we have enumerated above. We are therefore not satisfied about the due execution and attestation of this will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it.

We therefore allow the appeal, set aside the judgments of the High Court and the trial court and dismiss the suit arising out of the application for probate made by the respondent. The appellants will get their costs throughout from the respondent, Kumar Khagendra Narayan Deb.

Appeal allowed.

STATE OF UTTAR PRADESH

v.

KUNWAR SRI TRIVIKRAM NARAIN SINGH

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, M. HIDAYATULLAH, J. C. SHAH and RAGHUBAR DAYAL, JJ.)

Zamindari Abolition—Pension paid in lieu of compensation for loss of Tehsildari rights and proprietory rights—If interest in land—U.P. Land Revenue Act, 1901(U.P. 3 of 1901), s.32, cls. (a) to (d)—U.P. Zamindari Abolition & Land Reforms Act, 1950 (U.P. 1 of 1951), ss.3(8), 4, 63(b).

By the order of the then Government the right of S, an ancester of the respondent, to the entire parganas "Syudpore Bhettree" was resumed. S challenged in a civil court the authority of the Government to resume his interest in the jagir. During the pendency of the dispute, settlement proceedings were commenced and in 1832 the Settlement Officer reported that to 166 mahals of the "Syudpore Bhettree" pargana, the village zamindars had established their proprietory rights and only on 12 mahals the proprietory right of S had been established. The dispute pending in the Civil Court was compromised, and the terms were finalised in 1838 with H, son of S (who had died in the meantime). The terms, *inter alia*, were that for

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166 mahals settled with the Zamindars, H, and his heirs in perpetuity, be paid annually a pension of 1/4th of the collections after deducting the Tehsildari charges and for 12 mahals settled with H allowance be made in the form of remission of 1/4th of the revenue assessed. The Government under the settlement intended to give a clear fourth of the net revenue of the parganas as pension. The allowance and/or pension was paid through Treasury Office year after year from 1838 to H and his descendants.

In 1951 the U.P. Legislature enacted the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1 of 1951, and under s.6(b) of the Act the revenue authorities stopped payment of the allowance to the respondent. The respondent claimed that by virtue of the notification issued under s.4 of the Act his right to receive pension did not cease because the pension was neither land nor immovable property nor an estate within the meaning of the Act and being merely compensation payable to him in lieu of the rights of his ancestors over the estates comprised within the pargana "Syndpore Bhettree", it was not liable to vest in the State.

Held, that the right to receive the allowance of Rs.30,612-8-0 for 166 mahals from the Government under the arrangement was not in respect of land or its revenue; it was granted as consideration for settlement of a claim litigated in a civil court relating to that land, and could not in the absence of an express provision to that effect be called "an area included under one entry in any of the registers" described in various clauses, (a) to (d) of s.32 of the U.P. Land Revenue Act, 1901.

The intention of the Legislature was to extinguish estates and all derivative rights in estates and to extinguish the interest of intermediaries between the State and the tiller of the soil. The grant of confirmation of title which is in respect of a right or privilege to land in an estate or its revenue; it must determine under cl.(b) of s.6 of the Act; but a right to receive an allowance granted in consideration of extinction of a right to land or land revenue does not by the force of cl.(b) determine. The allowance has not the quality of land or land revenue; its quantum only was measured by equating it with a fourth share in the net revenue of a part of land which was the subject matter of the suit in which arrangement for payment of the allowance was made. A person receiving an allowance from the State in consideration "of extinction of a right to land or land revenue is not a proprietor who is an assignee of land revenue," and in particular if his name is not entered in the revenue record under cls.(a) to (d) of s.32 of the U.P. Land Revenue Act, 1901, the provisions relating to computation of gross and net assets will not apply to him. The Act does not intend to extinguish the right to receive allowance granted in

considerations of extinction of right to land or land revenue by the operation of s.6(b) of the Act 1 of 1951.

Held, further, that the respondent was a proprietor of the 12 mahals, of the "Syudpore Bhettree" Parganas. The said 12 mahals were an "estate" within the meaning of s.3(8) of the Act and by s. 4 the right of the respondent in that estate stood vested in and transferred to the State. The right of the respondent in the 12 mahals having ceased, the right of remission could not be converted into a positive right to receive the amount thereof.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 529 of 1958.

Appeal from the judgment and decree dated March 9,1956,of the Allahabad High Court in Civil Misc. Writ No. 464 of 1954.

C. B. Agwarwala, K. B. Asthana and *C. P. Lal, for the appellants.*

M. C. Setalvad, Attorney-General of India, A. V. Viswanatha Sastri and *S. P. Varma,* for the respondent.

1961. August 22. The Judgment of the Court was delivered by

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SHAH, J.—Under a treaty between the East India Company and Nawab Asafuddaula, the Province of Banaras was ceded about the year 1775 to the East India Company. The Company then granted a sanad to Raja Chet Singh, the former ruler of Banaras, and under that sanad, the rights and powers previously held by Raja Chet Singh were conferred afresh. Raja Chet Singh granted in jagir, pargana "Syudpore Bhettree" in perpetuity to his Diwan Ousan Singh as remuneration for services rendered to his family. Raja Chet Singh having renounced his gadi, the East India Company confirmed the grant made by the Raja in favour of Ousan Singh. Raja Chet Singh was succeeded by Raja Mahip Narain Singh who executed a sanad in favour of Ousan Singh affirming the grant.

Land revenue settlements were made in the Province of Banaras about the year 1789-90, but the jagirs including "Syudpore Bhettree" were excluded from that settlement. Ousan Singh died in or

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about the year 1800, and his son Sheo Narain Singh succeeded to the jagir. In the enquiry held by the Collector of Ghazipore into the proprietary right claimed by the jagirdar under Regulation II of 1819, it was declared that the grant to Ousan Singh was for life only and did not confer a heritable or transferable tenure in the parganas. The decision of the Collector was confirmed by the Commissioner of Bihar and Banaras, subject to the recommendation that Sheo Narain Singh should be maintained in possession of the parganas for life. The Government then directed in 1828 that a detailed settlement be made with the village zamindars, and offered Sheo Narain Singh allowance for life of one-half of the revenue to be assessed on the pargana. Sheo Narain Singh declined to accept the offer and commenced an action in the civil court contesting the validity of the order resuming the jagir. The Government considered the question afresh, and resolved to revise the order of resumption and in July 1830, ordered that Sheo Narain Singh be considered Tahsildar of parganas "Syudpore Bhettree," and that the office be treated as hereditary devolving upon the descendants of the jagirdar and held so long as the incumbent did not infringe the privileges found to belong to other classes at the time of formation of the settlement. Sheo Narain Singh died before the resolution of the Government was communicated to him and he was succeeded by his son Harnarain Singh who withdrew the suit and signed a compromise incorporating the terms of the resolution.

On August 19, 1831, the Secretary to the Government addressed to the Agent of the Governor-General at Banaras a letter requesting the Secretary to the Governor-General in the Pension department to prepare the necessary documents relating to the grant of a sanad specifying that parganas "Syudpore Bhettree" were granted on an "istmrar" tenure to Harnarain Singh for his own benefit and of his heirs and successors in perpetuity on condition of their

paying to Government 3/4ths of the Jamma which the revenue officers may in a resettlement of the parganas assess thereon, and that all claims to proprietary right to any village or villages situate in the said parganas shall be fully enquired into and in the event of any such claims being established to the satisfaction of the Government, the village or villages forming the subject of the claim shall be considered distinct from and independent of the grant and that a settlement shall be made with the proprietors as in other cases, that the office of Tahsildar shall belong to Harnarain Singh and be hereditary in his family so long as the conditions prescribed for the duties of that office be not infringed, and that in virtue of such office, the separate proprietors shall continue to pay the Jamma which may be assessed on their villages through Harnarain Singh or such other member of the family as the Government may appoint, provided that 1/4th of the Jamma of such separated villages shall be deducted from the payment to be made to the Government in lieu of all remuneration for discharging the duties of Tahsildar, and provided further that until the settlement shall be completed, Harnarain Singh shall continue to pay Jamma to Government. This proposal calling upon Harnarain Singh to bear all the expenses of the administration and any loss in collection which may occur, departed from the terms of the compromise. Harnarain Singh refused to accept the offer of a sanad on the terms set out in that letter and also the office of Tahsildar. In the meanwhile, proceedings for settlement were commenced and on November 16, 1832, the Settlement Officer reported on the conclusion of a summary settlement of the parganas that in 166 mahals, the village zamindars established proprietary rights and the revenue assessed upon them was Rs. 1,28,960. He further reported that 12 mahals of which the gross revenue was Rs. 22,840 were settled with the jagirdar at a reduced revenue of Rs. 17,130.

Harnarain Singh having refused to undertake

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the office of Tahsildar on the terms offered by the Government, the Board of Revenue suggested that Harnarain Singh should receive 1/4th of the net collections after deducting from the gross collection the cost of Tahsil establishment thereby giving him an income of Rs. 36,322-8-0. The Board of Revenue recommended that a sanad be issued under the authority of the Lt. Governor conferring "the pension of Rs. 36,322-8-0 on Babu Harnarain Singh and his heirs in perpetuity".

In a letter dated September 13, 1837, it was recorded that the Lt. Governor of N.W.F. Province was of the view that it would be more conformble with the terms of the agreement if the allowance on Harnarain Singh's villages (12 mahals) were given in the form of a remission of revenue to the amount of one-fourth, the Jamma being fixed at Rs. 17,130 instead of Rs. 22,940 and in the villages settled with zamindars (166 mahals) Harnarain Singh be paid annually a pension of 1/4th of the collections after deducting the Tahsildari charge, and on that footing Rs. 30,612-8-0 be granted to Harnarain Singh. By letter dated October 19, 1837, from the Secretary to the Lt. Governor, N.W.F. Province, the Secretary to the Board of Revenue was informed that the Lt. Governor had resolved to adopt the Board's recommendation made in their letter dated September 26, 1837, and to allow Harnarain Singh 1/4th of the net collections after duducting the expenses of the Tahsildari establishment *i. e.*, Rs. 30, 612-8-0 out of a net Jamma of the villages amounting to Rs. 1,28,960. About the 12 mahals settled with Harnarain Singh, the allowance was directed to be made in the form of a remission of 1/4th of revenue assessed. Finally, by letter dated September 14, 1838, from the Secretary to the Sadar Board of Revenue to the Officiating Commissioner 5th Division, Banaras, it was stated that "what the Government intended to give is a clear fourth of the net revenue of the Pargana to the Muqurrureedar as pension". The letter further stated.

"2. The arrangement of paying a portion of that pension by a remission of revenue on certain mauzas settled, as was supposed, directly with the muqurrureedar was proposed by the Board and allowed by Government as a mere matter of convenience to the parties. Neither Government nor Board intended to alienate any part of the muqurrureedar's pension to his son or to any other person.

3. If the mauzas supposed to have been settled with the muqurrureedar for his own use and behalf, turn out to be held by another person on a distinct interest, it will be necessary, the Board observe to modify the arrangement previously allowed and to collect the whole assessed revenue of those mauzas as of all others ; and when the same shall have been collected to pay the Muqurrureedar his clear fourth of the net collections.

4. As however, these mauzas were settled by the Government with the Muqurrureedar his responsibility for the Jumma any portion of revenue which may fall in arrear by person or the arrangement made by him, or of the domestic differences of his family, must be made good from his pension, before the assignment of the fourth share of the net collections can have effect.

5. The Board must consider the Muqurrureedar as the owner of these villages during his life. With his family arrangements they have no concern. But if it will be his wish that the whole revenue be collected from these villages, and one-fourth be returned to him from the treasury instead of receiving that fourth in the shape of a remission, he is at liberty to make the election.

6. He is also the Board remark of course at liberty to cause those mauzas to be

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transferred or sold in the case of arrear, but his responsibility for the assessed Jumma as fixed by the act of settlement will remain the same.

It is manifest that the recommendations made by the Board of Revenue and the Secretary to the Government in the lengthy correspondence varied from time to time, but in the final letter it appears to have been made clear that an amount equivalent to 1/4th of the net revenue of the 166 mahals be given as pension annually to the jagirdar.

A formal sanad, though contemplated, was, it appears, never issued, but it is common ground that the allowance was paid through the Treasury Office of the Collector of Ghazipore year after year since the year 1838 to Harnarain Singh and his descendants. This allowance to the jagirdar of "Syudpore Bhettree" was called sometimes in the revenue papers "malikana" sometimes "pension" and sometimes a "share in the revenue of the entire pargana".

In 1951, the U. P. Legislature enacted the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1 of 1951, and relying upon s. 6(b) of the Act, the revenue authorities stopped payment of the allowance to the descendants of Harnarain Singh. The respondent who is a descendant of Harnarain Singh then presented Writ Petition No. 464 of 1954 in the High Court of Judicature at Allahabad for a writ in the nature of *mandamus* calling upon the State of Uttar Pradesh to forbear from interfering with his right to regular payment of the "pension, allowance or malikana" payable in lieu of the hereditary estate of Harnarain Singh in respect of parganas "Syudpore Bhettree" and for an order for payment of the "pension, allowance or malikana" as it fell due. The respondent claimed *inter alia* that by virtue of the notification issued under s. 4 of the Act, his right to receive the pension did not cease, especially when the scheme of the Act and the principles of assessment did not contemplate payment

of compensation in respect of extinction of his right to the allowance, and that in any event, there was no nexus between the pension and the estates sought to be acquired under Act 1 of 1951 or the zamindari system sought to be abolished, because the pension was neither land nor immovable property nor an estate within the meaning of the Act and being merely compensation payable to him in lieu of the rights of his ancestors over the estates comprised within the pargana "Syudpore Bhettree", it was not liable to vest in the State. The High Court rejected certain preliminary objections to the maintainability of the petition (which objections are not canvassed in this appeal) and held that the right of the respondent to receive Rs. 36,330 per annum was not an "estate" within the meaning of the Act and that the right was not acquired under the Act nor did compensation fall to be paid for the same. In the view of the High Court, under s. 6 of the Act, only the rights of the intermediaries in respect of land revenue of the lands comprised in the estate were extinguished and that the rights of third parties under a contract with the State not relating to the rights and privileges of intermediaries, tenants or other persons having interest in land were not effected, and the predecessors in interest of the respondent having been granted an allowance annually in lieu of abandonment of the right to realise land revenue, the arrangement did not come to an end because of the "abolition of the zamindari" under the Act.

The question which falls to be determined in this appeal by the State of Uttar Pradesh, is whether the right of the respondent to receive the allowance under the arrangement of the year 1838 was extinguished as a consequence ensuing from the vesting of the "Syudpore Bhettree" parganas in the State of Uttar Pradesh under s. 4 of the Act.

By the preamble, it was recited that the Act was enacted to provide for the abolition of the

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Zamindari system which involved intermediaries between the tiller of the soil and the State and for the acquisition of their rights, title and interest and to reform the Law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith. By s.3 (8) which was retrospectively amended by Act 14 of 1958, "estate" was defined as meaning the area included under one entry in any of the registers described in cls. (a) to (d) and in so far as it relates to a permanent tenure-holder in any register described in cl. (e) of s. 32 of the U. P. Land Revenue Act 1901 as it stood immediately prior to the coming into force of the Act or subject to the restrictions mentioned with respect to the register described in cl. (e) in any of the registers maintained under any other Act, Rule, Regulation or Order relating to the preparation or maintenance of record of rights in force at any time and included share in or of an estate. "Intermediary" was defined as meaning with reference to any estate, a proprietor, under-proprietor, sub-proprietor, thekadar, permanent lessees in Avadh and permanent tenure holder of such estate or part thereof. "Land" was defined as meaning, except in ss. 143 and 144, as land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which included pisciculture and poultry farming. By s.4, provision was made for vesting of estates in the State of Uttar Pradesh. By sub-s.(1), it was enacted, insofar as it is material, that the State Government may by notification declare that as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and from the date so specified, all such estates shall stand transferred to and vest, except as provided in the Act, in the State free from all encumbrances. Section 6 provided for the consequences of an estate in the State. On the publication of a notification under s. 4 of the Act, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as

otherwise provided in the Act, the consequences set forth in cls.(a) to (j) of s. 6 were to ensue in the area to which the notification related. By cl.(a), all rights, title and interest of intermediaries in every estate in such area and in the sub-soil in such estate including rights, if any, in mines and minerals ceased and vested in the State. Clause (b) on which the dispute primarily turns, provided :

> "All grants and confirmations of title of or to land in any estate so acquired, or of or to any right or privilege in respect of such land or its land revenue shall, whether liable to resumption or not determine."

By cl. (c), all rents, local rates and *sayar* in respect of any estate or holding therein for any period after the date of vesting and which, but for the acquisition, would be payable to an intermediary, vested in and became payable to the State Government and not to the intermediary ; and where under an agreement or contract made before the date of vesting any rent, cess, local rate or *sayar* for any period after that date had been paid to or compounded or released by an intermediary, the same, notwithstanding the agreement or the contract, became recoverable by the State Government from the intermediary. By cls. (d) and (e), liability of intermediaries in respect of any estate incurred for any period prior to the date of vesting remained enforceable. By cl. (f), the interest of intermediaries in any estate was exempt from attachment or sale in execution of any decree or other process of any court and any attachment existing at the date of vesting or any order for attachment passed before such date, subject to the provisions of s. 73 of the Transfer of Property Act, 1882, ceased to be in force. By cl. (g), mortgages with possession on any estate or part of an estate on the date immediately preceding the date of vesting were to be deemed to have been substituted by simple mortgages without prejudice to the rights

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of the State Government. By cl. (h), no claim or liability enforceable or incurred before the date of vesting by or against an intermediary for any money charged on or secured by a mortgage of an estate or part thereof was, except as provided in 73 of the Transfer of Property Act, to be enforceable against his interest in the estate. By cl. (i), all suits and proceedings of the nature to be prescribed pending in any court at the date of vesting and all proceedings upto any decree or order passed in any such suit or proceeding previous to the date of vesting were stayed. By cl. (j), all mahals and their sub-divisions existing on the date immediately preceding the date of vesting and all engagements for the payment of land revenue or rent by a proprietor, under-proprietor, sub-proprietor, co-sharer, or lambardar as such determined and ceased to be in force.

Section 37 to 40 of the Act provided for the preparation of the Compensation Assessment Roll of intermediaries as respects mahals and for preparation of gross assets of mahals. It was on this Compensation Assessment Roll that the compensation payable for loss of interest of the intermediaries was to be computed and paid. Section 42 provided for computation of gross assets of an intermediary and s. 44 for computation of the net assets of an intermediary. Section 45 provided that in the case of proprietors to whom s. 78 of the U.P. Land Revenue Act, 1901 applied or who were assignees of land revenue whose names were recorded in the record of rights maintained under cls. (a) to (d) of s. 32 of the said Act, under-proprietors, sub-proprietors, permanent tenure-holders and permanent lessees in Avadh, the provisions of ss. 39 to 44 were to apply subject to such incidental changes and modifications as may be prescribed and the gross assets and net assets of such intermediaries were to be computed accordingly.

By the definition, in s. 3 (8) of the Act an "estate" is an area included under one entry in the registers described in cls. (a) to (d) of the Land Revenue Act. The High Court upheld the contention of the respondent that allowance paid to him could not be regarded as an "estate". That view is not challenged before this Court by counsel for the State of Uttar Pradesh. The right to receive the allowance of Rs. 30,612-8-0 from the Government under the arrangement cannot, in the absence of an express provision to that effect, be called "an area included under one entry in any of the registers" described in the various clauses. The first part of s. 6(b) does not therefore assist the claim made by the State.

But of the 12 mahals the respondent was a proprietor : the land of the mahals was "estate" within the meaning of s. 3(8) of the Act and by s. 4, the right of the respondent in that estate stood vested in and transferred to the State. It is true that by the arrangement of the year 1838, confirming the earlier compromise, remission of 25% was granted to the respondent's predecessors in respect of payment of land revenue. If the right of the respondent in the 12 mahals ceased, the right to remission could not be converted into a positive right to receive the amount thereef, notwithstanding the extinction of his right in those 12 mahals. The right to remission of land revenue was a right in respect of land revenue in the estate which stood vested in the State. The letters dated September 13, 1837, October 19, 1837 and June 15, 1838 make it abundantly clear that the difference of Rs. 5710 between the amount originally assessed and the Jamma recoverable was to be remission of revenue. The right of the respondent to the 12 mahals was transferred to the State by virtue of the notification under s. 4, and the consequences set out in sub-s. (b) of s. 6 relating to those 12 mahals ensued.

We are therefore unable to agree with the

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High Court that for the amount of Rs. 6710 which was treated as remission, the respondent was entitled to obtain relief on the footing that that right was not affected by the issue of the notification under s. 4 of the Act.

The claim of the respondent in respect of the allowance granted as consideration for abandonment of the right to 166 mahals rests on a firmer ground. It is true that this allowance was computed as 1/4th share of the revenue assessed on the 166 mahals. But the respondent under the arrangement has no interest in the land of the 166 mahals or in the land revenue payable in respect thereof. By the order of the Government, the right of Sheo Narain Singh to the entire pargana "Syudpore Bhettree" was resumed. Sheo Narain Singh challenged the authority of the Government to resume his interest in the Jagir and dispute pending in the civil court was compromised on the terms which were finalised in the year 1838 whereby Harnarain Singh and his decendants were given an allowance in amount equal to 1/4th of the net revenue of the 166 mahals. Because the annual allowance is equal to a fourth share of the net revenue of the mahals, the right of the respondent does not acquire the character of an interest in land or in land revenue. Under the arrangement, the entire land revenue was to be collected by the Government and in the collection Harnarain Singh and his descendants had no interest or obligation. As a consideration for relinquishing the right to the land and the revenue thereof, the respondent and his ancestors were given an allowance of Rs. 30,612-13-0. The allowance was in a sense related to the land revenue assessed on the land, *i.e.*, it was fixed as a percentage of the land revenue: but the percentage was merely a measure, and indicated the source of the right in lieu of which the allowance was given. The amount is described as "pension" in the letters dated September 14, 1838, July 7, 1837 and June 15, 1838. The words used in cl. (b) are undoubtedly wide;

any right to a grant which has relation to land or land revenue would be determined by the operation of that clause. But the allowance to Harnarain Singh was not in respect of land or its revenue: it was granted as consideration for settlement of a claim litigated in a civil court relating to that land.

The primary object of the legislature, as set out in the preamble of the Act, was to abolish the zamindari system and to acquire the rights of the intermediaries and to pay compensation for acquisition of those rights. By s. 4, estates in the area for which a notification was issued, vest in the State free from all encumbrances and as a consequence of vesting, the rights of intermediaries, but not their pre-existing liabilities are extinguished as from the date of vesting. Clauses (a),(c) to (f) and (h) expressly deal with the rights and obligations of intermediaries, and the interaction thereon of the notification of vesting. Clause (g) deals with the derivative rights of mortgagees of estates. By cl. (i), the mahals and sub-divisions are obliterated, and the engagements for payment of land revenue or rent by proprietors, under-proprietors, sub-proprietors, co-sharers and sub-sharers cease. There is no express reference in s. 6 (b) to the right of intermediaries; by the first part of that clause, the grant and confirmation of title to land in an estate are determined and by the second part, the rights and privileges in land or in the land revenue in the estates are determined. The key words of the second part of the clause are "in respect of" indicating a direct connection between a right or privilege and land in an estate or its revenue. The intention of the legislature is manifestly to extinguish estates and all derivative rights in estates and to extinguish the interest of intermediaries between the State and the tiller of the soil. If the grant or confirmation of title is in respect of a right or privilege to land in an estate or its revenue, it must determine under cl. (b); but a right to receive an allowance which is

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granted in consideration of extinction of a right to land or land revenue does not, by the force of cl. (b) determine. The allowance has not the quality of land or land revenue: its quantum only was measured by equating it with a fourth share in the net revenue of a part of land which was the subject matter of the suit in which the arrangement for payment of the allowance was made.

Absence of a provision in the Act for payment of compensation for a right such as the one claimed by the respondent strongly supports the plea that the right is not intended to be acquired or extinguished. Section 37 to 44 deal with the assessment of compensation to be paid to intermediaries. Compensation Assessment Roll of intermediaries in respect of the mahals has to be prepared and detailed instructions in that behalf are contained in ss. 39 to 44. By s. 45, in computing the gross assets and net assets of proprietors who are assignees of land revenue and of under-proprietors, sub-proprietors, permanent tenure-holders and permanent lessees in Avadh ss. 39 to 44 of the Act are applicable subject to such modifications and incidental changes as may be prescribed. It is common ground that s.78 of the U. P. Land Revenue Act has no application to "Syudpore Bhettree" pargana. To proprietors who are assignees of land revenue and whose names are recorded in the record of rights maintained under s.32 cls. (a) to (d), the provisions of ss.39 to 44 may undoubtedly apply subject to modifications as may be prescribed, and computation of their gross and net assets may be made accordingly. But the respondent is not an assignee of land revenue whose name is so recorded in the record of rights nor is he *qua* the allowance an under-proprietor, sub-proprietor, permanent tenure-holder or permanent lessee. Section 45 is a machinery provision: it does not purport to extend the field of s.6 by prescribing consequences which are not incorporated in that section. There is in s.45 nothing to warrant the submission of counsel for the State that rights of a

land-holder to receive allowances from the Government are extinguished even without compensation, merely because he was an assignee of land revenue of some land or was a proprietor, sub-proprietor, permanent tenure-holder or permanent lessee in respect of other land in Avadh. The scheme for payment of compensation prescribed by ss. 39 to 44 is extended to amongst others, proprietors of land who are assignees of land revenue whose names are recorded in the record of rights maintained under cls. (a) to (d) of s.32: but, a person receiving an allowance from the State of the character received by the respondent is not a proprietor who is an assignee of land revenue, and in any event, if his name is not entered in the revenue record under cls. (a) to (d) of s.32, the provisions relating to computation of gross and net assets will not apply to him. Absence of a provision in the Act for awarding compensation to persons holding interest such as the respondent has, strongly supports the view that such interest was not to be extinguished by the operation of s.6(b) of Act 1 of 1951.

We accordingly hold that the High Court was right in granting the application preferred by the respondent insofar as it related to the allowance of Rs. 30,612-13-0 granted as a consideration for extinction of the right of Harnarain Singh to 166 mahals: but for reasons already stated, we are unable to agree with the High Court that the respondent was entitled to receive in respect of the 12 mahals the land revenue which was remitted. The order passed by the High Court will therefore be modified and the petition of the respondent in so far as it deals with remission of land revenue in respect of the 12 mahals of "Syudpore Bhettree" will stand dismissed. The order of the High Court in respect of the allowance of Rs. 30,612-13-0 will stand confirmed. Subject to the above modifications, the appeal will stand dismissed with costs.

Appeal dismissed.