

---

**(1985) 01 BOM CK 0031**  
**In the Bombay High Court**  
**Case No : First Appeal No. 365 of 1978**

State of Maharashtra

APPELLANT

Vs

Shriraman Govindarao Narayanrao Ghorpade

RESPONDENT

---

**Date of Decision :** 15-01-1985

**Acts Referred:**

Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 — Section 7, 7(3)  
Land Acquisition Act, 1894 — Section 23, 4

**Citation :** AIR 1985 Bom 336 : (1985) 2 BomCR 94 : (1985) 87 BOMLR 101

**Hon'ble Judges :** K. Madhava Reddy, C.J.; S.C. Pratap, J.; R.C. Gadgil, J

**Bench :** Full Bench

**Advocate :** S.C. Page, Asst. Govt. Pleader and Manjula Rao, for the Appellant; K.J. Abhyankar and A.K. Abhyankar, for the Respondent

---

## Judgement

Gangil, J.—This matter was initially heard by the Division Bench consisting of Waikar and Vaze, JJ., and by their order dt. Sept. 15, 1983, certain questions have been referred to the Full Bench. Though the questions have not been formulated in the referring judgment, we have, at the time of the hearing of this reference, formulated those questions. We will enumerate them in the latter part of this judgment.

2. Before considering the controversy it would be necessary to mention a few facts. Two acres and 25 gunthas from survey No. 610, situated at Ichalkaranji were acquired for public purpose viz. Burial ground. This land was originally a jagir land. The said jagir along with other miscellaneous inams and watans were abolished under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 (hereinafter referred to as the "1955-Act"). The scheme of the Act is to abolish all alienations or watans. Section 7 provides that the land under a watan stands resumed and that it shall be granted to the holder of the watan in accordance with the provisions mentioned in that section. Sub-sec. (2) provides that the watan of the type with which we are concerned shall be granted on payment of certain occupancy price within the prescribed period. That

occupancy price is in multiples of the assessment of the land. Sub-sec. (3) which is relevant for deciding this reference, reads as follows :

"The occupancy of the land regranted under cl. (2) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on the payment of such amount as the State Government may by general or special order determine".

It is not in dispute that the Government has issued necessary directions as to (i) the manner in which the said ban on transferability or impartibility can be lifted and (ii) the amount that is to be paid for that purpose. Previously under some other Enactments certain inams have been abolished. Some of the Acts have made provisions similar to S. 7 of the 1955 Act. The Government has issued a resolution No. 4089/51 dt. Mar. 28, 1955, prescribing as to how the conditions of inalienability should be relaxed. Class IV deals with the inam lands which have been granted under various acts with restrictions about the alienation, partition etc., It reads as follows :

"In regard to the lands covered by I (ii) the main distinguishing feature in their case is that the conditions of inalienability and impartibility imposed at the time of the regrant of these lands are relaxable on payment by the grantees of such amounts as are specifically prescribed by Government in this behalf. Government, therefore, considers that this special or peculiar feature should be specifically mentioned in the agreements to be taken from these grantees and is pleased to direct that in the case of these grantees agreements should be taken in the form "appended to this Government Resolution....."

The relevant portion of the prescribed agreement from which is required to be signed by the grantee reads as follows ;

"The said land has been granted to me in perpetuity....."

Subject (1) to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder and to (2) the further condition I, my heirs, legal representatives and assigns shall not at any time partition, lease, mortgage, sale or otherwise transfer directly or indirectly the said land either in whole or in part without the previous consent of the Collector which will be granted by the Collector on payment of the amounts prescribed ..... If I fail to perform any of the aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have that said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.....".

It is not in dispute that the Government has applied the provisions of the abovementioned resolution for the regrant of the watan lands under the 1955-Act. Similarly, there is no dispute that the Government has prescribed certain amount that is to be paid for relaxing the condition of inalienability and

impartibility. The provision is that the amount equivalent to 20 times the assessment should be paid if the condition of inalienability is to be relaxed in connection with the agricultural lands while the amount equivalent to 50% of the market price is to be paid if the relaxation is sought for in connection with the land used or intended to be used for non-agricultural purpose.

3. The Land Acquisition Officer fixed the amount of compensation of the claimant's land at Rs. 8, 717/- without taking into account the clog about the alienability and impartibility of the land as mentioned above. The claimant filed a reference under S. 18. In that reference the compensation was determined at over Rs. 2,00,000/-. However, the reference was allowed to the extent of Rs. 2,00,000/- only as the claimant had limited his claim to that figure. Certain order has been made as regards the appointment of the compensation between the jagirdar-owner and his tenant. However, that aspect is not relevant for deciding, this reference. The State preferred this appeal. Amongst other grounds one of the contentions is that the compensations should have been fixed at a reduced amount as there is a clog on transfer of the land. Thus, by reason of S. 7(3) the tenure regranted to the jagirdar is not transferable or partible without the previous sanction of the Collector and except on payment of certain amount as mentioned above. The question has arisen before this Court in a number of matters as to whether the abovementioned term of inalienability or impartibility has any relevance while determining the amount of compensation payable to the owner. In the following matters it was held that such a term in the regrant is irrelevant when the land is being compulsorily acquired and that the amount of compensation has to be determined after ignoring that term.

1) First Appeal No. 502 of 1969, Shrimant Govindrao Narayanrao v. state of Maharashtra decided on Sept. 2, 1976, by Kantawal C.J. and Sawant J.

2) First Appeal No. 279 of 1973 The State of Maharashtra Vs. Govindrao Narayanrao Ghorpade, .

3) First Appeal No. 567 of 1976 The State of Maharashtra Vs. Ganpatrao Amritrao Deshpande, .

4) First Appeal No. 506 of 1978 State of Maharashtra Vs. Shrimant Govindrao Narayanrao Ghorpade, by Dharmadhikari and Shard Manohar JJ.

Somewhat different view has been taken in First Appeal No. 749 of 1973 in the case of State of Maharashtra v. J.R. Dadabhai Tata decided on Sept. 15, 1981, by jahagirdar and Mody JJ. In this matter the Court determined the market value of the land at Rs. 4/- per sq. foot after ignoring the restrictions attached to the grant. However, the net amount that was found payable to the claimant was fixed at Rs. 2/- per Sq. foot as the land was to be used for non-agricultural purpose and consequently 50% of the market price was required to be paid by the owner for relaxing the inalienability clause.

4. When the present appeal was argued before the Division Bench, the learned

Government Pleader appearing on behalf of the Government relied upon the decision of the Supreme Court in the case of Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, . In that case the Government had granted certain land to the claimant with a reservation that the grantee shall surrender the land to the Government without claiming any compensation if the Government would require the land for its own use. The Government instead of exercising this right initiated proceeding under the Land Acquisition Act and the question arose as to whether the abovementioned term in the grant would have any relevancy in fixing the amount of compensation. The Supreme Court held that the measure of market value would be what a willing purchaser would pay for the land which is subject to the Government option as mentioned above. It further held that where the interest of the owner is clogged by the right of the State the compensation payable to the owner is only the market value of the land. The Division Bench felt that it would be necessary to decide the question views taken in the abovementioned different matters and more particularly in the background of the decisions of the Supreme Court. As already observed, the Division Bench had not formulated the questions and hence it was necessary that we should ourselves formulate the questions after hearing the learned advocates. Accordingly the question that arise for our decision are :

- 1) Whether while determining the compensation payable under the Land Acquisition Act, it is necessary and incumbent to take into account any restrictions on the holding such as inalienability and impartibility ?
- 2) Whether on principle there is any difference in the restrictions which are of irrevocable nature and the restrictions which can be withdrawn by sanction of any authority either with or without payment of certain amount ?
- 3) How the valuation under the Land Acquisition Act be made of the interest of the claimant in the property subject to clog of the nature prescribed by S. 7 of the 1955 Act and the Government orders in pursuance of that section ?

It is true that various High Courts have taken different views as regards the necessity or otherwise of taking into account the restrictions against the alienability and impartibility while fixing the compensation under the Land Acquisition Act. Not only that but this Court has also taken somewhat divergent view as mentioned above. Consequently the submission that are made, before us are on the basis of these decisions. Shri Page for the Government relied upon the decision of the Supreme Court in the case of Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, He also placed certain reliance on the decision of this Court in the case of Government v. Century Spinning and Mfg. Co., reported in AIR 1942 Bom 105. As against this Shri Abhyankar argued that the view taken by the three Division Benches of this Court in the matters enumerated in para 3 above, is a correct view. We would, therefore, discuss the principles laid down by the various decisions and find out as to whether those decisions will have to be read subject to the principles laid

down by the abovementioned Supreme Court decision.

5. In First Appeal No. 502 of 1969 a land which was governed by the 1955-Act was acquired. The Land Acquisition Officer fixed the compensation on the basis that there is no restriction on transfer or partition. Thereafter he appointed the compensation on 50% basis between the claimant and the State Government. On reference made to the District Court it was held that the entire amount was payable to the claimant and no part of it should have been paid to the State Government. When the matter came before this Court, the Division Bench observed in para 6 of its judgment as follows :

"However, in the present case at no time prior to the making of the award the land was converted to N.A. use. In fact no application was made at any time by the claimant to the Collector or any other Revenue authorities for conversion of his land for N.A. purposes. The restriction or the obligation imposed under the order of regrant can only be attracted if the claimant wants voluntarily to convert his land to N.A. purposes. If Government by statutory exercise of powers wants to acquire claimant's land for using it for non-agricultural purposes like construction of a filter house, it cannot be said that the terms of the regrant would be attracted in such case, Government after it becomes the owner of the property can use the property in such manner as it likes, but it could not be said that obligation has arisen in view of the terms of the order of regrant because at no time in respect of any portion of the acquired land was any application made by the claimant for its conversion to N.A. purposes ....."

It appears that the claimant had already obtained relaxation of the condition of inalienability by paying 20 times the assessment as the land was to be used for agricultural purpose and the only question that was before the Division Bench was as to whether the intended or prospective non-agricultural use after compulsory acquisition can be taken into account for the purpose of deciding as to whether the holder-claimant was liable to pay 50% of the price. The Division Bench recorded a negative finding and consequently the question of reducing the value on the basis of the restrictions did not arise.

6. The second decision on which Shri Abhyankar relied is The State of Maharashtra Vs. Govindrao Narayanrao Ghorpade, . He more particularly drew our attention to the observations in paras 5 and 8 which are as follows:

"Para 5 : In all such types of cases the first and primary consideration, therefore, is what would be the market value of the land whether under restricted or unrestricted tenure. If the market value can be fairly determined of such land there is hardly any scope to deduct any amount from that value so as to compensate the restrictions with regard to transferability. The provisions of S. 793) of Bombay Act No. XXII of 1955 are hardly relevant. They do not apply firstly to acquisitions at all. They would operate only when lands are being subjected to voluntary transfers or partitions..... In terms of statutory injunctions available in S. 23(1) firstly of the Land Acquisition Act, the claimant is entitled to

get the market value of the entire acquired land and nothing less than that.

Para 8 : The words "restricted tenure" do not by themselves mean that even in the matters of acquisition, the Government has retained any right in property. The restrictions in each case upon the tenures will have to be understood and appreciated. The tenure which may not be transferable voluntarily, unless certain conditions are fulfilled, including the payment against such transfer, may not have any restrictions with regard to its acquisition by the Government itself which in law is the authority that settles such a tenure. If in the matters of acquisition, no restrictions are imposed upon the tenure by virtue of the settlement of the tenure itself or by the law or Rules that govern the same, it would follow that while acquiring the land, the land cannot be treated under restricted tenure so as to reduce the compensation itself....."

It is, however, material to note that attention of the Court was not invited to the decision of the Supreme Court in the case of Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, The contention of Shri Page is that the above observations would not hold good if the principles laid down in Seshagiri Rao's case are taken into account.

7. Shri Abhyankar relied upon the following relevant part of the head-note in the other reported decision in the case of The State of Maharashtra Vs. Ganpatrao Amritrao Deshpande, .

"It is not open to the authority determining the compensation to reduce the market value of restricted land by some arbitrary proportion arrived at by itself....."

In para 11 of this judgement the decision of the Supreme Court in Seshagiri Rao's case was considered but the contention of the Assistant Government Pleader is that the principles laid down in Seshagiri Rao's case have not been properly applied. Shri Page drew our attention to the following discussion of Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, in paras 11 and 14 of this judgment :

"The judgment of the Supreme Court in Seshagiri Rao's case cited by Mrs. Shenoy does not advance her case ; quite the contrary. It was there held that the measure of the compensation which the grantee of restricted land must get its market value and the measure of that market value is what a willing purchaser will pay for the land subject to the restriction. This, therefore, expressly enjoins upon the authority ascertaining the compensation payable for restricted land which is acquired to determine what a willing purchaser would pay for it and, necessarily excludes the deduction of any amount from the market value. It contemplates the determination of the market value of restricted land in the manner in which the market value of land which is subject to no restriction is ascertained.

Para 14 : It bears repetition that even for restricted land compensation must only

be determined by finding out what a willing purchaser will pay for it, knowing it to bear restriction. "

The grievance of Shri Page is that in the background of the above discussions in paras 11 and 14 it was necessary for the Division Bench to determine the market value of the land after taking into account the clog or the restriction on transfer, and that this is exactly what the Divisions Bench did not do. He argued that the discussion in the rest of the judgment would indicate that the market value that was determined by the Courts below after ignoring the clog or the restriction has been upheld even though the principles in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, contemplate that such market value has to be determined after bearing in mind the clog or the restriction. In our opinion, there is much substances in the contention of Shri Page. Consequently, it will be very difficult to accept the submission of Shri Abhyankar that the said decision has correctly laid down the law that the compensation has to be determined ignoring the clog or the restriction. The judgment in First Appeal No. 506 of 1978 as also relied upon by Shri Abyankar. In substance, the Division Bench in that case refused to take into account the clog or restriction on the alienation and partition of the property under the grant and consequently this decision would be in derogation of the principles laid down in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, .

8. Shri Abhyankar relied upon two decisions of other High Courts. One is of Nagpur High Court and the other is of Calcutta High Court. The decision of the Nagpur High Court is in the case of AIR 1933 208 (Nagpur) The land that was acquired was granted on inalienable tenure. The question arose as to whether this inalienable nature of the grant would have any relevancy while fixing the compensation. The Nagpur High Court held that that in determining the compensation payable for any land the element of non-transferability of the land cannot enter into consideration. There is also another observation that it is idle to say that a land is not transferable when it is actually being has been taken by the Calcutta High Court in the case of *Bengal Province v. Board of Trustees*, reported in AIR 1946 Cal 416. There were some restrictions attached to the land which was acquired. It was contended on behalf of the Government that such a restriction would be a material factor in assessing the compensation. This contention was rejected and relevant observations are in para 34 of the judgement. They read as follows :

"The compensation must be tested no doubt by the loss to the owner, but in estimating his loss it is legitimate to disregard the restrictions on ownership which were existing at the time of acquisition. If restriction on the power of the owner to alienate at the time of the acquisition be taken to be a material factor in assessing combination payable on an acquisition under the Land Acquisition Act, the amount of compensation would be different according as the property at the time of the acquisition belonged to a Hindu widow or a full owner...."

It is that these two decisions do support the contention of Shri Abyankar. However, it would not be possible to hold that these decisions enunciate good law particularly when the Supreme Court has held otherwise in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, .

9. It would be advantageous if we refer to the decision of this Court in the case of *Government v. Century Spinning & Mfg. Co.*, reported in AIR 1942 Bom 105. In that case the Bombay Municipal Corporation had granted plots under two conveyances. The conveyances provided certain restrictions on the user of the plots. It is not necessary to give the details of those restrictions. Those plots were acquired and the question arose as to the quantum of compensation that was payable to the claimant i.e., the grantee of the plots. The argument was advanced that the restrictions would be irrelevant and the plots should be valued after ignoring them. This contention was rejected by the Division Bench of this Court in the following words :

"The argument of the claimants would really produce this amazing result that, if a man had acquired land at a low price, because it was subject to a covenant not to build upon it, nevertheless if the land was acquired under the Land Acquisition Act, he would be entitled to claim the market value, although that market value be based on its value as a building site. Such a proposition is preposterous. There is nothing in the Land Acquisition Act to suggest that any person interested is to be paid for anything except the interest which he possess, and as the claimants in this case only possess an interest in the land subject to restrictive covenants, they can only be paid compensation for such land".

Thus, by this judgment the Division Bench has held that the restrictive covenants would be relevant while determining the compensation and that the market value of the land will have to be determined after bearing in mind those restrictions.

10. Similar question has arisen before the Gujarat High Court in case of *Special Land Acquisition Officer, Baroda Vs. Sushilaben Chhanganlal Thakkar and Another*, The acquired land was originally in possession of the claimant as the tenant. By reason of the provisions of the Bombay Tenancy and Agricultural Lands Act the tenant became the owner thereof from April, 1957. The rights of such tenant-owner were to be governed by the various provisions of the Tenancy Act and S. 43 of that Act read as follows (at P. 190)

"43.(1) No land purchased by a tenant under S. 32, 32-F, 32-1, 32-O or 3-U or 43-ID or sold to any person under S. 32-P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or petitioned without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine".

This provision is, therefore, practically similar to S. 7(3) of the 1955-Act. It is also material to note that the relaxation against alienation and partition was possible under the Tenancy Act on payment of 20 times the assessment if the land is used for agricultural purpose or 50% of the market value if the land is

used for non-agricultural purpose. Thus, this is also a provision similar to the one with which we are now concerned. After the land was acquired the question arose as to what should be the compensation payable to the tenant who had become the owner. The contention of the claimant was that the restrictions against alienability and impartibility would be irrelevant while the Government contended that the compensation payable to the claimant will have to be determined after bearing will have to be determined after bearing in mind these restrictions. The Gujarat High Court made a distinction between a restriction simpliciter and a restriction relaxable on payment of certain amount. In para 5 it is observed as follows :

"In our opinion, it would not be right to value the land under acquisition at a discount merely by reason of the fact that there is a mere restriction on its alienation. So far we are in agreement, with respect, with the view expressed by the Calcutta and the Nagpur High Courts in the aforesaid decision. But that principle will be of no avail when we are confronted with the question as regards the valuation of land where the transferability depends on an obligation to pay a sum of money to the State. When the obligation carries with it a money content, the aforesaid principle cannot apply .....".

We think that it would not be correct to say that a restriction on its alienation (without any money content) would not reduce that market value of the land. As a matter of fact the Gujarat High Court in the subsequent para has been certain observation to show that the statutory restrictions would be important while determining the market value. This is what the Gujarat High Court has observed (at P. 192) :

"The value of property to its owner inter alia depends on two key factors - (1) the right to alienate and to obtain the money equivalent of the property (2) its income. It does not depend merely on the income. If on sale of the property it would fetch less than the property of a similar nature an account of some statutory restriction, the value of the property to the owner cannot be the same".

Thus, on principles it makes no difference whether there is a mere restriction on alienation or whether that restriction can be relaxed on payment of any amount. Shri Page contended that the position of the owner would be more vulnerable where there is as restriction against alienation without any possibility of its relaxation and consequently the market value of such restricted tenure would be far less. We do not purpose to go into the extent or the severity flowing from a restriction which cannot be relaxed. However, we would like to make it clear that the compensation of a property to which no such restriction is attached. The restriction would undoubtedly reduce the market value. The extent of reduction will depend upon the facts of each case. The Gujarat High Court after taking into account the amount that was payable for relaxing the restrictive conditions has held that the value of the claimant's interest will have to be proportionately reduced. Thus, we do not approve the first part of the observation in para 5 of the judgment as reproduced above. However, we agree with the decision of the

Gujarat High Court that the value of the property with a statutory restriction would be less than the value of the property without any such restriction.

11. To get over this position Shri Abhyankar relied upon the decision of the Supreme Court in the case of Nagesh Bisto Desai and Others Vs. Khando Tirmal Desai and Others, . It was a case under the Bombay Paragana and Kulkarni Watans Abolition Act and also under the Bombay Merged Territories Miscellaneous Alienations Abolition Act. This latter Act is the Act with which we are also concerned in this appeal. The main question before the Supreme Court was as to whether the impartible estate of the joint Hindu family would be the exclusive and individual property of the holder of that estate, or whether on abolition of inam the property is liable to be partitioned. The question is not material for deciding the present controversy. The Supreme Court has considered the restrictions under both the above Acts in paragraph 43 and 44 of the judgment. Shri Abhyankar relied upon the following observations :

"Para 43 : All that these provisions lay down is that the occupancy of the land regranted under sub-sec. (1) of Section 4 of the former Act shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order, determine. It is quite plain upon the terms of these provisions that they impose restrictions in the matter of making alienations. On regrant of the land, the holder is deemed to be an occupant and therefore the holding changes its intrinsic character and becomes Ryotwari and is like any other property which is capable of being transferred or partitioned by metes and bounds subject, of course, to the sanction of the Collector and on payment of the requisite amount".

Para 44 : The condition for the grant of sanction by the Collector as a pre-requisite for a valid transfer of a holding or the making of a partition by metes and bounds, is to ensure that the actual tiller of the soil is not deprived of his land except for valid consideration, or that the partition effected between the members of a family is not unfair or unequal. These provisions therefore do not create a statutory bar to a transfer or a partition once the conditions mentioned therein are fulfilled".

We do not find that the above observations would be of any use to Shri Abhyankar for the purpose of contending that the restriction on transfer has to be ignored while determining the compensation under the Land Acquisition Act. Shri Abhyankar further contended that the restriction on transfer and a provision for relaxation thereof on payment of money would only mean that there is an obligation on the part of the holder to pay a particular amount and that such an obligation would not constitute any clog on the property. Section 7 initially lays down that the occupancy of the land shall not be transferable or partible without the previous sanction of the Collector. It then states that in addition to the sanction the occupant has to pay certain amount for getting rid of the restriction.

We have already observed that the agreement that is required to be executed by the grantee includes a clause that it is an impartible or inalienable grant subject, of course, to the relaxation the property is not liable to be transferred. The agreement further states that the land is liable to be summarily forfeited to the Government in case the grantee-commits any breach of the above condition. In this background it will be difficult to accept the contention of Shri Abhyankar that the requirement of payment of certain amount for relaxation of condition would be a mere obligation not constituting any restriction or clog on the property.

12. Shri Page is right when he contends that the determination of compensation of the land to which certain restrictions are attached will have to be made after bearing in mind the principle laid down by the Supreme Court in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, We have briefly mentioned in paragraph 4 above about the decision. Similarly, we have stated in the same paragraph the principle laid down by the Division Bench of this Court in *Government v. Century Spinning & Mfg. Co.*, AIR 1942 Bom 105 . In our opinion, this decision lays down a correct proposition of law particularly in the background of the principle enunciated by the Supreme Court in *Seshagiri Rao's*. Thus, as laid down by the Supreme Court in assessing the compensation, the existence of a condition which severely restricted the rights of the owner cannot be ignored and that the compensation which would be payable would be only the market value of the interest of the owner subject to the clog. Consequently , the decision of the single Judge in *The State of Maharashtra Vs. Govindrao Narayanrao Ghorpade*, and that of the Division Bench in the case of *The State of Maharashtra Vs. Ganpatrao Amritrao Deshpande*, would not be a good law. Similar would be the position with respect to the decision of the Division Bench in First Appeal No. 506 of 1978. Thus, a restriction against the alienability and impartibility would be relevant while determining the compensation. The proper amount of compensation must be determined after bearing in mind such clog or restriction. The quantum of payment which enables a person to get rid of such restriction would no doubt be relevant while determining the market value of the land with a restriction. However, to reduce the market value of the interest of the claimant after deducting the amount payable by him for relaxation would be too broad a proposition to be accepted. One cannot forget that qua acquisition the claimant does not voluntarily require or ask for relaxation. At the time of the notification, he may feel himself satisfied to continue in possession of the property with restriction clause. He may be thinking that on some future uncertain date he might be required to get the tenure converted into an alienable and impartible occupancy by paying the requisite amount. Shri Abhyankar is right when he contends that the reduction of the value on such voluntary conversion cannot be taken into account in toto when one has to determine the compensation payable for compulsory acquisition. Of course, the amount that is payable for conversion would be a relevant circumstance, though it would not be conclusive or decisive.

13. It would, therefore, be necessary to estimate reduction of the market value

on account of such restriction. The Supreme Court in the case of Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others, has considered how there is an element of guess-work in such valuation. The relevant part-note reads as follows (at P. 871) :

"The estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess".

The guess-work would be more when one has to value an land with restriction. The payment of twenty times the assessment is contemplated by Government orders for relaxation of the restriction if the property is an agricultural land. We do not understand these Government orders to mean that they have determined the amount by any precise or concise arithmetical calculations. However, we accept the payment of 20 times the assessment as a fair and ready measure for determining the value of an agricultural land with a restriction against the alienation. In the case of the lands used for non-agricultural purpose Government orders show that the condition can be relaxed on payment of 50% of the market value. In our opinion, this would be grossly unjust when we have to determine the market value not on a voluntary transaction but on a compulsory acquisition. The provision of the Government directions for the payment of 50% of the market value cannot, therefore, be bodily lifted and applied while determining the market value in a compulsory acquisition. In our opinion, the value of the property which is used for non-agricultural purpose on the date of the notification will have to be assessed after deducting the amount equivalent to twenty times the non-agricultural assessment that is levied or is leviable on such non-agricultural lands. We are conscious of the fact that this determination would be conjectural and involves an element of guess-work. However, as observed in the abovementioned Supreme Court cases this is rather inevitable in the absence of any other relevant and cogent better data for evaluating a property with a restrictive condition. We may add that under the Land Revenue Code separate non-agricultural assessment is levied after taking into account the market value of the property. The non-agricultural assessment does thus have some nexus with the valuation of the property.

14. The net result of this discussion would show that the market value with a restrictive clause contemplated by S. 7 of the 1955 Act will have to be determined after taking into account the market value of the land which had no such restriction and thereafter deducting the amount equivalent to 20 times the assessment. The assessment would be agricultural assessment, if the land is used for agricultural purposes and if the land is used for non-agricultural purposes the assessment would be non-agricultural assessment actually levied or leviable on such non-agricultural lands. The relevant date for determining the use of the lands would be the date of the notification under S. 4 of the Land Acquisition Act. The fact that authority for whose purpose the land is to be

acquired is likely to use the same for non-agricultural purpose would not be relevant inasmuch as the actual nature of the user on the date of the notification is material. In view of the above discussion we record our findings as below and hold.

Point No. 1 : In the affirmative.

Point No. 2 : In the negative.

Point No. 3 : As detailed in this para 14.

The appeal should now be placed before the Division Bench for further hearing and decision.

15. Order accordingly.