
(1957) 05 MAD CK 0006
In the Madras High Court

O.R.M. Om. Am. Chidambaram Chettiar by his authorised agent S. Narasimha Iyengar APPELLANT

Vs

S. Venkatesa Iyengar (since adjudged insolvent) and Others RESPONDENT

Date of Decision : 03-05-1957

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 42

Citation : (1958) ILR (Mad) 135 : (1957) 70 LW 751 : (1957) 2 MLJ 341

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—The point that arises in this appeal for consideration is a very narrow one and is with, regard to the proper

construction of Section 42 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 read in the light of the general scheme of the enactment.

2. The appeal is against the order of the Abolition Tribunal, Madurai in O. P. No. 1 of 1950. The appellant was the petitioner in this original

petition and he laid a claim as a secured creditor of a co-sharer the principal landholder. The Tribunal negated this and held that he was not a

secured creditor, but that he was bound to share the compensation amount rateably along with the other unsecured creditors of this particular co-sharer.

3. One Venkatesa Iyengar was the co-proprietor (owning a moiety) of the zamin village of Thiruthervalai. This estate was notified by Government

and taken over, on 7th September, 1949 and Rs. 13, 649 was deposited with the Tribunal as advance compensation on 17th January, 1950.

Venkatesa Iyengar as half owner of this estate was, therefore, entitled to Rs. 6515 out of the amount deposited. The appellant was a creditor of

Venkatesa Iyengar having lent the latter on a promissory note dated 26th September, 1947, Rs. 15,000. The promissory note was sued on and a

decree obtained in this Court in C. S. No. 382 of 1949 on 23rd November, 1949. The decree passed was a simple money decree. On 10th

October, 1949, however, that is a month after the Government notification taking over the estate, but before the decree Venkatesa Iyengar by a

letter, which has been marked as Exhibit A-2 in the case, created a charge over the compensation amount likely to be received by him from the

Thiruthervalai estate in favour of the appellant. He also addressed a letter Exhibit A-3 to the Collector of Ramanathapuram informing him that he

had created this charge in favour of the appellant in regard to the debt on the promissory note for Rs. 1,5000 and requesting him to pay to the

creditor the amount due to him out of the compensation amount that might be deposited. On the strength of Exhibit A-2 and A-3 the appellant

made a claim before the Tribunal on the basis that he was "" a secured creditor "" within the meaning of Section 42 of the Abolition Act and to be

paid in full the sum of Rs. 6,515 which was due to Venkatesa Iyengar out of the advance compensation. This claim was opposed by another

creditor, Sri Chockalingam to whom Venkatesa Iyengar owed Rs. 6,500 and odd on a promissory note dated 15th July, 1946. The Tribunal held

that as the charge in favour of the appellant had been created after the estate was taken over, the same could not be recognised or given effect to

u/s 42 of the Act, and that the appellant should be treated merely as a simple money creditor and could therefore obtain only a ratable payment out

of the sum in deposit, along with Chock lingam. It is from this decision that the present appeal has been filed, and the sole point for consideration is

whether on the terms of Section 42 and other provisions of the Abolition Act, the rights which had been brought into existence after the date of the

notification could be given effect to.

4. The reasoning on the basis of which the Tribunal has negated the appellant's claim to rank as a secured creditor may shortly be set out thus :-

Under Section 3 (b) and (c) an estate which is notified becomes vested in Government and the rights of the landholder and any other persons

claiming under him do as against the Government cease and terminate on the notified date. The proviso to Section 41(1) and Section 59 also

contain indications that the enactment draws a line at the date of the notification and fixes this as the point with reference to which the rights which

are the subject-matter of enquiry and adjudication under Sections 42 to 46 should be determined. In our judgment the construction of the

provisions adopted by the Tribunal is correct.

5. The main argument of the learned Counsel for the appellant was that Section 42 of the Act was general and did not lay down that the rights

which were the subject-matter of enquiry or adjudication were those which had come into existence anterior to the notified date. We agree that the

learned Counsel is right in this submission, that there is no express provision excluding consideration of fresh rights, but the general scheme of the

enactment and the provisions to which we shall immediately advert undoubtedly point to the conclusion that the Act does draw a dead line at the

notified date and fixes it as the point of time when the rights which are the subject-matter of proceedings before the Tribunal constituted under the

Act become crystallised.

6. Section 3 which effects the divesting of the "" estate "" from its proprietors enacts : To quote only the words relevant to the question on hand,

With effect on and from the notified date and save as otherwise expressly provided in this Act--

* * *

(b) the entire estate...shall stand transferred to the Government and vest in them free of all encumbrances.

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder shall, as against the

Government, cease and determine.

Compensation for this divesting is referred to in Sub-clause (e) which runs:

The principal or any other landholder and any other person whose rights stand transferred under Clause (b) or cease and determine under Clause

(c) shall be entitled only to compensation from the Government as provided in the Act;

These provisions, in our opinion, make it clear that just as the date when the estate is notified and taken over is the point of time in relation to which

the compensation which the statute substitutes for the "" estate "" is determined, the same determines also the point of time when claims against the estate "" or the proprietor which, having been deprived of the right to resort to the "" estate "" for their satisfaction, have to be made against the compensation amount are ascertained.

7. Further on the terms of Section 3(b) the estate vests in the Government ""free of all encumbrances."" Surely this can only mean an ""encumbrance which was in existence on the notified date. When u/s 3(c) all rights or interests created in or over the estate cease and determine, they actually give effect to the freedom from "" encumbrances "" referred to in Section 3(i½). When we come to Section 3(iii) it is clear that persons who are stated to be entitled to compensation, confining our attention to the case of secured creditors, could refer solely to those who occupied that position on the notified date, and it follows that it is they who are referred to by the statute as entitled to resort to the compensation provided for by it.

8. Sections 27 to 39 deal with ascertainment or computation of the compensation payable in respect of an estate taken over, and then we have sectional (2) with regard to deposit of compensation which runs:

On the making of such deposit the Government shall be deemed to have been completely discharged in respect of all claims, to or enforceable against, the compensation deposited.

Confining our attention to "" secured "" claims referred to in Section 42, this expression refers us back to Section 3 the relevant portions of which we have extracted, and the discharge u/s 41(2) is related to "" the encumbrance "" ""free "" of which the Government take the estate u/s 3(b) and to the rights which have ceased and determined u/s 3(c) in regard to which compensation is being provided for u/s 3(e) of the Act. If this were the proper construction of Section 41(2), the wide language of Section 42 cannot help the appellant.

9. Section 42 under which the appellant made his claim before the Tribunal enacts:

Every person claiming the compensation so deposited or any portion thereof, including the principal or any other landholder, members of his family claiming any portion of such compensation, whether by way of a share or by way

of maintenance or otherwise, and creditors whether their debts are secured or not shall apply to the Tribunal within six months from the date on which the amount was so deposited or within such further time as the Tribunal may, in its discretion allow.

The entire argument of the learned Counsel was that this provision under which claims have to be made did not in terms specify that the creditors, whose debts are referred to as "secured", should have their security dating from a period anterior to the date of the notification taking over the estate. As we have pointed out earlier, though this section does not in terms say so, taking into consideration the scheme of the enactment which we have endeavoured to point out earlier we are of the opinion, that Section 42 is incapable of the construction contended for by the learned Counsel for the appellant, and it clearly signifies a creditor whose security extended over the "estate" when it was taken over and not one who obtains a charge against the compensation amount without having had any charge or encumbrance against the estate taken over. In saying this we have in mind of course the terms of Section 3(b) under which "the estate" which vests in Government is free of "encumbrances" which having been extinguished in so far as the estate is concerned, are afforded a substituted security against the compensation deposited under the combined effect of Section 3(e) and Section 41(2). We have had occasion to consider the meaning of the expression "secured creditor" in Section 42 of the Act in S.T.A. No. 95 of 1954 and the construction which we adopted was that it designated those debts where the property which formed the security was part of the estate for which compensation has been deposited. Though the point raised for our consideration then was not precisely the same as that now before us, our previous decision would appear to be an authority adverse to the contention raised by the learned Counsel for the appellant before us.

10. The Tribunal has referred in this connection also to Section 59(1) which reads:

No claim or liability enforceable immediately before the notified date against the principal or any other landholder of an estate, or against any other person whose rights stand transferred to the Government in pursuance of Section 3 Clause (b) shall, on or after that date be enforceable against

the interest he had in the estate; and all such claims and liabilities shall after the date on which the deposit in pursuance of Section 54-A is made be

enforceable, (a) against the interim payments or the compensation or other sums paid or payable to him under this Act to the same extent to which

such claims and liabilities were enforceable against his interest in the estate immediately before the notified date; and (b) against his other property,

if any, to the same extent to which such claims and liabilities were enforceable against such property immediately before the notified date.

11. In our judgment this reinforces what we have pointed out as the proper contraction of Section 3 (b) and (c) and Section 41(2).

12. Learned Counsel urged that Section 59, no doubt, referred to claims immediately before the notified date but did not prohibit claims arising

thereafter, secured or unsecured, from being enquired into u/s 42. We are unable to accept this as the proper construction of the provision.

13. In our judgment Section 59(1) throws light on what Section 41(2) was intended to provide for, and to adopt the construction suggested on

behalf of the appellant would render the provisions run counter to the basic provisions of the Act.

14. Apart from the case of the ""secured "" creditor, which we have considered earlier and which is sufficient for the disposal of the appeal, we shall

examine the case of a creditor whose debt comes into existence after the date of the notification or even after the date of the deposit of the

compensation. To hold that such a creditor might have his claim adjudicated u/s 42 which would follow logically the acceptance of the appellant's

argument would render the Act unworkable, because if claims which could be preferred u/s 42 could come into existence even after the

compensation amount were deposited the Tribunal would be bound to admit those claims right up to the date of the enquiry, to be held u/s 43, and

when new claims come in, the proceedings would necessarily have to be adjourned and the landholder might go on incurring fresh debts which

might again be brought before the Tribunal for payment u/s 42. The proceedings would thus not have any termination. Nor can the Tribunal

properly refuse extension of the six months' limitation provided in Section 42, because if the debt itself came into existence after the six months'

period, the creditor could legitimately insist upon the delay being excused, because he would have been prevented by proper cause from preferring

his claim within the time permitted by Section 42. We are merely pointing out the administrative inconvenience not as itself furnishing any complete answer but to show that the Abolition Act could not have contemplated such a state of affairs. If a debt incurred subsequent to the notification or the deposit of compensation could not be brought for enquiry and adjudication and payment within the scope of Sections 42 to 46, by the same line of reasoning also, secured debts of creditors, who are referred in to Section 42, could only refer to those creditors whose security extended over the estate before it was taken over, and who by reason of the extinguishment of their security were relegated to their claims against compensation amount. The decision of the Tribunal refusing to recognise the appellant as a secured creditor is correct.

15. The appeal fails and is dismissed with costs.