DELHI HIGH COURT

Mangal Sen

Vs.

Union of India (Delhi)
F. A. O. 23-D of 1961.

(Hardayal Hardy and Om Parkash, JJ.)

20.5.1969

JUDGEMENT

Hardayal Hardy, J.

1. This appeal is directed against an award made by an arbitrator appointed under Section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act 60 of 1948, hereinafter to be called the Act. The appeal which should ordinarily have been heard by a Single Bench, was ordered by the Humble the Chief Justice to be placed before a Division Bench for reasons mentioned in his order dated October 26, 1967 and that is how it was laid before us.

2. The appellant is the owner of certain land in village Basai Darapur which along with the land of some other owners, was acquired under Government's notification No. F-l (136) 48 LSG dated 1-1-1949 published in the Delhi State Gazette for the purpose of re-settlement of displaced persons. The project for which the acquisition of land was made is known as "The Industrial Area Scheme".

3. As the controversy in this case relates to the quantum of compensation, the provision of the Act with which we are concerned is Section 7 which lays down the method for determining compensations for the land acquired under the Act. The section provides that where the amount of compensation can be fixed by agreement it shall be paid in accordance with that agreement; but where no such agreement can be reached then the Provincial Government shall appoint as arbitrator a person qualified for appointment as a Judge of a High Court. Under Clause (d) both the Provincial Government and the person to be compensated are required to state at the commencement of the proceedings before the arbitrator what in their respective

opinions is a fair amount of compensation.

4. Clause (e) with its two provisos lays down the principles in accordance with which the compensation payable under the Act is to be determined. The clause reads:-

> "The arbitrator, in making his award, shall have due regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act, 1894 (1 of 1894).
> Provided that the market value referred to in clause first of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section, or on the first day of September, 1939, with an addition of 40 per cent whichever is less:
> Provided further that where such lands has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document, or a decree for pre-emption between the aforesaid date, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption as the case may be". Sub-section (3) provides for an appeal from the award to the High Court and makes the decision of the High Court final.

5. Sub-section (4) lays down that save as provided in this section, nothing in any law for the time being in force shall apply to arbitrations under this section.

6. As there was no agreement between the appellant and the State Government the latter appointed Shri K. S. Sidhu, a Subordinate Judge in Delhi, as arbitrator who made his award on September 28, 1960 whereby he fixed the compensation at Rs. 908 as against sum of Rs. 38530/12/-claimed by the appellant.

7. The present appeal is for the enhancement of compensation and has been filed under sub-section (3) of Section 7. The memorandum of appeal is stamped with a fixed court-fee of Rs. 5.25.

8. At the commencement of the arguments a preliminary objection has been taken by the learned counsel for the State on the ground that the memorandum of appeal is deficiently stamped in that the appeal being against an order relating to compensation the memorandum is required to bear ad valorem court- fee on the amount represented by the difference between the amount awarded and the amount claimed by the appellant.

9. In order to appreciate the objection it is necessary to look into the various sections

of the Court-fees Act. Section 4 deals with fees on documents of the kinds specified therein when filed in the High Court while Section 6 deals with fees on documents filed in mofussil Courts. Section 4 is in Chapter 2 which deals with fees in High Courts and Chapter 3 which contains Sections 6 to 19 deals with fees in other Courts and public offices.

10. Sections 7 and 8 provide for computation of fees. Section 8 which alone is relevant for the purpose of the argument raised before us reads as under:-

> "The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant".

As to what is the amount of Court-fee chargeable in various cases is given in Schedules I and II of the Act. Schedule I deals with ad valorem court-fee and Schedule II with fixed fees.

Article 1 of Schedule I (Punjab Amendment) is a residuary Article. It runs:-

> "1. Plaint, written statement pleading a set off or counter claim or memorandum of appeal (not otherwise provided for in the Act) or of cross- objection presented to any Civil or Revenue Court except those mentioned in Section 3".

Other Articles of Schedule I are not necessary for the purpose of this case. In Schedule II the only Article which is necessary to be considered is Article 11 which provides:

> "11. Memorandum of appeal when the appeal is not **** from a decree or an order having the force of a decree and is presented- (a) to any civil Court other than a High Court, or to any Revenue Court or Executive Officer, other than the High Court or Chief Controlling Revenue or Executive Authority One rupee twenty-five naya Paisa
>
> (b) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority. Five rupees twenty-five naya Paisa."

The contention urged on behalf of the appellant is that this case falls under Article 11 of Schedule II in that it is a memorandum of appeal in a case where the appeal is not from a decree or an order having the force of a decree and is presented to a High Court and is therefore, liable to a fixed fee of Rs. 5.25. It is urged that Shri K. S. Sidhu was acting as an arbitrator and not as a Court. The award made by him is neither a decree nor an order having the force of a decree.

11. Reliance is placed by the learned counsel appearing for the appellant on a Bench decision of the Punjab High Court in *Kanwar Jagat Bahadur Singh v. Punjab State,* [1] and on a Single Bench judgment of the Bombay High Court in *Hirji Virji Jangbari v. Govt. of Bombay,* [2]

12. The case of Kanwar Jagat Bahadur Singh AIR 1957 Punjab 32 is under the Punjab Requisitioning and Acquisition of Immovable Property Act 11 of 1953. Assessment of compensation for property requisitioned or acquired under that Act is provided for in Section 8 while Section 9 deals with payment of compensation. Provision for appeals from the award is made under Section 11, the relevant portion of which is in these terms:-

> "11. Any person aggrieved by an award of the arbitrator made under Section 8 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situated."

The District Judge who was appointed arbitrator under the Act had enhanced the compensation awarded to the appellant by the Collector by Rs. 53,678-11-0 but the latter being dissatisfied with the award had preferred an appeal to the High Court under Section 11 and his prayer was for enhancement of compensation by Rupees 2,68,274-5-0. The memorandum of appeal was stamped with Rs. 4 under Schedule II Article 11 of the Court-fees Act. The State filed cross-objections on which they paid ad valorem court-fee. At the hearing of the appeal, the Advocate-General appearing for the State contended that the fee paid on the appeal filed by the appellant was inadequate. Learned Judges (J. L. Kapur and Bishan Narain JJ.) relying upon the judgment of Bombay High Court in AIR 1945 Bombay 348 held that the award made by an arbitrator was not a decree nor an order having the force of a decree within the words used in Article 11 of Schedule II.

13. On behalf of the State, the learned Advocate-General relied on Section 8 of the Court-fees Act and on two judgments, one of Calcutta High Court in the case of *Anandalal Chakrabarti v. Karnani Industrial Bank Ltd.* [3] and the other of Allahabad High Court in *Debichand v. Secretary of State,* [4] and submitted that the effect of Section 8 was that in cases where an appeal was brought against an order relating to compensation under any Act for the time being in force for the acquisition of land the amount of fee payable on a memorandum of appeal under the Court-fees Act had to be computed according to the difference between the amount awarded and the amount claimed.

13-A. Repelling the objections raised by the learned Advocate-General the learned Judges held:-

> "The only way that the various sections and the Schedules of the Court-fees Act can be reconciled is that Section 8 should be confined to orders as understood in the Civil P. C. and that where any matter does not fall within a decree or an order having the force of a decree, the matter should be held to be covered by Article 11, Schedule II, and once we hold that, Article 1 of Schedule I is excluded".

14. The case of Hirji Virji Jangbari AIR 1945 Bombay 348 decided by N. J. Wadia, J. of Bombay High Court was one of an appeal against an award for compensation made by an arbitrator under Section 19 of the Defense of India Act, 1939 in respect of property acquired by Government under the provisions of Rule 75-A, Defense of India Rules 1939. An examination of the provisions relating to assessment and payment of compensation and to appeals under the Act and the Rules under discussion in that case shows at the provisions in that case were more or less identical with those in the case before he learned Judges of the Punjab High Court.

15. While dealing wit the two cases from Calcutta and Allahabad on which reliance was placed on behalf of the Government, Wadia, J. observed:-

> "It is to be noted however, that both in the Calcutta Improvement Act (5 of 1911), under which the award in ILR 59 Cal 528 had been made, and in the U. P. Town Improvement Act of 1919, under which the award in ILR 1939 Allahabad 142 had been made, there are express provision at the Tribunals making the awards are to be deemed to Courts under the land Acquisition Act. Section 69, Calcutta Improvement Act, of 1911 provides that the Board may acquire land under the provisions of the Land Acquisition Act for carrying put any of the purposes of the Act. Section 70 provides that a Tribunal should be constituted for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act; and Section 71 provides that for the purpose of acquiring land under the Act for the Board the Tribunal shall be deemed to be the Court and the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act and shall be final. Sections 56, 57 and 58, U. P. Town Improvement Act of 1919 contain similar provisions by which the Tribunal acquiring land under the Land Acquisition Act is deemed to be the Court for the purpose of the Land Acquisition Act and the award of the Tribunal is deemed to

be the award of the Court under the Land Acquisition Act. There is no provision in Section 19, Defense of India Act, and, in the rules made there under, by which the award of the arbitrator can be deemed to be an award of the Court under the Land Acquisition Act. Both these cases are therefore, distinguishable from the present case."

16. A comparison of the relevant provisions of the two statutes with which the learned Judges of the Punjab High Court and Wadia, J. of the Bombay High Court were concerned with the provisions of the statute, with which we have to deal in this appeal clearly establishes their close identity. In a way therefore, I feel bound by the authority of the Bench decision of the Punjab High Court. Mr. Kartar Singh Chawla learned counsel for the State however, challenges the correctness of that decision and has reinforced his argument not only by reference to the two decisions of Calcutta and Allahabad High Courts cited above but also by citing several other judgments from other High Courts including two later judgments of Calcutta High Court. To these judgments I may now turn for discussion.

17. The first case to which we have been referred is a decision of Lodge J. in *Sohan Lal Bahety v. Province of Bengal,*[5] Although the case relates to an award under Section 19 of the Defense of India Act, 1939 and was decided on 11th June 1946, the judgment of Bombay High Court in Hirji Virji's case which was delivered on 11th August 1944 and was reported in AIR 1945 Bombay 348 was not brought to the notice of the learned Judge at all and the counsel's arguments in the case had also proceeded mainly on the basis that temporary requisition of land under the provisions of Section 19 of the Defense of India Act was not "acquisition of land" for the purposes of Section 8 of the Court-fees Act. The points raised in the Bombay case were neither raised nor considered in this case.

18. As regards the true nature of the award made under Section 19, the view taken by the learned Judge was the same as in Bombay case and it was held that the award was neither a decree nor an order having the force of a decree.

19. The next case referred to by Mr. Chawla is *Satya Charan Sur v. State of West Bengal*[6] The case relates to an award under Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 and expressly dissents from the decision in Hirji Virji's case, AIR 1945 Bombay 348 and relies upon the judgment of Lodge J. in Sohan Lal Bahety's case, AIR 1946 Calcutta 524.

20. While holding that the award is not a decree nor is it an order having the force of

the decree and also that the award is by an arbitrator who is merely a persona designata and not a Court the learned Judge goes on to add:-

> "With very great respect, I dissent from the judgment of Wadia, J. Section 8 of the Court-fees Act does not use the expression "order" simpliciter but uses the expression "order relating to compensation 'under any Act' for the time being in force." Underlined (here in ' ') by myself.
>
> That being so, there is no reason why the expression "order" in Section 8 of the Court-fees Act must be treated as an order under Section 2 (14), Civil P. C."

21. The Bench decision in Kanwar Jagat Bahadur Singh, AIR 1957 Punjab 32 does not seem to have been brought to the notice of the learned Judge at all.

22. The other case cited by Mr. Chawla is *Srunguri Lakshminarayana Rao v. Revenue Divisional Officer Kakinada,*[7] . It is a Bench decision of Andhra Pradesh High Court which follows the view of Banerjee J. In Satya Charan's case, AIR 1959 Calcutta 609 and expressly dissents from the decisions of the Punjab and Bombay High Courts.

23. It appears to me that the reason which weighed with Banerjee J. in Satya Charan's case, AIR 1959 Calcutta 609 and with Manohar Pershad, C. J. and Mohamed Mirza J. in Srunguri Lakshminarayana Rao's case, AIR 1968 Andhra Pradesh 348 about Section 8 of the Court-fees Act not having used the expression "order" simpliciter but having instead used the expression "order relating to compensation under any Act for the time being in force" as being decisive of the matter in favor of the application of Section 8 to an appeal from the award, is fallacious. In a fiscal statute like the Court-fees Act what really matters is the charging provision of the Act under which a particular document would fall before it can be said what stamp it should bear. There is no denying the fact that the Court-fees Act is an enactment dealing with revenue and therefore, no amount is livable unless it clearly falls under the provisions of the Court-fees Act. Section 4 of the Court-fees Act prohibits the filing of any document in a High Court unless it is stamped with a fee chargeable within the 1st Schedule or II Schedule of the Act. This section makes it clear that a document is to be charged with fees in accordance with Schedules I and II of the Act.

24. In other words, the charging provisions are Sections 3 and 4 read with Schedules I and II. If there were no Schedules, Sections 7 and 8 themselves would be of no assistance to the State, as both of them are merely computing sections. It is under the provisions of the various Articles of the Schedules that the amount has to be determined.

25. Before a document can be filed in the High Court it must bear the court- fee chargeable within the first Schedule or Second Schedule of the Act. If it is a memorandum of appeal, it must either be an appeal from a decree or an order having the force of a decree or an order which is neither one nor the other. If it is neither an appeal from a decree nor an order having the force of a decree then it can only fall under Schedule II, Article 11. It does not make the slightest difference whether it is an order under one Act or another nor does it make any difference whether it is an order relating to compensation or some other matter.

26. Apart from Schedule II, Article 11 there is no other provision either in Schedule I or Schedule II which covers an order relating to compensation no matter under which Act such an order may be.

27. Section 8 no doubt provides for mode of computation of court-fee on an order relating to compensation but before any question of computation of court-fee can arise the order itself must fit in the strait-jacket of one or the other provision of Schedule I or II and this can only be if it is held that Section 8 is confined to orders as understood in the Civil P. C. and where any document does not fall within a decree or an order having the force of a decree it should be held to be covered by Art 11. of Schedule II.

28. The last case cited by Mr. Chawla is a Full Bench decision of Punjab High Court in *Daryodh Singh v. Union of India,* [8] The case has no bearing on the question arising for consideration in the present case as the question in that case was whether a memorandum of appeal under Section 54 of the Land Acquisition Act in which the only dispute is as to the apportionment of compensation *inter se* the various claimants and not as to its quantum, has to be stamped with a court-fee stamp in accordance with the provisions of Section 8 read with Schedule I, Article 1 (ad valorem basis) or with a fixed court-fee stamp under Article 11, Schedule II of the Court-fees Act. It is well settled that an order made under the Land Acquisition Act, is deemed to be a decree and an appeal against that order is therefore, an appeal from a decree.

29. The view of Section 8 taken by Wadia, J. also found favour with a Division Bench of Nagpur High Court in *Crown v. Chandrabhanlal,* [9] There is however, no discussion on the point in the judgment.

30. On a careful consideration of the cases cited at the Bar, I express my respectful dissent from the decisions of Calcutta High Court in AIR 1946 Calcutta 524 and AIR 1959 Calcutta 609 and with the decision of High Court of Andhra Pradesh in AIR 1968 Andhra Pradesh 348 and would prefer to follow the decision of Wadia, J., in AIR

1945 Bombay 348 and the Bench decision of the Punjab High Court in AIR 1957 Punjab 32.

31. The Preliminary Objection raised by Mr. Chawla is therefore, overruled and it is held that the memorandum of appeal in the present case is properly stamped in accordance with Article 11 of Schedule II.

32. This brings me to the merits of the controversy in appeal. The main contention urged by the learned counsel for the appellant is that the compensation awarded to the appellant has been determined on the basis of the market-value of the acquired land on 1-9-1939 with an addition of 40 per cent but the said provision is *ultra virus* the legislature. The appellant had addressed the same argument before the arbitrator on the basis of a Bench decision of the Punjab High Court in *Than Singh v. Union of India,* but it was rejected on the ground that under Article 31-B of the Constitution which was inserted by the Constitution (Fourth Amendment) Act, 1955, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any rights conferred by, any provision of Part III of the Constitution, and notwithstanding any judgment, decree or order of any Court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 being one of the Acts mentioned in the said Schedule, the constitutional mandate therefore, is that the provisos in question "shall be deemed never to have become void" and "shall ..... notwithstanding any judgment..... to the contrary ..... continue in force". The arbitrator therefore, held that the provisos continued to remain valid in spite of the aforementioned judgment of the Punjab High Court.

33. The argument of the learned counsel for the appellant however, is that the view of law taken by the arbitrator is erroneous in that the Act being a pre- Constitution Act both the provisos to Clause (e) of sub-section (1) of Section 7 of the Act are *ultra virus* Section 299 of the Government of India Act, 1935 and are therefore, liable to be ignored. The Act was passed by the Central Legislature in September 1948 when the powers, authority and jurisdiction of the Legislature were governed by the Government of India Act, 1935. Section 299 (2) of the Act was in the following terms:-

"(2) Neither the Federal or a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner, in which it is to be determined".

34. Any law passed during the time when sub-section (2) of Section 299 of the said Act was in force, which does not provide for payment of compensation for the property acquired has obviously to be struck down.

35. In support of his argument, the learned counsel relies upon a decision of R. S. Narula, J. in *Barkat Ram v. Union of India,* [11] where this very provision was struck down.

36. The question as to how far a provision like the one contained in the two provisos to Clause (e) of sub-section (1), Section 7, was violative of Article 31 (2) of the Constitution and was not saved by Article 31 (5) had come up for consideration before the Supreme Court in the *State of West Bengal v. Mrs. Bela Banerjee,* [12] The case before their Lordships was one under the West Bengal Land Development and Planning Act, 1948 which had been passed primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal and provided for the acquisition and development of land for public purposes including the purpose aforesaid. The Act provided that compensation of land acquired there under shall not exceed the market-value of land as on December 31, 1946. This provision was struck down by the Supreme Court on the ground that the fixing of market value on December 31, 1946 as the ceiling of compensation without reference to the value of the land at the time of acquisition was arbitrary and could not be regarded as due compliance in letter and spirit with the requirement of Article 31 (2). It was further held that Article 31 (2) requires that the principles which should govern the determination of the amount to be given to the owner of the property must ensure that what is determined as payable must be "compensation" that is, a just equivalent of what the owner has been deprived of.

37. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justifiable issue to be adjudicated by the Court.

38. The Supreme Court's judgment in Bela Banerjee's case, 1954-5 SCR 558 along with some other judicial decisions interpreting Articles 14, 19 and 31 led to the enactment of the Constitution (Fourth Amendment) Act, 1955. One of the important amendments made by the aforesaid Act purported to withdraw the question of adequacy of compensation under Article 31 (2) from the field of judicial determination, leaving it exclusively with the Legislature. In *P. Vajravelu Mudaliar v. Special Duty Collector, Madras,* their Lordships gave the same meaning to the expression "compensation" occurring in Article 31 (2) as given to it in Bela Banerjee's case, 1954-5 SCR 558 in spite of the amendment of Article 31 (2) in the year 1955 as stated above. Their Lordships also held that if the compensation payable for the property acquired is illusory or if the principles prescribed for ascertaining such compensation are not relevant to the value of the property at or about the time of its acquisition or if the principles are so designed and so arbitrary that they do not provide for compensation at all, it can be said that the Legislature made the law in fraud of its powers and in such a case the question of compensation is justiciable.

39. This decision was later followed in *Union of India v. Metal Corporation of India, 1967-1 SCR 255* and *Union of India v. Kamalabai Harjivandas Parekh,.*

40. Besides the cases mentioned above, there is the case of *N. B. Jeejeebhoy v. Assistant Collector, Thana*[15] which along with the case of Kamalabai Harjivandas Parekh, AIR 1968 Supreme Court 377 is almost directly in point so far as the present case is concerned. In the first case, the appellant's lands were acquired for the purpose of a housing scheme pursuant to a notification issued under Section 4 of the Land Acquisition Act 1894, in May 1948. Notifications under Section 6 of the Act were issued in July and August 1949 and possession of the lands was taken under Section 17 in December 1949. In the course of proceedings for the ascertainment of compensation payable to the appellants both the Land Acquisition Officer and the District Court, to which the matter was referred, awarded compensation in accordance with the provisions of the Land Acquisition (Bombay Amendment) Act, 1948 i. e. on the basis of the value of the lands as on January 1, 1948 and not upon the value on the date on which the notification under Section 4 had been issued.

41. On appeal, it was held by the High Court of Bombay that though the Bombay Amending Act was hit by Article 14, it was saved by Article 31-A and that under Section 299 of the Government of India Act, 1935 which governed the statute, the compensation for compulsory acquisition did not necessarily mean equivalent in value to what the owner had been deprived of.

42. On a further appeal to the Supreme Court it was held that ascertainment of compensation on the basis of the value of the lands acquired as on 1st January 1948, and not as on the date on which the notification under Section 4, Land Acquisition Act, 1894 was issued, in the absence of any relevant circumstance requiring the fixing of an anterior date, was arbitrary. It was further held that the provisions of Article 31 (2) of the Constitution and Section 299 (2) of the Government of India Act, 1935 relating to compensation were *pari materia* with each other and in the context of the payment or ascertainment of compensation there was no distinction between the two provisions justifying a different interpretation of each and for giving a more restricted meaning to Section 299 (2).

43. It was also held that the Bombay Amending Act being void at the inception was not an "existing law" within the meaning of Article 31 (5) or Article 31-A at the date of commencement of the Constitution and could not therefore, be saved by either of these provisions. It is true that if a particular statute attracts Article 31-A (1) (a) it cannot be invalidated on the ground that it does not comply with the provisions of Article 31 (2) of the Constitution namely, that the Act has not fixed the amount of compensation. But Article 31-A cannot have any bearing in the context of an Act which had no legal existence at the time the Constitution came into force. It does not purport to revive laws which were void at the time they were made.

44. The second case is under the Requisitioning and Acquisition of Immovable Property Act, 1952. The attack in that case was directed against Clause (3) (b) of section which compelled the arbitrator to measure the price for acquisition arrived at under Clause (a) with twice the amount of money which the requisitioned property would have fetched if it had been sold on the date of requisition and to ignore the excess of the price computed in terms of Clause (a) over that in terms of Clause (b). It was held that the basis provided by Clause (b) had nothing to do with just equivalent of the land on the date of acquisition nor was there any principle for such a basis. Clause (3) (b) was therefore, struck down as not satisfying the requirements of Article 31 (2) of the Constitution.

45. Judged in the light of the above cases, there can be no doubt that the measure of compensation adopted in the two provisos to Clause (e) of sub-section (1) of Section 7, of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 can by no means be described as a just equivalent. As has been observed by their Lordships of the Supreme Court in Kamalabai's case, AIR 1968 Supreme Court 377, "It is common knowledge that all over India there has been a spiraling of land prices after the

conclusion of the last world war although the inflation has been greater in urban areas, specially round about the big cities than in the mofussil. Land values in post-war India are many times the corresponding values before the conclusion of the last war."

46. To fix the market-value as on 1-1-1939 with an addition of 40 per cent and compel the arbitrator to adopt that as against the actual market-value of the acquired property when the notification under Section 4 was issued on 1-1- 1949, is clearly contrary to the provisions of Section 299 (2) of the Government of India Act, 1935. Both these provisos must therefore, be held to be *ultra vires* Section 299 (2) and are therefore, deemed to have never been on the Statute Book. The impugned provisos being void *ab initio* cannot be brought within the definition of "existing law" as contained in Article 366 (10) of the Constitution. Not being an existing law, they are not saved by Article 31 (5) of the Constitution nor Clause (6) of Article 31 is applicable to the Act as it was admittedly enacted more than 18 months before the commencement of the Constitution. The inclusion of the Act in the Ninth Schedule also does not save the impugned provision from being declared void or from having become void because the attack against the validity of the impugned provision is not directed on the ground of its being inconsistent with or taking away or abridging any of the fundamental rights contained in Part III of the Constitution. The attack is exclusively aimed on the ground that it is *ultra virus* Section 299 (2) of the Government of India Act, 1935 and is not saved as existing law after the coming into force of the Constitution.

47. The result of the foregoing discussion is that I would accept the appeal and set aside the award of the arbitrator dated 28-9-1960 and direct that the appropriate authority will now issue a proper notification re-appointing Mr. K. S. Sidhu or any other competent and qualified officer as arbitrator under Section 7 (1) (b) of the Act to take evidence of both the parties afresh and make an award for the compensation to which the appellant may be found to be entitled in accordance with law. The appellant will also have his costs in this Court from the respondent.

48. **Om Parkash, J.** :- I agree.

Appeal allowed.

Cases Referred.

1. AIR 1957 Punjab 32

2. AIR 1945 Bombay 348.

3. ILR 59 Cal 528

4. AIR 1939 Allahabad 127

5. AIR 1946 Calcutta 524

6. AIR 1959 Calcutta 609.

7. AIR 1968 Andhra Pradesh 348

8. 1966-68 Punj LR (D) 299 (FB).

9. 1966-68 Punj LR (D) 299 (FB).

10. AIR 1955 Punjab 55,

11. AIR 1966 Punjab 507

12. 1954 SCR 558 .

13. (1965) 1 SCR 614

14. AIR 1968 Supreme Court 377

15. , (1965) 1 SCR 636