
(1960) 12 MAD CK 0007

In the Madras High Court

Case No : W. P. 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 for the Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

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

under S. 54-A of the Act. Under 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. 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 in am 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 be calculated with reference to the

weighted average rates. On the fresh data that was collected the advance compensation payable to the petitioners was recomputed 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 under S. 39 of the Act.

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

Government.

3. 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. 9848 was recoverable as the excess advance compensation paid to the petitioners.

4. To complete the narrative, I can set out even at this stage that the compensation payable to the petitioners was computed under 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 nP.

5. 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 W. P. 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 W. P. No. 334 of 1958 the petitioners sought a

writ of mandamus to direct the Government to deposit interim payments

subsequent to Fasli 1362.

6. The questions that arise are: (1) whether the Government can recover any portion of what was paid under S. 54-A as advance compensation,

and (2) whether the Government can recover the entirety of what was paid towards the interim payments under the provisions of S. 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 under S. 39 of the Act.

7. 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 under S. 39 of the Act. What was originally determined as advance

compensation in this case was Rs. 38,682, with the assumption that the final compensation would be about double that amount. What was

computed finally as the compensation payable for the estate under 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 under S. 39 of the Act, after the re-settlement 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 under S. 54-F. In this case the final compensation payable has been computed under S. 39.

8. 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 under S. 54-B had been

determined. The learned Counsel urged that what can be recovered under S. 54-F is what was paid in excess of what was due to him. The amount

payable under S. 51-B is also due to him. Until that is ascertained it would not be possible to determine what was due 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.

9. Plausible as the argument sounds, it is not consistent with the general scheme of the Act. What is payable under S. 39 is after a final

determination of the compensation payable for the notified estate. Even S. 54-B refers to that as "final determination." What S. 54-B 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 under S. 39, computation of the advance payments towards compensation, and the

provisions for re-computation and adjustments till the final determination under 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:

(1) payment of advance compensation under S. 54-A, which is one half of the estimated compensation; (2) the determination of the final

compensation under S. 39 and the payment of what is still due as compensation; and (3) the determination and payment of the further and

additional compensation under S. 54-B. 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 under S. 39 or those under S. 54-B, S.

54-F is comprehensive enough for that. I shall illustrate my point. Sub-Ss. 5 to 7 of S. 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 under S. 39 have not been

exhausted. Subject to the result of the appeal or revision under S. 39, and at this stage, Rs. 26,988 is the amount of compensation due to the

petitioner within the meaning of S. 54-F. That is the amount due under S. 39. If he has been paid in excess of that as compensation, the excess is

recoverable under S. 54-F.

10. The position now is that no writ of mandamus can issue to the Government to refrain from collecting in accordance with the law. S. 54-F 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 under S. 39

of the Act.

11. 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 under 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 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.

12. S. 50 which provides for the interim payments also provides for their periodical revision and adjustments. S. 50(7) provides for the final

adjustment after the determination of the final compensation, that is, compensation computed under 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 S. 50(8) makes it clear that the interim

payment is no part of the compensation which has to be computed under S. 39, Sub-S. 4-A of S. 50 makes interim payments also available to the

Government for effect-recovery of what has been paid in excess as advance compensation. The proviso to Sub-S. 4-A of S. 50 however limit

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-S. 4-A. 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 under

S. 50(7).

13. 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 under S. 39, the claim of the Government was that the

statutory liability to deposit interim payments really ceased on 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-S.

4-A nor Sub-S. 7 of S. 50 could cover such a case. Two questions arise: can the interim payments to which the petitioners were not entitled, be

recovered; 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.

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

Government with statutory authority to recover even interim payments if they were not lawfully due. The proviso to S. 54(4-A) 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.

15. There is however nothing in S. 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 S. 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.

The Government Order provided:

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

under S. 50 need be made if it is found that the initial deposit of advance compensation made for the estate under S. 54-A by itself exceeds the

total compensation which is likely to be payable,

16. In my opinion, the Government could relieve themselves of the statutory obligation cast on them by Sub-Ss. 2 and 4 of S- 50, only if there is

legislative sanction. The statutory obligation is to deposit interim payments till the final compensation is determined under S. 39 and deposited.

Anticipation is not enough. There must be a factual determination under 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 S. 68. S. 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 deter. ruination of the compensation under S. 39.

17. 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 S. 54-F. 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 under 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 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 S. 54-F 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 W. P. No. 334 of 1958.

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

(Order of Court dated 2-12-1960.)

19. 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 that paragraph that may appear to be in conflict with what I stated earlier, that there was a liability to deposit because G. O. 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 have added this only to explain the basis of the correction.