

(1960) 04 OHC CK 0031

In the Orissa High Court

Case No : Misc. Appeal No's. 43, 44, 46, 53 and 68 of 1957

State of Orissa

APPELLANT

Vs

Satyabadi Panda and Others

RESPONDENT

Date of Decision : 08-04-1960

Acts Referred:

Constitution of India, 1950 — Article 13(1), 31(2), 366(10)

Government of India Act, 1935 — Section 299, 299(2)

Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 7, 7(1)

Citation : AIR 1961 Ori 196

Hon'ble Judges : R.L. Narasimham, C.J.; J.K. Misra, J

Bench : Division Bench

Advocate : R.K. Mohapatra and B. Patnaik, for the Appellant; J. Rath, for the Respondent

Judgement

Narasimham, C.J.—These appeals have been filed by the State of Orissa against the decision of the Arbitrator, Hirakud Land Organization, Sambalpur, awarding certain specified sums as compensation to the various respondents whose lands were acquired in connection with the Hirakud Dam Project. The acquisition was made under the provisions of the Orissa (Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons) Land Acquisition Act, 1948 (Orissa Act No. 18 of 1948) (hereinafter referred to as the Act) which provided for the speedy acquisition of lands for the Hirakud Dam Project and some other specified projects.

Section 7 of the Act dealt with the method of determining the compensation payable to the owners of lands so acquired. If the parties did not reach an agreement as to the amount of compensation payable, that section required that a reference of the dispute may be made to an arbitrator to be appointed by the State Government. Clause (e) of Sub-section (1) of Section 7 of the Act may be quoted :

"7 (1) (e) : The Arbitrator in making his award shall have due regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act 1894.

Provided that the market value referred to in the first Clause of Sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land On the date of publication of the notice u/s 3 or on the 1st day of September, 1939 with an addition of 50 per cent whichever is less;

Provided further that where under a law or custom having the force of law lands are not marketable, then market value of such lands shall be such a multiple as may be prescribed of the deducted rent to be calculated in the prescribed manner with an addition of 50 per cent.

Provided further that where such land has been held by the owner thereof under a purchase made before the first day of October 1948 or, as the case may be, the date of publication of the preliminary notification u/s 4 of the Land Acquisition Act, but after the first day of Sept. 1939 by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption as the case may be."

It will be noticed that though the main portion of Clause (e) of Section 7 (1) of the Act requires the Arbitrator to estimate the market value of the land in accordance with the provisions of Section 23(1) of the Land Acquisition Act, the first proviso to the clause fettered his discretion by saying that the value so estimated should not exceed the market value which was prevalent on the 1st day of September 1939 with an addition of 50 per cent. In *State of Orissa Vs. Bharat Chandra Nayak*, a Division Bench of this Court held this proviso to be unconstitutional as offending Article 31(2) of the Constitution as it stood then.

That case also arose out of an appeal filed by the State of Orissa against an award of the Arbitrator appointed under the Act, granting compensation to a person whose lands were acquired for the said Hirakud Dam Project. After declaring the said proviso to be unconstitutional the learned Judge gave further directions for calculating the value of bhogra and ryoti lands, sir lands and other classes of lands in Sambalpur district. They also laid down certain principles for calculating the net yield of the various classes of lands after deducting the costs of cultivation.

They further directed that an owner whose lands were acquired should be given interest at 6 per cent per annum from the date on which his lands were taken possession of by the State of Orissa. In the present appeals the Arbitrator has followed the principles laid down in the aforesaid decision.

2. The learned Advocate-General, appearing on behalf of the State of Orissa, urged that we were not bound to follow the aforesaid Division Bench decision of this Court because after the delivery of that judgment on the 17th March 1955, Parliament, by the Constitution (Fourth Amendment) Act of 1955 amended

Clause (2) of Article 31 of the Constitution. According to him this constitutional amendment had the effect of removing the unconstitutionality attaching to the first proviso to Clause (e) of Section 7 (1) of the Act and that consequently the decision in State of Orissa Vs. Bharat Chandra Nayak, would no longer be binding on us. All these appeals involve the same constitutional question and they were heard analogously and will "be disposed of in one judgment

3. The Act came into force on the 11th January 1949--more than a year prior to the commencement of the Constitution. The constitutional validity of its provisions should, therefore, be judged with reference to the provisions of the Government of India Act, 1935 (as adapted) which was then in force. Assuming that the Act was valid under the provisions of the Government of India Act, nevertheless after the coming into force of the Constitution its validity will have to be further tested in the light of the provisions of the Constitution especially those dealing with Fundamental Rights embodied in Part III.

Clause (1) of Article 13 saves only those Pre- Constitution laws which are not inconsistent with the provisions of Part III and renders those provisions which are inconsistent with that Part void to the extent of the inconsistency. It was in the light of the provisions of Clause (1) of Article 13 that the Division Bench of this Court in State of Orissa Vs. Bharat Chandra Nayak, examined the validity of the proviso to Clause (e) of Section 7 (1) of the Act and held that it offended Article 31(2) of the Constitution, inasmuch as it did not provide for payment of fair and just compensation to the owner whose land was acquired for a public purpose, but on the contrary it provided for fixation of a grossly inadequate compensation on the basis of the market value prevalent on the 1st September 1939 prior to the commencement of World War II with an addition of 50 per cent.

The proviso completely ignored the abnormal rise in land values during and after World War II. In giving their decision the learned judges who constituted the Division Bench were influenced mainly by the principles laid down by the Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, .

4. On the 27th April 1955, the Parliament passed the Constitution (Fourth Amendment) Act 1955 amending Clause (2) of Article 31 as follows :

"31 (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for transfer of the ownership or right to possession of any property to the State, or to a corporation owned by or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any

person of his property."

By virtue of this amendment the adequacy of the compensation payable to a person whose land was acquired for a public purpose was not made justiciable. Retrospective effect was not given to this amendment expressly. But this question came up for consideration by the Supreme Court in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, . There the constitutional validity of the C. P. and Berar Motor Vehicles (Amendment) Act, 1947 was impugned on the ground that it offends Fundamental Rights.

Their Lordships of the Supreme Court proceeded on the assumption that the said law was valid under the provisions of the Government of India Act and held that by virtue of Article 13(1) that law became as it were eclipsed for the time being by the Fundamental Rights but this eclipse was removed by the Constitution (First Amendment) Act 1951 and the Constitution (Fourth Amendment) Act 1955. In that case also the actual order of the executive authority by which the person was aggrieved was passed on the 4th February 1955, prior to the coming into force of the Constitution (Fourth Amendment) Act.

But the writ petition challenging the constitutional validity of the Act and the orders passed thereunder was actually filed on the 27th May 1955 one month after the coming into force of the Amendment. Their Lordships held that though the Fourth Amendment was not given retrospective effect the petitioner could not challenge the constitutionality of the impugned Act on and from the 27th April 1955. This decision may, therefore, be taken as an authority for the view that the date on which the petition challenging the validity of the Act was filed will be relevant date for the purpose of examining whether the Amendment applies or not and not the date on which the parties' rights were affected.

5. In M. A's 42 of 1957, 44 of 1957 and 46 of 1957 the lands were acquired in May 1949 and the petition challenging the legality of the acquisition was filed by the aggrieved owners on the 17th April 1952 before the Arbitrator long before the Fourth Amendment to the Constitution came into force. Hence, in these appeals the constitutional validity of the proviso to Clause (e) of Section 7 (1) of the Act must be examined with reference to Article 31(2) as it existed prior to the amendment and on this question the previous Division Bench decision of this Court in *State of Orissa Vs. Bharat Chandra Nayak*, would still continue to be good law. In this connection I may refer to the following observations of the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, which turned on a construction of Clause (2A) of Article 31 as inserted by the fourth amendment. :

"But it is not disputed that this provision has no retrospective operation and that the rights of the parties must be decided in accordance with the law as on the date of the writ application and that on the provisions of the Constitution as they stood on that date."

In M. A. 53 of 1957 and M. A. 68 of 1957 the acquisitions took place sometime in

1954 and 1950 respectively but the petitions before the Arbitrator challenging the adequacy of compensation were filed on the 26th September 1956 and 25th August, 1956 respectively after the said Amendment had come into force. These two appeals will therefore be governed by the principles laid down by their Lordships of the Supreme Court in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, and the constitutional validity of the proviso to Clause (e) of Section 7(1) of the Act cannot be challenged merely on the ground that it offends Article 31(2) (as amended) inasmuch as that very clause of the Constitution expressly bars the jurisdiction of the Court to examine the adequacy or otherwise of the amount of compensation payable.

Hence, though for the purpose of M. As, 42, 144 and 46 of 1957 any discussion about the true scope of the Fourth Amendment to the Constitution may be academic, nevertheless as it is an important question in the other two miscellaneous appeals (M. As. 53 and 58 of 1957) I have thought it necessary to discuss the various questions raised by learned counsel for both parties.

6. In *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, the question as to whether the impugned Act (C. P. and Berar Motor Vehicles Act 1947) was invalid under the provisions of the Government of India Act 1935 was fully examined. It was assumed that it was valid and its invalidity arose by virtue of the coming into force of the Constitution, especially Article 31(2) which cast an eclipse as it were on that Act in view of Article 13(1).

In paragraph 11 of the judgment their Lordships of the Supreme Court briefly examined the question as to whether the impugned Act would offend Section 299 of the Government of India Act; and while observing that

"it is not clear at all that the impugned Act was in conflict with Section 299 of the Government of India Act",

they did not fully discuss this question saying that this point was taken at a belated stage.

7. In a recent decision of the Supreme Court! reported in *Deep Chand Vs. The State of Uttar Pradesh and Others*, the doctrine of eclipse propounded in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, was fully examined and the majority of the judges held that the said doctrine had no application if the Act was void ab initio being still born. Doubtless in that case the validity of a post Constitution Act came up for consideration and their Lordships were mainly concerned with the interpretation of Clause (2) of Article 13 of the Constitution.

They held that if a post-Constitution Act contravened any of the fundamental rights it would be still-born; consequently the decision of eclipse would have no application. But their Lordships went further and applied the same principle to pre-Constitution laws also where they offended! the provisions of the Government of India Act. There are several passages in the judgment dealing

with this question and I may quote some of them:

"It will be seen from the two decisions that in the former the Act was void from its inception and in the latter it was valid when made but it could not operate on certain articles imported in the course of inter-State trade. On that distinction is based the principle that an after-acquired power cannot *ex proprio vigore* validate a statute in one case, and in the other a law validly made would take effect when the obstruction is removed (page 658)"

"If a statute is void from its very birth then anything done under it, whether closed, completed! or inchoate will be wholly illegal and relief in one shape or another has to be given to the person affected by such an unconstitutional law. This rule, however, is not applicable in regard to laws which were existing and were constitutional according to the Government of India Act 1935 ,

As regards pre-Constitution laws this decision contains the seed of the doctrine of eclipse developed by my Lord the Chief Justice in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, where it was held that as the pre-Constitution law was validly made it existed for certain purposes even during the post-constitution period" . . . (page 659).

"That case may by analogy be applied to Article 13(1) in respect of laws validly made before the Constitution but cannot be invoked in the case of a statute which was void when enacted

Even in the case of a statute to which Article 13(1) applies, though the law is on the statute-book and (may) be a good law, when a question arises for determination of rights and obligations incurred prior to January 26, 1950, the part declared void should be notionally taken to be obliterated from the section for all intents and purposes" . . . , page 661.

"The Legislature was competent to make the law with which *Behram Khurshed Pesikaka Vs. The State of Bombay*, was concerned at the time it was made. It was not a case of want of legislative power at the time the Act was passed, but one where in the case of a valid law supervening circumstances cast a cloud" . . . (page 663).

"There is no scope for applying the doctrine of eclipse to a case, where the law is void *ab initio* in whole or part" (page 663).

At page 664 the majority view was summed up by their Lordships in the following propositions:

"(i) Whether the Constitution (affirmatively confers powers on the legislature to make laws subjectwise or negatively prohibits it from infringing any fundamental right they represent only two aspects of want of legislative power;

(ii) the Constitution in express terms makes the power of legislature to make laws in regard to the entries in the lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the

said power by the limitations laid down in part III of the Constitution:

(iii) It follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be; and

(iv) The doctrine of eclipse can be invoked only in the case of a law valid when made but a shadow is cast on it by supervening constitutional inconsistency or supervening existing statutory inconsistency; when the shadow is removed the impugned Act is freed from all blemishes or infirmity.

8. The aforesaid decision is thus a clear authority for the view that the doctrine of eclipse laid down in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, based on a construction of Article 13(1) of the Constitution applies only where a pre-Constitution law was valid under the provisions of the Govt. of India Act, 1935, and became invalid on the coming into force of the Constitution on account of the provisions of Part III of the Constitution dealing with fundamental rights.

If however the Act or any of its provisions was void under the provisions of the Government of India Act itself, it will be still-born and the doctrine of eclipse cannot have any application inasmuch as Article 13(1) itself would not apply to such an Act.

9. This necessitates an investigation of the question as to whether the impugned proviso to clause (e) of Section 7 (1) of the Act offends Section 299 of the Government of India Act 1935. Sub-section (2) of that Section runs as follows:

"299 (2). Neither the Federal nor a Provincial Legislature shall have power to make any laws authorising the compulsory acquisition for public purposes of any land for any commercial or industrial undertaking unless it provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which it is to be determined."

Though, in the Government of India Act there was no separate chapter dealing with fundamental rights as in the Constitution (Part III) nevertheless the Report of the Joint Parliamentary Committee shows that some of the provisions of that Act, such, as Sub-section (2) of Section 299 and Section 198 were considered to be fundamental rights and acted as checks on the legislative power of the various Legislatures. Doubtless the language of Sub-section (2) of Section 299 is in the nature of a prohibition on the Legislature, whereas the corresponding portion of Article 31(2) of the Constitution, is based on the recognition of an existing right to-property in a citizen. But in *Dhirubha Devisingh Gohil Vs. The State of Bombay*, , their Lordships of the Supreme Court pointed out that essentially there was no distinction between the two. I may quote the following observations:

"One of the rights secured to a person in Part III of the Constitution is the right

that his property shall be acquired only for a public purpose and under a law authorising such acquisition and providing for compensation which is either fixed by the law or regulated by the principles specified in that law. That is also the very right which was previously secured to the person u/s 299 of the Act What, "under the Government of India Act was a provision relating to the competence of the Legislature was also clearly in the nature of a fundamental right of the person affected". This appears from the Report of the Joint Parliamentary Committee on Indian Constitutional Reforms, Vol. I paragraphs 366 and 399".

It may thus be taken as well settled by the highest Judicial authority that notwithstanding the difference in language, Sub-section (2) of Section 299 of the Government of India Act, 1935 and Clause (2) of Article 31 of the Constitution both deal necessarily with the same right. On this point there are also similar observations in *Raja Suryapalsingh and Others Vs. The U.P. Govt.*, *H.P. Khandewal and Another Vs. State of Uttar Pradesh and Another*, and *Venskata Chalamayya v. Madras State AIR 1958 A P 173(FB)* but it is unnecessary to refer to them in detail in view of the aforesaid clear pronouncement of the Supreme Court.

10. The next question is whether the impugned proviso to Clause (e) of Section 7 (1) of the Act offends Sub-section (2) of Section 299 of the Govt. of India Act and as such is unconstitutional from its inception. I have already pointed out that by virtue of this proviso a person whose property was taken away is given compensation not on the basis of the market value, as it was on the date of acquisition, or the date on which, by appropriate notification the State Government made known its intention to acquire the property, but on an arbitrary date, namely, the first day of September, 1939, plus 50 per cent.

The abnormal increase in the prices of all classes of property including lands, consequent on the out-break of World War II is a fact too notorious to be challenged. Hence, if a person whose property is acquired long after the "end" of the World War No, II is given compensation on the basis of the market value prior to the commencement of that war with a consolation of only 50 per cent more extra, there can be no doubt that the compensation is grossly inadequate.

The learned Advocate General contended that so long as the compensation given is not illusory, mere inadequacy is no ground for holding the proviso to be unconstitutional under the provisions of Sub-section (2) of Section 299 of the Government of India Act. The answer to this argument is furnished by the decision of the Supreme Court in *The State of West Bengal Vs. Bela Banerjee and Others*, already referred to. A similar contention was repelled by their Lordships who observed :

"What is determined as payable must be compensation, i. e. a just equivalent of what the owner has been deprived of".

11. The learned Advocate General then cited a recent decision of the Bombay

High Court reported in Assistant Collector, Thana Prant, Thana Vs. Jamnadas Gokuldas Patel and Others, where a Bench of that Court while recognising that Section 299 of the Government of India Act requires that the compensation must be real and not illusory and intended reasonably to indemnify the owner for loss of his property, nevertheless held there that there was nothing in that section to suggest that the compensation paid must be equivalent to the market value of the property at the date on which title of the Owner was extinguished.

In that decision, a distinction was made between the exercise of fundamental rights protected by Clause (2) of Article 31 and the fetter on legislative power provided in Sub-section (2) of Section 299 of the Govt. of India Act; and it was pointed out that the decision dealing with Clause (2) of Article 31 should not be too literally applied in construing Sub-section (2) of Section 299 of the Government of India Act, inasmuch as those two provisions were made under different circumstances.

Some of the observations in this judgment seem to go directly against the principle laid down by their Lordships of the Supreme Court in Dhirubha Devisingh Gohil Vs. The State of Bombay, and Deep Chand Vs. The State of Uttar Pradesh and Others, . It has been authoritatively laid down that Sub-section (2) of Section 299 of the Government of India Act 1935 was made in recognition of the same fundamental right which was subsequently expressly stated in Article 31(2) of the Constitution.

Hence, in my opinion, the construction of the expression "compensation" as given by the Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, must apply while construing the same expression in Section 299 of the Government of India Act, that is to say, a person who is deprived of his property must be given the "just equivalent" of what he has been deprived of.

Doubtless the Legislature has certain discretion in the matter and may fix the compensation at the market value prevailing on the date on which the notification of the State's intention to acquire the property was issued so as to prevent the owner from taking undue advantage of any speculative rise in the value consequent on the publication of the notice of acquisition.

To that extent, I would agree with the observations in, the aforesaid Bombay High Court's decision to the effect that it was not contemplated either by Section 299 of the Government of India Act or by Clause (2) of Article 31 of the Constitution that the market value on the date on which the title of the owner was extinguished should be taken as a guide in assessing the amount of compensation, and that the Legislature may, in appropriate case, even fix an anterior date, i. e. the date on which notification of the intention to acquire the property was duly published.

But in the instant case, the impugned proviso goes further and fixes an arbitrary date, prior to the commencement of World War No. II thereby giving grossly inadequate compensation to the dispossessed owner. Such a provision in the Act

cannot be said to be "intended leasonably to indemnify the owner for the loss of his property" within the meaning of the aforesaid Bombay decision. Hence, it must be held that the Proviso offends the provisions of Sub-section (2) of Section 299 of the Government of India Act, 1935 and is therefore invalid from its very inception.

The doctrine of eclipse can obviously have no application to such a "still born" provision. Nor will the Fourth Amendment to the Constitution have the effect of saving the provision which was dead even before the commencement of the Constitution. In the previous decision of this Court ((S) State of Orissa Vs. Bharat Chandra Nayak, the validity of the impugned proviso, with reference to the provisions of Sub-section (2) of Section 299 of the Government of India Act was not examined because it was considered unnecessary in view of Article 31(2) of the Constitution as it then stood. But for the reasons clearly mentioned, the same conclusion follows from the language of Sub-section (2) of Section 299 of the Government of India Act of 1935.

12. I may now notice an ingenious argument raised by the learned Advocate General, relying on the observations in Dhirubha Devisingh Gohil Vs. The State of Bombay, to the effect that the right conferred under Article 31(2) of the Constitution is the same as the right recognised in Sub-section (2) of Section 299 of the Govt. of India Act, 1935. He urged that the question regarding adequacy of compensation arises out of the recognition of that right and when the Fourth amendment to the Constitution prohibited any Court from examining the adequacy of the compensation that prohibition, by necessary implication would apply not only to post-Constitution laws but also pre-Constitution laws when, their validity is examined" with reference to Sub-section (2) of Section 299 of the Government of India Act.

He urged that it would be illogical to say that the question of adequacy of compensation could not be examined when validity of the Act is examined with reference to Article 31(2) of the Constitution, while the same question could be considered when examined with reference to Sub-section (2) of Section 299 of the Government of India Act, especially when both the provisions deal with the same right. In my opinion this argument which is based on some observations in the aforesaid Supreme Court decision, is not tenable.

In that case their Lordships were concerned with the construction of Article 31B of the Constitution which was expressly given retrospective effect by the use of the words "ever to have become void" so as to apply to all pre-Constitution laws. That construction cannot apply when considering Article 31(2) as amended by the Fourth Amendment especially when the Parliament did not give retrospective effect to that amendment. Moreover, when the makers of the Constitution intended that a challenge to pre-Constitution Act on the ground that it contravened Section 299(2) of the Government of India Act should not be made before any law court they expressly said so as in Article 31(6).

The absence of any reference to Section 299(2) of the Government of India Act in Article 31(2) as amended by the Fourth Amendment shows that the validity of any pre-Constitution law with reference to the Government of India Act was left open. Further more, a pre-Constitution Act is an "existing law" within the meaning of Article 366(10) of the Constitution according to which it must be a law passed before the commencement of the Constitution by any legislature. This definition necessarily involves the idea that the Legislature which passed the Act was otherwise competent to pass it.

For the purpose of judging its competence we will have to examine the provisions of the Government of India Act. Once it is held that even prior to the commencement of the Constitution the legislature had no competence to make a provision in a statute depriving a person whose property was acquired for a public purpose of his right to receive just compensation that provision becomes invalid and it will no longer be an "existing law" so as to continue to remain in force after the commencement of the Constitution. The applicability of Article 13(1) of the Constitution to such an "existing law" arises only if it is otherwise valid and in force on the date of commencement of the Constitution,

13. I must, therefore, hold that the Arbitrator was justified in ignoring the proviso to Clause (e) of Section 7(1) of the Act and in determining compensation on the basis of the principles laid down in *State of Orissa Vs. Bharat Chandra Nayak*, .

14. I may now deal with a few minor points raised by the learned Advocate General. He contended that the Arbitrator should not have utilised the Hamid Settlement Report for the purpose of estimating the gross yield, yield of straw, cost of cultivation, etc. The learned lower Court pointed out that the State of Orissa led no evidence to show the yield of the land acquired from the respondents. In the absence of any evidence on the side of the State the Arbitrator very properly did not accept the exaggerated claim made by the respondents but estimated the value on the basis of the yield as given in Hamid Settlement Report.

It is true that that Report was made in 1924-27 more than thirty years before the date of the award. But though there has been an abnormal rise of prices since then, there was no evidence to show that the yield of the land increased appreciably either due to the extensive use of fertilisers, or due to the adoption of improved methods of cultivation, etc. In *State of Orissa Vs. Bharat Chandra Nayak*, also the Hamid Settlement Report was utilised for the purpose of estimating the net yield of the land acquired.

15. The Advocate General then, contended that there was no evidence to show that the quantity of straw was 1 1/2 times the weight of paddy, or that the straw should be valued at Rs. 2/- per maund. This calculation was made by the Arbitrator on the basis of the calculation adopted by this Court in the previous decision. The State of Orissa did not lead any evidence before him to challenge

the basis of the aforesaid calculations.

No evidence regarding the proportionate yield of straw to paddy was also given, nor was the value of straw per maund mentioned by any of its witnesses. In this state of the evidence, I think the Arbitrator was justified in adopting the same calculations as was done by the Bench of this Court in *State of Orissa Vs. Bharat Chandra Nayak*, .

16. It was next contended that the Arbitrator was not justified in awarding interest from the date of dispossession, till the date of the filing of the petition before him. The Advocate General relied on the well known decision of the Privy Council in AIR 1938 67 (Privy Council) to the effect that awarding of interest prior to the date of the suit does not depend on the provisions of the CPC but is based on substantive law and in the absence of any agreement for payment of interest at a fixed rate, or of the usage of the trade having the force of law, or of the provision in a substantive law entitling a person to claim interest, the court would not be justified in awarding interest for the period prior to the institution of the suit

In this connection, he drew my attention to Section 34 of the Land Acquisition Act which expressly provided for payment of interest from, the date of taking possession of the property and that in the absence of a similar provision in the Act, the Court was not entitled to award interest. In reply to this argument, Mr. Rath for respondents invited our attention to the previous decision of this Court, awarding interest to the dispossessed owner, from the date of dispossession.

That decision does not show that the State of Orissa then contested the legality of that portion of the Court's order. The Advocate General thereupon contended that this question required further consideration and suggested that a larger Bench may be constituted to overrule the previous decision in *State of Orissa Vs. Bharat Chandra Nayak*, on the question of liability for payment of interest prior to the date of filing of the petition before the Arbitrator.

I might have been inclined to accept this suggestion of the learned Advocate General but for the fact that in the appeal petition also the State did not raise the question of the legality of the order directing payment of interest. So far as interest was concerned, the only ground urged in the appeal petition was ground No. 11 which was as follows :

"For that there was no justification for awarding interest in respect of even the compensation which was offered by the competent authority, even though such interest may be payable in respect Of the excess amount awarded by the Additional Arbitrator."

This ground implicitly admits liability to pay interest from the date of dispossession in respect of the difference between the amount offered by the Land Acquisition Officer on the one hand and the amount awarded by the Arbitrator on the other. Thus, once the liability is recognised it is not open to the

State now to urge that interest was not legally payable.

The previous decision of this Court has been in force for nearly five years and extensive acquisitions of property have taken place not only in respect of Hirakud Dam Project but also in connection with other big projects like Rourkela Steel Project, Bhubaneswar Capital Construction Project, Manchkund Hydro Electric Project etc. and interest must have been awarded to the dispossessed owners on the basis of that decision.

When the State Government did not challenge the liability to pay interest when the aforesaid judgment was pronounced and when, even in the appeal petition before this Court they did not take up this point. I do not think it would be advisable to constitute a larger Bench at this stage to decide this question alone,

(17-18) In Miscellaneous Appeals Nos. 42 of 1957, 44 of 1957 and 46 of 1957 the actual order of the Arbitrator is as follows:

"That the objector is to get with interest at 6 per cent per annum from the date of taking over possession till the date of payment in full, minus interim payment, if any".

This portion of his order may lead to some confusion. I would therefore modify the same as follows:

"Interest should be calculated at 6 per cent per annum on the total amount of compensation awarded by the Arbitrator, from the date of taking over possession upto date of payment of interim compensation. From that date interest should be calculated at the same rate only in respect of the difference between the compensation awarded by the Arbitrator and the interim compensation paid by the State of Orissa to the respondent".

19. Subject to the aforesaid modification in the calculation of interest all these appeals are dismissed with costs.

Misra, J.

20. I agree.