HIGH COURT OF GUJARAT *(D.B.)*

MULSHANKAR SOMNATH BY HIS HEIRS BAI SARASWATI AND ANOTHER
V/S
AGENT, BHARATKHAND TEXTILE MANUFACTURING COMPANY LIMITED

Date of Decision: 05 March 1965

Citation: 1965 LawSuit(Guj) 13

Hon'ble Judges: N M Miabhoy, M U Shah

Eq. Citations: 1967 AIR(Guj) 36, 1965 GLR 512, 1965 ILR(Guj) 473

Case Type: First Appeal; First Appeal

Case No: 530 of 1960; 531 of 1960

Subject: Civil, Property

Head Note:

Transfer of Property Act (IV of 1882) - S.111(g) - Question of lease of permanent nature - Whether right of retaking possession complied - Whether right of lessee to surrender gives lessor the right to terminate lease. Land Acquisition Act (I of 1894) - S.4,S.30 - Apportionment of compensation between landlord and tenant - Circumstances of proportion - Principle of apportionment.

The respondent-Bharat Khand Textile Manufacturing Co. Ltd. as a lessee was holding property on the basis of a document of Permanent lease. The land in question was acquired by the Government and the question arose about the apportionment of the compensation between the landlord-appellant and the respondent-lessee. In the reference before the District Judge Ahmedabad the District Judge held that the lease was a permanent lease and that the landlords were entitled to 14th the amount of compensation and that the lessee was entitled to 3/4th amount of compensation. Both the parties filed appeals to the High Court.

HELD: Under the terms of the lease there is no doubt that there is an express condition to pay rent. But it is quite obvious that the provision relating to re-entry is absent. Apart from the fact that there is no such implication of re-entry in the terms of the lease even if there was such an implication there would be no right of re-entry. The provision in the lease that lessor had no right to get the land vacated as long as the lessee paid the amount of rent every year in advance is a mere covenant and not a condition of the lease and does not detract from the permanent nature of the lease and confer a right of re-entry. The right of lessor to surrender the lease on payment of two years rent did not confer any corresponding right on the lessor and a right so conferred on the lessee cannot be converted into a disability or an obligation which should detract from the grant of a permanent tenancy. Even the fact that the lease was being entered into for the purpose of erecting permanent structures and for establishing a mill would clearly indicate that the intention of the parties was that it was to be a permanent lease. (Para 3) Barasaheb Walad Mansursaheb Kotri v. West Patent Press Co. Ltd. Sivayogeswara Cotton Press v. M. Panchaksharappa Navalram v. Javarilal Narayan Dasappa v. Ali Saiba and others Madarsaheb and others v. Sannabawa Gujranshah referred to. Land Acquisition Act (I of 1894)-Secs. 4 30 of compensation between landlord and tenant-Principles of apportionment. In determining the question of apportionment of the compensation between a landlord and a tenant the task which has got to be performed by the Court is to compensate the landlord and the tenant for the value of the interest that is lost by the acquisition. There is no question of any windfall in determination of the amount of compensation at all. The amount of compensation is to be determined with reference to the market value of the land as prevailing on the dale of the notification and the question is what is the portion of that market value which is attributable to one or the other party and which that party has lost. If the interest of the landlord and the tenant can be valued in terms of money with reasonable precision or exactness that would be the best method of determining the question of apportionment specially if the total of the two interests exactly coincides with the total amount of compensation determined by the Land Acquisition Officer. If in a given case the totality of the amount of compensation does not coincide with the totality of the two interests separately valued then the question would further arise for determination as to how the excess or shortfall is to be apportioned between the two interests. Some Judges have resolved this problem by dividing the excess or the shortfall in the proportion of the values separately determined in respect of each interest. But it is quite obvious that whichever of the aforesaid

two methods is employed the condition precedent for the employment of such a method is that the Court must be in a position to value in more or less a precise and exact manner each interest. (Para 4) HELD on facts that in the present case it was not possible either to evaluate the interest of the landlord or the tenant with reasonable precision in terms of money. Therefore the first two methods referred to above cannot be adopted. Therefore the third method of evaluating the interests of the claimants in terms of fractions of the total amount of compensation regarded as a single unit has to be adopted. Further held that under the circumstances the proportion fixed by the Judge as at 25 and 75 per cent between the landlord and the tenant cannot be stated to be unreasonable. (Para 4) Dosibai Nanabhai Jeejeebhoy v. P. M. Bharucha followed. F. G. Natesa Ayyar and Ors. v. Kaja Maruf Sahib not followed. Shri Somashekhar Swami v. Bapusaheb Narayanrao Patil referred to.

Acts Referred:
Land Acquisition Act, 1894 Sec 30, Sec 4

Final Decision: Appeal dismissed

Advocates: N C Shah, B A Kayastha, H M Choksi,K S Nanavati, I M Nanavati

Reference Cases:
Cases Cited in (+): **7**
Cases Referred in (+): **8**

Judgement Text:-

Miabhoy J

[1] These two appeals arise from the judgment and order dated 15th September 1958 of the learned Joint Judge Ahmedabad in Compensation case No. 137 of 1958 arising under section 30 of the Land Acquisition Act 1894 (hereafter called the Act). The case raises the question of apportionment of the amount of compensation between a landlord and his tenant. The facts which need be stated in order to dispose off the two appeals are as follows. The Government acquired 4363 square yards from out of survey No. 2 which measured 10164 square yards and 10252 square yards from out of survey No. 3

which measured 23716 square yards. The total amount of compensation which was determined by the Land Acquisition Officer for the aforesaid two areas was Rs. 1 4 877 paise. Two sets of parties laid claim to the aforesaid amount of compensation. One was the Bharatkhand Textile Manufacturing Company Limited Ahmedabad. Admittedly that Company was the lessee of the two survey numbers. The lease deeds under which the company claimed title as a lessee are Exs. 27 and 28 both dated 7th July 1930 and both drawn up in identical terms except in regard to the stipulation regarding the amount of rent. It is an admitted fact that at the date of the notification under section 4 of the Act the interest of the landlord in survey No. 2 vested in Mulshanker Somnath appellant of appeal No. 530 of 1960. He is since dead and he is now represented by his heirs. It is also an admitted fact that at the relevant time the landlords interest tn survey No. 3 vested in Mulshanker and one Madhusudan Nathalal and that the former was entitled to a ten annas share in the landlords interest and the latter six annas share in the same. Mulshanker was claimant No. 1 and Madhusudan was claimant No. 2. The Land Acquisition Officer decided that the landlords were entitled to a sum of Rs. 14 319 from out of the total amount of compensation and that the lessee was entitled to the balance. Both the sides felt aggrieved by this decision of the Land Acquisition Officer and claimed a reference under section 30 of the Act. The reference was made to the District Court at Ahmedabad and it was numbered 137 of 1958. The learned Judge held that the landlords were entitled to 1/4th amount of compensation and that the lessee was entitled to 3/4th amount of compensation. Only Mulshanker from out of the two landlords felt aggrieved by the aforesaid decision and he has preferred appeal No. 530 of 1960. Therefore the question which arises in that appeal for determination is as to what is the share which Mulshanker is entitled to in the amount of compensation determined for survey Nos. 2 and 3. The lessee has preferred appeal No. 531 of 1960 and the question which arises in that appeal is what share the landlords are entitled to in the whole amount of compensation. The rival contentions are as follows. According to the landlord Mulshanker the amount of compensation must be divided half to half between the landlord and the tenant. According to the lessee the landlord is entitled to compensation on the basis of the rent payable to him capitalized at 64 plus a further reasonable amount of compensation for some other rights which he is entitled to under the two leases. These are the two rival contentions the correctness of which is required to be examined in the present two appeals;

[2] In our judgment it will be convenient first of all to examine the rights of each of the parties under the two transactions embodied in the two lease deeds Exs. 27 and 28 before taking up the question of apportionment of the amount of compensation. We

propose to examine the terms of only one of the two leases because as we have already mentioned and there is no dispute about this the terms of the other lease are almost the same. Ex. 27 is the lease deed in respect of survey No. 3. The lessors are (1) Somnath the predecessor-in-title of appellant Mulshanker (2) Somnaths brother Chhotalal and (3) Nathalal the father of respondent No. 2 in First Appeal No. 530 of 1960. The lessee is the Bharatkhand Textile Manufacturing Company Limited appellant in First Appeal No. 531 of 1960. It is a registered lease deed dated 7th July 1930. The heading of the lease is Document of Permanent Lease. After describing survey No. 3 the subject-matter of demise the lease deed proceeds to state that that land has been taken by the second party (the lessee) from the first party (the lessor) on a permanent lease for the construction of a Mill and buildings connected therewith and for construction of all kinds of buildings and for doing such use thereof in the manner the second party (lessee) desired to make. The lease deed states that the rent has been fixed at Rs. 861-10-6. It further says that the amount of rent is payable every year in advance and again repeats that the land has been taken from the first party (the lessor) on a permanent lease. Thereafter the lease deed proceeds to mention the various conditions on which the lease was taken. The first clause provides for the payment of rent and the right of the lessee to construct or get constructed the Mill as well as buildings in the said land or to use it in any manner that the lessee or its heirs and executors and Vahivatdars may desire. It also provides for payment of rent in advance as long as the above-mentioned land remained in the possession of the second party (the lessee). The second clause provides that in case the lessee does not pay the rent in stipulated time then the lessor will serve the lessee with a notice of one month on the expiry of the stipulated period and if even after the expiry of the period of notice the lessee does not pay the rent then the lessor will recover the rent from the lessee with interest thereon. In the third clause it is provided that the lessee will be entitled to the use of the well but that it will hand back the well in the same condition as it was in case the land is handed back to the lesSec. The liability to repair the well is cast on the lesSec. The clause further provides that in case a new well is constructed and the lease is surrendered then the lessor will be entitled to the possession of the new well also. The fourth clause states that the lessor will not have right to get the land vacated or to obtain possession of the same so long as we of the second party (the lessee) pay the amount of rent every year in advance. The fifth clause confers a right upon the lessee to relinquish the land on payment of two years rent in lump. The sixth clause provides that the lessee will be entitled to the earth stones bricks and brick-bats found in the land but that the lessor will be entitled to treasure prove or mineral. The seventh clause confers a right upon the lessee to assign the lease on the obligation to pay the amount of the rent

and to abide by all the conditions of the lease. The eighth clause provides that in case of the demolition of the hedge the lessee shall restore the same when surrendering possession of the land. It also provides that the lessee shall be entitled to the usufruct of the trees existing on the land or to be planted thereafter but that the lessor shall be entitled to the wood of the trees in case they fall down. The ninth clause provides that the liability for payment of the agricultural and the non-agricultural assessment and for payment of municipal taxes shall be on the lesSec. The tenth clause confers an obligation upon the lessor to give all possible help to the lessee for construction of the buildings. The eleventh clause confers a right on the lessee of entering the land for necessary work. The twelth clause provides that if the lessor obstructs the lessee in the use of the land then the lessor will be liable for the same. In the thirteenth clause it is provided that as long as the rent of this field is being paid by us the second party (the lessee) continuously and for all time we of the first party (lessor) have no right to have this field vacated or obtain possession of the same. The fourteenth clause provides for the apportionment of rent between the two sets of landlords. The last paragraph then states With the conditions as stated above the second party (the lessee) has taken this land on a permanent lease and a document of lease concerning the same has been executed.

[3] Now the first contention of Mr. Shah appearing for the heirs of the original appellant Mulshanker is that the view of the learned Judge that the lease created a permanent tenancy was wrong. Mr. Shahs contention is that if the lease is read as a whole then the true construction thereof is that it is a lease for an indeterminate period or at the best a lease which would enure till the existence of the Mill only but that it is not a permanent lease. In support of this contention Mr. Shah very strongly relies upon the decision in Bavasaheb Walad Mansursaheb Kotri v. West Patent Press Co. Ltd. 56 Bombay Law Reporter 61. In this case Their Lordships made the following general observations at page 63 in connection with the construction of the lease in that case which observations were approved by Their Lordships of the Supreme Court in Sivayogeswara Cotton Press Devangere and others v. M. Panchaksharappa and another A. I. R. 1962 Supreme Court 413.

> "The forms in which tenancy rights are created in India are not uniform and they do not conform to precedents known to conveyancing; sometimes the words used are not precise and it is not easy to understand from the said words the intention of the parties in executing the documents. Leases are often executed without legal assistance; and the aid that the parties obtain

from professional scribes does not always contribute to make the terms clear or precise. The nature of the tenancy created by any document must nevertheless be determined by construing the document as a whole. If the tenancy is for a building purpose prima facie it may be arguable that it is intended for the lifetime of the lessee or may in certain cases be even a permanent lease." Now, from the observations made by Their Lordships at page 67 it is quite clear that the main clauses which Their Lordships were called upon to construe in that case were three in number. The first clause referred to the period of thirty years which had already been stipulated for. The second clause gave a right to the tenant to continue in possession of the premises so long as he paid the rent and the third clause gave him the option to determine the tenancy at his pleasure. The rival contentions which were raised and which Their Lordships were called upon to examine in that case were that in the submission of the landlord the tenancy was one at will and that in the submission of the tenant it was a tenancy which would enure during the life-time of the company. Their Lordships held in favour of the contention of the tenant. Now in our judgment there is a material distinction between the facts obtaining in the above case and the facts obtaining in the present case. The most material difference between the two cases is that in the above case there was no stipulation for the period of the lease so that Their Lordships had to construe a lease deed in which the period had not been specifically provided for. Therefore the period had to be ascertained from a perusal of the other clauses and specially from the fact that the lease was created for erecting buildings. In the present case from the summary of the lease deed which we have already given it is quite obvious that the parties have provided at as many as five places that the land was taken or given on a permanent lease. However Mr. Shah tries to get over the effect of the use of the aforesaid words by references to clauses No. 2 4 5 and 13 Mr. Shahs submission is that the effect of the aforesaid four clauses is that though the lease states at more than one place that it was a permanent lease in law it was a lease for an indeterminate period and was not a permanent lease. Now in our judgment none of the contentions on which the submissions of Mr. Shah are based is tenable. Mr. Shahs contention is that the effect of clause No. 2 and clause No. 13 is that the lessor had a right of re-entry in case of non-payment of rent. This argument assumes that in case there is such a provision a permanent lease would be converted into a non-permanent lease. Apart from the fact that such a contention was negatived

by Their Lordships of the Supreme Court in the case of Sivayogeswara Cotton Press Devangere and others v. M. Panchaksharappa and another we are not convinced that under the terms of the aforesaid lease the lessor had a right of re-entry as contended for by Mr. Shah. In effect the contention of Mr. Shah is that there was a right to forfeit the tenancy on account of non-payment of rent. Section 111 clause (g) of the Transfer of Property Act 1882 provides for the determination of lease of immovable property by forfeiture and that clause states in express terms that a lease of immovable property determines by forfeiture that is to say in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter. Under this clause not only the condition the breach of which would determine the lease must be express but that it must also provide that on breach thereof the lessor has a right of re-entry. Under the terms of the lease there is no doubt that there is an express condition to pay rent. But from the summary which we have given it is quite obvious that the provisions relating to re-entry is absent. But Mr. Shahs contention is that that provision is implied in the terms of the lease. Apart from the fact that there is no such implication in the terms of the lease it is quite obvious that even if there was such an implication there would be no right of re-entry. The question arose before the Bombay High Court in a series of cases and in each of those cases a similar contention was negatived. These Bombay Cases are binding on this Court and therefore we have no hesitation in rejecting the contention of Mr. Shah. The Bombay Cases are (1) Navalram v. Javarilal 7 Bombay Law Reporter 401 (2) Narayan Dasappa v. Ali Saiba and others I. L. R. 18 Bombay 603 and (3) Madarsaheb and others v. Sannabawa Gujranshah I. L. R. 21 Bombay 195 Secondly Mr. Shah contended that the provision in clause 4 that lessor had no right to get the land vacated as long as the lessee paid the amount of rent every year in advance also implied a right to re-enter In our judgment this is also a mere covenant and not a condition of the lease and does not detract from the permanent nature of the lease and confer a right of re-entry. Thirdly Mr. Shall contended that the right of the lessee to surrender the lease on payment of two years rent impliedly conferred a right on the lessor to terminate the lease on the doctrine of mutuality. Such a contention was negatived by Their Lordships of the Supreme Court in the case of Sivoyogeswara Cotton Press Devangere and others v. M. Panchaksharappa and another already referred to. As pointed

out by Their Lordships in that case such a clause did not confer any corresponding right on the lessor and that a right so conferred on the lessee cannot be converted into a disability or an obligation which should detract from the grant of a permanent tenancy. As regards the aforesaid two clauses Their Lordships of the Bombay High Court pointed out in the case of Bavasaheb Walad Mansursaheb Kotri v. West Patent Press Co. Ltd. already referred to as follows at page 65:- The emphasis is on the right of the tenant to remain in possession subject to payment of rent and the subsequent clause giving him the option to terminate the lease is merely incidental and subsidiary. Therefore in our judgment there is nothing in the aforesaid clauses which detracts from the permanent nature of the lease which has been expressly provided for in the lease deed. On the contrary the fact that the lease was being entered into for the purpose of erecting permanent structures and for establishing a Mill would clearly indicate that the intention of the parties was that it was to be a permanent lease.

[4] That leads us to the second question about the apportionment of the amount of compensation between the lessor and the lesSec. Now on this subject. Mr. Shah cited a number of authorities. But in our judgment it is not necessary to refer to all or any of them in view of the fact that the Bombay High Court in Dossibai Nanabhoy Jeejeebhoy v. P M. Bharucha 60 Bombay Law Reporter 1208 a case binding on us-has laid down the principles which should govern the apportionment of compensation between a landlord and his tenant. At page 1218 is to be found a passage which may be quoted in full. The passage is as follows:-

"In apportioning the compensation the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated the proposition may appear simple; but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and Court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded. In disputes between

landlords and tenants about apportionment different methods of apportionment have been adopted. The methods which are generally adopted fall into three broad divisions. Under the first method the value of the lessors and the lessees interest may be separately ascertained in terms of money and then out of the total amount awarded the value of the interest of one may be taken out and the remainder awarded to the other. The second method is to value the interest of the lessor and the lessee separately and in the aggregate of these two values does not reasonably correspond to the amount of compensation available for distribution the amount may be distributed on the proportion of the two amounts. If reasonably precise valuation of the competing interests is not possible the Court may proceed to evaluate the interests of the claimants in terms of fractions of the total amount of compensation regarded as a single unit. That is the third method. Theoretically the aggregate value of the interests acquired must be equal to the amount of compensation to be distributed. But in the valuation of competing interests which from its very nature is dependent upon indefinite factors and uncertain data considerable difficulty is encountered. Indisputably in apportioning compensation the Court cannot proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which are lost. The Court must in each case having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto."

As against the aforesaid principles Mr. Shah contended that the correct principle to apply in a such cases was the one enunciated by Their Lordships of the Madras High Court in F. G. Natesa Ayyar and others v. Kaja Maruf Sahib I. L. R. 50 Madras 706. The observations on which Mr. Shah relies are at page 709 and they are as follows:-

"When the land was leased out under Exhibit A it was apparently a waste land fit only for pasturage of cattle and consequently valued at a very low figure. Now that the Railway Company has come forward and acquired the land the compensation has been given for it apparently on the footing of a

building site. This enhanced value is not due to the exertion either of the landlord or the tenant. It is a sort of windfall which has come to both the parties. There is no reason why one alone should have the whole of it and not the other. If we give the landlord only Rs. 80/ we will be ignoring altogether the general rights as melwaramdar which is in him."

With the greatest respect we are unable to agree with the principle so enunciated. In our judgment the true principle is as has been pointed out in the aforesaid Bombay Case and which principle is binding on this Court viz. that in determining the question of apportionment between a landlord and a tenant the task which has got to be performed by the Court is to compensate the landlord and the tenant for the value of the interest that is lost by the acquisition. There is no question of any windfall in determination of the amount of compensation at all. The amount of compensation is to be determined with reference to the market value of the land as prevailing on the date of the notification and the question is what is the portion of that market value which is attributable to one or the other party and which that party has lost. Therefore deciding the present case on the principles laid down in the aforesaid Bombay Case the first question which arises is whether the interest of the landlord and the tenant can be valued in terms of money with reasonable precision or exactness. It is quite obvious that if the Court can so value the two rival interests then that would be the best method of determining the question of apportionment specially if the total of the two interests exactly coincides with total amount of compensation determined by the Land Acquisition Officer. In the latter event it is quite obvious that no injustice would be done either to the landlord or to the tenant. But some times even in such cases complications may arise on account of the fact that the amount of compensation which is determined by the Land Acquisition Officer as payable by the acquiring authority is not determined on the basis of the separate valuation of the various interests involved. The amount of compensation as a general rule is determined by determining the market value of the totality of interests. If in a given case the totality of the amount of compensation does not coincide with the totality of the two interests separately valued then the question would further arise for determination as to how the excess or the shortfall is to be apportioned between the two interests. Some Judges have resolved this problem by dividing the excess or

the shortfall in the proportion of the values separately determined in respect of each interest. But it is quite obvious that whichever of the aforesaid two methods is employed the condition precedent for the employment of such a method is that the Court must be in a position to value in more or less precise and exact manner each interest. Now on the facts of this case it is not possible either to evaluate the interest of the landlord or that of the tenant with reasonable precision in terms of money. Mr. Nanavati contends that this can be easily done so far as the interest of the lessor is concerned. Mr. Nanavati is partially right. He is right in saying that in so far as the lessor has a right to recover the amount of rent that particular amount can be capitalized according to the known principles of valuation. We may mention that the figures which were given to us as regards the rent which has been lost as a result of the aforesaid acquisition were as follows. As regards survey No. 3 the amount of interest which the landlord would lose was stated to be Rs. 374-39 paise and the corresponding figure in respect of survey No. 2 was stated to be Rs. 155-44 paise. We find that the figures so given when added up with the figures of the rents which are at present being paid by the lessee to the lessor in respect of the aforesaid two survey numbers do not tally. But as we are only concerned at present with the question of principle we do not pursue the matter further. There was a controversy in our Court as to at what years purchase the aforesaid amounts of rent lost should be capitalized. Mr. Shah submitted that it should be capitalized at 25 years purchase whereas Mr. Nanavati submitted that it should be capitalized at 16 2 years purchase. If we had to decide the case on the basis of the rental valuation of the lessors interest we would have agreed with Mr. Shahs contention in preference to the contention of Mr. Nanavati. In our judgment having regard to the fact that the ground-rent was well secured a purchaser in the market would regard the rent as secured as a return from gilt-edged security. But Mr. Nanavati did concede that a mere capitalization of the amount of rent would not compensate the landlord fully. The landlord possessed some other rights under the lease deed. Amongst those rights the most important is the right of reversion. It is true that having regard to the fact that the lease has been construed to to be a permanent lease the reversionary interest may not be said to be of great significance. But at the same time we must bear in mind the provision relating to surrender. Now one does not know what exactly would have been the fate of the lease in course of the balance of the life of the land. It it not improbable that in times

of slumps the lessee might surrender the lease and then in course of time there may be considerable increase in the value of the land on the arrival of better times. Then the landlord had the right to receive the treasure trove and the minerals. Mr. Nanavati said that these two rights were also insignificant. In our judgment though there is no evidence to show that there was any treasure trove or any minerals it is also equally clear that no attempt was made to ascertain by either side as to the existence of one or the other. It is true that in the case of the right to receive the fuel the landlord has been compensated separately inasmuch as the compensation relating to trees which were existing on the lands has been entirely given to the landlord. Then there is also the right to receive the well or wells in case the lands were surrendered in future. The aforesaid rights are incapable of being converted into money precisely and exactly. The second difficulty in the case appears to arise from the fact that no materials have been laid before the Court for the purpose of evaluating the lessees interest. In our judgment unless an attempt is made in that direction injustice is likely to be caused by merely evaluating the interests of the lessor and paying the balance to the lesSec. This was pointed out by Mr. Justice Macklin in Shri Somashekhar Swami v. Bapusaheb Narayanrao Patil 49 Bombay Law Reporter 748 at page 788."

I have considerable doubt as to the fairness of the procedure adopted. It seems to me that the adoption of such a procedure namely estimating the present value of the rights of one side and giving the balance to the other side is bound to lead to unfairness to one side or the other unless it can be definitely stated that the valuation of the combined rights of all the parties as arrived at in the award is a strictly correct valuation. If for example the award errs on the side of generosity and the value of the landlords rights is deducted from the amount awarded then all the advantage goes to the tenant. If on the other hand award errs on the side of stinginess and the tenant is given only the balance after the landlords rights have been deducted then it is the tenant who bears the full disadvantage of the award."

Moreover there are no materials to show as to what would be the market value of the lessees interest. Under the circumstances in our judgment the present case is one in which the first two methods referred to in the case of Dossibai Nanabhoy Jeejeebhoy v. P. M. Bharucha cannot be adopted.

Therefore the third method must be adopted and that is exactly the method which the learned Judge has adopted in the present case. It is true that in some cases the proportion has been filed to be six aanas and ten annas between the landlord and the tenant. That was the proportion which was fixed in Dossibais case. But that was a case obviously not of permanent tenancy. The lease in that case was initially for a period of 99 years with a provision of the right of renewal at the option of the lessee for a further period of 99 years at double the rate. In this case we have got to deal with a permanent tenancy. Under the circumstances the proportion fixed by the learned Judge at 25 and 75 per cent between the landlord and the tenant cannot be stated to be unreasonable and therefore both the appeals must be dismissed.

[5] Appeal No. 530 of 1960 is dismissed. Appellants therein to pay the costs of respondent No. 1. Appellants and the rest of the respondents to bear their own costs. Appeal No. 531 of 1960 is dismissed with costs.

Appeals dismissed.