
(1966) 04 RAJ CK 0001
In the Rajasthan High Court
Case No : First Appeal No's. 6 and 15 of 1958

Keshav Prasad

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 09-04-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 295, 300
Interest Act, 1839 — Section 1
Land Acquisition Act, 1894 — Section 28, 34
Limitation Act, 1908 — Section 19, 5
Limitation Act, 1963 — Section 18, 5

Citation : AIR 1967 Raj 24 : (1966) RLW 550

Hon'ble Judges : V.P. Tyagi, J; I.N. Modi, J

Bench : Division Bench

Advocate : Sumerchand Bhandari, for the Appellant; Raj Narain, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Modi, J.—The judgment and decree of the learned District Judge, Bikaner, dated the 11th of September, 1957 are being assailed before us both by the plaintiff and the defendant by their respective appeals Nos. 6 of 1958 and 15 of 1958. By this judgment the learned District Judge partly decreed the plaintiff's suit for a sum of Rs. 4,340 as price of his two plots of land taken over by the covenanting State of Bikaner; Rs. 1,000 as damages for his mental worries and Rs. 500 for incidental expenses; the total amounting to Rs. 5,840 against the defendant State, the suit having been dismissed against the other defendant, namely, the Union of India.

2. The facts leading upto this appeal, in so far as they are admitted between the parties or have been held to be proved satisfactorily, may be briefly set out as follows :

3. The plaintiff was the owner of the two plots of land in dispute situate on the Gajner road near the Orphanage in the city of Bikaner having purchased the same from the said State some time in 1941 at the rate of 0-2-0 annas per, what is called the Malimandi sq. Gaj in force in that State, that is. 2" X 2" On the 16th or 17th of May 1946, the Bikaner State Government took possession of these plots without the consent of the plaintiff avowedly in order to re-design these and some other plots which fell to be covered by or under the Amarsinghpura Scheme.

The plots in question measuring 8680 malmandi sq. yards, which were originally Nos. 1 and 2 in the scheme were considered upon along with some other land in its close vicinity and were later known as Bungalow No. 27 which thus came under the possession of the then Maharaja of that State His Highness Shri Sadul Singhji and on his death in 1950 was inherited by his son His Highness Maharaja Shri Kami Singhji. The plaintiff felt aggrieved by the manner in which he was arbitrarily deprived of the possession and ownership of his plots, and so, on the 23rd of May, 1946 sent a telegram to His Highness the Maharaja of Bikaner (Ex. 2) protesting against the unlawful assumption of possession of the said plots and the construction which was being raised on them.

By his letter (Ex. 3) dated the 28th of May, 1946, the Private Secretary to His Highness informed the plaintiff that whatever was being done on his plots was being carried out "under proper authority and orders." The plaintiff was, however, assured that "you should have no fear and either another piece of land of approximately the same size will be shown to you nearby or compensation paid as may be decided in regard to the various plots sold in that area." It was also mentioned in this letter that the step taken with respect to his plots had been "necessitated because of the general re-designing which has to be done on account of the old plan under which your plot was sold having been found to be unsatisfactory. "

Nothing further transpired, however, for a period of about two years although, according to the plaintiff, he had been constantly making endeavours during this period to either get certain other plots in exchange or monetary compensation therefor. On the 18th of May, 1948, vide letter Ex. 20/1, the Executive Officer and Secretary of the City Improvement Committee, Bikaner informed the plaintiff that plots Nos. 10 and 11 situated in the same locality, that is, Amarsinghpura Scheme were proposed to be given to him in exchange for his old plots Nos. 1 and 2 and he was asked to convey his consent if he was agreeable to do so. It may be pointed out in parenthesis that according to the plaintiff as the total area of these two plots Nos. 10 and 11 was about 12,000 Malmandi sq. yards, it had been orally understood between the parties that he would be charged for the excess land that is, the land over and above the area of his plots Nos. 1 and 2, at the rate of 0-2-0 annas per sq. yard and therefore, in his reply dated the 4th of June, 1948 (Ex. 20/2) he wrote back to the Executive Officer of the City Improvement Committee. Bikaner this he was agreeable to accept the said plots

in exchange provided his request for selling the extra land to him at the rate of 0-2-0 annas per sq. yard was accepted.

Alternatively, he stated that in case the Government was not willing to accept his aforesaid proposal, he would like to accept the price of his plots according to the market rates which were in force in 1946. To this, the Executive Officer by his letter (Ex. 21) dated the 10th of July, 1948, replied that if he wanted the entire plots Nos. 10 and 11 including the excess land contained therein as compared with the area of his plots, he could have such excess area measuring 2,240 Malmandi sq. yards at the rate of Rs. 2 per such yard as that was the rate fixed by the Government and it was not possible to reduce the same. An alternative proposal was, how ever, made to the plaintiff that in the event of his refusal to accept the proposal made to him, he may take plots Nos. 17 and 18 which were, more or less, of the same area as his original plots and that he should convey his desire as early as possible so that final action may be taken in the matter.

Both these offers, the plaintiff expressed his inability to accept by his letter (Ex. 22/1) dated the 24th/26th July, 1948, the first because it had been "distinctly agreed with him and he had conveyed his consent therefore in writing that he would be given the extra land at the rate of 0-2-0 annas per sq. yard and that it was not open to the authorities to go back on that agreement, and the second because the alternative plots which had been offered to him, although in close vicinity of his original plots, were far inferior in situation to his own. The plaintiff also made a counterproposal in this letter, the details of which it is unnecessary to set out.

Then by a letter dated the 6th of April, 1949 (Ex. 23), of which an extract copy was sent to the plaintiff for his information, the Private Secretary to His Highness the Maharaja wrote to the Prime Minister of the Bikaner State that as the plaintiff wished to have land in exchange for the plots owned by him, and which had been taken over by the State, he should be given two entire plots Nos. 25 and 53 and a portion of plot No. 55 to make up his entire quantity of land being 8680 sq. yards in Sadulnagar which appears to be an area in the neighbourhood of the Amarsinghpura scheme.

From the plaintiff's reply dated the 21st of May, 1949 (Ex. 24) addressed to the Chief Engineer, Bikaner, it appears that in the meantime a proposal had been made to him towards the end of March, 1949, that he should accept plot No. 25 (3168 yards) and plot No. 26 (3568 yards) and take the remaining 1944 yds. from plot No. 53 in Sadulnagar and that he had accepted the same but as the proposal now made to him as hereinbefore mentioned, was a different one, it was not acceptable to him, and he further said that he altogether repudiated the consent which had been given, by him.

It may be conveniently mentioned at this stage that the princely State of Bikaner had integrated with the United State of Rajasthan on 7th of April 1949, and the ruler of that State had handed over charge of the reins of the administration to

the Rajpramukh of the new State. On the 7th of June, 1949, therefore the plaintiff complained to the Administrator at Bikaner how he had been deprived of his land and the delay that had taken place in giving him compensation for the same and he also made a number of proposals as to the manner in which the wrong done to him could be set right. Certain correspondence then appears to have taken place between the plaintiff and the Commissioner. Bikaner, by which time the United State of Rajasthan had become a Part B State under the Constitution.

The Secretary to the Government in the Commerce and Industries Department of the new State by his letter (Ex. 32) dated the 21st of August, 1950, conveyed to the plaintiff that the Government "see no reason to change the decision of the former Bikaner Government ". One might have thought that this was the end of the long-drawn negotiations between the parties but that did not prove to be so. Obviously, as result of the plaintiff's making further representations in the matter there appears to have been further correspondence between the Collector Bikaner and the Commissioner. Bikaner (See Collector's letter Ex. 92 dated the 27th of April 1951 in reply to the Commissioner's which has not been brought on the record). The Collector seems to have been of the opinion that the plaintiff be directed to select certain plots in exchange of his original ones and the same be allotted to him, or, in the alternative, the original price paid by him for the plots Nos. 1 and 2 be refunded to him at the rate paid by him.

On the 18th of May, 1951 (Ex. 29/1) the plaintiff gave a notice u/s 80 of the Code of Civil Procedure. On the 21st of May (Ex. 33) the Commissioner wrote to the plaintiff that he was directed to ask him which plots he required in exchange of his original ones otherwise he will be refunded the original price paid by him for the latter. As the Commissioner had not specified the plots out of which the plaintiff could make his choice, further correspondence ensued between him and the plaintiff, and eventually by his letter (Ex. 35) dated the 27th of November 1951, the Commissioner told him that he could make his selection from plots Nos. 10, 13, 14, 24 and 39 in Amarsinghpura scheme which were lying vacant at the time.

In reply to this, the plaintiff informed the Commissioner by his letter (Ex. 36/1) dated the 10th of February, 1952 that he had already given a notice under Section 80 C. P. C., to the Government claiming a sum of Rs. 38,000 against it including the price of the land at Rs. 3 per sq. yard and interest and damages and that he would like to take cash compensation and not land in exchange, because price of land in Bikaner had been falling after the integration, but as he was keen to settle this matter out of Court, he would agree if land of the value of Rs. 35,000, which, according to him, would be of the measurement of some 24,900 sq. yards from the plots mentioned to him is given in exchange, and if that is done he would be willing to drop his claim for damages.

Then some further correspondence took place between the Executive Officer of the City Improvement Committee and the Collector and the plaintiff to which it is

unnecessary to refer in detail except that some alternative proposals seem to have been negotiated between them, and mention may at once be made of the plaintiff's letter dated the 3rd of May, 1952 (Ex. 41) to the Executive Officer of the City Improvement Committee in which he stated that "pursuant to our talks with the learned Collector in connection of my land case, I have to say that if the land near my house, of which plan has been made and shown to me, measuring approximately 978 m. m. sq. yards together with 6 plots behind the road measuring in all 6000 m. m. sq yds. (plots Nos. 136 to 141 of Amarsinghpura) be given to me. I shall forgo my claim against Government. This is without prejudice and provided the matter is done within 10 days."

The Collector by his letter dated the 12/ 13th May, 1952 (Ex. 42) acknowledging the last mentioned letter of the plaintiff wrote to him saying that he had already submitted his proposal to the Commissioner and he would like him (plaintiff) to take up the matter with the Commissioner. The Collector's letter to the Commissioner, to which reference had been made in the former's letter to the plaintiff, is dated the 7/8th May, 1952 (Ex. 95). This is a long letter which gives the history of the entire case right from 1942 onwards and contains the recommendation that the proposal to give the plot of land measuring approximately 978 sq. yards near the house of the plaintiff, which bore the value of Rs. 10 per m. m., sq. yard according to the existing rate and which would meet half the claim of the plaintiff, together with six other plots measuring 1,000 sq. yards each not on the main road in the Amarsinghpura scheme of the value of Rs. 1-4-0 per sq. yard which would give him a further compensation of Rs. 7,500 would, in his opinion, meet the justice of the case. He also stated that the plaintiff had given his choice for plots Nos. 136 to 141 and that the Secretary of the City Improvement Committee, Bikaner was also of the same opinion as his.

The Collector, however, further wrote to the Commissioner that the latter might give an early hearing to the plaintiff in the presence of the Executive Officer, City Improvement Committee and finalise the matter. The recommendation does not seem to have found favour with the Government, and by his letter dated the 11th of August, 1952, the Executive Officer and Secretary of the City Improvement Committee, Bikaner informed the plaintiff that the Government had sanctioned the allotment of land measuring 978 sq. yards near his house in the city of Bikaner of the value of Rs. 9,780 in full settlement of the dispute relating to his two plots on the Gajner road. It is obvious that the remaining part of the recommendation made by the Collector that the plaintiff be allowed in exchange six more plots of the value of Rs. 7,500 was turned down by the Government.

A communication to the same effect was made (vide Ex. 59) dated the 17th July, 1952 by the Secretary to the Government in the Local Self-Government & Medical and Public Health Department to the Commissioner, Bikaner. The plaintiff stoutly repudiated this offer by his letter dated the 23rd August, 1952 (Ex. 61/1) in which he said that it was not at all in conformity with the arrangement which

had been finalised between him and the Collector, Bikaner. He also added, however, that if the Government were still in a mood to enter into a just and reasonable compromise, he would always be anxious to accept it. As already stated the plaintiff had filed his suit in the Court of the District Judge, Bikaner in the meantime on the 2nd of July, 1952.

4. The position taken up by him in the plaint was that the price of the two plots which belonged to him and which measured 8,680 m. m. sq. yards amounted to Rs. 26,040 at the rate of Rs. 3 per sq. yard which was prevalent in May, 1946, when the State Government of Bikaner had taken possession of the same. He also claimed a sum of Rs. 8,960 on account of simple interest at the rate of 6 per cent per annum from 16th of August, 1940, upto 1st July, 1952, and to this he added a claim for damages on account of mental and physical worries and harassment and a further sum of Rs. 500 as incidental expenses incurred over correspondence with various authorities from time to time and in this matter claimed a sum of Rs. 38,000. The plaintiff had impleaded the Union of India also as defendant No. 2 in his plaint, but as the claim against the Union of India has been dismissed by the trial Court, and there is no appeal against it, we need not say anything further on this point.

5. The defendant State resisted the suit. It seems to have taken all possible pleas in its defence but we propose to refer here to such of them only as have been pressed before us and as are material for the purposes of the present appeals. In the first place, it is contended by the State that the plots of land in question had been taken possession of by an act of His Highness the Maharaja of Bikaner as the sovereign ruler of that State and such an act amounted to an act of State and therefore, it could not be questioned in the Courts of law. In the second place, it was contended that in any case the successor State of Rajasthan could not be held liable for any act, even if it was wrongful, of the former State of Bikaner. In the third place, the contention was that the plaintiff had evaluated his land at a grossly inflated value and therefore, was not entitled to it, although it may be pointed out at this stage that the State did not disclose in its written statement or even later what, according to it, was the proper value of the land in question at the time the plaintiff was deprived of its possession in 1946. It was further contended that the plaintiff was not entitled to interest or damages or incidental expenses alleged to have been incurred by him. Finally, it was contended that the suit was barred by time.

6. The trial Court gave its findings on all the aforesaid points in favour of the plaintiff except that on the question of the cost of the land it came to the conclusion that the plaintiff was entitled to no more than Rs. 4,340 which was the price paid by the Comptroller of Household of the Maharaja to the City Improvement Committee, Bikaner for the plots in question, and it further found that the plaintiff was entitled to a sum of Rs. 1,000 only as damages for his mental worries and to yet another sum of Rs. 500 as his incidental expenses and in this way decreed the plaintiff's suit for a total amount of Rs. 5,840. It is this

judgment which is being questioned before us by both parties to this litigation.

7. We propose to take up the State's appeal first because if that appeal succeeds, plaintiff's suit must result in dismissal, and, in that case it would not be necessary to deal with the latter appeal at all.

8. A preliminary objection has, however, been taken to the maintainability of this appeal that it is barred by limitation. We shall, therefore, consider the question of limitation to start with. The dates bearing on this question are as follows :

9. The judgment under appeal is dated the 11th September, 1957. An application for a certified copy of the same was made by the State on the 25th of September, 1957. The date fixed for the delivery thereof was the 19th of October, 1957, but as no notice for such delivery was put up on the notice board of the Court its delivery was taken on the 3rd of December, 1957. The appeal was presented in this Court on the 19th of February, 1958. From the dates given above, it is clear that the appeal was filed on the 161st day of the date of the judgment and decree under appeal, while it is admitted before us that the time permissible for the same, including the time taken in obtaining the copy, would work out to 160 days only. Thus, the last date for filing this appeal would be 18th of February, 1958. The State has filed an application u/s 5 of the Limitation Act for condonation of this delay of one day and supported it by an affidavit of one Narainlal, Senior Clerk in the Office of the Government Advocate at Jodhpur.

It is submitted in the affidavit that a demand draft dated the 10th of February, 1958 for Rs. 341 (the amount of court-fees payable on the State appeal is admitted before us to be Rs. 315) was received at the residence of the Government Advocate on the 16th of February, 1958 which was holiday, being Sunday, and it was received in the office on the next day, that is, the 17th of February, 1958. The affidavit goes on to say that, the Government Advocate had endorsed this draft in favour of the deponent on the 16th obviously at the house of the Government Advocate, and that when he went to the Bank of Jaipur for its encashment on the 17th, the Bank refused to make payment as the signatures of the deponent had not been attested by the Government Advocate.

In these circumstances, it is submitted that the draft could not be encashed. It is further submitted, and that is important to note, that the clerk then reported the matter to the Deputy Government Advocate on the 19th on which day he made arrangements for depositing the amount of court-fees payable on the appeal out of some other fund lying in the office of the Government Advocate. On these grounds, it is prayed that the delay of one day be condoned u/s 5 of the Limitation Act and the appeal be held to be within time.

This prayer has been stoutly opposed before us on behalf of the plaintiff and it is submitted on his behalf that it is incumbent for an application u/s 5 of the Limitation Act for being granted that the party guilty of delay should satisfactorily explain the same and should further account for every day's delay, and in that connection it is further pointed out that accepting the facts as mentioned in the

affidavit of Narainlal as correct, the utmost that could be said was that there was satisfactory explanation for the delay in the filing of this appeal upto the 17th but not beyond, in as much as no explanation whatsoever had been adduced on behalf of the State as to why it was not possible for the clerk concerned to have reported the matter of the non-encashment of the draft by the Bank to the Deputy Government Advocate on the 18th, and it is contended that if that precaution had been taken, as it should have been, and the failure to do the same could be attributed to nothing but gross negligence, it would have been perfectly possible for the Deputy Government Advocate to do precisely what he thought of doing, and actually did, on the 19th.

It is further contended that whoever was the officer incharge of this appeal in the office of the learned Government Advocate should have also been at pains to find out what had happened to the demand draft from the clerk concerned as the 18-2-1958 was the last date for the filing of the appeal. The contention is that in view of this obvious lapse on the part of the Government Advocate or the Deputy Government Advocate concerned, the prayer for condonation of the delay does not merit acceptance, and as a valuable right has accrued in favour of the plaintiff by lapse of time, the State's appeal should be dismissed on the ground of limitation alone.

10. We have given our careful and anxious consideration to the contentions raised before us in this behalf, and we feel bound to point out that fully assuming that the delay upto the 17th February, 1958 has been, more or less, satisfactorily accounted for, neither the application filed by the learned Deputy Government Advocate nor the affidavit filed in support of it offers any explanation whatever as to why an important matter like this was not duly taken note of on the 18th by some one responsible in the office of the Government Advocate and why it was allowed to stand over till 19th by which date the appeal had already become barred by one day.

The earliest case of our Court on this point in *Nauratan Mal v. Hari Singh* ILR (1951) Raj 304: AIR 1962 Raj 90 decided by K. N. Wanchoo, Chief Justice as he then was, and Mr. Justice K. L. Bapna. It was held in this case that there is no doubt that an applicant praying for indulgence u/s 5 of the Limitation Act is required to explain the delay of only those days which are beyond the period of Limitation and not for any delay antecedent thereto which, therefore, should not be taken into consideration, but it was further pointed out that in such cases it is the duty of the applicant to explain each day's delay satisfactorily, and if he fails to do so, he cannot get the benefit of Section 5 of the Limitation Act.

11. The next case on the point is *Nath Mal v. Sanwal Ram* ILR (1958) 8 decided by Mr. Justice Ranawat" as he then was and Mr. Justice Sharma. It was affirmed in this case, relying on the last mentioned case, that it was necessary in cases u/s 5 of the Limitation Act of the appellant or the applicant to satisfactorily explain each day of delay.

12. It is urged by learned Deputy Government Advocate, appearing for the State, that this principle should not be held to be applicable in the case of appeals by the State because such appeals, before they are filed, have necessarily to be processed through a fairly long channel and, therefore, what might amount to laches in the case of a private individual may not so amount in the case of the State. Our attention has been drawn in support of this submission to the decision of a learned single Judge of this Court in *State of Rajasthan Vs. Madanswarup and Another, The State of Rajasthan v. Dungar Singh* ILR (1965) 15 Raj 503 *Dalmia Dadri Cement Co. Ltd. Vs. The Commissioner of Income Tax, Maharaja Shree Umaid Mills Ltd. Vs. Union of India (UOI), State of Rajasthan v. Shyamlal*, AIR 1964 SC 1495, and *Amar Chand Butail Vs. Union of India (UOI) and Others*,

17. The following observations from the judgment of their Lordships in *Amar Chand Butail Vs. Union of India (UOI) and Others*, may be reproduced with advantage:

"The position in law about the liability of respondents 1 and 2 (Union of India and others) to meet the appellant's claim in regard to the dealings between the appellant and the State of Jubbal is not in doubt or dispute. If it can be shown that respondents 1 or 2 had recognised the appellant's claim against the State of Jubbal, that would give him a valid cause of action against both of them. It is hardly necessary to deal with this point elaborately, because the position under Article 295 of the Constitution is fairly clear in respect of this point Recognition of the claim made by the appellant can be proved by the appellant either by express acknowledgment or recognition or may even be established on relevant facts and circumstances which may lead to the inference of such recognition In other words, recognition of such a claim can be either express or implied and in the latter class of cases the inference as to recognition may be drawn legitimately from facts and circumstances which reasonably support such an inference."

18. That being the state of the law on this aspect the question is how does it apply to the present case. There can be hardly any doubt or dispute that the Government of the then State of Bikaner had unmistakably owned its liability to compensate the plaintiff for the loss of his land either by giving him other land in exchange or by giving him cash compensation. That State then merged its individuality in the successor State of Rajasthan. From the facts, which we have set out at considerable length above, it clearly seems to us that both the United State of Rajasthan and the Part B State of Rajasthan, as it came to be formed under the Constitution, also affirmed their liability towards the plaintiff in the matter of the loss which had been occasioned to him.

As we look at it, this is not a case of mere implied affirmance or recognition of the liability of the predecessor State but it is one of express recognition inasmuch as the Executive Officer and Secretary of the City Improvement Committee, Bikaner, by his letter addressed to the plaintiff dated the 11th of August, 1952 (Ex. 581 conveyed to the latter that the Government had

sanctioned the allotment of certain land to him near his house in the city of Bikaner of the value of Rs. 9,780 in full settlement of the dispute in lieu of the two plots held by him on the Gajner road. It is not the case of the defendant State that this letter had been written by the said Officer without due authority from the Government.

In these circumstances, there seems to us to be no escape whatever from the conclusion that the defendant State had unmistakably recognised the claim of the plaintiff and acknowledged or affirmed its liability to make it good, to such extent, of course, as it thought proper. Learned Deputy Government Advocate, however, contended that this offer was ex gratia. We are unable to accept this submission as well founded. In the first place, no such defence was raised in the written statement filed by it or was sought to be proved at the trial. In the second place, there was a very long-drawn-out exchange of correspondence between the plaintiff and the defendant State or its officers right from the middle of 1949 upto the middle of 1952, during the course of which various offers and counter-offers had been made between the parties, and this was chiefly because the plaintiff was persistently pressing his claim for compensation for the land of which he had been deprived in a most summary fashion.

As far as we can see, the plaintiff was able to impress the authorities not only of the former Bikaner State but of the successor State of Rajasthan that he had an unanswerable case for the award of compensation and it was with a view to meet this case that the whole dispute took the shape it did right from 1946 down to the date when the letter (Ex. 58) from the Executive Officer of the City Improvement Committee dated the 11th of August, 1952 was addressed to the plaintiff, and an intimation to the same effect was conveyed by the Secretary to the Government in the Local Self-Government and Medical and Public Health Department to the Commissioner, Bikaner by his letter (Ex. 59) dated the 17th of July, 1952. We cannot do better than to reproduce this letter in ex-tenso for the present purpose:

"From the Secretary to the Government, Local Self-Government and Medical and Public Health Department (A. L. S. G.) to the Commissioner, Bikaner.

Sub:--Dispute regarding land originally given to Shri Kesho Prasad Gupta, Vakil Churu.

Ref:--Your Nos. Rev./4039/3079 of 1952 dated 31st May/3rd June, 1952, respectively

I am directed to convey Government sanction as recommended for the allotment of land measuring 978 sq. yds. to Shri Kesho Prasad Gupta Churu situated near his house in Bikaner, (as per plan) costing Rs. 9780 in full settlement of the dispute regarding acquisition of the plots 1 and 2 measuring 4340 Malmandi sq. yds. allotted to him on Gajner Road in the year 1941."

19. A copy of this letter was in due course forwarded by the Commissioner to the

Collector Bikaner for information and necessary action. There is nothing in this letter to suggest that the decision of the Government to give the 978 sq. yds. of land to the plaintiff was reached *ex gratia*. On the other hand, it is clear from the letter of the Collector, Bikaner to the Commissioner, Bikaner dated the 7/8th May, 1952 (Ex. 95), to which we have referred above, that he had carefully examined the details of the case and he felt that it would be in the fitness of things if the settlement proposed in his letter was agreed to. And let it be noted that the settlement proposed by the Collector as a result of the negotiations that took place between him and the plaintiff was not to this extent only that some 900 odd. yds. of land lying close to the residential house of the plaintiff be given to him to compensate him for the loss sustained by him, but it had been further proposed that six other plots situated in the Amarsinghpura scheme measuring a thousand sq. yds. each and of the value of Rs. 1/4 per sq. yd. bearing the total value of Rs. 7,500 be further given to him in settlement of this dispute

Under the circumstances, we find it utterly impossible to accept the plea raised on behalf of the defendant-State before us for the first time that the settlement, which it was eventually prepared to accept, was just out of grace and not that thereby it was prepared to accept any liability which the plaintiff was endeavouring to fasten upon it. Our conclusion on this aspect of the case, therefore, plainly is that the successor State of Rajasthan had expressly recognised or affirmed its liability towards the plaintiff for the loss that had been caused to him by the act of the former State of Bikaner or its Ruler and, that being so, it is too late for the defendant State to disown its liability in this behalf. We hold accordingly.

20. It was next contended by the learned Deputy Government Advocate that the plaintiff's suit is barred by limitation. This contention was put before us in the following way: According to his submission, the plaintiff has himself admitted in his plaint that the cause of action against the State of Rajasthan arose to him for the first time on the 16th of May 1946, and the suit out of which the present appeals before us arise was filed as late as the 2nd of July, 1952. It is further submitted that the limitation for a suit of this nature would be three years as provided under Article 39 of the Limitation Act of 1906 which is the Act admittedly applicable to the present case, and the suit is, therefore, barred by time.

The learned trial Judge has held in his judgment under appeal that the present suit is governed by Article 120 of the Limitation Act and, therefore, the period available to the plaintiff for filing it was six years as provided thereunder. Now, if Article 126 is the proper article applicable to this case, then the suit was certainly brought within limitation because in addition to the normal period of six years, the plaintiff would be entitled to add to this period the period of two months' statutory notice which it was incumbent upon him to give to the State before he could file the suit against it. The contention of learned counsel for the State, however, is that there is no question of the applicability of Article 120 of the

Limitation Act to the present case and the the correct article which should fee held to govern it is Article 39 which reads as follows:

Description of suit

Period of limitation

Time from which period begins to run

"39. For compensation for trespass upon immovable property.

Three

years

The date of the Trespass".

21. Now, speaking for ourselves, we are not at all sure that a ease of this character wherein certain immovable property of the plaintiff was taken possession of by the State Government or its Ruler, whose subject the plaintiff was, could be properly characterised as a suit for compensation for "trespass". We are, however, inclined to the opinion that even if the present suit was governed by a three years period, if not under Article 39 but by some other article analogous to it, which also prescribes a like period, then too, the suit would not be barred by limitation, the reason being that the liability of the State, first by the State Government of Bikaner and then by the successor State of Rajasthan, appears to us to have been acknowledged time and again within such period of limitation by the prolonged correspondence that took place between the plaintiff and the authorities of the Bikaner State or the State of Rajasthan during the course of which a number of offers and counter-offers were made to and fro between the parties and which would never have fallen to be made by the Bikaner Government or by the defendant State if the latter was not prepared or willing to acknowledge its liability in this behalf.

It should be sufficient in this connection to invite attention to the letter of the Private Secretary to His Highness the Maharaja of Bikaner to the Prime Minister of that State dated the 6th of April, 1949, wherein it was clearly stated that in exchange for the two plots measuring 8,680 sq. yds. in Amarsinghpura he should be given two other plots bearing Nos. 25 and 53 in Sadulnagar and a portion of land falling in vet another plot, namely, No. 55 so that total land thus given to him would be equal to the 8,680 sq. yds. of land originally held by him. It may also be noted here that this letter of the Private Secretary was written by him in pursuance of the order of His Highness the Maharaja himself of the same date which has been embodied in Ex. A. 3 and which has been brought on the record by the defendant itself.

This marked the end of the chapter so far as the then State of Bikaner was concern ed. because on the 7th of April, 1949, it ceased to be an independent State and got integrated with the United State of Rajasthan, which in due course became the Part B State of Rajasthan after the coming into force of the

Constitution. An this marks the onset of the second chapter during the course of which there was a fairly long-drawn-out correspondence between the plaintiff and the Commissioner, Bikaner, and out of this correspondence it should suffice to refer to the letter of the Commissioner, Bikaner addressed to the plaintiff dated the 21st of May, 1951 (Ex. 33) where-under the latter was asked, inter alia to select the plots he required in exchange of his original plots, and the further letter of the same officer dated the 27th of November. 1951 (Ex. 35) by which informed the plaintiff that the Collector. Bikaner, had suggested that certain plots situated in Amarsinghpura were vacant and were of the same value and position as those held by him originally and, therefore, he should let the former know if he agreed to select any of the plots in exchange of those held by him.

We have no doubt whatever that the Commissioner being the highest officer in his division, which included the Bikaner area with which we are concerned, had the authority of the State to enter into this correspondence with the plaintiff, and these letters amounted to a sufficient acknowledgment of the liability of the State towards the plaintiff within the meaning of Section 19 of the Limitation Act, For these reasons, we have no hesitation in coming to the conclusion that the plaintiff's suit was well within time on the 2nd of July, 1952, when it was filed.

22. Before we conclude the defendant's appeal, we may as well briefly refer to yet another submission which was made to us on its behalf, and that is that the act by which the plaintiff was dispossessed of his two plots in suit was not the act of the Government of the former State of Bikaner but of His Highness the Maharaja of that State in his personal capacity. In support of this argument, it was further brought to our notice that there was abundant material on the record to show that the bungalow which was built on the land in question together with some more land lying in vicinity thereof belonged to the Maharaja himself and that the same had been built at his own private expense and it was known as a privy-purse bungalow. It was, therefore, contended that neither any responsibility for the dispossession of the plaintiff could be laid at the door of the Government of the former State of Bikaner, nor could it at all devolve on the successor State of Rajasthan.

This argument, in our opinion has no substance whatever; for, even assuming that His Highness the Maharaja of Bikaner had ordered the taking over of the suit land, it appears to us that he did it in his official capacity, that is, as the Ruler of the State. The matter does not end there. There is incontrovertible evidence on the record that his household had in due course purchased this land from the State by a Patta which is dated the 22nd November 1948 and a copy of which (Ex. 26) is on the record. The language of this Patta is indeed revealing. The Patta was given by the City Improvement Committee, and it states in so many words that it was so given "bv sanction of the Government of His Highness the Maharaja Sahib Bahadur."

This Patta further goes on to mention that there was an open land occupied by bungalow No. 27 (this was the number which was eventually given to the

bungalow constructed on the land held by the plaintiff originally and to which some more land was added) towards the east of the Orphanage at Bikaner measuring 13,104 odd sq. yds. which had been purchased by the Household of His Highness the Maharaja of Bikaner from the State Govt. of Bikaner and for which a sum of Rs. 6,552/2 had been given to the latter by the former. At the end of the Patta it was mentioned significantly as follows:

"We will not put any claim or objection about this land, and if someone raises any objection thereto, the State Government will deal with him effectively."

It has not been disputed before us, nor is it indeed disputable, that this Patta does cover the lands held by the plaintiff in the Amarsinghpura scheme. The position, therefore, inevitably boils down to this, namely, that the suit lands, which belonged to the plaintiff, had been taken over by the State Government, presumably at the instance of the Ruler, and thereafter the same land together with certain other land lying in its neighbourhood (the total amounting to 18,104 sq. yds.) was then sold by the State Government to the Household of His Highness the Maharaja of Bikaner for a consideration of Rs. 6,552/2, that is, at the rate of 8 annas per sq. yd. which sum had been paid by His Highness' household to the Tehsil City, And further having accepted the sale consideration the Government of His Highness the Maharaja took upon itself the obligation to safeguard, as it were, the title of the Maharaja. In this state of evidence, we have no manner of hesitation in holding that the plea that the act by which the plaintiff felt aggrieved was really the act of His Highness the Maharaja in his private capacity and that the State Government had nothing to do with it or that no liability therefore was incurred by the State, falls to the ground, and we hereby reject it as wholly unsubstantial.

23. This disposes of the defendant's appeal.

24. Turning next to the appeal of the plaintiff, the first and the main point which has been raised before us is whether the decision of the Court below that the plaintiff was entitled to receive the price of the suit lands at the rate of 8 annas per Malmandi sq. yd. only instead of Rs. 3 per sq. yd. claimed by the plaintiff, is not well founded. Now, before we deal with the evidence of the parties on this aspect of the case, as this is essentially a matter of fact, we should first like to address ourselves as to what would be the correct basis or measure for founding a decision on this point, and this immediately brings us to the judgment of the Court below on this aspect of the case. The learned Judge, while giving his finding on issue No. 7 relating to this part of the case has dealt with the oral evidence led by the plaintiff which, according to him, shows that the ruling rate was Rs. 3 per sq. yd. at the relevant time in the area in question and that the defendant had hardly led any rebuttal thereto.

Having said all this, he, however, proceeded to point out that there was another aspect of the case which could not be overlooked, and that was that the plaintiff had purchased the land in question at the rate of 2 annas per sq. yd., that the

then Government of Bikaner had recovered Rs. 4,340 only for the sale of this land to the Comptroller of the Household of His Highness the Maharaja of Bikaner, that the defendant State had not made any profit from the transaction, and although there had been unconscionable delay in the settlement of the dispute the plaintiff himself had contributed to a large extent to the prolongation of the dispute and having regard to all these circumstances and in the interest of justice, the defendant State should be held liable for that amount only "which the past administration had realised from the Comptroller of the Household." In this view of the matter, the Court below allowed a sum of Rs. 4,340 only to the plaintiff as the price of the land in question.

25. We are far from satisfied that the approach adopted by the Court below to the question under consideration was either a correct or a proper one. The plaintiff was undeniably owner of the two plots of land in Amarsinghpura area. Undeniably again, he was deprived of this land in some extra legal manner which he could not have possibly resisted at the time. He immediately protested against the manner in which his land had been seized and was being built upon. He was assured that he need have no fears and that either he will be given land of equivalent value in the vicinity of his own plots or will be otherwise suitably re-compensated. The process for settling the measure and quantum of compensation took an inordinately long time and according to the learned Judge himself there has been unconscionable delay in the settling of the dispute. He was, however, persuaded to think that the plaintiff had himself contributed to a large extent to the protraction of this dispute, a matter upon which, we confess, we are not at all as sure as the learned Judge below seems to have been. Perhaps after everything is said and done and duly considered, he was more a victim of events than himself a victimiser. We should also like to point out here that normally if the State wanted to acquire certain immovable property whether a mere open land or one that was built upon such an object could lawfully be achieved by taking appropriate proceedings under the Bikaner State Land Acquisition Act, 1909, which had been brought into force as early as the 15th of July, 1909.

The preamble of this Act clearly shows that by this Act a machinery was being laid down for the acquisition of land for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. Section 3 of this Act prescribes for the publication of a preliminary notice to the effect that land in any locality is likely to be needed down that whenever it appears to the Durbar that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary and published in the Rajpatra and thereafter the Nazim shall take further proceedings for the acquisition of the land.

By Section 8, provision is made for the giving of notice to all the persons interested in the intended acquisition and to raise their objections, if any. Section 10 relates to the enquiry into such objections and to the making of an award for the compensation payable for the same. By Section 11, it is provided that such

award shall be filed in the office of the Nazim and it shall be final & conclusive evidence of the true area and the value of the land and the apportionment of the compensation among the persons interested. Thereafter, the Nazim is required to forthwith give notice of the award to such of the persons interested as may not have appeared personally before him or by representatives when the award was made.

Section 17 then provides that any person interested who does not accept the award may file an application to the Nazim asking him to refer the matter for the determination of the Court, and he shall also state the grounds on which he proposes to assail the award. In such cases the Court must enquire into the matter after giving notice to the parties concerned and determine the amount of compensation payable. Sections 22 and 28 lay down the principles for determining the amount of compensation. Now among other matters provided u/s 22, it is important to note that in determining the quantum of compensation the Court shall take into consideration the market value of the land sought to be Acquired at the date of the publication of the declaration relating thereto u/s 5.

By Sub-section (2) of Section 22 it has been further provided that in addition to the market value of the land, as above provided, the Court shall in every case award a sum not exceeding ten per centum on such market value, in consideration of the compulsory nature of the acquisition. The further important section to notice in this connection is Section 29 which lays down that as soon as the Nazim makes an award u/s 10, he must tender the payment of the compensation awarded by him to the persons entitled thereto and shall pay it to them unless he is prevented from doing so from some one or more of the contingencies mentioned in next sub-section. This sub-section, inter alia, lays down that if the parties concerned refuse to receive the compensation or there is any dispute relating to the title or apportionment thereto, the Nazim shall deposit the amount of compensation in the Court to which a reference u/s 17 is submitted.

26. It is clear from the scheme of this Act that before a person could be deprived of the possession of his land by means of proceedings under this Act, then, as a rule, he is entitled to have the compensation therefore determined and paid to him before such possession is taken.

27. Now speaking for ourselves, we are not at all satisfied that it was not possible for the former State of Bikaner to take proper proceedings under the Act of 1909 to be able to acquire the plaintiff's land, if such acquisition was necessary in public interest within the meaning of the Act. Instead, he was summarily and swiftly dispossessed of the same, and no compensation therefore has been tendered to him upto date. It further seems to us that the plaintiff should not stand to suffer because no proceedings under the Act of 1909 were at all taken in this case. The failure to do so, in our considered judgment, should be considered as a factor to his advantage rather than to his detriment.

Bearing the principles enshrined in the Act as determinative of the amount of compensation permissible which we think should be held as applicable to the present case as a matter of justice, equity and good conscience, we are, therefore, definitely of the opinion that he would be properly and justly entitled to the price of the land of which he was deprived at its market rate in 1946 when it was summarily seized, apart from any further solatium to which he may be entitled for the compulsory deprivation of his land within the intendment of Sub-section (2) of Section 22 of the Bikaner State Land Acquisition Act, 1909, and to any interest which is a separate question and to which we propose to address ourselves presently.

28. Now, if the principle that we have enunciated above in dealing with a matter like this is the correct one to follow, as we think it is, then the considerations on which the learned Judge below proceeded to ascertain the compensation for the land, such as, what was the price paid by the owner of the land for the same when he originally purchased it, or what was the price which was paid by the Household of His Highness the Maharaja of Bikaner to the State Government, or the further consideration that the Government of the former State of Bikaner had not sold this land at the rate of Rs. 8 per sq. yard or that the Government of Rajasthan did not make any profit from the transaction of sale, seem to us to be largely irrelevant and out of place.

And, viewing the whole case from its correct perspective, we are disposed to think that the learned Judge below wholly misdirected himself in determining the question of the market value of the land, the more so as the evidence before him, as led by the plaintiff, clearly was that the market value of the land in question was far more than 0-8-0 annas per sq. yard and of which evidence there was hardly any rebuttal on the side of the defendant State. At the best, what might be said for the judgment of the lower Court on this aspect of the case is that the price paid by His Highness' Household for this land at the rate of 0-8-0 annas per sq. yard is just one piece of evidence which may be taken into consideration in determining the market value of the land, but its force is and can be no more than this, and this piece of evidence is by no means final or conclusive and will have to be taken into consideration along with other evidence available on the record in this connection.

29. This brings us to the question as to what was the market value of the land in dispute in May, 1946, when the plaintiff was deprived of it by the Government of the former Bikaner State, The plaintiff seems to have led both oral as well as documentary evidence in this behalf. The oral evidence consists of the statements of Bhikam Chand (P. W. 2), Narain Singh (P. W. 3), Amar Singh (P. W. 4) and Sagat Singh (P. W. 5) apart from the plaintiff himself. The first two witnesses prove that Sumer Singh sold his land measuring 3200 m. m. sq. yards situated in Amarsinghpura scheme to Mst. Asha Bai for a sum of Rs. 9,600 at the rate of Rs. 3 per sq. yard by means of Ex. 67 dated the 18th January 1949

The third witness, who is one of our District and Sessions Judge, deposed that in

January, 1949, he purchased a plot just opposite the area covered by the Sadulnagar scheme at Rs. 3 per sq. yard. Sagat Singh (P. W 5) has deposed that he owned land, being plot No. 12 in Amarsinghpura scheme, which has been shown in red on Ex. 91 which was acquired by the State in 1946, obviously under the Bikaner State Land Acquisition Act, 1909 and his plot was readjusted and realigned so as to cover a total area of 10,000 sq. yards and he was asked to pay at the rate of Rs. 3 per sq. yard for the excess land which was to be allotted to him. The witness, however, refused to do so as he had not the means to pay for the extra land at the rate demanded of him by the State, and so eventually he was allotted another plot of land of the value of Rs. 3 per sq. yard in the Sadulnagar scheme area. This evidence is fully corroborated by Exs. 86, 87, 88 and 89 on the record. Our attention is also invited to Ex. 86 which is a copy of the order of the City Improvement Committee dated the 2nd March, 1951, with reference to the particular extract which reads as under :

"The Government rate of the land in the locality where Shri Sagat Singh's land exists and which has been assigned No. 12 is Rs. 3 per yard. The rate of both the lands i.e., the land falling in the scheme and the land to be given in exchange, is the same, since the rate of the plots at Sadulnagar is also Rs. 3 per yard. The difference only is of area."

30. Our attention was next invited in this connection to certain notifications issued by the Bikaner State in 1948 and 1949 which have a bearing on the question of the market value of land in Sadulnagar area. The first notification is Ex. 74 published in the Bikaner Rajpatra dated the 29th of May, 1948. This was a notification inviting purchasers for the sale of plots in this area. Among other conditions, which were mentioned and with which we are not concerned, it was mentioned that the price of land in this area was fixed at Rs. 12 and Rs. 5 per m. sq. yard for shopping and residential areas respectively. The next notification (Ex. 75) is dated the 12th of March 1949, whereby the public were informed that revised prices were fixed by the Government for shopping and residential plots in the area in question respectively at the rate of Rs. 10 and Rs. 3 per sq. yard which shall be operative till the 15th of April, 1949, after which the prices were likely to be raised. The plaintiff has, of course, supported his own case that the market rate of land in the Amarsinghpura area was Rs. 8 per sq. yard. It is on the basis of this material that the plaintiff claims that he should have been allowed the price of his land at the rate of Rs. 3 per sq. yard and the submission of his learned counsel is that no attempt has been made on behalf of the defendant State to lead any evidence in rebuttal of this.

31. We have carefully considered the material which has been brought to our notice to this connection and feel bound to point out that no precise evidence of the market rate of the land in the area, with which we are concerned at it happened to be in the middle of 1946, has been brought on the record; but this, for ought we know, may be due to the fact that most of the plots which are situated in this area had been purchased by the owners thereof prior to 1946 and

no such sales took place at the relevant time. We say so because if any such sales should have taken place at or about that time, it should not have been difficult for the State to have produced such evidence which it has entirely failed to do.

We further, feel that in the absence of such evidence we may have to bear in mind the transactions of sale or purchase which took place in this or the Sadulnagar area as an admittedly analogous area near about that time, and it is from this angle that the evidence led by the plaintiff and to which we have referred above, will have relevance. At the other end, we have before us the offer which was finally made by the defendant-State to the effect that it had sanctioned for the plaintiff a compensation in the shape of allotment of land to him near his own house in Bikaner City of the value of Rs. 9,780 in lieu of his original land measuring 8680 sq. yards which works out to slightly more than Re. 1 per sq. yard.

Thus, we have two rates before us, the one being Rs. 3 which is claimed by the plaintiff, and the other being Re. 1 which was offered by the State Government to the former. We are inclined to the view that it would be just and fair to allow the plaintiff the mean of these two rates which works out to Rs. 2 per sq. yard.

We might incidentally mention in this connection that when the then Chief Engineer of the Bikaner State Shrt S. R. Gadag came to be examined as D. W. 2, he deposed that when plots in the Amarsinghpura scheme were redesigned and re-allotted, an effort was made to see that they were, as far as possible, of the same measurements as before, but he added that if anybody's plot as re-designed happened to be bigger in size than the area previously occupied by him "then the order in that respect was that Rs. 2 per sq. yard may be charged." This part of the statement of the defendant's own witness Shrt Gadag, who was also ex officio Vice-Chairman of the City Improvement Committee, Bikaner, goes a long way to strengthen us in the conclusion at which we have on the whole arrived that the ruling price of land in the Amarsinghpura area cannot legitimately be fixed at less than Rs. 2 per sq. yard in 1946.

32. The only thing which the learned Deputy Government Advocate could advance against this conclusion was that the price of Rs. 2 per sq. yard was demanded from the prospective purchasers by the State because the area was re-designed and improved or intended to be improved by the lay out of wider roads, electric lines and so on and to forth. In the first place, there is no evidence on the record that these improvements had actually been effected at the time with which we are concerned. In the second place, the benefit of such improvements would go equally to the previous owners and the new purchasers and the value of land in the hands of old owners could not be fixed at a lower value simply because when they purchased these lands such amenities did not exist there. Once a decision had been taken to provide this area with these amenities, the benefit thereof will go equally to all residents therein, whether they held land therefrom before or after the scheme became effective.

We do not think, therefore, that the conclusion at which we have arrived above is in any manner displaced by the submission of the learned Deputy Government Advocate in this behalf. In this state of the evidence, we have definitely come to the conclusion that the fair market value of the plaintiff's land in May, 1946 should be fixed at Rs. 2 per sq. yard only and no more and not less and this should meet the just requirements of the case. Computed at this rate, the amount of compensation under this head works out to be Rs. 17,360.

38. The plaintiff has also claimed interest from the date of his dispossession upto the date of the suit and further upto the date of realisation. The trial Court refused to allow interest on the sum decreed by it as, in its opinion, the plaintiff himself was responsible for refusing to accept a number of proposals which had been made to him from time to time "and as the question of compensation was never brought before the authorities." We do not understand what the learned Judge meant when he made the last mentioned observation because it was the question of compensation and compensation alone which the plaintiff was pressing before the authorities right from the time when his land had been unceremoniously seized from him, nor are we impressed by the argument that the plaintiff should be disallowed interest because he had refused a number of proposals made to him for the simple reason that normally if his land had been acquired under the Act of 1909, he would have been entitled to have his compensation determined before he would have been deprived of his land and the same had been paid, or at least tendered, to him. This was never done; and we cannot ignore the last proposal which was made to him in August, 1952 (vide Ex 58) whereby a compensation of Rs. 9,780 in full settlement of the dispute had been sanctioned for him. For the reasons already given, it is impossible for us to hold that this compensation was just or fair having regard to the probable market rate of the plaintiff's land at the relevant time, that is in May, 1946.

34. The learned Deputy Government Advocate next contended that the plaintiff would not be entitled to interest as no provision therefore has been made in the Act of 1909 which was in force in the former State of Bikaner. This argument is correct so far as it goes, but is not conclusive on this aspect of the case. The reason is that the plaintiff had a right on equitable considerations to receive compensation for the acquisition of his lands before he was deprived of the possession thereof and, in such circumstances. Courts have held that there is an implied agreement between the parties that interest would be payable to the party dispossessed on the principal amount of compensation payable to him. Reference may be made in support of this view to *Satinder Singh and Others Vs. Amrao Singh and Others*, This was a case of acquisition of land under the Punjab Act 48 of 1948 and, inter alia, the question for determination before their Lordships was whether the owners of the lands were entitled to interest on the compensation allowed to them from the date of acquisition when the claimants lost possession of their property. The High Court had rejected this claim. After an elaborate discussion of the legal position, their Lordships summed up the position in the following words :

"It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. The question which we have to consider is whether the application of this rule is intended to be excluded by the Act of 1948

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 (of the Interest Act 32 of 1839). This question was considered by the Privy Council in AIR 1938 67 (Privy Council) Referring to the proviso to section 1, of the Act the Privy Council observed "this proviso applies to cases in which the Court of equity expresses its jurisdiction to allow interest." We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right: and so, the proviso to Section 1 of the Interest Act saves the said right. We must accordingly hold that the High Court was in error in rejecting the claimants' case for the payment of interest on compensation amount, and so we direct that the said amount should carry interest at 4 per cent per annum from the date when respondent 2 took possession of the claimant's lands to the date on which it deposited or paid the amount of compensation to them."

35. Learned Deputy Government Advocate draws our attention to Union of India (UOI) Vs. A.L. Rallia Ram, in this connection, but we have no hesitation in saying that that case has no application to a case like the present which is concerned with the compulsory acquisition or dispossession of the claimant's land. On equitable grounds, therefore, the plaintiff would clearly be entitled to receive interest on the principal amount of compensation namely Rs. 17,360 from the date of his dispossession upto the date of suit and he would be further entitled to interest on the same amount until it is paid or tendered to him. As to the rate of interest, we fix it at 4 per cent per annum simple.

36. Lastly, the learned counsel for the plaintiff contends that as against the claim for damages for mental and physical worry and harassment and for incidental expenses, which had been claimed by him at Rs. 2,500 and Rs. 600 respectively, he has been allowed Rs. 1,500 only under both these heads and that the full amount claimed by the plaintiff under these heads should have been allowed to him. In support of this argument, learned counsel has invited our attention to Sub-section (2) of Section 22 of the Act of 1909 whereby it is provided that in addition to the market value of the land as provided in the section itself, the Court shall in every case award a sum not exceeding ten per centum on such market value in consideration of the compulsory nature of the acquisition. On this basis, the plaintiff would have been entitled to a sum of Rs. 1,736 if the full ten per centum on the market value had been allowed to him as such allowance. Now, what we wish to point out in this connection is that the grant of a certain quantum of allowance within the maximum limit of ten per centum on account of the compulsory nature of the acquisition was a matter within the discretion of the

Courts and it is not necessary that the full ten per cent must have been allowed to him. On the other hand, it has been contended before us on behalf of the State that the Act of 1909 makes no provision for the grant of damages for mental worries or for expenditure on correspondence, etc., and therefore, we should quash this part of the compensation allowed by the Court below. To this, the short answer is that the defendant State has failed to raise any specific ground in its memorandum of appeal presented before this Court assailing the grant of any amount under this head to the plaintiff. The whole position boils down to this that although left to ourselves, we would have granted a certain amount of compensation to the plaintiff under the principle enshrined in Sub-section (2) of Section 22 of the Act of 1909 instead of under the heads of physical and mental harassment or incidental expenditure incurred over correspondence as held by the Court below, we do not propose to interfere with the judgment of the Court below on this point under the circumstances.

37. The net result is that we dismiss the appeal of the defendant State but we partly allow the appeal of the plaintiff and hence the decree to a sum of Rs. 17,360 as price of the land in dispute instead of Rs. 4,340 as fixed by the Court below and further allow interest on the same from the date of the plaintiff's dispossession, that is, 17th of May, 1946 upto the date of suit, amounting to Rs. 4252.90 paise at the rate of 4 per cent per annum simple, and we further allow interest at the same rate from the date of the suit until realisation or until the principal amount of Rs. 17,360 is tendered or deposited in Court by the defendant. The trial Court's decree with respect to the grant of the further sum of Rs. 1,500 by way of hardship to the plaintiff is left intact. The plaintiff shall have his proportionate costs in both the Courts, The costs of the defendant's appeal shall be easy. The defendant State shall bear its own costs throughout.