

(1964) 03 KAR CK 0019
In the Karnataka High Court
Case No : Regular Appeal No. 22 of 1959

Ramacharya Narayana Charya Burli and Another	APPELLANT
Vs	
State of Mysore and Others	RESPONDENT

Date of Decision : 13-03-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23

Citation : AIR 1965 Kar 1 : (1964) ILR (Kar) 643 : (1964) 1 MLJ 261

Hon'ble Judges : T.K. Tukul, J;K.S. Hegde, J;A. Narayana Pai, J

Bench : Full Bench

Judgement

T.K. Tukul, J.

(1) The question referred to the Full Bench is whether the decisions of this Court in R.A. No. 34 of 1955 and R.A. No. 161 of 1955 lay down the law correctly?"

(2) When R.A. No. 22 of 1959 which involves the question as to the apportionment of compensation between the appellants representing the landlord's interest and the respondents representing tenant's interest was argued before a Division Bench, the two decisions mentioned in the question referred to the Full Bench were relied upon by Mr. V. Krishna Murthi as laying down the correct ratio of apportionment of compensation between the landlord and the tenant and prays for a decision of the appeal on that basis. But Mr. Jagirdar for the Respondents drew the attention of the Bench which heard the appeal to a decision of the Privy Council in Rakhal Chandra v. Secretary of State AIR 1929 PC 113 and that of the Supreme Court in Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai, which do not appear to accord with the decisions of this Court.. Hence the reference to a Full Bench.

(3) In order to determine the scope of the opinion which this Bench is called upon to record, it would be necessary to find out the principles laid down by the two decisions. Both the decisions are decisions of Division Benches and related to the apportionment of compensation between a landlord and tenant. In R.A. 161

of 1955 the dispute related to the apportionment of compensation in respect of S. No. 213 of Kinkini Village in Sringeri Taluka. On a reference u/s 18 of the Land Acquisition Act, the learned Subordinate Judge directed the landlord and the tenant to share equally the compensation awarded by the Land Acquisition Officer. In the appeal before their Lordships it was urged on behalf of the tenant that the compensation payable to the landlord should not be in excess of the rent capitalised on the basis of 33 1/2 years rule of purchase and that the tenant was entitled to the entire balance of the amount.

This argument was rejected on the ground that it was based on the supposition that the only right possessed by the landlord in the land which was in the possession of the tenant was the right to get the rent reserved under the lease and that it overlooked the fact that the landlord had several other rights including the right to possible contingent reversion, the right to minerals in the land, the right to resume the land, which in that case was stated to be a service inam, in the case of cessation of services, the right to the land in the event of the tenant dying without heirs and also the right to have the rent reserved enhanced, if he could, under any law in force in present or in future. The Judgment does not disclose that there was any evidence to support the landlord's claim in respect of ownership in that particular case. There is, therefore no indication as to what exactly were the incidental rights of the landlord that were taken into consideration in the case. It appears to have proceeded on the basis of mere possibilities. Further their Lordships referred to the decision of the Allahabad High Court in Rohan Lal Vs. Collector of Etah, and observed that

"..... in a situation similar to the present case the landlord was given ten annas share of the compensation, the tenant being given the remaining six annas share".

Thereafter, their Lordships dismissed the appeal holding that there was no mistake on the part of the learned Subordinate Judge in dividing the compensation equally between the landlord and the tenant.

(4) In R.A. 34 of 1955, besides the question of adequacy of compensation awarded in respect of Survey No. 242/1 situated in Jodi Kempapura Agrahar village in Bangalore, the question of apportionment of compensation between the appellant who had acquired the rights of permanent tenancy and claimed to have also acquired the rights of Jodidars and the respondents who were the Jodidars, came up for consideration. Mir Iqbal Husain, J. who delivered the judgment, referred to the various decisions cited before the Court and came to the conclusion that there was not much uniformity in the rule to be adopted for apportionment of compensation between the Zamindar on the one hand and the occupancy tenant or the Kadim tenant on the other. The Subordinate Judge on a reference u/s 18 of the Act had awarded ten annas' share in the compensation to the Jodidar and six annas' share to the tenant.

The decision of the Division Bench in R.A. No. 161 of 1995 and that of the Allahabad High Court in Rohan Lal Vs. Collector of Etah, were also cited. His Lordship came to the conclusion that the position of a tenant in Mysore was slightly better than that of his counterpart in the Allahabad case and that the ratio of fifty-fifty laid down by this Court in R.A 161 of 1955 appeared to be in consonance with law, justice and equity. While agreeing with this decision, my learned Brother Hegde, J. observed :

".....The question of apportionment of compensation is not free from difficulty. If that question had not been governed by a decision of this Court, I would have rather been inclined to follow the Calcutta decisions. But we are now bound by the decision of this Court referred to earlier by my Lord".

It may be incidentally noted that even the decision in R.A. 34 of 1955 does not indicate whether any or all of the incidents of a landlord's rights mentioned in the earlier decision of the Division Bench of this Court were set up by the landlord and held proved on the evidence. It would therefore be necessary to determine whether in all cases of apportionment of compensation between the landlord and tenant, the incidental rights mentioned in R.A. 161 of 1955 should be taken into consideration in favour of the landlord, whether their existence is proved or not.

(5) Sections 23 and 24 of the Land Acquisition Act afford full guidance for the fixation of compensation in respect of a property acquired under the provisions of the Act. There is, however, no provision in the Land Acquisition Act defining the grounds on the basis of which the total amount of compensation awarded for the property should be apportioned amongst persons having different interests in such property. The compensation fixed by the award made u/s II will have no reference to the character or the nature of right in which the property acquired is held or occupied by any particular claimant. Section 30 which deals with dispute as to apportionment empowers the Collector to make a reference to a Civil Court. Section 18 of the Act enables any person interested in the property acquired but has not accepted the award, to make an application to the Collector for a reference to the Court for determination of his objections, whether it be with regard to the measurement of the land the amount of compensation, the persons to whom it is payable or the apportionment of the compensation amongst the persons interested, stating the grounds on which objection to the award is taken.

It would thus follow that a party aggrieved by the apportionment at a particular ratio in the compensation amount applying to the Collector for a reference must state the grounds on which he objects to the same. Section 21 restricts the scope of the enquiry in every such enquiry to a consideration of the interest of the persons affected by the objections. So what the Court has to do in an enquiry is to determine the value of various interests claimed by each of the interested persons in the light of the evidence adduced in the case. As was observed by Shah, J. (as he then was) in Dossibai Nanabhoy v. P. M. Bharucha 60 Bom LR 1208:

"In apportioning the compensation the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated, the proposition may appear simple; but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests, rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and the Court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded.

x x x x x But in the valuation of competing interest which from its very nature is dependent upon indefinite factors and uncertain data, considerable difficulty is encountered. Indisputably, in apportioning compensation the Court cannot proceed upon Hypothetical considerations but must proceed as far as possible to make an accurate determinations of the value of the respective interests which are lost. The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereof. x x x x".

The Calcutta High Court in Santosh Kumar Dhar Vs. Nanda Kishore Mallick and Another, has also taken the view that remote possibility of any interest in favour of the landlord or the tenant must be disregarded.

(6) Incidents of proprietary rights of ownership enumerated in R.A. 161 of 1955 as requiring consideration in favour of the landlord fall into two categories. The right to possible contingent reversion and the right to enhance rent normally depend upon the terms of contract of lease while the right to minerals and the right of resumption in case the lands is a service inam, depend upon the terms of the grant made by the Government in favour of the Inamdar or the Watandar. Therefore if the landlord claims enhanced share in the Compensation amount in respect of rights arising under or relating to the contract of lease, he has to set up and prove what are all the special considerations which weigh in awarding him a higher share in the compensation. In respect of rights which are incidental to the tenure of the grant in his favour or to the property held by him which should enter into a determination of the market-value of the property under Ss. 23 and 24, he has to put forward his claims before the Land Acquisition Officer it would be unfair to allow him to make such a claim only at the time of apportionment of compensation between himself and his tenant. He must also establish his right to get the rent enhanced. Further his right to reversion, before it can be taken into consideration should not be so remote as to be valueless.

(7) The various authorities cited at the Bar for both the parties disclose that the valuation of a possible contingent right of reversion is a matter dependent upon the facts and circumstances of each case, or upon the terms of contract of

tenancy between the landlord and the tenant, or the tenancy between the landlord and the tenant, or the tenancy rights as may be declared by any law in force. In AIR 1942 86 (Nagpur) it was recognised that the apportionment of compensation between the landlord and tenant has to be made according to their several interests in the land and that "what those interests are can only be ascertained by the evidence in each case". Vivian Bose J. laid down that when there is no evidence it is only possible to follow the rough and ready rule. In stating this proposition reference was made to the decision in *Shiam Lal and Others Vs. Collector of Agra* which enumerated the various points in favour of the Zamindar and of the tenant that are required to be taken into consideration in apportioning the amount of compensation.

The Full Bench considered the previous decisions of that High Court and the rights of the Zamindars in general and the occupancy rights of tenants and laid down that in the absence of any specific evidence as to custom, practice or agreement, the fair ratio of distribution of the compensation awarded for agricultural land as between the landlord on the one hand and the occupancy tenants on the other was ten annas in a rupee to the landlord and six annas in a rupee to the tenants. It may be noted on the basis that this rough and ready ratio was fixed on the basis that the incidents enumerated in the decisions exist.

In AIR 1929 P. C. 113 the Privy Council held that the value of the landlord's chance of receiving back the land was nothing since from the terms of the lease deed and the Act passed by the Government the College had been put on a permanent basis and there was no chance for the landlord to receive back the land particularly when the option to surrender depends upon the lessee. In *Sakariyawo Oshodi v. Mariamo Dakolo* AIR 1930 PC 261 the Privy Council held in an appeal from Nigeria, that the land should be given "some small portion" of compensation in respect of his reversionary right. What the value of such right would be or how it should be calculated, has not been indicated in that decision. In that case it appears that the occupant had no right of alienation. If the tenancy right is both heritable and alienable, the value of right of reversion may be nothing.

Before the Madras High Court in *F.G. Natesa Aiyar and Others Vs. Kaja Maruf Sahib*, the question was one of apportionment of compensation between the melwaramdar (landlord) and kudiwaram. It held that the valuation of the former's interest at 20 years purchase of the rent would be unfair and referred to some other interests like the right to recover the land from the tenant and the right of forfeiture in case of denial of title. The decision, however, proceeded on the ground that the interest of the Kudivaramdar was merely one of occupation of the lands for cultivation or for utilising it for the purpose for which he had taken it on lease. Beyond laying down that the rights of persons "are somewhat indefinite" their Lordships did not lay down any principle as to how and when the possible right of recovery of the land could be valued in apportioning the compensation.

The Kerala High Court, in *Raja Krishna Menon Vs. Raman Unni*, considered the question of apportionment with special reference to Malabar Tenancy Act and laid down that in the context of the Tenancy Act the possibility of the landlord recovering possession should not be ignored. "The Bombay High Court also considered the question of reversionary right in *Dossibai's* case, 60 Bom LR 1208 referred to above and observed that-

"In assessing the value of the reversion, the court cannot consider it as a mathematical problem but must take a broad and practical view and that valuation should be fixed by considering what the owner might obtain if the land were sold subject to the claims of the permanent tenant whose lease was to last for 198 years".

It would thus be obvious from these decisions that the right of reversion cannot be taken into consideration as a hypothetical consideration in all cases but should be taken into account where the terms of the lease disclose reasonable possibility of the landlord getting back the land.

(8) As regards the landlord's right to resume the land, it is a matter that will depend upon the tenure of the tenancy either under the lease deed or under the law or the custom governing the same. The question of forfeiture and the denial of the landlord's title or continued failure to pay the rent are matters about which no general rule could be laid down.

(9) The right to enhance the rent is essentially a matter of contract between the parties; in certain cases the law also might intervene to prohibit the landlord to enhance the rent. In *Somashekhar Swami Vs. Bapusaheb Narayanrao Patil*, the Patilki watan land had been alienated in 1865 and the successor of the alienor applied in 1915 u/s 9 of the Bombay Hereditary Offices Act for restoration of the land. The collector declared the alienation void but permitted the alienee to continue in possession of the land or payment of rent of Rs.60/- per annum. In apportioning the compensation between the landlord and tenant, the court took into consideration the respective positions of the parties under that Act and the power of the Collector to revise the rent from time to time having regard to the change of value of lands in the locality.

(10) A number of decisions were cited for the respondent-tenant which lay down that the right to enhance rent is dependent upon the contract between the parties. In *Dinendra Narain Roy v. Tituram Mukherjee* ILR 30 Cal 801 it was contended before the Calcutta High Court that the landlord was entitled to something for the chance of the lease coming to an end or being forfeited. In dealing with this question Maclean C. J. rejected the contention on the ground that no evidence was adduced to show what would be the value of such a chance and that it was extremely difficult to appreciate and value the chance of enhancement. In *Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai*, , referred to above the Supreme Court had to deal with the case of apportionment between a landlord and a tenant of a watan land. Under the

Bombay Hereditary Offices Act the Government had passed an order in 1911 continuing the tenant in possession on payment of enhanced rent. The Court considered the right of the Watandar to enhance the rent and concluded on the facts of that case that he had no such right.

The Calcutta High Court considered such right of the landlord in *Manmohan Dutt v. Collector of Chittagong* ILR 40 Cal 64 and came to the conclusion that the landlord was entitled to something in respect of the possibility of enhancement of the value of the land. With respect we are unable to appreciate how the possibility of enhancement in the value of the land could go in favour of the landlord. If at all the land has any potential value, the compensation will have to be fixed as whole and will enure for the benefit of both the parties. In *Hakim Singh v. Collector, Gurdaspur* AIR 1932 Lah 123 the Lahore High Court laid down a general proposition that while valuing the interest of the landlord and of the tenant the terms and conditions of the lease should be taken into consideration. The obvious conclusion to be deduced from all these decisions is that the right to enhance the rent is not an invariable incident of the proprietary right of a landlord but depends upon the terms and conditions of the tenancy which ought to be proved in every case when the landlord claims enhanced compensation on the basis of his right to enhance the rent.

(11) Coming to the right to minerals, we have already observed that this is a right which has to be considered while fixing up the compensation at the time of making an award and that a landlord claiming enhanced compensation for his land ought to put forward that ground before the Land Acquisition Officer. That apart, the existence of minerals has to be proved. It cannot be assumed. In AIR 1942 32 (Nagpur) it was recognised that the ratio of apportionment between the landlord and tenant might differ in different cases, depending upon the particular facts admitted or proved. The Court took into consideration the landlord's right to hypothecate the land as security for his debt, his right to sell the property absolutely and to the minerals of the soil. It is not clear from the judgment as to whether the right to the minerals or the subsoil rights had been taken into consideration at the time of passing the award, or whether there was any proof of the existence of minerals or the value of the subsoil. The decision seems to have proceeded on the ground that the tenant's right was restricted to the surface of the soil.

The Kerala High Court laid down generally in *Raja Krishna Menon Vs. Raman Unni*, referred to above, that the subsoil rights should not be ignored. In a later Full Bench decision in *Palghat Valia Raja Vs. T.S. Veeraraghava Iyer*, that court laid down certain general principles governing the apportionment should be quite proportionate to the value of interest which each party has in the property acquired. Govinda Menon J. who spoke for the court, observed-

"What these interests are is the question to be decided and the same can be evaluated on the basis of the rights that each had in the property at the time of acquisition. In assessing, the respective rights of parties the possibility of a

situation which might enable the landlord to recover possession cannot be ruled out unless the law on the date of acquisition completely shuts out such possibility. Other rights such as the sub-soil rights, right to quarry and right to minerals that the landlord may have in the property should not be ignored valuing the interest of the landlord".

While laying down these general principles the decision seems to have proceeded on the facts and evidence in that case. In our opinion, the right to the sub-soil is a very valuable right and it is for the owner of the land to plead and adduce evidence about it at the time when the market-value of the land is fixed. In certain cases it may even require decision as to whether the sub-soil rights vest in the landlord or have been transferred to the tenant subject to certain conditions or vest in the State. In *Rohan Lal Vs. Collector of Etah*, relied upon by this Court in R.A. 161 of 1955 the tenants did not contest the Collector's award and so this questions did not specifically arise for decision. From a careful consideration of these decisions it would follow that the claim for subsoil rights as well as their value real or potential is a matter of proof and any party claiming enhanced value for such a right in the total amount of compensation must set up and prove the same.

(12) For the aforesaid reasons, we are of the opinion that the two decisions which lay down as a general proposition that the ratio of apportionment between the landlord and permanent tenant should be fifty-fifty do not lay down the correct law. The question is answered accordingly.

Narayana Pai, J.

(13) I have had the benefit of reading the opinion just pronounced by my learned brother Tukol, J. Having regard to the terms in which the question for consideration by the Full Bench has been formulated or framed and what appears to me to be the general effect of the several rulings cited before us, I prefer to make a different approach to the problem. It also appears to me that the discussion and the line of reasoning contained in the said opinion of my learned brother need not necessarily lead to the categorical answer made by him to the question placed before the Full Bench. I therefore proceed to state my opinion in my own words:

(14) The questions referred to the Full Bench is whether the decisions of this Court in R.A. No. 34 of 1955 and R.A. 161 of 1955 lay down the law correctly.

(15) Before answering this question, it is necessary to ascertain the exact rule of law which these two decisions may be said to lay down.

(16) Both the cases dealt with the question of apportionment of compensation granted for compulsory acquisition of land as between landlord and tenant of the land acquired. In R.A. No. 161 of 1955 which was decided earlier on 16th December 1959, the Subordinate Judge of Chickmagalur had divided the compensation equally between the landlord and the tenant. A Bench of this Court

consisting of Somnath Iyer and Kalagate, JJ., affirmed that decision. It appears to have been argued before their Lordships that the landlord's share in the compensation could in no circumstances exceed an amount arrived at by capitalising the rent receivable by him at a certain number of years' purchase. The argument was repelled, their Lordships pointing out that apart from or in addition to the right to receive rent, the landlord has several other rights in the land. They stated-

"The argument overlooks the fact that the landlord has several other rights including the right to the possible contingent reversion, the right to minerals in the land, the right to resume the land, which in this case is said to be a service inam, in the case of cessation of services, the right to the land in the event of the tenant dying without heirs and also the right to have the rent reserved enhanced if he could under appropriate statutory provisions".

Their Lordships, however, distinctly pointed out that in cases like the one before them, exact apportionment is not always possible, and after referring to a ruling of the Allahabad High Court in Rohan Lal Vs. Collector of Etah, where the landlord was given a ten annas share and the tenant the remaining six annas, but without expressing any opinion in that regard, concluded their judgment with the observation that in the case before them they were not satisfied that the learned Subordinate Judge had committed any mistake in dividing the compensation equally between the landlord and the tenant.

(17) R.A. 34 of 1955 was decided on 29th August 1960 by Hegde and Mir Iqbal Hussain, JJ. There was also a question of enhancement of compensation in that case with which, however, we are not now concerned. Mir Iqbal Hussain, J., who delivered the judgment of the Bench while opening the discussion on the question of apportionment, observed:--

"The question of apportionment is not free from difficulty. The principle behind it is that the compensation is to be distributed as far as possible according to the value of the quantum of interest which the party interested loses by reason of the acquisition. But the snag lies in fixing the portion of that interest in terms of money between the rival claimants. There is a wide divergence of opinion in this regard."

His Lordship then proceeded to refer to the rulings of other High Courts. The Subordinate Judge in that case appears to have followed the decision of a Full Bench of the Allahabad High Court reported in Shiam Lal and Others Vs. Collector of Agra . The previous decision of this Court in R.A. 161 of 1955 was cited before the Bench. Discussing the position, his Lordship summarised his conclusions as follows:--

"In the Full Bench decision of the Allahabad High Court reported in Shiam Lal and Others Vs. Collector of Agra as per the law prevailing in that part of the country (1) the occupancy tenant's rights were liable to be enhanced although within the statutory limits; (2) the tenant was unable to transfer his rights; (3) his rights

even to sublet were very limited; (4) that in respect of the rent falling into arrears for whatever reason she was liable to be evicted; (5) that in the case of a tenant dying without leaving any of his statutory heirs, the tenancy would lapse to the landlord. Having regard to all these factors, their Lordships of the Allahabad High Court held that the landlord's share ought to be ten annas and the occupancy tenant's rights, to be six annas in a rupee.

In the present case, the tenancy is a permanent one. Its nomenclature otherwise is 'Kadim' tenant. Hence his rent could not be enhanced. Moreover, the tenant is in actual physical possession of the land. The "Kadim" tenant has the right to transfer his rights to third party. The landlord cannot suo motu evict the tenant in case the rent falls in arrears. Hence the benefit of the enhanced value of the land should go both to the jodidar and to the tenant.

A careful consideration of these decisions indicates that there is not much uniformity in the rule to be adopted for apportionment of compensation between the jodidar or the Zamindar on the one hand and the occupancy tenant or the Kadim tenant on the other as in this case. Following the decision of the Full Bench case of the Allahabad High Court, the learned Subordinate Judge has awarded ten annas compensation to the jodidars and six annas to the tenant. A recent case of own High Court has come to my notice and that is the case of Nagappaiah v. The officer-in-charge of Bettada Mallikarjunaswamy Temple, Sringeri, decided in R.A. 161 of 1955. There also there was a dispute regarding the apportionment of compensation between the landlord and the tenant.

It was urged on behalf of the tenant that what the landlord was entitled to was capitalising of the rent and adding to it the statutory compensation. Their Lordships of the Mysore High Court repelled that contention and held that the landlord has several rights. Their Lordships further held that in cases like that exact apportionment was not always possible. Following the principle though not the exact apportionment laid down in the case of Rohan Lal Vs. Collector of Etah, , they held that the compensation should be equally divided between the landlord and the tenant. To my mind the position of a tenant in Mysore is slightly better than his counter-part in the Allahabad case. Therefore, the ratio of 50:50 laid down in the decision of this Court cited above appears to be in consonance with law, justice and equity".

(18) My learned brother Hegde, J., while agreeing with the result stated in the judgment of Mir Iqbal Hussain, J., observed as follows:--

"I agree with the order just pronounced by my lord. The question of apportionment of the compensation is not free from difficulty. If that question had not been governed by a decision of this Court I would have rather been inclined to follow the Calcutta decision. But we are now bound by the decision of this Court referred to earlier by my Lord".

(19) So far as I am able to see, these two decisions did not, in my opinion, purport to lay down any new rule of law nor any rule at all as one which should

invariably be applied or followed in every case of this description. A reading of both the judgments makes it clear that both the Benches of this Court proceeded on the footing that the question of apportionment of compensation between a landlord and a tenant of a land acquired is not capable of solution by the application of any hard and fast rule, and addressed themselves to the problem of formulating the best possible rule in the circumstances of the cases respectively before them by the application of which a just or equitable distribution of the compensation between the rival claimants could in the circumstances of the case be made. Viewed in this light, it is impossible, in my opinion, to say either that these decisions lay down any wrong principle of law or that any considerations adverted to or relied upon as leading to the ultimate conclusion in these cases is either wrong or irrelevant.

On the second aspect of the matter, I shall explain the position greater detail at a later stage of this judgment. Any question whether the established principles of law have been wrongly or rightly applied to the facts of the wrongly or rightly applied to the facts of the particular cases is certainly not before us, because we are not hearing any appeals against those decisions.

(20) I understand, however, that the need for making this reference was felt by reason of the arguments addressed on the basis of the above decisions during the hearing of Regular Appeal 22 of 1959 out of which this reference arises. It appears that it was argued on behalf of the landlord-appellant in the said appeal that on the strength of the above two decisions, an equal division of the compensation between landlord and tenant should be taken as a working rule in all cases of apportionment of compensation between a landlord and a tenant, unless by leading positive evidence either the landlord or the tenant makes out a case for payment to him of more than half the compensation and that, on the other hand, it was argued on behalf of the tenant-respondent that the landlord was entitled to nothing more than an amount representing capitalised value of the rent at a certain number of years' purchase because the tenancy in question was a permanent tenancy with no right to the landlord to enhance the rent. The counsel for the landlord appears to have contended that the above argument on behalf of the tenant must be taken to have been explicitly rejected by the decision in R.A. 161 of 1955.

The counsel for the respondent-tenant, on the other hand, appears to have pointed out that the said opinion expressed in the judgment in R.A 161 of 1955 is opposed to a decision of the Judicial Committee of the Privy Council reported in AIR 1929 PC 113 and also to what must be taken to be implicit in a decision of the Supreme Court in *Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai*, . The counsel for the tenant also appears to have further contended that at least some of the considerations adverted to or relied upon in the two Bench decisions of this Court in question are irrelevant as being either hypothetical or too remote to deserve considerations.

(21) Hence the arguments before this Full Bench have been devoted to the

questions - (1) whether in cases of permanent tenancy with no right to the landlord to enhance the rent the landlord is entitled to anything more than the capitalised value of the rent reserved by the lease out of the compensation awarded for compulsory acquisition of the land subject to the tenancy, and (2) whether and if so which of the considerations adverted to or relied upon in the judgments of this Court in R.A. 161 of 1955 and R.A. 34 of 1955 can be said to be irrelevant.

(22) It is undisputed and indisputable that acquisition under the Land Acquisition Act is of the land itself, whatever may be the number of persons interested therein and whatever may be the nature and extent of their respective interests. All those interests come to an end or stand terminated and the land vests in the Government freed of all those interests. Provision is made in the statute for payment of compensation to the persons interested, according, to a definite scheme. The process of payment of such compensation takes place in three stages, (1) the fixation of the value of the land itself on the date of the preliminary notification, (2) apportionment of the value so fixed among the several persons interested therein and (3) the payment thereof to such persons in accordance with such apportionment.

(23) Section 11 of the Land Acquisition Act, which makes a definite stage in the process, requires that the Collector making the award shall determine by such award (1) the true area of the land (2) the compensation which, in his opinion should be allowed for the land and (3) the apportionment of the said compensation among all the persons known or believed to be interested in the land. It will be noticed that the fixation of compensation is in respect of the land itself. Section 15 provides that in determining the amount of compensation, the Collector shall be guided by provisions contained in Section 23 and 24. Section 23 enumerates matters to be considered in determining the compensation, and Section 24 matters which should be neglected or ignored in determining the compensation.

Among the matters enumerated in Section 23, the most important is the first, viz., the market value of the land on the date of preliminary notification u/s 4(1) of the Act, the other factors being what may be briefly described as incidental matters, viz., damage sustained by reasons of the taking away of standing crops at the time of taking possession, the severance of the land acquired from other lands, injurious affection of other property, the need if any of a person interested having to change his place of residence or business and bona fide diminution of profits between the declaration u/s 6 and the actual taking of possession. A person dissatisfied with the compensation as fixed by the Collector may move the Court u/s 18 for enhancement of the compensation, but the considerations to be taken into account by the Court are the same. Apportionment is dealt in Sections 29 and 30 which read as follows:

"29. Particulars of apportionment to be specified :--Where there are several persons interested, if such persons agree in the apportionment of the

compensation, the particulars of such apportionment shall be specified in the award, and as between such persons, the award shall be conclusive evidence of the correctness of the apportionment. 30. Dispute as to apportionment : When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Deputy Commissioner may refer such dispute to the decision of the Court."

It will be seen from the above that the actual valuation is done once and for all under the award subject no doubt to an enhancement, if any, made by the Court on a reference u/s 18. The apportionment, whether made by the Collector on an agreement between the parties or in the absence of any dispute between them or made by the Court u/s 30 in the event of a dispute, does not in the real or strict sense of the term constitute any revaluation. It is only a process of distribution of the total compensation already fixed between several persons interested in the land in accordance with their respective interests. Even if in the process of arriving at the ultimate method of distribution it may not be possible to avoid altogether an estimation of the values of different interests, what is actually or in effect done is the estimation of relative values of the interests of the persons interested.

(24) Hence the chief difference between the fixation of the amount of compensation either by the Collector in his award u/s 11 or by the Court on reference to it u/s 18 on the one hand and the apportionment thereof between the several persons interested in the land u/s 30 on the other is this, viz., that whereas the existence, nature or quantum of the interests of different persons in the land acquired is wholly irrelevant while determining the value of or compensation for the land in gross, the first step in apportioning that compensation between the several persons interested is to ascertain the existence, nature and quantum of such interests. It should, however, be pointed out that each of the several ancillary matters, with reference to which separate computation of damage suffered by interested persons enumerated in section 23 (apart from the market value of the land itself) is made, has definite reference to the nature of the interest of the person concerned,--for example compensation for damage sustained by reason of taking away the standing crops must necessarily go to the person to whom the crops belong whereas compensation for the severance of the acquired land from other lands or for injurious affection of other property must go to the person who suffers by the severance or whose other lands are injuriously affected by the acquisition.

(25) It is in the light of these general considerations clearly flowing from the scheme of the Act that arguments addressed before the Full Bench with reference to the propositions as formulated above have to be examined.

(26) Taking up the first of the propositions, viz., whether in the case of a permanent tenancy with no right to the landlord to enhance the rent the landlord is entitled only to a capitalised value of the rent calculated on a just and

reasonable formula, it is obvious that the said proposition should be correct only on the basis that the one and only right which belongs to the landlord is the right to receive rent at a certain fixed and invariable rate. Unless it is clearly established that such is the only right of the landlord in the circumstances of the case, either on the basis of agreement i.e. the terms of the lease, or on the basis of any custom, i.e., any incident or incidents annexed to contracts by local custom, or on the basis of any statutory law regulating the mutual rights of landlords and tenants or controlling their separate rights, as for example, a law relating to treasure-trove or a law declaring the rights of the Government to minerals or controlling the rights of individual owners in the matter of exploitation of minerals, the clear legal inference would be that an owner of the land retains to himself all rights in respect of the land other than those which he has transferred under the lease to his tenant.

It is no doubt true that the right to receive rent is the most important right in terms of monetary advantage. But other advantages of ownership which in conceivable circumstances may take the shape of or result in actual monetary benefit to an owner cannot in ordinary circumstances be wholly discounted. The very legal conception of a lease is a transfer or right to enjoy the property in consideration of money, share of crops, service or any other thing of value to be rendered periodically,--such return for the enjoyment being called rent. In the absence of a contract or local custom to the contrary, the enjoyment of the property by the lessee is limited to the purpose of the lease and he cannot use the property for a purpose other than that for which it was leased or fell or sell timber or work mines or quarries not open when the lease was granted or do any act which is destructive or permanently injurious to the property. It means therefore that ordinarily the right to enjoy the property transferred to the lessee under a lease is not in the contemplation of law necessarily exhaustive of all the rights of the lessor in the property.

Consequently, the rent which is the return made by the lessee for the right of enjoyment transferred to him cannot represent the value of the enjoyment of all the rights of the lessor in the land. In other words, capitalised value of rent cannot be equated to the value of all rights of the lessor. To hold otherwise would mean that a permanent lease with a fixed rent is in no respect different from an actual sale of the land the sale price being treated as a permanent loan by the lessor to the lessee but irrecoverable at the instance of the lessee subject to a permanent liability of the lessee to pay a permanently fixed amount by way of interest.

(27) From what is stated above, it follows that in the absence of special circumstances limiting the landlord's right merely to the receipt of rent, he would have other rights which could in certain circumstances be worked out to his advantage in an appropriate manner without affecting the rights of the lessee or which would at any revert to him without any restriction on the termination of the rights of the lessee. It has, however, been contended that this possible

reversion of rights to a lessor is a distant possibility in the case of a permanent lease,--which possibility is so distant and remote that in ordinary circumstances one could treat it as a mere hypothetical chance which could as well be ignored as a matter of no value.

I must at once point out that whatever may be the value of Court may be disposed to place upon it in the circumstances of a given case, it is wholly inaccurate to treat a right actually contemplated by law to be purely hypothetical. If, as I have pointed out, ownership is a right or a bundle of rights which the law recognises and a lease is a transfer of one of those rights, however important or valuable it may be, the law distinctly contemplates that the residue of those rights, i.e., ownership minus only the right transferred, still remains with the owner. It is not open to a Court of law, in my opinion, to ignore something, which the law recognises, as purely hypothetical. Hypothesis, strictly speaking, means a supposition made as a basis for reasoning without reference to its groundless assumption. A word having that meaning can never be applied to a position which the law recognises as existing.

(28) It is, however, pointed out that the only possibility of reversion in a permanent tenancy would occur when the line of heirs of the lessee becomes extinct and that the total extinction of the line of heirs of a person cannot be expected to occur in normal circumstances. It is further stated that such possibility is made more distant if the lessee has a right to alienate his lease-hold interest.

(29) I have not been able to appreciate the second argument. Although, death is certain, its date of occurrence is most uncertain. It is not therefore possible to assert on the case of a transfer that the line of transferor might come to an end earlier than the line of transferee. The transfer may be to an individual bachelor who may die the very next day after the transfer leaving no heirs, while the transferor is a man with many sons and grandsons living who in ordinary course may be expected to continue his lineage for a century. I do not think therefore that the right of alienation enjoyed by the lessee can make any difference to the legal position.

(30) As to the first, viz., the alleged remoteness, there are at least two considerations which are very important.

(31) Firstly, there may be in permanent leases with no right to the landlord to enhance the rent a provision for forfeiture of the lease in certain contingencies in which case the right of reversion need not necessarily be dependent only on the extinction of the line of heirs of the lessee.

(32) There is also another aspect of the matter which does not appear to have received sufficient attention. When a land is acquired compulsorily under the Land Acquisition Act, the rights of all persons interested therein are put an end to by law and vested in the Government. In the contemplation of the law therefore the rights of both the lessee and the lessor stand terminated. Hence it

is a perfectly reasonable view to take that the moment the rights of the lessee come to an end, the lessor's right of reversion comes into being although that also immediately stands terminated. It is not therefore necessary to proceed on the basis that the rights of the lessee that stand terminated by the acquisition are real or substantial and those of the lessor which also stand terminated for the same reason are unreal, remote or a mere possibility. Cases refer to the lessor's right of reversion as a possible contingent right and to the portion of the compensation paid to him in respect thereof as compensation for the total and permanent deprivation of that possible contingent reversion. If the contingency, on the happening of which the reversion occurs, is one which results in the termination of the lessee's rights, I am unable to recognise any reason why the termination of lessee's right effected by compulsory acquisition should not tell itself be treated as furnishing the contingency which is sufficient for the lessor's right of reversion coming into being.

(33) Strong reliance was, however, placed upon the decision of the Privy Council in Air 1929 PC 113 and that of the Supreme Court reported in *Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai*, . Although at first sight the actual result of the cases decided in the said two rulings appears to lend some support to the proposition sought to be made on behalf of the tenant,--which circumstance appears to have been the principal reason which persuaded my learned brothers to make this reference to the Full Bench,--a careful reading of the decisions makes out, in my opinion, that no such absolute proposition can be read into these decisions or inferred therefrom.

(34) In the case decided by the Privy Council there was originally a lease in favour of a single individual for the purpose of housing a college containing, among other terms, a term to the effect that the lessors were not to be entitled to take back the property unless the lessee gives up the same on his own accord. Subsequently, by Act XVI of 1920 passed by the Indian Legislative Council, the property comprised in the lease stood transferred to and vested in the Governor of Bengal in Council. After the said Act was passed but before it was brought into force, the Government determined to acquire the freehold interest in the land and it then became necessary to ascertain the compensation to be paid to the lessors for their interest in the land. The Collector assessed that interest on the basis that they were entitled to a perpetual rent of Rs.140/- per month but that they had no substantial or marketable interest in the land beyond that amount. It was this view that was accepted as correct both by the High Court of Calcutta and later by the Judicial Committee of the Privy Council.

It will be noticed therefore that no question of apportionment of the type we are examining in this case was the subject of discussion in that case. The one and only question which their Lordships examined was the manner in which the value of the lessors' interest in that case which was acquired by the Government should be determined. From the judgment it appears that the High Court of Calcutta took the view that the lease was determinable only at the option of the

lessee and that the value of the lessors' chance of receiving back the land was nothing at all since it was quite plain that the effect of the Act was to put the college on a permanent basis.

It was argued before the Privy Council that the original lessee and his successors had the right to remain in possession only so long as the college was actually carried on the site demised. But, their Lordships, after examining the language of the lease, declined to accept the construction suggested in view of the clear term in the lease to the effect that the lessors shall not be entitled to take back the property unless the lessee gives up the same on his own accord. Thus, it is clear that the decision proceeded exclusively on the peculiar facts of the case and rested principally on the fact that the special terms of the lease and the effect of the Act of the Indian Legislative Council together indicated that the only right which the lessor had in that case was to receive a rent of Rs.140/- per month and nothing more.

(35) That the reversionary right of a lessor is not a matter to be ignored altogether as a hypothetical right is clear from another decision of the Privy Council reported in AIR 1930 PC 261. The Supreme Court of Nigeria in that case had declined to grant any compensation to the lessor in respect of that right of reversion. Their Lordships of the Privy Council reversing that decision observed :

"It is here that their Lordships are unable to agree. The possible contingent right is admitted, and the fact is found that by the taking of the land by the Government that contingent right is put for ever at an end. * * * Their Lordships therefore are of opinion that some portion of the compensation money in this case should be allotted to the plaintiff in respect of his possible right of reversion, which is cut off for ever by the compulsory acquisition."

Reliance, however, has been placed on the observation of their Lordships in the same case to the effect that the said right, though not actually illusory, must be of small value. But their Lordships did not state the same as a final opinion on the facts of the case, but observed:

"Their Lordships do not attempt by the settling of any fraction to evaluate it because it will be much better done by the learned Judge on the spot. Their Lordships think that the case must go back in order that the Court below may allot such portion of the compensation money to the Chief as represents in their view the value of the possible rights of reversion."

The decision therefore shows that even in permanent lease the right of reversion is a right which has some value and that the exact or proper value to be placed on it must depend upon the facts of each case.

(36) In the case reported in *Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai*, the Supreme Court dealt with the apportionment of compensation between a watandar and a lessee holding under a lease created by a predecessor in title of the former. Both before the High Court and before the

Supreme Court, the question appears to have been argued solely on the basis that the portion of the compensation payable to the watandar could only be capitalised value of the rent, the dispute between the parties being whether the rent was fixed in perpetuity or the watandar had the right to enhance it. From the Report it does not appear that it was at all contended on behalf of the watandar that he had any right of reversion.

From the narration of facts in the judgment relating particularly to the course of previous litigation between the parties, it appears that the permanent lease in question had been created before the coming into force of the Bombay Hereditary Offices Act of 1874 and that what the watandar was at the relevant time receiving as rent had been fixed by the Government of Bombay purporting to vary or modify the order passed by the Collector in proceedings taken by the watandar u/s 9 of the said Act to declare the invalidity of the lease. Though the Collector refused to declare the lease as void, he directed the alienee to pay a certain amount annually to the watandar which was later varied by the Government of Bombay on being moved by the watandar. The principal question examined by the Supreme Court was the effect of the said order of the Government. The Supreme Court pointed out that the Collector could u/s 9(2) of the Act make an order either for redelivery to the watandar of the land alienated or for a periodical payment to him by the alienee without handing back possession, only if the first declares the alienation to be void. The Collector in the said case having refused to make any such declaration, their Lordships held that the order of the Government in question in the case could only be regarded as one made u/s 5 of the Act according sanction to the alienation beyond the life-time of the alienating watandar.

In cases where the Collector actually declares an alienation by way of lease to be void but directs the alienee only to make periodical payments to the watandar continuing to remain in possession, the legal position as pointed out by their Lordships would not be that of creating a relationship of lessor and lessee between the parties. In other words, the only right which the watandar in such circumstances would have is the right to receive periodical payments as determined by the Collector.

It seems to me that the impression or the misapprehension of the parties in the earlier stages of this litigation the watandar's right to receive rent is relatable to an order validly made by the Collector u/s 9(2) of the Act was perhaps responsible for the failure to make any reference to the right of reversion or to make a claim compensation on the footing that the right of reversion exists. That the legal position was by no means clear is apparent from the fact that the principal question considered at some length by their Lordships of the Supreme Court is the exact legal effect to be given to the order of the Bombay Government fixing the amount receivable by the watandar by way of rent. In this view, therefore, I do not think that it will be either correct or proper to read this ruling of the Supreme Court as either laying down or by implication lending

support to the proposition that in every case of a permanent lease with no right to the landlord to enhance rent, the only right or interest that he has in the land is to receive that fixed rent.

(37) There is another aspect of the matter which should not be lost sight of. The circumstances in which the rate of rent was fixed between the parties or the reasons which persuaded them to arrive at that rate may vary from case to case, and in the case of ancient leases, it may even be impossible to ascertain with any approach to accuracy either those circumstances or the reasons. Except in cases where the value of the land goes up by reason only of the labour invested or the improvements made by the lessee, it stands to reason and justice that the enhancement in value caused by other circumstances should be shared equitably between two persons interested in the land as lessor and lessee. If in such a case the value of the lessor's interest is to be related exclusively to the rent fixed in circumstances quite different from those prevailing at the time of the acquisition, it would mean that once an owner grants a permanent lease to another, he loses for all time all benefits legitimately accruing to his right of ownership.

(38) In view of all these considerations, I am of opinion that the argument on behalf of the tenant that the landlord is entitled only to a capitalised value of rent and nothing more, cannot be accepted and was rightly rejected by the Bench of this Court which decided R.A. 161 of 1955.

(39) Several cases have been cited before us in regard to the manner in which the compensation should be apportioned between a landlord and a tenant. But, in the light of the question referred to the Full Bench and in view of my opinion that no hard and fast rule can be laid down for the purpose or can be laid down for purpose can be said to have been laid down by the decisions of this Court in R.A. 161 and R.A. 34 of 1955, it appears to me unnecessary to examine the cases in detail. I shall only make a very brief reference to a few of them before proceeding to express my opinion on the second of the two propositions formulated above.

(40) The two decisions of the Allahabad High Court reported in Rohan Lal Vs. Collector of Etah, and Shiam Lal and Others Vs. Collector of Agra cited in the judgment in R.A. 34 of 1955, as already stated, divided the compensation at the rate of 10 annas in a rupee to the landlord and six annas to the tenant. In AIR 1942 86 (Nagpur) , the landlord was given one part and the tenant three parts of the total compensation. In all these cases, however, it is pointed out that the said rule of distribution was adopted by the Court only as rough and ready rule, and not as rule of general application in all the cases. Justice Vivian Bose in Nagpur case distinctly points out that no guidance can be had from decided cases and that the rule of distribution must be formulated in each case depending upon the facts of that case. A Full Bench of the Kerala High Court in the case reported in Raja Krishna Menon Vs. Raman Unni, , after dissenting from a previous decision of that Court reported in Krishna Ayyar v. Kuthiravattath Nayar ILR 1958 Ker 1404 which had given the Jenmi or landlord only a capitalised value of

michavaram payable to him and the rest to the tenant, pointed out that value should be attached not only to the right to recover possession which he has but also the subsoil rights and the other rights that he may possess, and remanded the case to the trial Court for a fresh disposal after giving the parties an opportunity to adduce evidence.

In another case of Kerala High Court, also decided by a Full Bench, reported in Palghat Valia Raja Vs. T.S. Veeraraghava Iyer, , the High Court after pointing out that the rights which the Jenmi-landlord has in the subsoil or quarries, minerals, etc., should not be ignored confirmed the apportionment made by the Subordinate Judge in that case giving one-fourth the compensation to jenmi and three fourths to the tenant as a fair and reasonable one in the circumstances of the case. The decisions of the Calcutta High Court cited before us do not lay down any particular or invariable rule but divide the compensation differently in different cases depending upon the facts of each case.

(41) In every case cited before us the learned Judges have taken care to state that no rule of general application can at all be laid down to cover all conceivable factors and considerations which may arise in all cases but that the rule formulated by them appeared to them to be just in the circumstances of the case actually decided by them. Therefore when the ascertainment of the interests or rights possessed by the rival claimants has necessarily to be made on the facts of each case in the light of the law customary or statutory governing their respective rights and when the apportionment of the compensation between them in proportion to their value of their respective interests necessarily depends upon what appears to be just and equitable to the Court in the light of the circumstances, it is, in my opinion, dangerous to try to formulate principles or rules for general guidance or to lay down which considerations are relevant and which not, or to assert that the distribution made in a particular case is either right or wrong or could have been done better or in a different fashion.

As pointed out by the Privy Council in *Secretary of State for Foreign Affairs v. Charlesworth Pilling and Co.* ILR 26 Bom1 it should be recognised that in all valuation, judicial or otherwise, there must be room for inference and inclinations of opinion which being more or less conjectural, or difficult to reduce to exact reasoning or to explain to others, that there is when factors are not all quite certain, more than ordinary room for guess work and that it would be unfair to require an exact exposition of reasons for the conclusions arrived at. These observations apply with equal, if not greater emphasis to apportionment.

(42) The only general principle one could state is that apportionment u/s 30 of the Land Acquisition Act is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interest. The ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case

and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

(43) In view of these considerations I am not prepared to say that the two Division Benches of this Court which decided Regular Appeals 161 and 34 of 1955 have proceeded upon any hypothetical considerations or that the several factors which they have enumerated are irrelevant. Indeed, the enumeration of factors is, in my opinion, merely intended to point out that the landlord's interests is not to be limited in all cases to the right of receiving rent but that assessing or determining this share of compensation money, regard should be had to other rights which he may possess. The enumeration does not mean that every one of the circumstances or factors enumerated was available in a given case, nor is it possible for us to say which factors actually operated on the minds of the learned Judges by reaching their ultimate conclusions.

(44) This discussions leads to the following propositions:

1. The contention in absolute terms that in every case of a permanent lease with no right to the landlord to enhance the rent, the landlord is entitled only to the capitalised value of the rent reserved by the lease is wrong;
2. The landlord's share in the compensation for compulsory acquisition of the land can be so limited only in cases where it is established that the one and only right possessed by him is to receive rent at fixed invariable rate;
3. The right of reversion which the landlord has in any tenancy including a permanent tenancy cannot be described as either hypothetical or a remote chance. It is a right recognised by law as existing and should be assigned appropriate value according to the circumstances of each case;
4. The nature and number of other right which the landlord possesses have to be ascertained on the facts of each case and in the light of the law, whether customary or statutory, governing their mutual relationship or their separate right in the property;
5. No hard and fast rule can be laid down setting a definite proportion for apportioning the compensation for compulsory acquisition of the land as between landlord and tenant. The proportion or the rule of distribution has to be formulated in each case deriving such guidance as may be available in other decided cases dealing with similar facts; and
6. The decisions of the Division Benches of this Court in R.A. 161 of 1955 and R.A. 34 of 1955 do not purport to lay down any hard and fast rule applicable to all cases of permanent tenancies in this State.

I would therefore answer the question as follows:--

(45) Neither the decision in Regular Appeal 161 of 1955 nor the decision in

Regular Appeal 34 of 1955 can be said to lay down any wrong proposition of law.

ORDER OF THE COURT

(By majority)

(46) Our answer to the question of law referred to this Bench is that the decisions of this Court in R.A. No. 34 of 1955 and R.A. No. 161/55 do not lay down the law correctly.

(47) Order accordingly