
(1959) 12 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No"s. 86 and 291 of 1945

Central Govt.

APPELLANT

Vs

P.L. Jaitly and Co.

RESPONDENT

Date of Decision : 03-12-1959

Acts Referred:

Defence of India Act, 1939 — Section 19, 19(1)
Defence of India Rules, 1939 — Rule 75A, 79(1)
Land Acquisition Act, 1894 — Section 23(1)

Citation : AIR 1960 All 708 : (1960) 30 AWR 389

Hon'ble Judges : S.N. Dwivedi, J;A.P. Srivastava, J

Bench : Division Bench

Advocate : T.N. Sapru and K.L. Misra, for the Appellant; G.S. Pathak, Ahsanulla Haq, S.P. Kumar, P.N. Sharma, R.K. Kakkar and S.S. Dhavan, for the Respondent

Final Decision : Disposed Of

Judgement

Dwivedi, J.—These are two appeals against an award made u/s 19(1) of the Defence of India Act, 1939. Since they are against the same award, they are being disposed of by a common judgment.

2. First Appeal No. 86 of 1945 was filed by the Central Government, whereas First Appeal No. 291 of 1945 was filed by M. G. Qadir. Messrs. P.L. Jaitly and Company through Pandit Purushottam Lal Jaitly, Manager and Karta, was originally the respondent in both the appeals. During the pendency of the appeals Pandit Purushottam Lal Jaitly died and then the names of Pandit Amar Nath Jaitly, Arvind Nath Jaitly, Triloki Nath Jaitly and Smt. Savitri Devi, who were also the heirs of Pandit Purushottam Lal Jaitly, were brought on record as the legal representatives of the deceased.

3. The dispute relates to the requisitioning of premises No. 17 Canning Road, Allahabad. The aforesaid premises consisted at the relevant dates of a bungalow having a verandah and 20 rooms as well as an open yard at its back. There was also a separate block which would be referred to in this judgment as the

"workshop block." It was situated to the east of the bungalow and was separated from it by an open passage and a row of outhouses. The workshop block consisted of two portions, namely (1) the main workshop and connected rooms, and (2) the rest of the workshop block comprising office rooms and godown.

4. Adjoining premises No. 17 Canning Road and to its south were the premises No. 2 Clive Road. There was an open space between the residential building in No. 2 Clive Road and the compound wall separating the said premises from the premises No. 17 Canning Road. The main gate of the premises No. 17 Canning Road opened on the Canning Road while the main gate of premises No. 2 Clive Road opened on the Clive Road. There is an open gateway between the two premises for ingress and egress from one to the other.

5. The respondent Messrs. P.L. Jaitly and Company was a joint Hindu family firm. The joint family consisted of Purshottam Lal Jaitly, his brothers Narottam Lal and Kesari Narain and his son Amar Nath Jaitly. The firm dealt in electrical goods and hardware. It also held licenses for the supply of electricity in different places. It was also the Managing Agent of a number of limited concerns, namely, Budaun Electric Supply Co. Ltd. the Sultanpur Electric Supply Co. Ltd. The Darbhanga Electric Supply Co. Ltd. the Shahjahanpur Electric Supply Co. Ltd., the Gorakhpur Electric Supply Co. Ltd. and the Lower Ganges and Jumna Electric Supply Co. Ltd. of these concerns the last two were in liquidation during the relevant period. The Sultanpur Electric Supply Co. Ltd. had not then started working. The offices of these concerns were located in the premises No. 17 Canning Road. Besides those offices, the respondent had in the same premises its own office as well as a show room containing mostly electrical goods. The respondent had also business branches at various places outside Allahabad. The members of the aforesaid joint Hindu family were residing in the premises No. 2 Clive Road during the relevant period.

6. On the 12th June 1942 Sri A. D. Dixon, I. C. S., District Magistrate, Allahabad, made an order under Rule 75A of the Defence of India Rules requisitioning a part of the premises No. 17 Canning Road, which he described in the order as the "old workshop" because the said accommodation was "required for the purpose of clothing factory for the successful prosecution of the war". A copy of the order was sent to Tahsildar, Chail, who was directed to take over immediate possession of the requisitioned portion of the premises. It appears that the Tahsildar could not comply with the order. On the 23rd June 1942 Shi A. D. Dixon made another order whereby the entire "building with adjoining godown known as office building" was requisitioned. The respondent was directed by the said order to remove its goods from the said premises within 7 days.

The reason for the requisition as given in the order was that premises No. 17 Canning Road were suitable for a clothing factory and their occupation and utilization by Messrs. Kadir and Company as a clothing factory was absolutely necessary for the successful prosecution of the war. A copy of the order was sent to the Tahsildar, Chail, for necessary action. On representation by the Tahsildar.

Chail, Sri D. G. P. Anthony, City Magistrate, Allahabad, was asked by the District Magistrate to help the Tahsildar in taking over possession of the requisitioned premises.

Sri Anthony visited the premises on 3rd, 4th and 8th July 1942 and got the main building and the workshop block completely vacated except for a room in the front row of the main building in which certain almirahs and other things were locked up and sealed by him for safety. The things removed from the building included records of the aforesaid various concerns, furniture, show cases, electric goods and other things. All those things were dumped in the open compound of premises No. 2 Clive Road between the southern wall of premises No. 17 Canning Road and the residential house situated at premises No. 2 Clive Road.

Some furniture was placed in the drawing room and the verandah of premises No. 2 Clive Road, while some records and other things were placed in the stable and the servants' quarters of premises No. 2 Clive Road. The possession of the locked room was taken on the 22nd January 1943 and the almirahs and other things, that were there in that room, were placed in the open compound of premises No. 2 Clive Road by Sri- Anthony. It seems that the possession of the outhouses of premises No. 17 Canning Road was also taken over about the same time.

7. The requisitioning order was admittedly withdrawn with effect from the 31st May 1943 but it is also admitted that possession was not restored to the respondent after the withdrawal.

8. The District Magistrate, Allahabad, by his order dated the 28th July, 1942, fixed Rs. 50/- as compensation payable to the respondent for the vegetable garden in the compound of the premises No. 17 Canning Road (which will hereinafter be called the requisitioned premises). Thereafter a dispute started between the Central Government and the respondent about the compensation that was to be paid to the latter for the requisition of the property. Consequently by a notification No. 1454-C-X dated 11th February 1943 the Governor of the United Provinces appointed Sri Harish Chandra 3. C. S. then District Judge, Allahabad, as an arbitrator for determining the amount of compensation payable on account of the requisitioning of the premises No. 17 Canning Road. By a subsequent letter dated 10th March 1943 the Arbitrator was informed that the ownership of the requisitioned premises was in dispute in a case and Messrs. Kadir and Co. had been in possession not as owner but on behalf of and by arrangement with the Central Government. The Arbitrator was therefore to assess the compensation payable to the owner of the premises as well as to the respondent.

9. When the proceedings started before the Arbitrator, a claim for a sum of Rs. 750,000/- for compensation was tiled by the respondent on 3rd June 1943. It was stated in the claim that the respondent was in lawful occupation of the requisitioned premises as well as the premises No. 2 Clive Road, It was alleged

that all the properties and valuable records of the respondent were

"removed from the requisitioned premises in a careless manner and hurled into the compound of 2 Clive Road by, and under the direction and supervision of, the authorities who were present at the spot, and who were watching, the entire devastation that was being caused at their instance."

It was then alleged that the devastation caused to the property of the respondent would

"show whether all, that was done in the matter, was done in good faith."

10. Compensation was claimed on various grounds which will appear hereinafter.

11. The appellant filed its written statement on the same date. In paragraph 3 of the statement it was said that the respondent was required to remove its things and hand over possession to Messrs. M. G. Kadir and Co., but it failed to carry out the orders, that the bulk of the goods had, therefore, to be removed to the compound of the premises No. 2 Clive Road, that all reasonable care was taken to stock as many of the tiles as could be accommodated in the few outhouses of the premises No. 2 Clive Road, and that such of the tiles as could not be accommodated in the outhouses were placed with all reasonable care in the compound of the said premises.

Since the respondent was not prepared to permit the use of the verandahs of the said premises, the goods had to be placed in the compound. It was denied that any damage had been caused to valuable documents or other things belonging to the respondent. It was further stated that the fair amount of compensation payable to the owner of the requisitioned premises would be a sum of Rs. 223/3/- per month which was its rent at the time of its requisition, It was also alleged that the act of requisition had not injuriously affected any property of the respondent. It was admitted that the respondent was entitled to a sum of Rs. 50/- which was assessed as compensation by the District Magistrate for vegetables growing at the time of the requisition in the compound of the requisitioned premises.

12. Sri M. G. Kadir, proprietor of Messrs. M. G. Kadir and Co. also tiled his claim as proprietor of the premises on 3rd June 1943. He claimed to be the owner of the requisitioned premises and premises No. 2 Clive Road, and as their proprietor he claimed that he was entitled to receive compensation. He contended that as the respondent's possession over the requisitioned premises was unlawful at the time of its requisition, the respondent was not entitled to any compensation. In a subsequent written statement filed on the 11th September 1943 he clarified that he had purchased the requisitioned premises as well as premises No. 2 Clive Road from Panchayati Akhara Mahanirvani Goshaiyan Sect, Daraganj, Allahabad, by sale-deed dated 4th April 1942, that on that date the vendor informed the respondent, who was the tenant of the two premises on payment of rent of Rs. 345/-per month, that he had sold the premises to him, that on the 13th May

1942 he gave notice to the respondent to vacate both the premises at the end of the month, that the respondent did not vacate the premises, that On expiry of the period of notice the possession of the respondent over the two premises became unlawful and he filed suit No. 232 of 1942 in the court of Munsif, West Allahabad, for recovery of possession and the arrears of rent of the two premises, that in its written statement in that suit the respondent disclaimed to be a tenant of the aforesaid premises and pleaded *jus tertii* that the legal effect of the respondent's plea was that its tenancy terminated forthwith and it was no longer entitled to remain in possession of the said premises, and that it was also not entitled to claim any compensation for the requisitioned premises. Mr. Qadir did not claim any particular amount as due to him as compensation.

13. The evidence in the case consists of a large number of documents filed by the parties as well as some oral evidence. By common consent of the parties, the documentary evidence was admitted in evidence without proof. The Arbitrator, at the request of the respondent, also visited the requisitioned premises and premises No. 2 Clive Road on 5th May 1943 in the presence of counsel for all the parties and the inspection note prepared by the Arbitrator forms part of the record of the case.

14. After considering the voluminous documentary and oral evidence, the Arbitrator arrived at the conclusion that the effects of the respondent were removed from the requisitioned premises and placed in the compound of premises No. 2 Clive Road "in a most careless manner". At one place in his award he has expressed himself thus:

"But it seems to me that the entire proceedings were conducted in a somewhat arbitrary manner without much regard to rules and orders or to the rights and conveniences of the party occupying the premises."

In another part of the award he said,

"Admittedly Mr. Anthony took no steps to see that the files, papers and registers were properly arranged at the places to which they had been removed. They were carried by unskilled labourers and, as P. L. Jaitly states, carried indiscriminately in empty cement bags and they apparently got thoroughly mixed up in the process of removal. Some loose papers were also scattered in the compound by the labourers and some of them were subsequently picked up by Mr. Anthony and placed on the racks."

At another place he has the following words to say about the conduct of Mr. Anthony who was supervising the removal of goods from the requisitioned premises to premises No. 2 Clive Road.

"He had apparently understood from the District Magistrate that the time factor was of the utmost importance and was, therefore, taking steps to have the premises vacated with as little delay as possible and was not taking the ordinary precautions for the safety of the property which he would have taken had he

been left entirely to himself."

In the penultimate paragraph of the award the Arbitrator expressed himself thus:

Before I close this award I consider it my duty to mention that the evidence seems to indicate that the requisition was made more in the interest of Messrs. Kadir and Company than that of the Central Government. That a suit filed by Messrs. Kadir and Company in the civil court claiming ownership of the same property and seeking to eject Messrs. Jaitly and Company was pending when it was acquired and handed over to them is also a fact which creates an uncomfortable feeling in one's mind while considering the circumstances connected with this unfortunate case."

15. As a result of his findings the Arbitrator has awarded to the respondent the following compensation:--

- (1) For breakage of the furniture, show cases. and various other things Rs. 25000/-
- (2) For loss of electrical and other goods Rs. 50000/-
- (3) For loss of valuable projects, plan, estimates and surveys of various schemes relating to twenty-one towns Rs. 25000/-;
- (4) For loss of papers and documents, which had been collected by the respondent for purposes of various cases pending in the High Court and elsewhere Rs. 10000/-
- (5) For loss of valuable books and magazines from its business library Rs. 5000/-
- (6) For loss and destruction of vouchers and bills etc. Rs. 25000/-

16. The Arbitrator thus awarded a sum of Rs. 1,40,000/- to the respondent as compensation for its various moveable properties which according to him had been injuriously affected by the act of requisition. He also awarded compensation.

- (1) For loss of income from other business carried on in the requisitioned premises Rs. 500/- per month for the period of requisition;
- (2) For loss of good-will Rs. 18000/-
- (3) For loss of possession over the requisitioned premises Rs. 500/- per month for the period of requisition;
- (4) For loss of possession over the outhouses and the compound of the requisitioned premises Rs. 75/- per month for the period of requisition;
- (5) For loss of vegetable growing in the vegetable garden in the compound of the requisitioned premises Rs. 50/-
- (6) For severance of the premises No. 2 Clive Road from the requisitioned

premises and the trouble and inconvenience resulting from the placing of the things on the former premises Rs. 2500/-;

(7) For the loss occasioned to the respondent on account of deprivation of telephone connection of the requisitioned premises..... Rs. 500/-;

(8) For loss of the electric connection of the premises No. 2 Clive Road Rs. 1000/-.

17. The arbitrator then held that although the requisitioned premises had been de-requisitioned on the 31st May 1943, its possession was not delivered to the respondent who was, therefore entitled to the periodical payments adjudged by him until it was re-instated over the requisitioned premises. He did not go into the question of title to the premises and ignored the decree in the civil suit filed by Mr. Qadir against the respondent on the ground that it had not become final till the date of his award. He therefore thought that in spite of the decree the respondent could get the periodical payments adjudged by him till it was put back in possession. He, therefore, summed up his award thus:

"To sum up my finding is that the Central Government is liable to pay a lump sum of Rs. 1,62,050/- to Jaitly and Co. and is further liable to pay them a sum of Rs. 22,200/- on account of periodical payments to which, according to my findings, Jaitly and Company are entitled upto the end of March 1944....The Central Government is further liable to pay to Jaitly and Company a sum of Rs. 1075/- per mensem so long as possession of the property is not restored to them."

18. Finally the Arbitrator awarded Rs. 6000/-as costs of the case to the respondent from the Central Government.

19. Against the award the Central Government has filed First Appeal No. 86 of 1945 in which it questions each item which has been awarded by the Arbitrator to the respondent except the amount awarded on account of the vegetables. The respondent had filed a cross-objection in the appeal claiming" that Rs. 6,00,000/- should have been awarded to it as compensation. Mr. Qadir filed a First Appeal No. 291 of 1945 contending that the Arbitrator should have gone into the question of title to the premises and decided that question in his (Mr. Qadir's) favour.

20. Taking up First Appeal No. 86 of 1945 first, the learned Advocate General, who has argued the appeal on behalf of the Central Government, very properly did not try to support the Government's claim of fair and reasonable exercise of the requisitioning power and did not dispute the findings of the Arbitrator regarding the careless, negligent, arbitrary and mala fide removal of the goods from the requisitioned premises. The main point which he strenuously urged for our consideration was that the Arbitrator had no power to award compensation in these proceedings for breakage and loss of goods caused in the course of their removal from the requisitioned premises to the compound of premises No. 2 Civil

Road.

He had only been asked to assess the compensation for the requisitioning of the premises and could, therefore, award compensation only for the respondent being kept out of possession of the premises for the period of requisition and anything done legitimately in that connection. No amount could, therefore, be awarded for any loss caused by the negligent or unauthorised act or omission of Mr. Anthony on the occasion of taking possession. Nor could any amount be awarded on respect of the period subsequent to the date of de-requisitioning. This argument naturally takes us to the statutory provisions providing for award of compensation.

21. Rule 75-A of the Defence of India Rules empowers the Central or the Provincial Government, as the case may be, to requisition any immovable property. Section 19 of the Defence of India Act lays down that there shall be paid compensation if any immovable property is requisitioned under the aforesaid Rule. It provides that if compensation is not settled by agreement (between the parties concerned, the Central Government shall appoint a person as arbitrator to determine the fair amount of compensation for the requisitioned property. Clause (e) of Section 19(1) of the Act directs that the arbitrator, in making his compensation award, shall have regard to the provisions of Section 23(1) of the Land Acquisition Act, 1894, in so far as the same can be made applicable.

Section 23(1) of the Land Acquisition Act reads thus:

"In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration :

first, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

secondly, the damage sustained by the person interested, (by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously, affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of

the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land".

22. According to the Arbitrator, clauses 1st and 6th of the section had no application to the case. He thought that under the second clause the respondent was entitled to Rs. 50/- as compensation for the vegetable crop. That portion of the award is not in question now. He awarded Rs. 2500/- under Clause 3. Though he thought that the fifth clause was also applicable, he did not award any specific amount on account of change of place of business.

23. It was on the 4th clause that the Arbitrator mainly based the major portion of his award. In his opinion the respondent was entitled under that clause to get compensation not only for breakage and loss of goods caused by their careless and arbitrary removal from the requisitioned premises to the compound of the premises No. 2 Clive Road, those goods having been injuriously affected by reason of the requisition but also for its loss of earnings and good will. He, therefore, awarded:

1. Rs. 1,40,000/- for loss of or damage to moveables in course of taking possession,
2. Rs. 18000/- for loss of good will,
3. Rs. 1500/- for loss on account of disconnection of telephone and electricity,
4. Rs. 500/- per month as loss of earning, and
5. Rs. 575/- per month as loss on account of loss of possession over the requisitioned premises.

24. The principal target of attack is the first sum of Rs. 1,40,000/- and the question is whether it could be awarded in these proceedings,

25. It is well settled that when what would have been unlawful and actionable but for an Act is permitted by the Act to be done, compensation is allowed therefore in lieu and by reason of such right of action being taken away by the Act, See *In re Stockport, Timpedey and Altringham Rly. Co.* (1864) 33 LJQB 251. Accordingly when an act is not authorised by an Act and remains wrongful, the Act does not provide for the grant of compensation for any damage caused by such an unauthorised and wrongful action. In such a case the person aggrieved would have a remedy by suit. In the case of *Coledonian Rly. Co. v. Colt* (1860) 3 LTR 252 it was observed as follows:

"But it is well settled that the statutory tribunal is only established to give compensation for losses sustained in consequence of what the Railway Company may do lawfully under the powers which the Legislature has conferred upon them; and that for anything done in excess of these powers, or contrary to what the Legislature in conferring these powers has commanded, the proper remedy is a common law action in the common law courts."

26. The conduct of the requisitioning authorities in the instant case cannot be said to have been authorised and made lawful by the Defence of India Act and the Rules made thereunder. It is not permissible for a court of law to impute to the Legislature an intention to grant power to be exercised in an arbitrary, careless and negligent manner. Section 15 of the Defence of India Act indeed enjoins that any authority or person acting in pursuance of the Act shall interfere with the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India, It seems to us, therefore, that the removal of the respondents' goods from the requisitioned premises in an arbitrary, careless and negligent manner, was clearly an abuse of the power conferred upon the requisitioning authority by Rule 75-A and such arbitrary, careless and negligent removal was, therefore, ultra vires the requisitioning authority. The claim for compensation for damage" caused by such negligent and arbitrary conduct of the requisitioning authority could. not, therefore, be entertained by the Arbitrator whose jurisdiction in the matter was confined to assessing compensation only for what could have been lawfully done under the Act. If the respondent wanted to claim damage for the unauthorised, acts of the Officer concerned, its remedy most probably lay in an ordinary suit for damages filed in the proper court.

27. Our conclusion gets support also from the normal rule that compensation is granted for damage naturally flowing from the "taking" under statutory powers. Damage caused by careless, negligent and arbitrary removal of goods cannot be said to be the normal natural consequence of requisitioning.

28. The award in respect of Rs. 1,40,000/- under the first head cannot, therefore, be upheld, although the respondent had suffered damage, because the Arbitrator had no statutory power to grant compensation for the damage.

29. The next contention of the learned advocate General is that the Arbitrator should have awarded no compensation to the respondent for loss of earnings from the business carried on in the requisitioned premises. The Arbitrator has awarded compensation to the respondent under that head, because he was of opinion that the respondents' business-had come to a stand still on account of the requisitioning of the requisitioned premises. That circumstance alone was, however, not sufficient. It should further have been proved, as held in the case of Suresh Chandra Banerji Vs. Secretary of State and Another, , by the respondent that the business-could not be resumed anywhere else in the vicinage of the requisitioned premises owing to lack of suitable accommodation. No effort has been made to show that the respondent made any attempt to find out any other suitable accommodation to carry on, its business. It has also not been proved that the letting of accommodation was then controlled by some order under the Defence of India Act and that the respondent had made an attempt but had not been able to get some suitable accommodation allotted to it. There is also no evidence, direct or indirect, to show that it was impossible in those time for the respondent to have carried on its business in the premises of 2 Clive Road or at

any other suitable place. For want of material evidence we have to hold, though reluctantly, that the award of compensation for loss of earning was not justified.

30. The learned Advocate General then contended that the Arbitrator had wrongly awarded compensation for loss of goodwill. Claim for loss of good-will is in effect a claim for loss of business. It means a probable diminution in business by reason of the premises, in which the business was carried on, having been requisitioned. If similar premises could be had in the neighbourhood of the requisitioned premises, the loss incurred by the diminution in the value of goodwill would have been merely trivial. For claiming compensation for loss of goodwill it was essential to prove that the respondent could not get similar accommodation to resume his business thereon. But as already pointed out earlier there is no evidence in this case to show that even an abortive attempt was made by the respondent to acquire some other accommodation for his business purposes. The respondent made no effort to minimise his loss of goodwill by finding out another premises and accordingly it was not entitled to any compensation under this head. (31) The next argument of the learned Advocate General was that the Arbitrator has erred in awarding compensation to the respondent for loss of possession over the requisitioned premises. In order to appreciate this argument it will be necessary to set out the history of the ownership of the requisitioned premises. The requisitioned premises were originally owned by the Panchayati Akhara Mahanirvani, Allahabad, and the respondent took it from the Panchayati Akhara on rent. Later it began to assert ownership over the premises. M. G. Kadir, the appellant in the other appeal, purchased the requisitioned premises from the Panchayati Akhara by a sale-deed dated 4-4-1942. On 13-5-1942 M. G. Kadir served a notice u/s 106 of the Transfer of Property Act upon the respondent to vacate the requisitioned premises by the end of the month. On the expiry of the period of notice the respondent did not vacate the requisitioned premises and M. G. Kadir instituted suit No. 232 of 1942 in the Court or. Munsif West, Allahabad, for the ejectment of the respondent and the recovery of arrears of rent. That suit was decreed on 16-2-1944, and a copy of the judgment of the Munsif was filed before the Arbitrator. The respondent's appeal against the judgment and decree of the Munsif was pending at the time of the award but was subsequently dismissed by the appellate court. The argument of the learned Advocate General is that the respondent was a tenant of the requisitioned premises, and since his tenancy had been determined by notice before the requisitioned premises were taken over by the Government, the respondent had no legal right to continue in possession and was, therefore, not entitled to claim any compensation for loss of possession. He contended that in any case no compensation could have been awarded by the Arbitrator to the respondent in respect of the (period?) subsequent to the decree of ejectment that was passed against the respondent by the civil court, because from the date of the decree at any rate the respondent lost its rights to remain in possession. (32) It is not possible for us to accept the argument in its entirety. The act of acquisition deprives a person of

his title to the acquired property, while the act of requisition brings about a temporary extinction of his possession over the property. In the instant case the respondent was in possession of the requisitioned premises at the material time and it was deprived of its possession by the requisitioning orders. It is, therefore, entitled to claim compensation for loss of possession. See *Santi Devi and Another Vs. Province of West Bengal*, . But a decree for the ejectment of the respondent was passed on 16-2-1944 and has now become final. We think that it could get compensation until that date only. After that date it was not entitled to continue in possession on any account. The Arbitrator has assessed a sum of Rs. 575/- as monthly compensation for loss of possession. The correctness of the rate has not been challenged by the learned Advocate General. The respondent had thus been kept out of possession as a result of the requisition, from July 1942 to 16th February 1944, i.e. for eighteen and a half months. The respondent was, therefore, entitled to get a sum of Rs. 10350/- only under this head.

33. The last contention of the learned Advocate General was that no compensation for cutting off of electric connection for 2 Clive Road should have been awarded, because that connection was severed by M. G. Kadir long after the taking over of the requisitioned premises. Amar Nath Jaitly has admitted in his statement that the said electric connection was severed by Qadir sometime about January 1943. The appellant cannot obviously be held responsible for the misconduct of M. G. Kadir and we think that compensation under this head was wrongly awarded.

34. The Arbitrator awarded a lump sum of Rs. 500/- on account of the severance of the telephone connection of the respondent. He has expressly found that it was cut as a result of the requisition order and that it was neither transferred to the respondent's other premises nor was any fresh connection granted in its place. This item of the award was not questioned before us and we think no reasonable exception could be taken in respect of it.

35. We have disposed of all the points that were urged before us by the learned Advocate General. No other point was pressed by him.

36. The total amount of compensation which could, therefore, be awarded to the respondent by the Arbitrator could only be Rs. 13400/-.

37. M, G. Kadir, the appellant in the other appeal, has long ago migrated to Pakistan and his interest in the requisitioned premises had vested in the Custodian, Evacuee Property. The only point raised in that appeal was that in view of the requisitioned premises having been purchased by the appellant and his suit for the respondents' ejectment having been decreed, the Arbitrator could not have awarded any compensation to the respondent. We have already dealt with the point in connection with the arguments of the Advocate General. The appellant having been put in possession as a result of the requisition did not claim any compensation himself.

38. There is also a cross-objection by the respondent in First. Appeal No. 86 of

1945. In it the respondent urged that the full amount claimed by the respondent as damage ought to have been allowed to it. In view of what we have said above, the contention was obviously untenable.

39. The result of the foregoing discussion is that we dismiss First Appeal No. 291 of 1945 and the cross-objection in First Appeal No. 86 of 1945. First Appeal No. 86 of 1945 must partly be allowed and the award partly modified,

40. First Appeal No. 291 of 1945 is, therefore, dismissed. First Appeal No. 86 of 1945 is allowed in part. The total amount of compensation payable to the respondent in respect of the requisitioning of its premises No. 17 Canning Road is assessed at Rs. 13400/,-. If this amount has not been paid, it must be paid within two months. The rest of the claim of the respondent is rejected. The cross-objection filed in First Appeal No. 86 of 1945 is dismissed.

41. In the circumstances of the case the parties are left to bear then own costs, here and before the Arbitrator.