate Court that the execution of such a decree is put off.

4. A question may be asked as to whether the Tribunal has got powers to require a party who has been paid compensation in accordance with its decision, to bring back the money into Court, in the absence of a provision similar to the one embodied in Section 144, Civil P. C, or of inherent jurisdiction conferred by Section 151 of the same Code. It looks to us that the Tribunal can pass an order for restitution in view of R. 2 of the Rules framed u/s 67, Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Rule 2 provides that the proceedings of a Tribunal shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908, particularly to

- (a) the issue and service of subpoenas,
- (b) the examination of parties and witnesses,
- (c) the production of documents and
- (d) the passing of orders.

By virtue of this rule, the provisions of the CPC are attracted to proceedings pending before the Tribunal, including those relating to restitution. That being the situation, there is no hardship caused to any party by the payments being made to the various interested persons mentioned in the relevant sections of the Act, either before the expiry of the appeal time or before the disposal of the appeal, if appeal is filed, against the decisions of the Tribunal. From what precedes, the prevailing practice can be continued and it does not need any change or alteration. The reference is answered accordingly.

5. We are thankful to the Government Pleader for the assistance he has given us in answering the reference.