

(1979) 01 MAD CK 0056
In the Madras High Court

Neelavarma Iyer (died) and Others

APPELLANT

Vs

Srinivasa Iyer

RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 41

Citation : (1979) 2 MLJ 249

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—One Thiruvankadathammal was possessed of certain inam villages as life estate holder which were taken over under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. In respect of those inam villages, advance compensation had been deposited by the State Government u/s 41 of the Act with the Estates Abolition Tribunal, Madurai. On a claim made by the respondent who is the same in all these petitions, the amounts were paid out to him by the Tribunal after due enquiry, u/s 53. The claim before the Tribunal by the respondent was that he is entitled to compensation on the basis of a settlement deed executed by the service inam holder, Thiruvankadathammal.

2. Thereafter disputes arose between the respondent and the petitioner herein as to who is entitled to succeed to the estate held by Thiruvankadathammal. The petitioner claimed that under the will of Thiruvankadathammal he is entitled to succeed to her estate and that the respondent cannot claim any interest on the basis of the alleged settlement deed said to have been executed by her. Since the respondent disputed the claim put forward by the petitioner, the latter filed O. S. No. 33 of 1962 on the file of the District Munsif's Courts, Madurai for a declaration of his right to succeed to the estate of Thiruvankadathammal on the basis of the will executed by her in his favour. Though that suit was dismissed by the trial Court, there was an appeal against that judgment in A. S. No. 255 of 1965 on the file of the Sub-Court, Madurai. In that appeal, the petitioner succeeded in establishing his claim on the basis of the will set up by him to

succeed to the estate of Thiruvankadathammal as against the respondent. The respondent took the matter in Second Appeal No 830 of 1966 to this Court which, however, failed. The result of these proceedings is that the petitioner has been declared as successor to the estate of Thiruvankadathammal as against the respondent.

3. Subsequent to his succeeding in the civil suit wherein he got a declaration that he is entitled to succeed to the estate of Thiruvankadathammal, the petitioner filed four O. Ps., before the Estates Abolition Tribunal for directions to the respondent to redeposit the amounts earlier withdrawn by him, purporting to be u/s 54 (F) of the Act read with Section 144 of the Code of Civil Procedure. The case put forward by the petitioner before the Tribunal for redeposit of the sums drawn by the respondent is that he has been declared by the civil Court to be entitled to succeed to the estate of Thiruvankadathammal and that therefore the advance compensation amounts which have been wrongly paid to the respondent should be directed to be redeposited to the credit of O.P. No. 691 of 1952. The said petitions were opposed by the respondent on the ground that such petitions are not maintainable in law. After hearing the arguments of the counsel on the preliminary point as to the maintainability of the petitions, the Tribunal held that since it has no power to review its own earlier orders directing payment out of the amounts to the respondent, the petitions for redeposit cannot be maintained. The orders passed by the Tribunal have been challenged in these revision petitions.

4 According to the learned Counsel for the petitioner the Tribunal is in error in holding that the petitions for redeposit are not maintainable and that, though the Tribunal has no power of review as has been held by this Court in B.V. Nanja Raja and Another Vs. Lalitha Ammal and Another, still the Tribunal can act u/s 54 (F) which specifically deals with a situation where payments have been made by the Tribunal to a wrong person, and says that the amounts wrongly paid can be recovered as arrears of land revenue. According to the learned Counsel the object of Section 54 (F) stands completely defeated if the Tribunal denies itself the power to call back the amount which it has paid to a wrong person. The question is whether this contention of the learned Counsel for the petitioner can be accepted as sustainable.

5. The learned Counsel does not dispute the legal position that the Tribunal does not have the power to review its own orders as there is no specific power of review conferred on it under the provisions of Tamil Nadu Act XXVI of 1948. As a matter of fact, there are at least two decisions of this Court, one in B.V. Nanja Raja and Another Vs. Lalitha Ammal and Another, and Anr. in Mayilsami Gounder Vs. Rammoorthi Chettiar and Another, specifically holding the Tribunal has no power of review as the provisions of the Act do not confer a power of review on the Tribunal. Therefore it is clear that the Tribunal is powerless to go behind its own order and to call back the amount it had paid earlier to the respondent. It is also equally clear that Section 144 of the Code of Civil Procedure, cannot be

applied to the facts of this case. Apart from the question as to whether Section 144 of the Code of Civil Procedure, is applicable to the Tribunal or not, there is no question of the decision of the Tribunal being reversed so as to enable the petitioner to claim the amounts which were already paid to the respondent by the Tribunal on the ground of restitution.

6. The only question then to be considered is whether the Tribunal can act u/s 54 (F) of the Act and direct the respondent to redeposit the amounts which were wrongly paid to him. On a due consideration of the matter, I am inclined to take the view that Section 54 (F) cannot be taken to confer on the Tribunal either a power of review or a power to rectify a mistake in its earlier order or to act independently to call back the amounts which it had already paid to a particular person after due enquiry u/s 53. It cannot be disputed that the provisions of the Act deal specifically with the manner of payment of advance compensation. Section 40 of the Act prescribes the manner in which the compensation payable to any person under the Act may be paid Section 41 directs that the Government shall deposit the compensation in respect of each estate which has been taken over under the Act, in the office of the Tribunal. Section 43 enjoins on the Tribunal to conduct enquiry as to the person to whom the compensation amount is payable or as to the persons between whom it should be apportioned. Such determination by the Tribunal is made the subject of an appeal before a Special Tribunal u/s 51. Section 53 deals with the disbursement of compensation as per the directions of the Tribunal. The same procedure has to be adopted in the matter of payment of advance compensation as well. The payment of advance compensation is dealt with under Sections 54-A to 54-H.

7. In this case, after following the procedure set out above, the Tribunal, had paid the amounts to the respondent in the earlier proceedings. Now it is found that the respondent is not the person actually entitled to receive the said sum from the Tribunal and that the petitioner is the person justly entitled to receive the same as per the decision of the civil Court. As already pointed out, the provisions of the Act do not confer any power on the Tribunal to review its own order. Therefore, even if the Tribunal has passed erroneous orders and has directed payment of the compensation to persons who are not entitled to receive the same, such orders cannot be said to be null and void. As a matter of fact, Section 64 (c) clearly gives a finality to the order passed by the Tribunal. Section 64 (c) says that any order passed by an authority in respect of matters to be determined by it for the purpose of this Act shall be final subject only to any appeal or revision provided by or under the Act. Admittedly, the earlier orders passed by the Tribunal directing the payment of the compensation to the respondent had not been successfully challenged by filing appeals before the Special Tribunal. Therefore the earlier orders passed by the Tribunal directing the payment of the amount of compensation to the respondent have become final u/s 61-(c). In view of this position, unless the statute specifically enables the Tribunal before whom the present applications for re-deposit have been filed to set aside its earlier orders and to reopen the proceedings, the Tribunal is

powerless to entertain these petitions filed by the petitioner for a direction to the respondent to redeposit the amount. So long as the earlier order of the Tribunal, stands and has reached a finality under the provisions of the Act, there is no question of the Tribunal directing the redeposit of the amount paid to the respondent ignoring its earlier order.

8. It cannot be disputed that Section 54-F of the Act cannot be interpreted in isolation and that the scope of that Section has to be understood in the light of the other provisions of the Act. which have already been referred to. If Section 54-F is understood as conferring a power on the Tribunal to rectify the mistake in paying the amount to the respondent and to call back the amount from him, then that section should be taken to confer a power of review on the Tribunal. But it has been uniformly held by the Court that the provisions of the Act do not confer any such review power to the Tribunal. Therefore Section 54 F has to be understood as not conferring any review power on the Tribunal. Apart from this, the language adopted in Section 54 F does not also indicate that the Legislature intended to confer a power on the Tribunal to recall the amount paid to a claimant after due enquiry and to consider the question of disbursement once again. Section 54-F says that where any payment made to any person is subsequently found to be not due to him, the amount which is found to be not due shall be recoverable as if it were an arrear of land revenue. Though the language adopted in Section 54-F appears to be somewhat wide so as to cover all payments made under the Act, it is not possible for the Tribunal to apply Section 54-F and call back the amount which it had already paid to certain claimants after due enquiry. If Section 54-F has to be understood as being subject to the other provisions of the Act, then it can be applied only in cases of wrong payment made by the Government or the other authorities under the Act excluding the Tribunal as otherwise it will lead to an anomaly where the payment has been made by the Tribunal to a claimant after due enquiry, the Government in exercise of the power u/s 54-F can, if it is of the opinion that a payment has been made to a wrong person, call upon the person who has been paid the compensation to refund the same for proper disbursement. This will lead to the situation where the Government while exercising the power u/s 54-F will automatically become the appellate or revisional authority over the orders of the Tribunal. That is contrary to the scheme of the Act. The Tribunal is independent of the Government or the other authorities prescribed under the Act and therefore Section 54-F cannot be understood in the sense that it can be invoked even when the payment has been made by the Tribunal to a claimant after due enquiry. In this view of the matter, I cannot accept the contention put forward by the petitioner in these cases.

9. The petitions are therefore dismissed No costs.