III
5/9/2019

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. ... Respondents

AND
OTHER CONNECTED CIVIL APPEALS

COMPILATION OF JUDGMENTS ON MEANING OF 'BELONGING TO'

BY
DR. RAJEEV DHAVAN, SENIOR ADVOCATE

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ADVOCATE-ON-RECORD: EJAZ MAQBOOL

W

BELONGING TO

1. In its plaint, in the Nirmohi Akhara Suit No. 3 of 1989 claimed at para 2 that belonged to plaintiff:

> *"2. That Janma Asthan now commonly known as Janma Bhumi, the birth place of Lord Ram Chandra, situate in Aydhya belongs and has always belonged to the plaintiff no.1 who through its reigning Mahant and Sarbrahkar has ever since been managing it and receiving offerings made there at in form of money, sweets, flowers and fruits and other articles and things."* (Pleadings volume p.49 pr.2)

Again at (p.50 pr.4) it was stated:

> *"4. That the said temple has ever since been in the possession of the plaintiff no.1 and none others but Hindus have ever since been allowed to enter or worship therein and offerings made there which have been in form of money, sweets, flowers and fruits and other articles and things have always been received by the plaintiffs through their pujaris.*
>
> *Para 4A-XI "That before the Judgment of the Writ Petition of 11.12.92 on 6th Dec. 1992 the Temples of Nirmohi Akhara were also demolished by some miscreants who had no religion caste or creed.*
>
> *Para 4A-XII "The main temple was demolished on 6th Dec. 1992".*
>
> *Para 10 (Last) "and further cause of action against defendants 1 to 5 arises during pendency of the suit when the property and temples of plaintiff was demolished on 6th Dec.1992 by same miscreants within the Jurisdiction of this Court."*
>
> amended and added to plaint vide Court's order dt. 25.5.95 Sd/- 30.5.95

2. In the Written Submission to the Supreme Court (at pr. 13(d)):

> *"(d) The plaintiff – Nirmohi Akhara was not only claiming ownership and possession of the property i.e. the Main Temple or the Inner Courtyard but was also claiming to be the Manager (Shebiat) of "Janma Asthan" as well as the idols of*

Lord Ram Chandra, Laxmanji, Hanumanji and Saligramji."
(See Para 2 and 3 of the Plaint)

Again (at p.17 (j)) it was submitted (at p.17 (j))

"(j) Since the property was attached and placed under a receiver, it is incumbent for the court to decide and adjudicate the issue of title and the suits cannot be dismissed as barred by Limitation. The property must revert to the rightful owner and cannot remain custodia legis for time ad-infinitum. Hence in a suit for restoration of possession from a receiver, the question of limitation can never arise and such suits cannot never become barred by limitation so long as such property continues to be under a receiver at least of a person from whom possession was taken."

Again at (p.18 pr. (k))

"(k) Since the property is under the control of the receiver. A suit for Mesne Profits for incomes derived by the receiver can still be filed by the true owner and in such a suit, for which cause of action arises any benefit accrues would thus give rise to a continuous cause of action. While determining the issue of entitlement of mesne profits, the question of title will have to be adjudicated and upon adjudication possession will have to be delivered by the Receiver to the True Owner.

(i) Ellappa Naicken vs Lakshmana Naicken A.I.R. 1949 Madras 71

(ii) Rajah of Venkatagiri v. Isakapalli Subbiah, ILR 26 Madras 410."

Again at p.18 (m)):

"(m) The plaintiff – Nirmohi Akhara was not only claiming ownership and possession of the property i.e. the Main Temple or the Inner Courtyard but was also claiming to the Manager (Shebiat) of "Janma Asthan" as well as the idols of Lord Ram Chandra, Laxmanji, Hanumanji and Sahgramji. (See Para 2 and 3 of the Plaint). It is stated for the reasons which found favour with the court to hold that the suit OOS No.5 of 1989 is within limitation that the deity was a perpetual minor, the suit of the Plaintiff Nirmohi Akhara cannot also be held to be barred by limitation."

3. On the property "belonging" to the plaintiff, it is urged (at p.19 pr.18).

> *"18. The claim of the property "belonging" to the plaintiff in the plaint is based on two fold submissions – (i) that the property belongs to the plaintiff in the capacity of Manager/ shebait. And (ii) that the Plaintiff being in possession acquires possessory title in view of section 110 Evidence Act and is entitled to be and continue in possession unless the defendant can show a better title than the Plaintiff."*

4. Without prejudice to construing the plaintiff read as a whole along with its prayer, a question was raised about the meaning of the word "belong" and "belonging".

It is submitted that "belong" or "belonging" connotes ownership with some flexibility.

[Note in different contexts

- Raja Mohammad v Municipal Board Sitapur AIR 1965 SC 1923 at pr.24
- Late Nawab Sir Mir Osman Ali Khan v Commr. Wealth Tax (1986) Supp. SCC 700 that belonging means something over which a person has control and lawful control.

5. It is further submitted, in the alternative that these assertions do not match the relief (on p.57 pr. 14-5).

> *"14. Wherefore the plaintiffs pray for the following reliefs:-*
>
> (a) *A decree be passed in favour of the plaintiffs against the defendants for removal of the defendant no.1 from the management and charge of the said temple of Jnma Bhoomi and for delivering the same to the plaintiff through its Mahant and Sarbarhrahkar Mahant Jagannath Das."*

amended vide Hon'ble Court's order dt. 14.5.90 Sd/-

X

impugned order passed by the State Government dated April 6, 1983 for the appointment of Dr M.C. Bindal to be the Food and Drugs Controller, State of Uttar Pradesh as also the subsequent order of the government dated July 22, 1986 recording its ratification of the appointment of Dr Bindal to the post of Food and Drugs Controller. We direct that the State Government shall forthwith take necessary steps for appointment of a suitable candidate fully qualified to hold the post of Food and Drugs Controller, through the U.P. Public Service Commission, in accordance with law. We further direct that the State Government shall complete the process of appointment within three months from today. The State Government shall in the meanwhile appoint a member belonging to the Indian Administrative Service to hold the post of Food and Drugs Controller till a regular appointment to the said post is made in consultation with the Public Service Commission.

3. Accordingly, Civil Appeal No. (*sic*) of 1986 preferred by Dr S.K. Majumdar is allowed while Civil Appeal No. 3797 of 1984 and Writ Petition No. 756 of 1986 filed by Dr M.C. Bindal and Civil Appeal No. 3798 of 1984 filed by the State of Uttar Pradesh are dismissed, with costs.

1986 (Supp) Supreme Court Cases 700

(BEFORE R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.)

LATE NAWAB SIR MIR OSMAN ALI KHAN .. Appellant;

Versus

COMMISSIONER OF WEALTH TAX, HYDERABAD .. Respondent.

Civil Appeal No. 1763 (NT) of 1974†,
decided on October 21, 1986

Wealth Tax Act, 1957 (27 of 1957) — Section 2(m) — Net wealth — 'Assets ... belonging to the assessee' — Meaning of — Where property sold out by assessee without executing registered sale deed and possession handed over to the purchaser after receiving full consideration money, legal title to the property still vests in the assessee — In such a situation property would belong to the assessee for the purpose of Section 2(m) — Transfer of Property Act, 1882, Section 53-A

†From the Judgment and Order dated February 2, 1973 of the Andhra Pradesh High Court in Case Reference No. 67 of 1971

Interpretation of Statutes — Taxing statutes — Equitable considerations irrelevant

Words and Phrases — 'Belonging to' — Meaning of

The Wealth Tax Officer had included a sum of money representing the market value of certain immovable properties in respect of which, although the assessee had received full consideration money, he had not executed any registered sale deeds in favour of the vendees. Following facts were established: (1) The assessee had parted with the possession which is one of the essentials of ownership. (2) The assessee was disentitled to recover possession from the vendee and assessee alone until the document of title was executed was entitled to sue for possession against others i.e. other than the vendee in possession in this case. The title in rem vested in the assessee. (3) The vendee was in rightful possession against the vendor. (4) The legal title, however, belonged to the vendor. (5) The assessee had not the totality of the rights that constitute title but a mere husk of it and a very important element of the husk. The question was whether the properties belonged to the assessee even after such sale for the purpose of inclusion of his net wealth within the meaning of Section 2(m) of the Wealth Tax Act? Answering the question in the affirmative in the favour of the revenue Supreme Court

Held:

The properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed over to the purchasers belonged to the assessee for the purpose of inclusion in his net wealth. (Para 11)

The liability to wealth tax arises because of the belonging of the asset, and not otherwise. Mere possession, or joint possession unaccompanied by the right to be in possession, or ownership of property would therefore not bring the property within the definition of 'net wealth' for it would not then be an asset 'belonging' to the assessee. Unlike the provisions of the Income Tax Act, the legislature in Section 2(m) of the Wealth Tax Act has designedly and significantly used the expression 'belonging to' to indicate that the person having lawful dominion of the assets would be assessable to wealth tax. The words 'belonging to' may convey absolute right of user as well as ownership. The precise sense in which the expression has been used in Section 2(m) must be gathered only by reading the instrument or the document as a whole. It is not necessary for the purpose of Section 2(m) to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under Sections 9 and 10 of the Indian Income Tax Act, 1922 and Sections 22 to 24 of the Indian Income Tax Act, 1961, where 'owner' is spoken of in respect of the house properties, the legal owner is meant and not the equitable or beneficial owner. All the rights embedded in the concept of ownership of Salmond cannot strictly be applied either to the purchasers or the assessee in the instant case. (Paras 11, 12, 13 and 33)

CWT v. Bishwanath Chatterjee, (1976) 3 SCC 385: 1976 SCC (Tax) 301: (1976) 103 ITR 536: AIR 1976 SC 1492: (1976) 3 SCR 1096 and Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur, AIR 1965 SC 1923, relied on

Webster's Dictionary and Aiyar's Law Lexicon of British India, 1940 edn., p. 128 and Salmond On Jurisprudence, 12th edn., pp. 246 to 264, referred to

The property in this case was owned by one to whom it legally belonged. The property did not legally belong to the vendee as against the vendor, the assessee. Since the legal title to the property still vested in the assessee for all legal purposes the property must be treated as belonging to the assessee. Even though the assessee had a mere husk of title and no realty of title as against the world, he was still the legal owner and the real owner. Although it will work some amount of injustice in such a situation because the assessee would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question, but times perhaps are yet not ripe to transmute equity on this aspect in the interpretation of law. (Paras 30, 31 and 32)

Though all statutes including the statute in question should be equitably interpreted, there is no place of equity as such in taxation laws. But in the scheme of the administration of justice, tax law like any other laws will have to be interpreted reasonably and whenever possible in consonance with equity and justice. The concept of reality in implementing fiscal provision is relevant and the legislature in this case has not significantly used the expression 'owner' but used the expression 'belonging to'. (Paras 17 and 30)

Under Section 53-A of the Transfer of Property Act where possession has been handed over to the purchasers and the purchasers are in rightful possession of the same as against the assessee, secondly the entire consideration has been paid, and thirdly the purchasers were entitled to resist eviction from the property by the assessee in whose favour the legal title vested because conveyance has not yet been executed by him and when the purchasers were in possession had right to call upon the assessee to execute the conveyance, it cannot be said that the property legally belonged to the assessee in terms of Section 2(m) of the Wealth Tax Act in the facts and circumstances of the case even though the statute must be read justly and equitably and with the object of the section in view. If a person has the user and is in the enjoyment of the property it is he who should be made liable for the property in question under the Act; yet the legal title is important and the legislature might consider the suitability of an amendment if it is so inclined. (Para 35)

CWT v. H.H. Maharaja F.P. Gaekwad, (1983) 144 ITR 304 (Guj), approved

CIT v. Nawab Mir Barkat Ali Khan, 1974 Tax LR 90 (AP), referred to

CWT v. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust, (1977) 3 SCC 362 : 1977 SCC (Tax) 457 : (1977) 108 ITR 555 : AIR 1977 SC 2103 : (1977) 3 SCR 735; R.B. Jodha Mal Kuthiala v. CIT, (1971) 3 SCC 369 : (1971) 82 ITR 570 : AIR 1972 SC 126; CIT v. Ganga Properties Ltd., (1970) 77 ITR 637 (Cal); CWT v. Kum. Manna G. Sarabhai, (1972) 86 ITR 153 (Guj); CIT v. Ashaland Corpn., (1982) 133 ITR 55 (Guj); CIT v. Smt. T.P. Sidhwa, (1982) 133 ITR 840 (Bom); Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur, AIR 1965 SC 1923; Smt. Kala Rani v. CIT, (1981) 130 ITR 321 (P&H); Mrs M.P. Gnanambal v. CIT, (1982) 136 ITR 103 (Mad); S.B. (House and Land) Pvt. Ltd. v. CIT, (1979) 119 ITR 785 (Cal) and CIT v. Sahay Properties and Investment Co. (P) Ltd., (1983) 144 ITR 357 (Pat), distinguished

Wealth Tax Act, 1957 — Section 2(e)(iv) — Asset — Annuity — Private properties of ruler of erstwhile State taken over by Government and in lieu thereof Government granting payment of a fixed annual sum of money to the erstwhile ruler — Held, such annual payment amounts to payment of annuity — Express provision precluding commutation of the amount inferable from facts and circumstances — Terms of the grant for payment of the amount also not conferring any right on the grantee to claim commutation — Hence the amount exempt under Section 2(e)(iv)

Words and Phrases — 'Annuity' — Meaning of

The Nizam of Hyderabad owned some private properties called Sarf-e-khas. After the accession of the Hyderabad State to the Union of India, the private properties of the Nizam were taken over by the Government. The Government of India agreed to pay to Nizam after the merger a sum of Rs 1 crore distributed as follows: (a) Rs 50 lakhs as a privy purse, (b) Rs 25 lakhs in lieu of his previous income from the Sarf-e-khas and (c) Rs 25 lakhs for the upkeep of palaces etc. The Government in its letter to the Nizam stated that his Sarf-e-khas estates should be completely taken over by the Diwani, its revenue and expenditure being merged with the revenues and expenditure of the State. Question was whether the assessee's right to receive the sum of Rs 25 lakhs O.S. from the State Government was an asset for the purposes of inclusion in his net wealth under the Wealth Tax Act.

Held:

The annual payment of a fixed sum of Rs 25 lakhs out of the property of the Government of India in lieu of the previous income of the assessee from Sarf-e-khas was an 'annuity'. (Para 46)

Ahmed G.H. Ariff v. CWT, (1969) 2 SCC 471 : (1970) 76 ITR 471 : (1970) 2 SCR 19; CWT v. Arundhati Balkrishna, (1970) 1 SCC 561 : (1970) 77 ITR 505 : (1970) 3 SCR 819; CWT v. Her Highess Maharani Gayatri Devi of Jaipur, (1971) 82 ITR 699 (SC) and CWT v. P.K. Banerjee, (1981) 1 SCC 63 : 1981 SCC (Tax) 35 : (1980) 125 ITR 641, referred to

This payment of Rs 25 lakhs in lieu of the previous income of Sarf-e-khas must be read in conjunction with two other sums namely Rs 50 lakhs as privy purse and Rs 25 lakhs for upkeep of palaces. This bears the same character. As privy purses were not commutable having regard to the circumstances of the payment, there was an express provision flowing from the circumstances precluding the commutation of this amount of Rs 25 lakhs. The assessee had no right under the terms of the grant of payment to claim commutation of Rs 25 lakhs. As such it was exempt under Section 2(e)(iv) of the Wealth Tax Act. (Paras 49 and 50)

Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85 : (1971) 3 SCR 9 : AIR 1971 SC 530, referred to

An annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property. The hallmark of an annuity is: (1) it is a money; (2) paid annually; (3) in fixed sum; and (4) usually it is a charge personally on the grantor. (Para 40)

Jarman On Wills, p. 1113 and Oxford Dictionary, relied on

Constitution of India — Article 136 — Dismissal of special leave in limine — Cannot be construed as affirmation by Supreme Court of the decision from which special leave was sought for (Para 24)

Daryao v. State of U.P., AIR 1961 SC 1457, relied on

Sahu Govind Prasad v. CIT, (1983) 144 ITR 851 (All), approved

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Advocates who appeared in this case :

Y. Ratnakar, Mrs A.K. Verma and D.N. Misra, Advocates, for the Appellant ;
S.C. Manchanda, Senior Advocate (Ms A. Subashini and B.B. Ahuja, Advocates, with him), for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J.—This appeal by special leave arises from the decision of the High Court of Andhra Pradesh and it seeks answers to two questions :

(i) Whether, on the facts and in the circumstances of the case, the properties in respect of which registered sale deeds had not been executed, but consideration had been received, belonged to the assessee for the purpose of inclusion in his net wealth within the meaning of Section 2(*m*) of the Wealth Tax Act, 1957 ?

(ii) Whether, on the facts and in the circumstances of the case, the assessee's right to receive the sum of Rs 25 lakhs O.S. from the State Government was an asset for the purposes of inclusion in his net wealth under the Wealth Tax Act, 1957 ?

2. The year involved in this case is the assessment year 1957-58 under the Wealth Tax Act, 1957 (hereinafter called the 'Act'). It may be mentioned that the valuation date is the first valuation date after coming into operation of the Act which came into force on April 1, 1957. The assessee was the Nizam of Hyderabad, an individual. There were several questions involved in the assessment with all of which the present appeal is not concerned.

3. So far as the first question indicated hereinbefore which was really question No. (ii) in the statement of case before the High Court, it may be mentioned that the Wealth Tax Officer had included a total sum of Rs 4,90,775 representing the market value of certain immovable properties in respect of which, although the assessee had received full consideration money, he had not executed any registered sale deeds in favour of the vendees. The Wealth Tax Officer held that the assessee still owned those properties and consequently the value of the same was included in his net wealth.

4. On appeal the Appellate Assistant Commissioner sustained the order with certain deductions in value. On further appeal the Tribunal

held that the assessee had ceased to be the owner of the properties. The Tribunal was of the opinion that the assessee having received the consideration money from the purchasers and the purchasers having been put into possession were protected in terms of Section 53-A of the Transfer of Property Act and the term 'owner' not only included the legal ownership but also the beneficial ownership. The first question arises in the context of that situation. The High Court following the ratio of *CIT* v. *Nawab Mir Barkat Ali Khan*[1], answered the question in favour of the revenue.

5. The second question set out before, which was question No. (v) before the High Court, has to be understood in the context of the facts of this case. The right of the assessee to get the amount in question i.e. Rs 25 lakhs a year, arose in the wake of accession of the Hyderabad State to the Union of India. Several communications followed between the Military Governor of Hyderabad, Maj. Gen. Chaudhuri and the Nizam of Hyderabad as well as other officers. It has to be borne in mind that the assessee was a paramount ruler owning certain private properties called *Sarf-e-khas*. He surrendered his paramountcy and acceded to the Union of India. His private properties were taken over by the government and it was agreed by the government that in lieu of his income from the said properties, he would be paid Rs 25 lakhs in Osmania currency annually.

6. The communication between Major General Chaudhuri, the Military Governor and the Nizam about this particular sum is contained in the letter dated February 1, 1949. It stated inter alia as follows :

> After this merger H.E.H. will be paid annually a total sum of Rs 1 crore distributed as follows :
>
> (*a*) Rs 50 lakhs as a privy purse,
>
> (*b*) Rs 25 lakhs in lieu of his previous income from the *Sarf-e-khas*, and
>
> (*c*) Rs 25 lakhs for the upkeep of palaces etc.

7. The letter which appears in the paper-book of this appeal from Military Governor of Hyderabad, Major General Chaudhuri to the Nizam of Hyderabad, states, inter alia that Nizam's *Sarf-e-khas* estates should not continue as an entirely separate administration independent of the Diwani administrative structure. The *Sarf-e-khas*, it was stated in that letter, should therefore be completely taken over by the Diwani, its revenue and expenditure being merged with the revenues and expenditure of the State. Thereafter we have extracted the relevant portion

1. 1974 Tax LR 90 (AP)

of the letter which stipulated for the payment of Rs 25 lakhs. The other parts of the agreement contained in that letter are not relevant for the present purpose.

8. The Wealth Tax Officer treating the said sum as an annuity and secondly as an asset or property, capitalised the same to Rs 99,78,572 and included that amount as an asset of the assessee. The Appellate Assistant Commissioner agreed with the view taken by the Wealth Tax Officer. The Tribunal, however, refused to call it as an annuity and characterised it as an annual payment for surrender of life interest. The Tribunal therefore held that the capitalised value of such life interest be added to the net wealth and taxed.

9. The High Court in the judgment under appeal agreed with the view taken by the Tribunal that it was only an annual payment made in compensation for the property which had been taken over by the government. It was, therefore, a part of the wealth, according to the High Court. The High Court was of the view that it was possible to commute the annual payment of Rs 25 lakhs. The High Court found that there was neither any express preclusion nor any circumstances from which legitimately an inference could be drawn precluding commutation of the said amount into a lump sum grant. The High Court, therefore, was of the view that the Wealth Tax Tribunal had rightly rejected the contention of the assessee. The question was accordingly answered by the High Court in the affirmative and against the assessee and in favour of the revenue.

10. The first question involved in this case is whether the properties in respect of which registered sale deeds had not been executed, but full consideration had been received by the assessee, belonged to the assessee for the purposes of inclusion in his net wealth in terms of Section 2(*m*) of the Act. Under Section 3 of the Act, the charge of wealth tax is on the net wealth of the assessee on the relevant valuation date. Net wealth is defined under Section 2(*m*) of the Act. The relevant portion of Section 2(*m*) is as follows :

> (*m*) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date....

11. The material expression with which we are concerned in this appeal is 'belonging to the assessee on the valuation date'. Did the assets in the circumstances mentioned hereinbefore namely, the properties in respect of which registered sale deeds had not been

executed but consideration for sale of which had been received and possession in respect of which had been handed over to the purchasers belonged to the assessee for the purpose of inclusion in his net wealth? Section 53-A of the Transfer of Property Act gives the party in possession in those circumstances the right to retain possession. Where a contract has been executed in terms mentioned hereinbefore and full consideration has been paid by the purchasers to the vendor and where the purchasers have been put in the possession by the vendor, the vendees have right to retain that possession and resist suit for specific performance. The purchasers can also enforce suit for specific performance for execution of formal registered deed if the vendor was unwilling to do so. But in the eye of law, the purchasers cannot and are not treated as legal owners of the property in question. It is not necessary, in our opinion, for the purpose of this case to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under Sections 9 and 10 of the Indian Income Tax Act, 1922 and Sections 22 to 24 of the Indian Income Tax Act, 1961, where 'owner' is spoken in respect of the house properties, the legal owner is meant and not the equitable or beneficial owner. Salmond *On Jurisprudence*, 12th edn., discusses the different ingredients of 'ownership' from pages 246 to 264. 'Ownership', according to Salmond, denotes the relation between a person and an object forming the subject-matter of his ownership. It consists of a complex of rights, all of which are rights *in rem*, being good against all the world and not merely against specific persons. Firstly, Salmond says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it. Thirdly, the owner has the right to consume, destroy or alienate the thing. Fourthly, ownership has the characteristic of being indeterminate in duration. The position of an owner differs from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character. Salmond also notes the distinction between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognise equitable ownership and denied the equitable owner as an owner at all.

12. All the rights embedded in the concept of ownership of Salmond cannot strictly be applied either to the purchasers or the assessee in the instant case.

13. In the instant appeal, however, we are concerned with the expression 'belonging to' and not with the expression 'owner'. This question had come up before this Court before a Bench of five learned Judges in *CWT* v. *Bishwanath Chatterjee*[2]. At page 539 of the report (SCC p. 388, para 5), this Court referred to the definition of the expression 'belong' in the Oxford English Dictionary: "To be the property or rightful possession of". So it is the property of a person, or that which is in his possession as of right, which is liable to wealth tax. In other words, the liability to wealth tax arises because of the belonging of the asset, and not otherwise. Mere possession, or joint possession unaccompanied by the right to be in possession, or ownership of property would therefore not bring the property within the definition of "net wealth" for it would not then be an asset "belonging" to the assessee. The first limb of the definition indicated in the Oxford Dictionary may not be applicable to these properties in the instant appeal because these lands were not legally the properties of the vendees and the assessee was the lawful owner of these properties. The vendees were, however, in rightful possession of the properties as against the vendor in view of the provisions of Section 53-A of the Transfer of Property Act, 1882. The scheme of the Act has to be borne in mind. It has also to be borne in mind that unlike the provisions of Income Tax Act, Section 2(*m*) of the Act uses the expression 'belonging to' and as such indicates something over which a person has dominion and lawful dominion should be the person assessable to wealth tax for this purpose.

14. In *CWT* v. *Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust*[3], the question as to what is the meaning of the expression 'belonging to' was raised (page 594 of the report : SCC p. 377, para 14) but this Court did not decide whether the trust property belonged to the trustee and whether the trustee was liable under Section 3 of the Act apart from or without reference to Section 21 of the Act. The case was disposed of in terms of Section 21 of the Act.

15. In *CIT* v. *Nawab Mir Barkat Ali Khan*[1], it was held by the Andhra Pradesh High Court that when a vendor had agreed to sell his property as in the instant case and had received consideration thereof but had not executed a registered sale deed, his liability to pay tax on income from that property did not cease. His position as 'owner' of the property within the meaning of Section 9 of the Indian Income Tax Act, 1922 and Section 22 of the Income Tax Act, 1961 did not thereby change. According to the said decision, by the agreement to sell and the receipt of consideration by the assessee, the Nizam of

2. (1976) 103 ITR 536 : (1976) 3 SCC 385 : 1976 SCC (Tax) 301
3. (1977) 108 ITR 555 : (1977) 3 SCC 362 : 1977 SCC (Tax) 457

Hyderabad did not create any beneficial ownership according to Indian law in the purchaser nor did it create any equitable ownership in him. The ownership did not change until registered sale deed was executed by the vendor. The term 'owner' in Section 9 of the 1922 Act or Section 22 of the 1961 Act did not mean beneficial or equitable owner which concept was not recognised in India.

16. In the instant case as we have noticed the position is different. We are not concerned with the expression 'owner'. We are concerned whether the assets in the facts and circumstances of the case belonged to the assessee any more.

17. This Court had occasion to discuss Section 9 of the Income Tax Act, 1922 and the meaning of the expression 'owner' in the case of *R.B. Jodha Mal Kuthiala* v. *CIT*[4]. There it was held that for the purpose of Section 9 of the Indian Income Tax Act, 1922, the owner must be the person who can exercise the rights of the owner, not on behalf of the owner but in his own right. An assessee whose property remained vested in the Custodian of Evacuee Property was not the owner of the property. This again as observed dealt with the expression of Section 9 of the Indian Income Tax Act, 1922. At page 575 (SCC p. 373, para 11) of the report certain observations were relied upon in order to stress the point that these observations were in consonance with the observations of the Gujarat High Court which we shall presently note. We are, however, not concerned in this controversy at the present moment. It has to be borne in mind that in interpreting the liability for wealth tax normally the equitable considerations are irrelevant. But it is well to remember that in the scheme of the administration of justice, tax law like any other laws will have to be interpreted reasonably and whenever possible in consonance with equity and justice. Therefore, specially in view of the fact that the expression used by the legislature has deliberately and significantly not used the expression 'assets owned by the assessee' but assets 'belonging to the assessee', in our opinion, is an aspect which has to be borne in mind.

18. The Bench decision of the Calcutta High Court in *CIT* v. *Ganga Properties Ltd.*[5] rested on the terms of Section 9 of the Income Tax Act, 1922 and the court reiterated again that in Indian law beneficial ownership was unknown ; there was but one owner, namely, the legal owner, both in respect of vendor and purchaser, and trustee and *cestui que* trust. The income from house property refers to the legal owner and further that in case of a sale of immovable property

4. (1971) 82 ITR 570 : (1971) 3 SCC 369 : AIR 1972 SC 126
5. (1970) 77 ITR 637 (Cal)

a registered document was necessary. But these propositions as noted hereinbefore rested on the use of the expression in Section 9 of the Income Tax Act, 1922. It used the expression 'owner' unlike 'belonging to'.

19. The Gujarat High Court in *CWT* v. *Kum. Manna G. Sarabhai*[6] held that a *spes successionis* is a bare and naked possibility such as the chance of a relation obtaining a legacy and that could not form the basis of assessment under Section 26 of the Act. At page 174 of the report, the Gujarat High Court referred to the expression 'belonging to' and referred to the fact that the expression has been the subject-matter in a number of judicial decisions. The court observed that the words 'property' and 'belonging to' were not technical words.

20. The Gujarat High Court had occasion to deal with part performance in the case of an agreement of sale in *CIT* v. *Ashaland Corpn.*[7] The Gujarat High Court noted that in case of a person who was a dealer in land, the business transaction would be completed only when the purchase or sale transaction was complete. In order to decide whether the business transaction was complete, the question of vital importance was whether title in the property had passed. It was only on the passing of the title that the transaction became complete and unless the transaction was complete, any advance receipt of money towards the transaction would not form part of income or profit. It was observed by the Gujarat High Court that the doctrine of part performance embodied in Section 53-A of the Transfer of Property Act, 1882, had only a limited application and it afforded only a good defence to the person put in possession under an agreement in writing to protect his possession to the extent provided in Section 53-A, but an agreement in writing to sell, coupled with the parting of possession would not confer any legal title on the purchaser and take the land out of the stock-in-trade of the seller if the seller was a dealer in land. The context in which the Gujarat High Court had to deal this question was entirely different. The Gujarat High Court had to proceed on the basis that the assessee under the Income Tax Act was the owner and he was dealing in land and therefore whether the land was stock-in-trade was the question. In the instant appeal we are concerned with the expression 'belonging to'. Therefore the observations of the Gujarat High Court would not be quite apposite to the problem of the instant appeal.

21. This question was again viewed by the Bombay High Court

6. (1972) 86 ITR 153 (Guj)
7. (1982) 133 ITR 55 (Guj)

in a slightly different context in *CIT* v. *Smt. T.P. Sidhwa*[8]. The Bombay High Court was not concerned with the expression 'belonging to'.

22. Our attention was drawn to another decision of the Gujarat High Court in *CWT* v. *H.H. Maharaja F.P. Gaekwad*[9]. There the facts were more or less identical with the instant appeal on this aspect of the matter. The assessee owned two properties and had agreed to sell one property to a company. The vendees had paid Rs 30 lakhs in January, 1964 and were put in possession of the property. Thereafter, four instalments of Rs 17½ lakhs each were paid and the property was conveyed by four deeds executed in 1970-71 and 1972. It was contended that at the relevant time, the property did not belong to the assessee. It was held by the Gujarat High Court that receipt of part of the sale price and parting of possession would not divest the vendor of immovable property of his title to the property. The doctrine of part performance embodied in Section 53-A of the Transfer of Property Act had limited application and afforded a good defence to the person put in possession. The legal position and the relevant clauses of the agreement of sale showed that the assessee was the owner of the property at the relevant valuation dates. Therefore, according to the Gujarat High Court, the property agreed to be sold which had been parted with was includible as an asset of the assessee.

23. Even in some cases the phrase 'belonging to' is capable of connoting interest less than absolute perfect legal title. See in this connection the observations of this Court in *Raja Mohammad Amir Ahmad Khan* v. *Municipal Board of Sitapur*[10]. This Court observed in that case that though the expression 'belonging to' no doubt was capable of denoting an absolute title was nevertheless not confined to connoting that sense. Full possession of an interest less than that of full ownership could also be signified by that expression.

24. Before concluding this aspect of the matter, there is certain aspect which has to be borne in mind. Reliance was placed as we have mentioned hereinbefore on the decision of the Gujarat High Court in the case of *CWT* v. *H.H. Maharaja F.P. Gaekwad*[9]. It was contended that if the Gujarat High Court's view was correct, then the assessee's contention on this aspect in the instant appeal cannot be accepted. On behalf of the assessee it was submitted that the decision of the Gujarat High Court in *CWT* v. *Kum. Manna G. Sarabhai*[5] not having been taken into consideration by the Gujarat High Court in the later decision, the Gujarat High Court judgment on which revenue relied was not correct. It is not necessary in the view we

8. (1982) 133 ITR 840 (Bom)
9. (1983) 144 ITR 304 (Guj)
10. AIR 1965 SC 1923

have taken on the other aspect of the matter, namely, the use of the expression 'belonging to' to discuss this point any further. It was further submitted before us that from the said decision of the Gujarat High Court in *CWT* v. *H.H. Maharaja F.P. Gaekwad*[9], a special leave petition was filed by the assessee, which was dismissed by this Court on January 17, 1983. (See in this connection 144 ITR Statute page 23.) It is, however, well settled that dismissal of special leave petition *in limine* does not clothe the decision under appeal in special leave petition with the authority of the decision of this Court. See in this connection the observations in *Daryao* v. *State of U.P.*[11] It may be mentioned as was rightly observed by a Full Bench of the Allahabad High Court in *Sahu Govind Prasad* v. *CIT*[12], special leave is a discretionary jurisdiction and the dismissal of a special leave petition cannot be construed as affirmation by this Court of the decision from which special leave was sought for.

25. On this aspect, it may also be mentioned that our attention was drawn to some decisions which we shall presently note.

26. The Punjab and Haryana High Court in the case of *Smt. Kala Rani* v. *CIT*[13] had occasion to discuss this aspect of the matter. But the Punjab and Haryana High Court was construing the meaning of the expression 'owner' under Section 22 of the Income Tax Act, 1961. There, the Division Bench of the Punjab and Haryana High Court held that the assessee occupied the property after the execution of the agreement of sale deed in his favour and after completion of the building, he was in a position to earn income from the property sold to him, though the registered sale deed was executed subsequently in April 1969. It was held that the assessee was 'owner' in terms of Section 22 of the Income Tax Act, 1961.

27. The Madras High Court had occasion to discuss this aspect in *Mrs M.P. Gnanambal* v. *CIT*[14]. There the facts were entirely different and the Madras High Court held that the rights with reference to the properties in question in that case could only be described as a delusion and a snare so long as the sons continued to occupy the property which they were entitled to under the will and to describe the assessee's right as owner of the property would be a complete misnomer. There, the court was construing the will and Section 22 of the Income Tax Act, 1961 as to who were the owners in terms of the will.

11. AIR 1961 SC 1457
12. (1983) 144 ITR 851, 863 (All)
13. (1981) 130 ITR 321 (P&H)
14. (1982) 136 ITR 103 (Mad)

28. In all these cases as was reiterated by the Calcutta High Court in *S.B. (House & Land) Pvt. Ltd.* v. *CIT*[15] the question of ownership had to be considered only in the light of the particular facts of a case. The Patna High Court in *Addl. CIT* v. *Sahay Properties and Investment Co. (P) Ltd.*[16] was concerned with the construction of the expression 'owner' in Section 22 of the Income Tax Act, 1961. There, the assessee had paid the consideration in full and had been in exclusive and absolute possession of the property, and had been empowered to dispose of or even alienate the property. The assessee had the right to get the conveyance duly registered and executed in its favour, but had not exercised that option. The assessee was not entitled to say that because of its own default in having a deed registered in its name, the assessee was not the owner of the property. In the circumstances, it was held that the assessee must be deemed to be the owner of the property within the meaning of Section 22 of Income Tax Act, 1961 and was assessable as such on the income from the property. This is only an illustrative point where in certain circumstances without any registered conveyance in favour of a purchaser, a person can be considered to be 'owner'. It may incidentally be mentioned that this Court has granted special leave to appeal against this judgment. See in this connection (1983) 143 ITR (Stat) 60.

29. Salmond's conception of 'ownership' has been noted. The meaning of the expression 'belonging to' has also been noted. We have discussed the cases where the distinction between 'belonging to' and 'ownership' has been considered. The following facts emerge here : (1) the assessee has parted with the possession which is one of the essentials of ownership. (2) The assessee was disentitled to recover possession from the vendee and assessee alone until the document of title is executed was entitled to sue for possession against others i.e. other than the vendee in possession in this case. The title *in rem* vested in the assessee. (3) The vendee was in rightful possession against the vendor. (4) The legal title, however, belonged to the vendor. (5) The assessee had not the totality of the rights that constitute title but a mere husk of it and a very important element of the husk.

30. The position is that though all statutes including the statute in question should be equitably interpreted, there is no place of equity as such in taxation laws. The concept of reality in implementing fiscal provision is relevant and the legislature in this case has not significantly used the expression 'owner' but used the expression 'belonging to'. The property in question legally, however, cannot be said to belong

15. (1979) 119 ITR 785 (Cal)
16. (1983) 144 ITR 357 (Pat)

to the vendee. The vendee is in rightful possession only against the vendor. Speaking for myself, I have deliberated long on the question whether in interpreting the expression 'belonging to' in the Act, we should not import the maxim that "equity looks upon a thing as done which ought to have been done" and though the conveyance had not been executed in favour of the vendee, and the legal title vested with the vendor, the property should be treated as belonging to the vendee and not to the assessee. I had occasion to discuss thoroughly this aspect of the matter with my learned Brother and in view of the position that legal title still vests with the assessee, the authorities we have noted are preponderantly in favour of the view that the property should be treated as belonging to the assessee. In such circumstances, I shall not permit my doubts to prevail upon me to take the view that the property belongs to the vendee and not to the assessee. I am conscious that it will work some amount of injustice in such a situation because the assessees would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question. But times perhaps are yet not ripe to transmute equity on this aspect in the interpretation of law — much as I would have personally liked to do that. As Benjamin Cardozo has said : "The judge, even when he be free, is not wholly free". A judge cannot innovate at pleasure.

31. It may be said that the legislature having designedly used the expression 'belonging to' and not the expression 'owned by' had perhaps expected judicial statesmanship in interpretation of this expression as leading to an interpretation that in a situation like this it should not be treated as belonging to the assessee but as said before times are not yet ripe and in spite of some hesitation I have persuaded myself to come to the conclusion that for all legal purposes the property must be treated as belonging to the assessee and perhaps legislature would remedy the hardship of assessee in such cases if it wants. The assessee had a mere husk of title and as against the vendee the assessee had no reality of title but as against the world he was still the legal owner and the real owner.

32. As has been observed by this Court in *CWT* v. *Bishwanath Chatterjee*[2] the property is owned by one to whom it legally belongs. The property does not legally belong to the vendee as against the vendor, the assessee.

33. In *Webster's Dictionary* 'belonging to' is explained as meaning, inter alia, to be owned by, be in possession of. The precise sense in which the words were used, therefore, must be gathered only by reading the instrument or the document as a whole. Section 53-A of the Transfer of Property Act, 1882, is only a shield and not a sword.

34. In Aiyar's *Law Lexicon of British India*, 1940 edn., page 128, it has been said that the property belonging to a person has two meanings — (1) ownership ; (2) the absolute right of the user. The same view is reiterated in Stroud's *Judicial Dictionary* 4th edn., page 260. The expression : 'property belonging to' might convey absolute right of the user as well as of the ownership. A road might be said, with perfect propriety, to belong to a man who has the right to use it as of right, although the soil does not belong to him.

35. Under Section 53-A of the Transfer of Property Act, 1882 where possession has been handed over to the purchasers and the purchasers are in rightful possession of the same as against the assessee and the occupation of the property in question, and secondly that the entire consideration has been paid, and thirdly the purchasers were entitled to resist eviction from the property by the assessee in whose favour the legal title vested because conveyance has not yet been executed by him and when the purchasers were in possession had right to call upon the assessee to execute the conveyance, it cannot be said that the property legally belonged to the assessee in terms of Section 2(*m*) of the Act in the facts and circumstances of the case even though the statute must be read justly and equitably and with the object of the section in view. We are conscious that if a person has the user and is in the enjoyment of the property it is he who should be made liable for the property in question under the Act ; yet the legal title is important and the legislature might consider the suitability of an amendment if it is so inclined.

36. This question therefore must be answered in favour of the revenue and in the affirmative. The appeal on this aspect must therefore fail.

37. For the second question it is necessary to refer to Section 2(*e*) which provides for the definition of assets by stating that "assets" includes property of every description, movable or immovable, but does not include :

(*e*)(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant ;

38. Therefore, in order to be excluded from the assets of the assessee, the right being the sum which was annually to be paid under the agreement or letter mentioned hereinbefore must be by the terms and conditions precluded commutation of any portion thereof into a lump sum grant. The question therefore is — could this lump sum grant of Rs 25 lakhs be commuted by the Nizam and the capital value of the commutation be received ? Furthermore, the next question that

arises was whether that commutation was precluded by the terms and conditions relating to that right. It may be that preclusion might be either by express terms and conditions of the right or as an inference from the terms and conditions of the payment.

39. We need not go into the rights of the erstwhile princes before the abolition of the privy purses whether the privy purses could be commuted or not.

40. The term 'annuity' is not defined in the Act. According to the *Oxford Dictionary*, 'annuity' means sums payable in respect of a particular year ; yearly grant. An annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property. The hall-mark of an annuity, according to Jarman *On Wills* (page 1113) is : (1) it is a money ; (2) paid annually ; (3) in fixed sum ; and (4) usually it is a charge personally on the grantor.

41. Whether a particular sum is an annuity or not has been considered in various cases. It is not necessary in the facts and circumstances of the case and in view of the terms of the payment indicated to examine all these cases.

42. In *Ahmed G.H. Ariff* v. *CWT*[17-18], this Court held that the word 'annuity' in clause (iv) of Section 2(*e*) of the Act must be given the signification which it has assumed as a legal term owing to judicial interpretation and not its popular and dictionary meaning.

43. In *CWT* v. *Arundhati Balkrishna*[19], there were two deeds of trust. The assessee's father had settled certain shares in trust for the benefit of the assessee and her two brothers. The trustees were to pay the residue of the income from the trusts in equal shares to the beneficiaries after deducting all costs and expenses. The assessee had a right after she had attained majority and after the birth of her first child to require the trustees to pay her shares out of the corpus of the trust fund absolutely up to one-half thereof. Under another trust created by her mother-in-law of certain sums of money and certain shares the trustees were required to pay the income of the trust funds after deducting expenses to the assessee during her lifetime. It was held that the payments to the assessee under the trust deeds were not 'annuities' within the meaning of Section 2(*e*)(iv) of the Act.

44. In *CWT* v. *Her Highness Maharani Gayatri Devi of Jaipur*[20],

17-18. (1970) 76 ITR 471 : (1969) 2 SCC 471 : (1970) 2 SCR 19 : AIR 1971 SC 1691
19. (1970) 77 ITR 505 : (1970) 1 SCC 561 : (1970) 3 SCR 819 : AIR 1971 SC 915
20. (1971) 82 ITR 699 (SC)

this question arose again. The Maharaja of Jaipur had executed a deed of irrevocable trust whereunder the properties mentioned in the schedule thereto stood transferred to the trustee. The trust fund was to include the assets mentioned in the schedule and also such additions thereto and other capital moneys which might be received by the trustee. The assessee was one of the beneficiaries under the trust to whom the trustee was to pay during her lifetime 50 per cent of the income of the trust fund. The question was whether the assessee had a life interest in the corpus of the trust fund and her interest was therefore an 'asset' liable to wealth tax or whether the assessee had only a right to an annuity and as such her right was exempt from wealth tax in view of Section 2(*e*)(iv) of the Act. It was held by this Court that since neither the trust fund nor the amount payable to the assessee was fixed and the only thing certain was that she was entitled to 50 per cent of the income of the trust fund, what the assessee was entitled to was not an annuity but an aliquot share in the income of the trust fund. The assessee had a life interest in the trust fund and the right of the assessee under the trust deed was not exempt from wealth tax by virtue of the provisions of Section 2(*e*)(iv).

45. In *CWT* v. *P.K. Banerjee*[21], it was held that the right of the assessee in the trust fund in that case was not an 'annuity' and was not exempt from the wealth tax under Section 2(*e*)(iv) of the Act. It was further observed that in order to constitute an 'annuity' the payment to be made periodically should be a fixed or predetermined one and it should not be liable to variation depending upon or on any ground relating to the general income of the fund or estate which was charged for such payment.

46. In this case, in view of the background of the terms of payment and the circumstances why the payment was made, there cannot be any doubt that Rs 25 lakhs annually was an 'annuity'. It was a fixed sum to be paid out of the property of the Government of India in lieu of the previous income of the assessee from *Sarf-e-khas*. Therefore, it was an annuity.

47. The only question that arises, was there any express provision which prevented commutation of this annuity into a lump sum? Counsel for the revenue contended that there must be an express provision which must preclude commutation. In this case indeed there is no express provision from the document itself. The question is: can, from the circumstances of the case, such an express provision precluding commutation be inferred in the facts and circumstances of this case?

21. (1980) 125 ITR 641 : (1981) 1 SCC 63 : 1981 SCC (Tax) 35 : AIR 1981 SC 401

48. The background of the facts and circumstances of the payment has to be kept in mind. The Nizam had certain income. He was being given three sums — one was the privy purse which was not commutable ; the other was payment of Rs 25 lakhs for the upkeep of palaces etc. and the third of Rs 25 lakhs in lieu of his previous income from the *Sarf-e-khas*. Income is normally meant for expenditure. The Nizam had to incur various expenditure. Commutation is often made when one is not certain as to whether the source from which that income comes for example, when a man retires from service, he normally commutes in order to ensure for himself and after his death for his family a certain income which he can ensure by getting the commuted amount invested in his private bank or otherwise which he may not be sure because upon his death the pension will cease.

49. In this case this being an agreement between erstwhile ruler and the Government of India, there is no such motivation and this payment of Rs 25 lakhs in lieu of the previous income of *Sarf-e-khas* must be read in conjunction with two other sums namely Rs 50 lakhs as privy purse and Rs 25 lakhs for upkeep of palaces. This bears the same character.

50. As privy purses were not commutable, we are of the opinion that from the circumstances and keeping in background of the payment, there was an express provision flowing from the circumstances precluding the commutation of this amount of Rs 25 lakhs. If that is the position, then, in our opinion, it was exempt under Section 2(*e*)(iv) of the Act.

51. There was no right granted and can be gathered from the terms of the grant of payment for the assessee to claim commutation of the amount of Rs 25 lakhs. That would defeat the purpose and the set up of the arrangement under which the payment of the amount was made. The nature of privy purses have been discussed in *H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur* v. *Union of India*[22]. We are, however, not concerned with the controversy of the privy purses. But it is quite evident from the nature of the sum stipulated in the letter, the assessee had no right to claim commutation. Taking that fact in conjunction with the circumstances under which the payment of Rs 25 lakhs was agreed to, we are of the opinion that it must be held that from the terms of the agreement, there was an express stipulation precluding commutation. If that is so then it comes within clause (iv) of Section 2(*e*) of the Act and the assessee was entitled to exemption. The question therefore must also be answered in the negative and in favour of the assessee.

22. (1971) 3 SCR 9 : (1971) 1 SCC 85 : AIR 1971 SC 530

52. The appeal is disposed of in the aforesaid terms. The judgment and order of the High Court are modified accordingly. In view of the divided success, there will be no order as to costs.

1986 (Supp) Supreme Court Cases 719

(BEFORE O. CHINNAPPA REDDY, J., VACATION JUDGE)

VARINDERPAL SINGH .. Petitioner;

Versus

HON'BLE MR. JUSTICE M.R. SHARMA AND OTHERS .. Respondents.

Writ Petition (Criminal) No. 769 of 1982, decided on June 2, 1982

Constitution of India — Article 32 — Writ petition under Article 32 filed on the same subject matter on which SLP under Article 136 already dismissed by Supreme Court — In absence of any question of law or error of jurisdiction involved, the writ petition not maintainable

Legal Profession — Advocates should not bring frivolous petitions before Court — They should feel their responsibility to assist and cooperate with the Court so that precious time of the Court may not be wasted by such petitions

Writ petition dismissed R-M/7790/S

ORDER

This is a writ petition in a matter where petition for special leave against the judgment of the High Court has already been dismissed by this Court. The petitioner has now chosen to file this application under Article 32 of the Constitution. On the face of it the petition is not maintainable. There is not even a semblance of a question of law or an error of jurisdiction. There is not even a remote justification for filing this petition. It is a pity that the time of this Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such petitions. Perhaps many such petitions may be avoided if learned counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. I appeal to members of the Bar to realise that the great burden of dispensing justice is a burden which it is their duty to share and it is their duty to see that the burden should not be needlessly made unbearable. The Judges of this Court are struggling bravely against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done. I appeal to the members of the Bar for their goodwill and cooperation. If we are not able to cooperate and set our house in order, the people to whom all of us are accountable will surely intervene and ask wiser men than us to tell us what is good for us all. Please do cooperate. The petition is dismissed accordingly.

AIR 1965 SC 1923

In the Supreme Court of India

(BEFORE K. SUBBA RAO, RAGHUBAR DAYAL AND N. RAJAGOPALA AYYANGAR, JJ.)

RAJA MOHAMMAD AMIR AHMAD KHAN ... Appellant;

Versus

MUNICIPAL BOARD OF SITAPUR AND ANOTHER ... Respondents.

Civil Appeal No. 786 of 1962*, decided on December 3, 1964

Advocates who appeared in this case :

V.D. Misra, Advocate, for the Appellant;

J.S. Trivedi and C.P. Lal, Advocates, for Respondent 1;

C.B. Agarwala, Senior Advocate, (O.P. Rana, Advocate, with him), for Respondent 2.

The Judgment of the Court was delivered by

N. RAJAGOPALA AYYANGAR, J.— The plaintiff is the appellant in this appeal, by special leave, which is directed against the judgment and decree of the High Court of Allahabad. The plaintiff's suit was dismissed by the Civil Court of Sitapur and the High Court confirmed that order of dismissal.

2. The facts necessary for the disposal of the appeal, in view of the only point raised before us, lie in a very narrow compass. The dispute relates to the claim of the appellant to an area of 16 Bighas or 3 acres odd in plot 160 bearing Municipal number 1444, situated in Chhauni Qadim, Sitapur Cantonment. The plaintiff is the Taluqdar of the Mahmudabad estate in the district of Sitapur. The dispute relates to the nature of his title to the interest in this property which is admittedly nazul land and the particular whether he has forfeited his leasehold interest by reason of his acts and conduct to which we shall refer presently.

3. From the evidence on record the precise date upon which the predecessors in title of the appellant's ancestors obtained this property on lease or the terms upon which they held it are not very clear. We should also add that this has not been the subject of examination by the High Court. There was, however, evidence that there was a bungalow constructed by a previous tenant on this property. This bungalow was burnt down by an accidental fire some years before these proceedings began and on the finding of the courts, the site was vacant and without any buildings at the commencement of these proceedings. While so, the appellant appears in or about September 1947 to have sub-divided the plot, leasing them out to different persons for enabling them to erect buildings on them. The municipal Board of Sitapur objected to this dealing with the property and contested his right to do so, and passed a resolution requesting the State Government to terminate his lease. The Government thereupon issued a notification, in December 1948, for the acquisition of an extent of 2.68 acres out of this plot under Section 9 of the Rehabilitation of Refugees Act (Act 26 of 1948) for the purpose of erecting buildings for housing refugees from Pakistan. Before the Land Acquisition Officer assessing the compensation the contention raised by Government was that the land was admittedly nazul land and that the plaintiff was merely a non-occupancy tenant and that therefore he was entitled only to one year's rent as compensation. In answer to this claim the plaintiff filed, on March 25, 1949 an application claiming that he and his ancestors had been owners of the land and had been exercising "permanent, heritable and transferable rights" in the land openly and to the knowledge of and with the consent of the Government. He, therefore, claimed that he was entitled by reason of such interest in the land to a sum of Rs 52,900 as

compensation for its acquisition. He also stated in that application that as his title to the property had been disputed by the Municipal Board of Sitapur which asserted that he had no rights to transfer or lease the parcels of land as he had done in September 1947 he was filing a suit in the Civil Court for a declaration of his title in respect of that land and he, therefore, prayed that till the decision of the Civil Court the determination of the amount of compensation due to him may be deferred. Alternatively he prayed that if his claim as to the amount of compensation was not accepted the matter may be referred for decision to the court for adjudication. The Compensation Officer, however, rejected the claim of the appellant to the title that he claimed to the property and holding that he was a mere non-occupancy tenant decided that he was not entitled to anything more than a year's rent and assessed the compensation payable at Rs 15. This order was passed on March 26, 1949. Soon thereafter and after the expiry of the period of notice that he had given under Section 80 of the CPC the appellant filed a suit out of which this appeal arises, on July 11, 1949 impleading the Municipal Board, Sitapur which had disputed his right to parcel out the lands and lease them to refugees, and the State of United Provinces which disputed his claim in the compensation proceedings as defendants. After stating the earlier history of the property the plaint proceeded:

> "The plaintiff and his ancestors have been owning the bungalow and other constructions and holding the premises with a permanent heritable and transferable rights.
>
> The plaintiff and his predecessors have been exercising heritable and transferable rights in the land in dispute openly and to the knowledge of the Government and Municipal Board and in any view of the case have acquired such rights by adverse possession."

4. After reciting that the Municipal Board had been realising a consolidated amount of Rs 388/8 per year from the plaintiff and his ancestors in respect of the lands of all their bungalows including the plot in dispute, it prayed for a declaration that he had a permanent heritable and transferable right as owner and, in any case, as a permanent lessee for building purposes and that he had right to lease out the same.

5. We are not concerned with the written statement of the Municipal Board but the Government of U.P. filed one on April 10, 1950 to whose terms it is necessary to advert. In para 5 they admitted that there was a bungalow on plot 1444 but since the last 30 years no bungalow, outhouses or any kind of constructions had existed on the land in dispute which had been lying vacant up to March 18, 1949. In answer to the allegation in para 11 of the plaint wherein it had been set out that the plaintiff decided to parcel out lands and lease the same to different persons the Government stated that the plaintiff had no right to parcel out the land in dispute and had done so by wrongly representing himself as the owner and had sold it to the general public by auction. In other words, it was this action on the part of the plaintiff in parcelling out and sub-leasing the lands, that was said to amount to a repudiation of the title of the landlord. The plaintiff's complaint regarding the action of the Municipal Board in requesting the Government to terminate the lease and hand over the land to the Board was answered in para 13 by saying:

> "The Municipal Board passed a resolution terminating the tenancy of the plaintiff and requesting the Government to take over the land on the ground that the action of the plaintiff amounted to a denial of ownership of the landlord and was further detrimental to public interest and constituted a violation of the purpose for which the holder of the land was permitted to use it."

6. "The Government accordingly terminated the tenancy and took over the land". The contention regarding the repudiation of the title of the landlord in this manner was also repeated in para 14 of the written statement which was emphasised and

elaborated in paras 25, 26 and 27 which ran:

"*25.* The plaintiff's claim to permanent heritable and transferable right as owner is wrong, baseless and without any foundation.

26. Under the Cantonment tenure governing such areas no one except the Government can have any title to the land in the said area, and the Government can resume it at any time.

27. Inspite of the fact that the plaintiff had no claim to the land in dispute as owner, he repudiated the title of the landlord, and representing himself as the owner actually parcelled it out into various plots and with a view to make money out of it sold portions of it by auction to the general public representing himself to be the owner thereof. Under the circumstances the Municipal Board had to terminate the lease of the plaintiff and the Government acquired the land for building houses for refugees and have actually constructed the said houses on it.

... The conduct of the plaintiff has resulted in the forfeiture of the rights of the plaintiff in the tenancy claimed by him."

7. Other defences were also raised to which however it is not necessary to refer.

8. On April 22, 1950, nearly a fortnight after the filing of the written statement the Government issued a notice to the plaintiff stating, to quote the material part:

"That the Government is the absolute owner of this plot. That in the acquisition proceedings as well as on other occasions you set up & title in yourself as owner and proprietor of the said land and claimed the same in that capacity. That on account of the said acts on your part, I, on behalf of the Government hereby give you notice that the Government have forefeited the tenancy rights, if any, possessed by you in the said land."

9. On May 15, 1950 the plaintiff moved an application for amending the plaint by admitting in express terms the ownership of the Government and claiming rights merely as a permanent lessee but this application was dismissed.

10. The question raised in this appeal is whether the plaintiff had incurred forfeiture of his lease-hold interests by denying the title of the Government so as to justify the latter in terminating the lease. On the basis of the pleadings as many as 12 issues were raised of which it is necessary to refer only to:

"*4.* If this property was made a part of Taluqa Mahmudabad in 1919 and whether the plaintiff has a permanent heritable and transferable right in it?

6. If the Municipal Board had been realising rent for the land in suit on behalf of the U.P. Government from the plaintiff and his predecessors?

7. Whether the plaintiff is and his predecessors were mere licensees of the land in suit, and whether by sales and his attempt to allot parcel out of it to others, has ceased to be a licensee?

8. Whether the defendants terminated the tenancy of the plaintiff and took possession of the land as landlord after forfeiture of the plaintiff's rights?

9. If the right of the plaintiff, if any terminated by his own acts viz. (1) denial of his landlord's title, (2) Use of the land for purpose inconsistent with the purpose of the tenancy, (3) by the destruction of the house about 30 years ago."

11. At the stage of the trial and particularly during the arguments before the learned trial Judge, the learned counsel for the plaintiff sought to argue that the plaintiff had a permanent transferable and heritable right in the land as a lessee i.e. he was a permanent lessee the origin of which was unknown. The learned Judge, however, construed the plaint as not permitting such a case to be made out and that the choice was between the plaintiff's full title as owner which he held had not been established or a title as a licensee or a non-occupancy tenant which was the entry in the revenue register. On this reasoning the learned trial Judge decided Issue 7 in

favour of the defendants. If the plaintiff was, thus a licensee of the site of the bungalow and a tenant at will in respect of the rest of the land the learned trial Judge held that by the written statement that he filed on March 25, 1949 he had repudiated the title of the landlord — an attitude which had been repeated in the oral evidence in Court at the trial. He, therefore, held that the plaintiff had incurred forfeiture and that the Government were therefore entitled to revoke the licence and put an end to his rights. The learned trial Judge also referred to the application that was made for amending the plaint filed in May, 1950, but held that this would not help the plaintiff for avoiding the effect of the forfeiture he had already incurred. The result was that on the finding the plaintiff had incurred a forfeiture and the tenancy was properly terminated the suit was directed to be dismissed.

12. From this judgment and decree the plaintiff filed an appeal to the High Court. In the appeal only two points were urged on his behalf. The first was that the learned trial Judge was wrong in negativing his case that he was a permanent lessee with heritable and transferable rights, of the land in suit. In support of this position it was urged "that the manner of dealing with the property, the fact that the grant was lost in antiquity and the other circumstances of the case clearly indicated that the plaintiff held a permanent lease with heritable and transferable rights". An objection was raised on behalf of the State who was the only contesting respondent before that court (the Municipal Board who was impleaded as the first defendant having chosen to remain ex pane) that the plaintiff had come to Court with a statement that he was an owner and wanted a declaration to that effect. The learned Judges, however, construed the plaint as meaning that the plaintiff had prayed for a declaration in the alternative and that, at any rate, on the facts proved he was prima facie a permanent lessee who had a right to lease out the plots. It will be noticed that his was the subject-matter of the controversy between the plaintiff and the Municipal Board when the latter body invoked the aid of the Government to put an end to the lease. The learned Judges also referred to the application filed by the plaintiff on May 15, 1950 to amend his prayer and praying in specific terms for the relief that the plaintiff "was the owner with a permanent heritable and transferable right to property of which the Government had a paramount proprietary title". The learned Judges stated that they would not be prepared to accept the finding of the learned trial Judge on the point whether, in fact, the plaintiff was a permanent lessee who had a right to sub-lease the property which he held under the lease. In this connection they observed as follows:

> "We were, therefore, inclined to remand this case for a proper determination of the fact as to whether the plaintiff was a permanent lessee or an ordinary lessee or a mere licensee. We had come to this opinion only because we found that repeated attempts made by the plaintiff to summon certain documents from the defendants, particularly the Defendant 1 had been improperly blocked. We were taken through three applications 100 Ga, 101 Ga and 103 Ga, the last having been filed on the 22nd July, 1950. We are satisfied with the manner in which these applications had been dealt with. We are aware that the plaintiff had not included these documents in any list of documents submitted by him either with the plaint or immediately after the issues within the time granted to him. There could, however, be no doubt as to the genuineness of these documents as they were being summoned from the Defendant 1. There was hardly any question of proof, as the documents were coming from the possession of Defendant and they would have been immediately exhibited in the case. We are of opinion that in the circumstances the learned Civil Judge should have allowed the summoning of these papers on payment of costs and should have admitted them as evidence in the case and whatever costs be considered just and proper could be imposed on the plaintiff in respect of each document."

13. The result of this was that on this main point which was urged by the plaintiff

the learned Judges gave no definite finding themselves but were not prepared to accept as correct the finding of the trial Judge negativing the plaintiff's claim that he was a permanent lessee and holding that he was merely a licensee or a tenant at will.

14. It would have been noticed that the learned trial Judge had recorded a finding that the plaintiff had denied the title of the landlord and having thus incurred a forfeiture, had no further interest in the suit property as to obtain the relief of declaration in any form that he wanted. The second point that was urged before the learned Judges of the High Court was that the trial Judge was in error in holding that the plaintiff had denied the title of the landlord by the statements which were relied upon for that purpose — both having regard to the circumstances in which they were made as well as their tenor. Learned Counsel for the State stated that he was prepared to argue the case on the basis that the plaintiff was a permanent lessee with heritable and transferable rights and contended that even if it were so, the tenancy had been forfeited and determined and therefore there was no necessity for a remand. The learned Judges thereafter considered the terms of Ex. A-18 which was the application made to the Compensation Officer in the land acquisition proceedings and considered that it contained an unequivocal assertion of the plaintiffs absolute and proprietary right in the land and an unambiguous denial of the title of the landlord and rejecting the submission of the plaintiff as regards the construction and legal effect of Ex. A-18 dismissed the appeal holding that by the statements contained in that application the plaintiff had clearly denied the title of the landlord and thus incurred forfeiture. In passing we might mention that the suit sought a declaration as to the title of the plaintiff to the entirety of plot 160 of 16 bighas, whereas the Land Acquisition proceedings and Ex. A-18 filed in the said proceedings related to a smaller extent of 2.68 acres out of the said plot. This was either not noticed or considered immaterial.

15. It is the correctness of this judgment of the High Court that is canvassed in the appeal before us. Before we proceed to state the points urged before us, it is necesary to mention that the arguments before us have proceeded on the assumption that the appellant was a permanent lessee with heritable and transferable rights. We are saying this because the learned Judges of the High Court have not recorded any definite finding on this issue of fact but have expressed the opinion that if it were necessary to determine that question the matter would have to be remanded to the trial court after summoning the documents which are referred to in the passage extracted earlier. We would only add that we entirely agree with the observations of the learned Judges on this matter.

16. Section 111(*g*) embodies in statutory from this incident of a tenancy and it reads:

> "a lease of immoveable property would be determined by forfeiture in case the lessee renounces this character as such by setting up a title in a third person or by claiming title in himself".

to quote the material words. No doubt, the provisions of the Transfer of Property Act were not, it is stated in terms, applicable to the area in question, but it has been laid down that the principles embodied in Section 111(*g*) are equally applicable to tenancies to which the Act does not apply on the ground of the same being in consonance with justice, equity and good conscience (See *Maharaja of Teypore* v. *Rukmini*)[1]. It was also clear law that permanent tenancies are within the rule and are liable to forfeiture if there is a disclaimer of the tenancy or a denial of the landlord's title. That the disclaimer or the repudiation of the landlord's title must be clear and unequivocal and made to the knowledge of the landlord is also beyond dispute. The question then is whether the learned Judges of the High Court were right in holding that by the statement filed on behalf of the appellant before the Land Acquisition Officer marked Rules Ex. A-18 the appellant had renounced his

character as lessee claiming title in himself. For answering it we have to consider whether on the terms of Ex. A-18: (*1*) the appellant had asserted an ownership in himself repudiating the title of the Government, and (*2*) whether the terms of this assertion of ownership are clear and unequivocal.

17. That the land Plot No. 1444 — held by the appellant was nazul land is not in controversy, nor did the respondent controvert this. It was subject to the payment of a nominal annual rent of Rs 45/14 which has been unvarying as long as is known. There was no document evidencing the grant of the lease so as to enable the ascertainment of the terms upon which it was granted. In other words, its origin was shrouded in obscurity. There was, however, evidence to show that a bungalow was constructed on a part of the property now in dispute which was originally owned by one Mr Paton and then by one Captain Marett from whom the appellant's predecessor purchased it in the year 1870. By a deed dated August 8, 1918 an ancestor of the appellant who was the then Taluqdar of Mahmudabad, certain properties including that now in suit were annexed to the Taluqdari and declared subject to the Oudh Estates Act, 1869 on which the main Taluqdari was held. This deed was executed under the terms of Section 32-A of the Oudh Estates Act, 1869 which was introduced into the enactment by U.P. Act 3 of 1910. Section 32-A reads, to quote the material words:

> "Any Taluqdar may, by a registered instrument bearing a non-judicial stamp of Rs 15 signed by him and attested by two or more witnesses, declare the immovable property situated in the United Provinces in which he has a separate permanent, heritable and transferable right, and which is specified in the instrument is a part of his estate for the purposes of this Act.
>
> Such declaration shall take effect from the date of the registration thereof."

18. This deed was presented for registration and was registered on August 12, 1918. We are not now concerned with the legal effect of this declaration or to ascertain whether by reason thereof the lease of the property attained the character of permanency with hereditary and transferable rights in the hands of the then Talukdar or his successors but we are reciting this anterior history regarding which there is no dispute for the purpose of appreciating the significance of the claim made in Ex. A-18, and in ascertaining whether it amounted to a repudiation of the landlord's title.

19. There are three paras in Ex. A-18 which have been relied on by the learned Judges in this connection and these are paras 2, 5 and 8. Ex. A-18, as stated earlier, was an application to the Compensation Officer in respect of the compensation awardable to the appellant for the property in suit which had been acquired under Act 26 of 1948 for the rehabilitation of refugees. Two prayers were made in it and they were: (*1*) that the determination of the compensation might be deferred pending the suit which he proposed to file for a declaration regarding the nature of his interest in the land, (*2*) in the alternative he prayed that a sum of Rs 52,900 might be paid to him as compensation for the acquired plot. Para 2 of this application ran:

> "The land acquired is part of Jali Kothi or Bungalow Marett Saheb, belonging to me, in the Civil Lines, Sitapur."

20. After reciting in para 4 the declaration made by his ancestor under Section 32-A to which we have adverted, he proceeded in para 5 to state:

> "That I and my ancestors have been owners of the land and have been exercising permanent heritable and transferable rights in this land, openly and to the knowledge and consent of the Government."

21. Before proceeding to para 8 it would be useful to summarize the intervening two paragraphs. In para 6 he set out his having plotted out the land to various tenants for being built on and in para 7 he said:

> "Under a misconception of my rights some wrong entries have been made perhaps by the Patwari without any official order. (The reference here is to his being

recorded as a non-occupancy tenant of the land). On the same basis the Municipal Board, Sitapur, disputed my rights of transfer or lease in September, 1947, requested the Government to hand over possession of the plot to the Municipal Board and ultimately persuaded the Government to acquire the land for rehabilitation of refugees, though other vacant lands were available for the said purposes."

22. Para 8 stated:

"That on account of the conduct of the Municipal Board. Sitapur I have been forced to file a suit in the civil Court for declaration of my title in respect of this land."

23. In para 9 he prayed that the determination of the amount of compensation might be deferred till the decision of the Civil Court, after pointing out that the Government had already taken possession of the land and houses had been constructed on it for refugees and that the delay in the determination of the compensation would not prejudice anyone. He then proceeded to make a claim for Rs 52,900 if the officer was not prepared to defer consideration of the claim.

24. Now to revert to paras 2, 5 and 8 which the learned Judges considered amounted to a clear and unequivocal denial of the Government's title, they referred in para 2 to the words "belonging to me" as constituting a disclaimer of the tenancy and a repudiation of the landlord's title. We do not agree that this is the only or proper construction which the words are capable of bearing. Though the word "belonging" no doubt is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could signified by that word. In Webster "belong to" is explained as meaning inter alia "to be owned by, be the possession of". The precise sense which the word was meant to convey can therefore be gathered only by reading the document as a whole and adverting to the context in which it occurs. In *Prag Narain* v. *Kadir Bakhsh*[2] a tenant effected a mortgage of the premises including the Land which he held on lease and on which he had constructed buildings and in the mortgage deed employed the following words to describe the property mortgaged "house with the lands which belong to me". The landlord of the site claimed that this amounted to a denial of his title. The Court, however, held that the words were not unambiguous and as the denial was not unequivocal it did not entail a forfeiture. In the case before us there had been a bungalow constructed on the property and learned counsel for the respondent conceded that if that bungalow were in existence and the property had been referred to as "my bungalow" or "bungalow belonging to me" it would not be a disclaimer or rather the denial would not be unequivocal but he urged that if the same terms were used in respect not of the superstructure and the land together but of the site alone on which the superstructure stood, the interpretation of the assertion would be different. It is in this context that the circumstances of the tenancy become material for determining the nature of the assertion made. Here was a tenancy whose origin was not definitely known. The lessee had constructed superstructures and the appellant and his ancestors had been in enjoyment of the property for over three quarters of a century. There had been transfers effected of the property and the same had been the subject of inheritance. There had been a document in which there had been a public assertion that though it was Government land for which a nominal rent was payable, they had "a permanent heritable and transferable right". Notwithstanding enjoyment of this nature with public assertions of the type, when the property was sought to be enjoyed by sub-leasing it to others for construction of houses the municipality had come in and asserted rights in denial of these claims. It is with that background that one has to judge as to whether when the tenant stated that the land "belonged to him" he was asserting merely the substantial character of his interest in the property or was disclaiming the reversionary interests of Government or its right to demand and

receive a fixed rent in respect of the property. We consider that the words employed did not, in the circumstances, amount to a disclaimer or a renunciation of the tenancy.

25. Coming next to para 5, what we have stated in regard to para 2 and the use of the expression "belonging to me" occurring there would in our opinion apply equally to the use of the word 'owner' in this paragraph. The reference to the appellant and his ancestors exercising permanent heritable and transferable rights to the land is an obvious reference to the deed dated August 8, 1918 executed under Section 32-A of the Oudh Estates Act, 1869 in which also the same words occur. Though divorced from the context these words are capable of being construed as an assertion of absolute ownership, they cannot, in our opinion, in the setting in which they occur and bearing in mind the history of the enjoyment by the appellant and his predecessors of this property, be deemed an assertion unequivocal in nature of absolute ownership sufficient to entail a forfeiture of a permanent tenancy of this nature. In this connection it might be noticed that this enjoyment is stated to be with the consent of the Government. If the assertion were understood to be as an absolute owner in derogation of the rights of the Government as landlord, the reference to the consent of Government to such an enjoyment would be wholly inappropriate. Consent would have relevance only if the Government had interest in the property and we, therefore, understand the passage to mean that the permanent, transferable and heritable, particularly the right to transfer which was being denied by the municipality, was stated to have been enjoyed with the consent of the Government. That is an additional reason for our holding that at the worst the assertion was not unequivocal as to entail a forfeiture of the tenancy.

26. What remains for consideration is para 8 and the reference there to the suit for declaration "of my title in respect of this land". This passage is, if anything, less capable of the construction sought to be put upon it by the respondent that it amounts to an assertion repudiating the title of the landlord. If we are correct in the conclusion as regards paras 2 and 5 it would follow that the title of which it seeks a declaration is such title as he has in the suit property. A title as a permanent lessee with a heritable and transferable right in the property is as much a title as one with full ownership and if he stated that he was seeking a declaration from the Civil Court of his title as permanent lessee of such a character, there would, of course, be no question of his setting up a title in himself in derogation of the landlord's.

27. Learned counsel for the respondent placed before us certain English decisions, particularly *Vivian* v. *Moat*[3] and *Warner* v. *Sampson*[4] in support of his submissions. In the former case a claim by a tenant disputing the right of the landlord to increase the rent which, on the facts, he was entitled to, was held to be a disclaimer of the tenancy entailing a forfeiture. The rule enunciated in *Vivian* v. *Moat*[3] is however inapplicable to India, besides as pointed out by *Sir Dinshaw Mulla*[5] the tenant's assertion in *Vivian* v. *Moat*[3] was to hold at customary rent which was held to involve a denial of the relationship of landlord and tenant. As Lord Phillimore stated in *Maharaja of Jeypore* v. *Rukmini*[1]

> "Now, the rule of English law is that a tenant will forfeit his holding if he denies his landlord's title in clear, unmistakable terms, whether by matter of record, or by certain matters in pais. The qualification that the denial must be in clear and unmistakable terms has not unfrequently been applied by the courts in India, which have held that where a tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeiture. *Vithu* v. *Dhondi*, (ILR 15 B. 407); *Venkaji Krishna Nadkarni* v. *Lakshman Devji Kandar*, (ILR 20 B. 354); *Unhamma Devi* v. *Vaikunta Hegde*, (ILR 17 M. 218);

Chinna Narayudu v. *Harischendana Deo*, (ILR 27 M. 23)."

28. Though the Judicial Committee did not find it necessary to decide the case on this line of reasoning, the inclination of their opinion, is clear, for on p. 120 we have the following:

> "That a tenant who disputes his character as tenant does not thereby forfeit a lease for a term certain is shown by *Dee* v. *Wells*, (10 A. & E. 427). The doctrine of *Vivian* v. *Moat*, (16 Ch. D. 730) does not apply to Indian tenures such as the present; *Kali Kishen Tagore* v. *Golam Ali*, (ILR 13 C. 3, 248); and *Vithu* v. *Dhondi*, (ILR 15 B. 407) already cited."

29. As a fact, there are, besides those referred to by Lord Phillimore, a catena of decisions of High Courts holding that where a tenant claims rights higher than what he was entitled to he does not incur forfeiture (See *Ochhavalal* v. *Gopal*[6] and *Raja Sri Amar Krishna Narain Singh* v. *Waris Husain*[7], to mention a few). In *Raja Sri Amar Krishna Narain Singh case*[7] it was held that by setting up a permanent tenancy right a tenant whose tenancy was not of that nature did not on that account disclaim the title of the landlord as to incur forfeiture.

30. In *Warner* v. *Sampson*[4] a Divisional Court held that even by an inadvertent denial in a pleading of the right of the landlord, a tenant would incur forfeiture. We do not consider that this is the law in India, and for the same reason for which *Vivian* v. *Moat*[3] was held inapplicable to this country. We consider the law to be that unless there is a disclaimer or renunciation in clear and unequivocal terms whether the same be in a pleading or in other documents, no forfeiture is incurred.

31. Ex. A-18 was the only document containing the statement of the appellant which was held by the High Court to amount to a disclaimer entailing a forfeiture. Learned counsel for the respondent, however, drew our attention to statements in a few more documents which he submitted either by themselves amounted to a disclaimer or could be used to clarify the intention of the appellant in the statements or assertions that he made in Ex. A-18. The first one referred to in this connection was Ex. A-19 dated October 24, 1949. It would be recalled that in Ex. A-18 the appellant made a claim for Rs 52,900 as the proper compensation payable to him. The officer by his order dated March 26, 1949 awarded him Rs 15. Complaining of this award he made a claim for the amount he originally sought, by a reference to the District Judge under Section 11(3) of Act 26 of 1949 and the application he filed for this purpose was Ex. A-19 in which again the appellant made the two alternative prayers as he had done before the Compensation Officer. The learned District Judge, it may be noticed, by his order dated December 23, 1949 stayed the proceedings before him till the disposal of the present suit. The averments made in support of the reference were identical with those in Ex. A-18 which he had filed before the Compensation Officer on March 25, 1949. Para 2 of Ex. A-19 stated that the land acquired was a part of the Jali Kothi or Bangla Marett Saheb "*belonging to the claimant*" and was situated in the heart of the city. Para 6 which corresponds to para 5 of Ex. A-18 ran:

> "The claimant and his ancestors have been owners of the land and have been exercising permanent heritable and transferable rights in this (as in other lands mentioned in para 4 above) openly and to the knowledge and consent of the Government for more than sixty years".

32. and in para 13 he said:

> "The claimant was then forced to file a declaratory Suit 24 of 1949 against the U.P. Government and the Municipal Board, Sitapur that the rights of the claimant in the whole land acquired requisitioned and left out are those of an owner or of a permanent lessee."

33. This, if anything, is less unambiguous and unequivocal than the statements contained in Ex. A-18. Learned counsel next referred us to the terms of the plaint.

Here again, the only assertions made were that the plaintiff and his ancestors had been in possession of the bungalow and its compound since the last 79 years; that the plaintiff and his ancestors had been owning a bungalow and other constructions and holding the premises with permanent heritable and transferable rights, that the plaintiff and his predecessors had been exercising heritable and transferable rights in the land in dispute openly and to the knowledge of the Government and the Municipal Board and in any view of the case had acquired such rights by adverse possession. In para 20 the plaintiff prayed that it may be declared that the plaintiff had a permanent heritable and transferable right as an owner and, in any case, as a permanent lessee for building purposes and he had the right to lease out the same. We do not consider that the position of the respondent is improved by the plaint or that it takes us beyond the assertions in Ex. A-18 which we have considered in detail. If one proceeds on the basis that the appellant was a permanent tenant, holding at a nominal and invariable rent, and had a transferable and heritable interest in the plot, none of the allegations in Exs. A-18, A-19 or the plaint go beyond it or purport to deny the landlord the right to the reversionary interest or to demand and receive the fixed rental for the property. Mr Agarwala referred us, besides, to the oral evidence of the manager of the appellant who stated that the plaintiffs believed that they were the owners. We do not think that this assists the respondent.

34. The one fact that remains is that rent was being continuously paid right up to March, 1947 and the appellant never raised a dispute as regards his liability to pay rent. This was stressed before the learned Judges of the High Court as pointing to the assertion made by the appellant not amounting to a claim to full ownership in himself. The learned Judges, however, dismissed this argument on the ground that it was not proved that rent was paid up to 1949. Mr Aggarwala made the same submission to us. As regards this matter, however, two things stand out prominently: The first is what we have already stated that the appellant never disputed his liability to pay rent. The next is that as early as September 24, 1947 the Municipal Board objecting to the sub-leases effected by the appellant applied to the Government to terminate the lease and the Government also appear to have concurred with the municipality in this matter. The notification for acquisition of the suit plots was published on December 3, 1948 and immediately thereafter possession appears to have been taken as is recited in Ex. A-18 which we have extracted earlier. In these circumstances, we do not consider that any inference adverse to the appellant could be drawn from his not tendering the rent for the period up to the date on which possession was taken.

35. We, therefore, hold that the learned Judges were in error in holding that the appellant had incurred a forfeiture of his tenancy, assuming it was a permanent tenancy, by the claim that he made in Ex. A-18 and the other documents to which we have referred so as to justify the forfeiture which the Government claimed to enforce by Ex. A-15.

36. The appeal is accordingly allowed and the matter remanded to the High Court for being dealt with in accordance with law. The appellant would be entitled to his costs here and in the High Court. The costs to be incurred in future will be subject to the directions of the High Court.

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* Appeal by Special Leave from the Judgment and Decree dated 7th April, 1961 of the Allahabad High Court (Lucknow Bench) at Lucknow in First Civil Appeal No. 63 of 1950.

[1] 46 IA 109

[2] ILR 35 All 145

[3] 16 Ch D 730

[4] 1958 (1) AER 44

[5] (*Mulla-Transfer of Property Act* 4th Edn p. 688)

[6] 32 Bom 78

[7] ILR 14 Luck 723

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