

(1933) 07 AHC CK 0020
In the Allahabad High Court

Shiam Lal and Others

APPELLANT

Vs

Collector of Agra

RESPONDENT

Date of Decision : 19-07-1933

Acts Referred:

Citation : (1933) 07 AHC CK 0020

Hon'ble Judges : Sulaiman, C.J.; Mukerji, J.; King, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. This is an appeal by a zamindar and two tenants of a plot of land which has been acquired by Government under the Land Acquisition Act. The questions which arise in appeal are as to the market value of the property compensation for damage sustained and the method of distribution. The land as recorded in the revenue papers is an agricultural land, and the two tenants are its occupancy tenants. The first appellant, Shiam Lal, is the zamindar. The appellant however claimed that the land was a building site and had been let out for the purpose of keeping manure and fuel wood. The tenants filed an application before the Collector merely pointing out certain circumstances which should be taken into account in awarding compensation. They did not put forward any definite claim and did not mention any amount which should be fixed as compensation. The learned District Judge has accordingly held that they cannot be given any amount larger than what was awarded by the Collector. We are of opinion that in view of the provisions of Section 25, Land Acquisition Act, the view of the District Judge was right. The tenants cannot now be heard to say that the amount awarded to them is inadequate. The appeal of Amar Nath and Mt. Kaunsilla must therefore be dismissed with costs. Shiam Lal claimed RS. 4,600 as the market value of the land. The Collector treated this land as an agricultural land and assessed compensation at the rate of 16 years' purchase based on the net income. The total amount came to Rs. 78-15-0. The first point is whether the basis of calculating compensation is correct.

2. It appears that the land in question is a part of a bigger plot measuring 1 bigha and 4 biswas. 17 biswas out of this have now been acquired by Government. That area amounts to 2,342 square yards. The plot is situated within the Municipal limits of the city of Agra and adjoins a metalled public road and is quite close to another metalled public road which crosses it. This portion is still called village Bhugipura, but is in a portion of the town which is well inhabited. The map shows that there are houses all along the road in this part of the town. Eajendra Pal Singh, patwari, who was produced by the respondent, has stated that the number of houses as well as the population in this part are increasing day by day. The inspection note recorded by the Collector does not show that he found this plot under cultivation at the time when he saw it although it does not also show that there was any heap of cow.dung cakes or fuel wood on the spot. The claimant led oral evidence to show that this plot had been let to tenants who were using it for such purposes, and that he was getting about Rs. 50 a year as rent. On the other hand, the rent from occupancy tenants after deducting Government revenue for this portion comes to Rs. 3-5-3.

3. The learned District Judge has ignored the fact that the rates at which the properties in this neighbourhood were sold under previous sala deeds were much higher. He has ignored them on the ground that those sale deeds had been executed by full owners who had the right too sell the whole property for building purposes, and there were no tenancy rights in those lands. We think that he has erred in approaching the case from this standpoint. The first thing to do is to assess the market value of the land as it stood at the date of the publication of the notification : Section 23(1). For this purpose it is not necessary to take into account the conflicting rights of the various claimants inter se. This was the view expressed by the Calcutta High Court in the case of Collector of Jalpaiguri Vs. Jalpaiguri Tea Company Ltd., . The same view has been expressed in a recent case of this Court in Rohan Lal Vs. Collector of Etah, . We agree with the view that the Court must first find out the market value of the land acquired irrespective of any consideration as to how it is held by the various persons interested in it. We think that this plot of land in the circumstances quoted above cannot be treated as a pure agricultural land, but must be regarded as building site with considerable potential value. The examples cited on behalf of the claimant are not quite conclusive. In 1924, 17,689 square yards were sold for a price, which would work out at Rs. 3-10-0 per square yard. In the same year over 84 square yards were sold at the rate of Rs. 2-15-4 and over 86 square yards at the rate of Rs. 2-15-0. But these were the sales of much smaller plots of land, and the prices obtained would not necessarily furnish a sufficient criteria for determining the rate for the plot in question. At the same time it is to be borne in mind that when building sites are sold the areas may be small. The evidence produced by the claimant as regards the income derived for the stalls is very unsatisfactory, but there is reason to suppose that he has been getting some income. Having regard to all the evidence and the circumstances we have come to the conclusion that the price fixed by the Court below is too low, and that at

the same time the price demanded by the claimant is too high. A fair assessment of the market value would be to fix it at the rate of Rs. 1 per square yard. There is some arbitrariness in this assessment, but in the absence of better evidence it is not possible to arrive at any other result. We accordingly hold that a fair market price of this land, having regard to all its potentialities, is Rs. 2,342. This is exclusive of the 15 per cent for compulsory acquisition.

4. The second question is as to whether there has been any deterioration in the value of the land which has been severed off. The original acquisition covered the entire plot, but the Government have acquired only a portion abutting the road and have left the portion at the back of this plot to the persons interested. At the instance of the District Judge a right of way has now been allowed over the land already acquired; but there is no doubt that when the remaining land has lost its frontage towards the road, it has deteriorated in value. The persons interested are u/s 23(1), para 3, entitled to compensation for the damage sustained by reason of severing such land from the other land. It is very difficult to assess the amount of the damage, but we think that on the whole it would be a fair estimate to fix the damage at Rs. 158, thus the total value of the amount of compensation to be fixed is Rs. 2,500. The third question is one of apportionment of this value between the zamindar on the one hand and the tenants on the other. As the tenants did not put forward any definite claim in the Court below, they cannot get more than what they have been awarded. Whatever excess share is due to them would therefore remain for the benefit of the Secretary of State. Admittedly the claimant zamindar is entitled to such a share in this amount as would represent the value of his interest. In the case of *L.W. Orde v. Secy. of State* AIR 1918 All. 26 a similar situation had arisen in which the occupancy tenants had acquiesced in the award made by the Collector and the zamindar was not allowed to claim the amount which would have gone to the tenants, if they had put forward any claim. He was given compensation calculated at a certain rate based on the income. The learned Judges did not, in that case, proceed on the assumption that the zamindar's rights in such lands were much more than those of the occupancy tenants, and that therefore they were at any rate entitled to more than half of the total value. On the other hand, it has been held in the case of *Rohan Lal Vs. Collector of Etah*, that there is a substantial disparity between the rights of the landlord and the rights of an occupancy tenant in these provinces and that a fair estimate would be to say that in a rupee the landlord's share ought to be ten annas and the occupancy tenant's rights six annas. The learned Judges have rightly pointed out that there are several matters which have to be borne in mind in favour of the zamindar. These are: *Collector of Jalpaiguri Vs. Jalpaiguri Tea Company Ltd.*, that an occupancy tenant's rent is liable to enhancement, although within statutory limits; *Rohan Lal Vs. Collector of Etah*, that the tenant is unable to transfer his rights; (3) that his right even to sublet is very much limited; (4) that in the case of rent falling into arrears, from whatever reason, he is liable to be ejected; and (5) that in the case of the tenant dying without one of the statutory heirs the

tenancy would lapse to the landlord.

5. As against these there are also circumstances in favour of the tenants : (1)(a) No doubt an occupancy tenant's right is liable to enhancement, but the enhancement of rent of an occupancy tenant cannot be effected more than once in 20 years and this too for not more than 25 per cent (Ss. 67 and 50, Tenancy Act); (b) as against this, Government revenue payable by the zamindar is also liable to enhancement, though it cannot be enhanced within the period of the existing settlement. (2) Of course, the occupancy tenant has jao right to transfer his rights, whereas the zamindar can transfer his proprietary interest. But the value of the transferable interest to the zamindar is, for all practical purposes, governed by the rent which he receives from the tenant. Although he transfers his other contingent rights, he has no right of actual occupation. (3) The right of a tenant to sublet the land is very much limited, but as against this the zamindar's right to sublet the land to anybody else does not exist so long as the occupancy tenant continues. (4) The tenant is liable to ejectment when the rent falls into arrears. Similarly the zamindar's proprietary interest can be sold if he does not pay the Government revenue. (5) In the case of the tenant's line becoming extinct or there being no other collateral sharing in the cultivation, the tenancy would lapse to the landlord. But such a contingency is remote and there is also a possibility of the zamindar dying heirless in which case the land would escheat to Government. The outstanding fact however is that the landlord's right is limited in practice to the collection of rent, whereas the tenant is in actual physical possession of land. There is no doubt that the tenant derives much more benefit and income from the land than the zamindar ordinarily does. When the land is acquired by Government, the person who suffers most for the time being is certainly the occupancy tenant who has been turned out and not the zamindar who gets cash in lieu of the annual income, cash which he can reinvest. Ordinarily when zamindari properties are sold, the sale price is fixed on the basis of the rental, the rate being high on account of the contingent rights of the zamindar.

6. We therefore find it very difficult to lay down any hard and fast rule or to hold that the rights of the landlord are necessarily greater than those of the occupancy tenant, and that the landlord should therefore get a larger share in the amount of the compensation. But this view has been clearly expressed in *Rohan Lal Vs. Collector of Etah*, quoted above. We think that this is an important question affecting the rights of zamindars and tenants in these provinces, and is likely to arise in most cases whenever zamindari property is acquired for public purposes. As pointed out above the principle on which the learned Judges in *Manphool Vs. Sahi Ram and Others*, proceeded was quite the contrary. We therefore think that it is necessary that the following question should be referred to a larger Bench for an answer:

In the absence of any specific evidence as to custom, practice or agreement, what would be the fair ratio of distribution of the compensation awarded for

agricultural land as between the landlord on the one hand and occupancy tenants on the other.

Lay it before the Chief Justice.

Sulaiman, C.J.

7. The question referred to the Eull Bench is:

In the absence of any specific evidence as to custom, practice or agreement, what would be fair ratio of distribution of the compensation awarded for agricultural land as between the landlord on the one hand and occupancy tenants on the other.

8. A plot of land belonging to a zamindar and occupied by two tenants was acquired by the Government under the Land Acquisition Act. Separate compensations were awarded by the Collector to the zamindar and the tenants. It has been held that the tenants did not make a proper reference to the District Judge, and accordingly they have not been allowed to get any larger compensation. The zamindar objected, but his objection has been dismissed by the District Judge in appeal. A Bench of this Court has come to the conclusion that the full value of the compensation for the land acquired is Rs. 2,500, and has further held that the zamindar is entitled to only so much out of it as would represent adequate compensation for the acquisition of his interest in the land and that any excess amount which should have gone to the tenants can be retained by the Secretary of State. In assessing the compensation the Bench has, on the strength of an earlier ruling of this Court and one of the Calcutta High Court, proceeded on the principle that the market value of the land acquired irrespective of any consideration as to how it is held by the various persons interested in it, should be first found out, and then the amount apportioned between the various claimants.

9. Such a view obviously gives much more to the zamindar than he would ever be able to get in an open market as consideration for his interest, when hampered by the lights of occupancy tenants. It also gives to the tenant a share in the enhanced value of the land on account of its becoming a building site, although the occupation by the tenant is for agricultural purposes only and he cannot build upon it. This seems somewhat unfair to Government. On the other hand, when the Government is forcibly acquiring land as a third party, it does not seem to be unfair that it should be called upon to pay the full value of the land which it can fetch if all the rights were to be simultaneously transferred free from all obstacles. The question of distribution, among the claimants who can mutually settle their disputes among themselves does not directly concern the Government nor does it seem just that the Government should take advantage of such a possible dispute. That question, however, has not been referred to us. The only question that arises for consideration is as to the apportionment of the compensation between the zamindar on the one hand and the tenants on the other. The Board of Revenue have, in their circulars issued certain directions to

Collectors fixing maxima both for the amount to be awarded to the zamindar and the amount to be awarded to an occupancy tenant in the case of culturable lands. An occupancy tenant is allowed four times the rent rate payable by a statutory tenant plus ten times the difference between that rate and the rent actually paid by the occupancy tenant, whereas the zamindar is allowed no more than 16 times his net profit. The method is not only a complicated one, but it is also difficult to see on, what principle it is based.

10. In Section 40 of the new Tenancy Act provision has been made for the acquisition of land by a landlord from an occupancy tenant, but that is for the special purpose of farming on improved lines, and before acquisition can be made the Collector has to be satisfied that reasonable grounds exist for ordering such an acquisition; and the Collector is bound to award to the tenant another land with similar advantages in the same village or with his consent in another village; and it is only to such extent as such land is not available that the Collector has to award monetary compensation. The rate of monetary compensation fixed is six times the annual rental value of the land calculated at rates prescribed for statutory tenants. But as non-occupancy tenants have become statutory tenants under the Act the rents payable by statutory tenants are likely to approximate to rents payable by non-occupancy tenants. We do not think that this special provision can be of any help in fixing the proportion where land is acquired by Government from both the landlord and the tenant. The loss to the tenant is not represented by a multiple of the rent which he pays to the zamindar, but by a multiple of what he himself derives from the land. The landlord can never sell his interest, subject to the rights of occupancy of tenants, at the full rate which the land would fetch if it were not hampered by occupancy rights. He is therefore not entitled to the entire compensation minus six times the rent. This would be ignoring the fact that without the surrender of the occupancy rights the utility of the land for building purposes is very small indeed, and the tenant is entitled to claim compensation for the surrender of his rights of occupation. No doubt in Calcutta greater emphasis appears to have been laid in several cases on the fact that the zamindar is the owner of the land. As against this it cannot be lost sight of that the occupancy tenant is in actual possession of the land and that the zamindar's possession is only constructive. Prior to 1929, there does not appear to have been any case of this Court in which any hard and fast rule for apportionment was laid down. In the case of *Ilirday Narain v. Mrs. M.J. Powell* (1913) 35 All. 9 the High Court did not accept all the conclusions of the District Judge and did not find that the tenant had any transferable right or any absolute right to build upon the land, and yet it divided the amount of the compensation between the zamindar and the tenant in the ratio of the net incomes derived by each. At p. 13 the learned Judges observed:

In the absence of definite evidence as to the respective rights of the parties in the land, we think that the sum awarded should be divided between them in proportion to the values of the interest hitherto enjoyed by them, after making due allowance for the possibility of the rent being enhanced.

11. They accepted the finding of the District Judge that the annual value of the tenant's interest in the land was Rs. 22 and the annual value of the appellant's interest was Rs. 11 and then they divided the total Hum in proportion of 2/3 and 1/3 respectively. In the case of Manphool Vs. Sahi Ram and Others, the occupancy tenants had not come up in appeal before the High Court and the zamindar alone was claiming a larger amount than what had been awarded. It had been found by the District Judge that the market value of the property was at the rate of Rs. 500 per bigha. The Collector had awarded to the tenant compensation at the rate of Rs. 108 per bigha and to the zamindar at the rate of Rs. 213. The District Judge disallowed the claim of the zamindar to get more on the ground that as the land in question was hampered by the existence of the tenants' occupancy rights it had no value other than the value calculated on its rent income to a person who could not extinguish those occupancy rights : p. 368-(of 40 All). The zamindar claimed the whole of the compensation minus what had been given to the tenant. A Division Bench of this Court (Piggott and Walsh, JJ.), held that had it been established that the occupancy tenants were prepared to surrender their rights to their proprietor for the time being in return for the sum awarded to them by the Collector there might have been some basis for the contention that the award in favour of the zamindar should be increased by the difference between the market value of the land as a building site and the sum total of the compensation awarded by the Collector to both, but as there was no such evidence on the record, the mere acquiescence by the occupancy tenants in the Collector's award by no means suggested as a necessary inference the fact that they would not have stood out for a higher price if they had found themselves bargaining with a proposed purchaser of the proprietary rights. In the result they upheld the order of the District Judge under which the zamindar had got compensation at the rate of Rs. 213 per bigha, although the value of the land was found to be Rs. 500 per bigha. This also worked out at less than half.

12. The latest case of this Court is Rohan Lal Vs. Collector of Etah, The Division Bench, to which one of us was a party, clearly pointed out that there was a substantial disparity between the rights of a landlord and the rights of an occupancy tenant in these Provinces. The following facts were particularly emphasised at p. 525: (1) that an occupancy tenant's rent is liable to enhancement, although within statutory limits; (2) that the tenant is unable to transfer his rights; (3) that his right even to sublet is very much limited; (4) that in the case of rent falling into arrears from whatever reason, he is liable to be ejected; and (5) that in the case of the tenant dying without one of the statutory heirs, the tenancy would lapse to the landlord. It was also added that the number of statutory heirs was small and the chances of the occupancy rights lapsing were not at all remote. The reference to the rights to the minerals may be disregarded. The learned Judges conceded that it was difficult to give a money value to the respective rights of the zamindar and the occupancy tenant; but that a fair estimate of the respective rights of the zamindar and the

occupancy tenant was in the ratio of 10 annas and 6 annas in the rupee.

13. As against the points in favour of the zamindar, there are points in favour of the occupancy tenant as well: (1)(a) No doubt an occupancy tenant's rent, is liable to enhancement, but the enhancement of the rent of an occupancy tenant cannot be effected more than once in 20 years, and this too for not more than 25 per cent. (Bs. 67 and 50, Tenancy Act); (b) as against this, the Government revenue payable by the zamindar is also liable to enhancement though it cannot be enhanced within the period of the existing settlement; (2) of course, the occupancy tenant has no right to transfer his rights, whereas the zamindar can transfer his proprietary interest. But the value of the transferable interest of the zamindar is, for all practical purposes, governed by the rent which he receives from the tenant. Although he transfers his other contingent rights, he has no right of actual occupation. (3) The right of a tenant to sublet the land is very much limited, but as against this the zamindar's right to sublet the land to anybody else and put him in possession does not exist so long as the occupancy tenant continues. (4) The tenant is liable to ejection when the rent falls into arrears. Similarly the zamindar's proprietary interest can be sold if he does not pay the Government revenue. (5) In the case of the tenant's line becoming extinct or there being no other collateral sharing in the cultivation, the tenancy would lapse to the landlord. But such a contingency may be remote; and there is also a possibility of the zamindar dying heirless in which case the land would escheat to Government. The outstanding facts are that the landlord's right is limited in practice to the collection of rent whereas the tenant is in actual physical possession of the land, and on the other hand the proprietary interest in the land vests exclusively in the zamindar and not in the tenant. If the zamindar were to sell his land occupied by occupancy tenants in open market he cannot get a higher price than what would be calculated on the basis of the rent realized by him because the occupation by the occupancy tenant stands in the way of his building upon it. On the other hand, it is also clear that an occupancy tenant has no right to build upon the land without the permission of the zamindar, and such permission would not ordinarily be obtained without the payment of a heavy *nezzana*. The tenant's right is primarily confined to the occupation of the land for agricultural purposes. He can always get his full sub letting value, but not ordinarily its value as a building site. But he is also entitled to surrender value of the land, that is to say, the compensation which he can demand from the landlord before he would agree to surrender his occupancy rights. When land is acquired compulsorily, the tenant loses his physical possession whereas the zamindar loses his proprietary interest and constructive possession. It therefore follows that the benefit of the enhanced value of the land should go both to the zamindar and the tenant. The question in what proportion it should go is a difficult one.

14. It seems to be very difficult to say definitely that in every case the bundle of rights possessed by the zamindar would necessarily outweigh the bundle of rights possessed by an occupancy tenant, and even if they do so outweigh, it is

still more difficult to value the excess of the rights possessed by the zamindar. For instance, there may be a tenant who has a large family of sons and grandsons, and there is no prospect of his line becoming extinct and he may also be fairly well off so that there is no fear of his being ejected for non-payment of rent. In such a case the prospective chance of the zamindar for obtaining the occupancy tenancy is almost negligible. On the other hand, there may be an old Hindu widow as an occupancy tenant, who has no daughter, daughter's son or collateral of her deceased husband joint with her in the cultivation. In such a case the chance of the tenancy lapsing to the zamindar would be very great, and the value of the interest of the zamindar therefore fairly high. The method adopted by Griffin and Chamier, JX, in *Hirday Narain's case* (1913) 35 All. 9 was that in the absence of definite evidence as to the respective rights of the parties in the land the apportionment should be in the ratio of the annual values of their interests, i.e., in the ratio of the net profits to the zamindar and the net profits to the tenant. The net profits of the zamindar are to be determined by the difference in the amount of rent received and the amount of Government revenue paid by him; and the net profit of the occupancy tenant would be the difference between the rent which he would get by sub-letting the land and the rent which he pays to the zamindar. This method puts the zamindar and the tenant on the same footing so far as the enhanced value is concerned. But in most cases such a method of distribution of the compensation would result in giving to the zamindar slightly more than what the tenant would get and may approximate to the ratio of 10 annas and 6 annas in the rupee.

15. There can, therefore, be no great objection to the adoption of the rough rule of practice which was laid down in *Rohan Lal Vs. Collector of Etah*, when there are no other considerations and there is no other definite evidence to the contrary. It must, however, be clearly understood that this rough and ready rule is not accepted by me as any rule of law, but merely as a rule of practice for the purpose of forming a rough estimate of the respective rights of the zamindar and the tenants, to be a guide only when both the parties have failed to adduce any definite evidence to show other considerations and circumstances, which would lead to a more satisfactory assessment of their respective rights. When the parties have failed to adduce any evidence and the Court has to apportion the amount, it cannot but act in a somewhat arbitrary manner in trying to make a fair estimate. I think that in such an event, the Court is not likely to be far wrong if it were to accept the ratio suggested in the latest case of this Court *prima facie* as a just proportion. In the absence of definite evidence, the Court may presume that the interests of the landholder and that of the occupancy tenant are in the ratio of 10 to 6 annas; but if there are other considerations and circumstances that presumption may be rebutted. Of course, where either the landholder or the tenant proves that a specific amount has been spent on an extraordinary improvement of the land by him exclusively, compensation equal to that amount will have to be fixed separately for such improvement. This is my answer to the question referred.

Mukerji, J.

16. I agree with the Hon^{ble} the Chief Justice and King, J., that as a rough and ready means of dividing the compensation between the landlord and the occupancy tenant the ratio of 10 to 6 annas is a fair ratio. I, however, wish to say a few words. "When the Government acquires a piece of land, it must pay the legitimate value of it, irrespective of the fact who holds the land and in what shares. The land may be held by say 100" petty shares and it may again be held by tenants and sub-tenants. The proprietors may find it extremely difficult to agree among themselves as to whether they should sell the land and, therefore, it may be well nigh impossible for them to sell the land to a private purchaser. Again, for the reason that some of the actual holders of the land are tenants without any right of transfer and for the reason that the landlord and the tenant cannot agree to give a transferee good title and possession, there may be practical difficulty in transferring the property to a private individual. But these considerations cannot be relevant in finding out the price which the Government must pay in acquiring the land. If those considerations were relevant, the Government would pay different prices for the same land in different circumstances which have nothing to do with the intrinsic worth of the land or the market value of it.

17. When the price payable by the Government has been determined the question of apportionment will arise and then we must find out the proportionate values of the interest of the people, who have anything to do with the land. This will have to be done, whether the land has any value as a building site or not. I am unable to discover any valid reason for making a distinction between methods of apportionment in these two cases. The argument that there were difficulties in the way of the proprietors or the holders of different interests in the land to give a perfect title and possession to a private purchaser does hold good in both cases and in both cases, the difficulty is removed by the fact of compulsory acquisition of all interests in the property. In the case of Rohan Lal Vs. Collector of Etah, to the decision in which I am a party no distinction was drawn between a land fit for building site and land fit only; for agricultural purpose, and, I respectfully submit, no such distinction exists. I may also mention by the way that in the said case the mention of the right of the landlord to the minerals, was made in a general way and not having regard to the rights of landlords in these Provinces where there is only a temporary settlement. In another case, to the decision of which I was also a party, see Khushal Singh and Others Vs. Secy. of State, it was held that the Government and not the zamindar in these Provinces was the owner of the minerals. As regards the rules framed by the Board of Revenue for the assessment of the values of the interests of the tenant and the landlord in lands held and used for agricultural purposes, it is enough to say that those rules are not binding on the civil Courts and where they are in conflict with the right view of things, they must give way. I agree to the answer proposed by the Hon^{ble} the Chief Justice.

King, J.

18. I agree that the suggested ratio of 10 to 6 may be adopted as a rough and ready rule of practice, in the absence of any evidence to the contrary, in exceptional cases, like the present one, where the land has a special value as a potential building site. In my opinion the ratio suggested has no application to ordinary cases where only the agricultural value of the land has to be considered. In such cases the question of apportionment between the landlord and occupancy tenant does not arise. The Collector makes his award in accordance with the instructions contained in Ch. 15 of the Manual of the Revenue Department. The sums payable as compensation to the landlord and to the tenant respectively are separately assessed. The landlord's compensation is calculated in accordance with paras. 467 to 474, and the occupancy tenant's compensation in accordance with para. 485. The point that I mean to emphasize is that the compensation payable to the landlord and to the tenant is calculated separately and independently. The result is that there is no lump sum, or joint assessment, which has to be apportioned between the landlord and tenant. It would no doubt be possible to work out the average ratio of the landlord's interest to the tenant's interest by comparing the sums paid as compensation to landlords and the tenants respectively in a large number of cases. We have no materials for calculating the average ratio and I do not see what useful purpose would be served by such a calculation. In practice the Courts are not called upon to divide any lump sum between the landlord and the tenant. If a reference is made to the Court by the landlord, then the Court has to decide whether the compensation awarded to the landlord or to the tenant, as the case may be, is fair and adequate, but there is no question of apportionment of a lump sum between landlord and tenant.

19. It is only in exceptional cases, where the land has a special value, as a potential building site, that the question of apportionment arises. I quite agree with the Hon'ble Chief Justice that this special building value should be divided between the landlord and the tenant. The land does not become available to a third party for building purposes unless the landlord transfers his interests and the occupancy tenant also surrenders his occupancy rights. Thus both landlord and tenant are clearly entitled to a share in the special value. This principle is also expressly recognized in para. 491 of the Manual. Where the land has a special building value the assessment has to be made in a lump sum and both landlord and tenant are entitled to a share. So it is only in exceptional cases of this class that the question of apportionment between landlord and tenant arises. I see no reason to dissent from the suggested ratio of 10 to 6 annas, but I would restrict the application of the ratio to cases where the land has a special value, as a building site, in addition to its agricultural value. It should also be understood that the suggested ratio applies only to temporarily settled estates.