

(1877) 05 AHC CK 0006

Allahabad High Court

Case No: None

Seth Gobind Dass

APPELLANT

Vs

Major-General  
Showers

RESPONDENT

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Date of Decision: May 28, 1877

Citation: (1875) ILR (All) 400

Hon'ble Judges: Robert Stuart, C.J; Pearson, J

Bench: Division Bench

Final Decision: Disposed Of

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### Judgement

1. We are disposed to hold that the irregularities in publishing and conducting the sale are such as to render it invalid.
2. The place where the sale was to take place was not described with sufficient distinctness, nor was proclamation made on the spot as required, and there is no reason why the requirements of the law in this respect should have been omitted. But we further hold that the sale should not have been conducted by the officer of the Civil Court, but should have been held by the Collector, the estate being land paying revenue to Government within the meaning of Section 248 of Act VIII of 1859.
3. The property is a jungle grant situated in the eastern Dun, which at the time of the sale, had been granted to, and was in possession of General Showers. It was granted under the rules for such grants, which were subsequently formally embodied in the deed of 21st February 1877. Under the terms of the grant, no revenue was payable by the grantee for the first three years, but became payable for the fourth or following years. But because no revenue was payable at the time of actual sale, we cannot hold, with the Judge, that the estate was not a revenue paying estate within the meaning of the section.

4. The term "paying revenue" in Section 248 is used in contradistinction to "revenue-free" and will apply to all lands known as "Khalisa." The Government treated this estate as such, for it is so described in para. XI of the deed of grant, and such lands have always been so regarded, as may be implied from para. 20 of the present rules dated the 7th October 187G, for grant of waste lands. When the land granted on such terms as these is considered to be a mahal, as defined in Section 3, Clause I of Act XIX of 1873, and subject to all conditions attaching by law to such terms, the remission of revenue for a few years on the land will not alter its general character as Khalisa, or revenue paying, the revenue still remains assessed. It often happens that Government remits the revenue of revenue paying estates for several years, on various grounds, but the estates do not cease to be considered revenue paying, so far as to be subject to the conditions attaching by law to such estates.

5. We decree the appeal with costs, and set aside the order of the Judge, and set aside the sale.