PETITIONER:
SRISH CHANDRA SEN (DECEASED) AND OTHERS

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME-TAX, WEST BENGAL

DATE OF JUDGMENT:
23/11/1960

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
DAS, S.K.
SHAH, J.C.

CITATION:
1961 AIR 487 1961 SCR (2) 598

ACT:
Income Tax--Agricultural income--Acquisition of land forming part of permanently settled estate--Redemption of liability to pay land revenue by Payment of lump sum--Agricultural income from the land--Liability to income-tax-Indian Income-tax Act, 1922 (11 of 1922), S.2(1).

HEADNOTE:
By a notification dated November 2, 1864, a piece of land forming part of the Panchannagram Estate which was permanently settled under Regulation 1 of 1793, was acquired by the Government of Bengal at the instance of the justices of the Peace for the Town of Calcutta, which was a corporation established under the provisions of the Calcutta Municipal Act, 1863, and the justices were required to pay the compensation payable to the proprietor of the Estate. After the acquisition, the proprietor of the Estate was granted abatement of land revenue assessed on the Estate to the extent of Rs. 386-7-1, being the proportionate land revenue on the land acquired. On October 27, i865, the Government called upon the justices to pay a sum of Rs. 7,728-13-8, which represented the amount capitalised at 20 years' purchase of land revenue attributed to the area acquired. On December 5, i870, the Secretary of State executed in favour of the justices of the Peace a conveyance of the land acquired, which stated, inter alia, that it was "ever free and clear and for ever discharged from all Government land revenue whatever or any payment or charge in the nature thereof to the end and intent that the said land may be used for a public purpose, namely, for the conservancy of the town." On January 23, 1880, a lease of the land was granted by the Justices to the predecessors-in-title of the appellant, under which the lessee had the right to carry on cultivation with the aid of sewage.
Before the income-tax authorities the appellant claimed that the agricultural income derived by him from the land was not liable to income-tax, but the claim was rejected on the ground that on the payment of a lump-sum in 1865 the liability to pay land revenue was redeemed and no land revenue was demanded thereafter; consequently, the income derived from the land was not agricultural income within the

meaning of S. 2(1) of the Indian Income-tax Act, 1922, and was not, therefore, exempt from tax. The appellant's contention was that the redemption only saved the justices from liability for payment but did not affect the assessability of the land to revenue under Regulation 1 of 1793.

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Held, that by the down payment of a lump sum in 1865 the entire land revenue to be recovered from the land was redeemed and the land became free from land revenue assessment in perpetuity, as completely as if there was no assessment. Thereafter, the land could not be said to be assessed to land revenue within the meaning of S. 2(1) of the Indian Income-tax Act, 1922, and, consequently, the income derived therefrom could not be considered to be agricultural income under that section.

The Collector of Bombay v. Nusserwanji Rattanji Mistri and others, [1955] 1 S.C.R. 1311, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 405 of 1957.

Appeal from the judgment and order dated May 15, 1956, of the Calcutta High Court in I.T.R. No. 20 of 1953.

S. Mitra, B. Das and S. N. Mukherjee, for appellants Nos. 2 to 41.

A. N. Kripal and D. Gupta, for the respondent.

1960. November 23. The Judgment of the Court was delivered by

HIDAYATULLAH, J.-The point involved in this appeal is a very short one; but it requires a long narration of facts to reach it. The appeal is against the judgment and order of the High Court of Calcutta dated May 15, 1956, arising out of an Income-tax Reference.

By the Calcutta Municipal Act VI of 1863, there was established a Corporation under the name of "The Justices of the Peace for the Town of Calcutta". By a notification issued on November 2, 1864, one square mile of land forming part of the Panchannagram Estate was acquired by the Government of Bengal at the instance of the Justices. Section CXII of the Municipal Act provided that the Justices might "agree with the owners of any land for the absolute purchase thereof..... for any other purpose whatever connected with the conservancy of the Town". Under s. CXIII, it was provided that if there was any hindrance to acquisition by private treaty, the Government of Bengal upon the representation of the Justices would compulsorily acquire the land and vest

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such land in the Justices on their paying compensation awarded to the proprietor. The action which was taken by the notification was under s. CXIII of the Municipal Act, and the acquisition was under Act VI of 1857, an Act for the acquisition of land for public purposes.

The Panchannagram Estate was permanently settled under Regulation 1 of 1793. After the acquisition, the proprietor of Panchannagram Estate was granted abatement of land revenue assessed on the Estate to the extent of Rs. 386-7-1. This represented the proportionate land revenue on the land acquired.

In August, 1865, the Justices were required to pay Rs. 54,685-2-10 as compensation payable to the proprietor and to other persons holding interest in the land. Another piece of land which is described as an open level sewer, was also

acquired about the same time, and separate compensation was paid for it. With the amount of conveyance charges, the total compensation thus paid by the Justices was Rs. 57,965-8-10. On October 27,1865, the Government called upon the Justices to pay a further sum of Rs. 7,728-13-8. This order has not been produced in the case; but from other correspondence, it is easy to see that the amount represented an amount capitalized at 20 years' purchase of land revenue attributed to the area acquired, which, as has been stated above, came to Rs. 386-7-1. This payment was made on or about January 12, 1866. Similarly, another amount was paid in July of the same year for redemption of the land revenue in respect of the strip of land for the open sewer.

On December 5, 1870, a conveyance was executed by the Secretary of State in favour of the Justices of the Peace. It was there stated, inter alia:

"Whereas the Honourable the Lieutenant Governor of Bengal hath thought fit that the said land so acquired as aforesaid would be vested in the said Justices of the Peace for the Town of Calcutta a Corporation created by and authorised to hold land under the said Act No. VI of 1863 of the Council of the Lieutenant Governor of Bengal to the end and intent

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that the said land may be held by the said Justices for a public purpose, namely, for the conservancy of the Town..... and subject in every way to the same' Act but free and discharged from all payment of land revenue, land tax and all and every tax or imposition in the nature of revenue derivable from land payable to Government in respect thereof; NOW THIS IN-DENTURE WITNESSETH.....to hold the saidpieces of land, hereditaments and premises intended to be conveyed with the appurtenances except as aforesaid unto the said Justices of the Peace for the Town of Calcutta and their successors for ever free and clear and for ever discharged from all Government land revenue whatever or any payment or charge in the nature thereof to the end and intent that the said land may be used for a public purpose namely for the conservancy of the town upon the trusts and subject to the powers, provisions, terms and conditions contained in the said Act No. VI of 1863 of the Council of the Lieutenant Governor of Bengal and to the rules heretofore passed or hereafter to be passed by the Government of Bengal under the the said last mentioned Act;".

On January 23, 1880, a temporary lease of the land known as the 'Square Mile' was granted by the Justices of the Peace to the predecessors-in-title of the appellant (assessee), Srish Chandra Sen who has, since the filing of the appeal, died, leaving behind 40 legal representatives who have been shown in the cause title of the appeal. The lease was renewed for further periods, and the rent was also progressively increased. The conservancy arrangements for which the land 'was held were carried out, but, the lessee had the right to carry on cultivation with the aid of sewage.

The assessee derived from this land various kinds of income, some being purely agricultural and some, non-agricultural. For the assessment year 1942-43, the total agricultural income was computed at Rs. 99,987-9-6, and non-agricultural income, at Rs. 12,503-8-0. Agricultural income-tax was charged by the State of Bengal under the Agricultural Income-

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tax Act, on the agricultural income less expenses. For the

assessment years, 1943-44, 1944-45, 1945-46 and 1946-47, the assessments were made along similar lines. In 1947, the Income-tax Officer reassessed the income for the assessment year, 1942-43 after reopening the assessment under s. 34 of the Income-tax Act on the ground that the so-called agricultural income had escaped assessment to income-tax under the Indian Income-tax Act. Assessments for the other years, 1943-44, 1944-45, 1945-46 and 1946-47 were also reopened, and the income in those years wag also similarly reassessed. The assessee appealed to the Appellate Assistant Commissioner against all these orders of the Income-tax Officer, but his appeals failed. Against the orders of the Appellate Assistant Commissioner, appeals were filed before the Income-tax Appellate Tribunal (Calcutta Bench). The Tribunal dealt with the assessment for 1942-43 separately, and allowed the appeal as regards assessment for that year. It held that the reassessment was improper under s. 34 of the Income-tax Act, because the Income-tax Officer had not proceeded on any definite information but in the course of a "roving enquiry". The Tribunal also held that the income was exempt from taxation to income-tax under s. 4(3)(viii) of the Act, inasmuch as this income was derived from land used for agricultural purposes, which continued to be assessed to land revenue.

In the appeals arising out of assessments for the subsequent years, a common order was passed by the Tribunal, remanding the appeals to the Appellate Assistant Commissioner for a rehearing. The Tribunal stated that the appellants had filed a number of documents to establish that land revenue was assessed on the land which, the Department contended, proved the contrary. The Tribunal felt that the matter should be reconsidered by the Appellate Assistant Commissioner, and hence remanded the cases. The Appellate Assistant Commissioner in the rehearing held that the land in question continued subject to land revenue, and that the lump sum payment was merely payment of revenue in advance. He accordingly allowed the appeals, and ordered exclusion of the income

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from the assessments for the four years in question. On appeal by the Department, the Tribunal changed its opinion, and came to the conclusion that the' payment of a lump sum was not a payment in advance of the land revenue due from year to year but was land revenue capitalised. It referred to the deed by which the proprietorship in the land was ves-ted in the Corporation by the Secretary of State, and stated that by the document and the capitalisation of land revenue, the demand for land revenue was extinguished for ever. It accordingly allowed the appeals, and restored the orders of assessment made by the Income-tax Officer.

The assessee next moved the Tribunal for a reference setting out a number of questions which, he contended, arose out of the Tribunal's order. The Tribunal referred the following question of law for the opinion

of the High Court:

"Whether on the facts and in the circumstances of this case the Tribunal's conclusion that the land was not assessed to land revenue within the meaning of s. 2(1)(a) of the Indian Income-tax Act is justified?" The reference was heard by Chakravarti, C. J., and Sarkar, J., (as he then was). In an elaborate judgment, the learned Chief Justice upheld the conclusions of the Tribunal, and answered the question in the affirmative. Sarkar, J., in an equally elaborate order expressed his doubts about the correctness of the Chief Justice's reasons, but declined to disagree with

him.
The question that arises in this case, as we have stated in the opening of this judgment, is a very short one. It is an admitted fact that by payment of' a lump sum the liability to pay land revenue was redeemed and no land revenue was demanded or was ever demandable from the Justices or their assigns in perpetuity. The contention of the assessee is that this redemption saved the Justices from the liability for payment but did not affect the assessability of the land to revenue under Regulation I of 1793. Unless, it is contended,. there was a cancellation of the assessment, a,% is to be found in the
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Land Tax and Tithe Redemption Acts in England, the liability must be deemed% to continue and land would still be assessed to land revenue for purposes of s. 2(1)(a) of the Indian Income-tax Act. That section reads as follows:
"2(1) 'Agricultural income' means-
(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in (the taxable territories) or subject to a local rate assessed and collected by Officers of (the Government) as such".
It is not denied that both the conditions, namely, "used for agricultural purposes" and "is either assessed to land revenue or subject to a local rate..... have to co-exist. It is admitted by the Department that there is no question of subjection to a local rate assessed and collected, in this case. The income derived from the land was from its use for agricultural purposes, and the first condition is thus satisfied. The dispute centres round the point whether the land .can be said to be assessed to land revenue, in spite of the lump sum payment in 1865.
In the High Court, the matter was examined from three different points of view. The first was the effect of acquisition of the land by Government upon the continued assessability of the land to land revenue. The learned Chief Justice held that by the acquisition the assessment ceased to subsist. The second was the effect of the redemption of land revenue by the Justices by a lump sum payment. The learned Chief Justice was of opinion that it had the effect of cancelling the assessment. The last was the effect of the grant free from land revenue, about which the learned Chief Justice was of opinion that it freed the land from assessment to land revenue. Sarkar, J., agreed as to the first, but expressed doubts about the second and third propositions. According to the learned Judge, the acceptance of a lump sum payment in lieu of recurring annual payments was more a matter of agreement than a cancellation of assessment to land revenue.
The matter has been argued before us from the
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argument about the interpretation to be placed on the, conveyance by the Secretary of State which, according to him, only freed the Justices from 'payment' of the assessed land revenue but -did not cancel the assessment.
No Act of Legislature bearing upon the power of Government to accept a Iump sum payment in lieu of the annual demands for land revenue has been brought to our notice. Counsel admitted that they were unable to find any such legislative provision. We have thus to proceed, as did the High Court, without having before us the authority of a legislative enactment. The only materials to which reference was made are: an extract from the explanatory notes in the Revenue Roll of the Touzi which shows that an abatement of land

revenue pro tanto was granted to the proprietor of Panchannagram Estate, and a despatch from the Secretary of State for India (Lord Stanley)-No. 2 (Revenue) dated December 31, 1858-recommending redemption of land revenue by an immediate payment of a sum of equivalent value, together with a Resolution of Government (Home Department No. 3264 (Rev) dated October 17, 1861) on permission to redeem the existing land revenue by the immediate payment of one sum equal in value to the revenue redeemed. By the resolution, it was provided that such redemption would be limited to 10 per cent of the total revenue in the Collectorate and the price to be paid was to be fixed at 20 years' purchase of the existing assessment. It may be mentioned that in Despatch No. 14 dated July 9, 1862, the Secretary of State for India (Sir Charles Wood) did not agree with the earlier policy, but did not cancel it.

It may thus be assumed that what was done was under the authority of the Crown, which was then paramount, which paramountcy included the prerogative to free land from the demand of land revenue with or without conditions. We have, therefore, to examine three things: the effect of acquisition on the continuance of the assessment to land revenue, the effect of redemption by a down payment on the same,

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and the effect of the grant, free from land revenue, to the Justices.

The acquistion was under Act VI of 1857. That Act provided in B. XXVI as follows:

"When any land taken under this Act forms part of an estate paying revenue to Government, the award shall specify the net rent of the land including the Government Revenue, and the computed value of such rent: and it shall be at the discretion of the Revenue authorities either to pay over the whole of such value to the owner of the estate on the condition of his continuing to pay the jumma thereof without abatement; or to determine what proportion of the net rent shall be allowed as a remission of revenue, in which case a deduction shall be made from the said value proportionate to the value of such remission."

This provision only saved the Estate assessed to land revenue from liability to pay land revenue proportionately falling upon the land acquired compulsorily, subject to a like proportionate reduction in the amount of compensation payable to the proprietor of the estate, but the provision cannot be stretched to mean that the liability of the land actually acquired, to land revenue in the hands of grantees from the Government also ceased. Be that as it may, it is hardly necessary to view the present case from this angle at all, because, whether the land acquired continued to be subject to an assessment or must be deemed to be reassessed as a separate estate, the result would be the same if Government demand still subsisted on it, as, in fact, it did. There could have been no redemption of the liability by a down payment if no land revenue could have been demanded. The fact that the recurring liability was redeemed by a lump sum payment itself shows that in the view of Government as well as of the Justices, the 'Square Mile' was still subject to the recurring demand and was thus still assessed to land revenue. It is, therefore, not profitable to investigate the effect of acquisition on the continued liability of the land to land revenue between the time there was acquisition and the vesting of the land in the Justices.

-For the above reason, we need not examine at

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length the case in Lord Colchester v. Kewnoy where the acquisition by the Crown was held not to make, the area acquired immune from land-tax, because the burden of the tax would then have fallen upon the remaining land situated in the unit from which it was acquired and on which unit a quota of the land-tax was chargeable. Such a position does not arise here, because the Panchannagram Estate was given abatement and a lump sum was paid to free the land acquired from the liability to land revenue. Similarly, the decision of this Court in The Collector of Bombay v. Nusserwanji Rattanji Mistri and Others (2), where on the acquisition of some Foras lands held under Foras Land Act (Bombay Act VI of 1851) the Foras tenure was declared to have come to an end and on the same lands being resold by Government as freehold, they were declared not to be subject to assessment to which they were previously subject, is not very helpful. There do not appear to be any rules prior to 1875, which were framed under the Land Acquisition Act of 1870 (Act X of 1870) and which are to be found in the Calcutta Gazette of July 7, 1875, p. 818. If there were, they have not been brought to our notice. But a practice similar to the rules seems to have obtained under s. XXVI of the Act of 1857. That Act also did not contain any provision for making rules, as are to be found in the subsequent Acts for compulsory acquisition of land. In the absence of any statutory law or rules, we must take the facts to be that after acquisition the Panchannagram Estate was given abatement of land revenue, and the demand for land revenue was transferred to the land acquired and granted to the Justices. At that stage, the liability to assessment remained, and it was that liability which was redeemed by a down payment.

We next consider the effect of redemption. Learned counsel for the appellant contends that redemption in this connection means that by a single payment, the liability for periodical payments is saved but the assessment on the land remains uncancelled. He has cited Wharton's Law Lexicon to show the meaning of

(1) (1866) L.R. 1 Exch. 368.
(2) [1955] 1 S.C.R. 1311.

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the word "redemption", which is "commutation or the substitution of one lump payment for a succession of annual ones: e.g. See the Land Tax and the Tithe Redemption Acts and many other statutes". Redemption is the act of redeeming which in its ordinary meaning is equal to bringing off a charge or obligation by payment. To what extent this redemption freed the land or its holder from the obligation depends not so much upon what the obligation was before redemption as what remained of that obligation after it. Here, the payment itself was meant to be "an immediate payment of one sum equal in value to the revenue redeemed" (vide the Resolution of Government dated October 17, 1861). By the down payment, the entire land revenue to be recovered from that land was redeemed. The payment was equal to the capitalised value of the land revenue. When such a payment took place, it cannot be said that the assessment for land revenue remained. The land was freed from that assessment as completely as if there was no assessment. Thenceforward, the land would be classed as revenue-free, in fact and in law. In The Land-Law of Bengal (Tagore Law Lectures, 1895) p. 81 S. C. Mitra described these revenue-free lands as follows:

"There is another class of revenue-free lands which comes

within these rules laid down in the Registration and Tenancy Acts, namely, lands of which Government has, in consideration of the payment of a capitalised sum, granted proprietary title free in perpetuity from any demand of land-revenue."

That this is what had happened here is quite apparent from the conveyance by the Secretary of State vesting the land in the Justices. It is significant that there is no mention of the payment of Rs. 7,728-13-8, nor of the assessability of the lands to land revenue. On the other hand, the deed of conveyance merely reaffirmed the position, which existed before by stating:

"...to hold the said pieces of land, hereditaments and premises intended to be conveyed with the appurtenances except as aforesaid unto the said Justices of the Peace for the Town of Calcutta and their successors for ever free and clear and for ever discharged

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from all Government land revenue whatever or any payment or charge in the nature thereof."

There can be no doubt that the land revenue was for ever extinguished and the land became free from land revenue, assessment in perpetuity. It cannot thereafter be said that the land was still assessed to land revenue.

Mr. Mitra made a great effort to construe the operative part quoted above with the aid of the recital in the deed, where it was stated:

"...but free and discharged from all payment of land revenue, land tax and all and every tax or imposition in the nature of -revenue derivable from land payable to Government.....

He drew attention to the word 'payment', and contended that what was saved was payment of land revenue. He argued that in case of ambiguity it was permissible to construe the operative portion of a deed in the light of the recitals, and cited Halsbury's Laws of England, 3rd Edn., Vol. XI, p. 421, para. 680, Gwyn v. Neath Canal Co. (1) and Orr v. Mitchell (2). If there was any ambiguity in the operative portion of the deed, we may have taken the aid of the recitals. But there is no ambiguity in the deed. The history of redemption is a matter of record, and it is plain that Government was accepting a down payment and freeing land from land revenue. This is precisely what was done, and the result of the down payment is set out with great clarity in the deed itself, and it is that there was no land revenue assessed on or demandable from that land. In fact, no demand or payment or charge in the nature of land revenue could ever be made on it. In view of this, it is, in our judgment, quite satisfactorily established that this land was not assessed to land revenue and the income from it did not fall within s. 2(1)(a) of the Income-tax Act. The answer given by the High Court was thus correct.

In the result, the appeal fails, and will be dismissed with costs.

(1868) L R. 3 Exch. 209.

Appeal dismissed

(2) [1893] A. C. 238, 254.

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