
Srish Chandra Sen Vs Commissioner of Income Tax, West Bengal

Reference No. 20 of 1953

Court: Calcutta High Court

Date of Decision: May 15, 1956

Acts Referred:

Evidence Act, 1872 â€” Section 101, 102, 103, 104#Income Tax Act, 1922 â€” Section 2, 2(1)#Land Acquisition Act, 1894 â€” Section 6, 8

Citation: AIR 1958 Cal 34 : (1957) 31 ITR 307

Hon'ble Judges: Chakravarti, C.J; Sarkar, J

Bench: Division Bench

Advocate: R.B. Pal, Sukumar Mitra, R.C. Deb and Asoke Sen, for the Appellant; E.R. Meyer and Balai Pal, for the Respondent

Judgement

Chakravarti, C.J.

This Reference u/s 66(1) of the Indian Income Tax Act involves a question of law which it is not easy to decide. The

difficulty of arriving at a decision, satisfactory at least to our own minds, has been increased by the fact that certain additional information which

would have been of real assistance has not been available, although requisitions for it were made of the Board of Revenue, the Collector of 24

Parganas and the Corporation of Calcutta. Another difficulty has been that although several pieces of documentary material were produced before

the tribunal and have been referred to in their order, not one of them has been included in the paper book. Indeed, besides the application for a

Reference and the respondent's reply, the paper book contains nothing except the several orders passed in connection with the assessments under

reference and the assessment for a prior year. The Statement of the Case, again, is wholly useless. In form, it is merely the order passed by the

tribunal on the assessee's application for a reference, refusing its request in respect of several questions and acceding to it in respect of only one.

As regards the question referred, no facts are stated, nor is it stated how the question arises, nor are the ground"s of the tribunal"s appellate

decision set out. We have had to collect the facts from the several orders over which they lay scattered and from the documents referred to in the

appellate order of which copies were supplied to us by the parties.

2. Briefly stated the facts are as follows:--

3. The assessee, a Hindu undivided family, holds a square mile of land situated in the southern suburbs of Calcutta under a long lease granted by

the Calcutta Corporation. It appears that the land was acquired in 1865 by the then Government of Bengal for the Corporation of Calcutta in

order that it might be used by the Corporation for the conservancy purposes of the town. It is still used for those purposes, being chiefly utilised for

the drain-age outfall for the city"s sewage and for dumping the city"s refuse, but it has at the same time been leased out to the assessee at a

progressive rent and on condition that it will unload wagons of refuse at its own expense. The assessee derives income from the land in various

forms, some of which are non-agricultural in character and about which no question arises in this Reference. A portion of the land has, however,

beer, brought under cultivation and it has been let out by the assessee to cultivating tenants who grow vegetables on it and from whom the assessee

receives selami and rent. In the course of the assessments for the years under reference, the assessee claimed that the income received by it from

the portion of the leasehold land which was used for agricultural purposes was agricultural income and accordingly it was exempt from tax u/s 4 (3)

(viii) of the Income Tax Act. The Income Tax Officer disallowed the claim in the view that although the land had been a part of a revenue-paying

estate, it appeared that at the time when the Government of Bengal conveyed it to the Corporation after its acquisition under the Land Acquisition

Act, they had granted a redemption of the land-revenue on receipt of its capitalized value, computed at twenty times the annual revenue payable on

account of it and, since then, the land was being held by the Corporation as revenue-free. On appeal, the Appellate Assistant Commissioner

accepted the assessee"s contention and the view he took was that the land had been subjected to land-revenue by the method of obtaining

payment of revenue in advance. On further appeal, the tribunal held that the assessee"s claim could not be sustained. According to the tribunal, the

payment received by the Government was not an advance payment of land revenue, but only a consideration for freeing the land of the revenue

charge and since, by the payment, the liability for land-revenue had been extinguished for ever, the land no longer stood assessed to land-revenue.

4. After the tribunal"s decision, the assessee asked for a reference to this Court and the tribunal has referred the following question of law:--

Whether on the facts and in the circumstances of this case the tribunal"s conclusion that the land was not assessed to land revenue within the

meaning of Section 2 (1) (a) of the Indian Income Tax Act is justified?

5. The Reference concerns four assessment years, viz., 1943-44, 1944-45, 1945-46 and 1946-47. Before we can deal with the question, it is

necessary to state certain further facts and to refer to certain provisions of law.

6. The Corporation of Calcutta was constituted by Bengal Act No. VI of 1863 and was then constituted, as would appear from Section III of the

Act, of "Justices of the Peace for the Town of Calcutta", which meant all Justices of Peace for Bengal, Behar and Orissa, resident in the Town and

all Justices of the Peace for the Town itself. The object of the Act was to vest the property of the Town of Calcutta and the management of its

Municipal affairs in a Corporation and to make better provision for, inter alia, the conservancy and improvement of the Town. For the purpose of

carrying out its duties, the Corporation was authorised to acquire lands by purchase, but the Act also provided by Section CXI that if the method

of purchase was found ineffective in any particular case, the land required might be obtained through acquisition by the Government of Bengal. The

actual language of the section was as follows:--

When there is any hinderance to the acquisition by purchase of any land or building required for the purposes of this Act, the Government of

Bengal, upon the representation of the Justices and after such inquiry as may be thought proper, may declare that the land or building is needed for

a public purpose, and may order proceedings for obtaining possession of the same for Government, and for determining the compensation to be

paid to the parties interested, according to any laws now or hereafter to be in force for the acquisition of land for public purposes. And the

Government of Bengal may vest such land or building in the Justices, on their paying the compensation awarded.

7. The law for the acquisition of land for public purposes, then in force, was Central Act No. VI of 1857, generally called the first Land

Acquisition Act. That Act laid down the procedure for the acquisition of land for public purposes, which was more or less similar to the procedure

laid down in the present Act. In Section VIII it stated the effect of taking over of land upon acquisition in the following terms:--

When the Collector or other officer has made an award or directed a reference to arbitration, he may take immediate possession of the land

which shall thenceforward be vested absolutely in the Government, free from all other estates, rights, titles and interests

8. Act VI of 1857 did not contain any specific provision for the acquisition of any land for the purposes of any local authority or the Corporation of

Calcutta. Nor did it contain any provision for the execution of any instrument by the party in whose interest land might be acquired, like the

provision contained in the present Land Acquisition Act in respect of land acquired for the purposes of a company. The provision for acquisition of

land in the interest of the Corporation of Calcutta was contained in the then Calcutta Municipal Act itself, as in the successor Acts. It was thus in

Section CXIII of Bengal Act VI of 1863, read with Section VIII of Central Act VI of 1857, that provision was to be found for acquisition of land

for the purposes of the Corporation of Calcutta and vesting of the same in the Corporation after it had vested in the Government.

9. The exact measurements of the land concerned in the present case are 2,005 bighas 8 cottahs and 4 chittacks. At the time of the acquisition, it

appertained to the Panchannag-ram Estate which bore a land revenue of Rs. 3,198-0-9 pies per annum. It appears that the declaration that the

land was required to be taken for a public purpose was published in the Calcutta Gazette of the 2nd of November 1864. The amount of

compensation payable to the persons interested in the land was determined at Rs. 55,071-2-9 pies and in August 1865, the Corporation was

called upon to pay the amount. The Corporation having paid it, the acquisition was completed in the same year and possession of the land was

delivered to the Corporation on the 10th of November. Prior thereto, on the 27th of October 1865, the Government appears to have passed an

order that the Corporation should be required to pay a further sum of Rs. 7,728-13-8 pies as the "20 years" purchase of the rental, viz., Rs. 386-

7-1 pie", on account of the land acquired for its use. It appears from the explanatory notes in the Revenue Roll of the Touzi that the owner of the

Estate was granted abatement of land revenue to the extent of the said sum, i.e., Rs. 380-7-1 pie, on account of the acquisition of 2,005 bighas 8

cottahs and 4 chittacks of land "for conservancy, i.e., for cleansing roads and streets". By a letter dated the 5th of January 1866, the Deputy

Collector of 24 Parganas asked the Corporation to remit a sum of Rs. 7,728-13-8 pies and the money was paid on the 12th of January next. The

Deputy Collector's letter referred to a Government Order No. 5986, dated the 27th October 1865, by which the money had been directed to be

paid by the Corporation as "20 years" purchase of the rental, viz., Rs. 386-7-1 pie of the square mile in Dhappa acquired for the Justices for a

public purpose". The forwarding letter of the 12th January 1866, by which the Collector of Calcutta sent to the Officiating Collector of the 24

Parganas a Bank receipt for the sum paid in by the Corporation to the Bank of Bengal, described it as "the amount of remission of Government

Revenue for the square mile at Dhappa payable by the Justices under the Order of Government No. 5986, dated the 27th October 1865".

Nothing further appears to have happened thereafter for a space of about five years, but on the 5th of December 1870, an Indenture of

Conveyance between the Secretary of State for India in Council and the Justices of the Peace for the Town of Calcutta was executed. The

Indenture set out the history of the acquisition and then proceeded to recite the terms and conditions of the transfer as follows:--

And whereas the compensation to be paid to the parties who were interested in the said lands at the time of the acquisition of the land for public

purposes and amounted altogether with cost, fees and other charge's to the sum of Rupees Fifty-five thousand and seventy-one two annas and ten

pies which has been paid by the said Justices of the Peace.

And whereas the Hon^{ble} the Lieutenant Governor of Bengal hath thought fit that the said land so acquired as aforesaid would be vested in the

said Justices of the Peace for the Town of Calcutta, a Corporation created by and authorised to hold land under the said Act No. VI of 1863 of

the Council of the Lieutenant Governor of Bengal to the end and intent that the said land may be held by the said Justices for a public purpose,

namely, for the Conservancy of the Town upon the trusts expressed and contained in the last mentioned Act and subject in every way to the same

Act but free and discharged from all payment of land revenue, land tax and all and every tax or imposition in the nature of revenue derivable from

land payable to Government in respect thereof:

Now this Indenture witnesseth that for effectuating the premises and in consideration thereof and in order that the said lands and hereditaments may

be vested in the said Justices of the Peace, the said Secretary of State for India in Council doth by these presents grant and convey unto the said

Justice^s of the Peace for the Town of Calcutta and their successors all those several pieces or parcels and strips of land as per aforesaid Schedule

and all ways, rights, easements, members and appurtenances to the said pieces or parcels of lands or any of them or any part thereof belonging or

appertaining or reputed so to be and which the said Secretary of State in Council can convey and all the estate, right, title and interest of the said

Secretary of State for India in Council into or out of the land or any part thereofunto the said Justices of the Peace for the Town of Calcutta

and their successors for ever free and clear and for ever discharged from all Government land revenue whatever or any payment or charge in the

nature thereof to the end and intent that the said land may be used for a public purpose, namely, for the Conservancy of the town upon the trusts

and subject to the powers, provisions, terms and conditions contained in the said Act No. VI of 1863 of the Council of the Lieutenant Governor of

Bengal and to the rules heretofore passed or hereafter to be passed by the Government of Bengal under the said last mentioned Act.

10. It will be noticed that whereas the payment of the amount of compensation was stated as the consideration for the conveyance, the payment of

the further sum of Rs. 7,728-13-8 pies was not even mentioned.

11. It is not disputed in the present case that the income for which exemption from tax is claimed was derived from land used for agricultural

purposes. The only question is whether it was derived from land assessed to land revenue. The assessee's contention is that the land was and still

is assessed to land revenue, because its original assessment as a part of a revenue-paying estate was not extinguished by either the acquisition

under the Land Acquisition Act or the redemption of the revenue by the payment of a capitalised sum but, on the other hand, its subsistence is

indicated by that very payment. The Department's contention is that even if the assessment was not extinguished by the acquisition which,

according to them, was, the land was in any event freed of the revenue charge when it was redeemed by the payment of a capitalised sum and

therefore it cannot now be said to be land assessed to land revenue. The answer to the question depends upon the effect of the acquisition, the

redemption and the transfer,

12. On behalf of the assessee, Dr. Pal contended that the charge of land revenue to which the land was subject was not extinguished by the

acquisition and he relied on the decision in Lord Colchester v. Kewney (1866) 1 Ex 368 (A) for the proposition that land, chargeable with land

tax, did not acquire exemption on purchase by the Crown for public purposes. I do not think that the decision cited is of any assistance in the

present case. The question before the Court of Exchequer was whether an asylum for the maintenance and education of daughters of military men

dying in active service which had been founded in 1857 could claim exemption from land tax u/s 25 of the Land Tax Act, 1797, (38 Geo. 3, c. 5)

which provided for an exemption from land tax of "any hospital" in respect of its site. As the asylum was founded by certain Commissioners

appointed by the Crown to administer a fund subscribed by the public for that purpose, one of the contentions in the case was that the site of the

asylum was exempt from land tax as Crown land, even if it could not claim exemption as the site of a hospital. The Court held that the land was not

Crown land and then added, as the second ground for repelling the asylum's contention, that the land having been chargeable with land tax when

belonging to the previous owner, would be chargeable even in the hands of the Crown if it was directly purchased by the Crown, although there

might be some difficulty in enforcing payment of the tax. That view was taken as the Court made it clear, because of the nature of the tax imposed

by the Land Tax Act. By that Act, the King was provided with a grant of two millions thirty-seven thousand six hundred and twenty-seven pounds,

nine shillings and one farthing to be "raised, levied and paid by such proportions and in such manner and form" as the Act proceeded to specify

and out of that sum, an amount of one million nine hundred eighty-nine thousand six hundred seventy-three pounds, seven shillings and ten-pence

farthing was to be assessed and taxed in the several counties, cities, boroughs, towns and places of the country according to the proportions laid

down in the Act. The Land Tax Act used to be an annual Act, but the last of such Acts was the Act of 1797. By another Act (38 Geo. 3 c. 60)

passed in the same year, the tax was made permanent and the effect was to charge permanently the several counties, cities, boroughs, towns and

places with quotas of the tax fixed respectively for each of them. From each area thus separately assessed, the fixed quota charged on it was to be

levied and that amount was not to be altered. Only, if any portion of the tax charged on any land within an area was redeemed before the levy in

any particular year, the amount was to be deducted from the quota and the remainder only levied. The Court pointed out that the Act purported to

charge all lands with ""as much equality and indifference"" as possible, but if it was to be held that the Crown, after purchasing some land, the tax

payable on which had not been Redeemed, would be immune from paying the tax, the effect would be to throw a heavier burden on the remaining

lands of the area, because the fixed quota of the tax would have to be levied from it. The grant made by the Act which was intended to provide

financial aid to the King for the purpose of performing his functions as the Sovereign would have to be maintained, but if the sources from which

contributions to the fund, as fixed by the statute, were to be reduced, a situation of great difficulty, involving injustice to others,

would arise. It was pointed out that the effect of holding that land previously charged to land tax, if purchased by the Crown, would continue to be

chargeable, would not be to tax the Crown but merely to make the Crown pay the market-price for the land purchased, because, if the tax

payable on the land had been previously redeemed, its market-price would be higher and the Crown, on purchasing it as unredeemed land at a

lower price, would only be paying the difference in the price by paying the tax.

13. The considerations on which the Court of Exchequer proceeded in regard to the English Land Tax Act in the case cited do not appear to me

to apply to land assessed to land revenue in Bengal. The total revenue payable on the revenue-paying Estates in Bengal was not fixed by way of

providing for a fixed contribution to the public revenues of the State or the Consolidated fund, nor was the revenue assessed on individual Estates

fixed on the basis of any quota. The amount of the revenue was a matter of settlement in each individual case on principles laid down in the several

Regulations and even in the case of the permanently settled Estates, it was only the settlement made at the decennial settlement which was made

permanent. It is thus not possible to apply the case cited to the land revenue in Bengal, because the foundation on which the decision rests is

wanting here.

14. Besides, what we have to consider in the present case is not the nature of the impost of land revenue as such, but the effect of an acquisition of

land u/s 8 of Act 6 of 1857. Quite recently, that section fell to be construed by the Supreme Court in the case of The Collector of Bombay Vs.

Nusserwanji Rattanji Mistri and Others, , in connection with an acquisition of some Foras lands in Bombay which had been subsequently

transferred by Government to a third party, The transferee was contending that he was at least entitled to hold the lands at the assessment which

they bore under the Foras Act (Bombay Act 6 of 1851) up to and at the time of the acquisition, because Section 2 of the Act conferred on the

persons who were occupying Foras lands at its date a right to continue to hold such lands at the rates, then payable. In repelling that contention,

the Supreme Court pointed out that the effect of Section 8 of Act 6 of 1857 was to destroy all interests in the lands acquired other than those of

the Government and it held on the facts of the case that the Foras tenure having itself been extinguished, the rent attached to it or the right to hold

the lands at such rent could not be said to be subsisting. ""When the lands were acquired under the Land Acquisition Act No. 6 of 1857"", observed

the Supreme Court,

the entire "estate, right, title and interest" Subsisting thereon became extinguished and the lands vested in the Government absolutely freed from

Foras tenure and when they were sold by the Government under Exhibit A, the purchasers obtained them as freehold and not as Foras lands. As

the tenure under which the lands were originally held had become extinguished as a result of the land acquisition proceedings, it was incapable of

coming back to life, when the lands were sold under Exhibit A.

15. Likewise, it appears to me, it must be held in the present case that upon the acquisition of the land in question, its character as part of an Estate

settled with a Proprietor at an assessment of land revenue was extinguished and it passed into the ownership of Government as freed of the

settlement and necessarily freed of the proportionate revenue attached thereto. Formerly, the land was a part of a revenue-paying Estate. "Estate",

according to the definition in Section 1 of Act 7 of 1868, means any land or share in land subject to the payment to the Government of an annual

sum in respect of which the name of a proprietor is entered on the register known as the General Register of all the revenue-paying Estates, or in

respect of which a separate account may in pursuance of Section 10 or Section 11 of Act 11 of 1859 have been opened. "Revenue", according to

the definition in the same section, includes every sum annually payable to Government by the proprietor of any Estate or tenure in respect thereof

and also certain other kinds of payments which are not material for our present purpose. These definitions apply to Act 11 of 1859 as well. Both

"Estate" and "revenue" thus presuppose an engagement between a proprietor and the Government in respect of some land constituted into an

Estate, under which Government is paid an annual sum charged on the land as revenue. Thus, the charge of revenue does not exist de hors the

engagement and does not run with the land as a liability inherent in its composition, but it is the product of an assessment made in connection with

the engagement and payable in pursuance of one of its terms. When the land vests in the Government freed of all other interests, the interest of the

proprietor and with such interest his engagement to pay the land revenue disappears. On such disappearance the assessment to land revenue

cannot survive. That consequence is made clear by Rules 1, 3 and 4 of the Rules framed u/s 55 of the present Land Acquisition Act (Act 1 of

1894) which has the force of law under Sub-section (3) of the section. Those Rule"s provide that when any revenue-paying land is acquired under

the Land Acquisition Act, the proprietor shall be relieved of the liability to pay revenue to the extent of Government demand upon the said land.

No corresponding rule framed under Act VI of 1857 could be traced. But there was Section 26 in the Act itself which provided that if the owner

of the Estate declined to receive the full amount of the compensation for loss of rent on condition of his continuing to pay the revenue without

abatement, he might be allowed proportionate remission of revenue and a deduction might be made from the compensation for loss of rent as

computed, proportionate to the value of the remission. The proprietor in the present case was actually granted an abatement of the proportionate

land revenue in respect of the portion of the Estate acquired. I do not think that the provision to the effect that the owner may undertake to

continue to pay the full amount of revenue can mean that the charge of revenue on the portion of the estate acquired was not extinguished by the

acquisition. Such meaning would be inconsistent with the plain words of Section 8 as construed by the Supreme Court, under which the owner's

interest in the portion acquired, carrying therewith his liability to pay the revenue therefore, must be held to have ceased to exist as soon as the land

vested in the Government, free from all other Estates and interests. The alternative provision in Section 26 can only mean that the owner might

enter into a special engagement for continuing to pay the full amount of the original revenue in consideration of his receiving the full amount of the

compensation. In the absence of such special engagement, a proportionate amount of the revenue would be remitted, obviously on the basis that

the land acquired had ceased to be a part of the Estate and the owner could no longer be charged with the proportion of the revenue payable on it.

If the land ceased to be a part of the Estate to which it previously appertained and vested in Government, it could no longer bear any land revenue

until and unless revenue was again assessed on it in connection with a fresh settlement. I cannot therefore agree with Dr. Pal that the rule as to the

subsistence of the English Land Tax even after a private purchase by the Crown applies in India so as to keep alive an assessment of land revenue

on revenue-paying lands acquired under the Land Acquisition Act of 1857.

16. It also appears to me that, from one point of view, whether or not the original assessment to land revenue survived the acquisition, is not a

question of any practical importance in the present case. After the acquisition, Government called for a payment of the capitalised value of the

revenue which they described as "the rental * * * of the square mile in Dhappa" and, on receiving the amount, conveyed the land as revenue-free.

It may be argued with Some plausibility that when they asked the Corporation to make an additional payment of Rs. 7728-13-8 pies, they treated

the land as then subject to a land revenue of Rs. 386-7-1 pie. In that view of the facts, even if the original assessment did not survive, as I think it

did not, an assessment of an equal amount must be taken to have come into existence and the only hypothesis on which the revival of the land

revenue can be explained is that Government made a fresh assessment. It was pointed out by the Supreme Court in the case to which I have

referred that while an acquisition under Act 6 of 1857 extinguished all existing tenures and assessments, it did not extinguish Government's right to

levy assessment on the land. In the facts of the present case, if the amount of Rs. 7728-13-8 pies is taken to be not an extraneous sum but the

capitalised value of the revenue-charge to which the land was subject, we must proceed on the basis that even after the acquisition of the land

under the Land Acquisition Act and at the time it was about to be transferred to the Corporation, there was an assessment of land revenue charged

on the land, whether it was the original one or one brought into existence by a fresh imposition. On that footing, an enquiry as to whether the

original assessment continued to subsist after the acquisition would be unnecessary. The real questions would be whether the redemption of the

land revenue by payment of its capitalised value meant that the assessment was extinguished or only that, on receipt of a consolidated sum, its

payment as an annual sum was excused and next, whether quite apart from any other fact or consideration, the conveyance of the land by the

Secretary of State as revenue-free makes it impossible to contend that, even after such conveyance, it is still land assessed to land revenue.

I think, however, for reasons already stated, that the original assessment was extinguished by the acquisition and also, for reasons I shall state in

due course, that the demand and payment of the additional Sum of Rs. 7728-13-8 pies does not indicate that the land was subject to an

assessment of land-revenue at the time.

17. Before leaving this part of the case, I must refer in brief to a supplementary contention advanced by Mr. A. K. Sen who followed Dr. Pal. He

contended that the decision of the Supreme Court in *Collector of Bombay v. Nusserwanji Rattanji Mistri (B)* (ante), would not apply to the

present case, inasmuch as the lands which were involved in the case before the Supreme Court were Crown lands to which different

considerations applied. The land in the present case was a part of a permanently settled Estate. It was contended that by reason of the provisions

of Regulation 1 of 1793, particularly Section 4, Article 3 and Section 6, Article 5, an assessment of land revenue, once made on certain land,

could not be removed by any authority and could not be extinguished in any circumstances. If such land came to be the property of Government,

the payment of revenue would only remain suspended, but if Government transferred the land to third parties, they would be bound to transfer it at

an assessment. Reference was also made to Section 8 of Regulation 2 of 1793. Looking at the Regulations, I find myself wholly unable to accept

the concept of land revenue under the permanent settlement which underlay Mr. Sen's argument. The permanent settlement of an Estate or of the

revenue payable on it meant that the amount of assessment, as payable by the proprietor with whom the Estate had been settled or his successors

in interest, was made permanent; and Section 6, Article 5 of the Regulation means not that Government would be bound, if it transferred any land

which had become its property, to transfer it at an assessment, but that the transferee would be entitled to hold the land for ever at assessment at

which it might be transferred, if it was transferred at an assessment. Indeed, even if Section 6, Article 5 of Regulation 2 of 1793 implies that any

transfer made would have to be made at an assessment, it does not say that such assessment would be the original assessment or at least would

have to be its equivalent in value and therefore the section furnishes no ground for saying that the assessment, confirmed at the Permanent

Settlement, was inextinguishable and unalterable. Neither Article 3 of Section 4, nor Article 5 of Section 6 of Regulation 1 of 1793 and least of all

Section 8 of Regulation 2 of 1793 indicates that a permanent and ineradicable charge of land revenue was laid on the land itself which no

circumstance could affect or extinguish and with which Government themselves could not interfere.

18. This is hardly the occasion for discussing the incidents of land revenue as assessed on the permanently settled Estates of Bengal. Briefly it may

be stated that the theory on which Government's right to land revenue rests and which was adopted as the basis of the permanent settlement is

that, in all Eastern countries, the Sovereign Power in the State was entitled as of right to a portion of the produce of the soil, unless that right was

alienated by a special grant. It was because the right was related to the produce that the instalments of the revenue were originally so timed that

they fell due before the crops from which they were to be liquidated, could be gathered. In course of time, payment in kind came to be commuted

for a money payment which in some cases was fixed permanently and in others was liable to revision by periodical settlements. But the basis of the

impot always was that land was in the possession and enjoyment of a subject to whom no free grant had been made and that he was deriving

produce from the land, to a share of which the State was entitled. The revenue assessed on the land represented this share and it was secured by

making it a paramount charge on the land. When, by the permanent settlement, the zemindar was made the proprietor of the lands held by him, one

of the conditions on which he was granted the status was that in the event of his failing in the punctual discharge of the revenue, a sale of the whole

of his lands or such portion of them as would be sufficient to make good the arrear would positively and inevitably take place. This provision was

designed for the protection of the revenue and the interest in the land which was offered for sale at a sale for arrears of revenue and which passed

at such sale was not the interest of the defaulter, but the interest of the Crown, subject to the payment of the Government assessment. The

assessment subsisted, because the land was sold as subject thereto and it was so sold, because the purchaser also would derive profits from the

land, to a share of which Government would have a right as the Sovereign power. The assessment, however, was not a tax on the land itself, but

represented the levy of a share of the produce from the subject holding the land and, therefore, although it might have been imposed by a statute

and made permanent, the permanence did not mean that it had been impressed on the land for all time and could not be altered or extinguished, but

meant only that so long as the land continued to be held under the settlement, the quantum of the revenue would remain fixed. The continuance of

the assessment itself, however, depended on the subsistence of the tenure, but if the holding by a subject ceased, the assessment also ceased to

exist, because there could be no longer any question of a right to a share of the produce. Besides, the right to the revenue, being a right of the

Crown, the Crown could always alienate or remit it. There is thus no ground for saying that the assessment of land revenue, confirmed and made

permanent at the permanent settlement, could never be modified or removed from the land and that nothing and no power could affect it in any

way. I have so far refrained from citing authorities in support of propositions which I consider to be well-settled, but shall now cite one. In a case

decided by Mukerji and Bartley JJ. a portion of a permanently settled Estate was first acquired under the Land Acquisition Act and then the Estate

was sold for arrears of revenue. Both the original proprietor and the purchaser claimed the compensation awarded for the acquired portion of the

Estate, the latter on the ground that the default to which his title related back was prior to the date of the acquisition. The decision of that question

is not material here, but the Court also pronounced on the effect of the acquisition and abatement of a proportionate part of the land revenue

granted by the award. The learned Judges referred to the proposition that what passes at a revenue sale is the interest of the Crown, subject to the

payment of the Government assessment and then dealt with the effect of the acquisition and the grant of the abatement of land revenue which had

taken place before the sale. Mukerji J. pointed out that the abatement of Government revenue for the acquired lands had been allowed with effect

from the kist previous to the date of taking possession and held that therefore, ""at the time of the sale the said lands were no longer subject to the

payment of Government assess-ment"" and that the purchaser had never purchased the acquired lands at all. Hartley, J., pointed out that prior to

the revenue sale, the acquired lands had vested absolutely in the Crown and an abatement of the proportionate amount of land revenue payable in

respect of them had been granted. The effect of that, the learned Judge held, was

that on the one hand, the amount of land subject to the payment of revenue decreased and, on the other, the interest of the Crown diminished, as

is evidenced by the fact that the Crown assessed that interest, the land revenue, at a lower figure.

See Nrisinha Charan v. Nagendra Bala, 37 Cal WN 14: (AIR 1933 Cal 522) (C).

Apart from the decision of the Supreme Court which deals with the effect of an acquisition of Foras lands, there is thus a direct decision, dealing

with a permanently settled Estate of Bengal, which lays down the same law and holds that upon an acquisition of a portion of such an Estate and a

grant of abatement of land revenue, the lands acquired cease to be subject to an assessment of land revenue.

19. If, besides judicial decisions, it be legitimate to refer to practice, I may point out that as regards the effect of an acquisition of revenue-paying

land on the revenue assessed on it, some light is thrown by the practice, now followed, with regard to the disposal of surplus land after the

purposes of the acquisition have been served. The practice is certainly not in itself the law, nor have the Executive Instructions where the practice is

to be found stated statutory force, but they indicate what the effect of an acquisition under the Land Acquisition Act is, Section 16 of the present

Act being more or less in the same terms as Section 8 of the Act of 1857. It appears from Rule 146 of the Executive Instructions that in the

case of acquisition of lands appertaining to permanently-settled Estates, surplus land is to be offered in the first instance to the original holder on

condition that it will be re-absorbed into the Estate of which it originally formed part and if abatement of revenue was granted at the time of

acquisition, the amount originally remitted should be added to the revenue. Rule 147 provides that in the case of lands relinquished by Railways, if

the original owners or their representatives cannot be found, the lands are to be sold, either as temporary settled Estates on assessment of revenue

on them or, if it be inconvenient to assess revenue, as revenue-free lands. I am not saying that these executive rules, framed under the present

Land Acquisition Act, can be drawn upon in judging the effect of an acquisition of revenue-paying land under the Act of 1857 on the revenue

payable on it, but as the provisions of the two Acts are essentially the same they are of some help as showing that after some revenue-paying lands

have been acquired, the revenue payable on them is not treated as subsisting and that if they are not required and are disposed of again, a fresh

assessment is made or they are conveyed as revenue-free.

20. There is, however, in the present case the fact of the additional payment by the Corporation and in view of that fact, the parties before the

Tribunal and the Tribunal itself proceeded on the basis that, even after the acquisition, there was a subsisting assessment. Accordingly, they treated

the case as one of a redemption of land revenue and the only question to which they addressed themselves was whether the effect of the

redemption was to extinguish the assessment or it was to substitute an alternative method of the payment of the revenue. In my view, even

assuming that at the time Government were treating with the Corporation, there was an assessment on the land and it was intended that, by the

payment, the revenue should be redeemed, the effect of the redemption was to extinguish the assessment. The facts regarding the redemption are

unfortunately obscure. It is known that the proprietor of the Estate was allowed a proportionate abatement of land revenue and it is also known

that the Corporation was required to pay and did pay an amount, described by the Deputy Collector of 24 Parganas as ""20 years" purchase of the

rent"" and by the Collector of Calcutta as ""the amount of remission of Government revenue"" and computed on the basis of the amount by-which the

land revenue payable by the proprietor was reduced. The Tribunal's statement that the abatement granted to the proprietor on account of the

acquisition was Rs. 403-2-7 pies is erroneous. That sum includes, as would appear from the order of the Appellate Assistant Commissioner,

another sum of Rs. 16-11-6 pies which was remitted on account of the acquisition of another plot of land from the Estate. The Tribunal's

statement that the Notifications published in the Calcutta Gazette in the issues of 2nd November, 1864 and 14th July, 1864 showed that all lands

acquired under the Land Acquisition Act for public purposes were redeemed or rendered revenue-free on payment of 20 years" revenue at a time

is also erroneous. The Notifications are merely declarations that certain areas of land were required for public purposes and, of the two only the

Notification of the 2nd November related to the present land. Secondly, they say nothing about redemption of land revenue. It would seem that the

Tribunal did not refer to the actual Notifications at all, but merely reproduced paragraph 10 of the Appellate Assistant Commissioner's order and,

in doing so made the mistake of taking what appeared in that order after the reference to the Notifications as a statement of the general law or

practice as a statement of the contents of the Notifications. Be that as it may, neither the law in force at the time under which land revenue was

redeemed on payment of a capital sum, nor the actual terms on which the further payment was made by or received from the Corporation, are

known. The parties were unable to trace the law under which redemption was allowed at the relevant time or even the law under which they are

allowed now. They informed us that they had applied to the Board of Revenue for information, but had received no assistance. If the

Government's order of 27th October, 1865, by which the Corporation was required to pay a further sum of Rs. 7728-13-3 pies or the

redemption certificate, if any such certificate was granted, could be traced, fuller and more accurate information regarding the transaction could

perhaps be obtained. But neither the Corporation of Calcutta, nor the Collector of the 24 Parganas, who were summoned to produce the

documents, were able to produce either of them. In the circumstances, we have nothing before us except the fact of the further payment, the basis

upon which its amount was computed and the description given to it by two Revenue Officers of Government.

21. On the question of the meaning and effect of redemption of land revenue, Dr. Pal referred us to some correspondence which had passed

between the Government of India and the Secretary of State during the years 1858 to 1862 as also an intermediate resolution of the Government

of India adopted in 1861. It would appear from the correspondence and the resolution that no scheme for permitting redemption of land revenue

had yet been adopted and that the authorities in England and India were considering for the first time the advisability of introducing two practices

one of sale of waste lands discharged in perpetuity from all prospective demands on account of land revenue and the other of permitting persons,

already holding lands assessed to revenue, whether permanently or temporarily settled, to redeem them by immediate payment of a sum of

equivalent value. The materials placed before us were a Despatch, dated the 31st December, 1858 from the then Secretary of State for India,

Lord Stanley, a Resolution of the Government of India, dated 17th October, 1861, a Despatch from the Government of India to the Secretary of

State forwarding the Resolution and dated 21st October, 1861 and a Despatch, dated 9th July, 1862 from Sir Charles Wood who had by then

succeeded Lord Stanley as the Secretary of State for India. The suggestion for introducing the two practices emanated from Lord Stanley who

appears to have thought that the first of them would encourage the investment of British capital in India and the second would cause contentment

and loyalty among the indigenous proprietors. But Sir Charles Wood apparently did not share the enthusiasm of his predecessor. Ultimately it was

decided that permission to redeem the land revenue should be given at the discretion of the Local Governments only in a limited number of cases,

such as in cases of lands required for dwelling houses, factories, gardens, plantations and other similar purposes. If redemption was granted in

respect of lands comprised within zemindaries, the revenue payable on which was not redeemed, a proportionate reduction of the revenue was to

be granted to the proprietor.

22. The basis on which the scheme of redemption rested appears to have been as follows :

23. The land revenue of the country is the security for its public debt supporting the public credit and the Government pays the interest on that debt

out of its receipts from land revenue. For the Government the revenue is an annuity and for the person holding the land assessed to revenue, it is an

annual charge. It was thought that if persons holding lands subject to an assessment to revenue were enabled to get rid of the annual liability by

making a single payment of a consolidated sum and hold the lands thereafter completely freed of any demand on account of revenue and as though

they were full owners in the real sense, they were likely to welcome such an arrangement. On the other hand, if the quantum of the sum to be paid

for relieving the land of the charge on land revenue was so determined that, on investment in the public securities, it might be expected to bring in as

interest an amount at least equivalent to the amount of the revenue redeemed, Government would be in no way prejudiced. Government might

invest the money in paying off a part of the public debt, that is to say, buy up securities and cancel them and thereby obtain relief to the extent of

the interest payable on such securities. Or, it might invest the money in other public securities and earn an interest equivalent to the amount which it

would have earned if the land revenue had not been redeemed and apply that interest to the payment of the interest on its public debt. ""If a

zemindar""", it was said in Lord Stanley's Despatch,

bound to pay in perpetuity a fixed jama of a certain amount per annum, is permitted to redeem that obligation by the payment of an immediate

equivalent and the amount so paid is applied to the extinction of debt, the Government remains in precisely the same financial position, the balance

of its receipts and charges being unaltered. The process in this case is simply the extinction of a perpetual annuity by the payment of its value in a

simple sum.

It was added that while the perpetual annuity flowing in from the land revenue was of a fixed amount, the interest on the public debt which might be

extinguished by a transaction of redemption would be of a fluctuating character and, therefore, in estimating the value of the revenue to be charged

for its redemption, the possibility of the fluctuation would have to be borne in mind and a sufficient margin kept. If the scheme of redemption was

applied to lands in respect of which the revenue was periodically settled, it would operate in reality as a permanent settlement of the land tax. The

same would be the effect if waste lands were settled as revenue-free on receipt of a lump sum, in determining the quantum of which the revenue

reasonably assessable on the lands would be taken into consideration. In the case of permanently settled lands, it would convert the annuity into the

payment of a lump sum, placed at the disposal of the Government once and for all.

24. The Resolution of the Government of India adopted on 17th October, 1861 which was based on Lord Stanley's proposal stated that if the

scheme was ultimately approved of, suitable provision for giving effect to it would be made by a legal enactment which would also provide that all

sums paid in redemption of land revenue should be paid to certain Commissioners who would invest them periodically in such manner as the law

might direct. The Despatch of Sir Charles Wood suggested that the moneys should be invested, not periodically but as soon as practicable and as

a rule in the 4 per cent loan. No law passed for the purpose could however be traced, That a practice of allowing redemption of the land revenue

of a much wider character than authorised by Sir Charles Wood's despatch is now in existence admits of no doubt. Rule 203 of the Touzi Manual,

for example, provides as follows :

Proprietors of permanently-settled holdings in Calcutta, Panchannogram, Baranagore and Sahiban Bagicha may redeem their yearly rent by one

payment of thirty-five times the amount.

25. It seems almost certain that such redemption is allowed under the authority of some law passed subsequently to the time when the Government

of India was corresponding with the Secretary of State, but what that law is the parties were unable to trace. Only notifications changing the rate

from time to time could be found.

26. I might observe in passing that the scheme of redemption of the land tax under the several Land Redemption Acts of England, beginning from

the Act of 1802, appears to be the same as indicated in the correspondence between the Government of India and the Secretary of State placed

before us. There also, the land tax is regarded as the security which supports public credit and on the strength of which Government may borrow

and the amount obtained by permitting its redemption is applied to the extinction of the public debt. In computing the amount care is taken to

determine a sum which on being applied to the purchase of public securities would relieve Government of the burden of interest to the extent of the

land tax remitted.

27. Founding himself on the scheme underlying the redemption of land revenue, Dr. Pal contended that when revenue was allowed to be

redeemed, what actually happened was that an alternative form of payment was substituted, but the assessment of revenue on the land was not

removed. The Judicial Member of the Tribunal has observed that if the amount paid for redemption of land revenue is regarded as an advance

payment of it, an absurd situation will result, because if such amount is to serve as the payment of revenue till the end of time, it will have to spread

out over the whole of such period and will soon be reduced to nothing. Dr. Pal's reply was that the Judicial Member's view was mistaken. When

a lump sum was paid for redemption of land revenue, it was not intended that that sum would itself serve to discharge the revenue liability of the

land for all time but the scheme was that the sum would be invested in public securities and it would bring in an annual interest equivalent to the

annual revenue redeemed and thereby maintain perpetually an annual payment of revenue. The land would thus continue to be assessed to revenue,

but the liability of the annual payment would be discharged not by a direct payment made by the proprietor every year, but by the annual interest

received by Government on the consolidated sum deposited by him in lieu of annual payments. Such, according to Dr. Pal, was the position in the

present case and, therefore a sum of Rs. 7728-13-8 pies having been paid by the Corporation as the capitalised value of the revenue payable on

the square mile of land, the land stood assessed to land revenue.

28. The argument advanced by Dr. Pal is undoubtedly a very attractive one. but on the facts of the present case, I do not find it possible to hold in

his favour. We have to decide the point more or less in vacuo, because the facts are obscure and the relevant law unknown. If the principles of the

English Redemption Acts are to be applied, it would seem that what happens at a redemption of land revenue is not that a new method of payment

is substituted, but that the land is wholly freed and exonerated from the tax charged thereon. That is the actual language of Section 38 of the Act of

1802. In Halsbury's Laws of England Halsbury Edition, Vol. 19, at page 615, the effect of redemption is stated to be "to relieve the lands and

their natural production and profits from further tax"; and as regards Crown lands, it is stated in Vol. 6, page 798, that on redemption of land tax

charged on lands of the Crown and upon registration, such lands are freed and exonerated from land tax. Again, when an owner of land redeems

the land tax charged upon it by payment of a capital sum, he may have a certificate charging the land in his favour with the sum paid for its

redemption and with interest equal to the amount of the tax redeemed (see Finance Act, 1896, Section 33). What he does is that he redeems the

charge of land tax which, on such redemption, disappears, just as a mortgage disappears on redemption, and he acquires a different kind of charge

as a creditor for the money he has advanced to free the land of the charge of tax. Lastly, land tax may be "redeemed but not exonerated", which

means that an owner of land may, when entering into a contract for redemption, declare his option to be considered on the same footing as a

person not interested in the land and upon such option and declaration being inserted in the contract, the land tax continues to be assessable and

collectable as though it had not been redeemed and it is paid over on demand to the redemptioner or his assigns. This last provision indicates that

when the land tax is redeemed without any qualification that the land is not to be exonerated, it ceases to exist altogether and the land, being

emancipated, is no longer under a charge for it. As the law under which the redemption was granted in the present case is not known, there is no

warrant for assuming that there is in Indian law anything like the land revenue being redeemed but not exonerated. The normal effect of redemption

appears to be that the land is freed of the assessment. It may be that in computing the capitalised value, its quantum is determined at a sum which

will bring in an annual interest equivalent to the annual revenue redeemed, but the object adopting that method of computation appears to be only

to ensure that the Government will not suffer a financial loss, but its effect is not to keep the assessment itself alive. The annual proceeds out of the

capitalised sum paid to the Government come to them, not as revenue paid by the owner, but as interest produced by the money which has

become the Government's own property. It is not easy to hold in such circumstances that the assessment nevertheless survives and the only change

in the circumstances is that instead of the revenue being paid directly, it is paid indirectly from a fund, The theory of a substituted mode of payment

might perhaps be a plausible theory if the capitalised sum, deposited with Government, remained the property of the depositor, but since it

becomes the property of the Government, the true position appears to be that it is not an amount of capital invested by the owner of the land for

the purpose of providing for payment of the land revenue by the interest flowing from it, but it is consideration paid to Government for releasing the

land from the revenue charge. If so, the land in the present case is not assessed to land revenue.

29. It appears to me that, for the purposes of the present case, it is not necessary to decide the general question as to whether even when a

proprietor of an estate, assessed to land revenue, redeems it or a part of it and continues to hold the land himself, the land remains assessed to land

revenue. The facts here are difficult to reconcile with a continuance of the assessment. The land was acquired under Act 6 of 1857 and upon such

acquisition the tenure of the original owner ceased to exist. All interests other than the right of the Government to levy an assessment were

extinguished. The Corporation was a stranger to the land, but it had been acquired for its use and it was to be vested in the Justices u/s 113 of the

Act. That section provides that the Government ""may vest such land * * * in the Justices on their paying the compensation awarded"". The section

does not say how or on what terms the vesting is to take place except that it speaks of the payment of the compensation, but the word it uses is

"vest" which carries the idea that the land is to be made the property of the Corporation and is therefore to be transferred to it. The section does

not seem to contemplate that the land may be vested in the form of being settled with the Corporation on an assessment of revenue. The underlying

idea appears to be one of transfer. Although the section speaks of payment of only the compensation, the Government, as we know, obtained

from the Corporation a further payment on account of the capitalised value of the proportionate revenue which was formerly chargeable on the

land and to the extent of which the owner had been granted an abatement. Under what provision of law this additional payment was called for is

not known, since Section 113 of Act 6 of 1863 provides only for payment of the compensation; but even if there was no specific law, Government

was entitled to safeguard its own financial interest and it did so by realising compensation for the loss it was going to suffer by reason of having to

vest in the Corporation a land on account of which it had been previously receiving some revenue. In the law or rules of practice now in force,

there is a provision for realising from a party, in whose interest some revenue-paying land is acquired, the capitalised value of the revenue. Rule

172 of the Executive Instructions of the Government of Bengal, framed under the Land Acquisition Act, deals with cases of acquisition of revenue-

paying land on behalf of a company or local authority, financially independent of the Government. ""In such cases"", says the rule.

in addition to the cost of acquisition, the company or municipality or other authority concerned shall be required to pay to the Provincial

Government the capitalised value of the revenue assigned to the land, calculated at 35 times the annual amount of revenue remitted when the land

appertains to a revenue-paying permanently settled holding in Calcutta, Pan-channagram, Baranagar and Sahiban Bagicha in the district of 24

Parganas and at 25 times the annual amount of revenue remitted when the land appertains to any revenue-paying holdings or estates in other

places.

Under whatever authority the additional payment was asked for, the fact remains that it was realised. But it is to be noticed that in 1866, when the

payment was made, the Corporation had merely been put in possession of the land, but had no other interest in it. There is nothing to show that the

land was settled with the Corporation at an assessment of revenue and that it was for the redemption of that revenue that the payment was called

for. The position of the Corporation in regard to the land was therefore very different from that of a person who already holds land, assessed to

revenue, as a proprietor and obtains redemption of the whole or a part of the revenue chargeable on the land which he continues to hold in his old

capacity. The Corporation was a new-comer and it was a party in whom the land was going to be vested and who, at the relevant time, had

acquired no interest in it, not to speak of an interest of a tenant or proprietor. In those circumstances, it appears to me that the demand for the

capitalised value of the revenue did not mean that a fresh assessment had been made on the land and that the Corporation was being asked to

redeem it. It only meant that the Government was compensating itself for the loss it was going to suffer by the intended transfer and it referred to

the revenue, previously chargeable, only for the purpose of determining the measure of the loss; or, at the most, the demand meant that

Government was going to transfer to the Corporation a piece of land in the same way as it might transfer some Crown land, freed in perpetuity of

all demands on account of revenue and, therefore, in determining the price at which the land could be transferred, it took into account the revenue

which it might receive, if the land was settled at a revenue and included its capitalised value in the price. On either basis, the amount was

consideration for conveying the land as land which was not charged and would never be charged to land revenue in future. The position will appear

clearer if the broad facts are recalled. The Government as well as other persons had interests in the land acquired. The other persons received the

compensation as the value of their interests and the Corporation which was to get the land paid it. Then, for parting with its own interest of the right

to levy an assessment on the land which had vested in it absolutely, Government received the additional payment. It received the payment on

account of land which, having ceased to be a part of any Estate and become Government property, no longer bore any assessment and it received

it from a stranger to the land to whom it was going to be conveyed and therefore the payment was only the price for whatever interest Government

had in the land. There was no question of the land being land, assessed to land revenue, or the land revenue being redeemed in the normal sense of

the term.

30. I would for the foregoing reasons hold on this part of the case that even if there was an assessment of revenue on the land at the time the

Corporation paid the additional sum and the revenue was redeemed by the payment the effect of the redemption was to wipe out the assessment

and convert the land into revenue-free land. I would hold further that the question whether on redemption of the revenue, charged on some land,

by the payment of a capitalised sum, the assessment is extinguished or it subsists, being discharged in another form, does not really arise in the

present case. On the facts, the true position here is that there was no redemption of revenue at all. What happened was that the Government, on

acquiring a piece of revenue-paying land from the proprietor under the provisions of the Land Acquisition Act and granting him an abatement of

revenue for the land so taken out of his Estate, got the land with the existing assessment wiped out and then, in conveying the land to a third party

for whose benefit it had been acquired and who had yet no interest in the land, took from him a sum of money, not as the redemption value of any

revenue, because there was no revenue payable by him to be redeemed, but as compensation for the loss it was going to suffer by being no longer

able to realise the revenue, either from the original proprietor or from the third party to whom the land was going to be conveyed as revenue-free -

- the compensation being the price of the right to levy an assessment on the land and its measure being the value of the revenue which was formerly

recovered from the proprietor and which might be assessed again.

31. The case against the assessee is carried further by the terms of the Deed of Conveyance which I have already set out. It is not at all clear why

the Deed recites only the payment of the compensation but does not recite the payment of the additional sum. But what it conveys, it states clearly.

It grants and conveys the land "for ever free and clear and for over discharged from all Government land revenue whatever or any payment or

charge in the nature thereof. Dr. Pal contended that the land was conveyed free only from payment of revenue, but not revenue-free. That

contention seems to be excluded by the clear words of the Deed which, while reciting the object, states it to be that the land may be held "free and

discharged of all payment of land revenue, land tax and all and every tax or imposition in the nature of revenue derivable from land", but uses wider

language in the operative part and conveys the land as free and discharged not merely from payment of land revenue, but "from all Government

land revenue whatever." In the case of *The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others*, , the Supreme Court considered it to

be a material circumstance that the Deed in that case did not recite that the land was to be hold revenue-free. In the present case, the Deed does

not stop at saying that the land will be held revenue-free, but goes further and says that the land is conveyed as free and for ever discharged from

all Government land revenue, in other words, the land itself is emancipated. It is impossible to say, having regard to the words of the Conveyance.,

that the land is still assessed to land revenue.

32. I do not think that there was at all a Redemption Certificate in this case, because the Corporation never came to hold the lands as a proprietor,

holding lands assessed to land revenue and, therefore, no question of its redeeming the land-revenue in the strict sense of the term could arise. On

searches being made by the Corporation in its archives, no Redemption Certificate could be found. But it would appear from a copy of a

Redemption Certificate placed before us by the parties and granted in respect of some land appertaining to the Panchannag-ram Estate held on

payment of a ground rent that even in ordinary cases of redemption of revenue, the claim, the holder of the land and the land itself are all separately

released from the charge and then the land is granted "free and for ever discharged from all and every claim and demand". The Certificate placed

before us is one granted in favour of one Khaja Abdul Gani, presumably the old Nawab of Dacca of that name, and the material portion reads

thus:--

Now therefore the said Secretary of State for India in Council, in consideration of the said sum so paid as aforesaid, doth hereby release and for

ever quit the claim of and discharge as well the said Khaja Abdul Gani and his heirs and assigns for ever, as also the said land and premises, so by

the said Khaja Abdul Gani held.....as aforesaid of and from the said rent or sum of Rupees ten Annas thirteen and Pies two (Rs. 10-13-2) per

annum payable to the said Secretary of State for India in Council for the same, and doth hereby grant and assign to the said Khaja Abdul Gani and

his heirs and assigns for ever the said land and premises free, and for ever discharged from all and every claim and demand of him, the said

Secretary of State for India in Council.

33. It would therefore seem that even when there is no Conveyance after an acquisition under the Land Acquisition Act, but only a redemption of

revenue granted to a person holding the land under an assessment, the land itself is discharged from the liability to revenue, besides that the holder

and his heirs and assigns are personally released and the Government's claim is quitted. A redemption of the land revenue would therefore be

sufficient to extinguish the assessment. In the present case, besides the redemption, if there was any redemption in the true sense at all, there was

the Conveyance from the Secretary of State and it transferred the land, which had been previously relieved of the charge of revenue, as for ever

freed of the charge. I do not therefore find it possible to hold that, during the accounting years concerned, it was land assessed to land revenue.

34. To sum up, the position, as I see it, is as follows. This land did originally form part of a revenue-paying and permanently-settled Estate, but on

its acquisition by Government in 1865 under the provisions of Act VI of 1857 it ceased to form part of that Estate and vested absolutely in

Government with the result that its prior assessment to revenue was extinguished. The assessee on whom lies the onus of showing that the land was

re-assessed to revenue at any time, has not been able to do so. It is true that before transferring the land to the Corporation, Government received

from it a payment which was described as ""20 years" purchase of the rental"" and the rental mentioned was the same as the proportionate amount

of revenue levied under the prior assessment, but the transaction only meant that Government took a price for its own interests in the land which

were not included in the interests for which the compensation awarded had been paid and it gave an analysis of the price in terms of the revenue

which the prior assessment showed could be levied in respect of the land and which had in fact been levied in the past. There was no redemption

of land revenue at all, first, because there was no assessment of revenue on the land at the time and, secondly, because the Corporation being yet a

stranger to the land, there was no revenue payable by the Corporation to be redeemed by it. But, even assuming that there was, at the time of the

transaction, an assessment of revenue on the land, whether the old assessment or one newly imposed and that it was redeemed by the payment,

the effect of the redemption was to extinguish the assessment. Lastly, in any event, in 1870, the Secretary of State for India, who was entitled in

law to convey Government land on any terms he liked, conveyed the land to the Corporation "for ever free and clear and for ever discharged from

all Government land revenue whatever or any payment or charge in the nature thereof and, therefore, whatever the previous condition of the land, it

is, since the conveyance, no longer charged to land revenue but, on the other hand, stands discharged from it.

35. For the reasons given above, the answer to the question referred should, in my opinion, be in the affirmative. In view of the difficulty of the

point, I would make no order for costs.

Sarkar, J.

36. I agree with the opinion expressed by my Lord the Chief Justice but I confess that I do so not without a certain amount of hesitation. As I am

not differing from the views of the learned Chief Justice I do not think it necessary to deal with the matter at large. I shall only record here the

doubts that have assailed me.

37. The question before us is whether certain land was assessed to land revenue in the accounting years, i.e., 1943-44 to 1946-47. Prior to 1865

the land formed part of a permanently settled towzie and was therefore then assessed to land revenue. Sometime about the middle of 1865 the

land was acquired by the Government of Bengal for the purposes of the conservancy of the town of Calcutta, in order that it might be vested in the

municipal authorities of the town. The Municipality of Calcutta as there existing was formed by Bengal Act VI of 1863 and was constituted by

certain Justices of the Peace. The land was acquired under Central Act VI of 1857 read with the aforesaid Bengal Act VI of 1863. Upon the

acquisition, the land vested in the Government of Bengal absolutely under the provisions of Act VI of 1857 "free from all other estates, rights, titles

and interest"; see Section VIII of the Act. I think it right to hold as my Lord has held, that upon such vesting the land ceased to be assessed to land

revenue. What happened thereafter creates the difficulty that I feel.

38. What happened was this. After the land vested in the Government as stated above, the Justices in or about August 1865 paid to the

Government of Bengal a sum of Rs. 55,071-2-10 on account of the compensation payable to the parties who were interested in the land acquired

and the costs of the acquisition. The Justices thereupon became entitled to have the land vested in them by the Government of Bengal u/s CXIII of

Bengal Act VI of 1863 --Julius v. Bishop of Oxford (1880) 5 AC 214 (D). Thereafter on November 10, 1865, the Government of Bengal

delivered possession of the land to the Justices. It appears that after having obtained possession, the Justices found certain villages within the land

and they thereupon on the same date, i.e., November 10, 1865, asked the Government of Bengal to supply them with information regarding the

land, rents and fisheries to enable them to realise future rents, etc. It would not be unreasonable to suppose that the information was duly supplied

and the Justices proceeded to realise the rents and other income from the land forthwith.

39. Then we find a letter dated January 5, 1866, from the Deputy Collector, Calcutta, to the Justices of the Peace asking them to send Rs: 7,728-

13-8 to the Collector of 24 Parganas ""being 20 years" purchase of the rental, viz., Rs. 386-7-1 of the square mile in Dhappa acquired for the

Justices for a public purpose."" The square mile in Dhappa is the land with which we are concerned and that land is within the jurisdiction of the

Collector of 24 Parganas. Rental in this letter means land revenue. This is not in dispute. In fact the sum of Rs. 386-7-1 is the amount by which the

land revenue payable by the owner of the towzie out of which the land was acquired was reduced because of the acquisition. Next there is another

letter dated January 12, 1866, from the Collector of Calcutta to the Collector of 24 Parganas forwarding "a Bank of Bengal Receipt from the

Calcutta Justices for Rupees 7,728-13-8 in your favour being the amount of remission of Government Revenue for the square mile at Dhappa

payable by the Justices under the Order of Government No. 5986 dated 27th October 1865." This letter shows that under the orders of the

Government of Bengal the Justices paid into the Bank of Bengal to the credit of the Collector of 24 Parganas the sum of Rs. 7,728-13-8 on

account of remission of Government revenue, i.e., land revenue for the land and that there was a receipt from the Bank of Bengal stating this fact.

The order of the Government is not available. The payment was accepted by the Government of Bengal and it does not appear to have thereafter

ever realised any land revenue for the land from the Justices. The last thing that happened was the execution of a conveyance of the land on

December 5, 1870, by the Secretary of State for India in favour of the Justices. By this conveyance, the Secretary of State granted and conveyed

unto the Justices the said land free and clear "and for ever discharged from all Government land revenue whatever or any payment or charge in the

nature thereof."

40. Now I have stated all the facts on, which the question for our decision has to be answered. That question is whether on these facts the land can

still be said to be assessed to land revenue. If it was assessed when the sum of Rs. 7,728-13-8 was paid it must be deemed to be still so assessed.

I have used the word-still for the sake of simplicity for we are really concerned with the accounting years and of course if the land was assessed in

the accounting years it is still assessed.

41. If the words "assessed to land revenue-in Section 2 (1) (a) of the Income Tax Act mean subject to an enforceable liability to pay land revenue

then of course in this case the land cannot be said to be assessed to land revenue for admittedly no land revenue can be realised by the

Government in respect of the land. It has however not been argued on behalf of the Department that the words have this meaning. Indeed such an

argument would be difficult to sustain. I find nothing to hold that it is not possible for the Government to receive a lump sum in full satisfaction of all

land revenue payable in respect of a land for all time to come. It may even be that the Government can forego its right to land revenue gratuitously.

42. Proceeding then on the basis that the Government can accept a lump sum in payment of all land revenue to accrue due in respect of. a land in

future, without annulling the assessment of the land to revenue -- and I repeat that it was not argued that it could not be done --the question arises

as to what was done when Rs. 7,728-13-8 was paid. If what was done was to receive the sum in full payment of all land-revenue to accrue due in

future forever without disturbing any assessment that may have been existing, then the land must still be deemed assessed to land revenue. If on the

other hand the money was accepted as consideration for removing the assessment that was there or for not making any assessment if there was no

assessment then made, then the land cannot be said to be assessed to land revenue.

43. Therefore it is all a question of what was done when Rs. 7,728-13-8 was paid. What was then done has to be gathered from the two letters to

which I have referred and there is no other evidence on the matter. The two letters really say the same thing. The first letter demands the sum for

the "purchase of the rental" i.e.. the land revenue. The second letter shows that the amount was paid by the Justices under an order of the

Government to obtain "remission of Government revenue". These are the terms of the Receipt, as appears in the letter, granted by the Bank of

Bengal for the payment by the Justices to it to the credit of the Collector of 24 Parganas and therefore to the credit of the Government of Bengal.

The Government of Bengal, as I have said, accepted the payment. It may therefore be said that there was an agreement made between the Justices

and that Government by which in consideration of Rs. 7,728-13-8 paid to it by the Justices, the Government remitted the land revenue payable by

the Justices in respect of the land or allowed them to purchase the liability to pay it. If such was the agreement both parties must be held to it.

44. But then what did the agreement amount to? Now, "remission" according to the Shorter Oxford English Dictionary means "release from a

payment", the "act of giving up a tax". It may therefore well be that the agreement was that the Government though it was entitled to the tax would

not realise it in future. If such was the agreement it could not have made the land already taxed, land not taxed; it could not have made land

assessed to land revenue land not so assessed. Looked at from the point of view of an agreement resulting in the purchase of land revenue by the

owner of the land the result is no different. Purchase of the land revenue is not the purchase of the assessment or the right to assess. It means the

purchase of the liability to pay the land revenue. Of course the land revenue could neither be remitted nor purchased unless it was there and if it

was, an assessment must have already been made. From this point of view the agreement would import a pre-existing assessment to land revenue.

If there was such an assessment, there is nothing in the letters to show that the assessment had been removed, that the land had ceased to be

subject to assessment.

45. On behalf of the Department it was contended that in fact the land had never been assessed to land revenue after the acquisition. But there is

no evidence that this was so. On the other hand the fact that the Government had agreed to remit the land revenue or to its purchase by the

Justices, would, as I have already stated, import an existing assessment. What evidence there is, therefore, shows that an assessment had been

made.

46. Again, in, any event, having agreed to remit the land revenue or to its purchase by the Justices, the Government of Bengal cannot now be heard

to say that there was in fact no assessment. The agreement would operate as an estoppel against that Government preventing it from denying that

there was the remission or purchase. It would also operate to prevent the Government from denying all things necessary to make the remission or

purchase possible. It would therefore estop the Government from denying the existence of an assessment. All this is of course on the basis that

remission or purchase of land revenue means what I have earlier stated.

47. This estoppel also arises from another point of view. The money having been paid to obtain the remission of land revenue, as the receipt

mentioned in the letter of January 12, 1860, shows, and the Government having accepted the payment, it is estopped from denying that it was paid

for that purpose; Croft v. Lumley (1857) 6 HLC 672 (E). From this estoppel also the consequences mentioned in the preceding paragraph would

follow.

48. The Department however contended that there could in fact be no assessment of the land to land revenue at the date of the payment of Rs.

7,728-13-8 for then it had not been vested in the Justices. It was said that the vesting in the Justices did not take place till the conveyance was

executed on December 5, 1870. The Department's point was that at the date of the aforesaid payment, the Government being the owner of the

land, it was not legally possible to assess it to land revenue. But then the answer to this may be twofold. First, as it was contended on behalf of the

assessee, prior to the date of the payment of Rs. 7,728-13-8, the land may have actually been transferred to the Justices and vested in them. It

was pointed out that the Justices had paid to the Government the compensation payable in respect of the acquisition and became thereupon

entitled to have the land vested in them. Thereafter the Government delivered possession of the land to the Justices on November 10, 1865.

Learned counsel argued that on that date immovable property could be transferred by delivery of possession only and without any document being

executed as there was then no law concerning the mode of transfer of such property and that the Transfer of Property Act which prescribed a

mode of transfer for the first time was not passed till many years later, to wit on July 1, 1882. It was not shown to us that this contention was

incorrect. It may therefore well be that the Justices were on the material date the legal owners of the land. The fact that five years later namely, on

December 5, 1870, a written conveyance in their favour was executed cannot take away the pre-existing legal title of the Justices if they had one.

Again the estoppel that I have earlier mentioned arising from the agreement remitting the land revenue would also prevent the Government of

Bengal from denying that on January 12, 1866, the legal title in the land was vested in the Justices whatever the actual fact was. It is true that the

agreement was with the Government of Bengal and all estoppel arising from it binds that Government while the Income Tax is sought to be realised

by the Government of India. But it may well be said that since the Bengal Government alone could assess the land to land revenue and that

Government has to be deemed to have so assessed the land, the land must for all purposes and for every one else, be taken to have been assessed

to land revenue,

49. There is of course the conveyance of December 5, 1870. Does it affect the question before us? As has been seen it granted and conveyed the

land to the Justices "for ever discharged from all Government land revenue whatever". It was said that this shows that the land was conveyed

revenue free and hence, since the date of the conveyance, the land has been held without any assessment to land revenue. It is pointed out that the

conveyance does not at all mention the payment of Rs. 7,728-13-8 or that the land revenue was upon such payment remitted or permitted to be

purchased. But it may be contended in answer to this argument with at least equal force that the conveyance shows that the land revenue had been

imposed, for if it had not been it could not be "discharged". Besides though the payment of Rs. 7,728-13-8 and agreement relating to it are not

mentioned in the conveyance they are admitted facts and do not become nonexistent by the omission to mention them in the conveyance. The

expression "discharged from all Government land revenue" in the conveyance has therefore to be interpreted in the light of the agreement. So read

the conveyance would not show that the land was conveyed without assessment to land revenue but that it had been assessed and an agreement

had been made not to realise in future the revenue due under the assessment. It may also be said that the conveyance added nothing for the land

was already vested in the Justices by the delivery of possession to them on November 10, 1865.

50. I have for the reasons aforesaid some doubts in the matter. I do not feel however that I should for these doubts differ from my Lord the Chief

Justice. At the same time I feel it right to express these doubts. With these observations I agree with the answer to the question for our

consideration, proposed by the learned Chief Justice.