no legal or constitutional bar upon an Improvement Trust demanding enhanced price for plots sold or allotted by it consequent upon increase in the compensation awarded to the owners of the acquired land in proceedings under the Land Acquisition Act, if according to the terms and conditions of such allotment and sale, it is empowered to do so, as in the present case.

(19) All these writ petitions are consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.

R.N.R.

Before : G. R. Majithia, J.

VIJAY KUMAR AND ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3489 *of* 1988.

15th September, 1989.

Constitution of India, 1950—*Art.* 226—*Writ of certiorari—Scope of such writ—No objection to the jurisdiction of the President of Tribunal raised before Tribunal—Party debarred from raising such objections in the High Court.*

Held, that a writ of certiorari can be issued for correcting error of jurisdiction committed by inferior courts or Tribunals; these are cases where the orders passed by inferior courts or Tribunals are without jurisdiction or is in excess or as a result of failure to exercise jurisdiction. A writ can be issued where the Court or Tribunal acts illegally or improperly or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. A finding of fact recorded by the Tribunal cannot be challenged in writ proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

(Para 7)

Held, that the claimant did not raise objection before the President of the Tribunal that the proceedings could not legally be conducted by him in the absence of the Assessors. They will be deemed to have acquiesced in the jurisdiction of President of Tribunal and the objection cannot be raised in writ jurisdiction.

(Para 8)

Petition under Articles 226/227 of the Constitution of India praying that after sending for the records of this case, this Hon'ble Court may be pleased to:—

(i) issue an appropriate writ/order modifying the judgement/ order (Annexure P-8) to the extent as prayed for in the claim petition.

(ii) to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

(iii) filing of certified copies of Annexure P-1 to P-8 may please be dispensed with;

(iv) service of advance notice on the respondents may please be dispensed with;

(v) costs of the petition be awarded.

M. L. Sarin, Sr. Advocate with Pankaj Sharma, Advocate and Jaishree Thakur, Advocate, *for the petitioners in C.W.P.* 3489 *and* 8172 of 1988.

C. B. Goel, Advocate with Madan Jassal, Advocate, *for the Respondents.*

V. K. Bali, Sr. Advocate with Anil Khetarpal and Rajiv Vij, Advocates, *for the Petitioners in other C.W.Ps.*

JUDGMENT

G. R. Majithia, J.

(1) This judgment will dispose of Civil Writ Petitions Nos. 3488 to 3492 of 1988 and 2862, 2863, 2865, 2866, and 4159 of 1989 filed by the claimant-landowners, and Civil Writ Petition Nos. 8084, 8149 and 8172 of 1988 filed by the Karnal Improvement Trust.

(2) The Petitioners in all the petitions have challenged the award of the President, Tribunal under the Town Improvement Act, 1922, Karnal.

(3) I will refer to the facts as given in Civil Writ Petition No. 3489 of 1988. The Karnal Improvement Trust (in short the Trust),—*vide* resolution dated August 20, 1973, resolved to develop

a scheme (Scheme No. 37), for an area measuring 1215 Sq. Yards, Pursuant to the resolution, notification under section 36 of the Punjab Town Improvement Act (for short the Act), was issued on September 7, 1975, and the declaration under section 42 of the Act on January 14, 1976. The land sought to be acquired was initially owned by the Provincial Government and was sold to Sarvshri Palli Mal Bansi Lal in one-half share and the other half to Nawab Qutab Din and Ghulam Sharif Khan in the year 1854. The purchasers named their respective areas as Palli Ganj and Nawab Ganj, respectively. It was in a rectangular shape having four gates. In the enclosures, there were shops and in front of these shops, there were courtyards which were primarily used by the tenants for their business activity to pile up their grains/vegetables in separate heaps. The courtyards in front of the shops were the private property of the owners. Before 1920, the Municipal Committee, Karnal, (for short 'the Committee') built a pucca road passing through the enclosure. The Committee claimed ownership over the land on which the metalled road was constructed and this led to civil litigation between the Committee and the owners. The District Judge, Karnal, found that the area in front of the shops was the private property of the owners and the Committee could not lay claim to it. On appeal to the Chief Court of Lahore, the judgment of the District Judge was reversed, and it was disaffirmed that the area in front of the shops was the property of the Committee. The owners went up in appeal to the Privy Council against the judgment of the Chief Court of Lahore and the Privy Council in its judgment in *Nawab Bahadur Muhammad Rustam Ali Khan and another* v. *The Municipal Committee of Karnal* (1), held that the ground on which the metalled road was constructed was the Private property of the owners. It affirmed that the area in front of the shops was the property of the owners. The judgment of the Chief Court was reversed and that of the District Judge restored.

(3) Vijay Kumar and Surinder Kumar petitioners have challenged the award of the President, Tribunal under the Act. They maintained that the property owned by Palli Mal and Bansi Lal descended to Bhunnu Mal and Lala Sumer Chand. They transferred their rights to Asa Ram and Tara Chand on December 15, 1932, and the petitioners are successors-interest of Asa Ram. The petitioners made sales out of the property purchased by them

(1) I.L.R. 1920 Lahore 117.

in the year 1973 and constructed nine stalls which were leased out to the tenants. The principal ground of challenge was that the President Tribunal erred in not allowing compensation for the courtyard popularly known as *Phars* to them.

(4) The Improvement Trust in its reply, although generally controverted the averments in the petition, but did not controvert the material allegations made in para 12(6) of the writ petition. Sub-para (6) of para 12 reads as under:—

> "(vi) That fortunately for the petitioners there is a direct judgment pertaining to the area under acquisition itself. As referred to above, this entire Mandi was sold by the Government way back in 1854 to two set of owners and as such were named Nawab Ganj and Pali Ganj. In so far as the case of Nawab Ganj is concerned, its litigation went upto the Privy Council and in a judgment reported as *Nawab Bahadur Mohammad Rushtam Ali Khan and another* v. *Municipal Committee of Karnal,* I.L.R. 1920-Volume I, page 117, it was clearly held that the courtyard necessary for the purpose of business was neither drained, lightened, nor cleaned by the Municipal Committee and was by its nature as assessory to the property, would not be a public street under the Municipal Act. All submissions referred to above inclusive of the judgments were pressed into service at the time of submissions but have been totally ignored by the Tribunal, resulting into complete mis-carriage of justice."

In the corresponding reply to this para, it was stated thus:

> "That in reply to this sub-para, it is submitted that the petitioners have again tried to confuse the issue which arises in the case for consideration. Reference to the judgments of 1920 is wholly irrelevant and uncalled for because much water has flown after 1920. After the partition of the country, Municipal Committee, Karnal, had been managing the streets and had been providing drains, street lights etc. Therefore, the petitioner cannot take any benefit whatsoever from the said judgment. Moreover, the petitioner's claim has already been met in letter

> and spirit and thus, they are debarred from claiming any compensation whatsoever as detailed above."

The Trust did not deny the assertion regarding purchase made by the two set of owners in the year 1854 from the Provincial Government and that there was a dispute regarding courtyard in front of the shops which was claimed by the Municipal Committee as a public street but by the owners as their private property and the Privy Council ultimately affirmed the plea taken by the owners that the site in front of the shops was the Private property and not a public street. The site which was found by the Privy Council as private property of the owners is the same land which is given the nomeclature of *Phars* in the present litigation. An inference can be drawn that the plea which was not denied in the written statement was impliedly admitted.

(5) The land Acquisition Collector,—*vide* award dated May 24, 1976 evaluated the acquired land at the rate of Rs. 100 per sq. yard. Reference was made to the Tribunal under section 18 of the Land Acquisition Act. The Tribunal,—*vide* its award under Challenge found that the market value of the acquired land was Rs. 1336 per sq. yard for built up area. With regard to open space, known as *Phars* lying between various shops acquired by the Trust, it held that it formed part of the street and vested in the Municipal Committee and the owners had no right to claim compensation. He also found that the claimants are entitled to allotment of plots as local displaced persons, as provided under the Karnal Improvement Trust (Land Disposal) Rules, 1970 (in short the Rules) and the displaced persons had been allotted plots not under any agreement but under the Rules.

(6) Before me, the learned counsel for the Trust has made the following submissions :—

(i) that the evaluation made by the Tribunal is incorrect;

(ii) the Assessors were not joined by the President and the award was rendered by him alone. The same is vitiated; and

(iii) the application for reference made before the Land Acquisition Collector was barred by time.

(7) The Tribunal, on appreciation of the entire evidence arrived at a conclusion that the market value of the acquired land is Rs. 1336 sq. yard. This is essentially a finding of fact not open to challenge in writ jurisdiction. A writ of certiorari can be issued for correcting error of jurisdiction committed by inferior courts or Tribunals; these are cases where the orders passed by inferior courts or Tribunals are without jurisdiction or is in excess or as a result of failure to exercise jurisdiction. A writ can be issued where the Court or Tribunal acts illegally or improperly or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. A finding of fact recorded by the Tribunal cannot be challenged in writ proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. I do not find any infirmity in the finding arrived at by the learned Tribunal in evaluating the land at the rate of Rs. 1336 per sq. yard.

(8) On the second point that the non-inclusion of an Assessor by the President of the Tribunal in the proceedings renders the award invalid, the question is no more *res integra.* It was held in *Sohan Lal* v. *The State of Haryana and others* (2), that non-association of one or both the Assessors by the President of the Tribunal does not render the award invalid. It was also held that proceedings by the President of the Tribunal conducted while sitting alone were not invalid. Moreover, the claimant did not raise objection before the President of the Tribunal that the proceedings could not legally be conducted by him in the absence of the Assessors. They will be deemed to acquiesced in the jurisdiction of President of Tribunal and the objection cannot be raised in writ jurisdiction.

(9) The President of the Tribunal, on appreciation of statutory provisions and talking into consideration the rule of law laid down in *Kartara and another* v. *The State of Punjab* (3), held that the applications for reference were not beyond limitation. Even otherwise, he condoned the delay for late filing of the applications for reference. The learned counsel submitted that I should see the original record and hold that the applications for ref‑‑ences were

(2) 1981 Rev. L.R. 349.
(3) 1987 P.L.J. 464.

not made within limitation. The Tribunal was perfectly within his jurisdiction to condone the delay in making the references. The finding so recorded by him is not open to exception.

(10) The contentions of the learned counsel for the landowner-claimants are as under :—

(i) The *Phar* land is the private property of the landowners and the Tribunal was in error in holding that it was a public street and it vested in the Municipal Committee;

(ii) the evaluation of the land was not correctly made; and

(iii) Whether the statutory benefits are to be allowed on the total amount of compensation or after deducting the price of the plots allotted.

(11) On the first point, the learned Tribunal, after referring to the definition of the term "street" as given in section 2(23) of the Haryana Municipal Act, 1973, held that the *Phars* in question were being used by all the persons as a means of access to the public place or as a thoroughfare and it vested in the Municipal Committee and the owners were not entitled to any compensation *qua* these *Phars.* The learned Tribunal did not advert to the pleadings of the parties while arriving at the above finding. In this writ petition, the past history of the acquired land was given. In other writ petitions, the history of the acquired land has not been specifically pleaded but the Trust has not disputed, as already observed, as to who were the original owners of the property, subject-matter of acquisition. In the previous litigation, the property which is now known as *Phars* was held to be the property of the owners. The judgment rendered by the Privy Council may not operate as *res judicata* between the parties. Nevertheless, in that judgment a right was asserted by the owners that the courtyard in front of the shops was their property and the Municipal Committee controverted it claiming that the courtyard vested in it since it was used as a thoroughfare and a dedication will be assumed by usage. The plea of the Committee was negatived and it was held that it was the private property of the owners. The judgment in a previous suit though not inter parties is admissible under Section 13 of the Evidence Act in proof of a transation or particular instance, in which the right in question was asserted and recognised. See *Srinivas Krishanarao Kango* v. *Narayan Devji Kango and others* **(4)**.

(4) (1955) 1. S.C.R. I.

(12) A writ petition was filed challenging the scheme and the declaration under section 42 of the Act by the legal heirs of Tara Chand deceased-claimant in this court. In that writ petition, (copy Annexure R-2, in Improvement Trust case No. 135 of 1978) in para 3 it was stated thus :—

> "The said Shri Tara Chand died on 12th August, 1970 and after his death petitioner No. 1 Smt. Kala Wati, succeeded to the property by virtue of a will and later on this property *including an open space* in front of these shops was distributed to all the petitioners by virtue of a family settlement in the year 1971."

In the corresponding paragraph of the written statement, Exhibit R-3, it was not controverted by the Trust that the open space in front of the shops did not belong to Tara Chand deceased. The writ petition was disposed of by a Bench of this Court by an order dated 13th May, 1976, Exhibit R-1, on a statement by the counsel for the Trust, which reads as under :—

> "Shri P. S. Jain, the learned counsel for respondent No. 2, Improvement Trust, has stated before us that he has no objection in admitting the claim of the petitioner to the extent that Tara Chand deceased, owner of the land in dispute, was survived by five heirs, namely, Smt. Kala Wati (widow), Ram Parshad and Bhagwat Sarup (sons), Smt. Chander Kiran Bansal and Smt. Sarla Devi (daughters). The learned counsel concedes that these five heirs will be entitled to one plot each for the shop under the rules and further that the heirs of Tara Chand deceased will be entitled to compensation of the whole of the land belonging to the deceased which is being acquired, in accordance with law. On this undertaking having been given, the learned counsel for the petitioner says that this writ petition may be dismissed as infructuous. We order accordingly but with no order as to costs."

The Trust did not join issue with the petitioners in that litigation that the property in front of the shops was not owned by Tara Chand deceased. To the contrary, in the statement made by the counsel for the Trust, it was specifically conceded that the heirs of Tara

Chand deceased will be entitled to compensation of whole of the land including the land in front of shops belonging to the deceased. Admission was made by the Trust in the writ petition filed by the heirs of Tara Chand alone to the effect that the property in front of the shops was owned by the deceased but it cannot be permitted to adopt a different yard stick in other cases. It is an important piece of evidence in which it was conceded that the space in front of the shop was the property of the owners.

(13) The Tribunal after referring to the definition of the term "street" hastened to hold that the claimants are not entitled to any compensation for the *Phars* lying in front of the shops. The finding recorded by the Tribunal is not based in evidence. It did not take into consideration the evidence brought on record which had strong bearing on the determination of the question involved. The pleadings of the parties were not adverted to. Admissions made in pleadings ought to have been taken into consideration to adjudicate on a question of fact. The Tribunal ignored material circumstance while arriving at the above finding. The said finding can be said to have been vitiated by an error of law apparent on the face of the record. The Tribunal failed to consider the material evidence brought on record and did not elude to the same in his award, the error has to be corrected.

(14) Even if the open space in front of the shops is street as defined in the Haryana Municipal Act, the trust can in conformity with Section 45 of the Act take that land or street for executing the scheme. There is no proof that any action under Section 45 of the Act was ever initiated by the Trust.

(15) Section 46 of the Act deals with streets which do not vest in the Municipal Committee under section 45 of the Act and it enjoins upon the Trust to issue notice to the owners of the street and after hearing them pass an order for taking charge of such street or part thereof. The owners have to be compensated for the land of which they are divested. This was settled in *Durga Dass Vinayak* v. *The State of Punjab and others* (5), where it was held thus:—

> "A perusal of the above provisions of section 46 of the Act would reveal that the Trust has to take specific action if requires to take possession of a private street. In the

(5) 1979 PLJ 270.

present case, it is doubtful that the street is a private street. The land when the notification was issued was all a vacant land and it was only between the period of notification under section 36 and declaration under section of the Act that the petitioner disposed of a part of his vacant land by selling plots and left the land in dispute for the purpose of road on which the Trust, in fact constructed the road. By virtue of the scheme, the road, in fact, would not be a private road — that road would be a public road constructed by the Trust on a land belonging to the petitioner. In the circumstances of the case, even if conceding to the Land Acquisition Collector the right to advise the Trust about its powers, it is to be noticed that the Trust cannot invoke its powers under section 46 of the Act and deny compensation to the petitioner."

Thus, looking from any angle, the *Phars* cannot be treated to be the property of the Municipal Committee or of the Trust.

(16) The Tribunal did not give any finding whether it was a public street or a private street. It merely referred to the definition as given in sub-section 83 of section 2 of the Haryana Municipal Act and held that the site in front of the shops was a street. Even if it is a private street, the site under the street will be the property of the owners and the owners are entitled to compensation for that land. If the Trust wants to take possession of a private street, it can invoke its powers under Section 46 of the Act. As observed earlier in the litigation between the Committee and the owners it was affirmed that the land under the metalled road now popularly known as *Phars* was the property of the owners. The judgment rendered by the Privy Council is relevant under Section 13 of the Evidence Act. The trust in an litigation with the owners has admitted that the site in front of the shops was the property of the owners. Admissions operate as estoppel unless allowed to be withdrawn. Thus, I hold that the *Phars* is the property of the owners and the claimants are entitled to compensation for the same. The claimants are entitled to compensation at the same rate as was assessed for the acquired built up area, viz., Rs. 1,336 per sq. yard.

(17) The claimants are entitled to the benefit of Act No. 68 of 1984. The award was given by the Tribunal on January 21, 1988 and the benefits of the amended Act cannot be denied to them.

(18) The learned counsel for the claimants has submitted that his clients are entitled to allotment of plots under the Rules. The Tribunal has given a finding that plots have been allotted under the Rules and no exception can be taken to it.

(19) Mr. Bali, the learned counsel for some of the petitioners raised an additional plea that the Tribunal was in error in determining the market value of the property and then reducing it to the extent of the value of the plots allotted to the local displaced persons. He submits that the compensation, namely, the value of the land and the statutory benefit ought to have been determined in the first instance and out of the value so determined, the price of the plots allotted to the local displaced persons should have been deducted. I am afraid, the submission is not sustainable. The Tribunal has directed that out of the compensation assessed, the total value of the developed plots allotted to the claimants will be deducted. I do not find any infirmity in the direction given by the Tribunal calling for interference in writ jurisdiction.

(20) In fairness to Mr. Sarin, the preliminary objection to the maintainability of the writ petition filed by the Improvement Trust has to be noted. He submits that the local authority at whose instance the land was acquired cannot question the award made by the Collector. In support of his submission he relied upon *M/s Indo Swiss Time Limited Dundhahera* vs. *Umrao and others*, (6), *M/s Kulbhushan Kumar and* Co. vs. *The State of Punjab and another* (7), and *Santosh Kumar and others* vs. *Central Warehousing Corporation and another* (8),. I do not want to express any opinion on the merit of the submission made in this writ petition since the principal grounds of attack to the award of the Tribunal made by the Trust have been negatived by me.

(21) The award of the Tribunal is modified to this extent that the *Phars* land which was not treated as the property of the landowners will be treated as their property and they will be entitled to compensation at the same rate at which compensation for built up acquired land was allowed by the Tribunal. Out of the value

(6) 1981 P.L.R. 335.
(7) 1983 P.L.R. 768.
(8) A.I.R. 1986 S.C. 1164.

so assessed development charges payable to the Trust will be deducted. The Tribunal will re-assess the value of the land of each claimant in the light of the observations made above, within six months of the receipt of this order.

(22) The writ petition Nos. 8084, 8149 and 8172 of 1988 filed by the Trust are dismissed and the writ petitions Nos. 3488 to 3492 of 1988 and 2862, 2863, 2865, 2866 and 4159 of 1989 filed by the claimants are allowed as indicated above. The parties to bear their own costs.

(23) The parties shall appear before the Tribunal on 6th October, 1989.

S.C.K.

37431 HC—Govt. Press, U.T. Chd.