

(1983) 04 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 35 of 1979

Military Estates Officer

APPELLANT

Vs

Zamindaran Air Field

RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968
— Section 21(3), 8
Requisitioning and Acquisition of Immovable Property Rules, 1953 — Rule 9(1), 9(3), 9(6)

Citation : AIR 1983 J&K 91

Hon'ble Judges : Mufti Baha-Ud-Din Farooqi, C.J;G.M. Mir, J

Bench : Division Bench

Advocate : T.C. Kotwal, for the Appellant; Bhim Singh, H.L. Bhagotra and S.A. Salaria, for the Respondent

Judgement

1. By an Act called "the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968" (shortly, the Act), the State

Legislature has made provisions for the requisitioning and acquisition of immovable property in connection with the purposes of the State or of the

Union. Section 21 provides for the requisition of the property at the instance of the Union and says as under :

21. Requisitioning of property at the instance of the Union.-- (1) Where any immovable property situate in the State is required by the Union

Government in connection with the purposes of the Union and a requisition in that behalf is received by the Government, the Government shall

notify that such property be requisitioned.

2. Upon such notification the provisions of the Act shall apply in the same manner as they apply in respect of the property requisitioned for the

purpose of the State.

2. Section 7 provides for the power of the State Government to acquire the property which has been previously requisitioned either for the

purposes of the Union or of the State. Section 7 reads as follows :

7. Power to acquire requisitioned property.-- 1. Where any property is subject to requisition the Government may, if it is of the opinion that it is

necessary to acquire the property for public purpose, at any time acquire such property by publishing in the Government Gazette a notice to the

effect that the Government has decided to acquire the property in pursuance of this section :

Provided that before issuing such notice the Government shall call upon the owner of, or any other person who, in the opinion of the Government

may be interested in, such property to show cause why the property should not be acquired, and after considering the cause, if any, shown by any

person interested in the property and after giving the parties, an opportunity of being heard, the Government may pass such orders as it deems fit.

2. When a notice as aforesaid is published in the Government Gazette, the requisitioned property shall, on and from the beginning of the day on

which the notice is so published, vest absolutely in the Govt. free from all encumbrances and the period of requisition of such property shall end.

3. No property shall be acquired under this section except in the following circumstances, namely :--

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expenses of the

Govt. and the Govt. decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Govt; or

(b) Where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Govt., be excessive and

the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

4. Any decision or determination of the Govt. under Sub-section (3) shall be final and shall not be called in question in any Court.

5. For the purpose of Clause (a) of Sub-section (3) 'works' include buildings, structures and improvements of every description.

3. Section 8 sets out the principles and the method of determining the

compensation and is to the following effect, namely :

8. Principles and methods of determining compensation.-- (1) Where any property is requisitioned or acquired under this Act, there shall be given

compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say :--

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

(b) where no such agreement can be reached, the Govt. shall appoint as arbitrator a person, who is a District Judge or Additional District Judge;

(c) the Govt. may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to

assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator, the Govt. and the person to be compensated shall state what in their respective

opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and

specify the person or persons to whom such compensation shall be paid, and in making the award, he shall have regard to the circumstances of

each case and the provisions of Sub-sections (2) and (3), so far as they are applicable;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the

arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Jammu and Kashmir Arbitration Act, 2002 shall, apply to arbitrations under this section.

2. The compensation for the requisitioning of any property shall consist of:--

(a) recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation

of the property, if it had been taken on lease for that period; and

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

(i) pecuniary loss due to requisitioning; (ii) expenses on account of vacating the

requisitioned premises;

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

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be

incurred for restoring the property to the condition in which it was at the time of requisition.

3. The compensation for the acquisition of any property u/s 7, in the absence of an agreement, shall be--

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time

of requisitioning and been sold on the date of acquisition, or

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

is less.

4. Where there are several persons interested in the compensation, it shall be lawful for the Government, either on its own motion, or on an

application from any person interested to appoint the same or any other arbitrator to make an award or supplementary award in respect of the

dispute.

4. Section 16 provides for the delegation of power by the State Govt. and reads thus:

16. Delegation of powers.-- The Govt. may, by notification in the Govt. Gazette, direct that the powers exercisable by it by or under this Act

shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate

to the Government.

5. Section 22 provides for the rule making power of the State Govt. for carrying out the purposes of the Act. Acting under this section, the State

Govt. has framed rules called ""The Jammu and Kashmir Requisitioning and Acquisition Rules, 1969"". Rule 9 of these rules reads as follows:--

9. Compensation.-- (1) An authority to whom the powers of the Govt. have been delegated shall, as far as may be associate with itself the local

officer of the Govt. concerned with the property fixing compensation under Clause (a) of Sub-section (1) of Section 8, and obtain the approval of

the Govt. in the administrative Department concerned for) any officer authorised by the Govt. in this behalf.

2. Compensation for requisitioned property, other than agriculture land, shall be paid by the competent authority quarterly in arrears. In the case of

agricultural land, the compensation shall be paid either annually or on release of the land, whichever is earlier. The compensation shall be paid

either in cash or by cheque at the discretion of the competent authority.

2 (a). In determining the rent of agricultural land under Clause (a) of Sub-section (2) of Section 8 of the Act, the competent Authority shall have

regard to the following rates of rent which the Govt. consider minimum for different categories of lands in the State.

Category of land. Jammu province per Kashmir province per kanal

kanal

Class I irrigated Rs. 36 Rs. 40

Class II (a) Rs. 24 Rs. 25

(b) Unirrigated Rs. 16 Rs. 16

Class in vacaturable Rs. 5 Rs. 5

3. The competent authority shall, as soon as may be practicable after the making of a requisitioning order or the service of a notice of

requisitioning, communicate to each person interested as offer of what in the opinion of the competent authority, is a fair amount of compensation

payable to such person in respect of the property requisitioned or acquired.

4. If the owner of the property is not readily traceable or if there be no person competent to alienate the property or if the ownership of the

property is in dispute or if there be any dispute as to the title to receive the compensation, the competent authority shall deposit in Court the

amount of the compensation as determined by him under Clause (a) of Sub-section (1) of Section 8. The competent authority shall at the same

time submit to the Govt. a report setting forth the full facts of the case with all connected papers and apply for the appointment of an arbitrator.

Where the compensation is recurring, the competent authority shall, in cases covered by this sub-rule, deposit the amount in Court from time to

time in arrear as it falls due.

5. Every person interested to whom an offer is made under Sub-rule 3, shall,

within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Govt. in Form 'K'.

ii. In the following circumstances, the competent authority may at his discretion make to an eligible claimant ""on-account"" payment up to 80 per cent of the amount which, in his opinion is likely to be assessed as compensation or recurring compensation as the case may be:--

- a. when there is likely to be delay in assessing compensation;
- b. where the competent authority has made an assessment but there is delay in reaching an agreement though there is a reasonable prospect of agreement being reached; or
- c. where it is clear that an agreement cannot be reached.

iii. If the competent authority makes aa ""on-account"" payment under clause (ii), he shad enter into an agreement with the person to whom payment is made on behalf of the Govt. in Form 'L' with such notification as the nature of the case may require.

6. If any person to whom an offer is made under Sub-rule (3) does not accept the offer or does not within fifteen days of the receipt of the offer

communicate in writing to the competent authority his acceptance or otherwise of the offer the competent authority shall, as soon as may be, submit

to the Govt. a report setting forth the full facts of the case, particularly as regards the nature and extent of disagreement between himself on the one

hand and the said person on the other hand and he shall also forward with the report all connected papers. The competent authority shall at the

same time deposit in Court the amount offered by him to the said person under Sub-rule (3).

6. Section 2 (b) defines 'Competent Authority' as ""meaning any person or authority authorised by the Government by notification in the Govt.

Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification"". Section 2 (d)

defines the expression 'person interested' and provides as under:

The expression, 'person interested' in relation to any property, includes all persons claiming, or entitled to claim, an interest in the compensation

payable on account of the requisitioning or acquisition of that property under this Act.

7. By Notification SRO 59 dated 6-2-1970, the State Govt. has authorised every Deputy Commissioner to perform the functions of the competent authority under the Act within the local limits of his jurisdiction.

8. In pursuance of Notification No. SRO 610 dated 6-12-1971 the State Govt., acting u/s 21 of the Act, requisitioned land measuring 2134

kanals situate in 18 villages of Tehsil Udhampur for the purposes of the Union, namely : the extension of Air Field at Udhampur. The possession

of the land was taken over by the Union on 1-4-1972. Subsequently the Govt. of India requested the State Govt. to acquire the requisitioned land.

Acting on this request, the State Govt took the necessary steps for acquisition u/s 7 of the Act. By virtue of Notification No. SRO 843 dated 16-

12-1972, the State Govt. made a declaration acquiring the said land. For facilitating the determination of the compensation and its payment to the

persons interested the State Govt., by Notification No. SRO 51 dated 31st Jan., 1973, delegated to the Deputy Commissioner, Udhampur, the

power exercisable by it in respect of the property acquired. The relevant notification reads as follows:

In exercise of the powers conferred by Section 16 of the J. & K. Requisitioning and Acquisition of Immovable Property Act, 1968 (XXXV of

1968) the Govt. hereby direct that the powers exercisable by it by or under the said Act shall also be exercisable by the Deputy Commissioner,

Udhampur, in respect of the property acquired under notification SRO 843 dated 16-12-1972. By order of the Govt.

Sd/-

Addl. Secretary to Govt.,

Home Deptt.

9. Clothed with the powers of the competent authority and the Govt. under the Act, the Deputy Commissioner, Udhampur, by his Order No.

CL/425-27/JKR/30100/ Acq dated 25-6-73 described as an 'award' assessed the compensation for the property acquired. The material portion

of the 'award' reads as under:--

After giving my thoughtful consideration to the abovenoted issues and also in exercise of the powers conferred on me vide SRO 52 dated 31-1-

73 I hereby fix the following rates as compensation for the categories of land noted against each:

1. Rs. 5,100/- per kanal for 'A' class land in all villages.
2. Rs. 4,900/- per kanal for 'B' class land in all villages.
3. Rs. 4,800/- per kanal for 'C' class land in all villages.

In addition, 15% Jabrana is also allowed to be paid to the land holders with interest at 4% per annum from 16-12-1972 to 15-6-73 on the amount

cf compensation which has been detailed as Annexure 'C'.

Payment of compensation for the houses and shops has already been made to the extent of 80% separately and the balance will be paid as early as possible.

The cost of the trees already assessed shall also be paid to the concerned.

It has been represented by the MEO that he is not competent to accept the above-noted rates of compensation though he is satisfied with the

reasonableness of the same. He has therefore decided to make a reference to the Ministry of Defence, Govt. of India. He is within his rights to get

the approval of the same as we are trying to bring about a settlement between the land holders and the Air Force authorities. In case the

negotiations fail and the payment of the abovenoted rates is not made due to non-acceptance by either party, the matter shall go into arbitration u/s

8 of the RAIP Act, 1968.

10. The Military Estates Officer, Jammu Circle, did not accept the assessment. Thereupon, the Deputy Commissioner, acting u/s 8 of the Act read

with Notification SRO 52 dated 31st Jan., 1973, referred the matter for arbitration to the District Judge, Udhampur. The order of reference reads

as follows:

Office of the Deputy Commissioner,

Udhampur.

Order

Whereas land measuring 2134 kanals particulars whereof are set out in the schedule annexed hereto was acquired under Notification SRO 843

dated 16-12-1972 for a public purpose namely construction and expansion of Air Field for defence purpose:

Whereas the amount of compensation determined according to the nature and quality of land varying from Rs. 5,100/- to Rs. 4,800/- per kanal of

land was intimated to the Military Estates Officer (Defence Deptt.) for acceptance and payment:

Whereas the proposed amount of compensation along with the amount of Jabrana and interest have not been agreed to by the Military Estates

Officer, Jammu Circle HQ, Northern Command;

And whereas no agreement has been arrived at between the parties as to the amount of compensation and therefore a dispute has arisen;

Now, therefore, I, M. A. Khan, IAS Dy. Commissioner. Udhampur, in exercise of powers conferred on me by virtue of SRO 52 of 31st Jan.,

1973 u/s 16 of the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (XXXV of 1968) appoint District Judge,

Udhampur as an arbitrator u/s 8, Sub-clause (b) of the said Act.

The case is therefore, referred to the District Judge, Udhampur who will enter upon the reference and determine the amount of compensation

payable to the owners/tenants after hearing the parties. The arbitrator shall make his award within four months from the receipt of this reference.

Sd/-

M. A. Khan, IAS

Deputy Commissioner,

Udhampur.

11. During the course of hearing before the District Judge, the land-holders moved an application on 4-3-1975 and objected to the maintainability

of the arbitration proceedings on the principal ground that the reference was incompetent and, alternatively, on the ground that the amount of

compensation had not been deposited in the Court. It was averred in the application that the award made by the Deputy Commissioner amounted

to an offer of fair amount of compensation which was accepted by the landholders as they never raised any objection to it. Consequently it was

incumbent on the Deputy Commissioner to enter into agreement in the prescribed form with the land-holders, and the question of making any

reference did not arise. It was maintained that the reference was incompetent. It was also averred that, in any event, the arbitration could not

proceed because the amount offered had not been deposited in the Court, as required under Sub-rule 6 of Rule 9 The District Judge held that the offer described as 'award' was invalid because the award did not have the approval of the 'administrative department of the indenting department' as required by Sub-rule 1 of Rule 9. He further held that the provisions of Sub-rule 4 of Rule 9 requiring the Deputy Commissioner to enter into agreement with the land-holders ""could only be invoked, had there been a valid offer and acceptance by the contending parties, i.e. Zamindars on the one hand and the Administrative Department of the Union of India on the other"". He also held that since the offer made by the Deputy Commissioner had not been accepted by the Union of India, the reference was justified. On these findings, the learned District Judge, by his order dated 11-4-1975, rejected the application. The land-holders applied for a writ of certiorari in this Court. They prayed that the order passed by the learned District Judge be quashed and the Deputy Commissioner be directed to deposit the amount of compensation fixed by him in the Court and that the same be disbursed to them. The petition came to be heard by a learned single Judge of this Court. He held that the order of reference was without jurisdiction and, as such, the arbitration proceedings based thereon were void and illegal and that the order to the contrary passed by the learned District Judge was erroneous. He further held that the offer in the form of 'award' made by the Deputy Commissioner was accepted by the land-holders and, as such, it was incumbent on the Deputy Commissioner to enter into agreement with the land-holders in Form K. On these findings, the learned single Judge allowed the writ petition and set aside the order of reference dated 6-5-74 as also the order of the learned District Judge dated 11-4-75. He further directed that the Deputy Commissioner shall enter into agreement with the land-holders in Form-K. as envisaged under Rule 9 (5) and pay to them the compensation at the rates as fixed by him in the 'award'. Aggrieved by this decision, the Military Estates Officer has come up in appeal under the Letters Patent.

12. The law is well settled that the validity of an order made by a statutory authority must be judged with reference to the reasons given in the order itself. *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . Accordingly, the validity of the

impugned order dated 11-4-75 passed by the learned District Judge, acting as an arbitrator u/s 8 of the Act, has to be judged by reasons given by

him to support the order. Viewed thus, two questions arose for consideration in the writ petition. Firstly, whether the offer made in the form of

'award' by the Deputy Commissioner was invalid because it did not have the approval of the Union of India in the Ministry of Defence. Secondly

whether non-acceptance of the offer by the Union of India justified in law a reference to the arbitration u/s 8 of the Act. The success or otherwise

of the writ petition depends upon answer to these questions. Consequently these two questions alone should have engaged the attention of the

learned single Judge. But he has gone a step further and proceeded to investigate and determine the fact whether the 'award' was accepted by the

land-holders and that too when the impugned order did not and, in fact, could not raise the question for the obvious reason that, on its terms, the

reference had followed the refusal of the Union of India and not that of the landholders to accept the award. This has inevitably led him to grant to

the land-holders reliefs so given by way of quashing the order of reference and direction to the Deputy Commissioner that he should enter into

agreement with the land-holders in form-K. The land-holders, it may be noted, had merely asked for the quashing of the order dated 11-4-1975

passed by the learned District Judge and that only because once they got rid of that order on the ground that the reference was incompetent, other

things would automatically follow at the lower level. That apart the accepted principle is that, in an application under Article 226 for a high

prerogative writ, a party cannot have a relief which he has never asked for. It necessarily follows that to the extent the judgment and order of the

learned single Judge allows the extra reliefs mentioned above, it is not sustainable in law. We shall therefore concern ourselves with that part of the

judgment only, which supports the relief actually claimed in the petition. The Relevant portion of the judgment is as follows :

A combined reading of these provisions of the Act and Rule 9 (supra) would show that the Govt. of India is only the indenting authority, it is on its

request that the State Govt. proceeds to requisition or acquire the property. Section 21 (2) of the Act makes it abundantly clear that after the

notification is issued u/s 21 (1) of the Act, the provisions of the Act would become applicable in the same manner as they apply in respect of the

property requisitioned for the purpose of the State. After the notification u/s 21 (1) of the Act is issued, the Union Govt. which is only the indenting

Govt. goes out of the picture and comes back into the picture only to reimburse the State Govt. in respect of all the expenditure incurred by the

State Govt. on its behalf.

In the matter of fixation of compensation, the procedure to be followed is contained in Rule 9 (supra). The rule contemplates that the competent

authority shall assess, what in its opinion would be a fair amount of compensation. For making such an assessment, the competent authority shall

'as far as may be' associate with itself a local officer of the Govt. concerned with the property i.e. of the indenting Government. After making the

assessment the competent authority is to obtain approval of the administrative department of the Govt. before making an offer to the persons who

are required to be compensated. In case they accept the offer, he shall state the case to the Govt. and the dispute between him and the persons to

be compensated shall be referred to the arbitrator. The argument of the learned counsel for the Union of India and the M. E. O. that the competent

authority could make an 'offer' to the landowners only after the rate fixed by the competent authority was 'approved' by the administrative

department of the Union of India does not appeal to me. As observed above, after the State Govt. issued the notification u/s 21 (1) of the Act, the

Union of India went out of the picture, in so far as the provisions of the Act and the Rules are concerned. The 'approval' envisaged in Rule 9 (1)

had, under the scheme of the Act and the Rules to be obtained from the administrative department of the State Govt. and not of the indenting

Government. The Legislature only provided for the association of a local officer of the Govt. concerned with the property, 'as far as may be' at the

stage when the competent authority was required to form its opinion as regards the fixation of the fair amount of compensation. This association

has also not been mandatory. The use of the expression 'as far as may be' in Sub-rule (1) of Rule 9 makes it obvious that the legislature vested a

discretion in the competent authority to associate with it, an officer of the indenting Govt. while making assessment. The Legislature did not even

make such an 'association of a local officer of the indenting Govt.', the scheme of the Act and the Rules do not contemplate any other association

of the indenting Govt., let alone obtaining its approval as to the amount of compensation. The absence of the expression ""concerned with the property"", which occurs in the opening part of the rule dealing with the 'association' of the local officer at the time of assessing the compensation, from the later part of Sub-rule (1), dealing with the obtaining of 'approval' of the administrative department makes it abundantly clear that the approval which the competent authority is obliged to obtain is that of the 'administrative department' of the Govt. which acquires or requisitions the property and not of the administrative department of the indenting Govt. on whose behalf the property has been acquired or requisitioned. Had the intention been otherwise, the expression 'concerned with the property' would have also followed the words 'obtain the approval of the Govt.' (in the administrative department). It is, thus, obvious that the competent authority, after fixing the compensation under the first part of Sub-rule (i) of Rule 9 did not have to go to the administrative department of the indenting government, as indeed he had no concern with the government. In view of the delegation of powers, vide SRO 52 dated 31-1-1973 the competent authority itself, had been vested with the powers to accord 'approval' as envisaged under Rule 9 (1). The issuance of SRO 52 dated 31-1-1973, appears to me to have been actuated by the desire to the early finalisation of the payment of compensation to the persons required to be compensated and seeking 'approval' from the indenting Govt. would have defeated that object. Since, no 'approval' was required to be obtained from the Union of India to the amount of compensation fixed by the competent authority, the non-acceptance of the amount of respondent No. 1 was of no consequence at all. This view finds support from a perusal of Rule 9 (5) and Rule 9 (6) also which envisages the reference to arbitration only in the event of disagreement between the competent authority on the one hand and the persons required to be compensated on the other. No reference is required to be made to the arbitrator in case the Union of India does not accept the amount fixed by the competent authority. By virtue of Section 21 (3) of the Act, the Union of India is under a legal obligation to compensate the State Govt in respect of all the expenditure incurred by the State on its behalf. Thus, it follows that after the competent authority has assessed the compensation, the indenting Govt. has no locus standi to question it, let alone

veto it and a reference to arbitration could only be made in the event of disagreement between the persons from whom the land had been acquired or requisitioned on the one hand and the competent authority which had fixed the amount of compensation on the other as these are the only two parties contemplated under the Rules.

The basis on which reference had been made to the arbitrator on 6-5-1974 is revealed from the order itself which records "whereas the proposed

amount of compensation along with the amount of jabrana and interest have not been agreed to by MEO Jammu Circle HQ Northern Command".

No reference could have been made to the arbitrator on the refusal of the Union of India to accept the compensation as fixed by the competent

authority. The Govt. or the competent authority had no jurisdiction to make any reference to the arbitrator on the grounds recorded in the order

dated 6-5-1974 as reference to the arbitrator, within the meaning of Section 8 (b) of the Act read with Rules 9 (5) and 9 (6) of the Rules, could

only be made if the dispute as regards compensation was between the persons from whom the property had been requisitioned or acquired and

the competent authority. In the instant case there is nothing on the record which would show that any dispute had arisen between the competent

authority and the persons required to be compensated. There is no averment in the written statement even, to the effect that a dispute had arisen

between such persons and the competent authority. The order of reference also does not record this as a ground for making the reference. Under

these circumstances respondent No. 2 was completely in error in making a reference to respondent No. 5. The order of reference was beyond the

jurisdiction of the competent authority.

I cannot persuade myself to accept the argument of the learned counsel for the Union of India that in view of the fact that the petitioners had

accepted the validity of the reference by their petition dated 7-9-1974 they were estopped from challenging it. The argument on the face of it is

fallacious as there can be no estoppel against a statute. In the instant case, the Act did not confer any jurisdiction on the competent authority to

make a reference to the arbitrator except in the contingency provided in Section 8 (1) (b) of the Act read with Rule 9 (6) of the Rules. Reference

to the arbitration in the facts and circumstances of the case i. e. on the

disagreement by the indenting Government, is not contemplated under the Act or the Rules and therefore, no amount of consent could confer jurisdiction on the arbitrator, which under law he did not possess.

In view of the aforesaid discussion, I would hold that no reference could have been made on the ground given in the order of reference dated 6-5-

1974. The said order is, accordingly, hereby quashed as it is based on grounds extraneous to those contemplated by Sub-rule (6) of Rule 9.

The learned arbitrator also was in error in rejecting the preliminary objection of the petitioners. His opinion that the reference made by the Deputy

Commissioner had to be considered in the "light of the basic facts that the offer made by him had not been accepted by the Union of India", is in

view of the above discussion clearly erroneous and violative of the provisions of the Act and the rules framed thereunder. The order of the

arbitrator dated 11-4-1975, therefore, also deserves to be set aside.

13. Learned counsel for the appellant submitted that Rule 9 draws a distinction between a competent authority and an authority to whom the

powers of the Govt. have been delegated under the Act and whereas the delegate may be able to determine the amount of fair compensation

payable in respect of the property acquired, same is not true about the competent authority and that the view to the contrary expressed by the

learned Single Judge is erroneous. He further submitted that the authority to whom powers of Govt. to determine the fair amount of compensation

are delegated is required under this rule to obtain the approval of the Govt. to which the indenting department is subordinate before an offer can be

made to the party interested. He also submitted that the offer has to be made through the competent authority and that it is required to be made as

much to the Indenting department as to the land-holder and that the view to the contrary held by the learned single Judge is erroneous.

14. We have already set out the relevant provisions of the Act and the Rules in the beginning of this judgment. The object and the scheme of the

Act is to provide for the requisition and acquisition of the property in connection with the purposes of the Union and the State, The Union cannot

make such requisition or acquisition directly. They can do so through the agency of the State Government only. Where the property has been

requisitioned for the purposes of the Union, it can be subsequently acquired, if so

desired by the Union Government. In either case the amount of compensation is to be evaluated by the State- Government or its delegate, if there be one. The determination so made is binding on the Indenting department but not so on the property-holder. The amount of the compensation has to be offered to the property-holder through the competent authority. If the offer is accepted, the Competent Authority is required to enter into agreement with the property-holder in form-K. On the other hand if the property-holder does not accept the offer, the Competent Authority is required to submit a report to the Government setting forth the full facts of the case, particularly, as regards the nature and extent of the disagreement between him on the one hand and the landholder on the other. Thereupon the Govt., or its delegate, if there be one, is required to make a reference to the District Judge concerned. At the same time the competent authority is required to deposit the amount in the Court of such District Judge, Where the compensation is allowed to be determined by the delegate, he is required to associate with himself the local officer of the government concerned with the property .i e. the Indenting Department and obtain approval of the Govt. in the administrative department concerned i. e. the department of the Govt. to which he is subordinate or an officer authorised by the Govt. in that behalf. But, where the delegate is himself authorised to accord such approval, he need not refer the matter to the Administrative department.

15. It is true that there is some overlapping between Sub-rule (1) and Sub-rule (3) of Rule 9 inasmuch as whereas Sub-rule (1) authorises the delegate to evaluate the compensation payable to the landholder, the same power is also exerciseable by the competent authority under Sub-rule (3). But in this respect Sub-rule (3) must give way under Sub-rule (1). The words 'in the opinion of the competent authority' appearing in Sub-rule (3) are ultra vires of Sections 8 and 16 of the Act. We say so because Section 8 clothes the Govt. with power to evaluate compensation and Section 16 enables it to delegate that power to any other authority nominated by it. Consequently Sub-rule (1) will come into play where the power has been delegated by the Govt. to any subordinate authority and not otherwise. In this view, the submission made by the learned counsel for the appellant that there is a distinction between the competent authority and

an authority to whom the Govt. has delegated its powers and that both of them are not equally competent to evaluate the compensation cannot be said to be without merit, but in the present case tile distinction does not make any difference. For. the Deputy Commissioner combined in himself the powers of the competent authority as also the powers exercisable by the Govt. u/s 8 of the Act. The evaluation of the compensation by the Deputy Commissioner is referable to the power conferred on him under notification SRO 52 dated 31-1-1973 and reference to the competent authority in the judgment of the learned single Judge must be construed as a reference to such authority. Accordingly no fault can be found with his judgment on this score. In other respects it is fully in accord with the scheme of the Act and the rules as described by us above and we see no reason to take a contrary view. That being so, the argument of the learned counsel must fail.

16. In the result, the judgment and order of the learned single Judge is upheld in so far as it purports to set aside the order dated 11-4-1975

passed by the learned District Judge and it is directed that he shall pass fresh orders on the landholders' application in the light of this judgment. In

other respects the judgment and order of the learned single Judge is set aside. But that will not preclude the learned District Judge from passing

necessary orders in relation to the order of reference and related matters while disposing of the landholders' application mentioned above. The

appeal is disposed of accordingly. There shall be no order as to costs. The parties are directed to appear in the Court of District Judge,

Udhampur, on 3rd of May, 1983. The file shall be sent down forthwith.