

(1956) 03 AHC CK 0011

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 464 of 1954

Kunwar Sri Tri Vikram Narain
Singh

APPELLANT

Vs

The Government of the State of
Uttar Pradesh and Others

RESPONDENT

Date of Decision: March 9, 1956

Acts Referred:

- Constitution of India, 1950 - Article 226
- Pensions Act, 1871 - Section 4, 5, 7
- Uttar Pradesh Land Revenue Act, 1901 - Section 78
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 4, 45, 6

Citation: AIR 1956 All 564

Hon'ble Judges: V. Bhargava, J; G. Mehrotra, J

Bench: Division Bench

Advocate: S.K. Verma and B.N. Sapru, for the Appellant; A.G. and S.C., for the Respondent

Final Decision: Allowed

Judgement

Bhargava, J.

I have had the benefit of reading the judgment of my brother Mehrotra, J, and agree with him but I would like to add a few words on the merits of the case.

2. The facts brought out in this petition show that originally the Sanad granted in favour of B. Ausan Singh conferred on him the rights of a proprietor in the pergana and he became entitled to realise the revenue which was payable by the sub-proprietors instead of the Government.

Subsequently, however, this grant was resumed and it was decided that his successor B. Shiv Narain Singh was to be considered as the Tehsildar of Pergana Syudpore Bheittree and was to be allowed to hold the office hereditary. B. Shiv

Narain Singh and after him his son B. Har Narain Singh did not agree to work as Tehsildars and to bear all expenses of administration and loss in collection.

Ultimately this dispute ended in the grant of a sum of Rs. 36,330/- as pension to B. Har Narain Singh and his heirs, the amount being calculated on the basis of one-fourth of the revenue of the said Pergana which thereafter became payable directly to the Government.

On these facts, it is clear that from the time of the grant of this pension all rights of B. Har Narain Singh and his successors in the Pargana itself ceased. They were no longer proprietors of the Pergana or any land situated in it. They became entitled merely to a pension though the calculation of the pension was based on the land revenue assessed on the land in the Pargana.

Thereafter B. Narain Singh and his successors were not shown in the revenue records or treated by the Government as having any proprietary right or interest in the Pergana or One land situated in it. The pension payable to them had therefore no relation to any right remaining vested in them in the land of the Pergana. On the ground that the pension was calculated on the basis of one-fourth of the land revenue of the Pergana it was contended by the learned Advocate General that this pension must be treated as a grant of a right or privilege in respect of land revenue of land situated in estates which comprised the pergana.

In my opinion, it is not essential to decide whether this contention can be accepted. It is sufficient to hold that, even if this argument be accepted, Clause (b) of Section 6 of the U. P. Zamindari Abolition and Land Reforms Act does not determine such a grant as the grant was certainly not, in favour of a person having any right or interest in land vested in the State under this Act. The distinction sought to be drawn by the learned Advocate-General between the scheme of the U. P. Zamindari Abolition and Land Reforms Act and that of the Madhya Pradesh Abolition of Proprietary Rights Act which was considered by the Supreme Court in [Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh](#), does not appear to me to exist and to make any difference in application of the principle laid down by the Supreme Court in the case mentioned above.

Under the Madhya Pradesh Abolition of Proprietary Rights Act all proprietary rights in any estate or mohal vesting in a proprietor passed from him and vested in the State. Since the proprietary rights vested in the State the Supreme Court held that the right or privilege referred to in Clause (b) of Section 6 of that Act was the right or privilege of the proprietor or any person having interest in the proprietary right through the proprietor.

Applying this principle to Section 6(b) of the U. P. Zamindari Abolition and Land Reforms Act and keeping in view the difference that under this Act all estates vest in the State, it must be held that the right or privilege referred to in Section 6(b) of the U. P. Zamindari Abolition and Land Reforms Act is the right or privilege of an

intermediary or any person having an interest in the estate or any land situated in any estate.

As T have said above, the pension granted to B. Har Narain Singh and his successors cannot be held to be a right or privilege of an intermediary or a person having any interest in any estate or land situated in any estate acquired under the U. P. Zamindari Abolition and Land Reforms Act.

The effect of the interpretation of Section 6(b) of the Madhya Pradesh Abolition of Proprietary Rights Act by the Supreme Court therefore, is that the scope of Section 6(b) of the U. P. Zamindari Abolition and Land Reforms Act must also be held to be limited to rights or privileges of an intermediary or other persons having an interest in any estate or land situated in the estate acquired under the Act, so that the pension granted to B. Har Narain Singh and his successors cannot be held to have been determined under this provision of law. I, therefore, concur with the order proposed by my brother Mehrotra, J.

Mehrotra, J.

3. The present petition under Article 226 of the Constitution has been filed by one Sri Tri Vikram Narain Singh of Banaras for issue of a writ or Mandamus directing the opposite parties not to interfere with the applicant's right to regular payment of pension, allowance or malikana payable to the applicant in lieu of his hereditary estate in respect of pergaha Syudpore Bhettree in the district of Banaras.

4. In the petition it was prayed that at first instance, notice be issued to the other side to show cause why an order permanently restraining them from interfering with the applicant's right to realise his pension, allowance or malikana be not passed.

5. The petitioner is a descendant of one Sri Babu Ausan Singh who, as alleged by the applicant, was the owner and founder of what is commonly and popularly known as the Oussanganj Estate in the district of Banaras. The applicant alleged that Sri Babu Ausan Singh was of the family of His Highness the Maharaja of Banaras and was the Dewan of Maharaja Balwant Singh who was during his time the Maharaja of Banaras.

Babu Ausan Singh had rendered valuable services in the establishment of law and order at the time when there was great confusion due to incessant warfare in the time of Meer Qasim and the Wazir of Avadh. By a treaty entered into between the East India Company and Nawab Asafud-daula in or about the year 1775, the province of Banaras was ceded to the British Government and thereupon the British Government granted a "sanad" to Raja. Chet Singh and under it the pre-vius rights and powers hold by Raja Chet Singh were conferred afresh on him.

Raja Chet Singh, after the grant of the Sanad in his favour, in view of the past services of Babu Ausan Singh, gave in Jageer the perform of Syudpore Bhettree in

perpetuity to the said Babu Ausan Singh. After Raja Chet Singh had fled away, the Government of Warren Hastings renewed and confirmed the original "sanad" granted by Raja Chet Singh to Babu Ausan Singh.

Raja Mahip "Narain Singh was selected to succeed Raja Chet Singh and settlements of the reve-nue subject to certain specified deductions, were made with Raja Mahip Narain Singh and among those deductions was included the Jageer of Babu Ausan Singh. Raja Mahip Narain Singh also executed a "sanad" confirming the grant in favour of Babu Ausan Singh whereby the Jageer granted to Babu Ausan Singh by the British Government was further confirmed.

In 1793 certain zamindars in the Jageer estate made an attempt to get their lands placed on the same footing as the other zamindars in the prevince were and in July, 1796, the Collector of Banaras referred this matter for the orders of the Board of Revenue in Calcutta. The matter was submitted by the Board of Revenue to the Supreme Government which, on 5-8-1795 replied that the whole of pergana of Syudpore Bhettree was ex-pressly excluded from the mofassil settlement formed during the settlement operations of Mr. Ducan of 1790.

Therefore, no alteration could be made. It was, however, suggested that the zamindars of the estate should pay their revenue to Babu Ausan Singh as they had done since the pergana was made over to him. As a consequence of these proceedings, Babu Ausan Singh remained in full enjoyment of his rights. In 1802 he died and was succeeded by his son Babu Sheo Narain Singh.

In or about the year 1827, the finance of the East India Company became straitened and, when the normal conditions were restored, the Central Board of Revenue, which was then incharge of the resumption of rent-free tenures, resumed the pergana of Syudpore Bhettree and recommended to the Government that, as the tenure was in some respects perpetual, the estate should not be resumed until the demise of the then incumbent Babu Sheo Narain Singh.

Thereafter, Babu Sheo Narain Singh instituted a suit in civil court protesting against the resumption of the grant. In July, 1830, the Governor General in Council resolved that Sheo Narain Singh be considered Tahsildar of the pergana of Syudpore Bheittree and he should be allowed to hold his office hereditary.

The office was to devolve upon his descendants so long as they did not infringe any of the privileges conferred on them. It was, further, desired by the Government that Sheo Narain Singh should immediately withdraw the suit which was pending. Before, however, the instructions of the Government could be carried out, Sheo Narain Singh died and he was succeeded by his son Babu Har Narain Singh who withdrew the suit and a compromise was entered into.

The revenue authorities, however, asked Babu Har Narain Singh to bear all expenses of administration and any loss in collection that might occur which Babu

Har Narain Singh refused to do, asserting that it was contrary to the intentions of the Government. Ultimately this dispute rested in the grant of a sum of Rs. 36,330/- as pension to Har Narain Singh and his heirs.

The amount was calculated on the basis of one-fourth of the revenue of the said pergana, the revenue whereof became payable directly to the Government of the time being by the holders of the estate situate within the said pergana and the said pension was declared to be hereditary.

6. In the year 1951, the U. P. Zamindari Abolition and Land Reforms Act was passed and it is asserted by the applicant that, since the notification u/s 4 of the said Act, the opposite parties have stopped paying the pension and the allowances to the applicant.

7. On these facts, the present petition has been filed for the relief which I have already mentioned. In the affidavit filed in support of the Petition the facts mentioned above have been (sic) stated. In paragraph 17 of this affidavit it is stated that, since the notification in respect of the estates u/s 4 of the U. P. Zamindari Abolition and Land Reforms Act, the opposite party No. 1 has stopped paying the pension, allowance or the malikana.

In paragraph 20 it is further stated that on 4-9-1953 the applicant requested the opposite party No. 1 the State of Uttar Pradesh in the Revenue Department, to desist from making the claim which they had been unlawfully making against the applicant and to pay the amount payable to the applicant through the opposite party No. 3 but the opposite parties failed and neglected to accede to the request of the applicant.

8. A counter-affidavit has been filed on behalf of the opposite parties in which it is asserted that the applicant is a holder of an estate within the meaning of Act I of 1951 and the said estate has vested in the State of Uttar Pradesh u/s 6 of the U. P. Act I of 1951 since the date of the notification u/s 4 of the said Act and that the case of the applicant is fully covered, in any event, by Section 6 (b) of the above Act and he has no right to claim the amount of pension.

It is then stated that the payment has been rightly withheld by the State Government. It is further asserted in the counter-affidavit that the allegation of the applicant that the sum of money which used to be paid to the applicant "is not land; nor Immovable property, nor estate" is not correct.

The Advocate General appearing for the opposite parties, has taken a number of preliminary grounds and before dealing with the merits of the case, it is necessary to dispose of the preliminary points raised by him. Firstly, it is contended by the Advocate General that the remedy of the applicant is to file a regular suit for the recovery of the amount of the alleged pension and as an equally adequate alternative remedy is available to him, he is not entitled to any relief under Article

226 of the Constitution.

Secondly, it is urged that the allegations in the affidavit filed in support of the petition do not make out clearly what the nature of right claimed by the petitioner is and in the absence of any allegations which go to show that the applicant had any right, which has been infringed by the opposite parties he cannot ask for a relief under Article 226 of the Constitution as the existence of the right is the foundation for the exercise of power under Article 226 of the Constitution. It is lastly urged that even on the allegations made in the affidavit filed in support of the petition, no fundamental right of the applicant has been affected.

9. The preliminary point raised by the Advocate General that the applicant has a remedy by way of a regular suit is met by the applicant firstly, on the ground that in view of the provisions of the Pensions Act, the applicant had no right to bring a suit. Section 4 of the Pensions Act provides that :

"Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Government or any former Government, whatever may have been the consideration for any such pension or grant, and, whatever may have been the nature of the payment, claim or right for which such pension or grant, may have been substituted."

The expression grant of money or land revenue has been defined in Section 3 so as to include anything payable on the part of the Government in respect of any right, privilege, perquisite or office. In view of the provisions of Section 4 it has been contended by the applicant that no suit could be brought by the petitioner for the recovery of the amount of pension. Section 5 provides that: --

"Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the appropriate Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the-Chief Revenue authority may, subject to the general control of the appropriate Government, from time to time, prescribe in this behalf."

10. Section 6 provides that: --

"A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorised in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly". Section 7 then makes certain exceptions in which cases Sections 4 and 6 will not apply. The present case, however, does not come within any of the exceptions enumerated in Section 7. From the scheme of Sections 4, 5, and 7, it is clear that no suit could be brought by the applicant for the recovery of the amount of pension. If

there are claimants to any pension, they can apply u/s 5 to the Collector and, on receipt of the certificate from the Collector, a civil court can determine the claim but u/s 6 there is an express prohibition against granting a decree for recovery of the pension against" the Government.

It cannot, therefore, be said that the applicant had an alternative remedy by means of a suit available to him. It was then contended by the Advocate General, who appeared for the opposite parties, that the remedy of the petitioner lay in applying to the Collector.

In my judgment when there is a dispute with regard to the right of the applicant to claim the pension against the Government, the petitioner could not have applied to the Collector u/s 5 for such a relief and in any case such an application would not provide an adequate remedy when the Government itself is contending that the petitioner has lost his right to the pension under the U.P. Zamindari Abolition and Land Reforms Act.

11. The next point taken by the opposite parties as a preliminary objection was that the applicant had no, right, the enforcement of which he can claim under Article 226 of the Constitution. The existence of a right is the foundation for a relief being granted to the applicant under Article 226 of the Constitution and as the petitioner had no such right, no relief can be granted to him under Article 226 of the Constitution. The petitioner has relied on Section 8, Pensions Act which provides that: --

"All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorised officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue-authority,"

It is urged by the petitioner that there is a duty cast upon the Deputy Commissioner or other authorised officer to pay the amount of pension or grants of money or land revenue and it is open to the applicant to enforce the statutory duty enjoined upon the Deputy Commissioner or the Collector by means of a writ of mandamus.

In my judgment there is a duty cast upon the Deputy Commissioner or the Collector to pay the money payable to the applicant as a pension or grant of money or land revenue and it is open to the applicant to enforce the duty by means of a writ of mandamus.

The questions whether what the applicant is claiming is a pension or grant of money or land revenue, as contemplated by the Pensions Act, or any other right to get the amount from the opposite-parties are matters which may have to be considered by this Court independently but on the assumption that the amount which the applicant is claiming is a pension or a grant of money or land revenue, there is a statutory duty cast on the opposite parties which can be enforced by a writ

of mandamus.

12. Lastly, it was contended by the applicant that, even if there is an alternative remedy available to the applicant by means of a suit, it cannot be said that such a remedy is equally adequate. There may be considerations on which this Court may exercise its discretion in favour of the petitioner even though there is an alternative remedy available to him.

Reference in this connection may be made to the Full Bench decision of this Court in [Buddhu Vs. Municipal Board and Others](#). There is, therefore, no force in the preliminary objections raised by the opposite parties.

13. Coming to the merits of the case, the historical background in which the grant of the money was made to the predecessors-in-interest of the applicant has been set put in the petition and without going into the details of the circumstances in which the Government made the grant of the amount to the applicant, it will suffice to say that an annual grant of Rs. 36,330/- was made in favour of the applicant's predecessor.

The amount was calculated on the basis of one-fourth of the Revenue of the pergana Sydupore Bheittree as the revenue became directly payable to the Government by the holders of the estates situate within the said pergana. The said grant was declared to be heritable and in perpetuity and was settled as such.

The amount has been described in the revenue papers differently; some times as malikana and some times as allowance. After coming into force of the U. P. Zamindari Abolition and Land Reforms Act and the publication of the notification u/s 4 of the said Act, it is contended by the applicant, that the opposite-parties have stopped paying the said amount.

14. In the counter-affidavit, filed on behalf of the State Government, it is stated that the applicant is the holder of an estate within the meaning of Act 1 of 1951 and the same has vested in the State of Uttar Pradesh u/s 6 of U. P. Act 1 of 1951 Since the elate of the notification u/s 4 of the said Act and that, in any case, the applicant's case is fully covered by Section 6 (b) of the above Act and he has no case on merits.

In Para 5 of the counter-affidavit it is asserted that the statements in para Section 11 to 16 and 18 of the affidavit suggesting that the sum of money which used to be paid to the applicant is not "land" nor "immovable property" nor "estate" within the meaning of U. P. Act I of 1951 are denied. The point, therefore, raised by the opposite-parties in the counter-affidavit is mainly that the right which the applicant possessed of getting a sum of Rs. 36,330/- from the opposite-parties is an estate within the meaning of the U. P. Zamindari Abolition and Land Reforms Act and as such it could be acquired under the said Act and has been acquired and the right of the applicant ceased u/s 6(b) of the said Act. The word "estate" has fosen defined in the Zamindari Abolition and Land Reforms Act as follows;

" "Estate" means the area included under one entry in any of the registers prepared and maintained under Clauses (a), (b), (c) or (d) of Section 32, United Provinces Land Revenue Act, 1901, or in the register maintained under Clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate."

"Land" has been defined as land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. At this stage it will be convenient to give the definition of the word "intermediary" also which with reference to any estate means a proprietor, under-proprietor, sub-proprietor, thekedar, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof.

From the definition of the "estate" it is clear that money, which was paid to the applicant, cannot be regarded as an estate; may be that the money was paid to the applicant as the land revenue which was payable to his predecessor because to pay the Government and in lieu thereof the said amount was being paid but it cannot be said that the right to get the amount from the State Government under the grant can be regarded as an estate. It is not urged by the opposite-parties that the State Government, having acquired the right of the applicant to get the amount, has paid any compensation for the acquisition of such right. Section 45 of the Act provides that-

"In the case of proprietors to whom Section 78, U. P. Land Revenue Act. 1901, applies or who are assignees of land revenue whose names are recorded in the record of rights maintained under Clauses (a) to (d) of Section 32 of the said Act, under proprietors sub-proprietors, permanent tenure-holders and permanent lessees in Avadh, the provisions of Section 39 to 44 shall be applicable subject to such incidental changes and modifications as may be prescribed and thereupon the gross assets and net assets of such intermediaries shall be computed accordingly."

Sections 39 to 42 of the Act provide the methods by which the gross assets and the net assets of an intermediary are to be determined and Section 45 provides that in cases where the proprietors to whom Section 78, U. P. Land Revenue Act, 1901 applies, who are assignees of land revenue and their names are recorded in the record of rights as under proprietors, sub-proprietors and permanent tenure-holders, necessary changes will be made u/s 39 to 44 and their gross assets and net assets will be calculated accordingly.

This section does, therefore, contemplate the payment of compensation to the proprietors mentioned therein. It is not the case of the other side that the petitioner is an assignee of land revenue whose name is recorded in the record of rights, Section 78, U.P. Land Revenue Act, 1901 in terms does not apply to the applicant. It was, however, contended by the opposite parties that though Section 78, U. P. Land Revenue Act does not in terms apply to the present applicant, the provisions similar

to the provisions of Section 78 in the earlier Acts dealing with land revenue were applicable to the applicant and, therefore, subsequently it can be said that the applicant is a proprietor whom Section 78 applies.

In Section 45, Section 78, U. P. Land Revenue Act has been expressly mentioned and consequently, even if the applicant may have been entitled to get the benefit of provisions similar to the provisions of Section 78 in the earlier Acts, he cannot take advantage of Section 45, Zamindari Abolition and Land Reforms Act. Apart from this, Section 45 applies to the case of proprietors to whom Section 78, U. P. Land Revenue Act applies. The applicant is not a proprietor within the meaning of the Act. The word "proprietor" has been defined as follows:

" "Proprietor" means, as respects an estate, a person owning whether in trust or for his own benefit, the estate and includes the heirs and successors-in-interest of a proprietor." Before the provisions relating to ascertainment of gross and net assets for the purposes of payment of compensation can be taken advantage of by the applicant, it is necessary that the claim of the applicant must be an estate which has been acquired by the State Government. If it is not an estate and has not been acquired by the State Government the applicant cannot be regarded as a proprietor u/s 45 and is not entitled to any compensation and consequently, the question of applying Section 45 does not arise.

As I have already pointed out, this is not the case of the State Government that the right of the applicant to receive a sum of Rs. 36,330/- has been acquired by the State Government. The main contention of the opposite parties is that u/s 6(b) of the Act, the right of the applicant has automatically ceased after the notification u/s 4 of the Act. Section 4 of the Act provides that-

"As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in the Uttar Pradesh shall vest in the State and, as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances."

Section 6 provides for the consequences of the notification u/s 6. It provides that after the notification u/s 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification refers, namely:--

"(c) all rights, title and interest of all the intermediaries

(i) in every estate in such area including land (cultivable or barren) grove-land, forests whether within or outside village boundaries, trees (other than trees in

village abadi holding or grove), fisheries, tanks, ponds, water channels, ferries pathways, abadi sites, hats, Bazars and melas other than hats, bazars and melas held upon land to which Clauses (a) 10 (c) of Sub-section (1) of Section 18 apply, and (ii) in all subsoils, in such estates including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;

(b) all grants and confirmation of title of or to land in any estate so acquired, or of or to any right or privilege in respect of such land or its land revenue shall, whether liable to resumption or not, determine."

Sub-section (c) deals with rents, cesses, local rate and savaar in respect of any estate or holding therein for any period after the date of vesting and which, but for the acquisition, would be payable to an intermediary, shall vest in and be payable to the State Government. The Advocate General has strenuously contended that the grant in favour of the applicant, if any, is a grant in respect of land revenue and as a consequence of acquisition of estate, the grant has ceased.

Sub-section (a) deals with rights, title and interest of an intermediary. Sub-section (c) also deals with rents, cesses and local rates payable to an intermediary. The contention of the Advocate General is that there is no such restriction in Sub-section (b). That sub-section deals with all grants and confirmation in respect of land revenue whether made by an intermediary or a stranger and whether made in favour of an intermediary or a third person. So long as it is a grant or a confirmation of title or any right or privilege in respect of land or its land revenue, it will cease.

The contention of the applicant is that the grants, which are contemplated under Sub-section (b) are the grants in respect of rights or privileges in the land or in the land revenue of an intermediary and not a grant even though of land revenue made by a non-intermediary in favour of a third party. It is urged that the words "rights or privilege" in the sub-section refer to the right or privilege of an intermediary and not the right or privilege of any third party. If it is a grant of any right or privilege in respect of land in any estate or its land revenue which is not the right or privilege of or to an intermediary, such a grant is not affected by Sub-section (b).

What is granted to the applicant is a sum of Rs. 36,330/-. The consideration for which the grant was made may have been that the land revenue which was payable to the applicant became payable to the Government but it is not the grant of any right or privilege of or to the intermediary in respect of a land or land revenue of a land forming part of an estate so acquired. A grant of money, even though made as a consideration for the taking over of the land revenue which was payable to the applicant's predecessors-in-interest, cannot be regarded as a grant of any right or privilege of or to an intermediary in respect of land revenue of any land which forms a part of the estate acquired.

It is also contended by the applicant that Section 6 (b) applies only to the grants relating to the properties which have been acquired and regarding which provision has been made for determination of gross and net assets for the purposes of payment of compensation u/s 45 of the Act. Reliance has been placed on the case of [Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh](#), .

In that case certain contracts had been entered into with the proprietors of certain estates under which the applicants acquired the rights to pluck, collect and carry away tendu leaves, to cultivate, culture and acquire lac, and to cut and carry away teak and timber and miscellaneous species of trees called hardwood and bamboos. Some of those contracts were prior to the date of vesting and some of them were prior to 16-3-1950, which was the date specified in the Act after which the contracts were to terminate & the question which came up for decision before their Lordships of the Supreme Court was whether those contracts terminated after the notification u/s 3. Madhya Pradesh Abolition of Proprietary Rights Act.

Section 3 of that Act provided that on and from a date to be specified by a notification by the State Government all proprietary rights in an estate or mahal vesting in a proprietor, shall pass from him to and vest in the State. The consequences of vesting were specified in Section 4 of the Act and it will be necessary to quote the language of Section 4 of the Act which was considered by their Lordships of the Supreme Court. Clause (a) of Section 4 of that Act dealt with rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor. Clause (b) was in these terms:

"all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not determine." After quoting the section at p. 109 of the Report, their Lordships observed as follows:

"The right or privilege referred to is the right or privilege of the proprietor or any person having interest in the proprietary right, through the proprietor."

It is urged by the petitioner that the language of Section 4, Madhya Pradesh Abolition of Proprietary Rights Act was similar to that of Sub-section (b) of Section 6, U. P. Zamindari Abolition and Land Reforms Act and the observations of their Lordships of the Supreme Court when they said that right or privilege, referred to in Clause (b) of Section 4, related to the right or privilege of the proprietor, apply with equal force to the present case and the right or privilege mentioned in the present Sub-section (b) of Section 5 refer to right or privilege of an intermediary or persons whose interest in the land have been acquired. That case is sought to be distinguished on two grounds by the Advocate General. His first contention is that the words in the Madhya Pradesh Act were

"all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof." In the present case the words used are "all grants and confirmation of title of or to land in any estate so acquired." The property which vested u/s 3 of the Madhya Pradesh Act was the proprietary right in an estate or Mahal vesting in a proprietor while what vests under our Act u/s 4 is an estate which comprises of certain area mentioned in the record of rights.

It is not only the proprietary right in the land which has been acquired u/s 4 of the U. P. Act but it is the estate which has been acquired and as a natural consequence of such an acquisition, the rights possessed by various persons in the estate can be declared to have ceased. In a case where only the proprietary right of a proprietor of an estate has been acquired, the necessary consequences of such an acquisition can be that the rights and title relating to the proprietary rights of the proprietor can cease inasmuch as that is the property which has been acquired but in a case where the estate itself has been acquired, any interest in the land or its land revenue possessed by any person which is the subject-matter of a grant will be affected.

It is further contended that under the plain language of Section 6(b) any grant made in respect of the land revenue of a land which forms part of an estate has to cease irrespective of the fact whether the grantee is an intermediary or not and unless there is anything contrary indicated in the scheme of the Act, effect should be given to the plain meaning of the words used in the section and not to restrict its interpretation.

It is true that under the Madhya Pradesh Act what was acquired was the proprietary right of a proprietor of an estate and not the estate itself and under the U. P. Act what vests in the State is an estate, and, therefore, as a consequence of vesting of the estates, the rights of various persons may cease and the ceaser itself may amount to an acquisition of those rights but it can be said that what has ceased is only a grant in respect of a right or privilege of or to an intermediary and not all grants in respect of land revenue.

It is contended by the applicant that Section 6 speaks of the consequence of acquisition of the estate by the Government. Almost all the sub-sections of Section 6 deal with rights of an intermediary and having regard to the scheme of the section the intention of the Legislature in enacting Sub-section (b) of Section 6 was only to affect the rights and privileges of or to an intermediary in respect of the land revenue of the comprising an estate and not a grant in favour of a third party.

Section 4 deals with acquisition of an estate and Section 45, which provides for the ascertainment of assets for the purpose of paying compensation, deals only with the case of proprietors covered by Section 78, U. P. Land Revenue Act and the assignees of land revenue whose names are recorded u/s 32, Land Revenue Act. The right of the petitioner to get the money, as I have already indicated is neither covered by

Section 4 nor Section 45 and in that event, if the interpretation of Section 6(b) by the Advocate General is accepted, the right will be acquired by the State Government without paying any compensation.

Such an intention cannot be attributed to the Legislature. If the contention of the opposite parties is accepted that as a natural consequence of the vesting of an estate (which only means a certain area) the rights of all persons in that area would automatically cease, the Legislature would have used clearer words in Section 6. Chapter II, U. P. Zamindari Abolition and Land Reforms Act deals with the acquisition of the interest of intermediaries and the consequences of such acquisition.

After the notification u/s 4, the estates stand transferred to and vest, except as provided in the Act, free from all encumbrances, in the State. The Collector or any Officer appointed by him in this behalf, is authorised to take charge of any estate or part of an estate or interest vested in the estate by such means as may be necessary. He is further authorised to enter upon any land, building or other forming part of an estate and make a survey or to take measurement thereof and to require any person to produce any books, accounts or other documents.

The consequences of such a vesting of different kinds of rights in land are then enumerated in Sections 6 to 24 of the Act. Broadly, they can be classified as rights of intermediaries, rights of mortgagees and rights of tenants and other cultivators and then rights in groves and grants and confirmations. These rights are general in nature. The scheme of the Zamindari Abolition and Land Reforms Act consequently appears to be that after vesting of estates in the State, naturally the rights of all persons both intermediaries, tenants and mortgagees in land cease and stand transferred to the State.

By subsequent provisions the land is re-settled with the tenants but it does not appear from the entire scheme of the Act that it was intended that the rights of third parties under a contract with the State not relating to land or rights and privileges of intermediaries, tenants or other persons having interest in land can be affected. Section 6 as I already referred to, deals with the rights of the intermediaries.

Sub-section (a) specifically states that the rights of the intermediaries, enumerated therein, shall cease and be vested in the State of Uttar Pradesh. The natural consequence of the vesting of all the rights of the intermediaries in the state is that the grants and confirmations of title or land, in the estates so acquired or of any right or privilege in respect of such land refers to the rights and privileges of or to the intermediaries.

15. It was next contended by the Advocate General on behalf of the opposite-parties that even apart from Section 6, as a natural consequence of the abolition of the zamindari and the vesting of the estates in the State of Uttar Pradesh, the grant of -the Land Revenue in respect of the land should cease

The grant of payment of a sum of Rs. 36,330/- was made to the predecessors of the petitioners as the State Government was realising the land revenue which was payable to the predecessors and when the land revenue itself has ceased on account of the abolition of the zamindari, the subject-matter of the grant, in effect, has come to an end and the grant automatically should terminate. In my judgment, there is no force in this contention of the opposite parties.

It is true that the predecessors-in-interest of the applicant were granted payment of a sum of money as they had given up their right to realise the land revenue, but it does not mean that the subject of the grant has come to an end by abolition of the zamindari. Unless Section 6(b) of the Act applies to the present case, it cannot be said that by the abolition of the zamindari the grant in favour of the applicant has determined. A grant can be determined by means of a suit or by a legislature enactment but it cannot be determined only by means of an executive act.

In the case of [Virendra Singh and Others Vs. The State of Uttar Pradesh](#), it was held by the Supreme Court that a grant made by a previous Ruler of a State cannot be revoked after the merger by the State by an executive order. It is, therefore, clear that unless Section 6(b) applies to the present grant, it is not open to the State Government to refuse the payment of the amount to which the petitioner was entitled under the grant by any executive order and the statutory obligation of the State Government to pay such an amount can be enforced by means of a writ of mandamus.

16. I would, therefore, allow this petition with costs and direct the opposite-parties not to withhold the payment of the amount of Rs. 36,330/- only to the applicant.

17. We allow this petition with costs and direct the opposite parties not to withhold the payment of the amount of Rs. 36,330/- only to the petitioner. The costs of the petitioner and the fees of learned counsel for the State are assessed at Rs. 400/- each.