STATE OF GUJARAT ETC.

v.

VAKHTSINGHJI SURSINGHJI VAGHELA & ORS. ETC.

April 8, 1968

[M. HIDAYATULLAH, C.J., R. S. BACHAWAT, G. K. MITTER, C. A. VAIDIALINGAM AND K. S. HEGDE, JJ.]

Bombay Taluqdari Abolition Act 62 *of* 1949, *ss.* 7 *and* 14—*Right to pay jama or land revenue at reduced rates—Whether a right for which compensation is payable under s.* 14—15% *solatium whether payable in addition to compensation for lands under s.* 7—*Method of working out compensation for irrigation bunds, tanks and wells—Right to compensation for river, river beds, Bhathas.*

Constitution of India, Art. 227—*Scope of High Court's power to interfere with Tribunal's order and to give directions.*

The respondents filed claims before the Collector Ahmedabad for compensation under ss. 11 and 14 of the Bombay Taluqdari Abolition Act, 1949. Against the Collector's awards they appealed to the Revenue Tribunal and thereafter filed petitions under Art. 227 before the High Court. From the High Court's orders the State of Gujarat appealed to this Court. The matters in dispute were: (i) whether the right to pay only 60% of the full jama or revenue assessment on their lands which the respondents had been enjoying was a right for the extinguishment of which compensation under s. 14 of the Act was payable; (ii) whether under the provisions of the Act the respondents were entitled to 15% solatium in addition to the compensation which they were awarded for their lands; (iii) what was the proper method of working out the value of irrigational bunds, tanks and wells for the purpose of compensation; (iv) whether compensation was payable to the respondents in respect of river and river beds. The Court had also to consider the scope of the High Court's power under Art. 227 of the Constitution in the context of the case.

HELD: (i) The taluqdari estates were liable to payment of jama. As a matter of concession the jama was generally 60% of the survey assessment. The taluqdars had no legal right to claim the concession on the expiry of their current settlements, and at the next revisional settlement the Government had the right to withdraw the concession and impose full assessment. The right of the taluqdars to pay the jama at the concessional rate till the expiry of the current settlement was preserved by s. 5 of the Abolition Act. The enhanced assessment which they had to pay thereafter did not affect any contractual or statutory right vested in them. Even assuming that it modified or extinguished any right, such modification or extinguishment did not amount to transference to public ownership of land or any right in or over land within the meaning of s. 14 of the Abolition Act. The Collector, the Revenue Tribunal and the High Court therefore rightly rejected the claim of the respondents for compensation for the difference in the jama and the full assessment. [698 C, 699 H, 700 A]

Rao Bahadur Kunwar Lal Singh v. *The Central Provinces and Berar*, [1944] F.C.R. 284, applied.

Nawab Sardar Narharsinghji Ishvarshinghji v. *The Secretary of State for India*, 43 Bom. L.R. 167, referred to.

A (ii) The Collector is required by s. 7(1)(b) to make an award in the manner prescribed in s. 11 of the Land Acquisition Act, 1894. The Collector has to make an award under s. 11 and having regard to s. 15 in determining the amount of compensation, he is guided by the provisions of s. 23 and s. 24. Section 23(1) requires an award of the market value of the land. Section 23(2) requires an additional award of a sum of fifteen per centum on such market value, in consideration of the compulsory nature of acquisition. It follows that under s. 7(1)(b) of the B Abolition Act read with s. 11 of the Land Acquisition Act the taluqdars are entitled to receive as compensation the market value of all rights in any property extinguished under s. 6 and in addition a sum of 15 per cent on such market value. The right is subject to the conditions and exceptions enumerated in sub-cls. (i), (ii) and (iii) of s. 7(i)(b). [701 C—F]

C (iii) In regard to irrigational bunds, tanks and wells the High Court rightly rejected the claim for compensation based on reinstatement value. This method should not be adopted when the market value deduced from the income derived from the lands would fairly compensate the owner and in no case can re-instatement value be given unless reinstatement in some other place is *bona fide* intended. In the present case the High Court found that there was no intention to reinstate the bunds. [703 C-D]

D The value of irrigational bunds, tanks and wells is not what they cost but what they yield in annual income. The High Court rightly adopted the yield basis of valuation. The Himayat assessment and the water rates adopted by the Collector and the Tribunal did not give the correct yield. The High Court therefore rightly directed further inquiries into this claim. [703 E]

Raja Vyricherla Gajapatiraju v. *The Revenue Divisional Officer, Vizagapatam*, 66 I.A. 104, *Harish Chandra Neogy* v. *Secretary of State for India*, 25 C.W.N. 875 and *Province of West Bengal* v. *Raja Jhargram*, E A.I.R. 1955 Cal. 392, referred to.

(iv) In regard to river and river beds, the taluqdars had no property in running water. They were the owners of the river beds but the submerged river beds were of no value to them. They could rightly claim compensation only for the Bhathas formed in the rivers and other portions of the river beds where crops could be raised during some parts of the year. [703 F-G]

F (v) Article 227 of the Constitution gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercised jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The High Court had jurisdiction to revise the decision of the Tribunal in respect of the solatium and irrigational bunds tanks and wells, when the Tribunal on a misreading of ss. 7 and 14 of the Abolition Act declined to do what G was by those provisions incumbent on it to do. The High Court could not only set aside its decision, but also direct it to make further inquiries after taking evidence. [705 B—G]

Hari Vishnu Kamath v. *Syed Ahmed Ishaque*, [1955] 1S.C.R. 1104, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 517 to 534 of 1965.

H Appeals from the judgment and decree dated January 12, 1961 of the Gujarat High Court in Special Civil Applications Nos. 78 to 83 and 96 to 101 of 1960.

N. S. Bindra and *S. P. Nayar*, for the appellant (in C. A. Nos. 517 to 528 of 1965) and for respondent-State of Gujarat (in CAs. Nos. 529 to 534 of 1965). A

A. K. Sen, Bhuvanesh Kumari, J. B. Dadachanji, O. C. Mathur, Ravinder Narain and *M. H. Chhatrapati*, for respondent No. 1 (in C.As. Nos. 517 and 524 of 1965). B

A. K. Sen, M. H. Chhatrapati, and *Bhuvanesh Kumari*, for respondent No. 1 (in C.As. Nos. 518 to 522 of 1965) and the appellant (in C.A. No. 530 of 1965).

M. H. Chhatrapati and *Bhuvanesh Kumari* for respondent No. 1 (in C.As. Nos. 523, and 526 to 528 of 1965) and appellant (in C.A. No. 529 and 531 to 534 of 1965). C

N. A. Palkhivala, M. H. Chhatrapati and *Bhuvanesh Kumari*, for respondent No. 1 (in C.A. No. 525 of 1965).

The Judgment of the Court was delivered by

Bachawat, J.—These appeals are directed against the orders of the Gujarat High Court passed under Art. 227 of the Constitution revising the appellate orders of the Bombay Revenue Tribunal modifying certain awards of the Special Deputy Collector, Ahmedabad. Claims for compensation under secs. 7 and 14 of the Bombay Taluqdari Abolition Act, 1949 (Bombay Act LXII of 1949) were filed before the Collector by the Taluqdars of certain villages in the district of Ahmedabad. The Collector made his awards of compensation under secs. 7 and 14. The claimants filed appeals before the Revenue Tribunal and later petitions under Art. 227 of the Constitution to the High Court. The present appeals are filed by the State of Gujarat and some of the claimants. The principal matters in controversy in these appeals relate to the award of compensation under the heads : (i) difference in Jama and full assessment, (ii) solatium of 15% on the market value, (iii) irrigational bunds, tanks and wells and (iv) river and river beds. D E F

Excellent accounts of the history and incidents of the taluqdari tenures are given in Dr. Govind D. Patel's Agrarian Reforms in Bombay, 1950, Mr. J. B. Peile's Report, Government Selection No. CVI New Series, p. 13, Mr. L. Robertson's Report on the conditions of the taluqdars of the Ahmedabad district, 1903, statement of objects and reasons for Bill No. 6 of 1885 printed in Bombay Government Gazette, dated the 26th December, 1885, Part V, at p. 65 and *Nawab Sardar Narharsinghji Ishvarsinghji* v. *The Secretary of State for India*(1). The origin of the Gujarat taluqdars may be traced to Moghul and pre-Moghul times. They are found mainly in the districts of G H

(1) 43 Bom. L. R. 167.

A Ahmedabad, Kaira, Broach and the Panchmahals. The leading characteristics of the taluqdari tenure is that the taluqdari estate is neither alienated nor unalienated but is proprietary. Until 1862 the taluqdars were legally though incorrectly regarded as mere lease holders. From 1862 till 1888 they were full proprietors with unlimited powers of alienation. From 1888 on-
B wards they were full proprietors with restricted powers of alienation. Their estates were subject to payment of a jama to the Government. Originally the jama was regarded as a tribute but later it became a roughly calculated tax on the rental, then a land tax and finally land revenue. Acts were passed from time to time for ameliorating the conditions of the taluqdars. Since
C 1888 the taluqdari villages and estates were governed by the provisions of the Gujarat Taluqdars' Act, 1888 (Bom. Act VI of 1888). Under sec. 2(1)(c) of this Act Jama meant land revenue payable by the taluqdars to the Government. Section 4 empowered the Government to direct a revenue survey of a taluqdari estate under the provisions of the Bombay Land Revenue Code, 1879. Sections 22 and 23 deal with the taluqdar's
D jama :

> "22(1). If a taluqdar's estate, or any portion thereof is not wholly or partially exempt from land-revenue and its liability to payment of land revenue is not subject to special conditions or restrictions, the jama payable to (the Provincial Government) in respect of
> E such estate or portion thereof shall, if a survey settlement has been extended thereto, be the aggregate of the survey assessment of the lands composing such estate or such portion thereof minus such deduction, if any, as (the Provincial Government) shall in each case direct.
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> F (2) The (Provincial Government) may declare the amount of jama so ascertained fixed for any term not exceeding thirty years.
>
> 23(1) Nothing in this Act shall be deemed to affect the validity of any agreement, heretofore, entered into by or with a taluqdar and still in force as to
> G the amount of his jama nor of any settlement of the amount of jama made by or under the orders of the (Provincial Government) for a term of years and still in force.
>
> (2) Every such agreement and settlement shall have effect as if this Act had not been passed."

H The jama was usually fixed (uddhad) in respect of the estates in Kaira and Broach but those in Ahmedabad and Panchmahals

were liable to revision at every revisional settlement. The fluctuating jama in respect of these latter estates could under s. 22 be fixed at an amount equal to the full survey assessment of all the lands comprised within the estate. In practice the jama of the claimants' estates in Ahmedabad was limited to about 60% of the full assessment. As a measure of agrarian reform the Government decided to abolish the taluqdar tenures altogether. Accordingly the Bombay Taluqdari Tenure Abolition Act, 1949 was passed on January 24, 1950. It came into force on August 15, 1950. It extends to the districts of Ahmedabad, Kaira, Broach and Panchmahals. It repealed the Gujarat Taluqdars' Act of 1888 and certain other special Acts relating to taluqdars. Section 3 abolished the taluqdari tenure and extinguished all incidents of the tenure attached to any land comprised in a taluqdari estate save as provided in the Act. Under sec. 4 all revenue surveys and settlements made under sec. 4 of the Gujarat Taluqdars Act, 1888 are deemed to have been made under Chapters VIII and VIIIA of the Land Revenue Code. By section 5(1)(a) all taluqdari lands are henceforth liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code and the rules made thereunder. But this provision does not affect the right of any person to hold any taluqdari land wholly or partially exempt from the payment of land revenue under a special contract or any other law for the time being in force [s. 5(2)(a)] nor the right of any person to pay jama under any agreement or settlement recognised under sec. 23, or under a declaration made under section 22 of the Gujarat Taluqdars' Act so long as such agreement, settlement or declaration remains in force [s. 5(2)(b)]. Section 5(1)(b) provides that a taluqdar holding any taluqdari land shall be deemed to be an occupant within the meaning of the Land Revenue Code or any other law for the time being in force. Section 6 provides that all public roads, lanes etc., not situate within the limits of the wantas belonging to a taluqdar in a taluqdari estate shall vest in the Government and all rights held by a taluqdar in such property shall be deemed to have been extinguished. Section 7 provides for payment of compensation to taluqdars for extinguishment of rights under section 6. Section 14 provides for payment of compensation for extinguishment or modification of any other right in any land where such extinguishment or modification amounts to transference to public ownership of such land or any right in or over such land. Section 17 makes applicable provisions of the Land Revenue Code to all taluqdari lands with certain modifications. Sections 8, 9 and 10 provide for appeals from the Collector's award. Section 12 provides that the award made by the Collector and the decision of the Bombay Revenue Tribunal on appeal shall be final and conclusive and shall not be questioned in any suit

A or proceeding in any court. The Act is protected by Art. 31B of the Constitution. It was amended from time to time. Clause (a) of section 5(2) was deleted by Bombay Act 42 of 1953. Section 5A was inserted by Bombay Act I of 1955. Section 5A made a permanent tenant and an inferior holder in possession of any taluqdari land an occupant in respect of such land on B payment of compensation to the taluqdar.

In these appeals the taluqdars claim compensation for the loss of benefit of the difference between the jama and the full assessment. The jama payable under the settlements made before the Abolition Act was 60% of the total assessment. Their right to pay the jama only under those settlements were not affected C in view of section 5(2)(b). They have obtained the full benefit of the concessional jama while the settlements remained in force. The period of those settlements have now expired and they are now liable to pay full assessment. They have thus suffered a loss of 40% of the land revenue of the villages. They claim compensation for this loss under s. 14(1) of the Abolition D Act which reads :—

> "14.(1). If any person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in any land other than those in respect of which provision for the payment of compensation has been made under section 7 and if such person E proves that such extinguishment or modification amounts to the transference to public ownership of such land or any right in or over such land, such person may apply to the Collector for compensation within a period of twelve months from the date on which this Act comes into force."

F "Any person" in sec. 14(1) includes a taluqdar. To get compensation under the section the claimant must establish firstly that his rights in any land other than those for which provision for compensation is made under s. 7 has been extinguished or modified and secondly that such extinguishment or modification amounts to the transference to public ownership of such land or G any right in or over such land. The taluqdars contend that they had the right to pay a jama not exceeding 60% of the survey assessment of the lands comprised in the estate. According to them the Government had issued directions under section 22(1) of the Gujarat Taluqdars' Act, 1888 so limiting the jama. They say that such direction is to be found in the memorandum of H the Government of Bombay issued on October 2, 1914 with reference to the recommendation made by the Commissioner, Northern Division, in his letter dated April 13, 1914. The High Court has referred to these documents in some detail. It appears

that the Gujarat Taluqdari Bill was then pending before the Legislative Council. The memorandum shows the Government's willingness to incorporate in the Bill suitable provision regarding the fixation of the jama. In our opinion, the memorandum was not a direction under sec. 22(1) nor did it create a legal right in the taluqdars to pay a jama of 60% of the survey assessment.

The taluqdari estates were always liable to payment of jama or land revenue. As a matter of concession the jama was generally 60% of the survey assessment of the lands comprised in the estate. The taluqdars had no legal right to claim the concession on the expiry of their current settlements. At the next revisional settlement the Government had the right to withdraw the concession and to impose full assessment on the taluqdari lands. Section 5(1)(a) of the Abolition Act by imposing full assessment on the taluqdari lands after the expiry of the period of the current settlements did not extinguish or modify any vested right of the taluqdars.

Mr. Palkhiwala argued that section 5 effected a transfer of the proprietary rights of the taluqdars in their lands to the Government together with the advantage of paying reduced revenue and a re-transfer of the occupancy rights in those lands to the taluqdars and consequently there was extinguishment or modification of their rights amounting to transference to public ownership of rights in and over such lands. The argument, though ingenious, does not bear scrutiny. Before the High Court the taluqdars made no claim for compensation generally for any loss of proprietary right. Mr. Palkhiwala therefore said that he did not make any claim for compensation for the loss of proprietary right other than the loss arising from the liability to pay full assessment. We have therefore to consider only the claim for compensation for the difference between the jama and the full assessment.

In *Rao Bahadur Kunwar Lal Singh* v. *The Central Provinces and Berar*(1) the appellant Rao Bahadur Kunwar Lal Singh held in Zamindari rights certain estates in the Central Provinces. The land revenue in respect of the estates was settled in 1921 under the Central Provinces Land Revenue Act, 1917 for a period of 19 years from July 1, 1919 and July 1, 1920 and thereafter until a fresh settlement was made. Section 88 of the Act provided that if the assessment of an estate, had been accepted under the Act, the proprietors would be bound to pay the land revenue assessed thereon from such date and for such term as the Provincial Government might appoint in that behalf and if at the expiry of such term no new assessment had been made, until a

(1) [1944] F. C. R. 284.

A new assessment was made. The Central Provinces Revision of the Land Revenue of Estates Act, 1939 enacted that with effect from July 1, 1938 notwithstanding anything contained in the Act of 1917 the land revenue payable to the Government in respect of the estates would be enhanced to the amounts mentioned in the Schedule to the Act of 1939. By an Amending Act of
B 1941 it was provided that those amounts would be deemed to have been assessed, offered and accepted under the Act of 1917. The appellant contended that as no new settlement had been made, the Act of 1939 extinguished or deprived him of his contractual as well as statutory right to hold his estates subject only to the payment of the takoli fixed in 1921 and thus amounted to an acquisition of his right in land in contravention of section
C 299(2) of the Government of India Act, 1935. The Federal Court repelled this contention. Spens, C.J. observed :—

> "It is, we think, impossible to hold that the mere increase of an assessment for land revenue involves any acquisition of the land or any rights in or over im-
D movable property. It further seems to us that the word 'acquisition' implies that there must be an actual transference of, and it must be possible to indicate some person or body to whom is or are transferred, the land or rights referred to. It is impossible, in our view to suggest that when the land revenue is
E increased, there is any transference to the Provincial Government or any other person of any land or rights in or over immovable property, which remain in the same possession or ownership as immediately before the increase of the assessment. In our judgment, the attempt to bring the case within s. 299(2) must fail."

F

It will be noticed that the Zamindar in that case was bound to pay only the fixed land revenue for the period of 19 years and thereafter until a new settlement was made. The increase in land revenue made by the 1939 Act affected this right. Nevertheless it was held that the increase in land revenue did not in-
G volve any transference to the Government of any right in or over any immovable property. The case of the taluqdars in the present case is weaker. Their right to pay the jama only while the old settlements remained in force was not affected by section 5. The increase in land revenue on the expiry of those settlements was not due to any change in ownership. The en-
H hanced assessment did not affect any contractual or statutory right vested in them. Even assuming that it modified or extinguished any right, such modification or extinguishment did not amount to transference to public ownership of land or any

right in or over land within the meaning of sec. 14 of the Bombay Taluqdari Tenure Abolition Act. The Collector, the Revenue Tribunal and the High Court therefore rightly rejected the claim of the taluqdars for compensation for the difference in the jama and the full assessment.

The next claim is for payment of a solatium of 15 per centum on the market value awarded under section 7 of the Abolition Act. The Collector and the Revenue Tribunal rejected this claim. The High Court partially allowed it and directed that an amount of 15% should be added to the market value awarded under section 7(1)(b)(iii). This ruling is challenged by both the State of Gujarat and the taluqdars. Section 7(1) reads :—

> 7.(1) Any taluqdar having any rights in such property shall be entitled to compensation in the manner provided in the following paragraphs namely :—
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> (a) within a period of twelve months from the date on which this Act comes into force, the taluqdar shall apply in writing to the Collector stating the nature of his right, the ground of his claim and the amount of compensation claimed by him for the extinguishment of his right;
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> (b) the Collector shall hold a formal inquiry in the manner provided in the Code and if the Collector is satisfied that the applicant had any rights in the land and that such rights have been extinguished under the last preceding section, shall make an award in the manner prescribed in section 11 of the Land Acquisition Act, 1894 (1 of 1894), subject to the following conditions :—
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> (i) if the property acquired is waste or uncultivated but is culturable land the amount of compensation shall not exceed three times the assessment of the land;
>
> Provided that if the land has not been assessed, the amount of compensation shall not exceed such amount of assessment as would be leviable in the same village on the same extent of similar land used for the same purpose;
>
> (ii) if the property is land over which the public has been enjoying or acquired a right of way or any individual has any right of easement, the amount of compensation shall not exceed the amount of the annual assessment leviable in the village for unculti-

A vated land in accordance with the rules made under the Code or if such rules do not provide the levy of such assessment, such amount as in the opinion of the Collector shall be the market value of the right or interest held by the claimant;

B (iii) if there are any trees or structures on the land, the amount of compensation shall be the market value if such trees or structures, as the case may be;

Explanation—For the purpose of this section the "market value" shall mean the value as estimated in accordance with the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (1 of 1894), in C so far as such provisions may be applicable."

Section 7(1) gives compensation to taluqdars for extinguishment of rights in any property under sec. 6. The Collector is required by sec. 7(1)(b) to make an award in the manner prescribed in section 11 of the Land Acquisition Act, 1894. The Collector has to make an award of compensation under sec. 11 D and having regard to sec. 15 in determining the amount of compensation, he is guided by the provisions of secs. 23 and 24. Section 23(1) requires an award of the market value of the land. Section 23(2) requires an additional award of a sum of fifteen per centum on such market value, in consideration of the compulsory nature of acquisition. It follows that under sec. E 7(1)(b) of the Abolition Act read with section 11 of the Land Acquisition Act, the taluqdars are entitled to receive as compensation the market value of all rights in any property extinguished under sec. 6 and in addition a sum of 15 per centum on such market value. This right is subject to the conditions and exceptions enumerated in sub-clauses (i), (ii) and (iii) of section F 7(1)(b). In cases falling under clause (i) and in some cases under clause (ii) the amount of compensation is limited. In cases falling under clause (iii) and in some cases under clause (ii) the amount of compensation is the "market value" which according to the explanation to sec. 7(1) means the value estimated in accordance with sections 23 and 24 of the Land Acquisition Act, 1894. The value so determined includes the G solatium of 15 per centum payable under sub-section (2) of s. 23. Where the legislature intended to exclude the application of sub-section (2) of sec. 23, it has said so, as in section 14(2) under which compensation is determined in accordance with the provisions of sub-section (1) of sections 23 and 24. It follows that the *taluqdar* is entitled to the solatium of 15 per H centum on the market value, (1) under the main part of sec. 7(1)(b) subject to the provisions of the several sub-clauses thereof : (2) in cases falling under clause (iii) of section 7(1)(b) and (3) in cases under clause (ii) of section 7(1)(b) where

market value is awarded. The direction of the High Court is modified accordingly. A

The next claim is with regard to irrigational bunds, tanks and wells. The Collector awarded compensation on the basis of Himayat and water rates of assessment. The Revenue Tribunal confirmed his award. The High Court set aside this award and directed the Collector to award compensation after further inquiry on the basis of twenty-five times the annual profits derivable from the properties. This ruling is challenged by the State of Gujarat and also by the Taluqdars. Mr. Bindra contended that the Tribunal's award should be restored. Mr. A. K. Sen contended that the compensation should be awarded on the basis of reinstatement value. In our opinion, both these contentions should be rejected. The duty of the Collector is to award the "market value". The market value is the amount which the land if sold in the open market by a willing seller might be expected to realise. In the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalise it by a number of years purchase. The capitalised value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer. In some special cases awards have been given on the basis of the reinstatement value which is assessed according to the cost of acquiring an equally convenient land or premises. Cripps on Compulsory Acquisition of Land. 11th ed., Arts. 4-203, p. 907 explains this method thus :— B C D E

> "Before the Acquisition of Land Act, 1919, reinstatement value, instead of market value, was sometimes given so as to give proper effect to the principle of compensation on the basis of value to the owner. Generally it was only given in respect of property which was of such a nature (for example, a school, church, hospital, house of exceptional character, business premises in which the business could be carried on under special conditions or by means of a special licence) that there was no market or general demand for such property; and a market value deducted from the income derived would not constitute a fair basis in assessing the value to the owner." F G H

The measure of compensation for lands or premises taken under the Lands Clauses Act, 1845 was their value to the owner. In special cases reinstatement value enabling the owner to

A replace the lands or premises taken from him was taken to be the correct measure of this value. This principle was later enacted in Rule 5 of section 2 of Acquisition of Land (assessment of compensation) Act, 1919 which is now replaced by Rule 5 of section 5 of the Land Compensation Act, 1961. In *Raja Vyricherla Gajapatiraju* v. *The Revenue Divisional Officer, Vizagapatam*(1) Lord Romer said that the general principles for determining compensation under section 23 of the Land Acquisition Act, 1848 did not differ in any material respect from those upon which compensation was awarded under the Lands Clauses Act of 1845. In *Harish Chandra Neogy* v. *Secretary of State for India*(2) and *Province of West Bengal* v. *Raja Jhargram*(3) it was suggested that in special cases the reinstatement value may be awarded as compensation under section 23 of the Land Acquisition Act. For the purpose of this case it is sufficient to say that this method should not be adopted where the market value deduced from the income derived from the lands would fairly compensate the owner and in no case can reinstatement value be given unless reinstatement in some other place is *bona fide* intended. The High Court found that there was no intention to reinstate the bunds. The owners could be fairly compensated by giving the market value deduced from the estimated yield. The High Court rightly rejected the reinstatement method. The value of irrigational bunds, tanks and wells is not what they cost but what they yield in annual income. The High Court rightly adopted the yield basis of valuation. The Himayat assessment and water rates did not give the correct yield. The High Court therefore directed further inquiries into this claim.

The next claim for compensation is with regard to river and river beds. The Collector and the Tribunal rejected this claim but the High Court allowed it and directed further inquiries. The State of Gujarat challenges this ruling. Now the taluqdars had no property in running water. They were the owners of the river beds but the submerged river beds were of no value to them. Counsel for the taluqdars therefore conceded that the High Court's ruling cannot be supported. Before us they confined their claim under this head to Bhathas formed in the rivers and other portions of the river beds where crops could be raised during some parts of the year particularly during summer. Counsel for the State did not oppose further inquiries into this limited claim for compensation. We therefore set aside the directions of the High Court in respect of river and river beds. We direct the Special Deputy Collector to inquire into the claim for compensation for Bhathas, if any, formed in the rivers, and other portions, if any, of the river beds where crops could be raised.

(1) 66 I. A. 104 at 113. (2) 25 C. W. N. 875.
(3) A. I.R. 1965 Cal. 392.

Counsel for the taluqdars sought to challenge the findings of the High Court with regard to compensation for unbuilt village sites, trees, sim road and non-irrigational tanks and wells. We find no error of principle in the award of compensation under these heads. There is no ground for our interference in respect of these claims. A

Mr. Bindra submitted that section 12 of the Abolition Act makes the decision of the Tribunal final and conclusive and the High Court had no jurisdiction to interfere with this decision, particularly in respect of solatium of 15 per centum and non-irrigational bunds, tanks and wells. We are unable to accept this contention. Article 227 of the Constitution gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. It was the duty of the Revenue Tribunal to award compensation to the Taluqdars in accordance with the provisions of secs. 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the Tribunal where the Tribunal on a misreading of the provisions of secs. 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light it does not appear that the High Court exceeded its jurisdiction under Art. 227 in revising the decision of the Tribunal in respect of the solatium and irrigational bunds, tanks and wells. Numerous cases were pending before the Revenue Tribunal in respect of compensation payable to the taluqdars under the Bombay Taluqdari Tenure Abolition Act. To prevent miscarriage of justice it was necessary for the High Court to lay down general principles on which compensation should be assessed so that the Tribunal may act within the limits of their authority. On finding that the Tribunal had misconceived its duties under secs. 7 and 14, the High Court could not only set aside its decision, but also direct it to make further inquiries after taking evidence. As pointed out in *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque*(1) the High Court in the exercise of its supervisory jurisdiction under Art. 227 cannot only annul the decision of the Tribunal but can also issue further direction in the matter. B C D E F G

In the result, in modification of the High Court's decision in respect of solatium of 15 per centum on the market value, we direct that in all these cases the taluqdars be awarded solatium in accordance with this judgment. We set aside the High Court's decision with regard to river and river beds. Instead, we direct that the Special Deputy Collector will inquire into the claim for H

(1) [1955] 1 S. C. R. 1104 at 1120.

A compensation for Bhathas, if any, formed in the river and other portions of the river beds, if any, where crops could be raised during some parts of the year, particularly during the summer. The Special Deputy Collector will make awards under these two heads after giving opportunity to the parties to adduce evidence Subject to these modifications, the appeals are dismissed and the
B decision of the High Court in other respects is confirmed. As success is divided, there will be no order as to costs.

G.C. *Appeals dismissed with modifications.*