
(1963) 09 MAD CK 0036
In the Madras High Court

Ramachandran

APPELLANT

Vs

A.N. Krishnamoorthy Iyer

RESPONDENT

Date of Decision : 06-09-1963

Acts Referred:

Estates Abolition Act — Section 50

Citation : (1964) 77 LW 118 : (1964) 1 MLJ 153

Hon'ble Judges : K.S. Ramamurthi, J

Bench : Division Bench

Judgement

K.S. Ramamurthi, J.—This is an appeal against the Order of the Estates Abolition Tribunal. The respondents had purchased three-fourths interest in the life estate—belonging to one Rajagopala Pandarathar the Zamindar of Pudukudi village. The Government had deposited a sum of Rs. 2,614-67 representing the interim payments for Fasli 1360 to Fasli 1366 both inclusive. The respondent filed the application u/s 50 of the Estates Abolition Act, Madras Act XXVI of 1948, herein referred to as the Act for payment out to him the sum of Rs. 1961 representing three-fourths of Rs. 2614-67, the amount deposited by the Government. Rajagopala Pandarathar and his son Ramachandran Pandarathar were impleaded as respondents 1 and 2 to the petition. The Tribunal took the view that the interim payments by the Government represented the income of the Zamindar and as the respondent had purchased the life interest he was entitled to the entire income. Rajagopala Pandarathar died during the pendency of the petition and the appeal is now preferred.

2. The only point that arises is whether the interim payments deposited by the Government constituted income of the erst-while holder of the estate. Learned Counsel for the respondent contended that under the scheme of the Estates Abolition Act only two payments represent compensation for the taking over of the estate namely, the advance compensation and the final compensation, and that the interim payments are only referable to the income from the estate. He relied upon Sections 39, 54-A and 50(8) of the Act. He further contended that as

Section 50(8) clearly provides that no interim payment shall be deemed to constitute any part of the compensation which the Government are liable to deposit u/s 41(1), the interim payments should be regarded only as representing the income of the estate. He also drew our attention to the recent judgment of the Supreme Court in Civil Appeal 420 of 1962 Raja Rameswar Rao v. Commissioner of Income Tax, Hyderabad (1963) S.C.J. 456 : (1963) 2 I.T.J. 241 which arose under the Hyderabad (Abolition of Jagirs) Regulation 1358-F containing analogous provisions as in the Madras Estates Abolition Act as deciding the point in his favour.

3. We are unable to agree with the arguments of learned Counsel for the respondent. In our opinion, there is no need to discuss the matter in great detail as the point raised is directly covered by a recent Bench Judgment of Rajagopalan and Srinivasan, JJ. in R. Shanmugha Rajeswara Sethupathi Vs. The First Additional Income Tax Officer, . With great respect we entirely agree with the lucid and clear analysis of the relevant provisions of the Act by Srinivasan, J., delivering the judgment on behalf of the Bench. In that case it was held that the interim payments represented some or portion of the equivalent for the loss of a capital asset that they were exactly similar to the payments in respect of either advance compensation or the final compensation. It was also held that the fact that the quantum of the interim payment was to some extent based upon the annual income of the properties did not alter the real character of the deposit, so as to dissociate it from capital asset. With regard to the argument based upon Section 50(8) the learned Judge observed as follows:

The learned Advocate-General appeared to place great reliance upon Section 50, Sub-section (8) which read thus : " No interim payment made under this section shall be deemed to constitute any part of the compensation which the Government are liable to deposit u/s 41, Sub-section (1), or to any extent in lieu of such compensation. " It seems to us that this provision cannot be given the very extended interpretation which the learned Advocate-General seeks to place upon it. According to him, here is a clear declaration that the interim payment is not part of the compensation. We have pointed out that in the Bill as it was originally published, this Sub-section did not appear, though interim payments were in fact provided for. It was therefore doubtful if these payments would be adjusted against the total compensation payable to the land holder. This provision seems to have been inserted in order to remove any such doubts and to make it clear that these payments were in addition to the compensation determined u/s 39 of the Act. Coming to the section itself, what it purports to lay down is that the Government undertook to make these interim payments in addition to the total compensation as determined by Section 39 of the Act and declare the decision that they would not adjust these payments against the compensation. But for this provision the Government would perhaps have been in a position to make that adjustment. If the learned Advocate-General's argument under this head meant that the Government clearly specified that this was not also compensation for the loss of the estate, we are not able to interpret

this provision in that light. What is stated is that the interim payment shall not be part of the compensation which the Government are liable to deposit u/s 41. That it is not part of the compensation so computed u/s 39 and liable to be deposited u/s 41, Sub-section (1) does not mean that it is not compensation for all purposes. This section cannot to our minds lead to any such conclusion.

4. The same view was taken regarding the scope of Section 50(8) in a judgment delivered by my Lord the Chief Justice on behalf of the Bench, sitting with Venkataraman, J. in S.T.A. Nos. 21 and 22 of 1960. In that case when a mortgagee creditor applied for payment out of the interim payments, the sons of the Zamindar relying upon Section 50(8) opposed the claim on the ground that interim payments did not represent compensation. In rejecting that argument My Lord the Chief Justice observed as follows:

It was then contended that Section 50(2) will have to be read with Section 50(8) of the Act which stated that interim payment made under the section should not be deemed to constitute any part of the compensation amount which the Government were liable to deposit u/s 41(1) of the Act. Basing on this it is sought to be argued that as the interim payment is not regarded as compensation amount under the Act, the mortgagee will not be entitled to have recourse against that amount. This argument, however, runs counter to the express provisions in Section 52 of the Act. Apart from the consideration, we are of opinion that Section 50(8) was enacted for different purpose altogether. While Section 50(2) creates rights in certain persons to have their shares in the interim compensation amount Section 50(8) is intended to preclude the Government from taking credit for interim payments towards compensation which they are liable to pay for the taking over of the estate under the provisions of the Act. The two-provisions being intended for different purposes cannot be read together in any manner so as to nullify the effect of each other.

In view of the clear pronouncement of the law, we hold that there is no substance in the contention of learned Counsel for the respondent.

5. We are also of the opinion that the argument based upon the recent judgment of the Supreme Court in Civil Appeal No. 420 of 1962 (1963) 2 S.C.J. 456 : (1963) 2 I.T.J. 241 lacks substance. It may be noticed that this appeal C.A. 420 of 1962 (1963) 2 S.C.J. 456 : (1963) 2 ITR 241 was from the judgment of the Andhra Pradesh High Court in Raja Rameswar Rao Vs. Commissioner of Income Tax Hyderabad, which arose under the Hyderabad (Abolition of Jagirs) Regulation 1358-F, providing for a scheme for the abolition of Jagirs. Srinivasan, J. in the judgment referred to above 3 has referred to the judgment of the Andhra Pradesh High Court and on a careful analysis of the provisions of the Hyderabad Regulation expressed the opinion that the payment in question, there, were clearly in the nature of income and therefore clearly distinguishable from the interim payments made under the Madras Act. The Supreme Court in the narrative portion of the judgment merely referred to the judgment of the Madras High Court in R. Shanmugha Rajeswara Sethupathi Vs. The First Additional

Income Tax Officer, but did not express any opinion whatsoever on its correctness or otherwise and on an analysis of the provisions of the Hyderabad Act held that the payments represented the income within the meaning of Indian Income Tax Act. In more places than one the Supreme Court has emphasised that the allowances in question were interim maintenance allowances and were obviously not intended to be compensation but that there was no doubt that they were in the nature of "income". Towards the end of the judgment the Supreme Court has observed as follows:

Next, we observe that the Regulation advisedly called the payments "maintenance allowances" a nomenclature peculiarly suited to payments of the nature of income. Lastly, it may be pointed out that the payments were made for the interim period between the time when the income of the Jagir began to be collected by the Government through the Jagir Administrator and April 1, 1950, when the compensation for the loss of the Jagir first became payable. The payments were, therefore, by way of compensation for the loss of income in the interim period. In the words of Jenkins, L.J., as will appear later, they were "income compensation" and therefore of the income nature.

We have said enough to indicate that the judgment of the Supreme Court does not apply to the instant case.

6. The appeal, therefore, succeeds and will therefore have to be allowed.

7. The allowance of the appeal does not mean that the respondent will not be entitled to any portion of the interim payment. Since the interim payments represented the compensation, the respondent will be entitled to a portion of the compensation in the same ratio as was decided by the Estates Abolition Tribunal by its order dated 9th June, 1953, when the advance compensation was distributed.

8. There shall be no order as to costs.