struck down, is also not available to the petitioner. The case relied upon by the learned counsel for the petitioners, A.I.R. 1979 Supreme Court 49 in this behalf, has no applicability to the facts of the present case. That was a case where a person was detained and if one of the grounds of detention was found to be extraneous or irrelevant, the whole order was liable to be quashed. That was so because it was a question of one's personal liberty as guaranteed by Article 21 of the Constitution of India. As regards the present case, if the order could be sustained on any of the grounds for which the show cause notice was issued, this Court will not interfere in the impugned order as this Court was not sitting in appeal. After all, it was a matter of subjective satisfaction of the State Government to form an opinion on the basis of the allegations made against the Board. After considering the reply filed thereto, if an opinion was formed, it could not be successfully argued that the same was liable to be set aside because any one of the grounds was irrelevant. Similar view was taken by the Supreme Court in A.I.R. 1967 Supreme Court 1353 while dealing with a case under the City of Nagpur Corporation Act whereby the Corporation was superseded by the State Government. In that case, it was held that such order of the State Government superseding the Nagpur Municipal Corporation was based on two grounds, one of which was relevant and the other irrelevant. The fact that the second ground showed that in the opinion of the State Government, the ground was serious enough to warrant action under Section 408(1) of the Act was sufficient to establish that the Corporation was not competent to perform its duties under the Act.

(12) Thus, in view of the discussion above, the writ petition fails and is dismissed with no order as to costs.

P.C.G.

Before : A. L. Bahri, J.

SMT. RAVI KANTA,—*Petitioner.*

versus

THE LAND ACQUISITION TRIBUNAL, HISSAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 741 of 1988.

4th October, 1989.

Land Acquisition Act (1 of 1894)—*S.* 30—*Punjab Town Improvement Act*, 1922—*S.* 36—*East Punjab Urban Rent Restriction Act* (*III of 1949*)—*Acquired shop on rent with tenant under Rent Act—Tenant*

given right to purchase shop in same locality on reserve price—Apportionment for tenancy rights—Tenant entitled to nominal compensation.

Held, that at the time of acquisition, the tenant had the protection of the provisions of East Punjab Urban Rent Restriction Act and the fact that he had been compensated to some extent by allotment of another plot, though on sale, the right of the tenant to do business in the same locality also continues to be there. Earlier it was in the tenanted premises but now it will be in his own premises. Taking into consideration all these facts, as observed above, only a nominal compensation is required to be paid to the tenant. In such circumstances, only rule of thumb or a rough estimate can be applied. The fact cannot be lost sight of that now the tenant is to share the compensation which has been fixed taking into consideration the market value of the land and other benefits of compulsory acquisition. As noticed above, the High Court allowed compensation for the land at the rate of Rs. 900 per square yard with statutory benefits. In the writ petition filed by the tenant, he also claimed compensation as allowed/to be allowed by the High Court. He also moved application under section 18 of the Act. Thus, the tenant in the peculiar facts and circumstances of the present case is allowed to share compensation for 307 square yards of land to the extent of 1/8th at the rate as awarded by the High Court which is considered just and reasonable and the remaining amount of compensation i.e. 7/8th share to be given to the landlord.

(Para 7)

Petition under Articles 226 and 227 of the Constitution of India praying that:—

(*i*) *the records of the case may be called for;*

(*ii*) *a writ of Certiorari/mandamus or any other writ, order or direction quashing the impugned award (Annexure P-2) be issued;*

(*iii*) *any other appropriate writ, order or direction be issued, as this Hon'ble Court may deem fit, in the circumstances of the case;*

(*iv*) *condition of issuing advance notices of motion to the respondents, may kindly be dispensed with;*

(*v*) *filing of certified copies of Annexures be dispensed with;*

(*vi*) *costs of the writ petition may kindly be awarded to the petitioner.*

It is further prayed that the implementation of the impugned order (Annexure P-2) dated 29th September, 1987 passed by the Land Acquisition Tribunal, during the pendency of the writ petition regarding the amount awarded to the Respondent No. 2, to the extent of his share, may kindly be stayed.

M. L. Sarin, Sr. Advocate with Jaishree Thakur, Advocate, *for 14th September, 1989 only.*

Jaishree Thakur, Advocate, *for 22nd September, 1989 also, for the Petitioner.*

Neena Bansal, Advocate, *for 14th September, 1989 only, for Respondent No. 2.*

Ashok Aggarwal, Sr. Advocate with Mohinder Singla, Advocate, *for 22nd September, 1989 only, for the Respondents.*

C. B. Goel, Advocate with Madan Jassal Advocate, *for Respondent No. 3.*

JUDGMENT

A. L. Bahri, J.

(1) In C.W.P. No. 741 of 1988, the petitioner is Smt. Ravi Kanta, widow of Professor Muni Subrat Dass Jain (hereinafter to be called as the Landlord.) C.W.P. No. 5653 of 1988 has been filed by Bishan Sarup (hereinafter to be called as the tenant.) The dispute relates to land measuring 307 square yards over which two shops existed as raised by the landlord and some construction was subsequently raised by the tenant. The land in dispute along with other land and property situated at Hissar was acquired by the Improvement Trust, Hissar. Under section 36 of the Punjab Town Improvement Act (hereinafter to be called as the Act), notice was published in the Haryana Government Gazette on July 9, 1974 intending to acquire the land and the property. Afterwards, the Land Acquisition Collector announced the award on April 26, 1976. He referred the dispute of apportionment of the amount of compensation between the landlord and the tenant under section 30 of the Land Acquisition Act to the civil Court. The President, Tribunal Improvement Trust, Hissar announced his judgment on September 29, 1987 allowing one-eighth of the compensation of the land measuring 307 square yards to the tenant and the remaining to the landlord. With respect to compensation of the value of structures raised by the tenant on 227 square yards, the compensation was allowed to the tenant. This is how the landlord and

the tenant have challenged the award of the Tribunal in these two writ petitions *inter alia* making counter claims to the amount of compensation.

(2) On an area of 227 square yards, Bishan Sarup tenant had raised some construction. Thus, for the superstructures existing on 227 square yards, compensation so determined is solely to be paid to him and not to the landlord. The Tribunal fixed a sum of Rs. 1,55,520 on the method of capitalisation of annual rental value of total number of shops which were existing on 960 square yards of area. Adopting the same value, price for superstructure existing on 227 square yards would be Rs. 36,774 (i.e. Rs. $\frac{1,55,520 \times 227}{960}$ = 36,774). Thus, out of the total amount of compensation fixed for the land as well as the shops, the tenant Bishan Sarup would be entitled to a sum of Rs. 36,774 as compensation for superstructure raised by him on the tenanted land, with other benefits of compulsory acquisition under the Act.

(3) The compensation for the land was separately fixed by the Collector, the Tribunal on reference and thereafter by the High Court. The Collector allowed compensation at the rate of Rs. 100, Rs. 60 and Rs. 40 per square yard for 'A', 'B' and 'C' zones whereas the Tribunal at the rate of Rs. 400 and Rs. 350 per square yard for two belts and the High Court at the rate of Rs. 900 per square yard flat rate. The disputed land in these two writ petitions, as stated above, is 307 square yards which was let out to the tenant. The claim of the tenant is that he should be allowed compensation for his tenancy rights to the extent of one-third of the total amount of compensation fixed for the land. In support of this contention, reliance has been placed upon two decisions of this Court. In *Sohan Lal* v. *The State of Haryana and others* (1), a case relating to acquisition of agricultural land situated in Ambala City which was acquired by the Improvement Trust, such a question was raised. M. M. Punchhi, J. held that no material was placed in Court or seemingly before the Tribunal from which it could be determined that the share of the tenant in the compensation should have been less than one-third as awarded. While referring to the cases under the Punjab Land Security of Land Tenures Act where the tenant could purchase land of the big landowner under section 18 of the said Act, it was observed that in

(1) 1985 P.L.J. 126.

those cases proprietory interest of the landowners could not in any case be more than three fourth of the price was distinguished that the same could not be the interest of the tenant in the case of simple landlord and tenant relationship. *Punjab Wakf Board* v. *State of Haryana* (2), was also a case relating to agricultural land measuring 49 Acres 1 Kanal 15 Marlas situated in the revenue estate of Sirsa which was acquired under the provisions of the Land Acquisition Act. The tenant was allowed one-fourth of the compensation. The District Judge had ignored the case of the tenants on the ground that they were lesses and not tenants. It was held that even a tenant-at-will was entitled to a share in compensation with the landowners of the acquired land regarding his tenancy rights. The Division Bench judgments in *Piare Lal* v. *Col. H. H. Raja Sir Harinder Singh Brar* (3), and *Behari Lal* v. *Col. H. H. Raja Sir Harinder Singh Brar* (4), were referred to wherein the tenant was allowed one-fourth of the compensation taking into view the provisions of the Punjab Security of Land Tenures Act. The Supreme Court in *Amba Lal Mansukh Ram Joshi* v. *The Additional Special Land Acquisition Officer, Ahmedabad etc.* (5), may also be noticed where the amount of compensation was apportioned two-third and one-third in favour of the landowners and the tenant in case of permanent lease.

(4) The judgment noticed above are not at all helpful in deciding the case in hand. The land in dispute is not agricultural but is urban land where business was being carried on by the tenant in the shops and other construction raised by him. The principle that a tenant of agricultural land had the right to purchase the same under section 18 of the Punjab Security of Land Tenures Act and hence he had a marketable interest in the land is not applicable in the case of urban land like the land in dispute. In the urban area where provisions of the Rent Restriction Act are applicable, rights and liabilities of the landlord and the tenant are defined as well as restricted. At the outset, it may be stated that there is no right with such a tenant under any statute to purchase the tenanted premises. Without the written consent of the landlord, the tenant cannot transfer or alienate his interest therein to anybody else. Grounds of ejectment of a tenant are specified in the said Act

(2) 1988 P.L.J. 481.
(3) 1979 P.L.J. 474.
(4) 1979 C.L.J. 526.
(5) A.I.R. 1974 S.C. 591.

and protection is also available to the tenant that on payment of the rent regularly, he cannot be evicted therefrom except on proof of the grounds mentioned in the Act. Ordinary rights of a tenant under a contract are governed by the terms and conditions of the contract and after expiry of the period of tenancy, in view of the provisions of section 106 of Transfer of property Act, if the landlord continues accepting rent from the tenant, it would be a case of holding over i.e., the tenant would continue to enjoy the user of the tenanted premises on payment of the rent as agreed from month to month or from year to year, as the case may be. Since there was no material produced in this case that the tenancy was from year to year, in view of the provisions of section 106 of Transfer of property Act after expiry of the original period of tenancy or otherwise would be from month to month. As already noticed above, he would be a statutory tenant as, under the provisions of the Rent Restriction Act, as applicable, he could not be evicted from his tenanted premises except on proof of grounds mentioned in the said Act.

(5) The further question that arises for consideration is as to what should be the value of the tenancy rights of Bishan Sarup in the land in dispute. The claim of the landlord is, as briefly discussed above, that the tenant had only a right of user of the premises and that too on payment of rent. Since after acquisition, the tenant is not required to pay any rent and for user of the premises which have been acquired, under another scheme the tenant has been allowed a plot after development on the reserved price. Thus he has been fully compensated and he cannot claim any apportionment out of the compensation amount for the premises. It is in this context that it has further been argued that if some amount is fixed as value of the tenancy rights and given to the tenant, the landlord who was getting rent of the tenanted premises let out to the tenant is deprieved of the rent in future as well as compensation of the value of the tenancy rights which are to be paid to the tenant and not to the landlord. There is only one judgment on the subject which has been referred to on behalf of the parties wherein the question of determination of value of the tenancy rights in such like circumstances was considered.

(6) *M/s. Indarprastha Ice and Cold Storage Ltd., New Delhi* v. *The Union of India and others*, (6), was a case where the acquired

(6) A.I.R. 1987 Delhi 171.

land was under lease for a period of 40 years i.e., after every 10 years, right of renewal on enhanced rent was provided for. In such circumstances, it was stated that the owner could not be said to have intended to give up his right. The acquisition in that case was of open land and the remaining portion of the land was at the disposal of the lessee. In such circumstances, apportionment of compensation in the ratio of 7:1 between the owner and the tenant was considered justified. It may further be noticed that in that case the landlord had not applied for enhancement of the compensation but the tenant had. The Delhi High Court enhanced the rate of compensation and gave benefit of the Amending Act of 1984 and apportioned the compensation as stated above. It was observed as under:

> "Now, the question arises how the compensation of this acquired land is to be apportioned between the owner and the tenant or lessee. If we feel that the tenant is a kind of permanent fixture then perhaps he can get more compensation but if we treat him as a transitory property then a very small proportion of the compensation has to be paid to the lessee. The actual proportion will depend on the nature of the right of the lessee/tenant."

It was further held as under:—

> "Furthermore, if we treat the case as one covered by the Rent Control Act, then we have a further difficulty in assessing the compensation payable to the tenant. By definition a protected tenancy under the Rent Control Act prohibits the creation of transfer of sub-lease. So, the interest of a person protected by the Rent Control Act is not marketable being not saleable, i.e. non-transferable and non-assignable. So, though the protection to the tenant makes the right a safe one, it also prevents a legal transfer giving rise to a market value. This is the result of the prohibition contained in Section 14 of the Delhi Rent Control Act. If there is any assignment, transfer or creation of small interest the tenancy is liable to be determined and protection under the Act is withdrawn. Therefore, there is no market value. On the other hand, if we treat interest of the appellant as one under the lease then it will continue for a maximum 32 years which remained at the time of acquisition and allowing for the maximum increase being permitted at the increased rent. Even the period of 32 years is a very short one compared to the perpetual lease. Therefore, it follows that a very

small proportion of the compensation can be paid to the tenant and the major portion had to be paid to the owner. another important aspect of this particular case is that the factory and the other land have remained intact even after the removal of the area taken under acquisition. We feel that in the circumstances the amount determined is payable to the tenant lessee and the remaining to the owner seems a fair one and we have not been able to find any superior ratio or other reasoning which would help us to give a different ratio."

(7) Taking into consideration the facts of the present case as well as the ratio of the decision of Delhi High Court, only a nominal portion of the compensation of the acquired land is to be paid to the tenant and substantial amount has to be taken by the landlord. The tenant is not entitled to one-third or one-fourth of the amount of compensation on the basis of judicial decisions relating to agricultural land on which the tenant had a right to purchase under section 18 of the Punjab Security of Land Tenures Act as discussed above. The tenant is only entitled to one eighth share of the compensation as was allowed by Delhi High Court in the case of *M/s Indraprastha Ice and Cold Storage Ltd.* (supra). The right of the tenant in the said case was evaluated as it was contractual tenancy for a period of thirty years and that too renewable after every ten years on enhanced amount of rent. As already noticed above, the Delhi High Court also observed that in view of the Rent Restriction Act as applicable there, the tenant had no marketable interest. That is the position in the present case where it can legitimately be said that in view of the provisions of the Rent Restriction Act, the tenant had no transferable interest in the premises in dispute. The only right which was given to him was to use the tenanted premises on payment of agreed rent and in that respect was the protection available under the Act; he being a statutory tenant. In case one statute had given the right and the other has taken away, it cannot be said that the occupant of the premises was put to loss on that account. Even by repeal of the Rent Restriction Act, if the protection given to the tenant had been withdrawn, there would not have been any question of grant of compensation to the tenant. The position would have reverted to ordinary tenancy rights as are provided under the Transfer of Property Act. As noticed above, such right of tenancy would have been from month to month and terminable even on issuing a notice of reasonable time. Be that as it may, at the time of acquisition, the tenant had the protection of the provisions of East Punjab

Urban Rent Restriction Act and the fact that he had been compenstated to some extent by allotment of another plot, though on sale, the right of the tenant to do business in the same locality also continues to be there. Earlier it was in the tenanted premises but now it will be in his own premises. Taking into consideration all these facts, as observed above, only a nominal compensation is required to be paid to the tenant. In such circumstances, only rule of thumb or a rough estimate can be applied. The fact cannot be lost sight of that now the tenant is to share the compensation which has been fixed taking into consideration the market value of the land and other benefits of compulsory acquisition. As noticed above, the High Court allowed compensation for the land at the rate of Rs. 900 per square yard with statutory benefits. In the writ petition filed by the tenant, he also claimed compensation as allowed/to be allowed by the High Court. He also moved application under section 18 of the Act. Thus, the tenant in the peculiar facts and circumstances of the present case is allowed to share compensation for 307 square yards of land to the extent of 1/8th at the rate as awarded by the High Court which is considered just and reasonable and the remaining amount of compensation i.e. 7/8th share to be given to the landlord.

(8) The tenant was allowed a sum of Rs. 525 for removal of fixtures and Rs. 854 for disturbance. He would be paid the same as these items were not disputed.

(9) For the reasons recorded above, both the writ petitions are disposed of and respondents Nos. 1, 3 and 4 are directed to apportion the compensation and pay to the landlord and the tenant as discussed above. There will be no order as to costs.

P.C.G.

Before : K. S. Bhalla & S. D. Bajaj, JJ.

GURPARTAP SINGH,—*Petitioner.*

versus

SMT. SATWANT KAUR AND ANOTHER,—*Respondents.*

Criminal Misc. No. 1081-M of 1989

Criminal Misc. No. 6339 of 1989.

February 28, 1990

Code of Criminal Procedure 1973—*Ss.* 125(2), 354(1)(*b*) & 482—*Application for maintenance pendente lite by wife and minor*