

Ujagar Singh
 v.
 Mst. Jeo

 Sarkar, J.

should be revoked. As, in our view, the respondent succeeds on the merits of the case we think it unnecessary to express any opinion on this question.

In the result we dismiss the appeal with costs.

B. R. T.

INCOME-TAX REFERENCE

Before A. N. Bhandari, C.J., and Bishan Narain, J.

THE FAZILKA ELECTRIC SUPPLY CO., LTD., DELHI,—
Petitioner
versus

THE COMMISSIONERS OF INCOME-TAX, DELHI—
Respondent.

Income-tax Reference No. 18 of 1954

1959

 Apr., 24th

Income-tax Act (XI of 1922)—Section 10(2)(vii)—Acquisition of undertaking of an Electric Supply Company by the Government under section 7 of the Indian Electricity Act (IX of 1910)—Whether amounts to sale or compulsory acquisition—Compulsory acquisition—Whether comes within Section 10(2)(vii).

Held, that the exercise of option by the Government to purchase the undertaking of the electric supply company was as a result of a contract between the parties and amounted to a sale. The license granted by the Government under the provisions of the Indian Electricity Act, 1910, amounts to a contract between the parties. When the applicant makes an application for license, he knows that under section 7 option has to be given not exceeding 50 years to the local authority or to the Government to purchase the undertaking. This only means that the license period in any case must not exceed 50 years. It is a matter of bargain when the first option is to be exercised by the local authority or the Government. In the present case it was to be exercised on the expiry of 15 years which means that the license made an irrevocable offer to the local authority and the Government to sell the undertaking on the expiry of 15 years and on the expiry of every

subsequent 10 years if the Government or the local authority chose to exercise the option. When the option is exercised then the contract of sale becomes complete. It may be that under the statute the undertaking must be sold within 50 years or in other words the license cannot exceed more than 50 years but that circumstance does not detract from the agreement between the parties being considered as a contract of sale in accordance with the conditions laid down in clause 9 of the license.

Held, that neither "compulsory sale" nor "compulsory purchase" equates with "compulsory acquisition". The transaction of compulsory purchase of the electric undertaking under section 7 of the Indian Electricity Act, 1910 and clause 9 of the Electric License by the Government does not amount to compulsory acquisition. If a transaction amounts to compulsory acquisition, then it does not come within section 10(2)(vii) of the Income-tax Act.

Reference under Section 66(1) of the Indian Income-Tax Act, 1922 by the Income-Tax Appellate Tribunal, Delhi Bench forwarding the Statement of Facts of the case prepared by the Assessee.

P. C. KHANNA and S. K. KAPUR, for Petitioner.

K. N. RAJGOPAL SHASTRY, for Respondent.

JUDGMENT

Bishan Narain, J.—The facts leading to the reference are not in dispute. The Punjab Government, on 23rd July, 1934 granted a licence to Dewan Harbhagwan Das Nanda and Lala Harcharan Das for generation and supply of electric energy in the town of Fazilka. A public Limited Company under the name and style of the Fazilka Electric Supply Company was incorporated in 1935. This Company acquired the said licence. Then it carried on the business in accordance with the terms of the licence. Under clause 9 of the license the Government was empowered to exercise its option to purchase the undertaking on terms laid

Bishan Narain,
J.

The Fazilka
Electric Supply
Co., Ltd., Delhi

v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

down in section 7(1) of the Indian Electricity Act, 1910. on the expiry of 15 years from the date of the license and on the expiry of every subsequent period of 10 years. The Government exercised its option to purchase the undertaking on the expiry of fifteen years with effect from 23rd July, 1949, and paid Rs. 2,74,000 for the same which was in excess of the written down value. The Income-tax Officer computed this excess to amount to Rs. 77,700 and held it to be taxable under section 10(2)(vii) of the Income-tax Act. This decision has been upheld by all the authorities under the Income-tax Act in spite of the assessee's objections and now the Income-tax Appellate Tribunal has at the instance of the assessee Company referred the following question for the opinion of this Court under section 66(1) of the Income-tax Act:—

“Whether on the facts and in the circumstances of this case, and on a true interpretation of section 7(1) of the Indian Electricity Act, and clause 9 of the Fazilka Electric Licence, 1934, the transaction, by which the Government acquired the undertaking could be regarded as a sale within the meaning of section 10(2) (vii) of the Income-tax Act?”

Before dealing with the case on merits, I may notice one submission made by the learned counsel for the assessee Company before the arguments started. He urged that the statement of the case by the Income-tax Appellate Tribunal was defective because certain matters were not included therein. He argued that in this case the Government had arbitrarily fixed the price and had acquired the undertaking in spite of Company's protest and that these facts should have been included in

the statement. On these grounds he urged that the case may be sent back to the Appellate Tribunal under sub-clause (a) of Section 66 of the Income-Tax Act. We were, however, satisfied that the statement of the case was sufficient to enable us to determine the question raised and, therefore, refused to accede to this request.

The Fazilka
Electric Supply
Co., Ltd., Delhi

v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

Now under section 10(2) (vii) of the Income-tax Act the amount by which the written down value of any building, machinery or plant exceeds the amount for which these properties have been "actually sold" is taxable. The question arises whether the transaction described above amounts to sale within the Income-tax Act or not. The case of the assessee Company is that the transaction of transfer in question did not take place as a result of any valid contract or agreement between the parties but is the result of compulsory purchase or in other words compulsory acquisition of the property by the Government against the wishes of the assessee Company. On the other hand the case of the Commissioner of Income-Tax is that the transaction is in pursuance of a valid contract between the parties and that in any case section 10(2) (vii) applies also to compulsory sales or acquisitions. It is therefore, necessary to determine (1) the exact nature of the present transaction and then (2) if section 10(2) (vii) of the Income-tax Act applies to it.

Now the supply of electric energy to a town involves public interest. The Electricity Act, 1910 and the rules framed thereunder lay down the conditions in the general terms on which a license should be granted and also the procedure which must be followed for the purpose. A license gives exact terms on which a particular license has been granted.

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

I now proceed to describe the relevant provisions of the Electricity Act. Section 3 of the Act lays down that the State Government concerned may on any application made for the purpose grant a license to supply energy in any specified area and therein may also provide for laying down or placing electric supply lines for the conveyance and transmission of energy. An application for this purpose is to be made in the prescribed manner and with the prescribed particulars. A licence is not to be granted without previous consideration of objections, if any, received against the application. Section 3(2)(f) also lays down that the provisions contained in the Schedule to the Act shall be deemed to be incorporated with the licence subject to express exceptions, variations and additions of any term mentioned therein. Sections 5 and 7 deal with purchase of the undertaking in certain circumstances and section 10 empowers the Government to vary terms of purchase. In this case there has been no variation of the terms of purchase and, therefore, we are not concerned with section 10 of the Act. When a licence is revoked under section 4 (1) of the Act, the local authority concerned with the written consent of the State Government may require the licensee to sell the undertaking to it at its fair market value and in case of dispute this value is to be determined by arbitration. If the local authority does not purchase it then the Government may do so on the same terms. If neither the local authority nor the State Government purchases the undertaking then the licensee has the option of disposing it of as he likes but if he does not do so within six months then the Government may remove the works of the licensee in the streets at the cost of the licensee. Then comes section 7. Its relevant portion reads:—

“Where a license has been granted to any person not being a local authority, and

the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority with the previous sanction of the State Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking * * * * * such value to be, in case of difference or dispute, determined by arbitration:

The Fazilka
Electric Supply
Co., Ltd., Delhi

v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

Provided * * * * *

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per cent on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

(a) the local authority does not elect to purchase under sub-section (1), or

(b) * * * * *

(c) * * * * *

the State Government shall have the like option upon the like terms and conditions.

The Fazilka Electric Supply Co., Ltd., Delhi	(3)	*	*	*	*	*	*
v. The Commis- sioner of Income-tax, Delhi	(4)	*	*	*	*	*	*
	(5)	*	*	*	*	*	**

Bishan Narain,
J.

This section gives option to the local authority and the State Government to purchase the undertaking. If neither is willing to exercise this option on the expiry of periods referred to in the section then the license may be revoked on the application or by the consent of the licensee. In that case section 8 lays down that the licensee has the option to dispose of the undertaking to any other person within six months. If the licensee fails to do this then the Government may remove the works at the costs of the licensee as laid down in section 5 of the Act.

Rules relevant for the present purpose are these. Section 3 lays down that an application for a license should be filed in prescribed manner containing prescribed particulars. Rules have been framed *inter alia* to prescribe these matters. The Rules have framed a draft license in which clause 9 relates to section 7. This clause in the draft license is in general terms and the periods for the exercise of option at different points of time subject to maximum of 50 years have to be fixed by the licensee. There are other clauses also in general terms and in the draft license the licensee has to give specific and definite proposals. This draft license is then advertised by the applicant. If objections are received then they are to be decided. Thereafter the draft license with or without amendments is approved by the State Government. After this approval the licensee must inform the State Government that he is willing to accept the license in the form approved by the

State Government. When this has been done the license is notified in the Gazette with the statement that it has been granted. It may be stated here that the above-mentioned rules have been described from 1937 rules (Rules 11 to 19). The earlier rules are not available but the learned counsel for the respondents has informed us that the previous rules were the same as the 1937 rules though their numbering is not identical

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.
The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

Within the frame work of these statutory provisions the terms and conditions laid down in the license are these. (1) Under Clause 1 of the Schedule the licensee agreed to give a security of Rs. 10,000 and to discharge his obligations of erecting works within four months. (2) Specified the area within which the electricity was to be supplied. The report of the progress of the compulsory works to be sent every six months. (4) The nature of the supply of the energy is specified. (5) Limit of price to be charged for the energy and the rent for meters is specified. (6) The option of purchase under section 7(1) is laid down as exercise-able on the expiry of fifteen years and thereafter on the expiry of every subsequent ten years.

Having described the terms of the license with its statutory background it is now necessary to discuss various contentions raised by the learned counsel in this case. In the present case clause 9 of the license fixed 15 years and then every subsequent period of ten years for exercise of option to purchase the undertaking by the local authority in accordance with the provisions of section 7(1) of the Electricity Act. The local authority did not elect to purchase the undertaking on the expiry of fifteen years but under section 7(2) the Government was entitled to exercise this option in accordance with the terms laid down in clause 9 of the

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.
The Commis-
sioner of
Income-tax,
Delhi

license. The Government has exercised this option on the expiry of fifteen years after giving notice of two years under section 7(4) of the Act. It is to be decided whether this exercise of the option is a sale within section 10 (2) (vii) of the Income-tax Act.

Bishan Narain,
J.

It was argued on behalf of the assessee Company that this exercise of the option by the Government amounts to compulsory acquisition of the undertaking and that the transfer brought about by such acquisition is not covered by section 10(2) (vii) of the Income-tax Act. There can be no doubt that if the transaction amounts to compulsory acquisition then section 10(2)(vii) has no application to it. The expression "sale" is not defined in the Income-tax Act nor is there any indication therein of its scope. In *Calcutta Electric Supply Corporation, Limited v. Commissioner of Income-tax, West Bengal* (1), an electric generator was acquired compulsorily under the Defence of Indian Rules in spite of the owners' protest and it was held that the transaction or transfer thus brought about did not amount to sale within the meaning of section 10(2)(vii) of the Income-tax Act. There is a similar provision in the corresponding English Act. In *John Hudson & Co., Limited v. Kirkness (H. M. Inspector of Taxes)* (2), certain wagons were requisitioned and then were acquired by the Government. A contention was raised in the case that the acquisition amounted to a transfer for price and, therefore, it was a sale. This contention was rejected by a majority of the House of Lords. This majority view has been approved and accepted as correct by our own Supreme Court in *The State of Madras v. Messrs Gannon*

(1) (1951) XIX I.T.R. 406

(2) 36 Tax Cases 28

Dunkerley & Co. (Madras), Limited (1), and the English decision in *12 Tax Cases* was distinguished on the ground that in that case scope of the expression "profit" and not that of "sale" had to be determined. It follows that if a transaction amounts to compulsory acquisition then the transaction does not come within section 10(2)(vii) of the Income-tax Act.

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.
The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

The question arises whether the present transaction does or does not amount to compulsory acquisition. The contention raised on behalf of the assessee Company is that it is acquisition because section 7 itself describes the transaction as compulsory purchase. The learned counsel argued that "compulsory purchase" is only another and equivalent expression for "compulsory acquisition". This is not correct. The term "compulsory purchase" is not defined in the Electricity Act. We must, therefore, consider its meaning as commonly understood in this country. Lord Morton of Henryton in *Hudson's case* (2), gave his dissenting judgment and based it on the argument that compulsory acquisition of property had been described in the legislative practice of Great Britain as compulsory sale. The Supreme Court in *Dunkerley's case* noticed this argument and held that this ratio does not apply to our country (*vide* para 32 of the Judgment) and approved of the majority view in *Hudson's case* (2), to the effect that bargain is an essential element in a transaction of sale. Even in England Lord Simonds in *Hudson's case* (2), when considering the expression "compulsory sale" observed as follows:—

"There are aspects of a so-called compulsory sale which clearly distinguish it from a

(1) A.I.R. 1958 S.C. 560
(2) 36 Tax Cases 28

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

sale *stricto sensu* and I am not satisfied that without some context to aid it the word "sale" in an Act of Parliament should be held to include a transaction which is more accurately, and, I think, now more commonly, described as a compulsory acquisition. * * * *

It has not those elements which in some degree assimilate a compulsory sale to a sale simpliciter and make the name, if a misnomer, at least a convenient misnomer. It was easy to describe as a purchase or sale with the qualifying adjective "compulsory", a transaction in which the parties were placed in a position to negotiate and, apart from the power of compulsion in the background, were not unlike an ordinary vendor and purchaser."

It is clear from these observations that a compulsory sale is brought about by negotiation. I am, therefore, of the opinion that neither "compulsory sale" nor "compulsory purchase" equates with "compulsory acquisition." That being so there was no compulsory acquisition in the present case.

In this view of the matter whether the transaction be called a sale simpliciter or a compulsory sale all that remains to be decided is whether it is a sale within the Income-tax Act. As I have already stated "sale" is not defined in the Income-tax Act nor in the Electricity Act. There is nothing in the Act itself to give any special meaning or colour to that word. We have, therefore, to ascertain the exact connotation which the expression has in law in this country. Both in England and in India one

of the essential factors of a transaction of sale is that there must be an agreement express or implied to sell, i.e., there must be a mutual assent between the parties. This has been so held in *Hudson's case* (1), and in *Poppatlal Shah v. State of Madras* (2), *State of Bombay v. United Motors (India), Ltd.* (3), and *The State of Madras v. Messrs Gannon Dunkerley and Co., (Madras), Limited* (4). The learned counsel for the assessee Company argued that this element of mutuality is lacking in the present case and, therefore, the transaction cannot be considered to be a sale which has been brought about by a contract between the parties. I find it impossible to accept this contention. The rules show that a draft license has to be sent by an applicant for license containing definite and specific terms on which the license is sought. This amounts to an offer. The Government accepts it or rejects it. If it modifies it in any way then the applicant or offerer must accept the modification. If the Government accepts the offer with or without modification then it grants a license. In my view a license granted by the Government in such circumstances amounts to a contract between the parties. No doubt the contract must be in accordance with and not in conflict with the provisions of the Electricity Act. When the applicant makes an application for license he knows that under section 7 option has to be given not exceeding 50 years to the local authority or to the Government to purchase the undertaking. This only means that the license period in any case must not exceed 50 years. It is a matter of bargain when the first option is to be exercised by the local authority or the Government. In the present case it was to be exercised

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

(1) 36 Tax Cases 28

(2) A.I.R. 1953 S.C. 274

(3) A.I.R. 1953 S.C. 252

(4) A.I.R. 1958 S.C. 560

The Fazilka
Electric Supply
Co., Ltd., Delhi

v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

on the expiry of 15 years. In my view the licensee made an irrevocable offer to the local authority and the Government to sell the undertaking on the expiry of 15 years and on the expiry of every subsequent 10 years if the Government or the local authority chose to exercise the option. When the option is exercised then the contract of sale becomes complete. It may be that under the statute the undertaking must be sold within 50 years or in other words the license cannot exceed more than 50 years but that circumstances does not detract from the agreement between the parties being considered as a contract of sale in accordance with the conditions laid down in clause 9.

It was then submitted that no value of the undertaking was fixed between the parties and, therefore, there was no sale. It was also urged that the value of the undertaking fixed by the Government in the present case was arbitrary. Whether the value fixed is arbitrary or not is not the matter to be considered in the present proceedings. All that can be said is that the licensee has accepted the price fixed by the Government and has realised it. It is wrong to say that no value of the undertaking has been fixed between the parties. The agreement in clause 9 is that value should be fixed under section 7(1) of the Act, i.e., fair market value. Second proviso to section 7 lays down that the licensee should be paid over and above the fair market value additional amount not exceeding 20 per cent and compensation for compulsory purchase. The amount of percentage is to be fixed by agreement between the parties. In the present case this amount has been fixed at 20 per cent. Obviously this was a matter of bargaining between the parties and they agreed that on exercise of option to purchase the undertaking the licensee should get fair market value and additional 20 per cent

In my view this agreement was a result of bargaining between the parties and came about by mutual assent.

Finally the learned counsel for the assessee Company urged that if the license amounts to an agreement of sale then it is invalid in law because it does not conform with the provisions of section 175(3) of the Government of India Act, 1935. This provision of the 1935 Act has been reproduced in Article 299(1) of our present Constitution. It is true that the license is not signed by the licensee but the licensee has assented to its terms in writing in the application or thereafter under Rule 19. Admittedly the license is not in the name of the Governor of Punjab State. We are, however, not concerned with the validity of the contract in this case. Both parties have carried out its terms and the licensee has duly received the price of the undertaking as fixed in accordance with clause 9 of the license. The Supreme Court in *Chatturbhuj Vithaldas Jasani v. Moreswar Parashram and others* (1), has held that the contract because of this defect is not void and it is always open to the Government to ratify it. By carrying out the terms of the license the Government has obviously ratified it. This contention of the learned counsel also, therefore, fails.

It follows from the above discussion that in the present case the exercise of option by the Government to purchase the undertaking was as a result of a contract between the parties and amounted to a sale.

My opinion on the question referred to us, therefore, is that the transaction in the present case amounted to a sale within section 10(2)(vii)

The Fazilka
Electric Supply
Co., Ltd., Delhi

v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

(1) A.I.R. 1954 S.C. 236

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

of the Income-tax Act. The Income Tax Commis-
sioner is entitled to get costs of this reference
Counsel's fee Rs. 250.

BHANDARI, C. J.—I agree.

B. R. T.

REVISIONAL CIVIL

Before I. D. Dua, J.

BHURA MAL-DAU DAYAL,—*Plaintiff-Petitioner*

versus •

MESSRS IMPERIAL FLOUR MILLS LTD., AMBALA
CITY AND OTHERS,—*Defendants-Respondents*

Civil Revision No. 482 of 1956

1958

Apr., 27th

*Court-fees Act (VII of 1870)—Court-fee leviable—
Plaint filed in Delhi Court bearing Delhi Court-fee stamps
returned to plaintiff for presentation to the proper court
under Order VII rule 10 C. P. C.—Plaint presented in
Ambala Court—Court-fee already paid—Whether to be
given credit of—Objection as to court-fee—Whether pro-
per to be taken by the opposite litigant.*

Held, that when a court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper court under Order VII rule 10 of the Code of Civil Procedure, the latter court to which the plaint is represented is bound to give credit for the court-fee already levied by the former court. The scheme of the Court-fees Act, to the extent to which it can be discerned, shows that a litigant is, normally speaking, not made liable to pay court-fee twice over for the same adjudication by the same court or by its successor court or on account of the mistakes of courts. It is also well-settled that courts should put a liberal interpretation on fiscal statutes like the Court-fees Act, so as to lessen and not add to the burden of litigation. This of course does not mean that where a provision is clear and explicit it should not be enforced; it merely means that while dealing with fiscal statutes letter of the law is of paramount importance.