

(1979) 01 MAD CK 0030

In the Madras High Court

Case No : C.R.P. No's. 1492 etc. of 1975

Neelavarna Iyer and Others

APPELLANT

Vs

Srinivasa Iyer

RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 54

Citation : AIR 1980 Mad 31

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : V. Krishnan, for the Appellant; N. Venugopal Nayagar and K. Alagiriswami, for the Respondent

Judgement

1. One Thiruvengatathammal , was possessed of certain in am villages as life estate holder which were taken aver 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, On amounts were paid out to him by the Tribunal after due enquiry under 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, Thiruvengatathammal.

2. Thereafter disputes arose between the respondent -and the petitioner herein as to who is entitled to succeed to the estate held by

Thiruvengatathammal The petitioner claimed that under the Will of Thiruvengatathammal, 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. 33 of 1962 on the file of the Dist. Munsif's Court, Madurai for a declaration of his right

to succeed to the estate of Thiruvenkatathammal on the basis of the will executed by her in his favour. Though the trial court dismissed the suit,

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 "Thiruvenkatathammal as against the respondent. The

respondent took the matter in S.A. No. 830 of 1966 to this court which, however, failed. The result of these proceedings is that the petitioner has

been declared as a successor to the estate of Thiruvenkatathammal 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 Thiruvenkatathammal, 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 under S. 54-F of the Act read with S. 144 C.P.C. 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 Thiruvenkatathammal 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. 691 of 1952. The respondent and the ground that such petitions are not maintainable in law opposed the said petitions. After hearing

the arguments of the counsel on the preliminary point as to the maintainability of the petition, the Tribunal held that since it has no power to review

its own earlier orders directing payment out of the amounts to the respondents, 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 *Nanja Raja v. Lalithammal*, (1960)1 Mad LJ415, still the Tribunal

can act under 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 26 of 1948. As a matter of fact, there are at least two decisions

of this court, one in Nanjaraja v. Lalithammal, (1960)1Mad LJ415 and another in Mayilsami Gounder v. Ramamurty (1970)1 Mad LJ606,

specifically holding that 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 S. 144 C.P.C. cannot be applied to the facts of this case. Apart from the question as to whether S. 144 C.P.C. 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 S. 54-F cannot be taken to confer on

the Tribunal either power of review or a power to rectify 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 under 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 under 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 Ss. 54-A to 54-H.

7. In this case, after following the procedure set out above, the Tribunal had paid the amount 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, S. 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 64-C. In view of this position, unless the statute specifically enables the tribunal before whom the present applications for redeposit 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 orders.

8. It cannot be disputed that S. 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 courts that the provisions of the Act do not confer any such power to the

Tribunal. Therefore, S. 54-F has to be understood as not conferring any review power on the Tribunal. Apart from this, the language adopted in S.

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. S. 54-F says whether the that where any payment made to any 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 S. 54-F

appear 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 S. 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 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 under S. 54-F can, if it is of 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 under 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 S. 54-T

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, 16

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.

10. Petitions dismissed.