Satinder Singh and Others

Vs

Amrao Singh and Others

Civil Appeals Nos. 396 to 398 and 419 to 421 of 1959, and 152 of 1960

(P. B. Ganjendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

02.02.1961

JUDGMENT

GAJENDRAGADKAR, J. -

This is a group of seven appeals all of which arise for the same land acquisition proceedings in respect of which the Punjab Government originally issued a notification under s. 4 of the Land Acquisition Act, 1894, On March 23, 1948. By this notification the State Government declared its intention to acquire land in the Ambala District for the construction of the new Capital for East Punjab. No action was, however, taken in pursuance of this notification. Meanwhile the Punjab Legislature passed the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 48 of 1948. Under the provisions of this Act the Government requisitioned the land in question for the purpose of resettling the persons who were like to be evicted for their lands as a result of the construction of the new Capital. The said land was actually acquired on May 20, 1951. This land forms part of a Jagir known as "Singh Purian" and comprises the areas of villages Mataur, Dhirpur, Saneta and Giddarpur in the District of Ambala. It appears that these villages originally formed part of the area covered by the Cis Sutlej States. S. Amrao Singh as entered as owner of the land thus acquired. His wife is Sardarani Gurdial Kaur and his son is Satinder Singh. The estate of Amrao Singh was at the relevant time being managed by the Court of Wards. Pursuant to the provisions of the Act compensation was assessed by the estate officer and was accordingly offered by the State Government to the Court of Wards. The Court of Wards agreed to the amount of composition thus offered and Amrao Singh himself did not object to it. Satinder Singh, however, was not willing to accept the said compensation and he raised several objections contending that it was wholly inadequate. He also objected to the compensation being paid either to the Court of Wards or to his father Amrao Singh, and in support of this contention he urged that since the estate once formed part of Cis Sutlej States, Amrao Singh was entitled only to its usufruct for his life and had no right to alienate or otherwise deal with its corpus. Satinder Singh's plea was that after the amount of compensation was finally determined it should be deposited in Government Securities or alternatively a part of it should be paid to him as compensation for the land of his reversionary rights. This plea applied to the three villages of Mataur, Saneta and Giddarpur. In regard to the village of Dhirpur, Amrao Singh's wife Sardarani Gurdial Kaur claimed that she was in possession of the said village as it was charged for the payment of her maintenance by a compromise decree passed in her favour and against her husband Amrao Singh. She therefore claimed for herself the entire amount of compensation. Thus the contest about the apportionment of the compensation amount took a triangular form.

At this stage it would be convenient to refer to the relevant provisions of the statute under which the present proceedings have been taken. In 1948 the relevant Punjab statute was East Punjab Act, 48 of

1948. Section 2 of the said Act deals with the requisitioning of property, and s. 3 empowers the State Government to acquire requisitioned properties. Section 5 prescribes the principles according to which compensation had to be paid in regard to acquired properties. Section 5(e) provides that the arbitrator, in making his award, shall have regard to the provisions of sub-s. (1) of s. 23 of the Land Acquisition Act, 1894 (I of 1894) so far as the same can be made applicable.

This Act as followed by the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act, 1951 (President's Act No. 2 of 1951). By s. 5 of this Act s. 5 of the earlier Act was amended, inter alia, by adding one provision. This provision provides that where any property is acquired in connection with the new Capital of the State of Punjab compensation may be paid whether by agreement or by award of the arbitrator, either in money or in kind or partly in money and partly in kind, and where there is no person competent to alienate the property, or there is a person with limited interest in such property, or there is any disputes as to the persons entitled to receive the compensation or as to the apportionment thereof, the arbitrator shall make an award in such a manner or make an arrangement in such a way as may be equitable having regard to the interests of the persons concerned; in other words, the principle of equitable apportionment which had been recognised by s. 32 of the Land Acquisition Act of 1894 has in effect been added by this amending Act.

In 1953 the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (XI of 1953), came into force. Section 24 of this Act repeals the to earlier Acts of 1948 and 1951, and after this Act came into force it was the provisions of this Act that governed the proceedings relating to the requisitioning and acquisition of immovable properties in Punjab. The equitable principle which was inserted in the Act of 1948 by the amending Act of 1951 has been retained in the present Act under s. 8(3). Section 23(1) of this Act validates requisitions and acquisitions of properties there specified, while sub-s. (2) of the said section provides, inter alia, that acquisition of immovable property purporting to have been made before the commencement of this Act shall be deemed for all purposes to have been validly made as if the provisions of the said enactment or order had been included and enacted in this section, and this section had been in force on and from the date of the acquisition. It has been held by a Full Bench of the Punjab High Court in Colonel His Highness Raja Sir Harindar Singh Brar Bans Bahadur, Ruler, Faridkot State v. The State of Punjab [(1957) 59 Punj. L.R. 386] that compensation for property acquired under the Land Acquisition Act, 1894 or under the Punjab Act of 1948 must be paid in accordance with the principles set out in those Acts and not in accordance with the principles set out in the later Act of 1953. This position is not disputed by either party in the present proceedings. Thus it is common ground that for determining the amount of compensation and its apportionment amongst the rival claimants the provisions of the relevant Act of 1948 are applicable though the proceedings were held under the relevant provisions of the later Act of 1953. In fact, the appointment of the arbitrator who conducted the proceedings in the present case was made by the State Government under s. 8(1)(b) of the Act of 1953. We have already noticed that the provisions of s. 8(3) of this Act were included by an amendment in the earlier Act of 1948 by the amending Act of 1951.

Before the arbitrator the acquisition proceedings were dealt with in four different cases, each one being related to the lands in one of the four villages in question. On the contentions raised by the parties the arbitrator first considered two preliminary issues. The were : (1) Is Satinder Singh competent to object to the amount of compensation awarded in the case, and (2) Is the appointment of the arbitrator invalid on account of the agreement between the State and the Court of Wards about the amount of compensation payable by the State to the Court of Wards. It appears that Amrao Singh contended that his son Satinder Singh had no locus standi in the matter, and that since he and

the Court of Wards had agreed to the amount of compensation offered by the State the arbitrator had no jurisdiction to hold any enquiry on the claim put forward by Satinder Singh. The arbitrator, however, rejected Amrao Singh's pleas, and held that he was entitled and bound to hold the proceedings and to consider the merits of the pleas raised by Satinder Singh.

The arbitrator then proceeded to examine the merits of the rival contentions. He found that the property in suit was a part of Cis Sutlej States and so Amrao Singh had only a limited interest in it and had no right to alienate it. As a result of this conclusion the arbitrator held that Satinder Singh, who was the next heir, was entitled to contest the amount of compensation and was entitled to claim a share in the distribution of the amount. In regard to Dhirpur land he held that Sardarani Gurdial Kaur was entitled to retain the possession of the village for her maintenance under a compromise decree and that both Amrao Singh and Satinder Singh were bound by the said decree. In the result the arbitrator determined the amount of compensation and directed that the entire amount of compensation in regard to Dhirpur should be invested in Government Securities in the name of the holder of Manauli Estate with a charge in favour of Gurdial Kaur which would entitle her to its annual profits in lieu of maintenance. He also directed that on the death of Gurdial Kaur the amount should be divided half and half between the then holder of the Estate and the next heir or heirs taken together. In regard to the lands in the three other villages the arbitrator directed that the amount of compensation determined by him should be paid in cash, 3/4ths to Amrao Singh and 1/4th to the next sole heir Satinder Singh. The amount originally offered by the Government and ultimately awarded by the arbitrator were as follows :

> #Village Mataur (Plus Govt. Offer Award15% acquisition charges) Rs. 93,309.00 Rs. 1,82,813.00Saneta Rs. 42,179.00 Rs. 55,377.00Giddarpur Rs. 15,726.00 Rs. 27,640.00Dhirpur Rs. 1,17,912.00 Rs. 2,27,860.00##

It would thus be seen that the contest made by Satinder Singh in respect of the amount of compensation originally offered by the Government substantially succeeded inasmuch as the total amount offered was increased by the arbitrator by Rs. 2,24,564/-.

The order thus passed by the arbitrator was recorded by him in the four cases tried before him in respect of the four village. These orders became the subject matter of several appeals in the Punjab High Court. The State of Punjab preferred four appeals 67 to 70 of 1955; Satinder Singh preferred three appeals 42 to 44 of 1955; Amrao Singh preferred four appeals 59 to 62 of 1955; and Sardarani Gurdial Kaur preferred Appeal No. 55 of 1955. In its appeal the State urged before the High Court that Satinder Singh was not competent to object to the compensation offered by the State and so the proceedings held before the arbitrator were invalid. It was also urged alternatively that Amrao Singh and Sardarani Gurdial Kaur were not entitled to compensation at the higher rates directed by the arbitrator, and that the benefit of the award should be available only to Satinder Singh, and it was contended that the amount of compensation fixed by the arbitrator was excessive. All these contentions have been rejected by the High Court and the appeals preferred by the State have been dismissed. The State has not challenged the correctness of the decision of the High Court, and so we are not concerned in the present appeals with the merits of the pleas raised by the State before the High Court.

In the appeals preferred by Satinder Singh the High Court rejected his plea that the valuation fixed by the arbitrator in respect of certain properties was inadequate. It also rejected his plea that the amount of compensation ordered to be divided between him and his father Amrao Singh should be deposited in Government Securities. The High Court held that though equitable considerations

would be relevant in deciding the question of apportionment, it would be inexpedient to direct that the amount should be deposited in Government Securities because in that case no one will ever be absolutely entitled to it. The High Court also thought that since the State in whose favour the estate may finally lapse owing to escheat did not object to the apportionment made by the arbitrator there was no reason to interfere with the actual order as the apportionment between father and son which the arbitrator thought was reasonable. In dealing with this question the High Court took the view that the alleged reckless extravagance of the father on which the son relied was not relevant. In the result the three appeals filed by Satinder Singh were dismissed.

The High Court then dealt with the appeal preferred by Amrao Singh, and it confirmed the finding of the arbitrator that the property acquire originally formed part of Cis Sutlej States and that in regard to the said States the rule is now well settled that the Jagirs larger or small in Cis Sutlej States are non-transferable and are even exempt from attachment as political pensions, the holder for the time being having only life interest in the estate, the corpus of which is to be kept intact so that it may pass from heir to heir and laps in favour of the Government in the absence of any legal heir. The High Court also held that even if the character of the property was considered from the angle of the general custom of Punjab the same conclusion followed because the property in question was undoubtedly ancestral immovable property in the hands of the father qua his son and as such the father had no right to alienate it to the prejudice of his son without legal necessity or any other compelling reason. That is how the principal point urged by the father against the claim set up by his son was rejected and his appeals were dismissed. The appeal preferred by Sardarani Gurdial Kaur also met the same fate and was dismissed.

It appears that all the three claimants urged before the High Court that they were entitled to interest at a reasonable rate on the amount of compensation from the time that the property was acquired and they lost possession of it. This contention was likewise rejected by the High Court, and it was held that under the relevant Act of 1948, it was not permissible to award interest on the amount of compensation. The result was that the decision of the arbitrator was fully confirmed and all the appeals preferred before the High Court were dismissed. This decision of the High Court is challenged by special leave by the three claimants Amrao Singh, Satinder Singh and Sardarani Gurdial Kaur respectively. The appeals preferred by Satinder Singh are Civil Appeals Nos. 396 to 398 of 1959; Amrao Singh's appeals are Civil Appeals Nos. 419 to 421 of 1959, whereas Sardarani Gurdial Kaur's appeal is Civil Appeal No. 152 of 1960. That is how this group of seven appeals arises from the same land acquisition proceedings taken by the State of Punjab in respect of the lands situated in the four villages already mentioned. We would hereafter refer to Satinder Singh as the appellant, Amrao Singh as respondent 1, the State of Punjab as respondent 2, and Sardarani Gurdial Kaur as Sardarani.

Logically then the first point which we must consider is the nature of the property and the title of respondent 1 in relation to it. That is the principle point which Mr. Viswanatha Sastri sought to raise before us in the appeal filed by respondent 1. This question has been considered both by the arbitrator and the High Court elaborately and they have concurred in making a finding against respondent 1. As the judgment of the High Court points out the fact that the lands in question originally formed part of the domain of S. Budh Singh or of the Cis Sutlej States was not seriously disputed before the High Court. This implied concession naturally makes Mr. Sastri's task very difficult. Besides, we are not satisfied that there is any substance in the plea which Mr. Sastri has raised before us on this point. The history of the property has been considered by the arbitrator, and the arbitrator as well as the High Court have placed considerable reliance on the relevant statements made in the Punjab Land Administration Manual complied by Sir James McC. Douie and revised in

1931. Reliance has also been placed on the relevant statements in the compilation known as the "Chiefs and Families of Note in the Punjab" published by the Punjab Government in 1940. The pedigree table of the Singh Purian family given in this publication shows that the family was founded by S. Kapur Singh who held the title of Nawab. S. Budh Singh was his grandson and he was the head of the family in 1809. Amrao Singh is a descendant of Gopal Singh who was one of the seven sons of Budh Singh. The large Jagirs owned by the families are situated in Kharar and Rupar Tehsils of Ambala District and they formed part of the area formerly known as Cis Sutlej States. Paragraphs 100, 101 and 102 of Douie's Land Administration Manual give a detailed account of the families and their properties. The same is also briefly mentioned in the Punjab Gazetteer dealing with Ambala District.

It appears from this material that the Sardars in the Cis Sutlej States were independent Rulers whose ancestors ultimately came under the protection of the British Government in about 1809. Between 1809 to 1847 the British Government tried to enforce good government amongst the semi-independent States; in order to achieve this object the British Government gradually strengthened its hold and tightened the reins with a view to enforce good government. It appears that the Government exercised the right of escheat very freely and whenever there was lapse of heirs it took up the management and government of the area in its own hands. After 1846 Government began to introduce sweeping measures of reform and with that object Government reduced the privileges and rights of the petty chieftains. In 1849 the chieftains lost their sovereign powers and were deprived of their criminal, civil and fiscal jurisdiction so that they became no more than Jagirdars. Their rights in the lands held by them were, however, left untouched. Rules regarding succession to these Jagirs were framed by the Central Government from time to time and family custom was respected within reasonable limits. One of these rules is to be found in paragraph 111 of Douie's Manual. Clause (c) of this paragraph laid down "that alienations by a Jagirdar or pattidar of portions of his holding, whether to his relations or strangers, shall neither be officially recognised nor officially recorded." Similarly paragraph 164 emphasised the inalienable character of the Jagirs and referred to the opinion expressed by the Court of Directors whereby the said character was clearly and unambiguously notified. "We should have supposed", said the Court of Directors, "that there could be no necessity for notifying this as a rule, since it follows from the very nature of a Jagir, which cannot be alienated and can only be attached for the life of the holder." There is thus no doubt that he statements in the authorised publications to which we have just referred and on which the High Court and the arbitrator have relied conclusively show that the holder of property which was a part of Cis Sutlej States did not own the property absolutely but held it as a limited owner. The Kaifiat Taluka of Singh Purian family which has been produced in these proceedings supports the same conclusion.

Mr. Sastri, however, wanted to contend that the evidence on the record was insufficient to justify the conclusion that the lands under acquisition formed part of the original estate of S. Budh Singh; but he fairly conceded that respondent 1 had not gone into the witness box and not purported to justify his plea that any of the lands in dispute have been acquired either by him or by his ancestors in such manner that they could be treated as the absolute properties of the holder. The circular issued by the Office of the Commissioner and Superintendent of Cis Sutlej States on February 26, 1857, unambiguously shows that "all proprietary right to any part of the lands forming a part of the Jagir which may be held by the Jagirdar will be considered as pertaining to the Jagir and will go to the holder of the Jagir for the time being." This principle was applicable even to houses and other buildings standing on the Jagir which are in the nature of forts and may be considered to appertain to the estate. The only exception made was in regard to the shops built or acquired by the Jagirdar in a town apart from his place of residence. Therefore, on the material as it stands it is difficult to

sustain the plea that the concurrent findings made by the arbitrator and the High Court on the question about the character of the property and the nature of the title held by the holder of the said property are wrong. Incidentally it may be added that the same conclusion has been reached by the High Court on the ground of the customary law prevailing in the Punjab. We must accordingly proceed to deal with the rest of the dispute between the parties on the basis that the respondent 1 is not the absolute owner of the property and that the appellant is entitled to represent the reversionary interest in the present proceedings.

That takes us to the pleas raised by the appellant in his appeals. On his behalf it has been urged by the learned Attorney-General that the whole amount of compensation in respect of the three villages Mataur, Suneta and Giddarpur should be appropriately invested and both he and respondent 1 should be allowed to enjoy the income coming from the said investment in the share which may ultimately be fixed between them. In support of this contention he relies on the provisions of s. 32(1)(b) of the Land Acquisition Act I of 1894. This provision empowers the Court to direct that the compensation amount payable to the owners should be invested either in Government or approved securities and the payment of interest of other proceedings arising from such interest should be directed to the person or persons who would for the time being have been entitled to the possession of the lands under acquisition. The argument is that since respondent 1 was not entitled to alienate the property and was under an obligation to keep the corpus in tact for the benefit of the reversioners the compensation amount payable in respect of the acquisition of the said property should be similarly treated and saved for the benefit of the reversioners; in other words, it is urged that the compensation amount should be treated as a conversion of the corpus of lands and the same should not be distributed as directed by the High Court. Section 32 deals with cases where the land acquired belonged to any person who had no power to alienate the same; and since respondent 1 was not entitled to alienate the property the principle enunciated by s. 32(1)(b) is pressed into service as an equitable principle which should be applied to the present case. In support of this argument the learned Attorney-General has relied on decisions of different High Courts where this principle has been extended to watan property (Shri Somashekhar Swami v. Bapusaheb Narayanrao Patil [A.I.R. 1948 Bom. 176]), to the property belonging to an idol (K. C. Bannerjee, Official Receiver, In re [A.I.R. 1928 Cal. 402]), to the property held by a widow (Mt. Gangi v. Santu & Others [A.I.R. 1929 Lah. 736]), or to land belonging to an impartible estate (Special Deputy Collector, Ramnad v. Rajah of Ramnad [A.I.R. 1935 Mad. 215]).

This contention, however, ignores that the provisions of s. 32(1)(b) are intended to be applied only provisionally and for a short period. The scheme of s. 32 is that in cases to which the said section applies the Court shall order the compensation amount to be invested in the purchase of other lands which would be held under the right, title and conditions of ownership as the land in respect of which the compensation amount has been deposited. That is the plain effect of s. 32(1)(a). Section 32(1)(b) comes into operation if such purchase cannot be effected forthwith; and it has to remain in operation until such purchase is made. In other words, if the compensation amount cannot be immediately invested in the purchase of other lands, as an interim measure the said amount may be invested in the prescribed securities and income thereof distributed to those who were entitled to it. Therefore, even if the principle underlying s. 32 is extended to the present case on equitable consideration it would not justify the appellant's claim that the compensation amount should itself be treated as corresponding to the corpus of lands acquired and should be permanently invested in suitable securities leaving to the parties concerned the right to enjoy only its income. Such a course is plainly inconsistent with the principle recognised by s. 32(1)(a). Therefore, we are not prepared to accede to the argument that the compensation amount should not be divided between the parties and should be permanently deposited in the fund set apart in proper investments.

If the said amount must, therefore, be divided between the appellant and respondent 1 how should it be divided ? That is the next question which calls for our decision. The appellant contends that the fairs way to distribute this amount would be to divide it half and half between him and respondent 1. We are inclined to hold that this contention is well founded. As the High Court has observed, it is not at all easy to estimate the relative value of the two interests represented by the appellant and respondent 1. The High Court thought that the ratio may be 2/3 and 1/3 or 3/4 and 1/4 there being little to choose between the two; and so it confirmed the apportionment made by the arbitrator. This decision, however, suffers from one serious infirmity. The High Court thought that the conduct or respondent 1 which was characterised by the appellant as the conduct of a reckless spendthrift and squanderer was wholly irrelevant in determining the shares to which the appellant and respondent 1 were respectively entitled. In our pinion, in deciding the question of apportionment on equitable grounds it is relevant and material to take into account the grievance made by the appellant that the money which would be left with respondent 1 would be frittered away by him and no part of it would reach the reversioner. In support of this contention the appellant relied on the past conduct of respondent 1. Several alienations made by him are cited and attention is invited to the fact that after respondent 1 became a major his estate has been taken over by the Court of Wards for management under s. 5(2)(b) of the court of Wards Act, 1903, from 1928 to 1938, 1939 to 1947, 1948 to 1954. It has also been urged that since 1954 respondent 1 has made several unauthorised alienations. We do not propose to consider the validity of each one of these allegations but we have no hesitation in holding that on the material available on the record it would be difficult to reject as unfounded the apprehensions which the appellant entertains in regard to the fate of the amount which may be given to respondent 1. Besides, we are also inclined to take into account the fact that the appellant himself has a son and in apportioning the amount we have to bear in mind the fact that the amount is being paid in respect of the lands which respondent 1 holds as a limited owner and the reversionary interest in respect of which has to be safeguarded. We would, therefore, direct that the amount of compensation in respect of the three villages should be divided between the appellant and respondent 1 half and half. It is significant that the amount of compensation in respect of the fourth village which is at present charged for the maintenance of Sardarani has been ordered to be divided half and half. Therefore, we would uphold the contention raised by the learned Attorney-General on behalf of the appellant and direct that the said amount should be divided not as 2/3 and 1/3 but half and half between the father and son.

The next point which the learned Attorney-General wanted to urge was that the increase in the amount of compensation directed by the arbitrator should be paid to him exclusively. His case was that the Court of Wards and respondent 1 had accepted the amount offered by the State Government, and it was because he raised contentions that the proceedings were referred to the arbitrator whose award ultimately enhanced the compensation amount to a very large extent. This contention was not raised either before the arbitrator or before the High Court, and we have therefore not allowed the appellant to raise it before us.

That takes us to the question of interest which has been urged before us by all the three claimants alike. The argument is that the amount of compensation awarded should carry a reasonable rate of interest from the date of acquisition when the claimants lost possession of their properties. This argument has been rejected by the High Court principally on the ground that the relevant Act of 1948 makes no provision for payment of interest and omission to make such a provision amounts in law to an intention not to award interest in regard to compensation amount determined under it. In support of this conclusion the High Court has referred to the fact that s. 5(e) of the Act specifically makes applicable the provisions of s. 23(1) of the Land Acquisition Act of 1894, and that, it is said, inevitably leads to the inference that ss. 28 and 34 of the Act which deal with the payment of

interest are not intended to apply to the proceedings under it. In our opinion, this conclusion is not well-founded. It would be legitimate to hold that by the application of s. 23(1) in terms the provisions of s. 23(2) are by necessary implication excluded. If the Legislature has provided that only one part of s. 23 should be applied it would be reasonable to hold that the other part of s. 23 was not intended to be applied; but we do not see how it would be reasonable to hold that by the application of s. 23(1) the principles underlying the provisions of ss. 28 and 34 are also excluded. Therefore, it is necessary to examine this question on general grounds and principles without assuming that the application of these general considerations is excluded by any of the provisions of the Act.

What then is the contention raised by the claimants ? The contend that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest is made against the State. This question has been considered on several occasions and the general principle on which the contention is raised by the claimants has been upheld. In Swift & Co. v. Board of Trade [[1925] A.C. 520, 532] it has been held by the House of Lords that "on a contract for the sale and purchase of land it is the practice of the Court of Chancery to require the purchaser to pay interest on his purchase money from the date when he took, or might safely have taken, possession of the land." This principle has been recognised ever since the decision in Birch v. Joy [(1852) 3 H.L.C. 565]. In his speech, Viscount cave, L.C., added that "this practice rests upon the view that the act of taking possession is an implied agreement to pay interest", and he points out that the said rule has been extended to cases of compulsory purchase under the Lands Clauses Consolidation Act, 1845. In this connection distinction is drawn between acquisition or sales of land and requisition of goods by the State. In regard to cases falling under the latter category this rule would not apply.

In Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission [[1928] A.C. 429], it was held by the Privy Council that "upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention." Dealing with the argument that the expropriation with which the Privy Council was concerned was not effected for private gain, but for the good of the public at large, it observed "but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The right to receive the interest takes the place of the right to retain possession and is within the rule." It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948, and as we have already observed, the mere fact that s. 5(3) of the Act makes s. 23(1) of the Land Acquisition Act of 1894 applicable we cannot reasonably infer that the Act intends to exclude the application of this general rule in the matter of the payment of interest. That is the view which the Punjab High Court has taken in Surjan Singh v. The East Punjab Government [A.I.R. 1957 Punj. 265], and we think rightly.

It is, however, urged by Mr. Gopal Singh for respondent 2 that what the claimants are entitled to receive is compensation and since the word "compensation" is used by s. 5(1) both in respect of requisition as well as acquisition it would not be fair to import the general rule about the payment of interest where property is acquired. Compensation, it is urged, should represent the price of the property and there is no justification for adding to the said prince any amount by way of damages. We are not impressed by this argument. When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation. In our opinion, therefore, the fact that s. 5(1) deals with compensation both for requisition and acquisition cannot serve to exclude the application of the general rule to which we have just referred.

Mr. Gopal Singh then relied on some observations made by this Court in Seth Thawardas Pherumal v. The Union of India [[1955] 2 S.C.R. 48]. Bose, J., who spoke for the Court has set out four conditions which must be fulfilled before interest can be awarded under Interest Act of 1839, and observed that not one of these was present in the case with which the Court was concerned. That is why it was held that the arbitrator had erred in law in thinking that he had the power to allow interest simply because he thought the demand was reasonable. Having come to this conclusion the learned Judge proceeded to make certain observations in respect of the applicability of s. 34 of the Code of Civil Procedure. He added that s. 34 does not apply because the arbitrator is not a Court within the meaning of the Code, nor does the Code apply to arbitrators, and but for s. 34 even a Court would not have the power to give interest after the suit. These observations were considered by this Court in Nachiappa Chettiar v. Subramaniam Chettiar [[1960] 2 S.C.R. 209], and it was pointed out that they were obviously not intended to lay down any broad and unqualified proposition like the one which is urged before us by Mr. Gopal Singh in the present appeal.

In the connection we may incidentally refer to Interest Act, 1839 (XXXII of 1839). Section 2 of this Act confers power on the Court to allow interest in cases specified therein, but the proviso to the said section makes it clear that interest shall be payable in all cases in which it is now payable by law. In other words, the operative provisions of s. 1 of the said Act do not mean that where interest was otherwise payable by law Court's power to award such interest is taken away. The power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to s. 1. This question was considered by the Privy Council in Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji [(1938) L.R. 65 I.A. 66]. Referring to the proviso to s. 1 of the Act the Privy Council observed "this proviso applies to cases in which the Court of equity exercises its jurisdiction to allow interest." We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right; and so, the proviso to s. 1 of the Interest Act saves the said right. We must accordingly hold that the High Court was in error in rejecting the claimants' case for the payment of interest on compensation amount, and so we direct that the said amount should carry interest at 4% per annum from the date when respondent 2 took possession of the claimants' lands to the date on which it deposited or paid the amount of compensation to them.

In the appeal preferred by the Sardarani, Mr. Mathur attempted to challenge the propriety of the order passed by the High Court directing that the amount of compensation in respect of Dhirpur lands should be invested and that the Sardarani should receive her maintenance from the interest

accruing from such investment. Apart from the fact that the order made in that behalf is fair and just, it is clear that the learned counsel for the Sardarani himself had suggested that such an order should be passed. Therefore, we cannot allow Mr. Mathur to raise any contention against the said order in the present appeal.

Mr. Mathur further contended that if we were to award interest on the amount of compensation his client would be entitled to receive the whole of the interest on the compensation amount ordered to be paid in respect of the lands in Dhirpur village. That no doubt is true, and indeed Mr. Mathur's claim in that behalf is not disputed either by the appellant or by respondent 1. We would accordingly modify the decree passed by the High Court by directing that the amount of compensation payable in respect of the lands in Mataur, Saneta and Giddarpur may be divided half and half between the appellant and respondent 1, and that interest should be paid on all the items of compensation determined by the High Court at 4% per annum. The interest in regard to the compensation payable for Dhirpur lands should be paid to the Sardarani, whereas the interest in regard to the lands in the three other villages should be paid half and half to the appellant and respondent 1. In Making the payments of compensation amounts to the respective parties whatever amounts may have been withdrawn by or on their behalf should be taken into account and their claims should be properly adjusted in that behalf. In the circumstances of this case we direct that the appellant should get half his costs from respondent 1 and the other half from respondent 2 in his three appeals. There will be only one set of hearing costs. The costs in the remaining four appeals should be borne by the parties.

C.A. Nos. 396 to 398 of 1959 and C.A. No. 152 of 1960 allowed in part.

C.A. Nos. 419 to 421 of 1959, dismissed.

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