
(1970) 02 DEL CK 0018

In the Delhi High Court

Case No : F.A.F.O. NO. 80-D of 1958, from order of District J., Delhi, D/-
17-6-1958

Seth Satnarain Goenka and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-02-1970

Acts Referred:

Citation : AIR 1970 Delhi 232

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : B.C. Misra and Gopal Narain, for the Appellant; Dipak Datta Choudhary, for the Respondent

Judgement

1. The dispute, in this appeal against an award of an arbitrator, relates to the requisitioning of a three storeye building, known as Sat Narain Building, with out-houses and extensive lawns, situated on Dina Nath Road, Subzi Mandi, Delhi.

2. Sat Narain building was first requisitioned by the Government, in May, 1944 but was released in June, 1945. It was again requisitioned from the 1st November, 1947, by the requisition order dated 21st October, 1947. The order was issued under the Delhi Premises (Requisition and Eviction) Ordinance, 1947. The owners of the requisitioned premises had filed a suit questioning the validity of the order of requisition. On discovering that there was some lucuna in the order of requisition, the Government had issued a fresh order of requisition on the 23rd June, 1948. The possession of the requisitioned premises was taken over by the Government on the 5th July, 1948. The Government and the owners failed to agree with respect to the amount of compensation payable in connection with the requisitioning of the premises. The Government, Therefore, appointed, by an order dated the 9th July, 1949, Shri Sunder Lal, Subordinate Judge 1st Class, Delhi as an arbitrator for fixing fair amount of compensation, payable to the owners in connection with the requisition. The owners of the requisitioned premises filed their claim for compensation before Shri Sunder Lal.

The details of the compensation, claimed, were given in paragraph 8 of the claim-petition, which are as under:-

"(a) Compensation for use and occupation at the rate of Rs. 10,000 per month from 5-7-1948 the date of possession till today; 164000/-

(b) Compensation for destruction of marble fountain: 30,000/-

(c) Compensation for destruction of cement fountain; 2,000/-

(d) Compensation for destruction of garden: 10,000/-

(e) Compensation for destruction of furniture: 20,000/-

(f) Compensation for use and occupation till possession is restored to the claimant at the rate of Rs. 10,000/- per month

(g) Compensation for restoration for all other fixtures and furnitures etc., of which claimants gave no knowledge because the claimants have not been permitted to visit the place and see for themselves what other losses have been caused to the property by the respondent or his occupant to be assessed according to the principals (principles) of Section 23 of the Land Acquisition Act."

3. The claim for compensation, filed on behalf of the owners-claimants, was contested on behalf of the Govt. A preliminary objection was taken that the arbitrator had no jurisdiction to go into the question of damages as claimed in Clauses (b) to (g) of paragraph 8 of the claim-petition. The Govt. Denied that the owners-claimants were entitled to compensation at the rate of Rs. 10,000/- per month. It was pleaded that the owners-claimants were entitled to compensation for use and occupation of the premises requisitioned at the rate of Rs. 227 per month and for the use of furniture at the rate of Rs. 26.10 annas per month. The Govt. Denied that any substantial damage had been caused to the fountain or to the garden. It was pleaded that it was the responsibility of the owners-claimants to maintain the garden and that in spite of notices, they had failed to do so. It was, further, pleaded that a quite a number of trees in the garden were worthless and that a number of them had died.

4. By his order, dated the 21st February, 1950, Shri Sunder Lal accepted the preliminary objection, raised on behalf of the Govt. And held that he was to determine only the amount of compensation payable to the owners for the use and occupation of the premises. Shri Sunder Lal recorded some evidence in the case. He was transferred in 1951. Several arbitrators, one after the other were appointed after Shri Sunder Lal but none of them could complete the arbitration proceedings. Shri Shiri Gopal Singh, Officer-on- Special Duty (Arbitration) in the Ministry of Works, Housing and Supply, who was appointed as an arbitrator, completed the recording of evidence but he retired from service before he could announce the award. Ultimately, Shri Harbans Singh, District and Sessions Judge, Delhi was appointed arbitrator. He made the award on the 17th June, 1958. Shri Harbans Singh held that the compensation payable to the owners-claimants, in

connection with the requisition of the premises, was to be determined under the Requisitioning and Acquisition of Immovable Property Act, 1952 which had repealed the Delhi Premises (Requisition and Eviction) Act 1947 and that the requisitioning of the premises had not brought about the relationship of landlord and tenant between the owners-claimants and the Govt. And the provisions of the Rent Laws were not applicable but they could be taken as a guide for assessing compensation.

Shri Harbans Singh assessed the reasonable cost of construction of Sat Narain building and the value of the land appurtenant to it. The cost of construction of the Sat Narain building, on the date of the requisition, was assessed at Rs. 1,85,000/-. The cost of the land measuring 20806 sq. Yds., including the site of the building, was assessed at Rs. 10 per sq., yd. Shri Harbans Singh held that a tenant would pay more rent for the land, adjoining the building than for the land which was away from the building. He allowed 6% return on the cost of construction of the building and the value of the site and the land adjoining the building. For the remaining land, the learned arbitrator allowed a lump sum of Rs. 3400 per annum. The owners-claimants were awarded a recurring payment of Rs. 16,000 a year, for the 5th July, 1948. The arrears due up to the date of the award were directed to be paid within four months. It was, further, directed that if the arrears were not so paid, interest would accrue at the rate of 4% per annum till realization. The award gave a right to the Govt., to adjust against compensation, the costs of annual repairs or of such other repairs, which a landlord is generally bound to carry.

5. On an application, made by the owners-claimants, a clerical mistake in the award was corrected and it was directed that the total compensation payable to the owners-claimants was Rs. 19,984/- per annum and not Rs. 16,000/-, as originally directed in the award.

6. The owners-claimants of the requisitioned premises have come up in appeal. Cross-objections have been filed on behalf of the Govt. This order will dispose of both the appeal and the cross-objections.

7. During the pendency of the appeal, Shri Sat Narain one of the owners-claimants- appellants, died. His legal representatives were brought on the record.

8. It was not disputed that though the premises had been requisitioned, under the Delhi Premises (Requisition and Eviction) Ordinance, 1947, which was replaced by the Delhi Premises (Requisition and Eviction) Act, 1947, the compensation payable to the owners-claimants is to be determined in accordance with provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952, which had repealed Delhi Premises (Requisition and Eviction) Act, 1947. Section 24(2) of the Requisitioning and Acquisition of Immovable Property Act 1952 makes the position clear in this respect. It lays down that any property which immediately before the repeal of Delhi Premises (Requisition and Eviction) Act 1947 was subject to requisition under the provisions of that Act shall, on the

commencement of the Requisitioning and Acquisition of Immovable property Act, 1952, be deemed to be property requisitioned under the latter Act and all the provisions of the Act shall apply accordingly. The proceedings, with regard to the fixation of compensation, were still pending when the Requisitioning and Acquisition of Immovable Property Act of 1952 had come into force repealing the Delhi Premises (Requisition and Eviction) Act, 1947. In view of the provisions of sub-section (2) of Section 24 of the Requisitioning and Acquisition of Immovable Property Act 1952, the compensation is to be determined in accordance with the provisions of that Act.

9. Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 lays down the principles and method for determining compensation in connection with requisition. That section says that where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement and where no such agreement can be reached, the Central Govt. Shall appoint an arbitrator for determining the compensation. Clause (e) of sub-section (1) of Section 8 reads:-

"the arbitrator shall after hearing the dispute make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award he shall have regard to the circumstances of each case and provisions of sub-sections (2) and (3) so far as they are applicable."

Sub-section (2) reads as under:

"The amount of compensation payable for the requisitioning of any property shall consist of:-

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

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

(i) pecuniary loss due to requisitioning;

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

(iii) expenses on account of re-occupying 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."

10. Sub-section (3) deals with acquisition, and not requisition of the property.

11. In view of the provisions of Section 8 aforesaid, the compensation payable to the owners-claimants will be a recurring payment of a sum equal to the rent of

requisitioned premises, and other amounts mentioned therein. The other amounts, claimed by the owners-claimants, could not be determined in the arbitration proceedings, as was held by Shri Sunder Lal, arbitrator. Only the recurring sum, equal to rent of the requisitioned premises, fell to be determined.

12. It is not in dispute that the requisitioned premises had never been let out on rent. The owners-claimants had led evidence about rent payable for some premises. Shri Kauji Ram C.W. 8 stated that he had a house in Kamla Nagar and that it was leased out to Jansangh on a rent of Rs. 900 per month. Kamla Nagar is a well-developed new colony. It is not in the neighborhood of the requisitioned premises. Shri Surya Dev Singh C.W. 9-A stated that he had taken a room on rent in front of the requisitioned premises at Rs. 30/- per month. Shri Charan Dass C.W. 12 stated that he had taken a quarter on rent opposite to the requisitioned premises at Rs. 23/- per month. Shri M. B. L. Mathur C.W. 13 stated that the Municipal Committee Delhi had taken a godown on rent in Subzi Mandi at Rs. 518 annas 8p.m. Shri Mohan Lal C.W. 14 stated that he had taken two shops situated at Roshanara Road on rent at Rs. 95 p.m.. The evidence of Shri Surya Dev Singh C.W. 9-A, Shri Charan Dass C.W. 12, Shri M. B. L. Mathur C.W. 13 and Shri Mohan Lal C.W. 14 about the rent, could not form the basis for fixing the rent which could be fetched by the requisitioned premises as their evidence did not relate to premises similar to or comparable to the requisitioned premises. Shri Joty Prasad C.W. 19, stated that he had a double storeyed house in Kamla Nagar, as already observed, in a well-laid colony.

13. It was contended, on behalf of the Govt. That the rent, payable for the requisitioned premises, would be the standard rent, to be fixed under the provisions of the Rent Control Act. This contention had been advanced before the learned arbitrator who had rejected it and, in my opinion, rightly. The premises had been requisitioned in exercise of the statutory powers and as such the requisition, did not establish the relationship of landlord and tenant, between the owners-claimants and the Govt. The provisions of the Rent Laws were not applicable to the case. The recurring payment to be made to the owners-claimants, as rent, could not be merely the standard rent. Reference in this connection, may be made to Smt. Ravi Kanta v. Punjab State 1964 Pun Lr 919 and Hazi Mahammad Ekramul Haque Vs. Province of Bengal, . Both the authorities lay down that requisition of property does not create a relationship of a landlord and a tenant.

14. Though the provisions of the Rent Laws do not, in terms, apply to the requisition, made under the Requisitioning and Acquisition of Immovable Property Act, yet principles laid down for fixation of the standard rent in these laws may furnish a useful guide for determining the recurring payment, as rent. According to sub-section (4) of Section 8 of the Delhi and Ajmer Rent Control Act, 1952, the standard rent of a premises was not to exceed 7 1/2 % of the reasonable cost and construction including the market value of the land comprised in the premises. The cost of construction of a building will be the cost

of constructing the building at the time of the requisition and allowing for depreciation in consideration of the age of the building and also the amount required for repairs to keep the building in a fit condition, vide *Mytheen Kunju Abdul rahiman Kunju v. State* Air 1955 Trav Co 110 and AIR 1939 235 (Privy Council) . To this caost, is to be added the cost of the site of the building and, in the present case, the value of the land appurtenant to the building. The owners-claimants had got prepared the estimates of the cost of construction of the requisitioned building and the value of land by Shri Daulat Singh C.W. 2 and Shri A.C. Sood C.W. 6. These estimates are Ex. C2. And Ex. C7, respectively and are for Rs. 25,18,252 and annas 13 and 3 paise, and Rs. 22,37,074 and 10 annas respectively. The Govt. Had got prepared the estimate, the cost of construction of the requisitioned building and the value of the land would be Rs. 1,79,774. The estimate was prepared by Shri C.H. Mamtini R.W. 1 Ex. C5 is a copy of the estiamte of the cost of construction of the requisitioned building and the value of the aldn prepared by Shri Y.P. Kohli, Executive Engineer. The learned Arbitrator did not accept the estimate prepared by Shri Daulat Singh or Shri A.C. Sood or Shri C.H. Mamtini. He substantially adopted the estimate Ex. C5, though he did not accept the value of the land as assessed by Shri Y. P. Kohli, Executive Engineer.

15. Shri Daulat Singh C.W. 2 had adopted very liberal rates, without any justification in his estimate. He had assessed the value of the land at the rate of Rs. 70 per sq.yd. Shri Daulat Singh had admitted that he had not seen any sale deed of the land and that he had made only verbal enquiries. The estimate of Shri A.C. Sood C.W. 6 is based on the estimate prepared by Shri Daulat Singh. Shri A.C. Sood admitted that he had not taken any measurements and that he could not give the specifications of the building. Shri A.C. Sood had taken the depth of the foundation as 14 ft., but he had admitted that he had not dug out the foundation at any point and that he had acted on the information given to him by the owners-claimants. It appears that Shri A.C. Sood was not an experienced hand in assessing the cost of buildings. He admitted that he had evaluated only 2 buildings. In view of the facts, stated above, the learned arbitrator was right in not accpeting the estimates prepared by Shri Daulat Singh and Shri A.C.Sood.

16. The estimate Ex. R.W. 1/1, put in on behalf of the Govt., was prepared by Shri C. H. Mamtini R.W. 1. Shri C.H. Mamtini stated that the estimate represented the cost of construction of the building in 1925 in which year the building was built. He had further stated that in preparing the estimate he had adopted the rate relevant in 1925. This statement stood contradicted by the explanatory notes attached to the estimate Ex. R.W. 1/1. It is stated, in the explanatory notes, that the estimate was based on 1/3rd of the rates prevalent in 1949. Shri Mamtini had admitted, that in a report, submitted in another case, he had given the cost of construction of the requisitioned building and the value of land in 1925 as Rs. 3,67,828. Shri Mamtini also, admitted that the value of land in 1949 was Rs. 20 per sq.yd. Shri Mamtini did not give any reason why he

had assessed the cost of the construction of the building and the value of the land at Rs. 1,79,774 in Ex. R.W. 1/1, against his previous estimate of Rs. 3,67,828.

Shri Mamtini had also admitted that he had not taken measurements himself but had adopted the measurements given in Ex. C5. It is clear that the estimate Ex. R.W. 1/1 is not at all a correct estimate, Shri S.D. Haldar R.W. 5 had stated that in this estimate, the cost of the requisitioned building in the years 1948 would be Rs. 2,31,562. Shri S.D. Haldar admitted that his estimate was based on the estimate prepared by Shri Y.P. Kohli. Shri S.D. Haldar, further, admitted that the estimate prepared by Shri Kohli, excluding the cost of the land, was correct. Shri Kohli, had in his estimate Ex. C5, taken the age of the building as 100 years. Shri S.D. Haldar had taken the age as 50 years. The reasons, given by Shri S. D. Haldar, for taking the age at a reduced figure, was that the building was not in good condition when he had visited it in 1955. The possession of the building had been in possession of the Govt. For more than 7 years at the time when Shri S.D. Haldar had visited it. There is no evidence that the Govt., was effecting necessary repairs during the period of 7 years. The condition of the building would have deteriorated for want of repairs. The evidence of Shri S. D. Haldar about age of the building cannot be accepted.

17. We are left with the estimate Ex. C5 prepared by Shri Y.P. Kohli, Executive Engineer. As already stated, the learned arbitrator had substantially adopted that estimate so far as the measurements of the building and the land and the rates of various items of construction were concerned. He did not accept the estimate with respect to the age of the building and the value of land. Ex. C5 is a very detailed estimate. It gives all the measurements. The rates for various items are reasonable. It will not be unreasonable or unjust to adopt that estimate. According to Ex. C5, the cost of the building, and the value of the land would be Rs. 6,93,620 (Ex. C5 gives the figure 7,10,1200-, but it was corrected to 6,93,620). Shri Y.P. Kohli had taken the age of the building as hundred years. He had allowed 25% depreciation on the age of the building which was constructed in 1925. The learned arbitrator had taken the age of the building as 75 years. The learned arbitrator was of the view that the condition of the building was not good and that its age could not be more than 75 years. For holding that the condition of the building was not good, the learned arbitrator relied upon the evidence of Shri S.D. Haldar R.W. 5.

It has already been pointed out that Shri S.D. Haldar had visited the building 7 years after it had been occupied by the Govt., and that his evidence about the condition of the building in 1948, was not relevant. The learned arbitrator had also referred to his own inspection of the building. Unfortunately, there is no inspection note of Shri Harbans Singh on the record. Shri Harbans Singh might have visited the building in 1958 ten years after the Govt., had taken possession of the building. On the other hand, there is on the record, an inspection note of Shri Shiri Gopal Singh. His remarks are:-

"It is a three-storeyed building with spacious grounds and garden all-round it bounded by high walls. There is not much of a garden left now but certain fine trees are still in existence. On all the four sides of the building there are marble fountains built of Italian Marble. The frontage of the building is throughout made of stone beautifully engraved and ornamented. The engraving and the ornamental work was of a high quality.

In three rooms there was pearl flooring and in several other rooms there was marble chip flooring. The lower portion of the walls was mostly covered with glazed tiles. The doors were built of teak wood and ornamental work was also to be found on them. The glasses fitted in the doors were also of an ornamental type.

The four walls and the roof of all the rooms had spray ornamental painting.

The main building and out-houses etc., were all fitted with sanitary and electric fittings. Even the compound walls had electric fittings."

18. The aforesaid note shows that the requisitioned building was a first class building. In paragraphs Nos. 12 and 13 of the reply, filed by the Govt. To the interrogatories, delivered by the owners-claimants, it was stated that some princely houses comparable to the building in dispute in New Delhi stand requisitioned by the Govt. It is clear that the Govt., treated the requisitioned building comparable to the princely houses. Shri Banarsi Lal Jain C.W. 19, an Advocate, stated that he used to visit the requisitioned building almost daily in the evening as he was legal advisor of Shri Chamber of which Shri Sat Narain, owner-claimant, was the Managing Director. Shri Banarsi Lal, further, stated that the condition of the building was very good. In view of the above facts, the age of the building should have been taken as 100 years, as taken by Shri Y.P. Kohli, and not 75 years.

19. Objections were taken, on behalf of the owners-claimants, against the estimate Ex C5 of Shri Y.P. Kohli. It was alleged that no development charges had been allowed in the estimate Ex C5 and that the owners-claimants were entitled to development charges at 10% of the cost of the building. As has been rightly pointed out by the learned arbitrator, there is no evidence on record that the owners-claimants had spent anything on the development of the site of the building. They were not entitled to any development charges.

20. A second objection was that the owners-claimants should have been allowed 12% for electric installations. Shri Y. P. Kohli had allowed 6 1/4% for electric installations. The learned arbitrator was of the view that it was the proper percentage. There does not appear to be any valid reason for interfering with the finding of the learned arbitrator. It may be pointed out that the bigger the building, the lesser will be the percentage for electric installation.

21. The third objection was that 10% should have been allowed for external services such as external connections, electric poles etc. This item was covered

by 6 1/4% for electric installations and no further increase is justified.

22. The fourth objection was that the depth of the foundation should have been taken to be 14 ft instead of 5 ft., taken in Exhibit C-5. The learned arbitrator had taken the depth of the foundation of the outer perimeter at 14 ft., and of the rest of the building at 5 ft. The outer perimeter had been dug at one or two points. The depth was found to be fourteen feet. The depth of the foundation for the rest of the building was not checked. The arbitrator had allowed an additional sum of Rs. 4,000/- to the owners-claimants in connection with the depth of outer perimeter, as there is no evidence that the depth of the foundation of the rest of the building was 14 ft.

23. The learned arbitrator awarded Rupees, 1,000/- on account of electric points which had not been taken into consideration in Exhibit C-5. He also awarded another amount of Rs. 5,000/- for stone engravings as the thickness of the stone was greater than that taken in the estimate Ex. C-5 Shri Shiri Gopal Singh, who had inspected the building had noted that the stone engravings were of a high quality. The learned arbitrator was justified in awarding an additional amount of Rs. 5,000/- for stone engravings.

24. The cost of construction of the building (not including the value of the site but including the aforesaid additional amounts) will be Rs. 2,95,000/-.

25. The value of the land will be the value on the date on which possession of the requisitioned premises was taken, namely the 5th July, 1948. The best evidence to prove the value of the land would be the evidence of genuine sales effected, about the time of requisition either in respect of the same land or of land, similarly situated, with similar advantages. The sales, effected after requisition, should not ordinarily be relied upon but they need not necessarily be ignored. It is not always a correct method of evaluation to assess the value of a large area on the basis of sale prices of small plots.

26. The evidence, adduced by the parties, with respect to the value of the land, is to be analysed in the light of the aforesaid principles. The Government had produced Shri Badlu Ram, Tehsildar. He had stated that the value of land requisitioned would be Rs. 7/- or Rs. 8/- per sq yd. Shri Badlu Ram had based his opinion on 4 mutations. Out of those mutations, one evidences a transaction which had taken place in 1941. Two other mutations evidence transactions which had taken place in 1946. These transactions cannot be taken into consideration as they had not taken place within a reasonable time of the requisition. The fourth mutation evidences a transaction which had taken place in 1948. But it was a sale of 6 bids was only out of a big khata of 26 bighas and 11 biswas. Furthermore, all the four mutations, related to Chanderwal, which is far away from the requisitioned premises, and the lands covered by mutations were not similarly situated as the requisitioned land.

27. The owners-claimants had produced copied of some sale deeds and mutations. Most of the transactions covered by the sale deed and the mutations

are not relevant for determining the value of the requisitioned land. The sale deed Ex. C-9, Ex. C-8 Ex. Cw 4/1 and Ex. C-16 relate to transactions which had taken place in 1932, 1939, 1943 and 1952 respectively. The sale deed Ex. C-15 relates to a sale which had taken place more than one year after requisition. The mutations relate to Chandrawal. In most cases, the transactions, covered by the mutations, had taken place long before requisition. Some of the transactions relate to sales of small plots of land in Jawahar Nagar, a highly developed colony. The award Ex. C-17 is of the year 1950. The award was given on the basis of an agreement between the parties that the property should be valued at Rs. 2,50,000/-, as is clear from Ex. C-14. The judgment of Shri S.S. Dulat relates to property which was situated in Darya Ganj and not in Subzi Mandi. The purchase, made by Shri Dhanpat Rai C.W. 10, was in 1955, 7 years after the requisition.

28. Shri Y.P. Kohli had assessed the value of the land at Rs. 20/- per sq yd. Shri C. H. Mumtini, R.W. 1 had stated that in 1949 the value of the land was Rs. 20/- per sq. Yard. There is no reason why the value of the land requisitioned be not assessed at Rs. 20/- per sq yd. When the officers of the Government have themselves assessed it at that rate. The sale deed Ex. C-15 shows that, on 15-7-1949, 275 sq yds., of land on which there was a structure worth Rs. 100/- situated in Subzi Mandi were sold for Rs. 12,000/-. The price of land per sq yd. Came to Rs. 40/-. As already observed that transaction cannot form the basis for fixing the market value of the land requisitioned, as it had taken place one year after the requisition. But the transaction can be relied upon to show that the rate of Rs. 20/- per sq yd. For land would not be unreasonable.

29. The learned arbitrator, while fixing the value of the land, at Rs. 10/- per sq yd. Had relied upon the transaction which had taken place in Chandrawal. It was not correct to assess the value of the land on the basis of that transaction as Chandrawal is far away from Subzi Mandi.

30. For all the above reasons, the value of the land is fixed at Rs. 20/- per sq yd.

31. There is controversy, about the area of the land requisitioned. Shri Badlu Ram had stated that the area of the land, as recorded, in Revenue records was 23 bighas and 9 biswas, which comes to 23,634 sq.yds. The learned arbitrator had not accepted that figure. He had accepted the figure 20,806 sq yds., given by Shri Y.P. Kohli in Ex. C-5. The learned arbitrator had observed that Shri Y. P. Kohli had taken measurements on the spot while Shri Badlu Ram had not taken measurements but had given the area as was recorded in the revenue records. It may be that the area in the Revenue records is shown as 23 bighas and 9 bids was but on the spot the actual area is 20,806, sq yds. The area of the land is, Therefore, to be taken as 20,806 sq. Yds.

32. The next question is what percentage of the reasonable cost of construction of the building and the value of the land should be allowed to the owners-claimants as recurring payment. I agree with the learned arbitrator that the return on the value of the land under the building and adjoining to it would be

more than the return on the land away from the building. The learned arbitrator has allowed 6% on the cost of the construction of the building and the value of the land near the building, and a lump sum of Rupees 3,400/-, on the value of remaining land. It was pointed out on behalf of the Government that the requisitioned premises were situated in an insanitary area where there was smoke and dust and that the return at the rate of 6% was excessive. Requisitioned premises are situated in a thickly populated area. The Railway station is near. The land appurtenant to the building had potentialities. The learned arbitrator did not err in calculating the return on the cost of the building and the value of the land adjacent to it at 6%. The learned arbitrator had got prepared an estimate of the land under the building and the adjoining land. That land measured 2,450 sq yds. The reasonable cost of the construction of the building is Rs. 2,95,000/-, including the amounts allowed to the owners-claimants, in addition to the estimate of Shri Y.P. Kohli. The value of Rs. 2,450 sq.yds. at the rate of Rs. 20/- per sq yd, will be Rs. 49,000/-. The return on the reasonable cost of construction of the building and the value of the land adjacent to the building at 6% will be Rs. 20,640/-. On the remaining land, the owners-claimants may be allowed return at 2%. The value of the remaining land, at the rate of Rs. 20/- per sq yd. Will be Rs. 3,67,120/-. The return on this amount will be Rs. 7,342.40. the return, on the cost of construction of the building and the value of land will thus be Rs. 27,982.40.

33. It was contended, on behalf of the Government, that as in the Municipal Assessment Registers, the annual rent of the requisitioned premises was recorded as Rupees 3,000/-, per annum in 1948, the owners-claimants could not be allowed a higher amount as rent. The annual rent of the building requisitioned is recorded as Rupees 3,000/- in Ex. Rx copy of an entry from Municipal Assessment Register, for taxation purposes. It is, further, clear from Ex. R-2 and Ex. R-3. That the owners-claimants had got the amount of annual rent, for taxation purposes, reduced from Rs. 5,000/- to Rupees 4,000. The Explanation, on behalf of the owners-claimants, was that they had lost the possession of the building but were not getting any compensation, and that they had, in order to avoid higher taxation and to pay the minimum amount of tax, given a very low estimate of the annual rent and that, that estimate did not represent the correct estimate of rent which the requisitioned building may fetch. The Explanation appears to have some substance. The building was requisitioned in 1947. Possession was taken by the Government in 1948. The owners-claimants had not been paid any compensation till after the making of the award. But they had to pay Municipal taxes. The owners-claimants were in a difficult situation. It is not surprising that in that situation, the owners-claimants had given the estimate of the annual rent at a low figure in order to avoid the payment of Municipal tax at a higher rate. Moreover the owners-claimants are, under the law, entitled to a just compensation, for the requisition of the premises. They cannot be estopped from claiming just compensation merely because they had given a low figure of annual rent for purposes of taxation.

34. Besides the recurring payment aforesaid, for the building and the land, the owners-claimants are entitled to a rent of Rs. 26, annas 10 per month for furniture as has been clearly admitted in paragraph No. 9 of the written statement, filed on behalf of the Government. Shri Ilam Chander R.W. 4 had stated that he had inspected the garden attached to the requisitioned building in 1949 and had prepared the list of trees at that time. Shri Ilam Chander had further stated that he had assessed the approximate revenue of the garden in 1949 at Rs. 500/- per year. This according to Shri Ilam Chander, means that the owners-claimants could get Rs. 500/- per year from the sale of fruits and flowers of the garden. The owners-claimants would have incurred expenses to maintain the garden in order to get the income. They have already been allowed return for the value of the land. Keeping these facts in view, the owners-claimants may be allowed Rs. 200/- Per annum as lease money for the garden

35. Adding up all the amounts, the owners-claimants are entitled to get a recurring payment of Rs. 28,501.90 or say Rupees 28,502/- per annum from the 5th July, 1948 up to the date on which the requisitioned premises may be released by the Government.

36. It was, contended on behalf of the owners-claimants, that they were entitled to interest on the recurring payment assessed from 5th July, 1948, the date on which possession of the requisitioned premises was taken. Reliance was placed on *Satinder Singh and Others Vs. Amrao Singh and Others*, *Surjan Singh Vs. The East Punjab Government*, and *Balailal Pal v. State of West Bengal*, 1966 Cal Wn 363. All the cases, cited, related to acquisition, and not to requisition of property. The principle, on which interest is allowed in acquisition cases from the date of dispossession was laid down by their Lordships of the Supreme Court in *Satinder Singh and Others Vs. Amrao Singh and Others*, as follows:-

"What then is the contention raised by the claimants? They contend that their immovable property has been acquired by the State and the State has taken possession of it. Thus they have been deprived of the right to receive the income from the property and there is a time lag between the taking of the possession by the State and the payment of compensation by it to the claimants. During this period they have been deprived of the income of the property and they have not been able to receive interest from the amount of compensation. Stated broadly the act of taking possession of immovable property generally implies an agreement to pay interest on the value of the property and it is on this principle that a claim for interest be made against the State."

The principle, enunciated above, will not apply to a case of requisition. In such a case, an owner gets compensation from the date of his dispossession. Thus, he cannot be said to have been deprived of the income of the property from the date of dispossession. The owners-claimants are not entitled to interest from the date of dispossession.

37. It was, next, contended, that interest should have been at least, allowed

from the date of arbitration proceedings. Reliance was placed on Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, and Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., . These two authorities lay down that, in case, the dispute about interest is also referred to an arbitrator, he can award interest pendente lite and also from the date of the award. The authorities, further, lay down that though Section 34 of the CPC does not, in terms, apply to arbitration proceedings, yet the equitable principles enunciated therein, will apply to arbitration proceedings. In the present case, the dispute about interest was not referred to the arbitrator. The owners-claimants did not claim any interest in their claim-petition. The arbitrator could allow interest from the date of the award. The arbitrator, in his discretion, has allowed interest 4% per annum till realisation, in case Government failed to pay the amount due on the date of the award within 4 months. There is no valid reason to interfere with this discretion.

38. It was, also, contended, on behalf of the owners-claimants, that the arbitrator erred in not allowing the costs of proceedings to them. The award of costs was in the discretion of the arbitrator. In his discretion, he had not allowed the cost.

39. Finally, it was contended on behalf of the owners-claimants, that the arbitrator had no jurisdiction to direct that the Government would be entitled to adjust the cost to annual repairs against compensation. This contention appears to have failed. As is clear from the various notifications, appointing arbitrators, the arbitrator was appointed to determine compensation for the requisitioned premises. According to Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952, an arbitrator has (sic) jurisdiction to direct that the cost of repairs may be adjusted towards compensation. It is true that u/s 5 of the Act, the competent Authority has jurisdiction, after complying with the provisions of that section, to deduct the cost of repairs from the compensation. But neither Section 5 nor any other provision in the Requisitioning and Acquisition of Immovable Property Act gives jurisdiction to an arbitrator to direct that cost of repairs may be deducted from the amount of compensation. The direction of the arbitrator about the decision of the cost of repairs is without jurisdiction and is set aside.

40. As a result of the above discussion, the appeal is allowed and the award of the learned arbitrator is modified to the extent that the owners-claimants will be entitled to get a recurring payment of Rs. 28,502/- per annum from the 5th July, 1948, to the date on which the premises may be released. The amount, payable to the owners-claimants, from the 5th July, 1948, till today, after deducting the amounts which might have already been paid, should be paid within 4 months from today. If the amount is not so paid, interest would accrue on the amount due at the rate of 4% per annum till realisation. In future, the recurring payment of Rs. 28,502/- per annum should be made within 2 months of the date when it becomes due. If the payment is not so made within 2 months, interest at the rate of 4% per annum till realisation will accrue.

41. The cross-objections filed on behalf of the Government will stand dismissed.
42. In the circumstances of the case, the parties will bear their own costs of the appeal and the cross-objections.
43. Appeal allowed; Cross-objections dismissed.