

(1963) 04 MAD CK 0012
In the Madras High Court

M.S. Chockalinga Chettiar and Others	APPELLANT
Vs	
Navaneethakrishna Sivasubramania Hirudalaya Marudappa Pandayan and Others	RESPONDENT

Date of Decision : 18-04-1963

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 51(1)

Citation : (1964) ILR (Mad) 110 : (1964) 77 LW 143 : (1964) 1 MLJ 340

Hon'ble Judges : S. Ramachandra Iyer, C.J.; S. Ramachandra Aiyar, C.J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.—These appeals filed u/s 51(1) of the Madras; Estates (Abolition and Conversion into Ryotwari) Act, 1948,

raise a question as to-the right of a mortgagee of an estate which had been taken over by the Government under the provisions of the Abolition Act

to claim the interim compensation amount deposited by the Government. The appellant had obtained a mortgage decree over the Uthumalai and

Surandai estates in Tirunelveli district. These estates were taken over by the Government under the provisions of the Abolition Act-Under the

compromise decree, the history of which is"given in the decision, Navaneethakrishnaswami Devasthanam v. Rtikmani & Co. (1955) 2 M.L.J. 339

the appellant was entitled after payment of certain others to enforce his mortgage decree for payment of his dues.. The estates were notified and

taken over under the provisions of the Madras Estates-Abolition Act on 3rd January, 1951. Advance compensation which was deposited by the

Government with the Tribunal was paid over to the appellant. Prior to fasli 1362 there were deposits of interim compensation amount u/s 50-of the

Act by the Government. The appellant by way of abundant caution not. merely"

applied to the Tribunal for payment out of those compensation amounts but also applied to the civil Court which passed the decree for attachment of those amounts to satisfy his outstanding decree. Such attachments were effected and the moneys which were with the Tribunal were duly transmitted to the civil Court which in turn paid over those amounts to the appellant. Latter for faslis commencing from 1363 to 1366 the Government deposited certain amounts as and by way of compensation. The appellant applied to the Tribunal for payment out of those amounts. The Tribunal rejected this application on the ground that although the mortgagee might have a right to obtain from and out of the advance compensation, what was due to him he would not have such a right in regard to amounts deposited as and by way of interim compensation. That, according to the Tribunal would be the property of the landholder (mortgagor) whose estate had been taken over, and that the appellant could if at all, have recourse against the same only if he were to obtain an attachment from the Court which passed the decree.

2. In these appeals Mr. Sundaram Iyer, appearing for the mortgagee contends, that this view of the Tribunal is directly contrary to the provisions of

Section 50(2) of the Act which obliges the Tribunal to pay the amounts so deposited to the principal land-holder and to the other persons referred

to in Section 44(1) of the Act. A reference to Section 44(1) would show that the mortgagee of the estate will be one of the persons to whom

compensation amount will be payable for the reason that the mortgages would stand wiped out by reason of the taking over of the estate by the

Government. In our view Section 50(2) is too clear to require argument. Interim compensation amount will have to be paid to all those persons

who would be entitled to be paid u/s 44(1) of the Act, out of the advance compensation amount. It is only on that view that the decision in O.R.M.

Om. Am. Chidambaram Chettiar by his authorised agent S. Narasimha Iyengar Vs. S. Venkatesa Iyengar (since adjudged insolvent) and Others,

proceeds further to consider whether a subsequent mortgagee can have those rights.. The learned Judges held that having regard to the scheme of

the Act the secured creditor referred to in Section 42 would also be those whose security for the sums lent extended over the estate at the time

when the estate is taken over. The Andhra High Court in its decision in

Lakshminarayana v. Lakshmi Venkayamma (1956) 2 An. W.R. 445 : ILR

(1956) A.P. 314 is even more specific when it pointed out that in the case of interim payment as and by way of compensation in regard to estates

taken over the Tribunal is empowered to-distribute the same between the persons described in Section 44(1) of the Act namely, the land-holder

and all those persons whose rights or interests in the estate stood transferred to the Government u/s 3(b) of the Act. The mortgagee is.

undoubtedly one such person. We cannot therefore, agree with the view taken by the Tribunal that the appellant would not be entitled to be paid

out his dues-under the decree from and out of the amounts deposited as and by way of interim compensation. There is no point in the contention

which found favour with, the Tribunal that because the appellant had attached the interim compensation amounts on prior occasions he should

adopt a similar course in the present case as well. The mortgage decree had not been extinguished at the time when the estate was. taken over by

the Government. The Statute confers a right under Sections 42, 44(1) and 50 of the Act on the mortgagee to claim from and out of the

compensation amount. That right cannot be held to be taken away simply because the appellant on a prior occasion by way of abundant caution

attached the amounts through the process of the civil Court. Mr. T.R. Mani appearing for the contesting respondents who have claims for

maintenance from and out of the estate raised two contentions in support of the judgment of the Tribunal. The first was-that the decree dated 24th

March, 1945, should be held to be barred by limitation by reason of the provisions of Section 48 of the Civil Procedure Code. There is however

no execution of any decree involved in the case. On the date when the estate was taken over there was a decree the execution of which was not

barred by limitation. That being so, the decree-holder will have all the rights of the mortgagee-creditor as on that date. His rights stood extinguished

by reason of the provisions of Section 3 of the Abolition Act. By reason of such extinguishment the statute provided fresh rights in his favour by

making him entitled to draw from and out of the compensation amounts what is due to him. What the appellant is seeking in the present

proceedings is the enforcement of this statutory right to which he became entitled by reason of his claim under the decree not being barred by

limitation on the date when the estate was taken over. This does not amount to enforcing the decree as such in execution. Section 48 of the Civil

Procedure will not therefore, apply to "the present case.

3. It was then contended that Section 50(2) will have to be read with Section 50(8) of the Act which stated that interim payments made under the

section should not be deemed to constitute any part of the compensation amount which the Government were liable to deposit u/s 41(1) of the

Act. Basing on this it was sought to be argued that as the interim payment is not regarded as compensation amount under the Act, the mortgagee

will not be entitled to have recourse against that amount. This argument, however, runs counter to the express provisions in Section 52 of the Act.

Apart from that consideration we are of opinion that Section 50(8) was enacted for different purpose altogether. While Section 50(2) creates

rights in certain persons to have their shares in the interim compensation amount, Section 50(8) is intended to preclude the Government from taking

credit for interim payments towards compensation which they are liable to pay for the taking over of the estate under the provisions of the Act. The

two provisions being intended for different purposes cannot be read together in any manner so as to nullify the effect of each other. Learned

Counsel then contended that as interim payment is neither advance compensation nor an income (vide the decision in *R. Shanmugha Rajeswara*

Sethupathi Vs. The First Additional Income Tax Officer, it could be regarded only as payment made for the benefit of the mortgagor and the only

way by which the appellant could get at the money will be to enforce his decree through the process of civil Court by attachment, etc. This

contention, however, ignores the express provisions contained in Section 50(2) of the Act. It makes no difference whether the interim payment is

regarded either as compensation or as income or of any other variety of payment. The statute creates an obligation on the part of the Government

to make interim payment in certain circumstances and it provides that it shall be paid over to persons specified in Section 50(2). We have already

referred to the fact that Section 50(2) will comprehend the case of the mortgagee. The appellant in the present case as mortgagee will be entitled to

take what is due to him out of the interim payment of compensation amount by reason of that provision. The appeals have, therefore, to be allowed

and are accordingly allowed. There will, however, be no order as to costs.