## FULL BENCH.

*Before Walmsley, Greaves, C. C. Ghose, B. B. Ghose and Mukerji JJ.*

1925

*July* 22.

# MEHER BANO KHANUM

*v.*

# SECRETARY OF STATE FOR INDIA.*

*Income-Tax—Nazar or selami paid by a tenant to a landlord for recognition of transfer of non-transferable holding, if rent or revenue within the meaning of section 2(1) (a) of the Indian Income Tax Act—Income Tax Act (XI of 1922), ss. 2 (1) (a), 4 (3) (viii).*

*Held* by the Full Bench (WALMSLEY J. *dissentiente*) that *nazar* or *selami* paid by a tenant to a landlord for the recognition of a non-transferable holding is rent or revenue within the meaning of the expression as it occurs in section 2 (*1*) (*a*) of the Indian Income Tax Act (XI of 1922) and that it is exempt from assessment to income-tax by virtue of the provision of section 4(*3*) (*viii*) of the same Act.

*Birendra Kishor Manikya* v. *Secretary of State for India* (*1*) overruled.

FULL BENCH REFERENCE.

The facts material for the Reference are fully set out in the Order of Reference, which ran as follows:—

GREAVES J. This is a Reference under section 66 (*2*) of the Income Tax Act (XI of 1922) made to us by the Commissioner of Income Tax. The point which arises is a very short one, *viz.*, whether mutation *nazar*, that is, the amount paid to a landlord for recognising the transfer of a holding by one tenant to another, is agricultural income within the meaning of section 2, sub-section (*1*) (*a*) of the Indian Income Tax Act (XI of 1922) and as such is exempt from assessment to income-tax under section 4, sub-section (*3*) (*viii*) of the said Act. The Income-tax officer held that such payments were assessable to income-tax having regard to the decision of this Court in the case of *Birendra Kishor Manikya* v.

* Full Bench Reference No. 1 of 1925 in Reference No. 5 of 1924 under section 66 (*2*) of the Income Tax Act XI of 1922.

(1) (1920) I. L. R. 48 Calc. 766.

*Secretary of State for India* (1). An appeal was preferred by the assessee against the assessment of the Income-tax officer. The Assistant Commissioner of the Dacca Range rejected the appeal agreeing with the decision of the Income-tax officer. Accordingly, an application was made to the Commissioner of Income-tax asking for a Reference to this Court under the provisions of the section of the Act to which I have referred and the Commissioner has, accordingly, referred the question in the terms which I have indicated. He agrees with the Income-tax officer that the assessment was rightly made and that the *nazar* is not agricultural income and is, therefore, not exempt from income-tax and he adopts as the grounds of his decision the reasoning of this Court in the case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1) to which I have just referred. The case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1) was decided under the Income Tax Act of 1918, but it is conceded that so far as the question now before us is concerned, that Act was identical with the present Act of 1922. The point, therefore, is covered by the decision in *Birendra Kishor Manikya v. Secretary of State for India* (1), provided we agree with that decision. Before I refer to it, I must refer shortly to the sections of the Income Tax Act of 1922 which bear upon the point. Section 4, sub-section (3) provides that the Act is not to apply to certain classes of income. Amongst these, is agricultural income and in section 2 of the Act, agricultural income is defined as rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of Government as such. The land in respect of which the *nazar* was paid was a part of a permanent settled estate, which is also subject to road-cess.

Two points arose for decision in the Reference to which the case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1) relates. The first point was whether the *nazar* or *selami* payable in respect of a tenancy of waste land was assessable to income-tax or exempt as being rent or revenue derived from land used for agricultural puposes within section 2, sub-section (1) (*a*) of that Act. The second question was the one which directly arises on the present Reference, namely, whether the *nazar* or *selami* paid for the recognition of the transfer of a holding from one tenant to another was rent or revenue derived from land which was used for agricultural purposes within the meaning of section 2, sub section (1) (*a*) of the then Income Tax Act. The learned Judges who heard the Reference

(1) (1920) I. L. R. 48 Calc. 766.

1925

MEHER BANO KHANUM *v.* SECRETARY OF STATE FOR INDIA.

decided that *nazar* or *selami* paid in respect of waste land was revenue within the meaning of section 2, sub-section (1) (*a*). The reason for their so holding was that they thought that the amount fixed for periodical payment, that is, rent, was not independent of the *nazar* or *selami*, and that the *nazar* or *selami* was a capitalised sum which taken with the periodical rent constitutes in the aggregate the consideration for the grant. When, however, they came to consider the question of *nazar* or *selami* paid for recognition of the transfer they held that this was not revenue within the meaning of section 2 (*1*) (*a*), because it was not a return, yield or profit of any land and further that it was not rent in any sense of the term, but they held that such a payment was a payment to purchase peace in order that the landlord might not contest the validity of the transfer and they held that this was not a payment that came within the scope of the definition of agricultural income. With all respect to their lordships who decided that case, I feel some difficulty in accepting the reasoning upon which it is founded. The expression "revenue," as they say in their judgment, includes return, yield or profit of any land and I find it very difficult to escape from the conclusion that a payment of this kind is not profit derived from the ownership of the land. If, therefore, revenue includes profit, as I think it does, then it seems to me that *nazar or selami* is really derived from land which is used for agricultural purposes within the meaning of the expression as it occurs in section 2(*1*) (*a*) of the Indian Income Tax Act of 1922.

The result is that, in my opinion, the assessee is exempt from payment of income-tax by reason of the provisions of section 4, sub-section (*3*) (*viii*) of the same Act. The question, therefore, which we refer for the decision of a Full Bench is whether the decision in *Birendra Kishor Manikya* v. *Secretary of State for India* (1) as regards *selami* paid for the recognition of a transfer of a holding from one tenant to another is correct and the question which arises for the decision of the Full Bench is whether *nazar* or *selami* paid by a tenant to a landlord for the recognition of the transfer of a non-transferable holding is rent or revenue within the meaning of the expression as it occurs in section 2(*1*)(*a*) of the Indian Income Tax Act, XI of 1922. If the Full Bench hold that such *nazar* or *selami* is not assessable to income-tax, this judgment will be forwarded to the Commissioner If, however, the Full Bench hold that the case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1) was rightly decided, the matter will come back to this Bench in order that we may deal with the other question which was raised before us by the assessee, namely, that having

(1) (1920) I. L. R. 48 Calc. 766.

regard to the provisions of the permanent settlement no liability for assessment has been imposed by the Income Tax Act on *nazar* or *selami*.

MUKERJI J. I agree.

1925

MEHER BANO KHANUM *v.* SECRETARY OF STATE FOR INDIA.

*Mr. Jogendra Nath Mukherji*, advocate (with him *Babu Paresh Nath Mukherji*), for the petitioner. The definition of "agricultural income" in section 2(*1*)(*a*) of the Income Tax Act of 1922 includes all rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or, subject to a local rate, assessed and collected by officers of Government as such. It is an admitted fact that the land in question forms part of a permanently-settled estate, and that Road and Public Works cesses are levied upon it. These two conditions being satisfied, the question remains whether *nazarana* (which is the same thing as *selami*) derived from transfers of non-transferable holdings by one tenant to another can be taken to be rent or revenue. In this connection, my line of argument is that laid down in the Order of Reference to this Hon'ble Bench. The ruling in *Birendra Kishor Manikya* v. *Secretary of State* (1) has failed to consider fully and adequately the word "revenue" in the said section of the Income Tax Act. My contention is that the word "rent," as it is defined by the Bengal Tenancy Act, covers a payment under the present category. It is something which is lawfully recoverable by a landlord from a tenant for the use and occupation of land, although such payment may not be periodical payment—periodicity not being necessarily an inseparable adjunct of the payment in cases of rent. Even if it be conceded that the word "rent" does not cover cases like the present, there is no escape from the signification of the word "revenue"

(1) (1920) I. L. R. 48 Calc. 766.

1925

MEHER BANO KHANUM v. SECRETARY OF STATE FOR INDIA.

I rely upon the definition of the word "revenue" as given in the Oxford Dictionary and as quoted in the ruling in question (1). The quotation therein fully covers the present case. Other passages from the Oxford Dictionary, which have not been quoted in the ruling in question, runs thus :—

"An income, an amount of money regularly accruing to one.". Also (in the plural) "the collective items or amounts which constitute an income." "A separate source or item of (private or public) income"

The underlying idea in section 2(*1*)(*a*) is that whatever income was not intended to be covered by the word "rent" would be covered by the word "revenue." The distinction drawn in the ruling in question between the liability to pay income-tax in the case of *selami* or premium when levied at the time of first settlement of a holding and that when levied on the occasion of a transfer of a non-transferable holding is elusive. The *nazarana* is, therefore, exempt from liability to income-tax, being an agricultural income under section 4 (*3*) (*viii*) of the Income-tax Act, 1922 and the ruling in question was wrongly decided.

*The Standing Counsel* (*Mr. B. L. Mitter*) with *the Senior Government Pleader* (*Babu Surendra Nath Guha*) and *the Assistant Government Pleader* (*Maulvi Nuruddin Ahmed*), for the Secretary of State. I admit that the word "revenue" would cover a case of this kind; but my contention is that *nazarana* income is not derived from land; that is derived from the transaction of transfer and therefore it does not come under the definition of "agricultural income" and it is therefore liable to pay income-tax under the Income Tax Act of 1922.

*Mr. Jogendranath Mukherji*, in reply. The *nazarana* demanded is not directly and primarily on

1925

MEHER BANO KHANUM v. SECRETARY OF STATE FOR INDIA.

the transaction of transfer, but is in recognition by the landlord of the right claimed by a new tenant to get into possession of the land purchased This claim was liable to be ignored by the landlord, if the latter did not get any equivalent for the surrender of his right to resist the new tenants' claim to possession of the land. The transaction of transfer is not relevant to the question under consideration. There is no question that the income was derived from *land*. If there was no land belonging to the landlord, there would be no income which could be assessed. If there was only the transaction of transfer, but no attempt to give effect to it by the new tenant by his claim to possession, no *nazarana* could be claimed or levied. Therefore it was not the transaction which yielded the *nazarana*, but the land, properly understood.

*Cur. adv. vult.*

WALMSLEY J. This Reference raises the question of the liability of mutation *nazarana* to income-tax.

The referring Judges are unable to agree with the view taken in the case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1). In that case it was held that the premium paid for the settlement of waste land or abandoned holdings is not liable, but that the premium paid for recognition of a transfer of a non-transferable occupancy holding from one tenant to another is liable.

I was one of the three Judges who delivered that decision and I find that I am in a minority on this Bench. In the absence of any fresh arguments it is enough for me to say that I adhere to the opinion expressed in that judgment for the reasons there given.

GREAVES J. The question which arises for the decision of the Full Bench is, whether *nazar* or

(1) (1920) I. L. R. 48 Calc. 766.

1925

MEHER BANO KHANUM *v.* SECRETARY OF STATE FOR INDIA

GREAVES J.

*selami* paid by a tenant to a landlord for the recognition of the transfer of a non-transferable holding is rent or revenue within the meaning of the expression as it occurs in section 2 (*1*) (*a*) of the Indian Income Tax Act, XI of 1922. This question arose for the decision of the Court in the case of *Birendra Kishor Manikya* v. *Secretary of State for India* (1) and it was there decided that such payments were assessable to income-tax. Doubts having been raised as to the correctness of that decision the matter has been referred to the Full Bench. Agricultural income is not assessable to income-tax under the Income Tax Act, in which Act such income is defined as rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of Government as such and the land in the present case in respect of which *nazar* was paid was a part of a permanently-settled estate which is subject to road cess. It is admitted by the learned Standing Counsel who appeared for the Secretary of State that *nazar* is revenue, but he argues that although it is revenue it is not revenue derived from land but from the transaction, that is, from the recognition of the transfer, and that it is an incident of the transfer and not of the tenancy and therefore does not flow from the land.

In the case of *Birendra Kishor Manikya* (1), the learned Judge who delivered the judgment of the Court referred to the definition of revenue in the Oxford Dictionary as " the return, yield, or profit of "any land, property or other important source of "income; that which comes into one as a return from "property or possessions, specially of an extensive "kind; income from any source specially of an

(1) (1920) I. L. R. 48 Calc. 766.

1925

MEHER BANO KHANUM v. SECRETARY OF STATE FOR INDIA.

GREAVES J.

"extensive kind; income from any source but specially "when large and not directly earned".

The conclusion seems to me irresistible that if it is admitted, as I think it is rightly admitted, that *nazar* is revenue, it is profit of the land and that it flows therefrom or from the ownership thereof but in the last mentioned case (1), it is said that this is not so and that it cannot be deemed the return, yield, or profit of any land, but that it is money paid by the transferee to the landlord to purchase peace, so that he may not contest the validity of the transfer.

This no doubt is true, but it seems to me to ignore another aspect altogether, namely that it is money which comes to the landlord by virtue of the fact that he is the owner of the land. Viewed in this light it clearly is derived from the land and is agricultural income within the definition thereof contained in the Income Tax Act and as such exempt from assessment to income-tax under that Act.

I would therefore answer the question referred to the Full Bench by saying that *nazar* or *selami* paid by a tenant to a landlord for the recognition of a non-transferable holding is rent or revenue within the meaning of the expression as it occurs in section 2 (*1*) (*a*) of the Indian Income Tax Act (XI of 1922) and that it is exempt from assessment to income tax by virtue of the provisions of section 4 (*3*) (*viii*) of the same Act.

It follows that in my view the decision in *Birendra Kishor Manikya* v. *Secretary of State for India* (1) in so far as it holds to the contrary is not correct.

This judgment will be forwarded to the Commissioner of Income Tax.

(1) (1920) I. L. R. 48 Calc. 766.

1925

MEHER BANO KHANUM v. SECRETARY OF STATE FOR INDIA.

C. C. GHOSE J. I agree with my learned brother, Mr. Justice Greaves, in the view which he has taken.

B. B. GHOSE J. I agree in the opinion expressed by my learned brother, Mr. Justice Greaves.

MUKERJI J. I also agree in the judgment delivered by my learned brother, Mr. Justice Greaves.

S. M.

## APPELLATE CIVIL.

*Before Suhrawardy and Duval JJ.*

1925

*May* 5.

### NARESH CHANDRA BOSE

*v.*

### KRISHNA BHABINI DASI.*

*Interest—Decree making no provision for interest—Execution Proceedings—Interest on arrears, if can be awarded.*

Where in a decree for maintenance no provision for interest was made :—

*Held*, that in proceedings taken in execution of the decree, the decree-holder was not entitled to claim interest and his proper remedy was to bring a suit for damages for the detention of the decretal amount.

*Seth Gokul Das Gopal Das* v. *Murli and Zalim* (1), *Mohamaya Prosad Singh* v. *Ram Khelwan Singh Thakur* (2) referred to.

APPEAL by Naresh Chandra Bose, the judgment-debtor.

This appeal arose out of an application for the execution of a decree obtained by one Krishna Bhabini Dasi on account of maintenance allowance

* Appeal from Order No. 125 of 1923, against the order of Asutosh Pal, Subordinate Judge of 24-Parganas, dated March 2, 1923.

(1) (1878) I. L. R. 3 Calc. 602. (2) (1911) 15 C. L. J. 684.