GUJARAT HIGH COURT

Shrimati Kusumgauri Ramray Munshi

Vs.

Special Land Acquisition Officer,

First Appeal No. 334 of 1960 with First Appeals Nos. 335, 370 and 404 of 1960

(N.M. Miabhoy and R.B. Mehta, JJ.)

25.09.1961

JUDGMENT

R.B. Mehta, J.

1 to 13. ********

14. * * * In regard to this transaction of lease with option to purchase, Ex. 151, in regard to S. Nos. 47/1 and 47/2, it is necessary to appreciate the arguments of the claimants before us to know the real nature of this transaction. S. No. 47/1 comprises of 1 acre and 23 Guntas and the claimants have 1/4th share in the total area of 7 Gunthas of S. No. 47/2. This document, which at this stage for the sake of convenience we shall describe, as a lease with option to purchase document, is entered into between the claimants of S. Nos. 47/1 an4 47/2, as the purchasers-cum-lessees, again an expression used as a matter of convenience, on the one side and the vender owner Bacharbhai Bapuji on the other side, on 2nd May, 1946. This document, Ex. 151 recites that there was a prior agreement between the parties by which S. Nos. 47/1 and 47/2 were to be leased with option to purchase. That prior agreement was dated 6th November, 1945. It is further recited that Rs. 2000/-were paid on 6th of November, 1945, by a cheque; Rs. 1000/- were paid on 14th November, 1945, Rs. 5000 /- were paid on 21st March, 1946, while extending the period of agreement of the transaction and Rs. 7915-7-6 were paid on 2nd May, 1946, which is the date of the execution of this document. The document Ex. 151, was executed in due performance of the earlier agreement between the parties. Amongst the important terms and conditions of this document are that it was agreed to sell the two survey numbers by the vendor to the claimants who were described as the parties of the second part, for a sum of Rs. 63,657-5-6. The total yardage of both the survey numbers was described as 7834 3/4 Sc. Yds. and the rate per Sq. Yd was stated to be Rs. 8-2-0. The document further recited the receipt, as stated earlier in several instalments, of a total sum of Rs. 15,914-5-6. It was further stated that the balance of the purchase prior that remained was Rs. 47,743/-. It was further stated that for the balance of the

said amount, a lease for 999 years was by this document made between the parties, with an annual rental of Rs. 2148-6-0, which was calculated as being the interest at 4½ per cent p. a. on the said balance amount. The document further recited the terms and conditions of the transaction. The lessees were to pay the said rent in advance every year and if they did not pay, the same could be recovered by the owner with interest at the rate of 6 per cent p.a. from the person and property of the lessees. No right of forfeiture of the lease or re-entry has been reserved by the document. There is no restriction on the lessees for the use of the land. All taxes were to be paid by the lessees and the lessees were to indemnify the lessors in respect of the taxes. The lessors have been given the right of transfer and assignment. It was also one of the terms of this document that if the land was acquired at any time, then from the compensation the owner was entitled to the total purchase price fixed under this document and if there was any surplus, it would go to the lessor. It was also provided by this document that the lessees had option to purchase at any time within 10 years of the execution of this document by paying the balance of the purchase price, viz., Rs. 47743/-. If the lessees did not exercise their option within 10 years, then thereafter it was at the option of the lessor whether to sell the land to the lessees and further in case the lessees did not exercise the option to purchase within 10 years, the lessees had no right to the 1/4th part-payment of the purchase price, viz., Rs. 15914-11-6. It was further provided that till the period of the lease, viz., 999 years, the lessees were to pay the said annual rent of Rs. 2148-6-0 and at the end of the period of the lease, the lessees had to restore the land to the lessors in the original condition. These are in brief the important terms and conditions of this document.

15. It was contended on behalf of the claimants that this transaction falls within the ratio of *K. P. Frenchman v. Assistant Collector, Haveli*[1]*,* The ratio of that decision is to the effect that if the claimant himself has paid a price for his own land only a short-time before the acquisition, he would be entitled at least to be paid that price by the acquiring authorities unless it is conclusively shown by the acquiring authorities that the price which was paid by the claimant was not reasonable. Our attention was drawn to the following observations of the Chief Justice Sir Norman Macleod, Kt., sitting with Mr. Justice Shah, at page 785 of the report (Bom LR) : (at pp. 400-401 of AIR) :

> "It seems to me that when Government notified this property for compulspry acquisition in April, 1919, they were bound to offer the claimant what he had given a few months before for the property, unless they were able to show conclusively that he had not given a fair value for the property."

In the above case before Their Lordships, the claimant had himself bought the property in July, 1918, for a sum of Rs. 92,500/-. The acquisition was made in April, 1919. The claimant was awarded by the District Judge, Poona, less than what he had paid. It was in appeal against that award that the learned Chief Justice Sir Norman Macleod made the above observations that the claimant was at least entitled to be reimbursed in the amount which he had himself paid for the

acquired land, unless it was conclusively shown by the other side that he had not paid a reasonable price.

16. Next in this connection our attention was drawn by Mr. Vakil to the observations of Mr. Justice Mulla in the case of *Government of Bombay v. Ismail Ahmed Hafiz*[2] as follows at p. 229 (of Bom LR) : (at page 363 of AIR) :-

> "Where the property under acquisition has been recently purchased, the price paid is prima facie the market-value thereof."

[1]24 Bom LR 782 : AIR 1922 Bom 399
[2](1924) 26 Bom LR 227 : AIR 1924 Bom 362

Mr. Justice Mulla followed the observations of the Chief Justice Sir Norman Macleod cited above.

17. Next, Mr. Vakil drew our attention to the case of *Collector of Thana v. Chaturbhuj Radha Krishna*[3], and again to the observations of the Chief Justice Sir Norman Macleod, Kt., sitting with Mr. Justice Coyajee, as follows :-

> "The Assistant Judge increased the award to ten annas a square yard. He depended for that valuation on a sale to the claimant actually on August 29, 1919, at ten annas a square yard; and unless that sale could be avoided on the ground that it was not a fair and *bona fide* sale, then it obviously afforded a good basis for an award."

18. Our attention was also drawn to the case of *Ghulam Hussein Ahmed Somaji v. Land Acquisition Officer, Bandra, reported in*[4] In that case, the Assistant Judge of Thana found that the claimant had himself purchased the acquired land and observed that nothing was shown to have happened which materially affected the value of the land between the date of the purchase and the date of the Government notification for acquisition and came to the conclusion that that sale was evidence of weight as to the market value of the acquired land. The High Court reversed the decision and the matter went up to the Privy Council, where Their Lordships of the Privy Council upheld the decision of the learned Assistant Judge in the view which he took of the matter.

19. We are in respectful agreement with those observations which have been brought to our notice on behalf of the claimants and no exception can be taken to the same. But what this statement of law says is clear enough, viz., that it must be a case where the claimant must have paid the price for the land in question. The question then arises whether in the case before us in regard to the document Ex. 151, can it be said that the claimants in regard to S. Nos. 47/1 and 47/2 had paid the purchase price for these survey numbers to the vendor Becharbhai Bapuji. We have referred to the terms of the document. It may be stated that it is also in the evidence of Mr. Ramray Munshi, who is the husband of one of the lessees under the document, Ex. 151, as well as in the evidence of the owner Becharbhai Bapuji, that after the execution of this document, three instalments of the annual rent, which was reserved in the lease, have been paid. This

evidence has been accepted by the learned Joint Judge and we also accept the same. What has been paid, therefore, by the claimants in regard to S. Nos. 47/1 and 47/2 is the part payment of Rs. 15914-11-6, as stated earlier, before the execution of this document, Ex. 151; and the three instalments of the annual rent. The total purchase price fixed by the document was Rs. 63,657-5-6. There was an option under this document to the lessees to purchase the survey numbers within a period of 10 years. However, that option was not exercised before the date of the acquisition. Therefore, the balance of the purchase amount has not been paid by the claimants. In other words, the purchase has not been completed. There is no obligation on the part of the claimants to complete the purchase. In other words, the vendor is not entitled to ask the lessees to complete the purchase and as a result, according to the terms of the agreement, the claimants held the lands as lessees on the payment of annual rent. This being the position, it seems to us quite clear that this is not a case, where the claimants have paid the purchase price of the lands in question prior to

[3]28 Bom LR 548 : AIR 1926 Bom 365

[4] AIR 1928 PC 305

the acquisition by the State. The reason behind this principle is fairly clear that in an instance of the kind contemplated under the authorities referred to above, the estimate of the price which the parties have made, has been reinforced and acted upon by them by the payment of the price itself. Therefore, it is not merely an estimate or an opinion or even the matter does not rest in the stage of agreement, which may or may not be performed by the party. Such would be an instance where the parties translate their own estimate into action by their conduct. Therefore, it is in these circumstances that the Courts have shown their willingness to accept the amount thus paid as the purchase price to be a prima facie measure of the market value, unless it is shown by the State that the purchasers have paid a price which is not a reasonable one. We are, therefore, unable to accept the contention put forward on behalf of the claimants that this case falls within the principle of law which has been enunciated by the several authorities which have been referred to before us and which we have quoted earlier.

20. Next, it was contended that in any event this is the price of the land which has been arrived at between the parties; that only the realization of a part of the amount has been deferred and that it should not make any difference to the genuine character of the transaction and fixation of the price of the land and that, therefore, in fairness to the claimants, compensation should be awarded to the claimants accepting this transaction as a correct guide of the market price of these survey numbers on that date.

21. Before we proceed further, it would be right on our part to consider whether this transaction as it is is a genuine transaction. (After discussing the evidence, His Lordship concluded :) On the evidence, therefore, the transaction embodied in Ex. 151 appears to be a genuine transaction.

22. The question then arises, as has been mentioned earlier, whether the contention advanced by

the claimants is correct, viz., that the fixation of price at Rs. 8-2-0 per Sq. Yd. in this document should, in any event, be accepted as a correct value for the lands in question at the time when the transaction was entered into. As stated earlier, the argument on this point was that after all the parties had entered into an agreement of sale, part payment was made, which was 1/4th of the purchase price and for the 3/4ths, if the option to purchase was not exercised, the payment was to be under the lease for 999 years, by paying the annual rent of Rs. 2148-6-0. It was further said that the difference between such a lease for 999 years and a sale was nominal. It was contended on the other hand by the learned Advocate General that the price of Rs. 8-2-0 per Sq. Yd., which has been fixed on the terms and conditions, which are stated in the document itself, is a price of the land which has been fixed by both the parties having regard to all the terms and conditions of that composite document; and if all the terms and conditions of that composite document are taken into account, the real and the true price of the land would be far much less than Rs. 8-2-0 per Sq. Yd. and that in any event the price fixed by the learned Joint Judge at Rs. 7/- per Sq. Yd. for these survey numbers erred, if at all, on the liberal side and that there was no reason for this Court to disturb that value fixed by the learned Joint Judge. It is true that the valuation arrived at by a valuer, be a Judge or otherwise, can never be arrived at with mathematical certitude and unless the appellate Court feels that the valuation as arrived at by the lower Court is inadequate, the appellate Court will not interfere with such a valuation.

23. In this connection, we may refer to the following observations of Their Lordships of the Privy Council in the case of *Secy., of State for Foreign Affairs v. Charlesworth Pilling and Co*[5]*.,* which have been oft quoted in this context (p. 139) :

> "It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who had gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. In such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for such guesswork; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at."

In other words, as stated by Mr. Justice Broom-field sitting with Mr. Justice Rangnekar, in the case of *Assistant Development Officer, Trombay v. Tayaballi Allibhoy Bohori*[6]*,* the party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. Therefore the claimants have to show that the award is inadequate in the light of the above observations, and more particularly in the light of the observations from the above cited Privy Council case. The learned Advocate General said that a part of the purchase price, viz., Rs. 15914-5-6 had already been paid at the time of the execution of this document. According to the terms of the document, there was no obligation on the part of

the lessees to purchase the lands. The only obligation which was on them was in any event to continue in possession of the lands as lessees for a term of 999 years. The learned Advocate General said that having paid this amount of Rs. 15914-5-6, the claimants got the possession of the land and the only legal obligation which the claimants were obliged to carry out was to perform their obligation as permanent lessees (when we say 'permanent lessees', we say for the sake of convenience to denote the period of 999 years, which period is for practical purposes indicative of almost a permanent tenancy in a case where, as is the case here, there is no right of re-entry.)

24. The learned Advocate General further contended that if the claimants intended to exercise their option at the end of 10 years, as was open to them under the document in question, they would have been required to pay the balance of the price i.e. Rs. 47,7437/- and it was further said that the present value according to accepted tables of Rs. 47,743/- in those circumstances would be about Rs. 30,000/- and that calculated in this way to provide for the payment after 10 years of that balance amount of the purchase price if it was to be provided for instantaneously, only an amount of Rs. 30,000/- would have been required and that would indicate the vendor's value in the balance of the amount remaining outstanding on the basis that the claimants will exercise their option to purchase at the end of 10 years; and calculated this way, the compensation that has been

[5]28 Ind App 121 (PC)

[6]35 Bom LR 763, at page 768 : AIR 1933 Bom 361 at p. 364

awarded to the claimants was more on the liberal side. It was further said that in regard to the payment of the annual rent or interest the lessees had got possession of the land which would in turn yield a return. It was contended therefore that including the amount of Rs. 15,914-5-6 which was prepaid the lessee would thus be required to set apart only Rs. 30,000/- more and thus the total price which the lessee pays would be Rs. 45,914-5-6, while actually the compensation paid for S. Nos. 47/1 and 47/2 is about Rs. 56,000/-. In any event, therefore, it was said that this award which works out at the rate of Rs. 7/- per Sq. Yd. was most liberal. It was further said that even if the amount of Rs. 15,914-5-6 was treated as an earnest or deposit and if interest at the rate of 4½p.c. for 10 years was added to this calculation it would increase the cost to the lessee from Rs. 45,914-5-6 to Rs. 57,914-5-6 (adding Rs. 7000/- roughly as interest for 10 years). Even so it was said that the award at the rate of Rs. 7/- per Sq. Yd. for S. Nos. 47/1 and 47/2 was very liberal. Though this method of calculation may perhaps in the result give a near approximate idea of the cost to the lessee and therefore of the true price of the land, we do not think that this is a quite appropriate appraisal of the situation, for the premise would postulate the exercise of the option to purchase at the end of 10 years. The document, however, is quite clear on this point that there is no obligation on the part of the claimant so to purchase the land. The claimants may or may not exercise the option to purchase the land. Therefore any calculation which is based upon a premise which may or may not exist, cannot be considered to be a dependable one. It was, however, further contended on behalf of the State by the learned Advocate General that in any event the purchase price of this land cannot be Rs. 8-2-0 per Sq. Yd. The value with which the Court is concerned is the market value of the land in question on the elate of the notification

under Section 4. In other words, the Court is concerned with finding about that value which a willing vendor will get from a prudent purchaser for his land with all its possibility and potentiality. It was contended, therefore, that it cannot be said that taking all the terms and conditions of Ex. 151 into consideration, this is a case where the vendor can be said to have got this value, viz., the amount of Rs. 63,657-5-6 on the date of the transaction for the lands. It was said that he received only Rs. 15,914-5-6 and for the rest what he has received is a right to receive annual rent in a sum of Rs. 2148-6-0 in perpetuity (i.e. 999 years). In other words, what was contended was that the vendor for the balance amount of the price, relied upon an unsecured investment in regard to the realization of his rent and that taking into account all the risk attendant upon an unsecured ground-rent, which he hoped to receive in perpetuity, the price of Rs. 8-2-0 per Sq. Yd. was fixed. In other words, the vendor did not receive total cash return for his lands at the tune of the transaction but he received only Rs. 15,914-5-6 and for the balance of Rs. 47,7437- he hoped to get the same by way of an annual rent of Rs. 2148-6-0 in perpetuity; and getting of that annual return in perpetuity would be accompanied by the natural risks, which accompany unsecured investment, viz., bad times, death, insolvency and many such other circumstances which the Court obviously cannot exhaustively enumerate. Therefore, it was contended that in fixing the price of Rs. 8-2-0 per Sq. Yd. the possibility of the option being not exercised, and the vendor being dependant on the receipt of such annual ground rent was taken into account. In other words, in fixing the price, there were other circumstances which entered into consideration of the parties, viz. the risk which would be attendant upon the realization in perpetuity of the ground rent. It was said, therefore, that taking all these risks into consideration and deducting a portion equivalent to those risks which entered the fixation of the price, the learned Joint Judge was not wrong in the result in making an allowance of about 10% from the price of Rs. 8-2-0 per Sq. Yd. which was fixed in these circumstances as the purchase price between the parties. We think that there is considerable force in this argument. Briefly put, the argument is that there is a substantial difference between a vendor getting a cash value on the spot for the transaction which he had entered into and a vendor getting only a portion of it and spreading the remainder of it in perpetuity in the form of an annual ground-rent. There is always a difference between a cash transaction and a credit one. It can be said without much contradiction that if a purchaser pays cash and if a purchaser purchases on unsecured credit spread over a very long period, then in such circumstances, it is the purchaser who pays cash is bound to get it at a cheaper price than the purchaser who wants to purchase for credit spread over a long period. The reason is simple, for the credit spread ever a long period involves the usual risks. We, therefore, think, in this view of the case, that if the learned Joint Judge has awarded a sum of Rs. 7/- per Sq. Yd. for S. Nqs. 47/1 and 47/2, in the result deducting roughly about 10% from the price of Rs. 8-2-0, which was based on the terms and conditions contained in Ex. 151, his valuation cannot be said to be wrong because this 10%, as stated earlier, would represent the circumstances which a vendor would take into consideration, for he is to realize his return during an inordinately long period and as is the case here in perpetuity.

25. It was contended by Mr. Mehta that the price which has been determined as the price of S.

Nos. 47/1 and 47/2 at Rs. 7/- was unfair to the claimants. It was in the interests of Mr. Mehta's clients to get more price for S. Nos. 47/1 and 47/2, for as stated earlier, the plots belonging to his clients have a superior situation than S. Nos. 47/1 and 47/2. Mr. Mehta said that Rs. 63,657-5-6 was not the actual price, which would be the price that the claimants of S. Nos. 47/1 and 47/2 had to pay under the document, if they exercised the option to sell. Mr. Mehta said that if the option to sell was exercised at the end of 10 years, the position would be this way : that they would have paid a sum of Rs. 15,914-11-6 when the transaction was entered into; that 10 years thereafter they would have to pay Rs. 47,743/-. So, what would cost to the lessees would be in those circumstances, according to Mr. Mehta, a sum of Rs. 47,743/-, which they would pay at the end of 10 years while exercising the option to purchase. Added to this Mr. Mehta said that they had already paid Rs. 15,914-5-6. Mr. Mehta further said that at the end of 10 years the lessees would have lost not only Rs. 15,914-5-6 but also interest, which he calculated at the compound rate and which according to him came roughly to about Rs. 10,600/-. In other words, according to Mr. Mehta, the actual cost to the lessees would be not Rs. 63,657-5-67- and odd but a sum of about Rs. 73,000/- if the option to purchase was exercised at the end of 10 years. It was, therefore, said that the price of Rs. 63,657-5-6 under these circumstances was on the contrary a price which was fixed on a lesser side and that that price of Rs. 8-2-0 per 5q. Yd. should not be disturbed. This argument suffers from a fallacy. In the first instance, as we have stated earlier, it is based on the assumption that the lessees will exercise their option to purchase. But the lessees were not bound to exercise their option. Any inference, therefore, which is based again on a premise, which not only is uncertain but which depends only on the option of the lessees, is unwarranted. We cannot proceed on this basis because there is no obligation on the lessees at the end of 10 years to purchase and that the lessor was not entitled to require the lessees to purchase at the end of 10 years, as we have stated earlier. Mr. Mehta asked us to add in the calculation of the claimants' cost interest for 10 years on the amount of Rs. 15,914-5-6. But Mr. Mehta forgot that on payment of Rs. 15,914-5-6 the lessees got possession of the land for which the price was fixed at Rs. 63,657-5-6. The lessees have the land with them. As against that they have to go on paying the annual rent of Rs. 2148-6-0. The return from this land is really set off against the rent. and for the payment of the balance of the purchase price the lessees have to set apart presently about Rs. 30,000/- to enable them to pay Rs. 47,743/-after 10 years. So actually the cost to the lessee which would be the true index of the price would not be Rs. 73,000/- as calculated by Mr. Mehta but on his own argument only about Rs. 30,000/-and the sum of Rs. 15,914-5-6 which he has already paid and at the most if the latter sum is treated as a deposit or earnest one may even add interest at 4½ p.c., which would amount to about Rs. 7000/- (rough estimate) for 10 years. In this way as stated earlier the total cost to the lessee would come to about Rs. 52,914-5-6. If compound interest instead of simple is calculated on Rs. 15,914-5-6 one may add even a further amount of about Rs. 3000/- and make the total at about Rs. 55,914,5-6, while the award is about Rs. 56,000/-. We do not think that in any view of the case, this argument of Mr. Mehta is helpful to him.

26. It was further contended by Mr. Mehta as well as Mr. Vakil that it was not right on the part of

the Court to consider this aspect of the case, viz., that the price of Rs. 8-2-0 must have been fixed on the consideration that the payment of the annual rent would be an unsecured payment and that it involved the risk of an unsecured claim. It was further said by Mr. Mehta that no cross-examination of witness was directed on this point and that, therefore, the Court should not take into consideration this element in arriving at its conclusions. Mr. Mehta said that witness Becharbhai has in his evidence stated that he was willing to sell for Rs. 8/- per Sq. Yd. and it was further said that Becharbhai would have preferred an annual ground-rent in perpetuity than to receive the balance of the purchase amount in cash on the spot. We do not see any force in this argument. It is not necessary to have any oral evidence to consider this aspect of the case for the Court must look to the terms and conditions of the document itself and the document is quite clear that the vendor has received one-fourth of the amount in cash and for three-fourths of the amount, he has to depend upon the annual ground-rent in perpetuity, that is for a term of 999 years. It is difficult for us to accept the contention of Mr. Mehta as well as of Mr. Vakil that it might be possible that the vendor might have preferred to accept the annual ground-rent of Rs. 2142-6-0 in perpetuity from the lessees than to get the balance of the purchase amount in cash. This argument seems to us to be more fanciful than real. It is difficult to contemplate a case where a party would prefer not to accept a cash amount and would depend upon an annual return in perpetuity from a source which is unsecured. We are, therefore, unable to accept this argument of Mr. Mehta.

27. It was further contended by Mr. Vakil that so far as his clients are concerned, they have been actually put to a loss and he further stated that what his clients have received is a sum of only Rs. 9239/- as against their payment of Rs. 15,914-5-6 and three instalments of the ground-rent.

28. Mr. Vakil, therefore, contended that this Court should put at least such a market value as would reimburse his clients of what they have paid, as stated above. In addition to the sum of Rs. 9239/- which Mr. Vakil's clients received from the Land Acquisition Officer as their share of the award, they have received a further sum of Rs. 7231-7-0, as a result of the additional compensation given by the learned Joint Judge. Thus Mr. Vakil's clients have received about a sum of Rs. 16470-7-0. The Land Acquisition Officer, while apportioning the compensation in regard to S. Nos. 47/1 and 47/2, awarded about a sum of Rs. 47,743/- to the owner of those survey numbers as his part of the compensation. So, the total sum which was awarded inclusive of the additional compensation by the learned Joint Judge in respect of these S. Nos. viz., 47/1 and 47/2, comes to a sum of Rs. 64,213-7-0. According to Mr. Vakil, as stated above, the total amount which has gone out of his clients' pocket, inclusive of the part payment of Rs. 15,914-5-6 and the three instalments of the groundrent comes to about Rs. 22,358-5-0. Mr. Vakil's contention, therefore, is that his clients have been put to a loss of at least about Rs. 6000/- as a result of this award. In awarding compensation for land, however, the Court has to determine the market value of the land in question on the basis that all the interests in that land have combined to sell. In other words, the valuation is to be put on that concrete piece of land, irrespective of the different interests which several persons might possess in regard to any portion of the concrete

piece of land. We may usefully refer in this connection to the observations of Mr. Justice Batchelor in the case of Trustees for the Improvement of the *City of Bombay v. Jalbhoy Ardeshir Sett*[7], at page 690 as follows :-

> "..... for it is still the 'market value of the land' which has to be determined; and by that is meant, I think, the price which would be obtainable in the market for that concrete parcel of land with its particular advantages and its particular drawbacks ....."

29-35. These observations were referred to by the learned Chief Justice Sir John Beaumont, Kt., sitting with Mr. Justice Sen, in the case of *Government v. Century Spinning and Manufacturing Co., Ltd*[8]., The head-note in that case, which correctly represents the ratio, is as follows :-

> "The market value of the land referred to in Section 23 of the Land Acquisition Act, 1894, means the market value of the concrete piece of land to which the notification issued under Section 4 of the Act applies, and not separate interests in it. The normal method contemplated by the Act for assessing compensation is to take the market value of the land, and then to apportion it amongst the different interests. The Act, however, does not lay down any hard and fast rule and it may be desirable in special cases to adopt a different method, viz., by valuing each interest in the land separately."

When the learned Chief Justice referred to those special cases, where it may be desirable to adopt a different method of valuing each interest in the land separately, very probably he referred to those cases where the separate interest would be independent of the total interests of the ownership of the land. In that case before their Lordships, a question arose of valuing a right of easement. The case with which we are dealing belongs to that class of cases where a valuation has to be made of the land treating it as a concrete piece of land, as if all the interests have combined to sell the same, for the separate interest which is put forward before us is the interest of a lessee, which is in the nature of a derivative interest from the owner. In cases where the several interests are of the nature of derivative interests, the general rule of valuing the several interests as if the several interests have combined to sell, would be applicable. Therefore, the contention of Mr. Vakil that his clients have received less than what they have spent is really not relevant to this inquiry;

[7]11 Bom LR 674

[8]44 Bom LR 57 : AIR 1942 Bom 105

because what the Court has to bear in mind is the total valuation on the basis that all the interests have combined to sell. As stated earlier, the total compensation available for distribution in regard to S. Nos. 47/1 and 47/2, would thus be the sum of Rs. 47,743/- awarded by the Land Acquisition Officer to the owner of the land and the total sum of Rs. 16,470-7-0, which in the result have gone to the share of the claimants before us. The total amount awarded in respect of this land thus comes to Rs. 64,213-7-0. As stated earlier, the Court is concerned with the total

amount awarded in respect of all the interests having combined to sell. Whenever compensation is determined on that basis, then the question of apportioning the same between several interests would arise. If there is a dispute in regard to the apportionment, then naturally that question will come before the Court for the purpose of a fair and a proper distribution. In this case, however, there is no appeal by the claimants of S. Nos. 47/1 and 47/2 in regard to the apportionment of shares from the compensation awarded and consequently we are not concerned with any dispute with regard to the apportionment. In these circumstances, in view of the observations which we have made above, we do not think that this Court can be of any assistance to Mr. Vakil in disturbing the distribution of the compensation which has already taken place, since that dispute is not before us.

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36. It will be seen, therefore, that in this case the valuations of the survey numbers in question have turned upon the transaction contained in Ex. 151 in regard to S. Nos. 47/1 and 47/2. In that transaction the purchase price has been fixed at Rs. 8-2-0 per Sq. Yd. On looking to its terms and conditions, that cannot be taken as its true market value. As we have stated earlier, it must at least be loss by 10%, for in our view it is a transaction where the purchaser has two options, viz., either to purchase within 10 years or to keep the land as a permanent lessee. If the second party who has to exercise his option to purchase or lease, exercises his option to purchase, which obviously he will do if it becomes profitable to him, in the meantime, he has to pay the balance amount of the purchase money. If it is not profitable to purchase, he is bound to continue as a permanent lessee. These considerations, therefore, which enure to the benefit of the lessee must have an effect on the fixing of the purchase price. With these options the vendor would fix a higher price than one of a binding sale on that day. If it is a permanent lease, the lessor has only to depend on the lessee's personal security, which obviously cannot be as good as a gilt-edged security. In other words, this element would again enter in the fixing of the rent, which normally would lead to a higher rent in such circumstances. Viewed at from either way, the sale price fixed in such circumstances will naturally tend to be higher than a binding sale on that day in return for a price. In our opinion, therefore, the measure of the true value of this transaction which has been arrived at by the learned Joint Judge though on different reasoning with which we do not agree, is, to say the least, most fair and reasonable in the result and, if at all, on a liberal side.

37. There is, therefore, no substance in the appeals before us. All the four appeals will, therefore, be dismissed with costs. Order accordingly.
Appeals dismissed.