

(1963) 08 MAD CK 0007

In the Madras High Court

Case No : S. T. Apps. No's. 12 to 14 of 1962

R. Shanmuga Rajeswara Naganatha Sethupathi, Raja Of
Ramnad

APPELLANT

Vs

S. Ramanatha Setupathi And Others

RESPONDENT

Date of Decision : 16-08-1963

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 3

Citation : (1963) 08 MAD CK 0007

Hon'ble Judges : Ramachandra Iyer, C.J.; Ramamurti, J

Bench : Division Bench

**Advocate : R. Gopalaswami Ayyangar and U Somasundaram, for the Appellant;
M. Natesan, V. Janakiram and V. Ganapathy, for the Respondent**

Final Decision : Dismissed

Judgement

Ramachandra Iyer, C.J.—These are appeals filed by the Raja of Ramanathapuram under S. 51 of the Madras Act XXVI of 1948, against

the order of the Estates Abolition Tribunal, Ramanathapuram, dated 30th September, 1961, in so far as it declined to direct the respondents to

these appeals to bear their aliquot share of the amounts due to the Government in respect of excess collection of poruppu rents etc., made by the

Raja before the taking over of the estate by the Government. The zamindari of Ramanathapuram was an impartible estate. On 7th September,

1949, the Government took over the zamin, under the provisions of S. 3 of the Madras Estates (Abolition and Conversion into Ryotwari) Act,

1948, which will be hereafter referred to as the Abolition Act. In due course compensation payable to persons having an interest in the estate was

ascertained and a sum of Rs. 19,29,065 was deposited as advance

compensation. Several Claims from creditors and maintenance holders etc., were made before the Estates Abolition Tribunal for a share of the compensation amount deposited". They were all settled. The Rajah has three sons; they are respondents to these appeals. They being minors were brought on record, before the Tribunal with their respective mothers representing them as their guardians. It was claimed on behalf of the sons (respondents) that each of them would have an equal share with the Rajah in the compensation amount. But the latter contended that he was exclusively entitled to receive the balance of the compensation amount after paying off the creditors and the maintenance holders, as according to him S. 45 (6) of the Abolition Act which provided for partition of the amount as if it were joint family property was ultra vires of the Constitution and therefore void. Legal opinion as to the merits of the respective contentions was taken by the Rajah from two of the eminent members of the Madras Bar, the late Sri T. R. Venkatarama Sastri and the late Sir Alladi Krishnaswami Aiyar. Both of them gave the opinion that while much could be said on both sides, they were inclined to the view that Sub-S. (6) of S. 45 should be regarded as invalid. It was in this context that the parties thought that their claims should be adjusted or settled without fighting it out to the bitter end. Accordingly an agreement was entered into on 9th November, 1951, between the Rajah of Ramnad and his two wives as guardians of his minor sons. This having been duly sanctioned by the Tribunal a fortnight later, an order was made directing the advance compensation to be paid in accordance with the memorandum of compromise. Under the terms of the compromise, the Rajah was to take fifty per cent of the balance of the amount available out of the advance compensation amount deposited by the Government; likewise with respect to the final compensation. The remaining fifty per cent was distributed between the three sons, twenty per cent to Ramanatha Sethupathi, fifteen per cent each to Nagendra Durai and Rajasekhara Durai; they respectively figure as respondents in the above appeals.

2. The compromise provided for the investment of the shares allotted to the minors and the utilisation of interest earned therefrom for the maintenance and education of the respondents the Rajah agreeing to make up the deficiency if any in that respect. Cls. 5 to 7 of the compromise

which are relevant to the present case run thus :

5 The claimant, the father and the minor sons are to take future instalments of payments of compensation in the same proportion as is mentioned in

para 1;

6. The claimant, the father is to maintain all the children and wives according to the status of the family;

7. The respondents, the minor sons, have no right to claim any portion of the interim payment now deposited or hereafter to be deposited in the

Tribunal.

3. The interim compensation amounts that were deposited by the Government have been withdrawn by the Rajah conformably to the terms set out

above. But while making the deposit of the interim compensation the Government deducted therefrom a sum of Rs. 6,54,204-86, towards excess

collections of poruppu etc., made by the Raja in the fasli year during which the Zamin was taken over. It must be remembered that just about a

year prior to the enactment of the Abolition Act, the State Legislature had passed the Madras Rent Reduction Act (XXX of 1947) which provided

for reduction of rent payable by ryots in estates approximating to the level of ryotwari assessments. The Abolition Act itself contains provisions for

the landholder refunding collections of rent from ryots made in excess of the rates to be fixed under the notifications made under the Madras Act

XXX of 1947. The question in these appeals is whether the amount of Rs. 6,54,204-86 nP. which had been deducted from the interim

compensation to which the Raja was entitled to receive from the Government should be borne by the Rajah and his sons in accordance with the

shares specified under the compromise or whether the former has no right to obtain contribution from them in respect of that amount. This question

came to the forefront when the Government decided to pay the final compensation amount. That was proposed to be done in five equal annual

instalments. As soon as the first instalment of Rs. 5,43,288 was deposited several claims were made before the Estates Abolition Tribunal for

payment out by the maintenance holders, creditors and certain others. The respondents to these appeals also claimed their shares in proportion to

the rate agreed on under the terms of the compromise aforesaid. But the Rajah raised an objection to their drawing out the monies without their

bearing their legitimate share of the excess collections of poruppu which the Government had deducted from the interim compensation amounts due

to him. The Tribunal has however rejected the objection raised by the Rajah on the ground that as the sons had already given up a substantial

portion of their share at the time of the compromise in favour of the Rajah it would not be proper that they should be mulcted with the additional

liability to contribute for the payment of excess collections made by the Rajah; the view of the Tribunal is based on the fact that under S. 50 (7) (a)

(i) of the Abolition Act, the excess collection of rent by the landholder will have to be adjusted only out of the interim payments and not from out of

the final compensation amounts. This view is not entirely correct nor can the view that the sons had given up a portion of their rights in favour of the

Rajah be sustained. There was, as we said, a genuine doubt as to whether the Rajah was solely entitled to the entire compensation amount or

whether it was liable to be shared equally between him and his sons. The parties thought it best to settle their differences by entering into a

Compromise. Under those circumstances it cannot be said or assumed that the sons had given up a part of their shares in the estate in favour of the

Rajah, any more can it be said that the Rajah, had parted with any of his rights in favour of his sons. What the parties got was as a result of

settlement of doubtful claims and their rights have got to be adjusted on the basis of the settlement alone.

4. In these appeals the question that falls for determination is whether on the terms of the compromise read in the light of the provisions contained

in the Abolition Act, it will be competent for the Rajah to demand out of the shares in the final compensation amounts payable to his sons in

accordance with the compromise any amount from them by way of contribution towards the amount deducted by the Government by way of

excess collections out of the interim compensation received by him. That question has to be decided mainly on the interpretation of the terms of the

compromise in the light of the surrounding circumstances. At the time when the compromise was effected S. 50 (7) in its present form was not in

the statute as that provision was introduced only by an Amendment in 1956. In their original form Cls. 3 and 7 of S. 50 ran:

Sec. 50 (3). In respect of the fasli year in which the estate is Notified they shall together be entitled to such amount as the Government may on a

rough calculation determine to be the basic annual sum referred to in S-26 less the fonts, if any, collected before the notified date by the landholder

from the ryots in respect of that fasli year;

(7) After compensation has been finally determined and apportioned among the persons referred to in Sub-S. (2) all interim payment made under

this section to each of them shall be adjusted on the basis that together they are entitled in respect of each of the fasli years to the basic annual sum

as finally determined and that each of them separately is entitled to the same share of the basic annual sum as the share of the compensation to

which he is finally held to be entitled under S. 44;

Provided that in respect of the fasli year in which the estate is notified the rents if any collected before the notified date by the landholder from the

ryots in respect of that year shall be deducted from the basic annual sum

5. Sub-Ss. 3 and 7 refer to the interim payments to be made to the landholder, the former immediately on the taking over of the estate on the basis

of a rough calculation and the latter when that has been finally determined. It will be noticed from these provisions (i.e., as they stood on the date

when the compromise was entered into), the excess poruppu or excess collection of rents were to be deducted only out of the basic annual sum

payable as interim payment to the landholder. We have said that Under the compromise the entire interim compensation amount was to be taken

by the Rajah himself. One can reasonably assume in the context of S. 50 of the Abolition Act that this has been agreed to on the basis that the

excess poruppu collections should be met out of the first interim compensation amounts due to the Rajah.

6. The arguments before us however did not take note of these statutory provisions as they stood at the time when the compromise was effected

as reference was made only to the amended provisions of the Act, which provide for deduction of the excess collections of rent made by the

Rajah, even from the subsequent years' interim payments. S. 50 (3) as it stands at present provides for deduction from the basic annual sum

payable to the landholder for the fasli year in which the estate was taken over the amount of the rent collected before the notified date by the

landholder in excess of the reduced rent, but that, as we said earlier is only an ad hoc arrangement, being liable to be varied on ascertainment of

the correct basic annual sum as referred to in S. 26. Sub-Cl. 7 of S. 50 specifically provides:

After compensation has been finally determined that the Government shall ascertain in the manner specified the aggregate interim payment due in

respect of the estate; (a) in respect of the fasli year in which the estate is notified; the basic annual sum is finally determined under S. 39 after

deducting therefrom-- (i) the rents, if any. collected before the notified date by the landholder from the ryots in respect of the fasli year aforesaid

and any amount collected by him from the ryots in excess of the rent determined under the Madras Estates Land (Reduction of Rent) Act, 1947,

and outstanding to the credit of the ryots on the first day of that fasli year; and (rest omitted as not necessary).

7. Sub-Cl. (b) thereto entitles the Government to deduct excess collections, if any, made from out of the future interim payments as well. Even after

this, if the excess collections do not stand fully wiped out, S. 54-A (ii) empowers the Government to deduct the balance due out of the final

compensation amount. It is this later provision that has enabled the learned Advocate for the appellant to argue that the liability for repaying the

excess collection of rents made by the proprietor before the estate had been taken over by the Government is a liability on the estate itself and that

therefore it can be adjusted out of the final compensation amount. On the other hand Mr. Natesan appearing for the sons has contended that it is

only if the excess collections made by the proprietor could not be adjusted out of the interim compensation amounts that the liability will get

fastened to the final compensation amount but where the excess collections (as indeed it was done in the present case) could be adjusted out of the

interim payments made, there was no power in the Tribunal to shift that liability to the final compensation amount which according to the terms of

the section has got to be divided between the various persons entitled to receive the same. We are of opinion that neither of the two arguments can

be accepted wholly. It can prima facie be taken that the liability to pay back the Government excess collections of poruppu rent made by the

landholder before the taking over of his estate is a liability on the estate itself and not on the zamindar alone. This will be so at any rate so far as the

ryots and the Government are concerned. Secondly, the several provisions contained in S. 50 (3) and (7) enact only a mode of discharging the

liability to the Government. They cannot regulate the rights of parties inter se. The collection being in the nature of rents from the ryots the

Legislature presumably thought that it should primarily come out of the future years" interim payments and that it was only if that could not be

completely wiped out from out of the interim payments that there should be deduction from the final compensation amount. The use of the word

"deducting" in S, 50 (7) shows that the intention of the Legislature is merely to provide only a machinery for the collection back of the excess

collections made by the zamindar and not to cast the liability entirely on the zamindar himself. Once it were to be held that the liability to refund the

excess collections will be binding on the estate, every person entitled to a share in the compensation amount will normally have to contribute

towards that liability which will be in the nature of a debt binding on the estate. The provision in S.54-A (2) (ii) also recognises that the liability is

that of the estate. But at the same time it must be remembered that the Act does not envisage the adjustment of liability between the sharers by the

machinery provided therein, namely, through the Tribunals constituted under the Act. S. 50 provides that the interim payments made to the

landholder will be the basic annual sum, or half the annual basic sum where the advance compensation had to be deposited. The excess collection

of rent made by the landholder has to be deducted out of this. There is no provision in that section or even in the other sections to adjust or

distribute that liability between the various persons like maintenance holder, sharers etc., who are declared entitled to participate in the

compensation amount. In a case where interim payment made to a landholder had been reduced by any liability binding on the estate, under the

provisions of S.50 (3) and (7), the person affected might have to seek his remedy in ordinary Court by filing an appropriate suit for contribution as

no machinery has been provided under the Abolition Act for the purpose. Whether the Raja will be entitled to file such a suit in the instant case,

depends upon the terms of the compromise. If under the terms thereof it were to be held that it had impliedly been agreed to between the parties

that the entire excess collections made should be borne by the Raja himself, there cannot be any claim for contribution. If on the other hand, that

matter was never in the contemplation of parties at the time when the compromise was entered into, then the claim has got to be rested under one

of the other well known rules of law and agitated in a properly framed suit. As we stated that cannot be done in proceedings taken under the

Abolition Act. In this view we affirm the decision of the Estates Abolition Tribunal and dismiss the appeals. There will however be no order as to

costs.