FULL BENCH

Before, R. S. Narula, C. J., and M. R. Sharma and Rajendra Nath Mittal, JJ.

HARI KRISHAN ETC.,—*Petitioners.*

versus

THE UNION OF INDIA ETC.,—*Respondents.*

Civil Writ No. 608 of 1972.

May 30, 1974.

Land Acquisition Act (1 of 1894)—Sections 23 and 34—Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)—Section 8, denying 15 per cent solatium on compensation awarded and interest at 6 per cent—Whether violative of Article 14, Constitution of India—Interest Act (XXXII of 1839)—Secion 1—Amount of compensation for the acquisitioned land ascertained—Landowner—Whether entitled to interest thereon.

Held, that as a result of the provisions of section 7(3) of the Requisitioning and Acquisition of Immovable Property Act, 1952, only such property can be acquired under section 7(1) as has already been requisitioned by the Government. There is nothing in this Act to suggest that property which has been requisitioned cannot be acquired under the Land Acquisition Act, 1894. The Requisitioning Act, therefore, leaves it to the arbitrary and unguided discretion of the Government to acquire the requisitioned land of one owner under this Act by resort to section 7(1) and the requisitioned land of another landowner exactly similarly situated under the Land Acquisition Act. The acquisition under the Requisitioning Act is prejudicial to the owner of the requisitioned land because in case of acquisition under this Act the owner is deprived of his statutory right for payment of solatium and interest on the amount of compensation to both of which rights he is entitled if his lands are acquired under the Acquisition Act. Thus section 8(3)(a) of the Requisitioning Act enables the Government to discriminate in the matter of payment of compensation to similarly situated owners of requisitioned land. Moreover, the classification between requisitioned and non-requisitioned land for purposes of paying less to one and more to the other is not founded on any intelligible differentia. Nor has the difference in the two classes of owners any rational nexus with the object of acquisition of property for a public purpose. The comparative provisions of the two Acts enable the State to give to one owner different treatment from another similarly situated owner against the guarantee of equal protection of laws. Hence the provisions of section 8(3)(a) of the Requisitioning Act in so far as they deny 15 per cent by way of solatium on the compensation awarded and also deny interest at the rate of 6 per cent are violative of the provisions of Article 14 of the Constitution.

Held, that the provisions of section 1 of the Interest Act, 1939, vest in every Court the discretion to allow interest on all sums certain which are payable by one party to the other. The amount of compensation payable by

the Government to the landowner under the Requisitioning Act becomes a sum certain as soon as it is ascertained by the award of the Land Acquisition Collector. That Court has, therefore, the jurisdiction to award interest under section 1 of the Interest Act even in the absence of any specific provision in the Requisitioning Act. The proviso to section 1 of the Interest Act shows that the liability to pay interest created by the purview of that section is intended to fill in a gap in that respect which has been left in section 8 of the Act which creates the liability of the State to pay the amount of compensation to the owner. Hence notwithstanding the fact that the provisions of section 34 of the Land Acquisition Act have not been made applicable to the proceedings under the Requisitioning Act, the landowner is entitled to claim interest on the amount of compensation determined for his land acquired under this Act.

Case reerrfed by Hon'ble Mr. Justice Prem Chand Jain, vide *order datcd 28th August,* 1972 *to the Division Bench for deciding an important question of law involved in this case. The Division Bench consisting of* Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice P. C. Jain, vide *its order dated 16th August,* 1973 *further referred the case to Full Bench. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice Rajendra Nath Mittal, finally decided the case on 30th May,* 1974.

Petition under Article 226 *of the Constitution of India praying that a Writ in the nature of* Mandamus *or any other appropriate writ, order or direction be issued, directing the respondents to make payment of compensation to the petitioner as already determined and the provisions of Section* 8 *of the Act be declared to be illegal and void and further directing the respondents to pay to the petitioner solatium at the rate of* 15 *per cent of the compensation amount and also interest at the rate of* 6 *per cent upto the date of actual payment.*

K. P. Bhandari and I. B. Bhandari, Advocates, *for the petitioners.*

Kuldip Singh Bar-at-law and R. S. Mongia, Advocates, *for the respondents.*

JUDGMENT

R. S. Narula, C.J.—(1) The following question has been referred to this Full Bench in the circumstances hereinafter detailed:—

> "Whether the provisions of section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952, insofar as those provisions deny 15 per cent by way of solatium on the compensation awarded and also deny interest at the rate of 6 per cent, are violative of the provisions of Article 14 of the Constitution."

Late Dewan Hari Krishan Khosla had one-third share in the Hindu undivided family property in village Malo Majra, tahsil and district Patiala. The large tract of land which was requisitioned by the order of the District Magistrate, Patiala, dated March 17, 1967 (Annexure 'A'), under sub-section (1) of section 29 of the Defence of India Act, 1962, included 167 Bighas and 6 Biswas of land of Dewan Hari Krishan Khosla. 157 Bighas and 4 Biswas out of that land was later acquired by the Central Government under sub-section (1) of section 7 of the Requisitioning and Acquisition of Immovable Property Act (30 of 1952) (hereinafter called the Act) by publication of a notice to that effect in the Punjab Government Official Gazette, dated August 29, 1969 (Annexure 'B'). The compensation payable to Hari Krishan Khosla for the acquired land was determined by the order of the Special Land Acquisition Collector-cum-Competent Authority, Jullundur (Annexure 'C'), to be Rs. 1,62,109.37 P., and an offer of payment of the same was made to Hari Krishan Khosla. He was asked to communicate his acceptance or otherwise of the above-said offer. In his written reply, dated July 22, 1971 (Annexure 'D'), Hari Krishan Khosla requested that the amount awarded by the Land Acquisition Collector may be paid to him under protest. At the same time he objected to the inadequacy of the amount awarded to him, and applied to the Government for the appointment of an arbitrator and claimed interest at the rate of six per cent per annum. Annexure 'E' to the writ petition is a copy of his application for the appointment of an arbitrator containing objections against the award, dated April 24, 1971. The competent authority under the Act refused to pay even the amount of compensation determined by the Land Acquisition Collector on the plea that the claimant had submitted objections for enhancement of the compensation. Not having received any redress at the Government's hands, Hari Krishan Khosla filed this writ petition.

(2) A learned Single Judge of this Court (P. C. Jain, J.) before whom the petition came up for hearing framed the above-quoted question and directed that a larger Bench should hear the case. A Division Bench of this Court (Sandhawalia and Jain, JJ.) before whom the petition was listed for hearing passed order, dated August 16, 1973, directing the case to be placed before the learned Chief Justice for constituting a still larger Bench to hear it. In the meantime Dewan Hari Krishan Khosla died. Two of his sons, namely Avtar Krishan Khosla and Chand Krishan Khosla submitted an application to this Court praying for their names being substituted in place of the name of their father as petitioners in the case, on the ground that the share

of Hari Krishan Khosla in the amount of compensation had devolved upon the present claimants according to the will of the deceased. That application was allowed by our order, dated May 6, 1974, to the extent of directing the names of Avtar Krishan Khosla and Chand Krishan Khosla being substituted for the name of their deceased father.

(3) The constitutionality of section 8(3)(a) of the Act has been questioned on the solitary ground that it violates the guarantee of equal protection of laws under Article 14 of the Constitution, inasmuch as the acquisition of petitioner's land under the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act) would have entitled them to obtain from the respondents at least 15 per cent more on the amount of compensation awarded to them (awarded to their father) on account of solatium and 6 per cent more on account of interest, but the said reliefs had been denied to the petitioners on the lone ground that they are not entitled to either the solatium or the interest under the Act. In order to appreciate the submissions made by the learned counsel on this issue, it is necessary to notice some of the salient features of the Act. "Competent authority" is defined in section 2(b) of the Act to mean any person or authority appointed by the Central Government by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification. Sub-section (1) of section 3 authorises the competent authority to requisition any property which might be needed for any purpose of the union. Section 7(1) states that where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, acquire the same by merely publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the property. We are not concerned with the detail of the procedure which is given in the remaining part of section 7(1) for the purpose of answering the question which has been referred to us. Sub-section (2) of section 7 provides that when a notice under sub-section (1) is published in the Official Gazette, the requisitioned property vests automatically in the Central Government free from all encumbrances, and the requisitioning of the property shall thereupon come to an end. Sub-section (3) of section 7 is in the following words:—

> "No property shall be acquired under this section except in the following circumstances, namely:—
>
> (a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or

partially at the expense of the Central Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property."

The principles and method of determination of compensation are laid down in section 8 of the Act in the following terms:—

"(1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as a Judge of a High Court;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and

in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;

(f) when there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons then one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this section.

(2) The amount of compensation payable for the requisitioning of any property shall consist of—

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:—

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damage (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(3) The compensation payable for the acquisition of any property under section 7 shall be—

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less."

(4) Clause (b) of sub-section (3) of section 8 (reproduced above) was struck down by the Supreme Court in *Union of India* v. *Kamalabai Harjivandas Parekh and others* (1) as being violative of Article 31(2) of the Constitution. It was held:—

"Clause (a) of Section 8(3) lays down a principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition. Clause (b) however directs the arbitrator to measure the price arrived at in terms of 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). The position bears a close similarity with the facts in *State of West Bengal* v. *Mrs. Bela Banerjee* etc. (2) (supra) where the legislature directed that the excess of the value of the land arrived at in terms of the Land Acquisition Act over the value as on 31st December, 1946 was to be ignored. The basis provided by Clause (b) has nothing to do with the just equivalent of the land on the date of acquisition nor is there any principle for such a basis. We cannot therefore accept the proposition that the impugned clause satisfies the requirements of Article 31(2) of the Constitution."

Mr. Bhandari, learned counsel for the petitioners, has now sought to attack the constitutionality of clause (a) of section 8(3). He has argued that as soon as section 8(3) is wiped out the quantum of compensation payable to the petitioners would have to be determined under section 8(1)(e) of the Act on the basis of what is just having regard to the circumstances of the case without being hampered by the restrictions contained in section 8(3)(a). It was submitted by Mr. Bhandari that the impugned provision is hit by Article 14 of the Constitution because it discriminates between the requisitioned lands *inter se* as there is nothing in the Act or in the Land Acquisition Act

(1) A.I.R. 1968 S.C. 377.

(2) A.I.R. 1954 S.C. 170=1954 S.C.R. 558.

to guide the Government in the matter of choosing the Land Acquisition Act or this Act for acquiring the land requisitioned under section 7(1) of this Act. While it cannot be disputed that acquisition under this Act is comparatively prejudicial to the owner of the requisitioned land because in case of acquisition under this Act the owner is deprived of his statutory right for payment of solatium and interest on the amount of compensation to both of which rights he is entitled under the Land Acquisition Act. Acquisition under the Land Acquisition Act as well as under this Act can be resorted to only for a public purpose. Though the purpose for which land of two different owners may be acquired under two different Acts may be the same, the compensation to which the person whose land is acquired under this Act is entitled will be substantially less than the compensation to which the other person would be entitled as of right. In support of this argument reference has been made to the judgment of the Supreme Court in *Om Parkash and another* v. *State of U.P. and others* (3). The constitutionality of certain modifications made in the Land Acquisition Act by the U.P. *Nagar Mahapalika Adhiniyam*, 1959, and the effect of the repeal of the U.P. Town Improvement Act, 1919 (hereinafter referred to as the Town Improvement Act), on a particular housing scheme was called in question in that appeal in the following circumstances. Property of Om Parkash and another (appellants to the Supreme Court) was included in the area covered by the housing scheme prepared under section 42 of the Town Improvement Act. Notice under section 9 of the Land Acquisition Act was issued by the Collector. Before Om Parkash, etc. could file their claim with the Collector, and before any award could be made, the Town Improvement Act was repealed and replaced by the U. P. Nagar Mahapalika Adhiniyam resulting in the supersession of the Trust by the Nagar Mahapalika, Allahabad. Though possession was taken from Om Parkash, etc., they did not accept the award and a reference to the District Court was made on their application. During the pendency of the reference they filed a writ petition in the Allahabad High Court challenging the vires of sections 372 and 376, and Schedule II to the Adhiniyam, whereby section 23 of the Land Acquisition Act had been modified on the ground that those modifications were violative of Article 14 of the Constitution. The attack against the constitutionality of the said provision failed in the High Court. In the appeal preferred to the Supreme Court, the constitutionality of the proviso added to section 23(2) of the Land Acquisition Act (to the

(3) (1974) 1 S.C.C. 628.

effect that the sub-section shall not apply to any land acquired under Chapter XIV of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, except in certain specified contingencies) was questioned on a ground similar to that which has been canvassed before us. It was argued that the proviso was void because the effect of the addition of the proviso to section 23 (2) was that 15 per cent solatium over the value assessed which is awarded when the land is compulsorily acquired by the Government under the Land Acquisition Act would not be admissible if the same land is acquired for the purpose of a scheme under Chapter XIV of the Adhiniyam. The Supreme Court allowed the appeal with the following observations:—

> "There can be no dispute that the Government can acquire land for a public purpose including that of the Mahapalika or other local body either under the unmodified Land Acquisition Act, 1894, or under that Act as modified by the Adhiniyam. If it chooses the first course, then the land-owners concerned will be entitled to better compensation, including 15 per cent solatium, the potential value of the land etc. Nor will there be any impediment or hurdle such as that enacted by section 372(1) of the Adhiniyam in the way of such land-owners, dissatisfied by the Collector's award to approach the Court under section 18 of that Act. If the Government for the same purpose, resorts to the Land Acquisition Act as modified by the Adhiniyam, the land-owner(s) concerned will suffer from all the disabilities or restrictions envisaged by the modifications. In this way, the impugned legislation enables the Government to discriminate in the matter of acquiring land between similarly situated land-owners.
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> The impugned modifications do not satisfy the well-known tests of reasonable classification which is permissible for the purpose of legislation. It is not founded on any intelligible differentia nor has this differentia a rational nexus with the object sought to be achieved, namely, compulsory acquisition of land for a public purpose. It is not necessary to dilate further on this point as this matter stands concluded by this Court's decision in *Nagpur Improvement Trust and another* v. *Vithal Rao and others* (4) by the ratio of

(4) A.I.R. 1973 S.C. 689.

which we are bound. It will be sufficient to close the discussion by extracting here what Sikri C.J. speaking for the Court in *Nagpur Improvement Trust's case* (4) said:—

'Can the Legislature say that for a hospital land will be acquired at 50 per cent of the market value, for a school at 60 per cent of the value and for a Government building at 70 per cent of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right.————' ".

(The rest of the passage is being quoted by me a little later when referring to the dictum of their Lordships of the Supreme Court in the *Nagpur Improvement Trust's case*).

Though counsel for the petitioners invited our attention to the earlier judgments of the Supreme Court in *P. Vajravelu Mudaliar* v. *The Special Deputy Collector for Land Acquisition, West Madras and another* (5) *and in Balammal and others* v. *State of Madras and others* (6), it does not appear to be necessary to refer in any great detail to those earlier judgments in view of the subsequent authoritative pronouncement of their Lordships in *Nagpur Improvement Trust and another* v. *Vithal Rao and others* (4) which was later followed in the *case of Om Parkash and another* (3) (supra). In the *case of Balammal and others* (6) (supra), the Board constituted under the Madras City Improvement Trust Act (37 of 1950) acquired some land under section 71 of that Act. Section 73 of that Act subjected the provisions of the Land Acquisition Act to the modifications specified in the Schedule to that Act for certain specific purposes. The result of the modifications was that the persons whose lands were compulsorily acquired under the Madras Act of 1950 were deprived of the right of the solatium to which they would have been entitled if their lands were acquired under the Land Acquisition Act. Their Lordships of the Supreme Court struck down clause 6(2) of the Schedule to the Madras Act of 1950 read with section 73 of that Act which deprived land-owners of the statutory right to solatium at the rate of 15 per cent of the market

(5) A.I.R. 1965 S.C. 1017.

(6) A.I.R. 1968 S.C. 1425.

value of the land, and held that such owners were entitled to the solatium in question under sub-section (2) of section 23 of the Land Acquisition Act in consideratoin of compulsory acquisition of their lands as the land-owners would have been entitled to such solatium if their lands had been acquired under the Land Acquisition Act, and a clear case of discrimination infringing the guarantee of equal protection of the laws had been made out as the provision depriving the land-owners of the solatium was more prejudicial to the owners of the lands which had been compulsorily acquired. The *case of Nagpur Improvement Trust and another* (4) (supra) related to an exactly similar provision. In the Nagpur Improvement Trust Act wherein new clause (3)(a) had been added to section 23, and a proviso had been added to section 23(2) of the Land Acquisition Act by operation of the provisions of sub-paragraphs (2) and (3) of paragraph 10 of the Schedule to that Act, sub-paragraphs (2) and (3) of paragraph 10 of the Schedule were struck down by their Lordships of the Supreme Court as being violative of Article 14 of the Constitution. It was held that the said provisions enabled the State Government to discriminate between one owner equally situated from another owner, and did not, therefore, fulfil the test of reasonable classification laid down in *Nandeshwar Prasad* v. *U. P. Government* (7). The Supreme Court found that it was quite clear that the Government could acquire property for a housing accommodation scheme either under the Land Acquisition Act or under the Improvement Trust Act, and that being so, it enabled the State Government to discriminate between one owner equally situated from another owner, particularly when all the objects for which land could be acquired under the Improvement Trust Act or under the Land Acquisition Act were public purposes, and it does not matter to the owner whether the acquisition is for one public purpose or the other. During the course of the judgment their Lordships observed as below :—

> "It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recepient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an

(7) A.I.R. 1964 S.C. 1217.

Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."

(5) A somewhat similar question came up for consideration before a Full Bench of this Court in *Harbans Kaur and others* v. *Ludhiana Improvement Trust, Ludhiana, and others* (8). It was held by the Full Bench that the denial of the benefits of the Land Acquisition Act to the persons whose lands were acquired under the Punjab Town Improvement Act would amount to violation of Article 14 of the Constitution, and, therefore, all benefits under the Land Acquisition Act should be allowed to the persons whose lands and property are acquired under the Punjab Town Improvement Act.

(6) *In Union of India* v. *Kantilal Nihalchand* (9), a Division Bench of the Bombay High Court had the opportunity to consider the validity and vires of section 7 of the Act. The difference in the quantum of compensation payable under the two Acts to identically situated owners of requisitioned land for their such land acquired by the Government was made the basis of attack on the constitutionality of that provision. That matter had originally come up before a learned Single Judge (Tulzapurkar, J.) of the Bombay High Court. The learned Judge held:—

"In my view, therefore, the two sets of procedure, one under the Act of 1952 and the other under the general enactment viz., the Act of 1894, are available to the Central Government for the purpose of picking and choosing some out of such requisitioned properties for adoption of the more prejudicial procedure prescribed under the Act of 1952, and since it is left to the unguided option of the Central Government to make its choice, section 7 of the Act must be

(8) I.L.R. 1973 (1) 705=1973 P.L.R. 511.

(9) 1972 B.L.R. 155.

regarded as discriminatory and violative of Article 14. The impugned order, therefore, deserves to be set aside."

In the Union of India's appeal against the above-mentioned judgment, an argument was advanced which has again been pressed into service by the learned counsel for the Government before us, which argument and the decision of the Bombay High Court thereon may, therefore, be noticed from the following passage in the Division Bench judgment of the Bombay High Court :—

"Now, it is true that the scheme in section 7, sub-section (3), clearly provides that an order for acquisition of the properties requisitioned under the Act can only be made in the circumstances mentioned in clauses (a) and (b) of sub-section (3). We have already reproduced the said clauses and the effect thereof may be stated as follows:

Though sub-section (1) provides for and enables acquisition of requisitioned property under the Act for a public purpose, generally this power is directed to be exercised only in cases of two types of requisitioned properties, viz., (1) where works are constructed and are required to be acquired, and (2) where the cost of restoring the property to its original condition is excessive. The question is whether the above scheme contained in section 7 can at all be called a special statute to obliterate and repeal completely the powers available to Government under the 1894 Act to acquire all sorts of properties of any kind for a public purpose. The question resolves itself into the following: 'Is it permissible to hold that these two types of requisitioned properties which can be now acquired under the Act of 1952 cannot be acquired at all for public purpose under the Act of 1894?' This is again merely on the ground that by implication the scheme for acquiring property for public purpose under the 1894 Act is completely repealed by the Act of 1952 in respect of these two types of requisitioned properties. The proposition has appeared to us, *prima facie*, unsustainable. The Legislature was not contemplating repeal of the 1894 Act when it was making an enabling

provision for acquisition of these two types of requisitioned properties under section 7(1) of the present Act for many other reasons than those contained in clauses (a) and (b) of sub-section (3) of section 7 as properties already requisitioned may be needed for public purpose. There is nothing in the language of the relevant provisions of the Act of 1952 which makes acquisition of the properties requisitioned under this Act or under the 1894 Act illegal and prohibited either expressly or impliedly. The provisions of the two Acts are consistent with each other and can be accordingly enforced at the same time. The co-existence of the provisions in the two Acts and the continued application of the provisions in the 1894 Act to the land requisitioned under the present Act is not destructive of the provisions in sub-section (3) of section 7 as submitted on behalf of the Union of India. The language of section 7 is in affirmative terms and accordingly it does not indicate that the Legislature had the intention to repeal the scheme of acquisition of the very same lands and properties under the 1894 Act. Applying the relevant tests laid down by the Supreme Court in the case of the *N. I. Caterers Ltd. etc.* v. *State of Punjab, etc.* (10), we find it impossible to accept the contentions advanced by Mr. Nariman in support of the validity of the provisions of section 7."

Mr. Kuldip Singh, the learned counsel for the Union of India, tried to persuade us to hold that *Kantilal Nihalchand's case* (9) (supra) has not been correctly decided by the Bombay High Court, and that we should take a view different from that taken by the three learned Judges of that Court (by one at the initial stage, and by the other two at the appellate stage). He again laid emphasis on the provisions contained in sub-section (3) of section 7 of the Act (already quoted in an earlier part of this judgment), and argued that the power to acquire property under the Act having been directly confined within the limits laid down in section 7(3), the result would be that only such property can be acquired under the Act as has already been requisitioned by the Government thereunder. On that

(10) A.I.R. 1967 S.C. 1581.

basis it was argued that there is a reasonable classification between the owners of properties requisitioned under the Act on the one hand, and owners whose properties have not been requisitioned under the Act on the other; and, therefore, the impugned provision in the Act does not violate Article 14 of the Constitution. We are unable to find any force in this argument of Mr. Kuldip Singh for three reasons. Firstly, to the list of the three things which do not concern the owner of the land in the matter of payment of compensation to him (for his acquired land) mentioned by their Lordships of the Supreme Court in *Vithal Rao's case* (4) (relevant portion already quoted) can safely be added the fourth matter of the property having already been requisitioned or not having been requisitioned. The difference between the requisitioned property and the other property for the purpose of the two being classified separately has no rational relationship with the object of acquiring the property (which is for a public purpose in all the cases), and, therefore, the second condition precedent for satisfying the equality clause contained in Article 14 of the Constitution is in any case not satisfied by the impugned provision. The fact that the owner of requisitioned property has been receiving compensation (which is equivalent of the market rent) does not make any difference as the owner of a non-requisitioned property may indeed be getting even a higher rate of rent from a private tenant before his property is acquired. Secondly, the provision for depriving the landowners of solatium and interest in case of acquisition of their property under the Act in contradistinction to owners whose property is acquired under the Land Acquisition Act (who have the right to claim and get solatium and interest) cannot be justified on the basis of the positive terms of section 7(3) of the Act. There is nothing in the Act to suggest that property which has been requisitioned under the Act cannot be acquired under the 1894 Act. The argument of Mr. Kuldip Singh interpreting section 7(3) in that manner is obviously fallacious. The provision merely statets that property which is not requisitioned cannot be acquired under the Act. That cannot possibly imply that the reverse of it must also be true, that is, the property which is requisitioned under the Act cannot be acquired under the Land Acquisition Act. There is nothing in the language of any provision contained in the 1952 Act which prohibits or makes illegal the acquisition under the 1894 Act of any property requisitioned under this Act. The result is that the Act leaves it to the arbitrary and unguided discretion of the Government to acquire the requisitioned land of one owner under the Act by

resort to section 7(1) of the Act itself, and the requisitioned land of another exactly similarly situated under the Land Acquisition Act. Thirdly, the cases cited by Mr. Kuldip Singh [*Union of India* v. *Kamalabai Harjivandas Parekh and others* (1), and *Ballabhdas Mathuradas Lekhani and others* v. *Municipal Committee, Malkapur* (11)] are clearly distinguishable from the case in hand. Section 53 and 67 of the Bombay Town Planning Act (27 of 1955) were held by the Supreme Court to be *intra vires* in the *State of Gujarat* v. *Shantilal Mangaldas and others* (12), on the ground that there were two distinctly separate provisions, one for acquisition by the State Government, and the other in which the statutory vesting of land operated as acquisition for the purpose of town planning by the local authority, and there was no option to the local authority to resort to one or the other of the alternative methods which resulted in acquisition. As already illustrated, that is not so in the present case.

(7) In *Kamalabai Harjivandas Parekh's case* (1) (supra), no exception was taken to the mode for determination of compensation prescribed by clause (a) of sub-section (3) of section 8 of the Act. Only the mode prescribed in clause (b) was held to be arbitrary. After a careful consideration of the matter we are of the firm view that violation of Article 14 of the Constitution is writ large on the face of section 8(3)(a) of the Act as it enables the Government to discriminate in the matter of payment of compensation to similarly situated owners of requisitioned land. We are further of the view that even the classification between requisitioned and non-requisitioned land for purposes of paying less to one and more to the other is not founded on any intelligible differentia. Nor has the difference in the two classes of owners any rational nexus with the object to acquisition of property for a public purpose. It is apparent to the naked eye that the comparative provisions of the two Acts (the 1952 Act and the 1894 Act) enable the State to give to one owner different treatment from another similarly situated owner and the one who is discriminated against in this respect is entitled to successfully invoke the guarantee of equal protection of laws.

(8) There is an additional argument in favour of the petitioners so far as their claim for interest at six per cent per annum is con-

(11) A.I.R. 1970 S.C. 1002.

(12) A.I.R. 1969 S.C. 634.

cerned. In case of acquisition under the Land Acquisition Act, the provision for payment of interest is made by section 34 of that Act which reads as below:—

> "When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per cent per annum from the time of so taking possession until it shall have been so paid or deposited."

There is no such provision in the 1952 Act. Section 1 of the Interest Act (XXXII of 1839), however, provides:—

> "It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law."

The language of the above-quoted provision of the Interest Act is more than clear. It vests in every Court the discretion to allow interest on all sums certain which are payable by one party to the other. The amount of compensation payable by the Government to the land-owner under the Act becomes a sum certain as soon as it is ascertained by the award of the Land Acquisition Collector. That Court has, therefore, the jurisdiction to award interest under section 1 of the Interest Act even in the absence of any specific provision in the 1952 Act. The proviso to section 1 is also significant. That shows that the liability to pay interest created by the purview of that section is intended to fill in a gap in that respect which has been left in section 8 of the Act which creates the liability of the State to

pay the amount of compensation to the owner. In *Bengal Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji and others* (13), it was held that the proviso to section 1 of the Interest Act applies to a case in which the Court of equity exercises jurisdiction to allow interest, though no other statute provides for its payment. By making the said equitable rule part of the Interest Act, the power of the Court of equity in respect of payment of interest has been vested in all Courts in the country. The authoritative pronouncement of their Lordships of the Supreme Court in *Satinder Singh* v. *Umrao Singh and another* (14) leaves no doubt in this established proposition of law. In that case interest had been claimed on the amount of compensation for the land requisitioned by the Punjab Government under the East Punjab Requisition of Immovable Property (Temporary Powers) Act (48 of 1948). It was held by their Lordships that where the lands are acquired under the Land Acquisition Act, and the claimants are awarded compensation, the claimants are entitled to interest on the amount of the compensation for the period between the taking of the possession of the land by the State and the payment of compensation by it to the claimants, that the right to receive the interest takes the place of the right to retain possession and the application of the said rule is not intended to be excluded by the Punjab Act 48 of 1948, and that the mere fact that section 5(3) of the Punjab Act makes only section 23(1) of the Land Acquisition Act of 1894 applicable cannot lead to the inference that the Act intends to exclude the application of this general rule in the matter of payment of interest. It was observed as below:—

> "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. The fact that section 5(1) deals with compensation both for requisition and acquisition cannot serve to exclude the application of the general rule.

(13) A.I.R. 1938 P.C. 67.

(14) A.I.R. 1961 S.C. 908.

Section 2 of the Interest Act, 1839, 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. The operative provisions of section 1 of the 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 section 1."

The judgment of the Supreme Court in *Satinder Singh's case* (14) (supra) is on all fours so far as the claim of the petitioners for interest (notwithstanding the provisions of section 34 of the Land Acquisition Act not having been made applicable to proceedings under the Act) on the amount of compensation is concerned. The rate at which the interest has to be allowed is the current bank rate. It is the common case of the parties that if the Court holds that the Government is liable to pay interest, it would be payable at six per cent per annum only. That is also justified by reference to section 34 of the Land Acquisition Act. The claim of the petitioners for interest is sustainable on this additional ground.

(9) In view of what is hereinabove stated, we answer the question referred to us (which has been reproduced in the opening part of this judgment) in the affirmative. Clause (b) of sub-section (3) of section 8 having already been struck down by the Supreme Court in *Kamalabai Harjivandas Parekh's case* (1) (supra), and clause (a) in so far as it denies to the owner of the requisitioned property whose land is acquired under section 7(1) of the Act 15 per cent by way of salatium and interest at the rate of six per cent on the amount of compensation having been found by us to be violative of Article 14, the whole of clause (3) of section 8 stands wiped out. The result is that an arbitrator appointed under clause (c) of sub-section (1) of section 8 of the Act shall determine such amount of compensation under clause (e) of that sub-section which may appear to him to be just. Section 8(1) (e) of the Act providing for determination of just compensation would not be hit by Article 14 of the Constitution as the principles for determination of such compensation are readily available in section 23 of the Land Acquisition Act, and the same should be adopted by the arbitrator for determining the amount.

(10) Though only the legal question reproduced earlier was referred to this Full Bench, counsel for the parties indicated that no other point arises in the writ petition and that instead of merely answering the question, we should dispose of the petition itself. Another matter which needs mention before parting with this case is that at the outset (of the arguments) we asked Mr. Kuldip Singh Bhandari, learned counsel for the petitioners, if he wanted to attack the very acquisition of the property, but he candidly submitted that he had neither asked for the same in his petition, nor wanted any such relief. He submitted that the only effective relief prayed for by his clients is that they should be held to be entitled to the payment of solatium and interest. Even otherwise, the scope of the question referred to us does not go beyond the contention of Mr. Bhandari. We have, therefore, confined our decision to the vires of section 8(3) only. Clauses (a) and (b) having been struck down, nothing left in sub-section (3) of section 8 survives.

(11) For the foregoing reasons we allow this petition and hold that section 8(3)(a) of the Requisitioning and Acquisition of Immovable Property Act (30 of 1952) is ultra vires Article 14 of the Constitution, and that the petitioners are entitled to claim and receive from the Central Government solatium at 15 per cent per annum on the amount of compensation allowed to them for their land which has been acquired by the Government, and also interest at six per cent per annum on the amount of compensation. In the circumstances of the case the parties are left to bear their own costs.

M. R. SHARMA, J.—(12) I entirely agree with my Lord the Chief Justice and have nothing to add.

R. N. MITTAL, J.—I agree.

B. S. G.

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