A BRIJ BEHARI SAHAI (DEAD) THROUGH LRS. ETC. ETC.

v.

STATE OF UTTAR PRADESH

NOVEMBER 28, 2003

B [DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Land Acquisition Act, 1894—Section 18—Acquisition of suit property—State and Claimants claiming title over the suit property—Land Acquisition Officer awarding compensation to State and claimants in 10:6 ratio—
C *Reference Court granting full awarded compensation to claimants—High Court restoring the award of Land Acquisition Officer—Validity of—Held, on facts, State and claimants entitled to compensation in 25:75 ratio on account of disputed stands taken.*

Respondent State initially filed suits before trial court for recovery
D **of arrears of ground rent on the suit properties against the predecessors in interest of appellants treating them as lessees of the lands. When the claim of the State was rejected, the State initiated acquisition proceedings of the suit land belonging to the appellants. State took a stand that the appellants and their predecessor-in-title were the owners of the suit**
E **properties. The Land Acquisition Officer held that the appellants were holding lease hold rights for over thirty years and awarded compensation between the State and the appellants in the proportion of 10 : 6 respectively. The appellants and the State sought reference under Section 18(1) of the Land Acquisition Act, 1894 before Reference**
F **Court, and the State took the stand that the State is the absolute owner of the suit properties on expiry of the lease granted to the appellants and their predecessor-in-interest. Reference Court dismissed the claim of the State and allowed the claim of the appellants. It also held that the whole compensation amount would go to the appellants. High**
G **Court allowed the appeal by the State and restored the apportionment of compensation ordered by the Land Acquisition Officer.**

In appeal, the appellants contended that the suit lands were held on perpetual lease and was not for a specified period; that they had complete title on the suit land; and that the right available to the State
H **could only be to the extent of recovering ground rent assessed or its**

capitalised value and not the compensation amount on land acquisition. A

The respondents contended that the appellants are not entitled to any compensation amount on the suit lands since it had exclusive rights; and that the grant was given to the appellants for a specified B period and on expiry of the period, the lands vest with the State.

Allowing the appeals, the Court

HELD: 1.1. Both the parties on either side should not be allowed C to adopt their respective extreme stands at this point of time and to some extent, they will be precluded from doing so on the principle of estoppel arising out of their own conduct for such long spells of time. On the facts and circumstances of the case, there is enough justification to hold that the Nazul character of the land can be sustained with D corresponding rights of perpetual lessee in the appellants and their predecessor-in-interest subject to the payment of the periodically revised ground rent. [318-G, H]

1.2. The claim of the appellants that the entire compensation was only in respect of the totality of the rights held by the appellants as E lessees and not of the whole inclusive of the rights and interests of the State is not acceptable. Though as a matter of principle of law, the State while invoking the provisions of the Land Acquisition Act for acquiring a land in which the State also had some or other of interest, need not go for acquiring their interest as well and what is permissible as well F as obligated for acquisition is only of such of the private interest of third parties other than that of the State, the Land Acquisition Officer in this case has chosen to, while determining the market value, indisputably proceed to determine for the whole of it and only as a consequence thereof has chosen to apportion compensation between G the State and the appellants in the ratio of 10:6 respectively. Though the Reference Court, during the course of its judgment, adverts to the principles relating to the need or desirability of acquiring only private parties other than that of the Government under the Land Acquisition Act has ultimately chosen to adopt only the standard and rate of H

A market value determined by the Land Acquisition Officer. Consequently, niceties of language apart and the purported endeavour attempted to have been made by the Reference Court, the Court is constrained to hold that the actual market value determined was that of the acquired properties as a whole and, consequently the need for
B apportionment, inevitably arise. [319-A-E]

1.3. The fixation of apportionment in the ratio of 75% in favour of the appellants and 25% in favour of the State would be just and reasonable. Having regard to the fact the State's interest has been fixed
C at the proportion of 25%, there is no further need or justification to direct the capitalisation of the ground rent for further being deducted or directed to be paid by the appellants either from the compensation amount or otherwise separately. The High Court has committed a patent error of law and misdirected itself in determining the respective rights of the appellants on the one hand and the Government on the
D other in the lands in question as well as in restoring the ratio of apportionment made by the Land Acquisition Officer without any objective consideration of the relevant principles in their prosper perspective. [319-F-H; 320-A-B]

E *Inder Pershad* v. *Union of India & Ors.*, [1994] 5 SCC 239; *The Collector of Bombay* v. *Nusserwanj Rattanji Mistri & Ors.*, [1955] 1 SCR 1311; *Dr. G.H. Grant* v. *State of Bihar*, [1965] 3 SCR 576; *State of Madras* v. *K.N. Shanmugha Mudaliar & Ors.*, [1976] 3 SCR 536; *Chapsibhai Dhanjibhai Dand* v. *Purushottam*, AIR (1971) SC 1878; *Hamidullah*
F *(Dead) by his LRs. & Ors.* v. *Abdullah & Ors.*, AIR (1972) SC 410; *Mohammed Hasnuddin* v. *State of Maharashtra*, AIR (1979) SC 404; *Bangharu Narasingha Rao Naidu Etc.* v. *The Revenue Divisional Officer, Vizianagaram*, AIR (1982) SC 63; *Col. Sir Harinder Singh Brar Bans Bahadur* v. *Bihari Lal & Ors. Etc.*, [1994] 4 SCC 523 and *Union of India*
G *through Secretary, Ministry of Home Affairs, Govt. of India, New Delhi & Ors.* v. *A. Ajit Singh s/o S. Chet Singh, Delhi*, [1987] 6 SCC 50, referred to.

Kachrulal Hiralal Dhoot v. *The Gurudwara Board, Nanded & Ors.*, AIR (1979) Bombay 31 and *Shiam Lal & Ors.* v. *Collector of Agra*, AIR
H (1934) Allahabad 239, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 14178-14184 of 1996. A

From the Judgment and Order dated 8.2.95 of the Allahabad High Court in F.A. Nos. 74, 75, 76, 77, 78, 79, 80 of 1982.

Harish N. Salve, Manoj Swarup, Ms. Lalita Kohli, Anubhav Kumar and Nikhil Mehra for M/s. Manoj Swarup & Co. for the Appellants. B

S. Wasim A. Qadri, Rajeev Kumar Dubey, Manoj K. Mishra, Sanjay Visen and Kamlendra Misra for the Respondent.

C

The Judgment of the Court was delivered by

D. RAJU, J. The above appeals, arising out of a common judgment dated 8.2.1995 of a Division Bench of the Allahabad High Court in First Appeal Nos. 74 to 80 of 1982, involving identical questions of law and similar facts, are dealt with together. D

The immovable properties, land and buildings in question, which are the subject-matter of acquisition under the Land Acquisition Act, 1864 [hereinafter referred to as "the Act"], forming part of large extent were granted by Competent Authority on behalf of the Government of North E Western Provinces of British India by a deed dated 24.12.1862 subject only to the conditions stipulated therein, which included, apart from the payment of the lump sum amount specified therein, the rent/ground rent up to 31.7.1869 the periodical payment of on and from 31st July 1869 revised annual ground rent that may be fixed by the Revenue Collector of F Allahabad District, in favour of one Mr. Walter Edmond Davis, Indigo Planter of Bengal. The same was sold to and purchased from the said grantee by the Right Reverend Doctor Avastasins Hartmann of the Roman Catholic Mission Lord Bishop and Vicor Apostolic of Patna under a registered sale deed dated 7.1.1863 whose successor-in-office Right Reverend Doctor Pesci sold the properties more fully described in and under G a sale deed dated 13.5.1886, in favour of General Puddum Jung Bahadur Rana, who hailed from Nepal but settled in Nynetal, the great grand father of Rana Pratap Jung Bahadur, Rana Pradyuman Jung Bahadur and Rana Rutasan Jung Bahadur. It is also claimed that Rana Paddum Jung Bahadur also took, in addition to these properties, on lease additional extent of lands H

A measuring about 68 Bighas and 7 Biswas on different dates. It is further claimed that in the year 1910 the management of the lands in question was entrusted to the Municipal Board of Allahabad, subsequently came to be renamed as Nagar Mahapalika of Allahabad and the said body had these properties recorded in the name of the descendants of Rana Padam Jung B Bahadur in the Property Register of the Nazul section.

While matters stood thus, in the year 1941 the State of U.P. seems to have instituted proceedings to recover the arrears of ground rent due from the heirs of the owners and a suit again seems to have been filed in the year 1959 also for the same purpose admitting the relationship between C parties, the Government of U.P. and the heirs of Late Rana to be Lessor and Lessee. The authorities of the State seem to have started asserting in some form or other in correspondence as well as some of these litigations that the heirs of Rana had only a limited leasehold interest and that the period of such leasehold interest also expired by efflux of time and in the D absence of renewal thereafter, the heirs of Rana were said to be in possession of the leasehold properties only as a tenant holding over and not as a tenant under a perpetual lease. In the year 1970, the State appears to have filed a suit seeking for recovery of the arrears of ground rent and for eviction and when the claim of the State was rejected at the appellate E stage the State does not appear to have pursued the matter further. It is in the backlog of such claims and counter claims the present acquisition proceedings seem to have been initiated to acquire portions of the land on 23.10.1976. The stand of the State during the award proceedings and thereafter even before a Reference Court initially was one admitting the interest of the appellants and their predecessor-in-title, but by the time the F Reference Court could decide the matters finally, the State appears to have filed additional written statements disputing the rights of the appellants and their predecessor-in-interest *in toto* by asserting that the term of lease of Rana family expired and, therefore, they had no interest, title or right in the lands in question and that the lands have already vested absolutely with G the State of U.P. and, therefore, the transferees from the heirs and successors-in-interest of Rana cannot claim any share in the compensation. While thus disputing the rights and claims of the appellants, the State started asserting that the State alone is the absolute owner of the lands in question with the trees standing thereon and as such entitled to the whole H of the compensation.

So far as the Land Acquisition Officer is concerned, in the Award passed on 9.3.1978 it was held that the appellants were the Cultivators of the lands and while, at the same time, evaluating the value of the leasehold rights as that of thirty years in the land had apportioned ten annas share in favour of the Government and six annas share in favour of the appellants. Aggrieved, the appellants sought reference under Section 18(1) of the Act. As a consequence of which, seven references came to be made. The State also sought for and got a reference made, as well.

The learned Third Additional District Judge, Allahabad, exercising jurisdiction as the Reference Court under the Act, by his common Award and Judgment dated 29.5.1981, held the reference made at the instance of the State to be incompetent and did not pass any Award thereon. But so far as the references at the instance of the claimants are concerned, the learned District Judge, while affirming the rate of market value as determined, interfered with the apportionment by undertaking what he possessed to be an assessment of the market value of the totality of the interest held by the claimants alone in the land and in so determining ultimately came to the conclusion that the amount determined in its entirety would go to the claimants, subject only to the right of the State Government to recover the value of its interest as found by the learned District Judge by capitalizing the quit rent due to the Government multiplied by twenty years of rent. Aggrieved, the State approached the High Court by filing eight appeals under Section 54 of the Land Acquisition Act. The Division Bench of the Allahabad High Court by the judgment under challenge held that the claimants had no better interest than that of a tenant holding over, which, according to the High Court, was a precarious possession only and while sustaining the market value of Rs. 33.30 per square yard, set aside the finding of the District Court as to the apportionment of the entire compensation determined to the claimants and restored the apportionment ordered by the Land Acquisition Officer granting six annas share in a rupee to the claimants. Hence, these appeals.

Shri Harish N. Salve, learned Senior Counsel appearing for the appellants, after inviting our attention to the relevant materials on record, strenuously contended that the High Court was in grave error in interfering with the decision of the Reference Court rendered on an exhaustive analysis and elaborate consideration in accordance with law of all the

A materials on record placed during the course of trial of the Reference Court and that the ultimate decision arrived at by the High Court to restore the apportionment of the compensation as made by the LAO in the Award in the proportion of ten annas and six annas between the State and the claimants without any objective consideration of the issues and even in the B absence of recording any valid reasons therefor suffered from serious infirmities, warranting the interference of this Court. It was also contended that when the indisputable materials on record in the original grant disclosed no time limit or duration of period of the grant and even when the Government and the Mahanagar Palika subsequently treated the grant to be of a perpetual lease, which itself, though according to the appellants, C was unwarranted, there was no legally acceptable material whatsoever to alter the nature of the grant into one of a lease for a specified period or duration to completely deprive the claimants and their predecessor-in-interest of any right and interest in the property so as to deny their right to receive compensation. It was also asserted for the appellants that subject D to the payment of ground rent as stipulated in the initial grant, the quantum of which might be subject to revision in the periodical revenue statements, the rights granted in favour of Ranas were total and complete in all respects in properties, particularly having regard to the fact that there was not even any clause in the grant indicating it to be either by way of lease or that E any right was reserved under the grant for resumption of the same unconditionally or unilaterally. So far as the question of apportionment of the compensation and the course adopted by the High Court in restoring the proportion of apportionment made by the Land Acquisition Officer is concerned, it was contended that not only the Award of the Land F Acquisition Officer was illegal and unjustified, but the Reference Court has rightly chosen to, as a sequel to its finding on the nature of rights held by the Ranas and the claimants as their successors-in-interest in the property, determine the market value of only the bundle of rights held by the Ranas/ claimants and consequently there was no justification for the High Court to restore the apportionment made by the Land Acquisition Officer. It was G incidentally also urged that when the Land Acquisition Officer himself was convinced of the rights of the claimants to be that of a cultivator, the said Authority, at the same time, erred in evaluating the market value of the same viewing it to be a limited leasehold interest, which, according to the appellants, rightly came to be interfered with by the Reference Court. In H substance, the claims sought to be projected on behalf of the appellants are

that the grant in favour of Ranas, from whom the appellants derived their rights, is absolute subject only to the payment of the ground rent assessed and revised periodically and that the same to be also by way of a perpetual or permanent lease in the absence of any specific period of time or any provision for unilateral resumption. The rights of the Government, if at all, it is urged, could be only to the extent of recovering ground rent assessed or its capitalized value and nothing more and consequently the market value fixed by the Reference Court after giving due weight to large nature of extent under acquisition and deductions necessary for the developmental purposes, no question of any further deduction, except for the payment or deduction of the capitalized value of the ground rent, could arise and the judgment of the Reference Court rendered by the learned District Judge deserves to be upheld and restored to the appellants.

Per contra, Shri S. Wasim A. Qadri, learned counsel for the respondents, with equal vehemence, contended reiterating the same stand taken before the Reference Court in the light of the additional written statements filed asserting the exclusive rights of the State in the properties in question reiterating the claim, that the appellants are not entitled to any compensation whatsoever for the properties in question. It was further contended for the respondent-State that the learned District Judge, exercising powers of the Reference Court, went wrong in determining the nature and character of the grant and as to the rights and interests held by the claimants and their predecessor-in-interest to be that of a perpetual lessee and that, therefore, no exception could be taken to the conclusions arrived at by the Division Bench of the High Court. Reliance was sought to be placed on the basis of a Draft Lease Deed said to have been signed by the successors-in-interest of the original grantee Rana and some correspondence as well as the legal proceedings, which took place among the parties, noticed supra, for recovering rent/eviction in support of the claims made for the State. According to the learned counsel for the respondent, even six annas share ordered by the Land Acquisition Officer and restored by the High Court, is not really due to the claimants in law. Reliance has also been placed by the learned counsel on a decision reported in *Inder Pershad* v. *Union of India & Ors.,* [1994] 5 SCC 239 in support of the stand that at any rate the apportionment made by the Land Acquisition Officer, which stood restored by the judgment of the High Court, was correct and does not call for any further interference in these appeals.

A Before undertaking a consideration of the respective contentions, it would be useful to refer broadly to some of the findings of the Land Acquisition Officer in the Award and of the Reference Court for a better and proper appreciation of the contentions of parties:

B A. The Land Acquisition Officer, who passed the Award, seems to notice the very claim on behalf of the appellants to be that the owner of the Nazul land in the capacity of a perpetual leaseholder for the construction of house/building, the subsequent improvements and development claims to have been made, and for payment of market value at Rs.50 per sq. yard, in addition to the claims for trees and other improvements, etc. C Thereupon, after considering the materials on record, keeping into consideration the fact that the lands in question are Nazul lands and that the claimants to be cultivators not only fixed the market value at Rs.3.70 per sq. ft., which comes to Rs. 33.30 per sq. yard, but also apportioned the compensation in the proportion of 10:6 Annas between Government and D Claimants, respectively.

B. So far as the Reference Court is concerned, the conclusions arrived at are:

E The reference at the instance of the State, notwithstanding Section 18(3) inserted by the Amendment Act, is incompetent having been made beyond the period of limitation stipulated in the statute and that at any rate no reference under Section 18(3) of the Act at the instance of the Land Reforms Commissioner could also be entertained with reference to disputes as to title. The Government, F after admitting, at all relevant points of time, the rights and interest of the claimants and having had the apportionment got done through its Land Acquisition Officer by resorting to provisions under the Land Acquisition Act, cannot at a later stage fall back to assert a claim that the claimants and their predecessors-in-G interest had no right or interest whatsoever in the properties to claim any compensation for the acquisition and that all the interests in the properties vested free from all encumbrances with the State. The records produced and admitted in evidence proved that the lands, buildings thereon and appurtenance thereto be-H longed to the family of Ranas and that the admitted status of

'perpetual lessees' in respect of them, at any rate, cannot be denied, inasmuch as such perpetual leasehold interest was found to be disclosed even by the Nazul Register and that the lease also was shown to be for purpose of dwelling houses. The purchasers from the members of Ranas family are *bona fide* purchasers for valuable consideration and even their vendors have deposed before the Authorities during the Award enquiry that the compensation relating to the properties may be paid over to the purchasers directly and that they do not choose to assert for any rights for themselves in and over such transferred items. The properties in question are part and parcel of the grant originally made in favour of the Walter Edmond Davies and there was no restriction of any kind therein, including on the right to transfer by the grantee, or that any right of unilateral resumption was reserved in the grant by the Grantor State. The sale also by the Ranas in favour of the purchasers was subject to the continued payment of ground rent, the only condition imposed in the original grant and, therefore, cannot be said to be vitiated. Even assuming for purposes of consideration that the lease period expired as claimed for the State and that they are entitled to resume possession by having recourse to law, inasmuch as instead of doing so the State resorted to acquisition under the Act, the State cannot deny compensation payable to the claimants for the rights and interest held by them in the properties acquired, particularly when their possession of the lands was indisputable and beyond controversy and was taken only from them. The possession of the Ranas and their successors-in-interest cannot be said to be adverse since the relationship of landlord and tenant was recognized, in substance by decrees passed for recovery of the ground rent and consequently the plea of adverse possession cannot be countenanced. There is no discrepancy in the area of the land acquired and taken over and that as shown in the acquisition proceedings and the State cannot raise such questions at all in these proceedings. As far as the quantum of compensation and the question as to whether it was excessive or not is concerned — the Reference Court held that market value of the land fixed at Rs. 33.30 per sq. yard is neither excessive nor unwarranted in law, keeping in view the value fixed by the Government itself in respect of Shiv Kuti Arzai Barudkhana

A B C D E F G H

lands of lesser quality and other materials produced and that the said rate itself having been arrived at after giving due deductions and depreciation for carrying out development and also taking into large extent under acquisition as well as there was no need for any further deductions. As regards the question of apportionment of the compensation, it was held that the apportionment in the ratio of 10:6 Annas respectively in favour of Government and claimants is unreasonable and improper having regard to the fact that the market value fixed at Rs. 33.30 per sq. yard itself was only of the portion out of bundle of rights of the claimants and keeping into account their claims only as lessees.

The manner and method undertaken for the ultimate determination of the valuation of the property at Rs. 33.30 per sq. yard also requires to be noticed, as culled out from the Award passed by the Reference Court (*vide* Internal Pages 139-143 of the typed copy and Pages 189-191 of the Appeal Paper Book). The total value of the land would be about Rs.99 and odd keeping in view the preventing market rate at the relevant point of time and even on the basis of materials placed on record, particularly Ex. 57. But so far as the rights of the claimants as lessees are concerned, excluding the rights of the Government, the same deserved, in the view of the Reference Court, to be valued at Rs. 66.51 per sq. yard. Further deductions were found made at 25% for the land being underdeveloped and 25% for the land acquired being large area compared to the exemplar land and thus finally, in the opinion of the Reference Court, the resultant valuation of the rights and interests of the claimants as lessees only came to be arrived at Rs. 33.30 per sq. yards.

It would be appropriate to advert to some of the judicial pronouncements noticed by the Reference Court as well as those to which our attention was drawn at the time of hearing of the appeals.

In *Kachrulal Hiralal Dhoot* v. *The Gurudwara Board, Nanded & Ors.*, AIR (1979) Bombay 31, a Division Bench of the Bombay High Court held that in the matter of apportionment of compensation under the Land Acquisition Act, between owners of land and permanent tenants/permanent licensee, if the right of the owners was only to receive every year a certain sum, then naturally upon acquisition of the property including their

interests in the land, they would receive the compensation which would be arrived at upon capitalization of twenty years' income and that the rest has to be paid to the other claimants-permanent tenants/permanent licensees. In *Shiam Lal & Ors.* v. *Collector of Agra,* AIR (1934) Allahabad 239, a Full Bench of the High Court held that where an agricultural land of Zamindar over which tenant has occupancy right is acquired by Government under the Land Acquisition Act, the compensation awarded should be apportioned in the ratio of 10:6 annas, as between the Zamindar and the tenant, in the absence of evidence to the contrary, though not as a rule of law but as a rule of practice.

In the *The Collector of Bombay* v. *Nusserwanji Rattanji Mistri & Ors.* [1955] 1 SCR 1311, it was observed that when the Government acquires lands under the provisions of the Land Acquisition Act, the Government acquires the sum total of all private interests subsisting in them to put them to a public purpose and that if the Government has itself an interest in the land it has to only acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public user. Approval was also accorded to the view that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do not already belong to the Government, since there can be no acquisition by the Government of what already was its own. It was also observed therein that under the scheme of the Act, it is the interests of the occupants which are ascertained and valued and the Government is directed to pay the compensation fixed for them and there is no valuation of the right of the Government to levy assessment on the lands and there is no award of compensation therefor. Under the Land Acquisition Act what is acquired is only the ownership over the lands or the inferior rights comprised therein and that the Government is not person interested within the meaning of Section 3(b). This Court in *Dr. G.H. Grant* v. *State of Bihar,* [1965] 3 SCR 576 held as follows:

> "..... The Collector is not authorized to decide finally the conflicting rights of the persons interested in the amount of compensation : he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may

A be offered, he has, it is true, to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the B rights of the persons interested in the amount of compensation: the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under s. 18 or under s.30 or in a separate suit. Payment of C compensation therefore under s.31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under s.30 or by a separate suit."

D

In *State of Madras* v. *K.N. Shanmugha Mudaliar & Ors.*, [1976] 3 SCR 536, this Court, while rejecting the plea on behalf of the State that as the land had vested in the Government under the Abolition Act, the respondents were not entitled to compensation under the Land Acquisition E Act, held as hereunder:

"..... We find it difficult to accede to this submission, for we are of the opinion that in case the State wanted to take over the land under the Abolition Act, it should not have proceeded to acquire the interest of the respondents in the land in dispute under the F Land Acquisition Act. There were two alternative courses open to the State, either to proceed under the Land Acquisition Act or to take over the land under the Abolition Act. Although the estate was notified under the Abolition Act, the proceedings under that Act were stayed and the matter proceeded under the Land G Acquisition Act. As the proceedings, which were continued, were under the Land Acquisition Act, the compensation payable had also to be paid in accordance with the provisions of that Act. The reference, which was made by the Land Acquisition Officer to the Subordinate Judge under Section 18 of the Land Acquisition Act, H was with respect to the quantum of compensation payable to the

respondents because the respondents had felt dissatisfied with the amount awarded to them as compensation by the said Officer. The underlying assumption of those proceedings was that the respondents had an interest in the land. If it was the case of the appellant that the respondents had been divested of their interest in the land and the same had vested in the appellant-State, the appellant should have taken appropriate steps to make such a claim in accordance with law. No such claim seems to have been made. The High Court expressly left open the question of the claim of the State Government to the amount of compensation deposited on the score that Melwaramdar respondents were not entitled to it by reason of having lost all their interest in the land at the relevant point of time. We agree with the High Court that it was not open to the appellant-State in the particular reference made at the instance of the respondents to the Subordinate Judge to set up a claim adverse to the interest of the respondents. There is also we find nothing in the award of the learned Subordinate Judge to show that any question was raised before him that the amount of compensation was not payable to the respondents in accordance with the provisions of the Land Acquisition Act. This question appears to have been agitated for the first time only in the appeal before the High Court. The High Court rejected the contention in this behalf. We find no cogent ground to take a different view."

In *Chapsibhai Dhanjibhai Dand* v. *Purushottam*, AIR (1971) SC 1878, it was observed in dealing with the question as to whether a lease was permanent one or for the lifetime only of the lessee, even where it was for building structures and was transferable, that the answer depended upon the terms of the lease and that Courts must look at the substance of it to ascertain whether parties intended it to be a permanent lease. It was also held therein that the fact that the lease provided that the lessee could continue in possession of the property so long as he paid the stipulated rent did not mean that the lease was for perpetuity and instead it would be usually regarded as a lease for an indefinite period and, therefore, for the lessee's lifetime. In *Hamidullah (Dead) by his L.Rs. & Ors.* v. *Abdullah & Ors.*, AIR (1972) SC 410, it was observed that in every case the inference to be drawn as to the permanency of tenancy would be a question of fact

depending upon the facts of each particular case and the onus is always upon he who asserts such claim. While dealing with a question as to whether the Reference Court under the Land Acquisition Court had jurisdiction to decline to answer the reference on finding that the reference sought and made was beyond the statutorily fixed period, this Court in *Mohammed Hasnuddin* v. *State of Maharashtra,* AIR (1979) SC 404 held that the Collector acting under Section 18 of the Act being a statutory authority exercising his own powers under the said provision and that the making of an application for reference within the time prescribed by proviso to Section 18(2) is a *sine qua non* for a valid reference and that the Reference Court being merely a Tribunal of special jurisdiction had a bounden duty to see whether the reference made in a given case complied with the conditions laid down so as to give the court jurisdiction to hear the reference and decline to answer the reference when the same was found to have been not properly and validly made. In *Bangaru Narasingha Rao Naidu etc.* v. *The Revenue Divisional Officer, Vizianagaram,* AIR (1982) SC 63, it was held that the best evidence of the market value of the land acquired would be afforded by transactions of sale in respect of the very acquired land provided, there was nothing to doubt the authenticity of the transactions.

In *Col. Sir Harinder Singh Brar Bans Bahadur* v. *Bihari Lal & Ors., etc.,* [1994] 4 SCC 523, it has been held that if a tenanted land which its tenant was entitled to purchase under Section 18 of the Punjab Security of Land Tenures Act, 1953 did vest in the State by reason of its acquisition under the Land Acquisition Act before he became its deemed owner as envisaged under sub-section (4) of Section 18 of the Tenure Act, the landowner of that tenanted land could have made a claim for compensation awardable therefor under the Land Acquisition Act and his entitlement out of the said compensation could only be that falling in the component of compensation in Item (i), the market value of that land together with solatium and interest, though limited to the amount of purchase price of which he was entitled to get for the land under Section 18 of the Tenures Act and nothing more or less.

In *Inder Parshad's* case (Supra), this Court, while dealing with the compensation payable and apportionment of the same between the lessee and the owner of Nazul land owned by the Government itself but given

on perpetual lease by the Government with right to re-entry on breach of covenants, when being acquired under the provisions of the Land Acquisition Act, 1894, held that the fixation of the proportion by the High Court at 75% and 25% respectively as payable to the lessee and the Government was right and that does not call for interference of this Court.

In *Union of India through Secretary, Ministry of Home Affairs, Govt. of India, New Delhi & Ors.* v. *A. Ajit Singh S/o S. Chet Singh, Delhi,* [1997] 6 SCC 50, a Bench consisting of three learned Judges, while dealing with the apportionment of compensation between the tenant and landlord on the land being acquired under the Land Acquisition Act, 1894 in respect of Government land held by the tenant under a lease for thirty years with a right to further renewal up to a maximum period of 99 years, held that the ratio of 60% to the tenant and 40% to the landlord for apportionment of the compensation would be a reasonable ratio.

The relevant records and documents apart, though the dealings, conduct and claims as to their respective status, *inter se* relationship *vis-à-vis* the properties in question and their rights and interests therein seem to present varying, discordant and disorientated picture on account of a disorganised handling of such matters at different stages and points of time, certain vitally relevant aspects necessary for adjudication of the disputes raised in these appeals admits of no serious controversies or disputes. To notice some such of them are — the grant made under a document dated 24.12.1862 does not indicate that what was granted was a lease but one in return for the lump sum paid and subject to the continued payment initially of ground rent in relation to a portion and rent for the other and thereafter uniformly for all lands the payment of ground rent as revised, periodically. Since, it was not a lease as such, no duration of time or period seems to have been indicated and there appears to be a conspicuous omission also of any condition or clause enabling re-entry by resumption for one or other reason. Despite all such, for reasons beyond comprehension, the said properties along with certain other items of garden land in respect of which leases seem to have been obtained on different occasions, appear to have been shown as having been entrusted to the management of Mahanagar Palika, which got it entered as part of the Nazul Lands in the relevant register maintained, with no indication as to any time limit. The claim of the heirs of Rana as well as their successors-in-interest

A including the claimants appears from all such dealings to be only that of a permanent lessee, subject only to the obligation to pay the ground rent assessed, and as revised periodically. Then comes, the draft lease said to have been signed by an heir and successor-in-interest of the original grantee, which, though provide for 30 years lease, contains a clause for B periodical renewal upto 90 a total of years. The fact that the suits for recovery of ground rent being decreed but, at the same time, one such filed later for eviction also by the Government though did not meet with success and came to be dismissed with no further action thereon by the State also are matters of record. The further fact remains that, the State has not chosen C to take possession of the properties, in exercise of their professed or alleged rights, apparently aware of their difficulties as well and instead have chosen to have resort to the provisions of the Land Acquisition Act, 1894, and took possession in exercise of those powers of acquisition. Thus, the questions now put in issue by the parties are: (a) whether the State could completely deny the rights and interests of the claimants so as to deprive them of their D claims for compensation; (b) what are the respective interests of the parties: State on one hand and the claimants on the other in the properties acquired; and (c) how their respective interests have to be valued and whether the manner of determination undertaken by the authority and courts below are correct or that it requires interference in these appeals.

E

Having regard to the settled principles of law governing the matter in issue necessarily flowing from the relevant decisions noticed supra, we are of the view that the stand taken, in extreme by both sides, requires due modulation and moderation to finally and effectively determine their F respective claims as to their rights in the property acquired and the payment of compensation in respect of the same. Despite differences, variations and shifting of stands indicated above, we are of the view that both parties on either side should not be allowed to adopt their respective extreme stands at this point of time and to some extent, they will be precluded from doing G so also on the principle of estoppel arising out of their own conduct for such long spells of time. Consequently, we, on the facts and circumstances of the case, find enough justification to hold that the Nazul character of the land can be sustained with corresponding rights of perpetual lessee in the appellants/claimants and their predecessor-in-interest, subject, of course, H to the payment of the periodically revised ground rent.

The claim on behalf of the appellants that the entire compensation determined was only in respect of the totality of the rights held by the appellants as lessees and not of the whole inclusive of the rights and interests of the Government also, though appears to be attractive, does not appeal to us for acceptance. Though as a matter of principle of law, the Government while invoking the provisions of the Land Acquisition Act for acquiring a land in which the Government also had some or other of interest, need not go for acquiring their interest as well and what is permissible as well as obligated for acquisition is only of such of the private interest of third parties other than that of the Government, the Land Acquisition Officer in this case has chosen to, while determining the market value, indisputably proceed to determine for the whole of it and only as a consequence thereof has chosen to apportion compensation between the Government and the claimants at the rate of 10 annas : 6 annas respectively. Though the Reference Court, during the course of its judgment, adverts to the principles relating to the need or desirability of acquiring only private parties other than that of the Government under the Land Acquisition Act has ultimately chosen to adopt only the standard and rate of market value determined by the Land Acquisition Officer. Consequently, niceties of language apart and the purported endeavour attempted to have been made by the Reference Court, we are constrained to hold that the actual market value determined was that of the acquired properties as a whole and consequently the need for apportionment, inevitably arise.

Applying the ratio of the decision of this Court reported in *Inder Parshad's* case (supra), the fixation of apportionment in the ratio of 75% in favour of the claimants and 25% in favour of the State would be just and reasonable. The ratio fixed therein seems to us to be more appropriate on the facts of these cases, than the one approved in *A. Ajit Singh's* case (supra). Having regard to the fact that the Government's interest has been fixed at the proportion of 25%, there is no further need or justification to direct the capitalization of the ground rent for further being deducted or directed to be paid by the claimants either from the compensation amount or otherwise, separately.

For all the reasons stated above, in our view the High Court has committed a patent error of law and misdirected itself in determining the

A respective rights of the claimants/appellants on the one hand and the Government on the other in the lands in question as well as in restoring the ratio of apportionment made by the Land Acquisition Officer, without any objective consideration of the relevant principles in their proper perspective. Consequently, we set aside the same. Resultantly, the appeal
B shall stand allowed with the following consequences:

That the entire compensation awarded shall be distributed among the claimants in the ratio of 75% and the State in the ratio of 25%. The claimants are not bound to pay anything further even by way of capitalization of the ground rent payable. The parties will bear their respective
C costs.

B.S. Appeal allowed.