

(1980) 08 CAL CK 0003
In the Calcutta High Court
Case No : A.O.D. No. 320 of 1975

Jagadish Chandra Sinha and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Constitution of India, 1950 — Article 133(1), 227

West Bengal Estates Acquisition Act, 1953 — Section 12, 12(2), 16(1)(b)(vi), 17(1), 4

Citation : 85 CWN 361

Hon'ble Judges : B.C. Chakrabarti, J;A.K. Sen, J

Bench : Division Bench

Advocate : R.C. Deb and Santosh Nath Sen, for the Appellant; Sadhan Gupta, S.N. Samajdar and Samir Kumar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This is an appeal under Clause 15 of the Letters Patent directed against the judgment and order dated August 30, 1974, passed by a learned single Judge of this Court disposing of a writ petition which was registered as Civil Rule No. 1281 (W) of 1971. The writ petition having been dismissed, the petitioners, the Shebaites of the Deity Sree Sree Iswar Radha Ballav Jew Thakur of the Paikpara Raj Estate are the appellants in this appeal. The short point which arises for consideration in this appeal is as to whether the endowment in favour of the Deity as aforesaid is exclusively for a religious or a charitable purpose or not within the meaning of Section 6(1)(i) of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act). The deity as aforesaid is the family Deity established as such nearly a century ago by the ancestors of the present members of the Paikpara Raj Family. The endowment has its sanction under a decree dated December 11, 1893. In a suit in the Original Side of this Court, being Suit No. 41 of 1893 between the then members of the Paikpara Raj Family, a reference to arbitration was made to effect a partition of the joint estate with the exception of such of them as in the opinion of the Arbitrator are debuttar and further to decide the manner in which such debuttar properties are

to be held and to frame a scheme for management thereof. Sir Ramesh Chandra Mitter being the arbitrator filed an award declaring that the properties specified in Schedule A extending over the then Districts of Burdwan, Murshidabad, Jessore, Midnapore and Dinajpore are the Debuttar properties of the two Deities including the Deity as aforesaid which are not liable to be partitioned. (Properties specified in Schedule "A/1" being the properties of the Deity Sree Sree Iswar Radha Ballav Jew Thakur). The arbitrator further framed a scheme set out in Schedule B to his award for the Seva puja of the Deity and for the management of the Debuttar properties. In paragraphs 1, 2 and 3 the scheme provides who would be the Shebaites and in what turn they would carry on the Seva Puja. Paragraph 4 of the scheme provides; "The Shebaites during their respective turns of worship shall be entitled to receive the net income to be derived from the Debuttar properties mentioned in Schedule A annexed hereto entrusted to apply the same towards the Seva or worship of the Thakur". The scheme then goes on to provide that the Debuttar properties should ordinarily remain under the joint management of the Shebaites who, however, were given authority to appoint a common manager in terms of the majority decision. The common manager is to be paid out of the estate and such a manager being vested with the powers of the Shebaites would keep regular accounts subject to inspection by the Shebaites. This in substance is the scheme and constitutes the dedication now under construction before us. On December 11, 1893 this Court passed a decree on the said award filed in the aforesaid suit in its original side.

2. It is not in dispute that section 6(1) (i) of the said Act provides that where the intermediary is a corporation or an institution established exclusively for religious or charitable purpose or is a person holding under an endowment exclusively for a purpose which is charitable or religious or both then such an intermediary is entitled to retain all lands held in khas for the said purpose. Section 17(1) of the said Act provides that in respect of tenanted lands of such an intermediary which vests in the State, the intermediary would be entitled to a perpetual annuity equal to the net annual Income from the estate or interest of such intermediary excluding the portion thereof which the intermediary has retained under the provision of sub-section (1) of section. 6. Section 12(2) further provides that such an intermediary shall be entitled to receive an annual ad interim payment of the approximate net annual income from the estate or interest of the intermediary excluding the portion thereof which the intermediary has retained u/s 6(1).

3. It is not in dispute that the estate of the Deity as specified in Schedule A/1 of the Scheme decree consisted of both tenanted and khas lands extending over the present Districts of Murshidabad, Malda and West Dinajpore and that such estate is covered by the provisions of the said Act. The tenanted lands of the Deity having vested under the provisions of the said Act in or about the year 1957, a claim was lodged on behalf of the Deity by the Shebaites for ad-interim annuity in respect of the vested part of the estate in terms of section 12(2) of the said Act. It is not in dispute that when such a claim was lodged it was lodged

enclosing thereto a copy of the aforesaid decree in terms of Rule 10(3) of the Rules framed under the Act which provides :

Where the application is for ad interim payment under sub-section (2) of section 12 copies of the deed of trust or dedication or Arpannama or any other document in support of such claim shall be furnished along with the application.

Under Rule 10(2) read with para 3A of Schedule D of the said Rules sanction of the Board of Revenue shall be necessary in case of ad-interim payment under sub-section (2) of section 12.

4. Accordingly, the Additional Collector, Estates Acquisition, West Dinajpore, forwarded the said claim on September 25, 1957, to the Board of Revenue recommending sanction for payment of ad interim annuity in terms of section 12(2). In forwarding the said recommendation, it was pointed out by the Additional Collector, Estates Acquisition that even prior to the enforcement of the said Act, the disputed endowment was accepted to be an absolute debuttar for the purpose of assessment of agricultural income tax. On October 23, 1957, the Board of Revenue obviously being satisfied about the absolute nature of the debuttar sanctioned payment of annuity in terms of section 12(2) of the Act. Similar sanction was also accorded in respect of the tenanted lands for the District of Murshidabad belonging to the Deity which had vested in the State.

5. It further appears that though the endowment was considered to be absolute debuttar, a dispute was raised by the Settlement Officer, West Dinajpore and Malda as to whether the Deity is entitled to retain all the khas lands u/s 6(1) of the Act without filing any return in B form, or not. He took the view that though "from the High Court decree it is clear that the debuttar is genuine and the Shebaitis are entitled to retain all the lands held in khas" yet a return under B form not having been filed earlier a later application for revision was rejected by the Settlement Officer. That was the decision dated December 10, 1959, which was challenged by the appellants in this court in an application under Article 227 of the Constitution which was registered as Civil Rule 2310 of 1961.

6. Even pending the said Rule in this Court it appears that the Deity through the Shebaitis made further representations to the State Government for allowing the deity to retain the khas lands without submission of any return in B form. The Board of Revenue obviously acting for and on behalf of the State reconsidered the nature and character of the endowment and having obtained the opinion of the Legal Remembrancer on July 25, 1962, sanctioned retention of khas lands u/s 6(1)(i) of the said Act. The sanction was communicated to the Settlement Officer, Malda, West Dinajpur who in his turn communicated the same to the deity. This communication dated August 7, 1962, reads as follows :--

Please refer to your letter No. Nil dated 7th August 1962 on the subject of retention of khas land of the Paikpara Raj Debuttar Estate. It has since been decided to allow you to retain the khas lands u/s 6(1)(i) of the Estates Acquisition Act.

Immediate action, however, is not possible as the papers and/or subsequently filed B forms are now in the High Court in connection with the Civil Rule.

The relief claimed on behalf of the deity having been conceded by the State Government the earlier Rule obtained from this Court under Article 227 of the Constitution being Civil Rule No. 2310 of 1961 necessarily became infructuous and was disposed of accordingly sometime in November, 1962.

7. In the background of the aforesaid undisputed facts and proceedings and a few years thereafter on October 20, 1968, the Settlement Officer, Murshidabad started a proceeding called a debuttar enquiry of the Paikpara Raj Estate u/s 6(1) (i) of the said Act, being Case No. 1 of 1968 out of which the present appeal arises. Such a proceeding was initiated in respect of the khas lands of the deity situate in the District of Murshidabad. To him all previous decisions including the decision of the Board of Revenue are not conclusive in the matter of determination of the true character and nature of the endowment and he, therefore, issued a notice upon the Shebaitis to show cause why the debuttar concerned should not be considered to be one not fulfilling the requirements of section 6(1)(i) for the purpose of being entitled to retain all its khas lands. The Shebaitis appeared and contested this proceeding, relied on the decree and previous orders referred to hereinbefore. The Revenue Officer, however, by his order dated January 20, 1971, overruled the claim put forward on behalf of the deity that the endowment being for a purpose exclusively religious the deity is entitled to retain all the khas lands in terms of section 6(1)(i). According to the Settlement Officer the endowment is not entitled to such a benefit but will get the benefit u/s 16(1)(b)(vi) of the said Act and the net expenditure should be recorded as a charge on the estate which the deity will get by way of perpetual annuity. In coming to the aforesaid conclusion he rejected all previous orders referred to hereinbefore and relied on by the claimants before him because those orders were passed by the Settlement Officer, Malda based on papers of post-vesting period and that there the enquiry was made with reference to a section not relevant or the present purpose. It is difficult to appreciate the reasons assigned by the Settlement officer in rejecting all previous orders including the orders passed by the State Government itself. No reference to the orders passed by the Board of Revenue has been made. As it has been indicated hereinbefore there were two enquiries held--one with reference to a claim of payment of ad interim annuity u/s 12(2) and the other with reference to the claim of the deity to retain u/s 6(1) (i) of the khas lands in the District of West Dinajpore and Malda. In both the enquiries the only relevant issue for consideration was as to whether the endowment in dispute is one for a purpose exclusively religious or not. If it was not so, no sanction could have been accorded by the State Government for payment of ad-interim compensation in terms of section 12(2) nor could have the State Government sanctioned retention of khas lands in the other District u/s 6(1)(i).

8. Having rejected the previous orders in the manner as aforesaid, the Revenue

Officer, Murshidabad proceeded to consider the nature of the endowment. Here again, the Revenue Officer failed to look into or interpret the decree sanctioning the endowment. He took the view that the real issue is to be determined with reference to the mode of user of the property. Proceeding on that basis he found that the debutter estate was realising on average a net income of Rs. 35,532/- from the tenanted lands and the total average expenditure was determined by him to be Rs. 34,218.60. He concluded that no part of the income out of the khas lands was being used for the Deva Seva. Necessarily he came to the conclusion that that income was appropriated by the Shebaites for their personal use. The Revenue Officer, however, refused to accept the case of the Shebaites that there was no appreciable income from the khas lands. In that view, the Revenue Officer concluded that when the entire income was not being used for the Deva Seva, the endowment cannot be considered to be one for a purpose exclusively religious.

9. In our view the Revenue Officer not being enlightened on the law relating to the subject obviously made a wrong approach and such an error is apparent on the record. The character of the endowment is primarily dependent on the dedication itself. If the dedication is in respect of the entire beneficial interest then the debuttar is an absolute one meant for a purpose exclusively religious. Therefore, the primary approach should have been to look into the decree constituting the endowment and determine what was the true nature of the dedication. Assuming for a moment that in later years some or other of the Shebaites have appropriated to their own use a part of the income of the debuttar estate as found by the Revenue officer that would not derogate from the fact that the dedication if it is otherwise complete in favour of the deity the resulting debuttar would be absolute. We have set out the scheme framed by the arbitrator which merged into the decree of this Court dated December 11, 1893. The scheme specifically provides that all the Schedule A/1 properties are the debuttar properties of the deity Sree Sree Iswar Radha Ballav Jew Thakur. The scheme further directs that the entire income out of the debuttar estate are to be used exclusively for religious and charitable purposes. In view of such a term in the endowment it is difficult to appreciate how the endowment can be anything other than an absolute debuttar. The scheme does not provide for accumulation of any surplus ; the scheme does not prescribe the limit of expenditure for the Seva Puja ; the scheme does not provide that any part of the income can be appropriated by any of the Shebaites. This aspect was totally overlooked by the Revenue Officer. On the other hand, he went on to consider how the income from the estate was being used by the Shebaites since 1947-48. Even if we accept the finding of the Revenue Officer that during this period the entire income was not used for the Deva Seva that would merely constitute a breach of the terms of the dedication and such a breach does not derogate from the grant itself.

10. Feeling aggrieved by the aforesaid decision of the Revenue officer the appellants, moved this court with a writ petition which was registered as Civil Rule No. 1281 (W) of 1971. The said writ petition came up for hearing before the

learned Single Judge. At the hearing, however, the broad facts set out hereinbefore and the specific orders passed by the other authorities including the Board of Revenue were not disputed. Before the learned Single Judge on behalf of the appellants it was first contended that in view of the earlier orders passed by the Board of Revenue, the Revenue Officer had no jurisdiction to enquire into the exclusive nature of the debuttar. Secondly it was contended that on the correct interpretation of the decree of this court constituting the endowment it should have been held that the debuttar is an absolute one and the purpose of the endowment is exclusively religious and charitable. The learned Single Judge, however, overruled both the contentions so raised in support of the writ petition when he dismissed the same. In overruling the first point raised before him the learned Judge took the view that payment of ad interim compensation u/s 12(2) has got no bearing on the enquiry held by the Revenue officer in the present case u/s 6(1)(i). He further observed that the order of the Board of Revenue relied on by the appellants was an order passed subsequent to the order of the Revenue Officer and in passing such an order. "The Board of Revenue did not apply its mind and its satisfaction regarding the exclusive character of religious and charitable purpose are based on no materials and contrary to the findings of its own officer. So no reliance can be placed upon that part of the order." The other point overruled by the learned Judge only because the decree on its face does not declare the endowment to be exclusive dubuttar in nature. This is how the writ petition was dismissed and feeling aggrieved the appellants have preferred the present appeal.

11. Mr. Deb appearing in support of the present appeal has contended that the learned Judge not only overlooked the various orders passed by the other revenue authorities and the Board of Revenue but also failed to appreciate the true legal effect of such orders having its bearing on the issue now under adjudication. Secondly it has been contended by Mr. Deb that to interpret a decree constituting a debuttar is not to interpret in the manner done by the learned Judge. According to him the scheme framed has to be read and interpreted to find out whether the dedication was in respect of the entire beneficial interest or not According to Mr. Deb if the entire beneficial interest is not dedicated to the deity mere description or declaration of the endowment as an absolute beduttar would not make it absolute and conversely if the entire beneficial interest is so dedicated the endowment would be absolute whether described or declared as such or not. Therefore, according to Mr. Deb it was wholly inconsequential whether the decree had declared the debuttar to be absolute or not when the scheme that was made a part of the decree provides a dedication entirely to the benefit of the deity.

12. Mr. Gupta appearing on behalf of the respondent State felt his difficulties in view of the earlier orders passed by the State Government. He, however, contended that those orders are not binding upon the Revenue Officer so that it was within the jurisdiction of the Revenue Officer to ignore the earlier orders and come to his own conclusion. So far as the endowment is concerned, according to

Mr. Gupta the decree creates a trust for the fulfillment of Deva Seva ; the properties being vested in the Trustee when according to Mr. Gupta it has been found that the entire income is not required to meet the Deva Seva, the surplus obviously becomes the property of the Trustees. In that view, according to Mr. Gupta the Revenue Officer rightly held in the present case that the endowment was not for a purpose exclusively religious or charitable.

13. We have carefully considered the rival contentions put forward before us. On such consideration it appears to us that there is great substance in the two points raised by Mr. Deb in support of this appeal. In our considered opinion, the learned trial Judge was not right in his conclusions on either of the points decided by him against the appellants. Considering the dedication independent of the Government decision as to the true nature and character thereof, it is difficult to accept the view taken by the learned trial Judge, namely, that since the decree does not declare or describe the dedication to be an absolute one, it is not so. The suit in which the decree was passed was not a suit for any such declaration on determination of its nature or character. It was a suit for framing of a scheme and the decree passed adopting the scheme gave sanction to the dedication and laid down the terms thereof. One must, therefore, look to such terms to find out the true nature or character of the dedication. It is settled principle which has been reaffirmed by the Supreme Court in the case of *Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*, that the question whether a particular dedication in favour of a deity creates an absolute or partial dedication must be determined with reference to the conspectus of all its provisions. Where the property is wholly dedicated to the worship of the deity without reserving any beneficial interest to the settlor, his descendants or other persons, the dedication is complete. In the present case we have set out the terms of dedication incorporated in the scheme decree which is an annexure to the writ petition. On such terms, the entire property in Schedule A/1 including the disputed khas lands had been vested in the deity and the Shebaites are directed to spend the entire income arising therefrom for the Seva Puja. There is nothing on its terms to show that any beneficial interest was reserved or intended to be reserved in favour of any person other than the deity. If such absolute is the nature of the dedication one cannot hold it otherwise only because the decree does not declare or describe the dedication to be absolute. Mr. Deb, in our view, is right in contending that whether it is so declared or described is wholly immaterial in the facts and circumstances of the present case. To meet this difficulty Mr. Gupta contended that the dedication merely created a trust where the Shebaites, being the Trustees had the property vested in them charged for the Deva Seva so that once the obligations under the trust are fulfilled the surplus really belongs to the Shebaites personally. Such a contention, however, cannot be accepted. On the terms incorporated in the scheme decree such is not the provision. Indian Trust Act does not apply to religious endowment of the present nature. Moreover, it is not correct to think that on a religious endowment of the present nature the property vests in the Shebaites as Trustees. The property vests in the deity and

the Shebaita are in charge of the management thereof in the position of a Trustee in the general sense. They are not the Trustees in the sense contended for by Mr. Gupta, Nor does the property vest in them subject merely to the Deva Seva unless of course the dedication is a partial one. This position is well settled since the decision of the Privy Council in the case of *Vidya Bharati -Versus-Baluswami*, 48 Indian Appeals 302. Hence on construction of the dedication embodied in the scheme decree we must accept the contention of Mr. Deb that it created an absolute debuttar, the purpose whereof was exclusively religious.

14. Next we proceed to consider the other point raised by Mr. Deb in support of this appeal. Mr. Deb had strongly relied on orders passed in earlier proceedings both u/s 6(1) and section 12(2) of the said Act in contending that those orders being binding on the revenue officer he could not have arrived at a contrary decision as to the character or nature of the dedication. We have set out the material facts having bearing on this issue hereinbefore. Those facts as pleaded in the writ petition substantially stand uncontroverted in the two oppositions filed on behalf of the respondents. In the year 1957, the Shebaita on behalf of the deity claimed payment of ad interim annuity for the tenanted lands which had vested in the State. Section 12(2) makes a special provision with regard to payment of ad-interim compensation where the estate or interest of an intermediary referred to in section 6(1)(i) has vested in the State. Such an intermediary is entitled to annual ad interim payment of the approximate net annual income from the estate or interest excluding the portion the intermediary is entitled to retain u/s 6(1). This special provision would be applicable only in case the intermediary answers the description as specified in section 6(1)(i). We have referred to the relevant rules framed under the Act which provides that in laying a claim for ad interim compensation u/s 12(2) the intermediary has to enclose true copies of the dedication or trust or Arpannama or other documents in support of such claim obviously for the purpose of adjudicating the true nature of the trust or the dedication. The rules further provide that the Collector before making any order for payment of ad-interim compensation u/s 12(2) must necessarily have the sanction of the Board of revenue. In the present case, such sanction having been obtained, payment of ad-interim compensation was being made u/s 12(2) in favour of the appellant. Such sanctions have been referred to with necessary particulars in paragraph 11 of the writ petition which could not be disputed by the respondents in their affidavits-in-opposition. The learned trial judge gave no importance to such section u/s 12(2) by the Government itself on the view that such payment of ad-interim compensation has got nothing to do with an enquiry made u/s 6(1)(i). That was also the stand taken by the respondents in their affidavits-in-opposition. We are however unable to agree with the view so taken by the learned trial judge. Mr. Gupta too appearing on behalf of the respondents in his fairness did not support the said view. u/s 6(1)(i) the intermediary must be a person holding under a trust or an endowment exclusively for a purpose which is charitable or religious or both. If he is so, then under clause (i) he is entitled to hold all the khas lands in his possession and so

far as tenanted lands are concerned he would be entitled to an annual ad-interim payment of the approximate net annual income from the tenanted portion of the estate. Therefore, the test of eligibility for claiming the rights either u/s 6(1)(i) or u/s 12(2) is the same, namely, whether the intermediary is a person holding under a trust or an endowment exclusively for a purpose which is charitable or religious or both. Such being the position in law, the same intermediary cannot for the purpose of section 12(2) be adjudged to hold a character different from the character as adjudged u/s 6(1)(i). If the learned trial judge thought that since the proceeding u/s 12(2) is a proceeding for payment of ad interim compensation only, the adjudication as to its character is not final, we are unable to agree with him. Section 12(2) does not contemplate any provisional determination of the nature and character of the intermediary though the payment may be an ad-interim one. The other reason given by the learned trial judge for giving no importance to these orders and sanction are equally unsustainable. According to the learned trial judge in granting such sanction the Board of Revenue did not supply its mind and its satisfaction is based on no materials and contrary to finding of its own office. The learned judge seems to have proceeded OR the basis that the order of the Board of Revenue was passed only on August 27, 1973, that is long after the order impugned in the present writ petition. Unfortunately, however, the learned trial judge did not read the pleadings carefully and overlooked practically all the uncontroverted facts in this regard, It is nobody's case that the Board of Revenue sanctioned payment of ad-interim compensation without application of its mind or basing its satisfaction on no materials. In our view it would be too unfortunate to make such an assumption as made by the learned trial judge which is not the case of the respondents themselves. It is difficult to imagine that the Board of Revenue would be sanctioning such payments in exercise of its statutory powers without applying its mind or without arriving at a proper decision with regard to the character of the intermediary on which decision alone the sanction could have been made. The learned trial judge clearly overlooked the specific assertions made in the writ petition and particularly in paragraph 11 thereof in observing that the Board of Revenue passed the order only on August 27, 1973. All sanctions since 1957 in this regard have been totally overlooked by the learned trial judge.

15. This apart, there was a proceeding u/s 6(1)(i) of the said Act itself in respect of the deity's khas lands in the District of Malda and West Dinajpur. In the said proceeding the Assistant Settlement Officer by his order dated December 10, 1959, held that though the deity is entitled to retain all its khas lands obviously the dedication being exclusively for a religious purpose such claim for retention was rejected on the ground that returns in Form B had not been put in. The said position was disputed by the appellant then on the ground that being covered by section 6(1)(i) and being entitled to retain all its khas lands the deity was not required to submit any B Form return. It is not in dispute that the said dispute was brought over to this court on an application under Article 227 of the

Constitution (Civil Rule No. 2310 of 1961) wherein the order of the Assistant Settlement Officer was challenged. In the meantime, the deity, however, made further representation to the State Government over the said dispute and the State Government obviously in consultation with the Legal Remembrancer sanctioned retention of all the khas lands so far as that District is concerned. This is well established by the two annexures, annexures D and E respectively dated July 25, 1962 and August 7, 1962. The learned trial Judge did not at all refer to these orders nor the effect thereof. The defence taken in the two affidavits-in-opposition filed by the respondents in this regard was that there was no formal enquiry proceeding u/s 6(1)(i). To us it seems that there is no merit in such a defence. The Settlement Officer of the other District was really considering whether the deity, the intermediary, is entitled to retain all its khas lands or not. The Settlement Officer on the said occasion on independent consideration of his own came to a specific conclusion that the deity is otherwise entitled but for its failure to submit a return in B form. While the deity was disputing the view of the Settlement Officer in this regard in an application under Article 227 of the Constitution in this Court, the Government sanctioned retention of all its khas lands in the said Districts of Malda and West Dinajpur. The application under Article 227 of the Constitution in the court was accordingly rendered infructuous and was disposed of accordingly. Such a proceeding in our view cannot be ignored by suggesting that there was no formal adjudication. These orders therefore, clearly and conclusively determined the fact that the appellant was an intermediary answering the description of a person holding under an endowment exclusively for a purpose which is charitable or religious or both and on the scheme of the provisions of the said Act it would not be open for the Settlement Officer of Murshidabad to come to a contrary conclusion that the appellant-intermediary does not answer such a description. If the Settlement Officer, Murshidabad be held to be entitled to arrive at such a conclusion that would introduce irreconcilable anomalies in the matter if implementation of the provisions of the said Act in respect of the self-same dedication.

16. Mr. Gupta appearing in support of the respondents before us, however, contended that when the Revenue Officer was holding an adjudication left to him by the statute he is free to arrive at his own conclusion and he would not be bound by the other orders relied on by the appellant. According to Mr. Gupta, therefore, it was within the jurisdiction of the Revenue Officer to ignore the other orders and come to his own conclusion. On a careful consideration we are, however, unable to sustain such a contention put forward by Mr. Gupta. On the scheme of the Act, on issue of a Notification u/s 4, all estates and the rights of every intermediary in each such estate situate in any District or part of a District covered by the Notification vest in the State free from all encumbrances. Thus, the effect of the Notification is to vest in the State of all estates and rights of every intermediary in each such estate. Then follows section 6 which provides that notwithstanding such vesting an intermediary is entitled to retain certain lands with effect from the date of vesting. Section 6(2) makes it clear that all

that is so retained by the intermediary shall be deemed to be held by the intermediary directly under the State. Section 6 on its terms nowhere specifically constitutes the Revenue Officer to be a tribunal for adjudication of any dispute vesting in the Revenue Officer any jurisdiction exclusive of the State. Section 6(5) provides that the intermediary is to exercise his choice for retention within such a time in such a manner as may be prescribed by the rules and further provides that if no choice is exercised within the prescribed period the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of sub-section (1). No doubt by necessary implication the Revenue officer is to deal with the returns but obviously he is so doing for and on behalf of the State and not independent of the State. Such being the position, it is difficult to accept a contention that the Revenue Officer would be exercising a jurisdiction so independent of the State that he would not be bound by the decision of the State in this regard. After all on the scheme of the Act the estates and all the rights of intermediaries of such estates having vested in the State it is for the State to allow the intermediary to retain what the intermediary is entitled to do u/s 6(1) of the Act, under it. The Revenue Officer is an Officer- of the State to implement these provisions on behalf of the State and not vested with any independent powers, far less any power of adjudication unlike section 44 of the Act. That apart Mr. Gupta failed to appreciate that u/s 12(2) the Collector is vested with similar powers to sanction payment of adinterim compensation on prior determination of the true character of the intermediary and Rule 3A further enjoins that no such payment could be made without the prior sanction of the State Government. Such being the provision of law, a decision of the Collector and the State Government based on a prior determination of the character of the intermediary is a conclusive decision by admittedly a higher authority and when on the scheme of the provisions of the Act it is not permissible to arrive at or take inconsistent decision with regard to the character of the intermediary for the purpose of section 6(1)(i), there is no reason why the other order or decision of the State Government or the Collector should not be considered to be binding on the Revenue Officer. We have said hereinbefore that to adopt any other view is to introduce in the implementation of the Act irreconcilable inconsistencies never intended or contemplated by the Act. For reasons as above, we are unable to sustain the contention put forward by Mr. Gupta and we must uphold the contention of Mr. Deb in this regard. For reasons as aforesaid, this appeal is allowed. The judgment and order of the learned trial judge being set aside, we allow the writ petition of the appellant and quash the impugned order of the Revenue officer dated January 11, 1971. Let a writ in the nature of Certiorari do issue accordingly.

The copy of the decree dated December 11, 1893 as annexed to the writ petition being incomplete, though not in its material part and Mr. Gupta having insisted upon disclosure of the complete decree, the appellants filed an application disclosing the undisclosed part of the decree on an affidavit in course of hearing

which we have allowed and we have taken into consideration the complete copy of the decree on acceptance of the application. The application stands disposed of accordingly.

There will be no order for costs.

Necessary certificate for a further appeal to Supreme Court under Article 133(1) of the Constitution is prayed for orally on behalf of the respondents. In our view, it is not a fit case for issue of such a certificate. The prayer is accordingly refused.

B.C. Chakrabarti, J.

I agree.