(1960) 12 MAD CK 0010

In the Madras High Court

Case No : Writ Petitions No''s. 333 and 334 of 1958

P. Vd. Pr. Vr. M. Vinaitheerthan Chettiar and Another — APPELLANT

Vs

The State of Madras — RESPONDENT

Date of Decision : 02-12-1960

Acts Referred:

Citation : (1961) ILR (Mad) 800

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : V. Vedantachari, for the Appellant; R.G. Rajan, Additional Government Pleader and M.M. Ismail, for the Respondent

Judgement

Rajagopalan, J.—The Petitioners were the holders of Athivetti estate, which was notified and taken over by the Government under the

provisions of Madras Act XXVI of 1948 (hereinafter referred to as the Act) on 3rd January 1951. Earlier than that, a notification under the Rent

Reduction Act was issued on 25th April 1950, which enabled the Government to reduce the rents payable before 3rd January 1951, and to collect

those rents. On 30th June 1951, the Government deposited Rs. 31,641 out of Rs. 32,682 as the net advance compensation for the estate u/s 54A

of the Act. u/s 50 of the Act interim payments were deposited from time to time for faslis 1360, 1361 and 1362. All these amounts were duly

disbursed.

2. The Government subsequently discovered that by mistake Vairavanathapuram had been taken over along with Athivetti, and that advance

compensation and interim payments had been calculated on that basis. Vairavanathapuram, an inam village, was subsequently ordered to be returned to the landholders. The Government also decided that the district average rate which had been adopted earlier was not the correct basis

for computing the compensation, and that the probable rents in Athivetti had to be calculated with reference to the weighted average rates. On the

fresh data that was collected the advance compensation payable to the Petitioners was re-computed and fixed at Rs. 11,418 as against the original

computation of Rs. 32,682. The Government decided further that the Petitioners were not entitled to any interim payments, because what had been

deposited on 30th June 1951, as advance compensation was more than what the Petitioners would be entitled to on a final computation u/s 39 of

the Act.

3. Meanwhile the interim payment for fasli 1363 had been deposited, but the payment of that amount was withheld at the instance of the

Government.

4. On 15th June 1956, the Government directed that what had been paid in excess to the Petitioners should be recovered. The interim payment for

fasli 1363 which had been deposited with the Tribunal was withdrawn. The Petitioners were informed that no further interim payments would be

deposited. Some sums were recovered by attachment of the rents which were payable to the Petitioners before the estate was notified. The

Government claimed that a balance of Rs. 735 was still to be recovered as against the interim payments paid by mistake to the Petitioners, and that

Rs. 9,848 was recoverable as the excess advance compensation paid to the Petitioners.

5. To complete the narrative I can set out even at this stage that the compensation payable to the Petitioners was computed u/s 39 of the Act on

21st July 1960, and the amount payable as compensation to the Petitioners was determined as Rs. 26,988-30 P.

6. The Petitioners claimed that the Government had no statutory power to withhold the interim payments or to recover anything from them from out

of the advance compensation or the interim payments already paid. In Writ Petition No. 333 of 1958, the relief asked for was a writ of mandamus

to direct the Government to refund to the Petitioners what the Government had already recovered. In Writ Petition No. 334 of 1958, the

Petitioners sought a writ of mandamus to direct the Government to deposit interim payments subsequent to fasli 1362.

7. The questions that arise are (i) whether the Government can recover any portion of what was paid u/s 54A as advance compensation and (ii)

whether the Government can recover the entirety of what was paid towards the interim payments under the provisions of Section 50 or any portion

of that amount. The further question that arises is whether the Government are under a statutory obligation to deposit interim payments from fasli

1363 onwards till the payment of final compensation computed u/s 39 of the Act.

8. It is really unnecessary to examine the statutory provisions for the recovery of excess amount paid as advance compensation, if recovery is to be

effected before the determination of the final compensation computed u/s 39 of the Act.

9. What was originally determined as advance compensation in this case was Rs. 32,682, with the assumption that the final compensation would

be about double that amount. What was computed finally as the compensation payable for the estate u/s 39 of the Act was only Rs. 26,988, which

was less than what had already been paid as advance compensation. Unlike the interim payments, whatever is paid as advance compensation is a

payment towards the final compensation, which has to be computed u/s 39 of the Act, after the resettlement operations have been completed, to

the payment of which the landholder is entitled under the Act. If on final computation it is found that what has already been paid towards that

compensation is in excess of the compensation payable, obviously there can be no statutory liability to pay any more towards compensation.

Equally obviously the landholder cannot retain anything more than what he is lawfully entitled to as compensation. He is liable to return the amount

paid in excess. That liability can be enforced u/s 54F. In this case the final compensation payable has been computed u/s 39.

10. If I understood the learned Counsel for the Petitioners aright, his contention was not that the Petitioners were entitled to keep everything that

had been paid towards compensation. Nor did he contend that what was paid in excess of what was lawfully due as compensation could not be

recovered. His contention was that such a recovery should be postponed till the further amount due to the landholder u/s 54B had been

determined. The learned Counsel urged that what can be recovered u/s 54F is what was paid in excess of what was due to him. The amount

payable u/s 54B is also due to him. Until that is ascertained it would not be possible to determine what was clue to him, and until that was fixed it

was not possible to hold that any portion of what had been paid to him was in excess of what was due to him.

11. Plausible as the argument sounds, it is not consistent with the general scheme of the Act. What is payable u/s 39 is after a final determination of

the compensation payable for the notified estate. Even Section 54B refers to that as ''final determination''. What Section 54B secures is an

additional sum, and the determination of that additional sum is dependent on the total compensation paid for all the estates in the State falling below

the specified sum. Computation of the compensation u/s 39, computation of the advance payments towards compensation, and the provisions for

re-computation and adjustments till the final determination u/s 39 are all with reference to the notified estate and the basic annual sum of that estate.

It is with reference to that estate that the provisions for recovery have to be considered. There are at least three stages: (i) payment of advance

compensation u/s 54A which is one half of the estimated compensation; (ii) the determination of the final compensation u/s 39 and the payment of

what is still due as compensation and (iii) the determination and payment of the further and additional compensation u/s 54B. If at any stage the

Government find that the landholder has been paid in excess of what is due to him at that stage, the excess can be recovered, without waiting till

the completion of all operations, either those u/s 39 or those u/s 54B. Section 54F is comprehensive enough for that. I shall illustrate my point.

Sub-sections 5 to 7 of Section 39 provide for a review of the quantum of compensation. If the compensation has been determined can it be said

that the amount is not due because of the possibility of a re-computation either by way of appeal or by way of revision. In the present case it must

be remembered that the remedies open to the Petitioners u/s 39 have not been exhausted. Subject to the result of the appeal or revision u/s 39,

and at this stage, Rs. 26,988 is the amount of compensation due to the Petitioner within the meaning of Section 54F. That is the amount due u/s 39.

If he has been paid in excess of that as compensation, the excess is recoverable u/s 54F.

12. The position now is that no writ of mandamus can issue to the Government to refrain from collecting in accordance with the law-Section 54F is

only one of the provisions of law enabling recovery-what has been paid in excess as compensation. Nor can there be a writ of mandamus directing

repayment of what has already been recovered. The rights of the Petitioners have now to be worked out, not with reference to the advance

compensation or to the further re-computation of that advance compensation, but with reference to the final compensation computed u/s 39 of the

Act.

13. The further relief the Petitioners sought was a direction to the Government to deposit the interim payments due to the Petitioners. The liability to

make interim payments can be enforced only till the final compensation is determined u/s 39 and whatever is still due, after taking into account the

amounts already paid as compensation, is deposited with the Tribunal for disbursement. In this case the amount payable as compensation was

determined on 21st July 1960, and the Madras statutory liability to make interim payments ceased, because on that date nothing more was payable

to the Petitioners towards compensation. In fact they had been paid in excess of what was due to them as compensation. The real question is,

whether the Government should be directed to deposit interim payments for faslis 1363 to 1369. What was deposited for fasli 1363 was

withdrawn and nothing was deposited for any of the subsequent faslis.

14. Section 50 which provides for the interim payments also provides for their periodical revision and adjustments. Section 50(7) provides for the

final adjustment after the determination of the final compensation, that is, compensation computed u/s 39. The Government has to make good any

shortage, and the Government is entitled to recover any excess paid towards the interim payments. While Section 50(8) makes it clear that the

interim payments is no part of the compensation which has to be computed u/s 39, Sub-section 4A of Section 50 makes interim payments also

available to the Government for effecting recovery of what has been paid in excess as advance compensation. The proviso to Sub-section 4A of

Section 50, however, limits such availability to one half of the interim payment that has to be deposited in any fasli. The Government are thus under

a statutory obligation to deposit at least one half of the computed interim payment each year, even if amounts are due to the Government under

Sub-section 4A. If it is found that in any year the landholder has been paid anything in excess of what was due to him as interim payment the

adjustments have to be made u/s 50(7).

15. In the case of the Petitioners, since what was deposited towards compensation on 30th June 1951 it is true it was deposited only as advance

compensation was in excess of what was payable as final compensation computed u/s 39, the claim of the Government was that the statutory

liability to deposit interim payments really ceased en 30th June 1951, and everything paid to the Petitioners as an interim payment after that date

was a payment to which they were not entitled in law. The Act did not provide for such a contingency in express terms. Neither Sub-section 4-A

nor Sub-section 7 of Section 50 could cover such a case. Two questions arise: (i) can the interim payments to which the Petitioners were not

entitled be recovered (ii) is the Government bound to deposit the interim payments up to the date of the factual ascertainment of the final

compensation in cases, where no further amount need be deposited towards compensation? The questions are independent of each other.

16. The learned Government Pleader was, in my opinion, well-founded in his contention, that Section 54F is comprehensive enough to clothe the

Government with statutory authority to recover even interim payments if they were not lawfully due. The proviso to Section 54(4A) is limited in its

scope, and it does not confer absolute immunity on one half of the interim payments from being proceeded against, for instance under the

provisions of the Revenue Recovery Act, after the amount has been deposited.

17. There is, however, nothing in Section 50 or in any other section of the Act which entitles the Government to withhold interim payments. The

Government relied on G.O. Ms. No. 1543, dated 16th November 1955, issued in exercise of the power vested in the Government by Section 68

of the Act, which ran:

If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, do anything which appears to

them necessary for the purpose of removing the difficulty.

18. The Government Order provided:

Now, therefore, in exercise of the powers conferred by Section 68 of the said Act, the Government of Madras hereby directs that no interim

payment u/s 50 need be made if it is found that the initial deposit of advance compensation made for the estate u/s 54A by itself exceeds the total

compensation which is likely to be payable.

19. In my opinion the Government could relieve themselves of the statutory obligation cast on them by Sub-sections 2 and 4 of Section 50, only if

there is legislative sanction. The statutory obligation is to deposit interim payments till the final compensation is determined u/s 39 and deposited.

Anticipation is not enough. There must be a factual determination u/s 39 of the Act for the statutory obligation to deposit interim payments to

cease. A statutory obligation cannot be got over as a ''difficulty'' and avoided on that basis by recourse to Section 68. Section 68 did not clothe the

Government with any delegated legislative authority to amend or abrogate any of the statutory provisions with reference to any given estate. I may

point out that no legislative sanction was sought even in 1956, when the Act was amended, to clothe the Government with the statutory authority to

withhold interim payments in anticipation of a determination of the compensation u/s 39.

20. Still the question remains, should a writ of mandamus issue in this case; should, in effect the Government be compelled now to deposit interim

payments and then proceed against the amounts immediately by recourse to Section 54F ? I can see no useful purpose which can be served by

adopting such a procedure. The position now is that what was paid towards compensation on 30th June 1951, was itself in excess of what was

payable as compensation on a computation u/s 39. Though till 21st July 1960, the Government was under a statutory obligation to deposit interim

payments, that statutory obligation need not be enforced now, when it can, as I have pointed out earlier, lead to no practical results. The

Government can deposit and still prevent, the Petitioners from getting at the money deposited by immediate recourse to Section 54F of the Act. It

is in these circumstances that I have decided in the exercise of my discretion to refuse a writ of mandamus in Writ Petition No. 334 of 1958.

21. The rule nisi is discharged in each of these petitions and the petitions are dismissed. No order as to costs.

[These petitions having been set down to be spoken to this day in the presence of the said Advocates, the Court made the following]:

ORDER

Learned Counsel for the Petitioner wants the deletion of the two sentences in the penultimate paragraph of my judgment: ""Nothing was therefore

due as interim payment after 1st July 1951. But that position emerged only on 27th January 1960 during the pendency of these proceedings"".

These two sentences will stand deleted. In the context in the paragraph that may appear to be in conflict with what I stated earlier, that there was a

liability to deposit because G.O. No. 1543, dated 16th November 1955, was not valid. The deletion of these two sentences, in view of what I

have stated earlier in the judgment, will leave the rights and liabilities of the Petitioner and the Government otherwise intact. There was a liability to

deposit with a right to recover. It was because of that I stated that in the exercise of my discretion I must decline to issue a writ of mandamus.

Corrections have been carried out on this basis and I hare added this only to explain the basis of the correction.

