Late Nawab Sir Mir Osman Ali Khan vs Commissioner Of Wealth Tax, Hyderabad on 21 October, 1986

Equivalent citations: 1987 AIR 522, 1986 SCR (3)1072, AIR 1987 SUPREME COURT 522, 1986 TAX. L. R. 1502, 1986 21 TAX LAW REV 397, 1986 SCC (SUPP) 700, 1987 SCC (TAX) 88, 1987 UPTC 270, (1986) 28 TAXMAN 641, (1986) JT 684.2 (SC), 1986 JT 684 (2), 1987 TAXATION 84 (2) 1, (1986) 162 ITR 888, (1986) 57 CURTAXREP 89

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:
LATE NAWAB SIR MIR OSMAN ALI KHAN

Vs.

RESPONDENT:
COMMISSIONER OF WEALTH TAX, HYDERABAD

DATE OF JUDGMENT21/10/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1987 AIR 522 1986 SCR (3)1072
1986 SCC Supl. 700 JT 1986 684
1986 SCALE (2)626

ACT:
Wealth Tax Act, 1957 -S. 2(m)-Net wealth-'Assets belonging to the assessee'-Meaning of Properties sold out by the assessee without executing registered sale deed-Full sale consideration received-Possession handed over to the purchaser-Whether legal title still vests in the assessee and properties belong to the assessee for purpose of inclusion in net wealth.

Transfer of Property Act, 1882, s. 53A-Scope of.

Constitution of India-Art. 136-Dismissal of special leave petition in limine-Cannot be construed as affirmation by Supreme Court of the decision from which special leave was sought.

Statutory Interpretation-Though statutes should be equitably interpreted, no place for equity in taxation laws. Words and Phrases-'Belonging to'-Meaning of.

Wealth Tax Act, 1957 -S. 2(e) (iv)-Assessee-Ruler of erstwhile State-Private properties taken over by Government-Granting payment of a fixed annual sum of money in lieu of previous income-Whether such annual payment amounts to 'annuity'-Whether exempt from inclusion in net wealth. Words and Phrases-'Annuity'-Meaning of:

HEADNOTE:

In the assessment year 1957-58, the Wealth Tax Officer had included a sum of Rs.4,90,775 representing the market value of certain immovable properties in respect of which, although the assessee had received full consideration money, he had not executed any registered sale deeds in favour of the vendees. The question was whether the properties belonged to the assessee even after such sale for the purpose of inclusion of his net wealth within the meaning of s. 2(m) of the Wealth Tax Act, 1957. The Wealth Tax Officer held that the assessee

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still owned those properties and consequently the value of the same was included in his net wealth.

On appeal, the Appellate Assistant Commissioner sustained the order of the Wealth Tax Officer with certain deductions in value. On further appeal, the Tribunal held that the assessee had ceased to be the owner of the properties because the assessee having received the consideration money from the purchasers and the purchasers having been put into possession were protected in terms of s. 53A of the Transfer of Property Act and the term 'owner' not only included the legal ownership but also the beneficial ownership. The High Court following the ratio of Commissioner of Income Tax, A.P. Hyderabad v. Nawab Mir Barkat Ali Khan, [1974] Tax L.R. 90, reversed the order of Tribunal and upheld that of the Wealth Tax Officer and the Assistant Appellate Commissioner.

The Assessee-Nizam of Hyderabad, was a paramount ruler owning certain private properties called Sarf-e-khas. On surrendering his paramountcy and acceding to the Union of India, his private properties were taken over by the Government and it was agreed to pay him a sum of Rs. 1 crore annually distributed as follows: (a) Rs.50 lakhs as a privy purse; (b) Rs.25 lakhs in lieu of his previous income from the Sarf-e-khas, and (c) Rs.25 lakhs for the upkeep of palaces etc.

The Government in its letter to the assessee stated that his Sarf-e-khas estates should not continue as an entirely separate administration independent of the Diwani administrative structure and it should, therefore, be

completely taken over by the Diwani, its revenue and expenditure being merged with the revenues and expenditure of the State. Question was whether the assessee's right to receive the sum of Rs.25 lakhs O.S. from the State Government was an asset for the purposes of inclusion in his net wealth under the Wealth Tax Act, 1957.

The Wealth Tax Officer treating the said sum as an annuity and as an asset or property, capitalised the same to Rs.99,78,572 and included that amount as an asset of the assessee. The Appellate Assistant Commissioner agreed with this view. The Tribunal, however, refused to call it as an annuity, characterised it as an annual payment for surrender of life interest and held that the capitalised value of such life interest be added to the net wealth and taxed. The High Court agreed with the view taken by the Tribunal that it was only an annual payment made in compensation for the property which had been taken over by the Govern-

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ment, therefore, it was a part of the wealth and it was possible to commute the annual payment of Rs.25 lakhs. The High Court found that there was neither any express preclusion nor any circumstances from which legitimately an inference could be drawn precluding commutation of the said amount into a lumpsum grant. Consequently, the High Court upheld the order of the Wealth Tax Tribunal.

Partly allowing the Appeal,

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HELD: (1) Under s. 3 of the Wealth Tax Act, 1957 the charge of wealth-tax is on the 'net wealth' of the assessee on the relevant valuation date as defined under s. 2(m) of the Act. [1081E-F]

(2) The material expression for the purposes of this appeal is "belonging to the assessee on the valuation date". The properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed over to the purchasers belonged to the assessee for the purpose of inclusion of his net wealth. [1081G-H; 1082A]

(3) It is not necessary for the purpose of s. 2(m) to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under ss. 9 and 10 of the Indian Income Tax Act, 1922 and ss. 22 to 24 of the Indian Income Tax Act, 1961, where 'owner' is spoken of in respect of house properties, the legal owner is meant and not the equitable or beneficial owner. All the rights embedded in the concept of ownership of Salmond cannot strictly apply either to the purchasers or the assessee in the instant case. [1082C-D; 1082H; 1083A]

(4) The liability to wealth-tax arises because of the belonging of the asset, and not otherwise. Mere possession, or joint possession unaccompanied by the right to be in possession, or ownership of property would, therefore, not

bring the property within the definition of "net wealth" for it would not then be an asset "belonging" to the assessee. Unlike the provisions of Income-tax Act, s. 2(m) of the Act uses the expression 'belonging to' to indicate that the person having lawful dominion of the assets would be assessable to wealth tax. [1083C-E]

(5) Though the expression 'belonging to' no doubt was capable of denoting an absolute title was neyertheless not confined to connoting that sense. Full possession of an interest less than that of full ownership could also be signified by that expression. [1086G-H]

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Commissioner of Wealth-tax, West Bengal v. Bishwanath Chatterjee and Others, 103 I.T.R. 536 and Raja Mohammad Amir Ahmed Khan v. Municipal Board of Sitapur and another. A.I.R. 1965 S.C. 1923, relied upon.

Webster's Distionary and Aiyar's Law Lexicon of British India, [1940] edn., p. 128 and Salmond on Jurisprudence, 12th edn., pp. 246 to 264, referred to.

(6) The property is owned by one to whom it legally belongs. The property does not legally belong to the vendee as against the vendor, the assessee. The precise sense in which the words 'belonging to' were used in s. 2(m) of the Act must be gathered only by reading the instrument or the document as a whole. [1090C-D]

(7) Though all statute including the Wealth Tax Act should be equitably interpreted, there is no place of equity as such in taxation laws. The concept of reality in implementing fiscal provision is relevant and the Legislature in s. 2(m)has not significantly used the expression 'owner' but used the expression 'belonging to'. The Legislature having designedly used the expression 'belonging to' and not the expression 'owned by' had perhaps expected Judicial statesmanship in interpretation of this expression. [1089G-H]

(8) On a distinction being made between 'belonging to' and 'ownership' the following facts emerge: (1) the assessee has parted with the possession which is one of the essentials of ownership; (2) the assessee was disentitled to recover possession from the vendee and assessee alone until document of title is executed was entitled to sue for possession against others i.e. others than the vendee in possession in this case. The title in rem vested in the assessee; (3) the vendee was in rightful possession against the vendor; (4) the legal title, however, belonged to the vendor; and (5) the assessee had not the totality of the rights that constitute title but a mere husk of it and a very important element of the husk. [1088H; 1089A-B]

(9) The property in question legally cannot be said to belong to the vendee. The vendee is in rightful possession only against the world. Since the legal title still vests with the assessee, the property should be treated as belonging to the assessee. It will work some amount of

injustice in such a situation because the assessees would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question. But times perhaps are not ripe to transmute equity on this aspect in the interpretation of law. [1089C-F]
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(10) Under s. 53A of the Transfer of Property Act, 1908 where possession had been handed over to the purchasers and the purchasers are in rightful possession of the same as against the assessee, secondly that the entire consideration has been paid, and thirdly the purchasers were entitled to resist eviction from the property by the assessee in whose favour the legal title vested because conveyance has not yet been executed by him and when the purchasers were in possession had right to call upon the assessee to execute the conveyance, it cannot be said that the property legally belonged to the assessee in terms of s. 2(m) of the Act in the facts and circumstances of the case, even though the statute must be read justly and equitably and with the object of the section in view. If a person has the user and is in the enjoyment of the property it is he who should be made liable for the property in question under the Act, yet the legal title is important and the Legislature might consider the suitability of an amendment if it is so inclined. [1090F-H; 1091A]

Commissioner of Wealth-tax, Gujarat-IV v. H.H. Maharaja F.P. Gaekwad, 144 I.T.R. 304 approved.

Commissioner of Income-tax, A.P. Hyderabad v. Nwab Mir Barkat Ali Khan, [1974] Tax L.R. 90 referred to.

Commissioner of Wealth-tax, A.P. v. Trustees of H.E.H. Nizam's family (Remainder Wealth) Trust, 108 I.T.R. 555, R.B. Jodha Mal Kuthiala v. Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh, 82 I.T.R. 570, Commissioner of Income-tax, West Bengal II v. Ganga Properties Ltd., 77 I.T.R. 637, Commissioner of Wealth-tax-Gujarat-I v. Kum Manna G. Sarabhai, 86 I.T.R. 153, Commissioner of Income-tax, Gujarat v. Ashaland Corporation, 133 I.T.R. 55, Commissioner of Income-tax, Bombay City III v. Smt. T.P. Sidhwa, 133 I.T.R.840, Smt. Kala Rani v. Commissioner of Income-Tax, Patiala I, 130 I.T.R. 321, Mrs. M.P. Gnanambal v. Commissioner of Income-tax, Madras, 136 I.T.R. 103, S.B. (House & Land) Pvt. Ltd. v. Commissioner of Income-tax, West Bengal, 119 I.T.R. 785 and Addl. Commissioner of Income-tax Bihar v. Sahay Properties and Investment Co. (P) Ltd., 144 I.T.R. 357 distinguished.

(11) Special leave is a discretionary jurisdiction and the dismissal of a special leave petition cannot be construed as affirmation by the Supreme Court of the decision from which special leave was sought for. [1087E]

Daryao & Ors. v. State of U.P. & Ors., AIR 1961 SC 1457 relied upon.
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Sahu Govind Prasad v. Commissioner of Income-tax, 144

I.T.R. 851 at 863 approved.

(12) Section 2(e) (iv) of the Wealth Tax Act, 1957 provides that "assets" includes property of every description, movable or immovable, but does not include a 'right to any annuity' in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. [1091B-D]

(13) The term 'annuity' is not defined in the Act. It must be given the signification which it has assumed as a legal term owing to judicial interpretation and not its popular and dictionary meaning. An 'annuity' is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property. The hall mark of an annuity is: (1) it is a money; (2) paid annually; (3) in fixed sum; and (4) usually it is a charge personally on the grantor. [1091G-H]

(14) In this case, in view of the background of the terms of payment and the circumstances why the payment was made, there cannot be any doubt that Rs.25 lakhs annually was an 'annuity'. It was a fixed sum to be paid out of the property of the Government of India in lieu of the previous income of the assessee from Sarf-e-khas. Therefore, it was an'annuity'. [1093C-D]

(15) In the instant case, there is no express provision in the document itself which prevented commutation of this annuity into a lump sum. For inferring whether such as express provision precluding commutation exists, the background of the facts and circumstances of the payment has to be kept in mind. The assessee was given Rs.25 lakhs in lieu of his previous income from the Sarf-e-khas. Income is normally meant for expenditure. The assessee had to incur various exenditures. Commutation is often made when one is not certain as to whether the source from which that income comes. In this case, this being an agreement between earstwhile ruler and the Government of India, there is no such motivation and this payment of Rs.25 lakhs in lieu of the previous income of Sarf-e-khas must be read in conjunction with two other sums namely Rs.50 lakhs as privy purse and Rs.25 lakhs for upkeep of palaces. This bears the same character. [1093E-H; 1094A-B]

(16) As privy purses were not commutable, from the circumstances and keeping in background of the payment, there was an express provision flowing from the circumstances precluding the
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commutation of this amount of Rs.25 lakhs and, therefore, it was exempt under s. 2(e) (iv) of the Act. [1094B-C]

(17) There was no right granted and can be gathered from the terms of the grant of payment for the assessee to claim commutation of the amount of Rs.25 lakhs. That would defeat the purpose of the set up of the arrangement under which the payment of the amount was made. From the nature of the sum stipulated in the letter written by the Government

to the assessee, the assessee had no right to claim commutation. Taking that fact in conjunction with the circumstances under which the payment of Rs.25 lakhs was agreed to, it is held that from the terms of the agreement, there was an express stipulation precluding commutation and, therefore, it comes within cl. (iv) of s. 2(e) of the Act and the assessee was entitled to exemption. [1094C-F]

Oxford Dictionary: Jarman on Wills (P. 1113), relied on and

Ahmed G.H. Ariff and Others v. Commissioner of Wealth-tax, Calcutta, 76 I.T.R. 471, Commissioner of Wealth-tax Gujarat v. Arundhati Balkrishna, 77 I.T.R. 505, Commissioner of Wealth-tax, Rajasthan v. Her Highness Maharani Gayatri Devi of Jaipur, 82 I.T.R. 699, Commissioner of Wealth-tax, Lucknow v. P.K. Banerjee, 125 I.T.R. 641 and H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur & Ors. v. Union of India, [1971] 3 SCR 9 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1763 (NT) of 1974 From the Judgment and Order dated 2.2.1973 of the Andhra Pradesh High Court in Case Reference No. 67 of 1971.

Y. Ratnakar, Mrs, A.K. Verma and D.N. Misra for the Appellant.

S.C. Manchanda, Ms. A. Subhashini and B.B. Ahuja for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This appeal by Special leave arises from the decision of the High Court of Andhra Pradesh and it seeks answers to two questions:

> "(i) Whether, on the facts and in the circumstances of the case, the properties in respect of which registered sale deeds had not been executed, but consideration had been received, belonged to the assessee for the purpose of inclusion in his net wealth within the meaning of section 2(m) of the Wealth-tax Act, 1957?
>
> (ii) Whether, on the facts and in the circumstances of the case, the assessee's right to receive the sum of Rs.25 lakhs O.S. from the State Government was an asset for the purposes of inclusion in his net wealth under the Wealth-tax Act, 1957?"

The year involved in this case is the assessment year 1957-58 under the Wealth-tax Act, 1957 (hereinafter called the 'Act'). It may be mentioned that the valuation date is the first valuation date after coming into operation of the Act which came into force on 1st April, 1957. The assessee was the Nizam of Hyderabad, an individual. There were several questions involved in the assessment with all of which the present appeal is not concerned.

So far as the first question indicated hereinbefore which was really question No. (ii) in the statement of case before the High Court, it may be mentioned that the Wealth- tax Officer had included a total sum of Rs.4,90,775 representing the market value of certain immovable properties in respect of which, although the assessee had received full consideration money, he had not executed any registered sale deeds in favour of the vendees. The Wealth- tax Officer held that the assessee still owned those properties and consequently the value of the same was included in his net wealth.

On appeal the Appellate Assistant Commissioner sustained the order with certain deductions in value. On further appeal the Tribunal held that the assessee had ceased to be the owner of the properties. The Tribunal was of the opinion that the assessee having received the consideration money from the purchasers and the purchasers having been put into possession were protected in terms of section 53A of the Transfer of Property Act and the term 'owner' not only included the legal ownership but also the beneficial ownership. The first question arises in the context of that situation. The High Court following the ratio of Commissioner of Income-Tax, A.P., Hyderabad v. Nawab Mir Barkat Ali Khan, (infra) answered the question in favour of the revenue.

The second question set out before, which was question no. (v) before the High Court, has to be understood in the context of the facts of this case. The right of the assessee to get the amount in question i.e. Rs.25 lakhs a year, arose in the wake of accession of the Hyderabad State to the Union of India. Several communications followed between the Military Governor of Hyderabad,.Maj. Gen. Chaudhuri and the Nizam of Hyderabad as well as other officers. It has to be borne in mind that the assessee was a paramount ruler owning certain private properties called Sarf-e-khas. He surrendered his paramountcy and acceded to the Union of India. His private properties were taken over by the Government and it was agreed by the Government that in lieu of his income from the said properties, he would be paid Rs.25 lakhs in Osmania currency annually.

The communication between Major General Chaudhuri, the Military Governor and the Nizam about this particular sum in contained in the letter dated 1st February, 1949. It stated inter alia as follows:

> "After this merger H.E.H. will be paid annually a total sum of Rs. 1 crore distributed as follows:
>
> (a) Rs.50 lacs as a privy purse,
>
> (b) Rs.25 lacs in lieu of his previous income from the Sarf-e-khas, and
>
> (c) Rs.25 lacs and for the upkeep of Palaces etc."

The letter which appears in the Paper Book of this appeal from Military Governor of Hyderabad, Major General Chaudhuri to the Nizam of Hyderabad, states, inter alia, that Nizam's Sarf-e-khas estates should not continue as an entirely separate administration independent of the Diwani administrative structure. The Sarf-e-khas, it was stated in that letter, should therefore be completely taken over by the Diwani, its revenue and expenditure being merged with the revenues and expenditure of the State. Thereafter we have extracted the relevant portion of the letter which

stipulated for the payment of Rs.25 lakhs. The other parts of the agreement contained in that letter are not relevant for the present purpose.

The Wealth-tax Officer treating the said sum as an annuity and secondly as an asset or property, capitalised the same to Rs.99,78,572 and included that amount as an asset of the assessee. The appellate Assistant Commissioner agreed with the view taken by the Wealth-tax Officer. The Tribunal, however, refused to call it as an annuity and characterised it as an annual payment for surrender of life interest. The Tribunal therefore held that the capitalised value of such life interest be added to the net wealth and taxed.

The High Court in the judgment under appeal agreed with the view taken by the Tribunal that it was only an annual payment made in compensation for the property which had been taken over by the Government. It was, therefore, a part of the wealth, according to the High Court. The High Court was of the view that it was possible to commute the annual payment of Rs.25 lakhs. The High Court found that there was neither any express preclusion nor any circumstances from which legitimately an inference could be drawn precluding commutation of the said amount into a lumpsum grant. The High Court, therefore, was of the view that the Wealth-tax Tribunal had rightly rejected the contention of the assessee. The question was accordingly answered by the High Court in the affirmative and against the assessee and in favour of the revenue.

The first question involved in this case is whether the properties in respect of which registered sale deeds had not been executed, but full consideration had been received by the assessee, belonged to the assessee for the purposes of inclusion in his net wealth in terms of section 2(m) of the Act. Under section 3 of the Act, the charge of wealth-tax is on the net wealth of the assessee on the relevant valuation date. Net wealth is defined under section 2(m) of the Act. The relevant portion of section 2(m) is as follows:

> "(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date....."

The material expression with which we are concerned in this appeal is 'belonging to the assessee on the valuation date'. Did the assets in the circumstances mentioned hereinbefore namely, the properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed- over to the purchasers belonged to the assessee for the purpose of inclusion in his net wealth? Section 53A of the Transfer of Property Act gives the party in possession in those circumstances the right to retain possession. Where a contract has been executed in terms mentioned hereinbefore and full consideration has been paid by the purchasers to the vendor and where the purchasers have been put in the possession by the vendor, the vendees have right to retain that possession and resist suit for specific performance. The purchasers can also enforce suit for specific performance for execution of formal registered deed if the vendor was unwilling to do so. But in the eye of law, the purchasers

cannot and are not treated as legal owners of the property in question. It is not necessary in our opinion, for the purpose of this case to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under sections 9 and 10 of the Indian Income-tax Act, 1922 and sections 22 to 24 of the Indian Income-tax Act, 1961, where 'owner' is spoken in respect of the house properties, the legal owner is meant and not the equitable or beneficial owner. Salmond On Jurisprudence, Twelfth Edition, discusses the different ingredients of 'ownership' from pages 246 to

264. 'Ownership', according to Salmond, denotes the relation between a person and an object forming the subject-matter of his ownership. It consists of a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Firstly, Salmond says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it. Thirdly, the owner has the right to consume, destroy or alienate the thing. Fourthly, ownership has the characteristic of being indeterminate in duration. The position of an owner differes from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character. Salmond also notes the distinction between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognize equitable ownership and denied the equitable owner as an owner at all.

All the rights embedded in the concept of ownership of Salmond cannot strictly be applied either to the purchasers or the assessee in the instant case.

In the instant appeal, however, we are concerned with the expression 'belonging to' and not with the expression 'owner'. This question had come up before this Court before a bench of five learned judges in Commissioner of Wealth- tax, West Bengal, v. Bishwanath Chatterjee and others, 103 I.T.R. 536. At page 539 of the report, this Court referred to the definition of the expression 'belong' in the Oxford English Dictionary "To be the property or rightful possession of". So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises because of the belonging of the asset, and not otherwise. Mere possession, or joint possession unaccompanied by the right to be in possession, or ownership of property would therefore not bring the property within the definition of "net wealth" for it would not then be an asset "belonging" to the assessee. The first limb of the definition indicated in the Oxford Dictionary may not be applicable to these properties in the instant appeal because these lands were not legally the properties of the vendees and the assessee was the lawful owner of these properties. The vendees were, however, in rightful possession of the properties as against the vendor in view of the provisions of section 53A of the Transfer of Property Act, 1908. The scheme of the Act has to be borne in mind. It has also to be borne in mind that unlike the provisions of Income-Tax Act, section 2(m) of the Act uses the expression 'belonging to' and as such indicates something over which a person has dominion and lawful dominion should be the person assessable to wealth tax for this purpose.

In Commissioner of Wealth-tax, A.P. v. Trustees of H.E.H. Nizam's family (Remainder Wealth) Trust, 108 I.T.R. 555, the question as to what is the meaning of the expression 'belonging to' was raised (page 594 of the report) but this Court did not decide whether the trust property belonged to the trustee and whether the trustee was liable under section 3 of the Act apart from or without reference to section 21 of the Act. The case was disposed of in terms of sections 21 of the Act.

In Commissioner of Income-tax, A.P. Hyderabad v. Nwab Mir Barkat Ali Khan, [1974] Tax L.R. 90, it was held by the Andhra Pradesh High Court that when a vendor had agreed to sell his property as in the instant case and had received consideration thereof but had not executed a registered sale deed, his liability to pay tax on income from that property did not cease. His position as 'owner' of the property within the meaning of section 9 of the Indian Income-tax Act, 1922 and section 22 of the Income-tax Act, 1961 did not thereby change. According to the said decision, the agreement to sell and the receipt of consideration by the assessee, the Nizam of Hyderabad did not create any beneficial ownership according to Indian law in the purchaser neither did it create any equitable ownership in him. The ownership did not change until registered sale-deed was executed by the vendor. The term 'owner' in section 9 of the 1922 Act or section 22 of the 1961 Act did not mean beneficial or equitable owner which concept was not recognised in India.

In the instant case as we have noticed the position is different. We are not concerned with the expression 'owner'. We are concerned whether the assets in the facts and circumstances of the case belonged to the assessee any more.

This Court had occasion to discuss section 9 of the Income-tax Act, 1922 and the meaning of the expression 'owner' in the case of R.B. Jodha Mal Kuthiala v. Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh, 82 I.T.R. 570. There it was held that for the purpose of section 9 of the Indian Income-tax Act, 1922, the owner must be the person who can exercise the rights of the owner, not on behalf of the owner but in his own right. As assessee whose property remained vested in the Custodian of Evacuee Property was not the owner of the property. This again as observed dealt with the expression of section 9 of the Indian Income-tax Act, 1922. At page 575 of the report certain observations were relied upon in order to stress the point that these observations were in consonance with the observations of the Gujarat High Court which we shall presently note. We are, however, not concerned in this controversy at the present moment. It has to be borne in mind that in interpreting the liability for wealth-tax normally the equitable considerations are irrelevant. But it is well to remember that in the scheme of the administration of justice, tax law like any other laws will have to be interpreted reasonably and whenever possible in consonance with equity and justice. Therefore, specially in view of the fact that the expression used by the legislature has deliberately and significantly not used the expression 'assets owned by the assessee' but assets 'belonging to the assessee', in our opinion, is an aspect which has to be borne in mind.

The bench decision of the Calcutta High Court in Commissioner of Income-tax, West Bengal II v. Ganga Properties Ltd., 77 I.T.R. 637. rested on the terms of section 9 of the Income- tax Act, 1922 and the Court reiterated again that in Indian law beneficial ownership was unknown; there was but one owner, namely, the legal owner, both in respect of vendor and purchaser, and trustee and cestui que trust. The income from house property refers to the legal owner and further that in case of a sale

of immovable property a registered document was necessary. But these propositions as noted hereinbefore rested on the use of the expression in section 9 of the Income-tax Act, 1922. It used the expression 'owner' unlike 'belonging to'.

The Gujarat High Court in Commissioner of Wealth-tax- Gujarat-I v. Kum Manna G. Sarabhai 86 I.T.R. 153, held that a spes successionis is a bare and naked possibility such as the chance of a relation obtaining a legacy and that could not form the basis of assessment under section 26 of the Act. At page 174 of the report, the Gujarat High Court referred to the expression 'belonging to' and referred to the fact that the expression has been the subject matter in a number of judicial decisions. The Court observed that the words 'property' and 'belonging to' were not technical words.

The Gujarat High Court had occasion to deal with part performance in the case of an agreement of sale in Commissioner of Income-tax, Gujarat v. Ashaland Corporation, 133 I.T.R. 55. The Gujarat High Court noted that in case of a person who was a dealer in land, the business transaction would be completed only when the purchase or sale transaction was complete. In order to decide whether the business transaction was complete, the question of vital importance was whether title in the property had passed. It was only on the passing of the title that the transaction became complete and unless the transaction was complete, any advance receipt of money towards the transaction would not form part of income or profit. It was observed by the Gujarat High Court that the doctrine of part performance embodied in section 53A of the Transfer of Property Act, 1882, had only a limited application and it afforded only a good defence to the person put in possession under an agreement in writing to protect his possession to the extent provided in section 53A, but an agreement in writing to sell, coupled with the parting of possession would not confer any legal title on the purchaser and take the land out of the stock-in-trade of the seller if the seller was a dealer in land. The context in which the Gujarat High Court had to deal this question was entirely different. The Gujarat High Court had to proceed on the basis that the assessee under the Income-tax Act was the owner and he was dealing in land and therefore whether the land was stock-in-trade was the question. In the instant appeal we are concerned with the expression 'belonging to'. Therefore the observations of the Gujarat High Court would not be quite apposite to the problem of the instant appeal.

This question was again viewed by the Bombay High Court in a slightly different context in Commissioner of Income- tax, Bombay City-III v. Smt. T.P. Sidhwa, 133 I.T.R. 840. The Bombay High Court was not concerned with the expression 'belonging to'.

Our attention was drawn to another decision of the Gujarat High Court in Commissioner of Wealth-tax, Gujarat-IV v. H.H. Maharaja F.P. Gaekwad, 144 I.T.R. 304. There the facts were more or less identical with the instant appeal on this aspect of the matter. The assessee owned two properties and had agreed to sell one property to a company. The vendees had paid Rs.30 lakhs in January, 1964 and were put in possession of the property. Thereafter, four instalments of Rs. 17-1/2 lakhs each were paid and the property was conveyed by four deeds executed in 1970-71 and 1972. It was contended that at the relevant time, the property did not belong to the assessee. It was held by the Gujarat High Court that receipt of part of the sale price and parting of possession would not divest the vendor of immovable property of his title to the property. The doctrine of part

performance embodied in section 53A of the Transfer of Property Act had limited application and afforded a good defence to the person put in possession. The legal position and the relevant clauses of the agreement of sale showed that the assessee was the owner of the property at the relevant valuation dates. Therefore, according to the Gujarat High Court, the property agreed to be sold which had been parted with was includible as an asset of the assessee.

Even in some cases the phrase 'belonging to' is capable of connoting interest less than absolute perfect legal title. See in this connection the observations of this Court in Raja Mohammad Amir Ahmed Khan v. Municipal Board of Sitapur and another, A.I.R. 1965 S.C. 1923. This Court observed in that case that though the expression 'belonging to' no doubt was capable of denoting an absolute title was nevertheless not confined to connoting that sense. Full possession of an interest less than that of full ownership could also be signified by that expression.

Before concluding this aspect of the matter, there is certain as-

pect which has to be borne in mind. Reliance was placed as we have mentioned hereinbefore on the decision of the Gujarat High Court in the case of Commissioner of Wealth- tax, Gujarat-IV v. H.H. Maharaja F.P. Gaekwad (supra) It was contended that if the Gujarat High Court's view was correct, then the assessee's contention on this aspect in the instant appeal cannot be accepted. On behalf of the assessee it was submitted that the decision of the Gujarat High Court in Commissioner of Wealth-tax, Gujarat-I v. Kum. Manna G. Sarabhai (supra) not having been taken into consideration by the Gujarat High Court in the later decision, the Gujarat High Court the judgment on which revenue relied was not correct. It is not necessary in the view we have taken on the other aspect of the matter, namely, the use of the expression 'belonging to' to discuss this point any further. It was further submitted before us that from the said decision of the Gujarat High Court in Commissioner of Wealth-Tax, Gujarat-IV v. H.H. Maharaja F.P. Gaekwad (supra), a special leave petition was filed by the assessee, which was dismissed by this Court on 17th January, 1983. (See in this connection 144 I.T.R. Statute page 23). It is, however, well-settled that dismissal of special leave petition in limine does not clothe the decision under appeal in special leave petition with the authority of the decision of this Court. See in this connection the observations in Daryao & Ors. v. State of U.P. & Ors., AIR 1961 SC 1457. It may be mentioned as was rightly observed by a full bench of the Allahabad High Court in Sahu Govind Prasad v. Commissioner of Income-tax, 144 I.T.R. 851 at 863, special leave is a discretionary jurisdiction and the dismissal of a special leave petition cannot be construed as affirmation by this Court of the decision from which special leave was sought for.

On this aspect, it may also be mentioned that our attention was drawn to some decisions which we shall presently note.

The Punjab and Haryana High Court in the case of Smt. Kala Rani v. Commissioner of Income-tax, Patiala-I, 130 I.T.R. 321 had occasion to discuss this aspect of the matter. But the Punjab and Haryana High Court was construing the meaning of the expression 'owner' under section 22 of the Income-tax Act, 1961. There, the division bench of the Punjab & Haryana High Court held that the assessee occupied the property after the execution of the agreement of sale deed in his favour and after completion of the building, he was in a position to earn income from the property sold to him,

though the registered sale deed was executed subsequently in April, 1969. It was held that the assessee was 'owner' in terms of section 22 of the Income-tax Act, 1961.

The Madras High Court had occasion to discuss this aspect in Mrs. M.P. Gnanambal v. Commissioner of Income-tax, Madras, 136 I.T.R. 103. There the facts were entirely different and the Madras High Court held that the rights with reference to the properties in question in that case could only be described as a delusion and a snare so long as the sons continued to occupy the property which they were entitled to under the will and to describe the assessee's right as owner of the property would be a complete misnomer. There, the court was construing the will and section 22 of Income-tax Act, 1961 as to who were the owners in terms of the will.

In all these cases as was reiterated by the Calcutta High Court in S.B. (House & Land) Pvt. Ltd. v. Commissioner of Income-tax, West Bengal, 119 I.T.R. 785 the question of ownership had to be considered only in the light of the particular facts of a case. The Patna High Court in Addl. Commissioner of Income-tax Bihar v. Sahay Properties and Investment Co. (P) Ltd., 144 I.T.R. 357 was concerned with the construction of the expression 'owner' in section 22 of the Income-tax Act, 1961. There, the assessee had paid the consideration in full and had been in exclusive and absolute possession of the property, and had been empowered to dispose of or even alienate the property. The assessee had the right to get the conveyance duly registered and ex- ecuted in its favour, but had not exercised that option. The assessee was not entitled to say that because of its own default in having a deed registered in its name, the assessee was not the owner of the property. In the circumstances, it was held that the assessee must be deemed to be the owner of the property within the meaning of section 22 of Income-tax Act, 1961 and was assessable as such on the income from the property. This is only an illustrative point where in certain circumstances without any registered conveyance in favour of a purchaser, a person can be considered to be 'owner'. It may incidentally be mentioned that this Court has granted special leave to appeal against this judgment. See in this connection [1983] 143 I.T.R. 60.

Salmond's conception of 'ownership' has been noted. The meaning of the expression 'belonging to' has also been noted. We have discussed the cases where the distinction between 'belonging to' and 'ownership' has been considered. The following facts emerge here: (1) the assessee has parted with the possession which is one of the essen-

tials of ownership, (2) the assessee was disentitled to recover possession from the vendee and assessee alone until the document of title is executed was entitled to sue for possession against others i.e. others than the vendee in possession in this case. The title in rem vested in the assessee, (3) The vendee was in rightful possession against the vendor, (4) the legal title, however, belonged to the vendor. (5) The assessee had not the totality of the rights that constitute title but a mere husk of it and a very important element of the husk.

The position is that though all statutes including the statute in question should be equitably interpreted, there is no place of equity as such in taxation laws. The concept of reality in implementing fiscal provision is relevant and the Legislature in this case has not significantly used the expression 'owner' but used the expression 'belonging to'. The property in question legally,

however, cannot be said to belong to the vendee. The vendee is in rightful possession only against the vendor. Speaking for myself, I have deliberated long on the question whether in interpreting the expression 'belonging to' in the Act, we should not import the maxim that "equity looks upon a thing as done which ought to have been done" and though the conveyance had not been executed in favour of the vendee, and the legal title vested with the vendor, the property should be treated as belonging to the vendee and not to the assessee. I had occasion to discuss thoroughly this aspect of the matter with my learned Brother and in view of the position that legal title still vests with the assessee, the authorities we have noted are preponderantly in favour of the view that the property should be treated as belonging to the assessee in such circumstances, I shall not permit my doubts to prevail upon me to take the view that the property belongs to the vendee and not to the assessee. I am conscious that it will work some amount of injustice in such a situation because the assessees would be made liable to bear the tax burden in such situations without having the enjoyment of the property in question. But times perhaps are yet not ripe to transmute equity on this aspect in the interpretation of law-much as I would have personally liked to do that. As Benjamin Cardozo has said, "The judge, even when he be free, is not wholly free". A Judge cannot innovate at pleasure.

It may be said that the legislature having designedly used the expression 'belonging to' and not the expression 'owned by' had perhaps expected judicial statesmanship in interpretation of this expression as leading to an interpretation that in a situation like this it should not be treated as belonging to the assessee but as said before times are not yet ripe and in spite of some hesitation I have persuaded myself to come to the conclusion that for all legal purposes the property must be treated as belonging to the assessee and perhaps legislature would remedy the hardship of assessee in such cases if it wants. The assessee had a mere husk of title and as against the vendee the assessee had no reality of title but as against the world, he was still the legal owner and real owner.

As has been observed by this Court in Commissioner of Wealth-tax, West Bengal v. Bishwanath Chatterjee and Others (supra) the property is owned by one to whom it legally belongs. The property does not legally belong to the vendee as against the vendor, the assessee.

In Webstor's Dictionary 'belonging to' is explained as meaning, inter alia, to be owned by, be in possession of. The precise sense in which the words were used, therefore, must be gathered only by reading the instrument or the document as a whole. Section 53A of the Transfer of Property Act, 1908 is only a shield and not a sword.

In Aiyar's Law Laxicon of British India, [1940] Edition page 128, it has been said that the property belonging to a person has two meanings-(1) ownership; (2) the absolute right of the user. The same view is reiterated in Stroud's Judicial Dictionary 4th Edn. page 260. The expression:

> 'property belonging to' might convey absolute right of the user as well as of the ownership. A road might be said, with perfect propriety, to belong to a man who has the right to use it as of right, although the soil does not belong to him.
>
> Under section 53A of the Transfer of Property Act, 1908 where possession has been handed over to the purchasers and the purchasers are in rightfuly possession of the

same as against the assessee and the occupation of the property in question, and secondly that the entire consideration has been paid, and thirdly the purchasers were entitled to resist eviction from the property by the assessee in whose favour the legal title vested because conveyance has not yet been executed by him and when the purchasers were in possession had right to call upon the assessee to execute the conveyance, it cannot be said that the property legally belonged to the assessee in terms of section 2(m) of the Act in the facts and circumstances of the case even though the statute must be read justly and equitably and with the object of the section in view. We are conscious that if a person has the user and is in the enjoyment of the property it is he who should be made liable for the property in question under the Act yet the legal title is important and the legislature might consider the suitability of an amendment if it is so inclined.

This question therefore must be answered in favour of the revenue and in the affirmative. The appeal in this aspect must therefore fail.

For the second question it is necessary to refer to section 2(e) which provides for the definition of assets by stating that "assets" includes property of every description, movable or immovable, but does not include,-

".....

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;"

Therefore, in order to be excluded from the assets of the assessee, the right being the sum which was annually to be paid under the agreement or letter mentioned hereinbefore must be by the terms and conditions precluded commutation of any portion thereof into a lumpsum grant. The question therefore is-could this lumpsum grant of Rs.25 lakhs be commuted by the Nizam and the capital value of the commutation be received? Furthermore, the next question that arises was whether that commutation was precluded by the terms and conditions relating to that right. It may be that preclusion might be either by express terms and conditions of the right or as an inference from the terms and conditions of the payment.

We need not go into the rights of the erstwhile princes before the abolition of the privy purses whether the privy purses could be commuted or not.

The term 'annuity' is not defined in the Act. According to the Oxford Dictionary, 'annuity' means sums payable in respect of a particular year; yearly grant. An annuity is a certain sum of money payable. yearly either as a personal obligation of the grantor or out of property. The hall-mark of an annuity, according to Jarman On Wills (page 1113) is:

(1) it is a money; (2) paid annually; (3) in fixed sum; and (4) usually it is a charge personally on the grantor.

Whether a particular sum is an annuity or not has been considered in various cases. It is not necessary in the facts and circumstances of the case and in view of the terms of the payment indicated to examine all these cases.

In Ahmed G.H. Ariff and Others v. Commissioner of Wealth-tax, Calcutta, 76 I.T.R. 471, this Court held that the word 'annuity' in clause (iv) of section 2(e) of the Act must be given the signification which it has assumed as a legal term owing to judicial interpretation and not its popular and dictionary meaning.

In Commissioner of Wealth-tax Gujarat v. Arundhati Balkrishna, 77 I.T.R. 505, there were two deeds of trust. The assessee's father had settled certain shares in trust for the benefit of the assessee and her two brothers. The trustees were to pay the residue of the income from the trusts in equal shares to the beneficiaries after deducting all costs and expenses. The assessee had a right after she had attained majority and after the birth of her first child to require the trustees to pay her shares out of the corpus of the trust fund absolutely up to one-half thereof. Under another trust created by her mother-in-law of certain sums of money and certain shares the trustees were required to pay the income of the trust funds after deducting expenses to the assessee during her lifetime. It was held that the payments to the assessee under the trust deeds were not 'annuities' within the meaning of section 2(e) (iv) of the Act.

In Commissioner of Wealth-tax, Rajasthan v. Her Highness Maharani Gayatri Devi of Jaipur, 82 I.T.R. 699, this question arose again. The Maharaja of Jaipur had executed a deed of irrevocable trust whereunder the properties mentioned in the schedule thereto stood transferred to the trustee. The trust fund was to include the assets mentioned in the schedule and also such additions thereto and other capital moneys which might be received by the trustee. The assessee was one of the beneficiaries under the trust to whom the trustee was to pay during her lifetime 50 per cent of the income of the trust fund. The question was whether the assessee had a life interest in the corpus of the trust fund and her interest was therefore an 'asset' liable to wealth-tax or whether the assessee had only a right to an annuity and as such her right was exempt from wealth-tax in view of section 2(e) (iv) of the Act. It was held by this Court that since neither the trust fund nor the amount payable to the assessee was fixed and the only thing certain was that she was entitled to 50 per cent of the income of the trust fund, what the assessee was entitled to was not an annuity but an aliquot share in the income of the trust fund. The assessee had a life interest in the trust fund and the right of the assessee under the trust deed was not exempt from wealth-tax by virtue of the provisions of section 2(e) (iv).

In Commissioner of Wealth-tax, Lucknow v. P.K. Banerjee, 125 I.T.R. 641, it was held that the right of the assessee in the trust fund in that case was not an 'annuity' and was not exempt from the wealth-tax under section 2(e)

(iv) of the Act. It was further observed that in order to constitute an 'annuity' the payment to be made periodically should be a fixed or predetermined one and it should not be liable to variation depending upon or on any ground relating to the general income of the fund or estate which was charged for such payment.

In this case, in view of the background of the terms of payment and the circumstances why the payment was made, there cannot be any doubt that Rs.25 lakhs annually was an 'annuity'. It was a fixed sum to be paid out of the property of the Government of India in lieu of the previous income of the assessee from Sarf-e-khas. Therefore, it was an annuity.

The only question that arises, was there any express provision which prevented commutation of this annuity into a lumpsum? Counsel for the revenue contended that there must be an express provision which must preclude commutation. In this case indeed there is no express provision from the document itself. The question is: can, from the circumstances of the case, such an express provision precluding commutation be inferred in the facts and circumstances of this case?

The background of the facts and circumstances of the payment has to be kept in mind. The Nizam had certain income. He was being given three sums-one was the privy purse which was not commutable; the other was payment of Rs.25 lakhs for the upkeep of palaces etc. and the third of Rs.25 lakhs in lieu of his previous income from the Sarf-e- khas. Income is normally meant for expenditure. The Nizam had to incur various expenditures. Commutation is often made when one is not certain as to whether the source from which that income comes for example, when a man retires from service, he normally commutes in order to ensure for himself and after his death for his family a certain income which he can ensure by getting the commuted amount invested in his private bank or otherwise which he may not be sure because upon his death the pension will cease.

In this case this being an aggrement between erstwhile ruler and the Government of India, there is no such motivation and this payment of Rs.25 lakhs in lieu of the previous income of Sarf-e-khas must be read in conjunction with two other sums namely Rs.50 lakhs as privy purse and Rs.25 lakhs for upkeep of palaces. This bears the same character.

As privy purses were not commutable, we are of the opinion that from the circumstances and keeping in background of the payment, there was an express provision flowing from the circumstances precluding the commutation of this amount of Rs.25 lakhs. If that is the position, then, in our opinion, it was exempt under section 2(e) (iv) of the Act.

There was no right granted and can be gathered from the terms of the grant of payment for the assessee to claim commutation of the amount of Rs.25 lakhs. That would defeat the purpose and the set up of the arrangement under which the payment of the amount was made. The nature of privy purses have been discussed in H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur & Ors. v. Union of India, [1971] 3 SCR 9. We are, however, not concerned with the controversy of the privy purse. But it is quite evident from the nature of the sum stipulated in the letter, the assessee had no right to claim commutation. Taking that fact in conjunction with the circumstances under which the payment of Rs.25 lakhs was agreed to, we are of the opinion that it must be held that from the terms of the agreement, there was an express stipulation precluding commutation. If that is so then it comes within clause (iv) of section 2(e) of the Act and the assessee was entitled to exemption. The question therefore must also be answered in the negative and in favour of the assessee.

The appeal is disposed of in the aforesaid terms. The judgment and order of the High Court are modified accordingly. In view of the divided success, there will be no order as to costs.

A.P.J. Appeal allowed in part.