KIRAN TANDON

v.

ALLAHABAD DEVELOPMENT AUTHORITY AND ANR.

MARCH 23, 2004

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND G.P. MATHUR, JJ.]

Land Acquisition Act, 1894—Sections 4(1), 23 & 30—Civil Procedure Code, 1908—Order 1 Rule 10 Sub-rule (2)—Premises consisting of land, building and trees given on lease to claimant by State Government—Notification issued for acquisition—Award of compensation passed—Claimant making references before Reference Court claiming higher amount of compensation and for entitlement of full compensation on ground of subsisting of lease at the time of taking possession of the premises—Reference Court holding in favour of the claimant—High Court reduced the amount of compensation and apportioned it into half between the claimant and State Government—Correctness of—Held, from the evidence on record, the lease had expired at the time of taking over of possession from the claimant and had not been renewed—Reduction of amount of compensation by High Court is upheld—Compensation apportioned between claimant and State Government in the ratio of 20:80—Transfer of Property Act, 1882.

The premises in question consisting of land, building and trees, was given on lease by State Government to claimant-appellant. At the instance of respondent-Authority, a preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 was published for acquiring the premises. The Authority took possession of the premises from the claimant. Land Acquisition Officer made an award fixing market value of the land at Rs. 72.50 per square yard and for the building and the trees at Rs. 3,48,000 and Rs. 23,100 respectively. The claimant made two references to Reference Court being dissatisfied with the award. A third reference under Section 30 of the Act was also made by the claimant as to apportionment of the compensation between the claimant and the State Government. The Reference Court, by separate orders, fixed the market value of the land at Rs.500 per square yard and for the building and the trees at Rs. 10,96,842 and Rs. 50,000 respectively. With regard to the third reference,

A the Reference Court held that the entire amount of compensation is payable to the claimant.

The Authority preferred two appeals before High Court impleading the State Government as proforma respondent. The State Government moved an application before the High Court for transposing it as appellant B in the appeals. The High Court allowed the application of the State Government. The High Court upheld the market value of the land fixed by the Reference Court but with deduction of 20 per cent towards the cost of internal development and fixed the value of the building and trees at Rs. 60,000 and Rs. 23,000 respectively. The High Court further held that C the amount of compensation should be apportioned equally amongst the claimant and the State Government since the period of lease expired within a few days of taking over possession by the Authority.

The claimant, in appeal before this Court, contended that the Authority, being a State under Article 12 of the Constitution of India, D could itself raise objections on behalf of the State Government and that the High Court was in error in transposing the State Government as an appellant; that neither the Authority nor the State Government filed an appeal before the High Court against the Reference Court order of entitlement/apportionment of compensation; that the High Court was in error in apportionment of compensation between the claimant and the E State Government without an appeal filed by the Authority or the State Government; that the order passed by the Reference Court, being not challenged, has become final and thus the claimant is entitled to the entire amount of compensation; that allowance of 20 per cent deduction on account of internal development from the compensation awarded by the F Reference Court is not justified; that the State Government had renewed the lease in favour of the claimant and the lease was subsisting at the time taking possession; that the amount of compensation fixed by the High Court for the buildings and trees is not justified; and that the award of cost by the High Court was not justified.

G The Authority, in its appeal before the Court, contended that the amount of compensation awarded to the claimant is highly excessive as the market value of the land has not been correctly determined; and that the claimant was not entitled to any compensation since the lease expired within a short period of declaration under section 6(1) of the Act and that H the lease had not been renewed.

Dismissing the appeal of the claimant and allowing the appeal of the Authority, the Court A

HELD: 1. A Court has power under Order 1 Rule 10 Sub-Rule 2 CPC to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could be exercised by the High Court in appeal, if necessary, *suo motu* to B do complete justice between the parties. The pleas raised by the Authority and the State Government were identical and in order to effectuate complete adjudication of the question involved in the appeal, it was in the interest of justice to transpose the State Government as appellant in the appeal. [474-C-E]

C

Bhupendra Narayan Sinha v. *Rajeshwar Prasad,* AIR (1931) PC 162, relied on.

2. A finding which has attained finality operates as *res-judicata.* In view of the fact that appeal had been preferred against the award made D in other references, it was always open to the Authority or the State Government to contend in the appeal that the claimant was not entitled to receive the amount of compensation as held by the Reference Court and that the State Government alone was entitled to receive the amount. [477-D-E]

E

Badri Narayan Singh v. *Kamdeo Prasad Singh and Anr.,* [1962] 3 SCR 759 and *Premier Tyres Ltd.* v. *Kerala Road Transport Corp.,* [1993] Supp. 2 SCC 146, distinguished.

3. The Collector's award under Section 11 of the Land Acquisition Act, 1894 is nothing more than an offer of compensation made by the F Government to the claimants whose property is acquired. The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in a position of a plaintiff. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material G produced before it. The claimant has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. The material produced and proved by the other side will also be taken into account for this purpose. On the basis of the evidence, the Reference Court has held that the market value of the land at the time of the acquisition was not less than Rs. 500 per square yard. The High Court H

A has accepted the value of the land determined by the Reference Court. As the High Court has agreed with the view taken by the Reference Court, this Court does not consider it proper to interfere with the said finding. [478-F-G; 481-A-C]

Chimanlal Hargovind Das v. *Special Land Acquisition Officer,* AIR B (1988) SC 1652; *Periyar Pareekanni Rubbers* v. *State of Kerala,* AIR (1990) SC 2192; *Abdullah Jan Mohammed Ganjee* v. *The State of Bihar,* [1967] 1 SCWR 214; *State of Kerala* v. *P.P. Hassan Koya,* AIR (1968) SC 1201; *O. Janardhan Reddy* v. *Spl. Dy. Collector,* [1994] 6 SCC 456; *State of Bihar* v. *Madheshwar Prasad,* [1996] 6 SCC 197; *State of Bihar* v. *Ratanlal Sahu,* C [1996] 10 SCC 635 and *Administrator General of West Bengal* v. *Collector, Varanasi,* AIR (1988) SC 943, referred to.

Principles & Practice of Valuation by J.A. Parks (Eastern Law House 1998 Edn.), referred to.

D 4. The evidence on record indicates that the acquired land is situate in a developed area and approach road to the land and also power lines are available. However, in construction of multi-storeyed residential flats a considerable portion of the land has to be left out for internal roads, sewer line, open space etc. In such circumstances the High Court was justified in directing deduction of 20 per cent from the market value of E the land. [481-E-F]

Vijay Kumar Motilal v. *State of Maharashtra,* AIR (1981) SC 1632; *Sahib Singh Kalha* v. *Amritsar Improvement Trust,* AIR (1982) SC 940 and *Special Tahsildar Land Acquisition* v. *A. Mangla Gowri,* AIR (1992) SC 666 referred to.

F

5. The relevant documents show that when the Authority took possession of the land, the lease in favour of the claimant had already expired. Further the document does not contain any renewal clause. The plea raised by the claimant that the State Government had taken a decision G to renew the lease in his favour is not established by the evidence on record. [483-A; 484-B]

6. The Reference Court has lost sight of Chapter V of Transfer of Property Act, 1882 which deals with leases of immoveable property. Leasehold rights being limited in nature and entirely different from H ownership right, a lessee is not entitled to the entire amount of

compensation for the acquired land. The lease expired on 8.6.1987 and possession was taken over on 16.6.1987. However even according to the case set up by the claimant, the possession of the land was taken over just 21 days before the expiry of the lease. In such circumstances, the claimant should get 20 per cent of the compensation amount and the balance 80 per cent is payable to the State Government. The statutory sum under sub-section (1A) and the solatium under sub-section (2) of Section 23 of the Land Acquisition Act, 1894 shall be modified accordingly. [485-A, C; 486-D-E; 487-B]

Inder Parshad v. *Union of India,* [1994] 5 SCC 239 and *Ratan Kumar Tandon and Ors.* v. *State of Uttar Pradesh,* AIR (1996) SC 2710, referred to.

Radha Charan v. *Secretary of State,* AIR (1943) Allahabad 238, referred to.

7. The High Court has held that the report of the consulting Engineer filed by the claimant shows that while assessing the value of the building he had also taken into consideration the land underneath the same which was more than 400 square meters and consequently the value of the land had been assessed all over again. There is another fallacy in his report. He has assessed the age of the building from the time of its renovation. There is no evidence that the that the foundation, walls and roof had been made all over again when renovation was done, nor it appears logical. So, the whole method of calculation was faulty. The view taken by the High Court that the value of the building which was more than 90 years old is Rs. 60,000 is perfectly correct and calls for no interference. Similarly, no interference is warranted with the assessment made by the High Court regarding the value of the trees. [486-E-G]

8. The High Court, having accepted the appeal of the Authority and modified the award of the Reference Court, the direction regarding the cost made by it was perfectly justified. [487-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6493-6494 of 1998.

From the Judgment and Order dated 19.12.97 of the Allahabad High Court in F.A. Nos. 368 and 439 of 1994.

WITH

C.A. No. 1831 of 2004 @ R.P. (C) No. 408/99 in S.L.P. (C) No. 10943

A of 1998.

Sunil Gupta, Jatin Zaveri, Rajesh Tandon, Pramod Dayal, Rakesh U. Upadhyay, Vishwajit Singh, Kamlendra Misra, Tripurary Ray and R.C. Verma for the appearing Parties.

B The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. These appeals are directed against the judgment and decree dated 19.12.1997 of Allahabad High Court by which two First Appeals preferred by Allahabad Development Authority were partly allowed and the award made by the Additional District Judge was modified.

C

2. At the instance of Allahabad Development Authority (hereinafter referred as ADA) the State Government took steps to acquire property bearing No.2 Circular Road, in the city of Allahabad having an area of about 4 bighas. The preliminary notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act') was published in the Gazette on D 7.1.1987 and it was recited therein that the land is being acquired for a public purpose namely for construction of residential flats by ADA and in view of urgency, the provisions of Section 17 were being invoked. The Special Land Acquisition Officer (hereinafter referred to as 'SLAO') made an award for the acquired land on 15.6.1987 and further directed that the compensation E payable for the building and the trees standing thereon shall be determined subsequently after their valuation had been ascertained. The question of apportionment of the compensation for the acquired land was referred for determination by the Court in accordance with Section 30 of the Act. The ADA thereafter took possession of the land on 16.6.1987. It is the admitted case of the parties that the land in dispute, namely, 2 Circular Road was F owned by the State Government which had been given on lease. According to the claimant Ravindra Kumar Tandon (husband of the appellant Smt. Kiran Tandon) the lease in his favour was to expire on 7.7.1987. The SLAO gave a supplementary award with regard to the building and the trees on 4.3.1989. In the awards the market value of the land was fixed as Rs. 72.50 G per square yard, the value of the building (exclusive of land) at Rs. 3,48,000 and the value of the trees as Rs. 23,100. Being dissatisfied with the amount of compensation awarded to him the claimant sought references to the Court which were made by the SLAO and accordingly three references were registered, namely, reference no.126 of 1987, no. 23 of 1988 and no. 34 of 1989. The references were decided by VIIIth Additional District Judge, H Allahabad on 8.12.1992 by separate orders. The ADA then preferred two

appeals namely, First Appeal no. 368 of 1994 and First Appeal no. 439 of 1994 before the High Court in which the State of U.P. was impleaded as proforma respondent no.2 but subsequently it was transposed as appellant no.2. The Addl. District Judge had held that the market value of the land was Rs. 500/- per square yard and that the claimant was entitled to the entire amount even though possession of the land was taken only 21 days before the expiry of the lease. He, further assessed the value of the building at Rs. 10,96,842 and value of the trees at Rs. 50,000/-. The High Court upheld the finding of the Addl. District Judge regarding the market value of the land but directed that a deduction of 20 per cent should be made towards the cost of internal development which would be incurred by ADA. The High Court further held that in view of the fact that the claimant had only lease hold rights and the period of lease expired within a few days of taking over possession, the compensation amount with regard to the same had to be apportioned equally amongst the claimant and the State Government and therefore claimant was entitled to only 50 per cent of the compensation amount. It further held that the value of the building was Rs. 60,000/- and the value of trees was Rs. 23,000.

3. Feeling aggrieved by the judgment and decree of the High Court the claimant as well as the ADA preferred special leave petitions in this Court. The special leave petition preferred by ADA was summarily dismissed without assigning any reason. After leave was granted in the special leave petitions filed by the claimant, the ADA preferred a review petition in which notice was issued on 3.8.1999. Having heard counsel for the parties at some length, we are of the opinion that there is substance in the special leave petition preferred by the ADA as discussed hereinafter. Accordingly review petition is allowed and leave is granted.

4. Shri Sunil Gupta, learned senior counsel for the claimant has at the very outset assailed the order of the High Court whereby the application moved by the State of U.P. for transposing it as appellant in the appeals preferred by ADA was allowed. In the appeals preferred by the ADA against the judgment and award of the Addl. District Judge Smt. Kiran Tandon (widow of the original claimant Ravindra Kumar Tandon) was arrayed as respondent no.1 and State of U.P. was arrayed as proforma respondent no.2. The applications for transposition were supported by the affidavit of Tehsildar Sadar, Allahabad wherein it was averred that an objection had been raised on behalf of State of U.P. before the Addl. District Judge that the acquired land was State land and therefore the entire compensation amount should be

A awarded to State of U.P. The land had been acquired for construction of residential flats by ADA which is a State within the meaning of Article 12 of the Constitution and is therefore competent to raise any or all of the objection on behalf of the State Government. Therefore, in order to avoid any technical objection and in the interest of justice it was expedient that the State of U.P. may be transposed as appellant no. 2 in the appeal. The High B Court held that as the ADA and State of U.P. were disputing the title of the claimant to receive the entire amount of compensation and State of U.P. having already been impleaded as proforma respondent in the appeal, the interest of justice required that it should be transposed as appellant in the appeal. Sub-rule 2 of Order I Rule 10 lays down that the Court may at any C stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate D upon and settle all the questions involved in the suit, be added. It is well settled that the Court has power under Sub-rule (2) order I Rule 10 CPC to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could be exercised by the High Court in appeal, if necessary, *suo motu* to do complete E justice between the parties. This principle was laid by the Privy Council in *Bhupendra Narayan Sinha* v. *Rajeshwar Prosad,* AIR (1931) PC 162 and has been consistently followed by all the Courts. In fact the pleas raised by the ADA and State of U.P. were identical and in order to affectuate complete adjudication of the question involved in the appeal it was in the interest of justice to transpose State of U.P. as appellant no.2 in the appeal. We are, F therefore, of the opinion that no exception can be taken to the course adopted by the High Court in transposing the State of U.P. as appellant in both the appeals.

5. Shri Sunil Gupta has next submitted that there were three references G before the Addl. District Judge and the finding recorded by him in reference no.126 of 1987 that the claimant was entitled to entire amount of compensation having not been challenged either by the ADA or by the State of U.P. by filing an appeal, the said finding would operate as *res judicata* and it was not open to the High Court to apportion the compensation amount and to hold that claimant would get only half and remaining half would go to the State H Government. In order to examine the contention raised it is necessary to

mention the relevant facts. In reference no. 126 of 1987 the State Government was shown as applicant-plaintiff and (1) Lalji Tandon (2) Ravindra Kumar Tandon (3) Officer Incharge Estate Institution, Allahabad and (4) Allahabad Development Authority were shown as defendant-opposite parties. Lalji Tandon claimed that he was the sole lessee of the land in dispute and, therefore, he was entitled to entire amount of compensation. Ravindra Kumar Tandon also made a similar claim that he was entitled to entire amount of compensation as he was the sole lessee of the plot in dispute. The State Government on the other hand claimed that Lalji Tandon was not the lessee of the land and the lease having expired and the same having not been renewed it was entitled to receive the entire amount of compensation. The Addl. District Judge held that as the lease of Ravindra Kumar Tandon had been renewed, the State Government was not the owner of the property and was not entitled to any compensation. Similarly, the claim of Lalji Tandon was also rejected and Smt. Kiran Tandon was held entitled to receive the compensation amount as her husband Ravindra Kumar Tandon. the original claimant, had died during the pendency of the reference. In Reference no.123 of 1988 which was sought by Ravindra Kumar Tandon (1) State of U.P. and (2) ADA were arrayed as opposite parties and his case was that he was the sole owner of the property and he alone was entitled to receive the compensation amount. He further pleaded that at the time of publication of the notification under Section 4(1) of the Act the lease in his favour had not expired and had been subsequently renewed and therefore the State of U.P. was not entitled to receive any compensation. The prayer made in the application moved under section 18 of the Act seeking reference to the court clearly shows that he wanted determination of his title to receive the compensation amount as against the State of U.P. It is being reproduced below:

> "It is, therefore, most respectfully prayed that your honour may be pleased to refer the matter to court for the determination of proper and adequate amount of compensation for the applicant's above property *as well as the title to receive the same under law and oblige*."

The State of U.P. filed written statement claiming the entire amount of compensation being owner of the property. It was specifically pleaded that the lease in favour of Ravindra Kumar Tandon had expired and the same had not been renewed and therefore he was not entitled to any compensation. It was also pleaded that the amount of compensation determined by SLAO was correct. The ADA filed a separate written statement and denied the claim of Ravindra Kumar Tandon. On the pleadings of the parties the Addl. District

A Judge framed six issues and issue nos. 1 and 2 read as under :

(1) Whether the claimant is entitled to receive the compensation in respect of the land ?

(2) Whether the awarded compensation is inadequate ? If yes, then what is the proper compensation ?

B

6. After referring to the terms of the lease deed and some documents regarding renewal of lease filed by the claimant, the Additional District Judge noticed the contention raised on behalf of State of U.P. in the following manner:

C "On behalf of the State of Uttar Pradesh and Allahabad Development Authority it was argued that the period of lease had expired and Sri Ravindra Kumar Tandon was not the owner of the said leased land. They also argued that even if it may be assumed that at the time when the property was acquired, the rights of Sri Ravindra Kumar Tandon were existing in the property at that time, then he can get compensation D for that period alone. For the period for which the lease was still subsisting and not for the entire period. On the basis of the said two arguments they argued that Sri Ravindra Kumar Tandon was not the owner of the property and he is not entitled to receive the amount of compensation and the Estate Department of Govt. of Uttar Pradesh E should get the said compensation. I do not find any force in the aforesaid arguments of the opposite parties."

Thereafter, he observed that it is settled law that nobody can acquire his own property and if the State of U.P. was the owner there was no necessity for it to acquire the property. He further held that the Court is not supposed to take into consideration what will happen in future but should base its F decision on the present state of affairs and therefore the situation which would have happened after 7.7.1987 i.e. after expiry of the lease, cannot be taken into consideration. The finding recorded on issue no.1 reads as under:

"The evidence adduced by the parties and the evidence available on record, leads to conclusion that the lease was still subsisting at the G time when the property was acquired. Sri Ravindra Kumar Tandon and after his death his wife Smt. Kiran Tandon was the owner of the property. Even after the said period and after the expiry of the period of lease the said lease was in fact subsisting even after the year 1987 as the renewal of lease had taken place. For the said reason I hold H that Estate Department of Government of Uttar Pradesh or any other person had no interest in the said property and for the said reason I

hold that the referencee alone is entitled to receive the amount of compensation for the said property. This issue is decided accordingly." A

7. After recording the aforesaid findings and findings on other issues, reference no.123 of 1988 was decided by the judgment and order dated 8.12.1992. It is important to note here that even though an application had been made on behalf of the claimant to consolidate all the three references but the Addl. District Judge, for reasons which are not understandable, decided them by separate orders which were all passed on the same date i.e. 8.12.1992. The ADA preferred appeals against the judgment and awards in reference nos. 123 of 1988 and 34 of 1989. The effect of filing the appeals was that the finding that the State of U.P. or any other person had no interest in the property and that the claimant (Ravindra Kumar Tandon) thereafter his wife Smt. Kiran Tandon alone is entitled to receive the amount of compensation became subject matter of challenge. B C

8. The principle of *res judicata* as contained in Section 11 CPC bars any Court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. A finding which has attained finality operates as res-judicata. In view of the fact that appeal had been preferred against the award decree made in reference no.123 of 1988 it was always open to ADA or the State of U.P. to contend in the appeal that the claimant was not entitled to receive the amount of compensation as held by the learned Addl. District Judge and that the State of U.P. alone was entitled to receive said amount. Sh. Gupta has relied upon two decisions of this Court in *Badri Narayan Singh* v. *Kamdeo Prasad Singh and Anr.*, [1962] 3 SCR 759 and *Premier Tyres Ltd.* v. *Kerala Road Transport Corp.*, [1993] Supp. 2 SCC 146 in support of his submission that no appeal having been preferred against the judgment and award in reference no.126 of 1987, the same became final and the issue regarding the entitlement of the claimant to receive the entire amount of compensation could not be examined in the appeal preferred against the judgment and award in reference no. 123 of 1988. The authorities cited by learned counsel are clearly distinguishable on facts. In the case of Badri Naryan Singh an election petition was filed by the respondent wherein a declaration was sought to declare the election of the appellant as invalid and to declare the respondent as the elected candidate. The Tribunal granted D E F G H

A only one relief that the election of the appellant was invalid. The appellant and respondent both preferred appeals in the High Court. The appellant's appeal was dismissed but that of the respondent was allowed. The appellant challenged the order passed in favour of the respondent in his appeal. It was held that so long as order in the appellant's appeal confirming the order setting aside his election on the ground that he was holder of an office of
B profit under the Bihar Government and therefore could not have been properly nominated as a candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal. which is founded on the contention that that finding is incorrect. In *Premier Tyres Ltd.* v. *Kerala State Road Transport Corporation* (supra) reliance was placed upon *Badri Narayan*
C *Singh* (supra) and similar view was taken. As shown earlier there is no such finding here which on account of it having attained finality may debar the High Court to examine the question regarding the right claimed by the claimant to receive the entire amount of compensation or the right of the State of U.P. to receive the compensation amount.

D 9. The learned counsel for the ADA has submitted that the amount of compensation awarded to the claimant is highly excessive as the market value of the land has not been correctly determined. Learned counsel has submitted that the SLAO had determined the market value of the land at Rs.72.50 per square yard and the Reference Court has erred in enhancing the
E same to Rs. 500 per square yard which finding has been erroneously upheld by the High Court. Learned counsel has also submitted that in view of expiry of the lease within a short period of declaration under Section 6(1) of the Act, the claimant was not entitled to half portion of the total amount of compensation as directed by the High Court.

F 10. Before examining the merits of the contentions raised it will be useful to bear in mind the legal principle in the matter of determination of compensation. The Collector's award under Section 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in a
G position of plaintiff. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. The material produced
H and proved by the other side will also be taken into account for this purpose.

(See *Chimanlal Hargovind Das* v. *Special Land Acquisition Officer,* AIR (1988) SC 1652 and *Periyar Pareekanni Rubbers* v. *State of Kerala,* AIR (1990) SC 2192). A

11. A question which arises here is as to what method for determining the value of the property should be adopted when the land is comprised of buildings, trees or some other additions of like nature. In Principles & Practice of Valuation by J.A. Parks (published by Eastern Law House 1998 Edn.) the following paragraph on page 332 illustrates the different aspects of the problem: B

> "Land with buildings is viewed in a different perspective than bare land as such. Land and buildings once married become one unit, and neither land nor building can thereafter be valued separately. A building once erected on or married to the site, as it is technically often termed, takes unto itself a value which may be either greater or less than the cost of erection depending upon the market situation. If the building properly and economically develops the land, the total value of the complete entity may be worth more than the sum of the individual valuer. In such cases, the excess of the composite value over the sum of the individual values is ascribable as the builder's profit. But there may also be instances to the contrary. It is generally impossible to arrive at the true value of the whole by addition of the parts." C D E

12. In *Abdullah Jan Mohammad Ganjee* v. *The State of Bihar,* (1967) 1 SCWR 214 it was observed that a building standing on the land and the land on which it stands may not for the purposes of the Land Acquisition Act, ordinarily be regarded as separate units capable of being separately valued and the Reference Court in the normal course should have valued the land and building as composite property by the evidence furnished by the value of similar and comparable properties in the neighbourhood or by capitalisation of rent or other income received out of the property. F

13. This principle was reiterated in *State of Kerala* v. *P.P. Hassan Koya,* AIR (1968) SC 1201 wherein it was held as under : G

> "In determining compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the "break-up value" of the buildings separately. The land and the building constitute one unit and the value of the entire H

A unit must be determined with all its advantages and its potentialities.

14. *In O Janardhan Reddy* v. *Spl. Dy. Collector,* [1994] 6 SCC 456 it was held that where there are irrigation wells in the land, estimated construction cost of the wells cannot be separately assessed apart from assessment of market value of the land and the value of the land has to be assessed having B regard to the availability of irrigation facility on the land as a prime factor. This view has been reiterated in *State of Bihar* v. *Madheshwar Prasad,* [1996] 6 SCC 197 and *State of Bihar* v. *Ratanlal Sahu,* [1996] 10 SCC 635. But there is no hard and fast rule that land and building must be valued as one unit. They can be separately assessed if the large portion of the land is lying C vacant and is capable of better use as stated by Venkatachaliah, J. (as His Lordship then was) in *Administrator General of West Bengal* v. *Collector, Varanasi,* AIR (1988) SC 943 and it will be useful to extract the relevant part para 8 of the reports:

> "Usually land and building thereon constitute one unit. Land is one D kind of property, land and building together constitute an altogether different kind of property. They must be valued as one unit. But where, however, the property comprises extensive land and the structures thereon do not indicate a realisation of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market value of the land with reference to E the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime-cost or replacement-cost less depreciation. The rate of depreciation is generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of F utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation."

15. In the case in hand the value of the land, building and trees has G been assessed separately by the SLAO, Reference Court and the High Court. The claimant had filed a copy of the sale deed by which 3808 square feet area in plot No.11/3 situate at Hastings Road was sold at the rate of Rs. 425 per square yard and a certificate to show that the Collector had fixed the circle rate of land at Circular Road at Rs. 300 per square yard. Besides this he also filed a copy of judgment of L.A. Case No. 125 of 1987 (*Sri Lalji* H *Tandon* v. *State*) which shows that for plot No.81 on Hastings Road measuring

4 acres 3 bighas which had been acquired in the year 1985 compensation was paid at the rate of Rs.250 per square yard. The Reference Court also relied upon the evidence of a witness examined by the claimant who deposed that the ADA had constructed 66 flats on the acquired property and the price of each flat was fixed between Rs. 2,73,255 and Rs. 2,82,039 depending upon the floor. On the basis of the aforesaid evidence, the Reference Court has held that the market value of the land at the time of the acquisition was not less than Rs. 500 per square yard. The High Court has accepted the value of the land determined by the Reference Court. The exemplars relied upon by the Reference Court are of Hastings Road which is the prime locality of Allahabad. The acquired land is situate at some distance from Hastings Road and its market value could not be same. It, therefore, appears that the market value of the land has been fixed at a higher value. However, as the High Court has agreed with the view taken by the Reference Court, we do not consider it proper to interfere with the said finding.

16. Shri Gupta has submitted that when the Reference Court had not made any deduction in the compensation amount on account of internal development, there was no justification for the High Court to allow 20 per cent deduction on that account. According to the learned counsel the land is situate in a developed area where electricity supply, road and sewer lines were already in existence and as such there was no occasion for any further deduction from the market value of the land. Normally, the principle is that when a large area is acquired and the area is not fully developed a deduction of about 33 per cent from the market value is made. This view has been taken in *Vijay Kumar Motilal* v. *State of Maharashtra,* AIR (1981) SC 1632, *Sahib Singh Kalha* v. *Amritsar Improvement Trust,* AIR (1982) SC 940 and *Special Tehsildar Land Acquistion* v. *A. Mangla Gowri,* AIR (1992) SC 666. The evidence on record indicates that the acquired land is situate in a developed area and approach road to the land and also power lines are available. However, in construction of multi-storeyed residential flats a considerable portion of the land has to be left out for internal roads, sewer line, open space etc. In such circumstances the High Court was justified in directing deduction of 20 per cent from the market value of the land.

17. Shri Gupta has submitted that the finding recorded by the Reference Court was perfectly correct that the claimant was entitled to entire amount of compensation and the High Court has erred in directing that the compensation amount shall be shared half and half by the claimant and the State Government. Learned counsel for ADA has, on the other hand, submitted that the period

A of lease had already expired on 10.5.1987 prior to taking over of possession and consequently the claimant had no legal interest left in the property and he was not entitled to any compensation. It is stated in the Review Petition that the State Government had on 10.5.1887 granted leasehold rights in the land in question in favour of one Mr. W.C. Walsh for a period of 50 years which was upto 10.5.1937 and which could be renewed for a further period B of 50 years i.e. upto 10.5.1987. A fresh lease deed was executed in favour of Lalji Tandon on 20.2.1945 for a period of 42 years 2 months and 20 days which expired on 10.5.1987. Copies of these lease deeds have also been filed. The claimant has filed copy of a lease deed dated 20.2.1945 wherein it is mentioned that the earlier lease had expired on 8.6.1937 and a fresh lease C for 4 acres 1 rod and 12 poles land situate in Mauza Nasibpur Bakhitiara Paragana Chail, Allahabad is being granted in favour of Lalji Tandon for a term of 42 years 3 months and 48 days. If calculated from this document the lease expired on 7.7.1987. Accordingly to Ravindra Kumar Tandon this property came into his share in a compromise which was filed in First Appeal No. 7 of 1968 (Lalji Tandon v. Smt. Munni Bibi and Other) in Allahabad D High Court. Learned counsel for the ADA has submitted that this document does not relate to the property in dispute but for some other property. He has further submitted that the period of 42 years 3 months and 48 days carries no sense as in the event days were more than thirty, they should have been counted in months. It is true that a perusal of this document does not show E that it relates to the land in question namely, 2 Circular Road, Allahabad. However, as only this deed was filed before the Reference Court and was relied upon both by the Reference Court and also by the High Court, we consider it proper to decide the controversy on the assumption that the copy of the lease deed filed by the claimant relates to property in dispute.

F 18. The certified copy of the lease deed executed in favour of Lalji Tandon, which has been filed by the claimant, does not appear to be a correct copy. The first sentence of this document mentions "this lease made the 20th day of one thousand nine hundred and forty five between the Government of the United Provinces.". Here the month is missing though at a later stage, G there is a recital "to hold unto the lessee from the 20th day of Feb. 1945 for the terms of 42 years 3 m. 48 ds." Mention of 48 days does not carry any sense and looks wholly illogical as in the event the days were exceeding 30, they would have been counted in month. It is mentioned in the document itself that the earlier lease had expired on 8th June, 1937. It appears that the figure "48" has been wrongly written for "18". If the period of 42 years 3 H months and 18 days is counted from 20th Feb. 1945, it will end on 8th June,

1987. As mentioned in this very document the earlier lease had expired on 8th June. 1937 and therefore a fresh lease had been granted for a period of 50 years expiring on 8.6.1987. This shows that when ADA took possession of the land on 16.6.1987 the lease in favour of the claimant had already expired. Further this document does not contain any renewal clause.

19. The Reference Court has relied upon two letters in order to hold that the lease in favour of Ravindra Kumar Tandon had been renewed and he continued to be the owner of the property even after 7.7.1987. The first letter is dated 28.7.1987 bearing no. 2877/9 Nazul-33/N/87 sent by Sri Janardan Prasad, Joint Secretary U.P. Government to the Collector, Allahabad wherein it is mentioned that the Government has agreed to execute a new residential lease in place of the expired lease in favour of Sri Ravindra Kumar Tandon regarding Nazul Plot No.81M, Bungalow No.2, Circular Road, Allahabad on deposit of a premium of Rs. 10,03,500 and annual rent of Rs.25,087.50 for a period of first 30 years with effect from 25th May, 1987 which shall contain a clause for two further renewals. The second letter is dated 14.9.1987 bearing no. 4423/9-Nazul-33/N/87 sent by the same authority to the Collector, Allahabad and it is stated therein that in continuation of the Government Order dated 28.7.1987 regarding execution of a new lease deed in favour of Ravindra Kumar Tandon the Government had agreed that the premium amount may be deposited in six monthly instalments. These letters were not accepted by the ADA or by the State Government and their specific case was that the lease had already expired before taking possession and the same had not been renewed.

20. The original claimant Ravindra Kumar Tandon died during the pendency of the reference and his wife Smt. Kiran Tandon was substituted in his place. The claimants examined only one witness namely, Rajesh Kumar Tandon holding power of attorney on behalf of Smt. Kiran Tandon who made an attempt to prove the aforesaid letter in his oral statement. The original letters have not been filed but merely photo copies have been filed. They do not bear seal of U.P. Government. The letters were not exhibited. If the Government took a decision to renew the lease the same could be established by the production of relevant records by some responsible government servant. No attempt at all was made by the claimant to summon the relevant records of the Government. The endorsement at the end of the letters shows that copies thereof were sent to (1) Accountant General, Uttar Pradesh, Allahabad (2) The Commissioner, Allahabad Division, Allahabad (3) The Director, Board of Revenue, Uttar Pradesh (4) The Administrator,

A Nagar Mahapalika, Allahabad. The claimant could have easily summoned anyone from the aforesaid departments, some of whom were in Allahabad itself, who could produce the relevant records or even the communication received from the Government to the effect that a decision had been taken to renew the lease. But nothing of the sort was done. A decision taken by the Government can only be proved by production of relevant records by some B authority or officer of the concerned department of the Government and not in the manner attempted to be done in the present case. The plea raised by the claimant that the Government had taken a decision to renew the lease in his favour is therefore not established by the evidence on record.

C 21. There are other circumstances which also throw great doubt upon the genuineness of the aforesaid letters. In the first letter of 28.7.1987 it is mentioned that "the Government after having due consideration had agreed to execute a new residential lease in place of the expired lease with effect from 25th May, 1987". According to the claimant his lease expired on 7.7.1987 or even if it treated as 8.6.1987 as discussed earlier there was no occasion for D the Government to execute a new lease with effect from 25.5.1987 as mentioned in the letter. That apart. the process of renewal of lease of such a large area is an extremely complicated one. The Nazul Department and also the Collector in the District where the land is situate have to take various steps like survey and measurement of the plot, preparation of map and have E to make several reports which in turn have to be sent to the Government at Lucknow, where the proposal is examined at various stages by different sections. It is almost impossible to believe that even though the notification under Section 4(1) and 6 to acquire land had been published on 7.1.1987 and 6.3.1987 respectively, the said fact was not noticed by anyone dealing with the matter and the Government took a decision to execute a fresh lease. F Various steps which have to be taken in the matter of renewal of lease are quite cumbersome and as the Government machinery moves, it is an unduly long time taking process. The earlier lease which had expired in 1937 was renewed almost after 8 years in the year 1945. Though the lease expired in June, 1987, the claimant wants us to believe that in his case the Government took the decision within a month to execute a new lease in his favour and that G too for a huge area of 10920 square yards. It is therefore not at all possible to believe that any order was passed by the Government to renew the lease.

22. The Reference Court taking into consideration the fact that the Government had passed an order for renewal of the lease has held that Ravindra H Kumar Tandon was the owner of the property even after 7.7.1987 and he was

entitled to receive the entire amount of compensation. The learned Addl. District Judge, it seems, lost sight of Chapter V of Transfer of Property Act which deals with leases of immovable property. In view of Section 105 of the said Act the lease of immovable property is a transfer of right to enjoy such property, made for a certain time, in consideration of price paid or promised. The rights and liabilities of lessor and lessee are given in Section 108. Section 111(a) clearly lays down that a lease of immovable property shall determine by efflux of the time limited thereby. Therefore, the claimant can in no circumstances be treated to be the owner of the land and his right to receive compensation has to be determined treating him to be the lessee of the property.

23. The question which, therefore, arises is having regard to the fact that the claimant was only a lessee of the acquired land, whether he would be entitled to entire amount of compensation. Leasehold rights being limited in nature and entirely different from ownership right, a lessee is not entitled to the entire amount of compensation for the acquired land. The High Court has held that claimant would be entitled to 50 per cent of the amount and balance would be payable to the State Government..

24. *Radha Charan* v. *Secretary of State* AIR (1943) Allahabad 238 is a case from Allahabad city itself where a considerable area on the Bank Road was acquired by the Government for Allahabad University in the year 1930. The Division Bench held that it is a full owner of land who normally gets the entire amount of compensation and there is no reason why a person who holds a lease should get compensation as an owner. It was further held that the amount of compensation he would get would depend upon the terms of the lease and the length of time that he might be expected to remain in possession of the property. In *Inder Parshad* v. *Union of India,* [1994] 5 SCC 239 the appellant had obtained a perpetual lease of Nazul land from the Government. The High Court had apportioned the compensation as 75 per cent for the lessee and 25 per cent for the Government. In appeal to this Court it was contended that the Government being the owner of the land, it could not acquire its own interest therein and it was only the appellant's right and interest in the perpetual lease that was acquired therefore he was entitled to the entire amount of compensation. It was held that where the Government leases its land and in terms of the covenants cannot unilaterally determine the lease and take back possession and the land is required for a public purpose, it has to exercise the power of eminent domain by invoking the provisions under the Act for getting such land. It was further held that where the land is granted on lease the Government's power to resume the land is subject to

A non-fulfilment of the terms and conditions of the lease by the lessee and so long as the lessee acts and complies with the covenants contained in the lease or grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances and compensation becomes payable for the lease hold right or interest held by the lessee or grantee. Having regard to the fact that the appellant had perpetual lease the order made by the High Court awarding 75 per cent of the compensation amount to the appellant was affirmed. In *Ratan Kumar Tandon and Ors.* v. *State of Uttar Pradesh,* AIR (1996) SC 2710 keeping in view the fact that acquisition was made 7 years prior to the expiry of the lease, the High Court directed the apportionment of the compensation amount in the ratio of 50:50. The State of U.P. did not challenge the apportionment of compensation by preferring an appeal to this Court and the claimant alone preferred an appeal. Having regard to the features of the case and also the fact the State did not file an appeal, it was held that it was not a fit case to reverse the judgment of the High Court.

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25. In the present case, as per our finding, lease expired on 8.6.1987 and possession was taken over on 16.6.1987. However even according to the case set up by the claimant, the possession of the land was taken over just 21 days before the expiry of the lease. In such circumstances, we are of the opinion that the claimant should get 20 per cent of the compensation amount and the balance 80 per cent is payable to the State Government.

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26. Shri Gupta has also assailed the finding of the High Court regarding the amount of compensation fixed for the building. The High Court has held that the report of the consulting engineer filed by the claimant shows that while assessing the value of the building he had also taken into consideration the land underneath the same which was more than 400 square meters and consequently the value of the land had been assessed all over again. There is another fallacy in his report. He has assessed the age of the building from the time of its renovation. There is no evidence that the foundation, walls and roof had been made all over again when renovation was done, nor it appears logical. So, the whole method of calculation was faulty. We are of the opinion that the view taken by the High Court that the value of the building which was more than 90 years old is Rs. 60,000 is perfectly correct and calls for no interference. Similarly we find no ground which may warrant interference with the assessment made by the High Court regarding the value of the trees.

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H 27. Shri Gupta has also submitted that the award of cost to the ADA

by the High Court was not justified. In our opinion, the High Court having accepted the appeal of the ADA and modified the award of the Reference Court the direction regarding cost made by it was perfectly justified. A

28. In view of discussion made above, the Civil Appeals preferred by Smt. Kiran Tandon are dismissed and the Appeal filed by ADA is allowed. The judgment and decree of the High Court is modified to the extent that the compensation determined for the land shall be apportioned 20 per cent for the claimant and 80 per cent for the State Government. The statutory sum under sub-section (1-A) and the solatium under sub-section (2) of section 23 shall be modified accordingly. B

29. Before parting with the case we want to place on record that the learned counsel for the State of U.P. did not argue even a single word and only said that the brief was entrusted to him only 2 or 3 days earlier. The High Court has also made some comments in the impugned judgment as to how the case was conducted on behalf of State of U.P. The office is directed to send a copy of the judgment to the Chief Secretary, U.P. Government for his information and appropriate action in this regard. C D

B.S. Appeals dismissed/allowed.