
(1937) 03 AHC CK 0008
In the Allahabad High Court

Raja Bhagwan Bakhsh Singh

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 31-03-1937

Acts Referred:

Citation : (1937) 03 AHC CK 0008

Judgement

1. This is a plaintiff's appeal against a decree of the learned Civil Judge, of Allahabad, dismissing his claim for a, declaration that a certain declaration, made by the Local Government of the-United Provinces u/s 8, U.P. Court of "Wards Act, 1912, was illegal and ultra vires. The plaintiff is a taluqdar and is the proprietor of a large estate known as the Amethi estate which is said to be worth about 1? crores of rupees. On 7th March 1930, the Local Government of the United Provinces acting u/s 8, Court of "Wards Act, declared the plaintiff to be disqualified to manage his own property and consequently the Court of "Wards, assumed superintendence of the property of the plaintiff u/s 12(1), Court of "Wards Act. The plaintiff alleged that the declaration made by the Local Government disqualifying him from managing his own property was contrary to the provisions of Section 8, U.P. Court of Wards Act and consequently brought this suit for a declaration that the said declaration of the Local Government was ultra vires and illegal and of no effect.

2. The facts in this case are not disputed and the questions raised are purely questions of law. The Amethi estate owned by the plaintiff consists of villages in the districts of Sultanpur and Mirzapur and other Immovable property situate in the districts of Allahabad, Benares, Luoknow, Mirzapur and Sultanpur. It would also appear that the plaintiff was the owner of considerable moveable property. On 13th July 1929, the Governor in Council of the United Provinces in the exercise of the powers conferred by Section 9(1), U.P. Court of Wards Act, directed an enquiry to be made into the circumstances of the plaintiff and the extent of his indebtedness and as a result of such enquiries a letter dated 17th September 1929, was sent by Mr. Walton, Commissioner of Fyzabad Division, to the plaintiff informing him of the result of such enquiries. This letter is printed at

p. 101 of the paper book and therein it is set out that the plaintiff's indebtedness amounted to Rs. 14,45,160 upon which interest at the contractual rates amounted to Rs. 1,22,110, The gross profits of the estate are stated to be Rs. 3,06,508 and it is pointed out that the interest at contractual rates upon the debts exceeded 1/3rd of the plaintiff's gross annual profits. It is also pointed out that the plaintiff had, without sufficient cause failed to discharge the debts and the liabilities due from him and it is alleged that since 1920, the debts had actually increased by Rs. 3,26,000. Lastly, the Commissioner states that the failure to discharge these debts and liabilities is likely to lead to the dissipation of the property as was evidenced by proceedings then pending at the suit of the Allahabad Bank for the sale of 48 villages belonging to the plaintiff. The letter concludes by calling upon the plaintiff u/s 8(2), U.P. Court of Wards Act, to show cause why a declaration disqualifying him from managing his estate should not be made.

3. The plaintiff contested the accuracy of the figures given by the Commissioner and did show cause why a declaration disqualifying him from the management of his property should not be made. The Local Government, however, were satisfied with the accuracy of their figures and also were of opinion that the failure of the plaintiff to discharge his debts was prejudicial to the estate and likely to lead to the dissipation of the property. Consequently on 7th March 1930, the Local Government acting u/s 8(1), Court of Wards Act, declared the plaintiff to be a disqualified proprietor. The suit was launched by the plaintiff in the Court below to obtain a declaration that this declaration of the Local Government was null and void by reason of the fact that the Government had exceeded their powers and that the declaration was not validly made u/s 8 of the Act. It was the case for the plaintiff that the declaration was ultra vires and invalid by reason of two facts : (a) That the aggregate annual interest payable at the contractual rates on the debts and liabilities of the plaintiff did not exceed 1/3rd of the gross annual profits of the property, and (b) that the failure to discharge the debts and liabilities in the past was not likely to lead to the dissipation of the property.

4. In the Court below the accuracy of the figures given by the Commissioner were seriously challenged but on appeal the figures as given in the letter of 17th September 1929 are accepted. However, it was urged in the Court below and has been urged again before us that though the figures given are correct they do not establish that the aggregate annual interest payable at the contractual rates on the debts and liabilities of the plaintiff exceed 1/3rd of the gross annual profits of the property. Further it was contended in the Court below and has been contended before us that the figures themselves show that the property is in no danger and there is no likelihood of its dissipation by failure to pay the debts. A number of other allegations were made in the Court below, but it is unnecessary to consider them at this stage. The Local Government raised a number of defences. They denied the plaintiff's allegation that the aggregate annual interest payable at the contractual rates on the debts and liabilities did not exceed 1/3rd of the gross annual profits of the property and further denied the

plaintiff's statement that the property was in no danger of being dissipated. The Local Government also pleaded that the suit was barred by reason of Sections 11, 13 and 55, Court of Wards Act and also by reason of Section 42, Specific Relief Act.

5. The learned Civil Judge who tried the case with great care came to the conclusion that Section 11, Court of Wards Act was not an absolute bar to the suit. Having considered Sections 8 and 11, Court of Wards Act he came to the conclusion that it was open to the plaintiff to challenge the declaration of the Local Government in the civil Courts and to establish if he could that such declaration was ultra vires and therefore illegal and of no effect. He, however, held upon going into the facts that the Local Government had complied strictly with the provisions of Section 8, Court of Wards Act and consequently held that the declaration disqualifying the plaintiff had been validly made. He further held that the plaintiff's suit was barred by Sections 13 and 55, Court of Wards Act and by Section 42, Specific Belief Act. Consequently he dismissed the plaintiff's claim and it is against that decree that the present appeal has been preferred. On behalf of the plaintiff-appellant it has been strenuously urged before us that the declaration of 7th March 1930 made by the Local Government is ultra vires, and of no effect whatsoever. The case for the appellant shortly stated is that upon the Local Government's own figures it is clear that the aggregate annual interest payable at the contractual rates on the debts and liabilities of the plaintiff do not exceed 1/3rd of the gross annual profits of the property and consequently no declaration disqualifying the plaintiff could be validly made u/s 8, Court of Wards Act. It is also alleged that the figures given by the Local Government show quite clearly that the plaintiff's failure to discharge his debts and liabilities is in no way likely to lead to the dissipation of the property and therefore the Local Government had no right whatsoever to make the declaration disqualifying the plaintiff. The Local Government made the declaration which is now challenged under the powers given to them by Section 8, Court of Wards Act. The material portion of that section provides:

(1) Proprietors shall be deemed to be disqualified to manage their own property when they are....

(d) Persons declared by the Local Government to be incapable of managing or unfitted to manage their own property....

(iii) Owing to their having entered upon a course of extravagance;

(iv) Owing to their failure without sufficient reason to discharge the debts and liabilities due by them;

Provided that no such declaration shall be made under Sub-clause (iii) and (iv) unless the Local Government is satisfied;

(a) That the aggregate annual interest payable at the contractual rate on the debts and liabilities due by the proprietor exceeds 1/3rd of the gross annual

profits of the property, and

(b) That such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of the property.

(2) No declaration under Clause (d) of Sub-section (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made.

6. Section 9 empowers the Local Government to cause an enquiry to be made into the circumstances of a proprietor and lays down certain rules for advertising such enquiry and for its conduct. It must be admitted in this case that due enquiry was made by the Local Government u/s 9, U.P. Court of Wards Act and that the plaintiff was furnished with a detailed statement of the grounds on which it was proposed to disqualify him and was given an opportunity of showing cause why such a declaration should not be made as provided by Sub-section 2 of Section 8 of the Act. It was not the case for the Local Government that the plaintiff was a man given to bad habits and consequently would endanger his property by reckless spending upon wine, women, gambling or such like. The case for the Local Government was that the failure without sufficient reason to discharge the debts and liabilities endangered the estate by reason of the fact that the liabilities were mounting and that the total interest payable on the plaintiff's debts and liabilities exceeded substantially 1/3rd of his gross annual profits. It is clear from the commissioner's letter of 17th September 1929 and the statements enclosed therewith that the sum given as the gross annual profits of the estate is a sum representing the total receipts or rental of the estate less the land revenue payable upon the property. It is the appellant's case that the phrase "gross annual profits" means the total receipts or rental of the estate without any deduction whatsoever and it is admitted that if such be the case the total interest payable on the plaintiff's debts and liabilities does not exceed 1/3rd of such a sum. On the other hand if the phrase "gross annual profits" means the total receipts of the estate less the land revenue, then it is obvious that the interest payable on the debts does exceed 1/3rd of such a figure. The appellant contends that upon the face of the statement made by the Commissioner as to the plaintiff's circumstances it is clear that the total interest payable upon the plaintiff's debts and liabilities is less than 1/3rd of the gross annual profits and that being so, no declaration disqualifying him could possibly be made u/s 8, Court of Wards Act. It has been urged on behalf of the defendant that even if this were so the plaintiff's claim cannot succeed by reason of Section 11, Court of Wards Act. That section provides that:

No declaration made by the Local Government u/s 8 or by the Court of Wards u/s 10 shall be questioned in any civil Court.

7. On behalf of the respondent it is alleged that the plaintiff in this suit is questioning a declaration made by the Local Government and this he cannot do

by reason of the provisions of Section 11 to which we have referred. The terms of Section 11 are very wide, but it is contended on behalf of the appellant that this section cannot be pleaded as a bar to suits where the Local Government have acted wholly beyond their powers. It is argued that Section 11 only is a bar in cases where the Local Government have acted within their powers as defined by Section 8 and cannot be a bar to a proprietor alleging that the whole of the proceedings are void and illegal by reason of the fact that the Local Government had no power whatsoever in the circumstances to make the declaration sought to be challenged. It may be that Section 11 would not bar a suit where the Local Government had made a declaration in a case where a declaration could not have possibly been made. For example, the powers given to the Local Government u/s 8 is to disqualify a proprietor from managing his own property and the term "proprietor" is defined in Section 3(2) of the Act as a person entitled as proprietor or under-proprietor to any beneficial interest in a mahal.

8. A person owning no zamindari or Immovable property whatsoever could never be a proprietor within the meaning of the Court of Wards Act and that being so, the Local Government could not validly declare such a person disqualified from managing his property u/s 8, Court of Wards Act. If a declaration disqualifying such a person was made, it might well be that Section 11 would not provide a bar to a suit claiming a declaration that such a declaration disqualifying the plaintiff was ultra vires, illegal and of no effect. That state of affairs, however, does not arise in this case and it is not necessary for us, therefore, to decide whether or not Section 11 is a bar in all cases. All we have to decide is whether upon the particular facts of this case Section 11 bars the suit. As we have stated previously the plaintiff is the owner of a considerable number of villages and is therefore a proprietor within the meaning of that word as used in the Act. The Local Government could therefore in the case of the plaintiff make a declaration u/s 8 provided the other terms of that section were complied with. However, it is argued in this case that the Local Government have not complied with the clear terms of this section and therefore that the declaration made is ultra vires the section.

9. By the Proviso to Sub-section (1) of Section 8 it is laid down in the clearest terms that no declaration shall be made under Sub-Clause (iii) or (iv) unless the Local Government is satisfied, (a) That the aggregate-annual interest payable at the contractual rate on the debts and liabilities due by the proprietor exceeds 1/3rd of the gross-annual profits of the property, and (b) that such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of the property. As we have pointed out previously it is the appellant's case that the aggregate annual interest payable on the debts, and liabilities does not exceed 1/3rd of the gross annual profits of the property and that the failure to discharge the said debts and liabilities is not likely to lead to the dissipation of the property. That being so, it is argued, no declaration could possibly be made within the terms of this section.

10. For the purposes of dealing with this part of the case we will assume that the phrase "gross annual profits" means what the plaintiff contends it means, viz., the total annual receipts or rental without, any deduction whatsoever. The figures show that the total interest payable on the debts and liabilities does not exceed 1/3rd of the gross receipts or rental of the property, but in our judgment it is not open to the plaintiff in this case to challenge the decision of the Local Government in a civil Court. It must be remembered that the Proviso does not state that no declaration shall be made unless the provisions of Clauses (a) and (b) of that Proviso are complied with. All that the Proviso states is that no declaration shall be made unless the Local Government is satisfied that the provisions of Clauses (a) and (b) of the Proviso are fulfilled. If the Local Government is satisfied that the total interest payable on the debts and liabilities exceeds 1/3rd of the gross annual profits of the property and that the failure to discharge the debts and liabilities is likely to lead to the dissipation of the property, a declaration can be made u/s 8. It is the satisfaction of the Local Government which is the condition precedent to the making of such a declaration and in our view it is not open to a civil Court to question the grounds upon which the Local Government is satisfied that the provisions of Clauses (a) and (b) of the proviso to Section 8(1) of the Act have been fulfilled. If the Local Government after making an enquiry u/s 9 and giving the proprietor an opportunity u/s 8(2) to show cause why a declaration should not be made is satisfied that Clauses (a) and (b) of the Proviso to Section 8(1) are fulfilled and makes a declaration disqualifying a proprietor, such a declaration is made in accordance with Section 8 of the Act and cannot, by reason of Section 11 of the Act, be questioned in a civil Court.

11. It has been argued, however, on behalf of the appellant that the Local Government has been clearly guilty of an error of law in arriving at the sum representing the gross annual profits of the property. The statement served upon the plaintiff to show cause shows that according to the Local Government the phrase "gross annual profits" means the gross rental of the estate less the land revenue and as according to the appellant this is a mistake of law the Local Government cannot possibly contend that it was satisfied that the provisions of Clauses (a) and (b) of the Proviso to Section 8(1) of the Act had been fulfilled. Counsel for the appellant concedes that it is not open to a proprietor to question in a civil Court the conclusions of fact arrived at by the Local Government before making a declaration u/s 8(1)(d), (iii) and (iv) of the Act, but counsel does contend that where the Local Government has made a mistake of law it cannot be said to be satisfied that the terms of Clauses (a) and (b) of the Proviso to Section 8(1) have been complied with.

12. It is difficult to appreciate the difference between a mistake of fact and a mistake of law on the part of the Local Government in arriving at a decision whether or not a proprietor should be disqualified. All that the Proviso lays down is that no declaration shall be made unless the Local Government is satisfied that certain conditions have been fulfilled. Once a Court is allowed to question the

grounds upon which the Local Government is satisfied, then it appears to us that no distinction can be drawn between cases where it is said the Local Government made a mistake in fact or a mistake in law. For example, in computing the aggregate annual interest payable on the debts the Local Government must consider what debts are outstanding and it might well make a mistake as to the validity or otherwise of a particular debt or mortgage. That would be a mistake of law and would, according to the plaintiff, give the Court a right to examine afresh the circumstances of the proprietor and to determine for itself whether the provisions of Clauses (a) and (b) of the Proviso to Section 8(1) had been fulfilled. In our judgment it is quite impossible to draw a distinction between the case of the Local Government making a mistake of fact and a case of its making a mistake of law. In our judgment, if the Local Government is satisfied that the aggregate annual interest payable at the contractual rate on the debts and liabilities due by a proprietor exceeds 1/3rd of the gross annual profits, then the grounds upon which the Local Government arrives at such a conclusion cannot be questioned and agitated in a civil Court.

13. It was further contended that the plain facts of this case showed that the plaintiff's failure to discharge his debts and liabilities was not likely to lead to dissipation of the property and that the Local Government could not possibly have been satisfied that such dissipation of the property could possibly occur in this case. It was contended that upon the facts of this case there was no evidence whatsoever upon which the Local Government could come to the conclusion that the failure to discharge the debts and liabilities could possibly lead to dissipation of the property and that being so, no declaration disqualifying the plaintiff could possibly be made. Whether the plaintiff's failure to discharge his debts was likely to lead to the dissipation of his property is a pure question of fact and in our view there was ample evidence that dissipation of the property was likely to ensue as a result of the plaintiff's failure to discharge his debts. As pointed out by the Com-missioner the debts had increased by Rs. 3,26,000 between the years 1920 and 1929 and in the latter year a suit was pending against the plaintiff for the sale of 48 villages to satisfy a debt due to the Allahabad Bank, Further, there was evidence that the plaintiff had within recent times borrowed more money to defray expenses which should never have been incurred and further that he was on one occasion unable to meet the payment of his land revenue. In all the circumstances of the case the Local Government might well have come to a conclusion that the property was in danger and it cannot possibly be argued in this case that there was no evidence upon which the Local Government could come to a conclusion that the property was in jeopardy. In any event we are of opinion that this was a matter entirely for the Local Government and that if after making an enquiry into the facts of the case and giving the plaintiff an opportunity to state his case the Local Government was satisfied that the property was in jeopardy the grounds for arriving at such a decision cannot be challenged in this Court by reason of Section 11, Court of Wards Act.

14. We are, therefore, of opinion that even if the plaintiff is right in contending that the Local Government had made a mistake in law in construing the phrase "gross annual profits", yet a declaration made by the Local Government cannot be challenged in this Court provided that the latter were satisfied that the terms of Clauses (a) and (b) of the Proviso to Sub-section (1), Section 8, Court of Wards Act, had been complied with. In the present case the declaration made by the Local Government shows that they were so satisfied, and that being so the declaration cannot be questioned in this Court by reason of Section 11, Court of Wards Act. No case upon this point appears to have been decided in this Court, but a very similar question was raised in *Deputy Commissioner Kher v. Daya Chand* AIR 1935 Oudh 234. In that case Srivastava, J. held that if a declaration made by the Local Government u/s 8, U.P. Court of Wards Act is wholly without jurisdiction and outside the scope of the section it might be treated as a nullity, but if the Local Government has committed any irregularity or even illegality in the exercise of the jurisdiction possessed by it, Section 11 precludes the civil Court from questioning the validity of the declaration on the ground of such irregularity or illegality. In that case it was contended that a declaration of the Local Government was ultra vires and illegal because : 1. The requirements of Clauses (a) and (b) of the Proviso to Sub-section (1), Section 8, Court of Wards Act were not satisfied. 2. The mandatory provisions of Section 8, Sub-section (2), had not been complied with. 3. The inquiry u/s 9 had not been conducted according to law.

15. Srivastava, J. held that even if the provisions enumerated above had not been satisfied yet the declaration made could not be questioned in a civil Court, because at most the Local Government had acted wrongly in a case in which they had power to act. The case was not one in which the Local Government could not possibly have made a declaration. At p. 236 Srivastava, J. observes:

If the civil Courts are to sit in judgment over declarations made by the Local Government u/s 8 on the ground that the necessary formalities were not complied with, Section 11 would become practically nugatory. It is conceivable that a declaration purporting to be made u/s 8, Court of Wards Act, may be an absolute nullity in which case it can have no legal effect. But it seems to me that in all other cases such declarations are final and cannot be questioned in any civil Court on the ground of noncompliance with any formalities, whether directory or imperative. In other words, if a declaration made by the Local Government u/s 8 is wholly without jurisdiction and outside the scope of the section, it might be treated as a nullity, but if the Local Government has committed any irregularity or even illegality in the exercise of the jurisdiction possessed by it, Section 11 precludes the Civil Court from questioning the validity of the declaration on the ground of such irregularity or illegality.

16. In the case before us it cannot be questioned that the plaintiff was a proprietor within the meaning of the Act and was liable to be disqualified u/s 8 if the terms of that section were satisfied. In our judgment the most that can be

said in the present case is that the Local Government made a mistake in acting within its powers. It is not a case where the Local Government had no power whatsoever under the statute to make a declaration. The Local Government may have made a declaration when it should not have done so, but it had power to do so, if it was satisfied that the provisions of Clauses (a) and (b), Sub-section (1), Section 8, had been fulfilled. In our judgment once the Local Government was so satisfied, a declaration could be made and such cannot be questioned by reason of Section 11, Court of Wards Act.

17. The plaintiff has relied on a number of cases in which Courts in this country have interfered in spite of provisions similar to Section 11, Court of Wards Act, but in our judgment these cases are very different from the present case and are clearly distinguishable. In *Haji Rehemtulla Haji Tarmahomed Vs. The Secretary of State for India*, the question arose whether the plaintiff's suit was barred by the provisions of Section 39, Income Tax Act, 1886, which laid down that no suit shall lie in any civil Court to set aside or modify any assessment under that Act. It was held that the assessment in question was in contravention of the provisions of the Act and therefore ultra vires and that the provisions of Section 39, Income Tax Act, had no application. A very similar case is the case in *Forbes Vs. Secretary of State For India*, in which the Calcutta High Court held that though in making an assessment the Collector had acted without jurisdiction, yet the suit was barred by Section 39, Income Tax Act. If, in the Bombay case, the learned Judges were of opinion that the assessment in question was wholly outside the scope of the Act, then the decision is clearly distinguishable from the present case, but, on the other hand, if the learned Judges held that Section 39, Income Tax Act, provided no bar even if the assessment was within the scope of the Act, then we cannot assent to the decision.

18. In *Bhagwati Prasad Singh Vs. Hari Har Prasad Singh and Others*, a plea was raised that a suit was barred by Section 22, Bundelkhand Alienation of Land Act, 1903 which provided that a civil Court should have no jurisdiction in any matter which a revenue officer was empowered by that Act to dispose of. This Court however held that the Collector in that case had no jurisdiction under that particular Act to do what he did and therefore Section 22 provided no bar to the suit. This was a case in which the Collector acted entirely without jurisdiction and in no sense could his acts be said to be within the scope of the Act. Consequently the bar provided by Section 22 of that Act did not apply to the plaintiff's suit. A number of other cases were relied upon, but it is unnecessary, in our judgment, to consider them in detail, because in our view they are clearly distinguishable from the present case. Each case must eventually be decided upon its particular facts, and in our view no case cited on behalf of the plaintiff is contrary to the view which we have expressed upon the effect of Section 11, Court of Wards Act, as a bar to the present suit. For the reasons which we have, given we are satisfied that the learned Judge of the Court below was wrong in coming to the conclusion that it was open, to the plaintiff in this case to challenge the declaration and that a Court of law was entitled to go into the facts of the case to

ascertain whether or not the terms, of Clauses (a) and (b) to the Proviso of Sub-section (1), Section 8, Court of Wards Act, had been fulfilled.

19. In any event, we are satisfied that the Local Government were right in coming to the conclusion that in the present case the aggregate annual interest payable at the contractual rate on the debts and liabilities due by the plaintiff exceeded one-third of the gross annual profits of the property. It is unfortunate that the phrase "gross annual profits" has not been defined in the Act. As we have stated, the plaintiff contends that the phrase means the total income or receipts of the property; whereas learned Counsel for the respondents contends that the phrase means the gross receipts, rental or income less the land revenue. The term "profits" is frequently used in English law as meaning the gross receipts of property, but it must be remembered that there is a very great difference between the rights of an owner of property in England and the rights of the owner of zamindari property in India. The owner of property in England pays no land revenue; whereas the owner of ordinary zamindari property in India pays such land revenue.

20. In ordinary language "profit" means the difference between receipts and expenditure. An undertaking is said to be carried on at a profit if its total receipts exceed its expenditure and conversely if its expenditure exceeds its receipts it is said to be carried on at a loss. The word "profit" means a gain or an advantage and the word "profits" connotes such advantage or gain. In England where no land revenue is payable the total income or receipts derived from land may well be described as profits, but in India part of the receipts or income from land can in no sense of the term be described as profits. In these provinces it is provided by the U.P. Land Revenue Act, 1901, Section 141:

In the case of every mahal the revenue assessed thereon shall be the first charge on the entire mahal and on the rents, profits, or produce thereof. The rents, profits, or produce of a mahal, shall not be applied in satisfaction of a decree or order of any civil Court until all arrears of revenue due in respect of the mahal have been paid.

21. It is to be observed that in this section the word "profits" is used in a very wide sense as meaning something similar to the rents or produce of a mahal, but the section does provide that out of these rents or profits the revenue must first be paid, and it further provides that these rents or profits shall not be applied in satisfaction of any decree or order of a civil Court till all arrears of revenue due in respect of the property have been paid. Having regard to the terms of this section, it is clear that the total receipts cannot be regarded as part of the owner's profits, because the land revenue must at all costs be paid. The advantage or gain to the owner of zamindari property is measured not by the total receipts or income of the property, but by the sum representing the difference between the total receipts and the land revenue. Counsel for the appellant has very rightly laid great stress on the use of the word "profits" in Section 141, U.P. Land Revenue Act, as meaning the rents or produce of the

property, and he has argued that the phrase "gross annual profits" must mean the same. In our judgment the phrase "gross annual profits" appearing in Clause (a) to the Proviso to Section 8(1), Court of Wards Act, cannot mean the total rents or produce of a mahal or the property concerned. In our judgment it must mean the gross annual profits from the owner's point of view, in other words, what the property yields to the owner less the land revenue. In one sense it is true that the owner does receive the total rents of the property, but on the other hand, as he is under a liability to hand over part of such receipts to the Government as land revenue and such portion must be paid before all other claims. In fact the receipts of zamindari property cannot even be applied in satisfaction of a civil Court decree until all arrears of revenue have been paid. The owner derives no advantage from such portion of the receipts as represents the land revenue. Such he must pay to the Government, and it is only the balance which he can regard as a gain or advantage arising out of the land.

22. In our judgment it is clear from the terms of Section 8(1) that the Legislature meant by "gross annual profits" not the gross receipts of the property, but the sum representing the difference between the gross receipts and the land revenue. Before making a declaration disqualifying a proprietor the Local Government has to inquire into the circumstances of such proprietor and has to ascertain what income the proprietor has available to pay the interest accruing upon his debts. What is important to the Local Government in considering whether a proprietor should be disqualified or not is the sum available to meet the interest accruing on such proprietor's debts. The total income from the zamindari property is not so available, and the only part available is the rent less the land revenue. Until that difference is ascertained, it is impossible for the Government to come to a conclusion whether or not the proprietor should be disqualified. It is only when the Local Government knows precisely what the proprietor receives and out of which he can discharge his liabilities that it can come to a conclusion whether or not a proprietor is in a position to meet and discharge his debts. In our judgment the phrase "gross annual profits" used in Clause (a) to the Proviso to Section 8(1) must mean not the total receipts of the zamindari property but such receipts less the land revenue.

23. It has been contended that as the word "profits" is used in the Land Revenue Act as meaning the rents or produce of the property, the phrase "gross annual profits" must mean the same. It is argued that the use of the word "gross" strongly suggests that nothing should be deducted from the actual annual receipts of the property in arriving at the amount of the gross annual profits. In our view the word "gross" is used here as opposed to the word "net". The actual net profits, which the owner of zamindari receives is a sum considerably less than the difference between the total receipts and the land revenue. Out of that difference must also be taken the costs of management of the estate, the costs of collection of the rent, the costs of any litigation necessary to recover such rent and similar expenses. After making these deductions what is left is sheer profit to the owner of the property and can best be described as the net annual profits

of the property. In our view the phrase "gross annual pro-fits" means the actual profit to the owner before any deduction for management or collection expenses, and it is in order to emphasize this difference between the profits before and after deduction of management, collection and other expenses that the term "gross annual profits" is used in this section.

24. In our judgment the Local Government were right in coming to the conclusion that "gross annual profits" meant the sum representing the difference between the gross receipts and the land revenue. The decision of the learned Judge of the Court below upon this aspect of the case was, in our view, correct, and we are bound to hold that even if the plaintiff is entitled to question the declaration made in this Court, such declaration was made strictly in accordance with the provisions of Section 8 of the Act. The decision of this question is sufficient to dispose of this case because once it is found that the Government acted according to the provisions of Section 8, Court of Wards Act, in making the declaration now sought to be challenged, the suit is clearly not maintainable by reason of Section 11 of that Act.

25. The learned civil Judge, however, was of opinion that the plaintiff's claim was also barred by reason of Section 13, Court of Wards Act. That section is in these words:

If the right of the Court of Wards to assume or retain the superintendence of the person or property of any disqualified proprietor is disputed by such proprietor or, if he be a minor or of unsound mind, by some person on his behalf, the case shall be reported to the Local Government, whose orders thereon shall be final and shall not be questioned in any civil Court.

26. It appears that the plaintiff in this suit did make representations to the Local Government who refused to interfere and the Court of Wards have since remained superintending the property of the plaintiff. In one sense the plaintiff by bringing this suit can be said to be disputing the right of the Court of Wards to retain superintendence of his property but it must be remembered that there is no claim in this suit against the Court of Wards. What the plaintiff is endeavouring to do in this suit is to get behind the declaration made by the Local Government and therefore upon the pleadings it can well be said that in this case the right of the Court of Wards is not being challenged or disputed and therefore Section 13, Court of Wards Act, cannot operate as a bar. Assuming that it is open to a proprietor to challenge a declaration of the Local Government in a civil Court, Section 13 could not be a bar to such a suit. It may be that the bar created by Section 13 is only intended to cover cases where the Court of Wards in its discretion assumes superintendence of the property or person of a proprietor. These cases are set out in Sub-sections (2) and (3) of Section 12, but it is not necessary for us to decide this point. As we have held that the plaintiff's suit is not maintainable by reason of Section 11 of the Act it is unnecessary to consider the precise scope and effect of Section 13 of the Act. The learned civil Judge also held that this suit was barred by reason of Section 55, Court of Wards

Act, which is in these terms:

No ward shall sue or be sued nor shall any proceedings be taken in the civil Court otherwise than by and in the name of the Collector in charge of his property or such other person as the Court of Wards may appoint in this behalf.

27. Once the Court of Wards have assumed superintendence, then it is not open to the disqualified proprietor to bring a suit in his own name, but we doubt whether this section can possibly prevent a person bringing a suit to challenge the declaration made by the Local Government which is the basis of the right of the Court of Wards to assume possession. A proprietor desiring to challenge a declaration of the Local Government could only do so, if Section 55 provided a bar by persuading the Collector in charge of the property to bring proceedings for that purpose. In short he would have to satisfy an officer of the Government that a declaration made by the Government was invalid and ultra vires and persuade that officer to bring proceedings for a declaration to that effect. That appears to us to be an intolerable position. Again we have to say that this point does not arise as we have held as a matter of law that this declaration cannot be challenged by either the proprietor or anybody on his behalf. We therefore leave the point as to the effect of Section 55 of the Act open and express no final opinion upon it. The learned civil Judge also held that the plaintiff's suit was barred by Section 42, Specific Relief Act, but in our view this cannot be so. That section reads:

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief : Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

28. It is the contention of the Secretary of State that this is a case where the plaintiff was able to seek further relief than a mere declaration and had omitted to do so. It is argued that as the plaintiff is out of possession he should have claimed not only a declaration that the declaration of the Local Government disqualifying him was ultra vires and illegal but also possession of his property over which the Court of Wards had assumed superintendence. It must be remembered that the Court of Wards was not made a party to this suit and that the sole defendant was the Secretary of State for India in Council. In no sense can it be said that the Secretary of State for India was in possession of the plaintiff's property and therefore no claim for possession could have been made against him. The real ground of complaint is that the Court of Wards has not been joined as a party and a claim for possession made against it. In our judgment the plaintiff was not bound to join the Court of Wards and claim possession against the latter. The plaintiff was entitled to confine these proceedings to a claim against the respondent solely and a declaration was the

only relief that he could possibly obtain against the Secretary of State for India. In our judgment the plaintiff was not bound to join the Court of Wards who was in possession in order to dispose of the whole matter in this suit. He could, if he desired, bring proceedings against the respondent alone and in those proceedings he claimed the only relief that he could possibly obtain. In this case it cannot be said that the plaintiff was able to seek against the Secretary of State for India in Council further relief than a mere declaration of title and had omitted so to do. For these reasons we are satisfied that the plaintiff's suit was not barred by reason of Section 42, Specific Relief Act. No other point was urged before us in this appeal on behalf of the plaintiff and for the reasons which we have given we see no ground for interfering with the decree passed by the learned civil Judge. The result, therefore, is that this appeal is dismissed with costs.