

Sarojini Tea Co. (P) Ltd vs Collector Of Dibrugarh, Assam And Anr on 24 January, 1992

Equivalent citations: 1992 SCR, SUPL. (2) 25 1993 SCC SUPL. (4) 632, AIR 1992 SUPREME COURT 1264, 1992 (2) SCC 156, 1992 AIR SCW 1417, 1992 AIR SCW 1217, (1992) 1 JT 327 (SC), (1992) 1 SCR 371 (SC), 1992 (1) JT 327, 1992 (1) SCR 371, 1992 (1) UJ (SC) 219, 1992 UJ(SC) 1 219, (1992) 1 SCJ 372, (1992) 108 TAXATION 237

Author: K. Ramaswamy

Bench: K. Ramaswamy, Kuldeep Singh

PETITIONER:
SAROJINI TEA CO. (P) LTD

Vs.

RESPONDENT:
COLLECTOR OF DIBRUGARH, ASSAM AND ANR

DATE OF JUDGMENT 24/01/1992

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KULDIP SINGH (J)

CITATION:
1992 SCR Supl. (2) 25 1993 SCC Supl. (4) 632
1992 SCALE (3) 70

ACT:
Assam Taxation of Ceiling on Land Holdings Act, 1956
(as amended by Assam Act VIII of 1971):
Section 12-Land Ceiling-Excess land-Compensation-
Computation of: 'Annual Land Revenue'-Whether includes
'surcharge' on land revenue and 'local rate' payable under
Assam Land Revenue and Land (Surcharge) Act, 1970 and Local
Rates Regulation, 1879: Belated appeal-Condonation of
delay-Whether provisions of Limitation Act, 1963 would apply.

HEADNOTE:
The appellant, a tea company, whose land was declared

excess under the Assam Fixation of Ceiling on Land Holdings Act, 1956 as amended by Assam Act, VIII of 1971, was awarded compensation, equal to 50 times of the annual land revenue of the excess land as provided under section 12 of the Act. However, the compensation was assessed excluding the surcharge on land revenue and the local rate payable in respect of the land.

On appeal by the Company, the District Judge enhanced the amount of compensation by including the surcharge on land revenue as well as the local rate as part of the annual land revenue, against which respondent No. 1 filed a writ petition before the High Court.

The High Court allowed the writ petition holding that the expression 'full rate of annual land revenue' meant only the revenue assessed on the land as such and not the local rates leviable under the Local Rates Regulation, 1879 nor the surcharge on land revenue levied under the Assam Land Revenue and Land (Surcharge) Act, 1970.

Aggrieved, the appellant preferred the appeal by special leave to this Court.

On the question : whether the surcharge on land revenue levied under the Assam Land Revenue and Land (Surcharge) Act, 1970

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and the local rate payable under the Local Rates Regulations, 1879 can be held to be land revenue,

Allowing the appeal in part, this Court,

HELD: 1.1 The expression 'surcharge' in the context of taxation means an additional imposition which results in enhancement of the tax and the nature of the additional imposition is the same as the tax on which it is imposed as surcharge. [p.381 B-C]

Bisra Stone Lime Co. Ltd. & Anr. etc. v. Orissa State Electricity Board & Anr., [1976] 2 SCR 307; Commissioner of Income Tax, Kerala v. K. Srinivasan, [1972] 2 SCR 309; Vishweshwara Thirthaswamiar & Ors. v. State of Mysore & Anr., [1972] 1 SCR 137, relied on.

C.V. Rajagopalachariar v. State of Madras, AIR 1960 Mad. 543, referred to.

Shorter Oxford English Dictionary, referred to.

1.2 A surcharge on land revenue is an enhancement of the land revenue to the extent of the imposition of surcharge. The nature of such imposition is the same viz. land revenue on which it is a surcharge. [pp. 381 C-D]

1.3 The surcharge payable under the Assam Land Revenue and Land (Surcharge) Act, 1970 constitutes land revenue and has to be taken into account for assessing compensation under section 12 of the Assam Fixation of Ceiling on Land Holdings Act, 1956. [p.385 C-D]

1.4 In view of the provisions of section 12 of the Assam Ceiling Act, the measure for assessment of compensation is 'the full rate of annual land revenue' payable for the land acquired. [pp.377H; 378A]

1.5 The use of the words "full rate of" before the words "annual land revenue payable for the land" in s. 12 (a) (1) (i) of the Ceiling Act does not have a bearing upon the nature of the levy, which is land revenue. The said words have reference to the quantum of the levy which would form the basis for assessment of compensation and do not render inapplicable the principles that imposition of surcharge on land revenue is only an enhancement of the land revenue and nature of the said imposition is land revenue. Vishwesh Thirthaswamiar & Ors. v. State of Mysore & Anr., [1972] 1 SCR 137, relied on. [P,382 D-E]

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Benoy Mazumdar v. Deputy Commissioner, Cochin & Ors., (Civil Rule No. 28 of 1977 decided on 28.9.1981 by Gauhati High Court), inapplicable.

1.6 The provisions for assessment of surcharge contained in the Surcharge Act indicate that while land revenue is assessed in one settlement and continues till the succeeding settlement, surcharge having been imposed during the currency of the settlement, is required to be assessed. The need for assessment arises on account of the fact that surcharge is not leviable on a person holding land measuring less than 10 Bighas and, therefore, before making a demand for surcharge it is necessary to determine whether a person from whom demand is made is liable under the provisions of the Surcharge Act and is not entitled to claim exemption from such levy. [pp.382 GH; 383 A]

1.7 The fact that the person holding land less than 10 Bighas though liable to pay land revenue, is not liable to pay surcharge under the Surcharge Act, does not alter the character and nature of the levy. [p.383B]

1.8 The High Court was not right in holding that surcharge on land revenue levied under the Surcharge Act is different and distinct in character from land revenue and does not fall within the ambit of annual land revenue under section 12 of the Ceiling Act; and to this extent the judgment of the High Court is liable to be set aside. [pp. 382 CD; 385 C]

2.1 Local rate leviable under the Local Rates Regulation is, a levy which is distinct and different in nature from land revenue. [pp. 384 H; 385 A]

2.2 The expression 'rate' is generally used in the same sense as the expression 'cess'. Section 4 of the Local Rates Regulation also indicates that the local rate is in the nature of cess because in section 4 it has been provided that when a rate is imposed on any land under this Regulation any cess now leviable on such land for any of the purposes mentioned in Section 12, shall cease to be levied on such land or if such cess be maintained, a corresponding diminution shall be made for such rate. [p.384 F-G]

Guruswamy & Co. v. State of Mysore, [1967] 1 SCR 548; India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.,

[1990] 1 SCC 12 followed.

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2.3 The amount realised by way of local rate under the Regulations is to be used for incurring expenditure for the relief and prevention of famine and for local purposes. Land revenue, on the other hand, forms part of general revenue of the State and is not limited for a particular purpose. [p.384 G-H]

2.4 The High Court has rightly held that local rate payable under the Local Rate Regulations, 1879 is an imposition which is distinct in character from land revenue and cannot be regarded as land revenue or tax in lieu of land revenue. It cannot, therefore, be taken into consideration for assessing compensation under Section 12 of the Ceiling Act. [p.385 B]

3. Since there is nothing in the Ceiling Act which excludes the applicability of sections 4 to 24 of the Limitation Act, 1963 to proceedings under the Ceiling Act, the said provisions are applicable to such proceedings in view of sub-section (2) of section 29 of the Limitation Act, 1963 and the District Judge was competent to condone the delay in the filing of the appeal. In the exercise of jurisdiction under Article 136 of the Constitution, it would not be appropriate to interfere with the said exercise of discretion by the District Judge. [pp.376 G-H; 377 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6650 of 1983.

From the Judgment and Order dated 1.6.1983 of the Gauhati High Court in Civil Rule No. 876 of 1981.

A.K. Ganguli, Vijay Hansaria, Sunil Kumar Jain, A.K. Lawania, Suresh Gupta and Rudra Kahlon for the Appellant.

A.K. Mazumdar, S.K. Nandy and P. Goswami for the Respondents.

The Judgment of the Court was delivered by S.C.AGRAWAL, J. This appeal by special leave is directed against the judgment and order dated June 1, 1983 of the Gauhati High Court in Civil Rule No. 876 of 1981. It raises for consideration the question whether the expression 'annual land revenue' in Section 12 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as 'the Ceiling Act') would include 'surcharge' payable under the Assam Land Revenue and Land (Surcharge) Act, 1970 (hereinafter referred to as 'the Surcharge Act') and the 'local rate' payable under the Assam Local Rates Regulation, 1979 (hereinafter referred to as 'the Local Rates Regulation').

The Ceiling Act was enacted by the Assam State Legislature to make provision for imposition of limits on the areas of land that may be held by a person. Section 4 of the Act prescribes the ceiling on the existing land. Under s.5 a person holding land in excess of the ceiling is required to submit a return and under s. 7 (I), the Collector prepares a draft statement which shows the lands in excess of the limits fixed under s. 4. The said draft statement is published under sub-section (2) of S. 7 for the purpose of submitting objections. After considering the said objections, the draft statement is made final under sub-section (4) of S.7; and with effect from the date on which the final statement is signed by the Collector, all rights, title and interest of the person or persons whose lands are shown in excess in such statement, stand transferred to and vested in the State Government, free from all encumbrances created by such person. S. 12 makes provision for payment of compensation for the land which stands transferred to and vested in the State Government. Under clause (a) of S. 12 where the person from whom excess land has been acquired, held it as the owner thereof, the compensation, that is payable is, in the case of fallow land, an amount equal to 25 times the full rate of the annual land revenue for such land and, in case of any other land, an amount equal to 50 times such annual land revenue.

The Ceiling Act, as originally enacted, did not apply to tea estates. It was amended by Assam Act VIII of 1971 which came into force on March 27, 1971 whereby sub-section (2) of S. 4 was amended and the Ceiling Act was made applicable to tea plantations and land in excess of such land as has been used for special cultivation of tea and the purposes ancillary thereto, was brought within the ceiling.

The appellant is a tea company. Land measuring 1650 bighas, 4 Katthas and 5 lathhas belonging to it was declared as excess land under the Ceiling Act on September 9, 1975 by the Collector, Dibrugarh, respondent No. I herein, and he also took over possession of the same. A sum of Rs. 71,811 was assessed as the compensation payable to the appellant for the said land under S. 12 of the Ceiling Act. The said figure was arrived at by excluding the surcharge and the local rate payable in respect of the land. The appellant filed an appeal against the said order before the District Judge, Dibrugarh, who by his order dated July 1, 1981, enhanced the amount of compensation by including the surcharge as well as the local rate as part of the annual land revenue. Respondent No. 1 challenged the said order of the District Judge by moving a writ petition under Articles 226 and 227 of the Constitution before the High Court, which was allowed by the High Court by its judgment dated June 1, 1983 on the view that the expression 'full rate of annual land revenue' meant only the revenue assessed on the land as such and the Legislature by enacting S. 12 of the Ceiling Act did not have in their mind the local rates which were already leviable under the Local Rates Regulation, at the time of enacting s. 12 of the Act and the surcharge on the land revenue which was subsequently levied under the Surcharge Act. The said decision of the High Court was based on its earlier judgment dated December 21, 1982 in Civil Rule No. 194 of 1982 wherein the High Court had fully considered this question and had arrived at the aforesaid conclusion. Feeling aggrieved by the aforesaid judgment of the High Court, the appellant has filed this appeal.

Before we proceed to deal with the submissions of the learned counsel for the appellant, we may deal with the preliminary objection that has been raised by Mr. Mazumdar, the learned counsel for the respondents. Mr Mazumdar has urged that the appeal filed by the appellant before the District

Judge, Dibrugarh, against the order for assessment of compensation u/s. 12 of the Ceiling Act, was barred by limitation and that the District Judge was in error condoning the delay in filing the said appeal. In this regard, Mr. Mazumdar has submitted that under the law a period of 30 days is prescribed for filing an appeal against an order under s. 12 and that in the instant case the final order granting compensation was passed by the State Government on February 8, 1979 and the appeal was filed on September 19, 1979, long after the stipulated period of limitation. On behalf of the appellant, it was submitted before the District Judge that no order was communicated to the appellant and that the Collector by his order dated February 17, 1979 directed the appellant to collect the amount of Rs. 71, 811 and on request the company got a copy of the sanctioning letter on September 6, 1979 only and thus the appellant became aware of the sanction order only on September 6, 1979 and it preferred an appeal on September 19, 1979 which was within limitation. The District Judge has observed that the Government sanction of compensation was communicated by the Collector vide his letter dated February 17, 1979 which was duly acknowledged by the appellant vide its letter dated March 16, 1979 and that the appellant could have preferred the appeal by that time and that the appeal was filed beyond the period of limitation. But taking into consideration the peculiar circumstances of the proceeding of the principles of natural justice and fair play, the District Judge condoned the delay in the filing of the appeal. Since there is nothing in the Ceiling Act which excludes the applicability of ss. 4 to 24 of the Limitation Act, 1963, to proceeding under the Ceiling Act, the said provisions are applicable to such proceedings in view of sub-section (2) of s.29 of the Limitation Act, 1963 and the District Judge was competent to condone the delay in the filing of the appeal. On a consideration of the facts and circumstances of the case, the District Judge considered it proper in the interest of justice to condone the delay. In the exercise of our jurisdiction under Article 136 of the Constitution, we do not consider it appropriate to interfere with the said exercise of discretion by the District Judge. The preliminary objection raised by the learned counsel for the respondents, is therefore, rejected.

The main question that arises for consideration in this appeal relates to assessment of compensation u/s. 12 of the Ceiling Act. The relevant provisions of the said section are as under:-

"12. where any land is transferred to and vested in the State Government under Sub-s.(4) of s.7 of the Act, there shall be paid compensation which shall be determined by the Collector or any other officer authorised by the State Government in the manner and in accordance with the principles laid down below, namely:

(a) (1) where the person from whom the excess land has been acquired held it as the owner thereof, the compensation (inclusive of the value of any tenancy right) shall be-

(i) in case of fallow land, an amount equal to 25 times the full rate of annual land revenue payable for such land; and

(ii) in case of other land, inclusive of the value of trees, an amount equal to 50 times such annual land revenue;

xx xx xx xx xx xx xx xx xx "Provided that where the land is revenue free, or assessed to land revenue at a concessional rate, or where it is not assessed to land revenue under the provisions of the Assam Land and Revenue Regulations, 1886 or of the Assam Land Revenue Re- assessment Act, 1936, the compensation shall be determined on the basis of annual land revenue assessable under the provisions of the afore- mentioned Acts on similar, full revenue-paying land situated nearest to it."

From a perusal of the aforesaid provisions, it would appear that the measure for assessment of compensation is 'the full rate of annual land revenue' payable for the land acquired. The expression 'land revenue' is not defined in the Ceiling Act. Assessment and payment of land revenue in Assam is governed by the Assam Land and Revenue Regulation, 1886 (hereinafter referred to as 'the Revenue Regulation'). Clause (3) of s.3 of the Revenue Regulation defined the expression 'land revenue' in the following terms:-

"3 (e) "land revenue" means any revenue assessed by the State Government on an estate, and includes any tax assessed in lieu of land revenue;"

By the Assam Land Revenue Re-assessment Act, 1936, enacted for the purpose of regulating reassessment of land revenue in Assam, the land revenue was re-assessed. Thereafter, the Assam State Legislature enacted the Surcharge Act in 1970 to provide for the levy of surcharge on land revenue and rent assessed in the State of Assam. In sub-section (1) of s.2 of the said Act the expression 'land revenue' is defined in the same terms as in s.3 (e) of the Revenue Regulation. In s. 3 the following provision is made for the levy of surcharge:-

"3. Levy of Surcharge. Every person holding land measuring 10 (ten) bighas or more directly under the State Government shall be liable to pay a surcharge on land revenue or rent, as the case may be, at the rate of 30 per cent of the land revenue or rent of all classes of holdings in addition to the land revenue or the rent payable by him."

Section 4 provides for provisional assessment of surcharge and issue of notice to the person or persons concerned. Section 5 provides for filing of objections and making of assessment after giving an opportunity of hearing. Sec. 7 makes the following provision for recovery of surcharge:-

"7. Surcharge recoverable as arrear of land revenue. The surcharge assessed under this Act shall be payable along with the land revenue or the rent, as the case may be, in the manner prescribed and any arrear of any surcharge shall be realisable as an arrear of land revenue."

Since the question for consideration is whether the surcharge levied under the Surcharge Act can be held to be land revenue, it is necessary to examine the nature of the said levy. According to the Shorter Oxford English Dictionary the word 'surcharge' stands for an additional or extra charge or payment. In *Bisra Stone Lime Co. Ltd & Anr. etc. v. Orissa State Electricity Board & Anr.* [1976] 2 SCR 307 after referring to the said definition, this Court had observed:

"Surcharge is thus a superadded charge, a charge over and above the usual or current dues." (p.310-

11) In that case the Orissa State Electricity Board had imposed a uniform surcharge of 10% on the power tariff. It was argued that surcharge was unknown to the provisions of the Electricity (Supply) Act, 1948 and the Electricity Board had no power under the said Act to levy a surcharge. This Court negated the said contention and in that context, after explaining the meaning of the expression 'surcharge', it was observed:

"Although, therefore, in the present case it is in the form of surcharge, it is in substance an addition to the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act" (P. 311) Similarly, in *Commissioner of Income Tax, Kerala v. K.Srinivasan*, [1972] 2 SCR 309, a question arose whether the term 'income-tax' as employed in s. 2 of the Finance Act, 1964, would include surcharge and additional surcharge whenever provided. This Court while tracing the concept of surcharge in taxation laws of our country, has observed: "The power to increase federal tax by surcharge by the federal legislature was recommended for the first time in the report of the committee on Indian Constitutional Reforms, Vol. 1 Part I. From para 141 of the proposals it appears that the word "surcharge" was used compendiously for the special addition to taxes on income imposed in September, 1931. The Government of India Act 1935, Part VII, contained provisions relating to finance, property, contracts and suits. Sections 137 and 138 in Chapter 1 headed "finance" provided for levy and collection of certain succession duties, stamp duties, terminal tax, taxes on fares and freights, and taxes on income respectively. In the proviso to s. 137 the federal legislature was empowered to increase at any time any of the duties of taxes leviable under that section by a surcharge for federal purposes and the whole proceeds of any such surcharge were to form part of the revenue of the federation. Sub-section (3) of s.138 which dealt with taxes on income related to imposition of a surcharge." (P.312) It was further observed at page 315 of the report: "The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among others "to charge (one) too much or in addition..." also "additional tax". Thus the meaning of surcharge is to charge in addition or to subject to an additional or extra charge".

In *C.V. Rajagopalachariar v. State of Madras*, AIR 1960 Mad. 543, in the context of the Madras Land Revenue Surcharge Act, 1954 and the Madras Land Revenue (Additional Surcharge) Act, 1955, it has been laid down:-

"The word "surcharge" implies an excess or additional burden or amount of money charged. Therefore, a surcharge of land revenue would also partake the character of land revenue and should be deemed to be an additional land revenue. Although S.4 of the two enactments referred to above only deems it to be recoverable as a land

revenue it is manifest that the surcharge would be a part of the land revenue. The effect of the two Acts would be, therefore, to increase the land revenue payable by a land holder to the extent of the surcharge levied. If therefore, a surcharge levy has been made, the Government would be enabled to collect a higher amount by way of land revenue from a ryotwari pattadar than what was warranted by the terms of the previous ryotwari settlement."

The said decision was approved by this Court in *Vishwesha Thirthaswamiar & Ors. v. State of Mysore & Anr*, [1972] 1 SCR 137. In that case this Court was considering the question whether the Mysore State Legislature was competent to enact the Mysore Land Revenue (Surcharge) Act, 1961. After examining the nature of the levy the Mysore High Court had held that the so-called land revenue surcharge was but an additional imposition of land revenue or a land tax and fell either within Entry 45 or Entry 49 of the State List. This Court agreeing with the view of the High Court held that the surcharge fell squarely within Entry 45 of the State List, namely, land revenue. It was observed:-

"The legislation is but an enhancement of the land revenue by imposition of surcharge and it cannot be called a tax on land revenue, as contended by the learned counsel for the appellant. It is a common practice among the Indian Legislatures to impose surcharge on existing tax. Even art 271 of the Constitution speaks of a surcharge for the purpose of the Union being levied by way of increase in the duties or taxes mentioned in art, 269 and art. 270" (p.140) "It seems to us that the Act clearly levies land revenue although it is by way of surcharge on the existing land revenue. If this is so, the fact that the surcharge was raised to 100% of the land revenue on the wet and garden land and 75% of the land revenue in respect of dry lands, subject to some minor exceptions, does not change the nature of the imposition." (p. 141) From the aforesaid decisions, it is amply clear that the expression 'surcharge' in the context of taxation means an additional imposition which results in enhancement of the tax and the nature of the additional imposition is the same as the tax on which it is imposed as surcharge. A surcharge on land revenue is an enhancement of the land revenue to the extent of the imposition of surcharge. The nature of such imposition is the same viz., land revenue on which it is a surcharge.

The learned Judges of the High Court have taken note of the decisions of this Court referred to above and were of the view that if they were to interpret only the expression 'land revenue', there would not be any difficulty. They have observed that in the instant case they were interpreting the expression "full rate of annual land revenue payable for the land" in S. 12 (a) (1) of the Ceiling Act. According to the learned Judges, the expression "full rate of land revenues"

has to be understood in conformity with the Assam Land Revenue Regulation where different classes of estates are often referred to in terms of revenue, for example, khiraj or full revenue paying estates and Nisf-khiraj or half revenue paying estates. The learned Judges have referred to the

provisions of the Assam Land Revenue Reassessment Act, 1936 which prescribes the procedure for reassessment and how the rates of revenue are to be fixed, as well as the Assam Assessment of Revenue Free Waste land Grant Act, 1948 and have observed that the rate of revenue has been understood in the sense of revenue assessed on land. The learned Judges have also taken note of the provisions of the Surcharge Act and have pointed out that the Surcharge Act makes provision for assessment of surcharge in the prescribed procedure whereas in the case of land revenue, it is assessed in one settlement and continues till the succeeding settlement; and under S.3 of the Surcharge Act a person holding land measuring less than 10 Bighas, though liable to pay land revenue, is not liable to pay surcharge on his land revenue. The learned Judges have also laid emphasis on the expression 'in addition to the land revenue' used in S.3 of the Surcharge Act and the expression 'along with land revenue' in S.7 of the Surcharge Act.

Taking into account the features referred to above, the learned Judges of the High Court have held that the Legislature clearly distinguished land revenue and surcharge. The learned Judges also referred to the decision of a Full Bench of five Judges of the High Court in Benoy Mazumdar v. Deputy Commissioner, Cochin & Ors (Civil Rule No.28 of 1977 decided on September 28, 1981) wherein the court was dealing with the constitutional validity of S.7(1A) of the Assam Land (Requisition and Acquisition) Act, 1948, and had to deal with the question of compensation in terms of multiple of annual land revenue. After mentioning the various decisions that were referred to in the said decision, the learned Judges have observed that in those cases the annual land revenue was taken to mean the land revenue as assessed on land and nowhere the idea of surcharge entered into that concept.

With great respect to the learned Judges of the High Court, we are unable to subscribe to this view. We do not find any sound basis for holding that surcharge on land revenue levied under the Surcharge Act is different and distinct in character from land revenue and does not fall within the ambit of annual land revenue under section 12 of the Ceiling Act. The use of the words "full rate of" before the words "annual land revenue payable for the land" in Section 12(a) (1) (i) of the Ceiling Act do not, in our opinion, have a bearing upon the nature of the levy, which is land revenue. The said words have reference to the quantum of the levy which would form the basis for assessment of compensation. We find it difficult to appreciate how these words render inapplicable the principles laid down by this Court in Vishwesh Thirthaswamiar's case (supra), that imposition of surcharge on land revenue is only an enhancement of the land revenue and nature of the said imposition is land revenue.

We do not consider that the words "in addition to the land revenue" in S.3 and the words "along with land revenue"

in S.7 of the Surcharge Act imply that surcharge levied under the said Act is levy which is distinct in nature from land revenue. These expressions only mean that surcharge @ 30% of the land revenue leviable under S.3 of the Surcharge Act is over and above the amount that is payable as land revenue and in that sense it is an additional charge or imposition which is payable by way of surcharge on land revenue. The fact that the said sum is to be paid and can be recovered along with the

land revenue also does not alter the nature of the levy if it is otherwise found to be of the same character as land revenue. As regards the provisions for assessment of surcharge contained in the Surcharge Act for assessment, we find that while land revenue is assessed in one settlement and continues till the succeeding settlement, surcharge having been imposed during the currency of the settle-

ment, is required to be assessed. The need for assessment arises on account of the fact that surcharge is not leviable on a person holding land measuring less than 10 Bighas and therefore, before making a demand for surcharge it is necessary to determine whether a person from whom demand is made is liable under the provisions of the Surcharge Act and is not entitled to claim exemption from such levy. The fact that the persons holding land less than 10 Bighas though liable to pay land revenue, are not liable to pay surcharge under the Surcharge Act, does not, in our view, alter the character and nature of the levy. Benoy Mazumdar's case (supra) and the cases referred to therein, have no bearing because in those cases the question whether surcharge is to be included in land revenue, was not in issue and has not been considered.

For the reasons aforesaid, we are unable to endorse the view of the High Court that surcharge on land revenue payable under the Surcharge Act is not land revenue but a levy which is distinct from land revenue. In consonance with the law laid down by this Court in Vishwesh Thirthaswamiar's case (supra), it must be held that the surcharge on land revenue levied under the Surcharge Act, being an enhancement of the land revenue, is part of the land revenue and has to be treated as such for the purpose of assessing compensation under s. 12 of the Ceiling Act.

We may now examine whether the local rate payable under the Local Rates Regulation can be regarded as land revenue. In the Preamble to the Local Rates Regulation, the said Regulation has been made to provide "for the levy on land of rates to be applied to defray the expenditure incurred and to be incurred for the relief and prevention of famine and for local purposes". In S.1 of the Regulation it is prescribed that the said Regulation shall come into force in such districts, in such parts thereof and on such dates, as the State Government may by notification in the Official Gazette, from time to time, direct. Section 3 of the Regulation prescribes the rates assessable and reads as under:-

"3. Rates Assessable. All land shall be liable to a levy at the rate of twenty-five paise for every rupee of the annual value of the land in addition to the land-revenue and local cesses (if any) assessed thereon".

Sec.4 which deals with the effect of imposition of land rates on cess now leviable provides as follows:-

"4. Effect of imposition of land rate on cess now leviable. When a rate is imposed on any land under this Regulation, any cess now leviable on such land for any of the purposes mentioned in S.12 shall cease to be levied on such land; or if such cess be

maintained, a corresponding diminution shall be made in such rate."

Section 5 contains the following provision with regard to recovery of rates:

"5. Recovery of rate. All sums due on account of a rate imposed on any land under this Regulation shall be payable by the land-holder and shall be recoverable as if they were arrears of land revenue due on such land.

When such land is held by two or more land-holders such land-holders shall be jointly and severally liable for such sums".

In *Guruswamy & Co. v. State of Mysore*, [1967] 1 SCR 548; Hidayatullah J., as the learned Chief Justice then was, has observed as under:

"The word 'cess' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc.) indicates. When levied as an increment to an existing tax, the name matters for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment".

In *India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.* [1990] 1 SCC 12; these observations have been quoted and it has been mentioned that though they were made in the dissenting judgement, there was no dissent on this aspect of the matter.

From the aforesaid observations, it would appear that the expression 'rate' is generally used in the same as the expression 'cess'. S.4 of the Local Rates Regulation also indicates that the local rate which is imposed by the Local Rates Regulation in the nature of cess because in S.4 it has been provided that when a rate is imposed on any land under this Regulations any cess now leviable on such land for any of the purposes mentioned in S.12, shall cease to be levied on such land or if such cess be maintained, a corresponding diminution shall be made for such rate. Moreover, as indicated in the Preamble, the amount realised by way of local rate is to be used for incurring expenditure for the relief and prevention of famine and for local purposes. Land revenue, on the other hand, forms part of general revenue of the State and is not limited for a particular purpose. Local rate leviable under the Local Rates Regulation is, therefore, a levy which is distinct and different in nature from land revenue. S.3 only provides a convenient mode of prescribing the rate for levy of local rate by fixing it as a proportion, namely, 25% of the annual value of the land and S.5 only provides the mode of recovery of the rate as arrear of land revenue. The said provisions do not have the effect of equating the local rate with land revenue or making it a tax in lieu of land revenue.

The High Court has rightly held that local rate payable under the Local Rate Regulation is an imposition which is distinct in character from land revenue and cannot be regard as land revenue or tax in lieu of land revenue. It cannot, therefore, be taken into consideration for assessing compensation under S.12 of the Ceiling Act.

The appeal is, therefore, partly allowed and the judgement of the High Court to the extent it hold the 'Surcharge' is a levy different and distinct from land revenue is set aside and it is held that surcharge payable under the Assam Land Revenue and Land (Surcharge) Act, 1970 constitutes land revenue and had to be taken into account for assessing compensation under S.12 of the Assam Fixation of Ceiling on Land Holdings Act, 1956. The view of the High Court that the local rate payable under the Local Rates Regulation 1879, is to be excluded for the purpose of assessing such compensation, is upheld. The order of the High Court setting aside the judgement and order of the District Judge, dated July 1, 1981 in Misc. Appeal No.5 of 1979 is maintained. The matter will go back to the District Judge, Dibrugarh, for re-determination of the compensation payable to the appellant in Misc. Appeal No.5 of 1979 in accordance with law. The parties are left to bear their own costs.

R.P

Appeal partly allowed.