

(1989) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 9, 10, 11, 12, 13, 14 and 15 of 1978

Union of India (UOI) and Others

APPELLANT

Vs

Rajeshwar Singh and Another

RESPONDENT

Date of Decision : 02-08-1989

Acts Referred:

Arbitration Act, 1940 — Section 11, 20, 21, 34, 8(1)
Constitution of India, 1950 — Article 136, 14
Defence of India Act, 1939 — Section 19
Electricity Act, 1910 — Section 52
Land Acquisition Act, 1894 — Section 23, 23(1)
Religious Endowments Act, 1863 — Section 16, 17
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 10, 10(2), 11, 12, 19
Requisitioning and Acquisition of Immovable Property Rules, 1953 — Rule 10, 11(1), 11(2)
Telegraph Act, 1885 — Section 7B

Citation : (1989) 2 ILR HP 905

Hon'ble Judges : V.R. Mehrotra, J

Bench : Single Bench

Advocate : P.A. Sharma and Central Government, in F.A.O. Nos. 9, 10, 11, 12, 13, 14 and 15 of 1978, for the Appellant; Prem Goel and M.L. Chauhan, Assistant A.G. in F.A.O. No. 9, 10, 11, 12, 13, 14 and 15 of 1978, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Mehrotra, J.—The Hindustan-Tibet road passes through village Jhakri in Tehsil Rampur of District Shimla. On both sides of this road in that village lies the land with which we are concerned in the present and the connected appeals. The land was requisitioned on March 3, 1966, under the Requisitioning and Acquisition of Immovable Property Act, 1952, (in brief "the Act"). This was in exercise of the powers u/s 3. Later, the land was acquired through a notification of March 6, 1975, in exercise of the powers u/s 7 of the Act. The Respondents in the appeals are persons having interest in the property which was initially requisitioned and later acquired. Since the amount of compensation could not be

fixed by agreement between the parties, an Arbitrator for determining it was appointed by the Central Government, for the purpose of making an award, through notification of October 19, 1977 as contemplated by Section 8 of the Act. The Arbitrator made an award on February 18, 1978. The Union of India felt aggrieved by the award so made. It has come up before this Court in appeal u/s 11 of the Act.

2. During the course of the proceedings before the Arbitrator, counsel for the parties agreed that evidence be recorded in Arbitration Petition No. 1 of 1977 before him and that the entire evidence received in that Petition may be read as evidence in the various petitions, out of which these appeals arise. As such, oral and documentary evidence was adduced by the parties in Arbitration Petition No. 1 of 1977. F.A.O. No. 10 of 1978 arises out of that Petition.

3. The Arbitrator made a common award in the Arbitration Petitions leading to all these appeals. The three principal questions raised before the Arbitrator related to the payment of enhanced compensation pertaining to the land; payment of solarium, for the compulsory nature of acquisition, on the enhanced amount of compensation; and payment of interest on the enhanced amount of compensation from March 6, 1975 (when the land was acquired) till the date of the realization of the amount. The Arbitrator has determined the amount of compensation and has also held that the claimants were entitled to solarium at the rate of 15% "per annum on the enhanced amount of compensation as well as to interest thereon at the rate of 4 % per annum from March 6, 1975 till the date of realization. The counsel appearing for the parties in this Court have confined the submissions to the aspects aforesaid.

4. A look at the Act shows that it was enacted "to provide for the requisitioning and acquisition of immovable property for the purposes of the Union". The Statement of Objects and Reasons for the Bill, leading to the Act, shows that:

During the war, lands and buildings were requisitioned under the Defense of India Act, 1939, and the rules made there under and such property continued to be subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947 due to expire on 31st March, 1952 and as the Government of India had no powers to requisition any property outside Delhi, it was essential not only to ensure the continuance of the requisition of the premises already requisitioned under the Defense of India Rules, (but) also to secure powers for the Central Government to make fresh requisitions. The Requisitioning and Acquisition of Immovable Property Ordinance, 1952 was promulgated on 25th January, 1952. The Ordinance empowers the Central Government to requisition, for the purposes of the Union, any immovable property, and to acquire such requisitioned property under certain specified conditions. The principles and method according to which compensation shall be determined and paid for such requisitioning and acquisition have been laid down in Sections 8 and 9. Provision is made in Sections 10 and 11 for appeals against orders of the requisitioning and awards determining compensation. The present Bill seeks to replace the

Ordinance by an Act of Parliament.

5. The Act was amended from time to time.

6. Section 2 contains the definitions and says that unless the context otherwise requires:

(a) "award" means any award of an arbitrator made u/s 8 ;

xx xx xx xx xx xx

xx xx xx xx xx xx

(d) 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 ;

xx xx xx xx xx xx

xx xx xx xx xx xx

(g) "property" means immovable property of every kind and includes any rights in or over such property;

7. Section 3 confers upon the competent authority, as defined in Section 2(b), the power to requisition any property needed or likely to be needed for any public purpose, while Section 4 empowers it to direct possession to be taken of the requisitioned property. Section 6 provides for release from requisition of the property which might have been requisitioned and Section 7 enables the Central Government, if it is of opinion that it is necessary to acquire the property for a public purpose, to acquire the property which is subject to requisition.

8. Section 8 provides for the principles and method of determining the compensation. In its material part it says:

8. Principles and method of determining compensation. (1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,

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

(a) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court ;

(c) The Central Government 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 Central Government 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 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 the provisions of Sub-section (2) and (3), so far as they are applicable ;

(J) 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 Arbitration Act, 1940 shall apply to arbitrations under this section.

(2) xxx xxx xxx xxx xxx xxx (2A) xx xxx xxx xxx xxx xxx xxx xxx (2B) xxx xxx xxx xxx xxx xxx xxx (3) The compensation payable for the acquisition of any property u/s 7 shall be the price which the requisitioned property would have fetched in 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.

Before its substitution by Section 2 of the amendment Act 2 of 1975, Sub-section (3) was in these terms:

(3) The compensation payable for the acquisition of any property u/s 7 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.

9. Section 9 deals with the payment of compensation while Section 10 deals with appeals from orders of requisitioning. Section 11, which provides for appeals from awards in respect of compensation says that:

Any person aggrieved by an award of the arbitrator made u/s 8 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate.

The proviso to this section enables the High Court to entertain the appeal after the expiry of the period of thirty days, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

10. Section 12 provides that the competent authority and the Arbitrator will have certain powers of civil courts. It reads thus:

The competent authority and the arbitrator appointed u/s 8, while holding an

enquiry or, as the case may be, arbitration proceedings under this Act, shall have all the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of the following matters, namely:

- a) summoning and enforcing the attendance of any person and examining him on oath ;
- b) requiring the discovery and production of any document ;
- c) reception of evidence on affidavits ;
- d) requisitioning any public record from any court or office;
- (e) Issuing commissions for examination of witnesses.

11. The other provisions of the Act do not merit any specific mention except for Section 19 which bars the jurisdiction of civil courts in respect of any matter which the competent authority or the Arbitrator is empowered by or under the Act to determine and Section 22 which enables the Central Government to make rules for carrying out the purpose of the Act including, in particular, the procedure to be followed for arbitration proceedings and appeals under the Act; the principles to be followed in determining the amount of compensation and method of payment of such compensation and the principles to be followed in apportioning the cost of proceedings before the Arbitrator and on appeal under the Act.

12. The Requisitioning and Acquisition of Immovable Property Rules, 1953, were framed by the Central Government u/s 22 of the Act. Rule 10 of these rules relates to arbitration. It reads thus:

10. Arbitration: (1) An arbitrator appointed under Clause (Z) of Sub-section(1) of Section 8 shall ordinarily complete the arbitration proceedings and give his award within four months. If for any reason he is unable to give his award within that period, the Central Government or the authority to which the power of the Central Government under Clause (b) of Sub-section (1) of Section 8 has been delegated, may, if it thinks fit, whether the time for making the award, has expired or not and whether the award has been made or not, enlarge, from time to time, the time for making the award.

(2) An arbitrator shall take down the evidence of each witness, not ordinarily in the form of question and answer, but in that of a narrative and shall sign it.

(3) Where before an arbitrator is able to finish the arbitration proceedings and make his award, a new arbitrator is appointed, the new arbitrator may deal with the evidence taken down by his predecessor as if such evidence had been taken down by him and may proceed with the arbitration proceedings from the stage at which his predecessor left it.

(4) The costs of arbitration and award shall be in the discretion of the arbitrator who may direct to, and by whom, and in what manner, they or any part thereof

shall be paid, and in case an appeal is preferred to the High Court, such costs and the costs of the appeal shall be in the discretion of the High Court, who may direct to, and by whom and in what manner they or any part thereof shall be paid.

(5) When arbitrator has made his award, he shall sign it and shall give notice in writing to the parties to the reference of the making and signing thereof. He shall also send to the competent authority" as well as to the person or persons to be compensated a copy of the award with a note appended thereto setting forth the grounds on which the award is based and shall also forward the award in original together with the records of the proceedings

(a) to the proper court if an appeal is preferred against the award within the period of limitation prescribed for preferring such appeal ;

(b) to the competent authority if no such appeal is preferred within the said period.

(6) On receipt of a copy of the award, the competent authority shall pay the amount awarded by the - arbitrator to the persons entitled thereto".

12/4. Rule 11 deals with appeals. Sub-rule (1) deals with appeals u/s 10 and Sub-rule (2) says:

"(2) Every appeal shall contain the grounds of appeal and shall be accompanied by a copy of the order against which the appeal is preferred.

This Sub-rule, obviously, also applies to an appeal u/s 11 of the Act.

Seope of the Appeal :

13. What is the scope of interference by this Court in an appeal u/s 11 of the Act is the question which deserves attention in the first instance. For arriving at a proper conclusion about it, it is worth-while noticing the relevant provisions of the Defense of India Act, 1939, under which land used to be requisitioned earlier. 2 of the Act of 1939 enabled the Central Government to make rules and Sub-section(2) Clause (xxiv) of this Section gave power to the Central Government of framing rules in regard to "requisitioning of any property, moveable or him movable, including the taking possession thereof and the issue of any orders in respect thereof. Section 19, in its material H part read thus:

19. (1) Where by or under any rule made under this Act any action is taken of the nature described in Sub-section (2) of Section 299 of the Government of India Act 26 Geo. V. c. 2,1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, herein after set out, that is to say: (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached the Central Government shall appoint as arbitrator a person qualified under Sub-section (3) of Section 220 of

the above-mentioned Act for appointment as a Judge of a High Court.

(c) The Central Government may?????, nominate a person having expert knowledge?????, to assist the arbitrator?????.

(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(e) The arbitrator in making his award shall have regard to:

(i) the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act????? so far as the same can be made applicable ;

(ii) xx xx xx xx xx xx xx xx (/)

(f)An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed on amount prescribed in this behalf by rule made by the Central Government.

(g) Save as provided in this section and in any rules made there under, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) xx xx xx xx xx xx xx xx

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe:-

(a) the procedure to be followed in arbitrations under this section ;

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal.

(c) xx xx xx xx xx xx xx xx .

15. In *Rangoon Botatoung Company Limited v. The Collector, Rangoon* 1912 39 IA 197, the Privy Council was dealing with a case where the Chief Court of Lower Burma dealt with a case arising out of the Land Acquisition Act, 1894. The Chief Court dealt with the matter as the court of principal Civil Court of origin jurisdiction. It made an exhaustive award dealing minutely with the evidence and the award of the Collector and dismissed the reference with costs on its view that the Appellants had been given more than the full market value of their property. The Appellants wanted to file an appeal against this decision on the ground that the order passed by the Chief Court was a decree passed by the High Court in the course of its ordinary jurisdiction so that an appeal would lie there from to the Privy Council. The view taken by the Privy Council was that the appeal was not maintainable. It observed (at page 201)

?Their Lordship cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of

land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction. It is impossible to conceive anything more inconvenient than that a Court in this country should be called upon to review the determination of arbitrators as to the value of a piece of land in India.

16. In *Secretary of State for India v. Chellikani Rama Rao and Ors.* (AIR 1916 PC 21), this is what their Lordships of the Privy Council said about the judgment in *Rangoon Botatoung Company*:

It was urged that case of *Rangoon Botatoung Co. v. Collector, Rangoon* announced a Principle, which formed a precedent for excluding all appeal from the decision of the District Court in such cases as the present. Their Lordships do not think that is so. In the *Rangoon* case a certain award had been made by the Collector under the Land Acquisition Act. This award was affirmed by the Court which under the Act meant "a Principal Civil Court of Original Jurisdiction". Two Judges sat as "the Court " and also as the High Court to which the appeal is given from the award of "the Court". The Proceedings were however, from beginning to end ostensibly and actually arbitration proceedings. In view of the nature of the question to be tried, and the provisions of the particular statute, it was held that there was no right "to carry an award made in an arbitration as to the value of land" further than to the Courts specifically set up by the state for the determination of that value.

(Emphasis supplied).

17. These decisions clearly suggest that where arbitrator determines the value of a piece of land, the proceedings retain their basic character as arbitration proceedings.

18. The two Privy Council decisions were noticed by Patanjali Sastri, J. in *The Kollegal Silk Filatures Ltd. v. The Province of Madras by the Director of Industries and Commerce, Madras* (AIR 1949 Madras 39), when, dealing with a case under the Defense of India Act, 1939, he observed (In paragraph 4):

... In our opinion "arbitrations" in clause. (g) covers the entire proceedings from their commencement before the arbitrator to their termination in the High Court on appeal where an appeal has been preferred. Although the appeal is given to the "High Court" under clause. (f) the appeal is against the "award" of the arbitrator, and it seems to us that the High Court in hearing and deciding the appeal acts essentially as an arbitration tribunal, no less bound than the arbitrator under clause. (e) to have regard to the considerations referred to therein??????

The Privy Council cases were then referred to in paragraph 5 of the judgment and a paragraph from AIR 1916 Mad 21, notice earlier, was extracted.

19. In *Dinshaw Manekji Petit Vs. G.B. Badkas and Others*, , Nathwani, J. was dealing with an award u/s 19 and an appeal against it. He said in paragraph 12:

In my opinion, it is clear from the provisions of Section 19, and the said rules made there under, that the legislature intended to make a complete code for determining compensation by arbitration u/s 19 and no other law was to affect the provisions of that Code.

Later in paragraph 27, the learned Judge observed that:

??????.In my view the whole scheme and object of Section 19 of the Defence of India Act and the rules there under is to create a special forum by way of arbitration including an appeal to the High Court for determining the amount of compensation in respect of compulsory acquisition of property by Government and to exclude the jurisdiction of the Civil court under the Arbitration Act.

20. In *Hanskumar Kishanchand Vs. The Union of India (UOI)*, the question that arose for decision was whether the decision by the High Court was a judgment, decree or final order within the meaning of those words found in Section 109 of the Code of Civil Procedure. The Supreme Court accepted the contention of the Solicitor General that it was not a judgment, decree or final order, and that being so, no certificate under Sections 109 and 110 of the CPC to appeal to the Federal Court could have been given by the High Court. In coming to that conclusion, it was observed by the Court (in paragraph 14):

?Then again, the decision of the arbitrator appointed u/s 19(1)(Z) is expressly referred to in Section 19 (1) (f) as an award. Now, an appeal is essentially a continuation of the original proceedings, and if the proceedings u/s 19(1)(b) are arbitration proceedings, it is difficult to see how their character can suffer a change, when they are brought up before an appellate tribunal. The decisions in ILR 37 Bom. 506; 17 CWN 421 (PC); ILR 41 Mad 943: (AIR 1919 Mad. 626) and AIR 1931 149 (Privy Council) proceed all on the view that an appeal against an award continues to be part of, and a further stage of the original arbitration proceedings. In our view, a proceeding which is at the inception an arbitration proceeding just retain its character as arbitration, even when it is taken up in appeal, where that is provided by the statute.

21. In a later case in *Collector, Varanasi v. Guari Shankar Misra and Ors.* (AIR 1968 SC 385), the Supreme Court observed, with reference to the decision in *Hanskumar Kishan Chand*, (in paragraph 7):

?In that case this Court was not called upon to consider the scope of Article 136. Therefore, it did not go into the question whether the decision appealed against could be considered as a determination falling within the scope of Article 136???? The observation in this Court's judgment that the provision for appeal to the High Court u/s 19(1)(f) can only be construed as reference to it as an authority designated and not as a court, does not receive any support from those decisions. Nor do we find any sound basis for that conclusion. With respect to the learned Judges who decided that case, we are unable to agree with that conclusion. In our judgment, while acting u/s 19(1) (f), the High Court functions as a "Court" and not as a designated person????.

Later (in paragraph 8) it was said that:

We have already come to the conclusion that the decision rendered by the High Court u/s 19 (1)(0) is a "determination". Hence, it was within the competence of this Court to grant special leave under Article 136??????

22. The observations in Collector, Varanasi do not detract from the view that the proceedings before the Arbitrator and thereafter, in appeal, before the High Court retain their character as arbitration proceedings.

23. Arbitration is a mean by which the parties to a dispute get the same settled through the intervention of a third person, but without having recourse to a court of law. In Halsbury's Laws of England, arbitration has been defined as "the reference of dispute or difference between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a Court of competent jurisdiction". Arbitration may be Voluntary. It may be statutory, like in the present case. There are various enactments which provide for arbitration in certain circumstances. Apart from Section 19 of the 1939 Act the provisions of Section 52 of the Indian Electricity Act, 1910, Sections 16 and 17 of the Religious Endowments Act, 1863, Section 7B of the Telegraph Act, 1885 may be noticed as illustrations.

24. The concept of arbitration proceedings is that of a proceeding to arrive at a just conclusion in a matter of dispute between the parties without insisting upon the formalities, formalism and technicalities of detailed legal procedure and with expedition. The nature of the proceedings remains the same irrespective of the fact that against an award given by the Arbitrator, an appeal is provided. This is what is the ratio of various decisions noticed above. This is what a learned single Judge of the Allahabad High Court observed in Rajdhari Devi Vs. Deputy Registrar, Co-operative Societies, U.P., Gorakhpur and Others, . In paragraph 7 he said that:

?The fact that against an award given by the arbitrator under the rules an appeal is provided will not make a difference because, as held by the Supreme Court in Hanskumar Kishanchand Vs. The Union of India (UOI), : Hanskumar Kishanchand Vs. The Union of India (UOI), and by this Court in State v. Ram Swarup, 1961 All. LJ 258: The Uttar Pradesh Government Vs. Ram Swarup, the appellate decision is also in such cases to be considered as an award given in arbitration.

25. The exclusion of the applicability of the provisions of the Arbitration Act, 1940, notwithstanding u/s 8(1)(g), the ambit of an inquiry by the appellate court in an appeal u/s 11 must be restricted to the extent to which the courts can interfere with an award made by the arbitrators under the Arbitration Act. This is so, because of the nature of the arbitration proceedings themselves. The powers of the appellate court in such an appeal cannot be equated with those of the court in an appeal against a decree under the Code of Civil Procedure. Doing so would obliterate the basic distinction between a decision rendered in arbitration proceedings and the one rendered by a trial court under the Code of Civil

Procedure.

26. There have been a large number of decisions, over the decades, touching upon the scope of interference by a court with the award of an arbitrator. It is not necessary to notice them all. There have been recent decisions by the Supreme Court. A reference to some would suffice.

27. In *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, the history of the law of arbitration in England and India was noticed in the context of the question whether it was necessary for the arbitrator to give a reasoned award. Speaking through Sabyasachi Mukharji, J., the Court observed (in paragraph 8) that:

“Reasons were stated in the award no error of law was pointed out in those reasons. There was no error of fact. It was a possible view to take. It could not be urged that it was an impossible view to take. The arbitrator has made his mind known on the basis of which he has acted; that, in our opinion, is sufficient to meet the requirements even if the reasons stated in the award are not stated.”

And in paragraph 9 that:

“... it is apparent that the arbitrator has not acted irrelevantly or unreasonably. Arbitration procedure should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indication of the grounds should be available to find out the mind of the arbitrator for his action.., And then in paragraph 10 that:

And then in paragraph 10 that:

“...The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon a legally depository which is erroneous.

28. A few months later, the same Bench, speaking again through Sabyasachi Mukharji, J., said in *Gujarat Water, Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd.*, and *Anr.* (AIR 198 SC 973) that:

“... Reasonableness as such of an award unless...absurd is not a matter for the Court to consider. Appraisal of evidence” by the arbitrator is ordinarily not a matter for the court. It is difficult to give an exact definition of the word “reasonable”The word “reasonable” has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know”. See the observation on this point in, *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, ?

(quoted from paragraph 11).

29. Recently, a constitution Bench of the Supreme Court has ruled in *Raipur Development Authority Vs. M/s. Chokhamal Contractors etc. etc.*, that:

an award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award .

30. The question, however, does not arise in the instant case and need not be pursued further.

31. If, as I hold, the scope of scrutiny of the award of an arbitrator by the Court in an appeal u/s 11 of the Act is akin to that of scrutiny of the award of Arbitrator under the Arbitration Act, the present Award, as far as quantum of compensation is concerned, cannot be said to be such with which any interference can be made in the present appeal. It is clear from the perusal of the award, under challenge, that the evidence, both oral and documentary, which was adduced by the claimants as well as Appellants-Union of India in the case was referred to in detail by the Arbitrator. He has also seen the exemplars which were brought on the record by the parties. The mind of the Arbitrator was alive to the entire oral and documentary evidence adduced by the parties. He has chosen to arrive at his own conclusion, on the basis thereof, which cannot be said to be unreasonable in the sense of being preposterous or arbitrary. He has, undoubtedly, not given reasons for discarding the exemplars, relating to land similar to the one under acquisition, filed by the Union of India. But, on that account alone the award cannot be set aside. He has noticed these exemplars but has preferred to base his conclusion on the exemplars filed on behalf of the claimants. It is clear that his mind was alive to the evidence of both the parties. The Court would not be justified in view of the limited ambit of scrutiny, in such a case, in re-appreciating the evidence itself. The challenge to the award, in regard to the quantum of compensation must, therefore, fail on this short ground.

SOLATIUUM:

32. Could the Arbitrator direct the payment of solatium, as has been done in that instant case.

33. Section 8(3) of the Act does not provide for payment of solatium. The Act does not contemplate application of the provisions of the Land Acquisition Act either.

34. A Full Bench of the Punjab and Haryana High Court considered the question of payment of solatium and interest under the Act in Hari Krishan Khosla (decd.) and Others Vs. The Union of India (UOI) and Another, . It took the view that, in as much as, Section 8(3) clause (a) (prior to its amendment) did not provide for payment of solatium and interest, it was violative of the provisions of Article 14 of the Constitution and further that the claimants were entitled to claim and receive from the Central Government solatium of 15% per annum on the amount of compensation allowed to them as also interest at 6% per annum thereon. A

similar view was taken by a Division Bench of that Court, relying upon the above Full Bench decision, in *Shanker Singh and Ors. v. Union of India and Anr.* (1975 RLR 6).

35. The above principle was not accepted by the Supreme Court. In *Prakash Amichand Shah Vs. State of Gujarat and Others*, , a constitution Bench, speaking through Venkataramiah, J. (as he then was) said (in paragraph 36) that:

It cannot also be said as a rule that the State which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium?

36. Dealing with the question whether failure to, provide, for payment of solatium, in addition to the compensation payable for the acquired land, rendered the Act discriminatory, the Court observed (in paragraph 34) that it was not so. It referred to the earlier decision in *Nagpur Improvement Trust's case* (AIR 1973 SC 689), which had dealt with the acquisition under the Nagpur Improvement Trust Act, 1936, where the provisions of the Land Acquisition Act were made applicable with some modifications and observed that:

?We do not understand the decision in *Nagpur Improvement Trust's case*???. as laying down generally that where ever land is taken away by the Government under a separate statute compensation should be paid under, the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under he Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory ?

37. A Division Bench of the Andhra Pradesh High Court, while considering the question of payment of solatium in the case of land acquired under the Act, took the view in *The The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, , that in the absence of a specific provision for its payment, solatium could not be awarded as a matter of law. In that case, the Arbitrator had negative the claim for solatium. The Bench observed that it should not be understood as saying that while determining compensation under the 1952 Act, the principles underlying Section 23(1) of the Land Acquisition Act need not be kept in mind.

38. In *Union of India (UOI) and Others Vs. Asit Kumar Mondal and Another*, a Division Bench of the Calcutta High Court was dealing with the acquisition of land under the Defense of India Act (1939). It said that the absence of provision for solatium could not be held in any way unlawful or contrary to the constitutional provisions, because the acquisition was complete long before the Constitution of India came into force.

39. Section 8(1), Clause (e) says that the Arbitrator shall make an award determining the amount of compensation which appears to him to be just. He has to keep in mind the circumstances of each case and also the provisions of

Sub-section (3), as far as they are applicable. There is no provision in the Act which precludes the Arbitrator from awarding any amount by way of solatium or interest over and above the price which the property would have fetched in open market on the date of acquisition, if it had remained in the same condition as it was at the time of requisitioning.

40. If an amount is directed by the Arbitrator to be paid as solatium, as part of the just compensation, his award cannot be interfered with on that account.

41. If the principles of the Land Acquisition Act are kept in mind by the Arbitrator, who makes an award of some amount by way of solatium as well, the award cannot be said to be unsustainable, in law. This is the view taken by the various High Courts in the Country. The Punjab and Haryana High Court said so in *Gurcharan Singh and Another Vs. Union of India and Another*, , has also in *Board of Nawan Mission, America v. Union of India and Anr.* AIR 1988 P&H 248). The Andhra Pradesh High Court, as noticed earlier, said so in *The Competent Authority, Special Deputy Collector, Land Acquisition (Defence), Hyderabad Vs. Thota Penta Reddy and Others*, and the Calcutta High Court took that view in *Union of India (UOI) and Others Vs. Asit Kumar Mondal and Another*,

42. The inevitable conclusion, on the facts of these appeals, is that the award of solatium by the Arbitrator does not merit interference because it can be justified as payment of compensation which appeared to be just to him by keeping in mind the principles of Land Acquisition Act, 1894.

INTEREST:

43. The question of award of interest by the Arbitrator may now be seen. He has directed the payment of interest on the enhanced amount of compensation at the rate of 4 % per annum from March 6, 1975 till the date of realization.

44. The Calcutta High Court had to consider the question whether the Arbitrator is competent to award interest on the amount of compensation assessed under the Act in the case of *Balai Lai Pal v. State of West Bengal* 1965 70 CWN 363 . It held that it was within the discretion of the court to allow or reject the claim for interest which should be based on considerations of equity. The claimant had no legal right to get interest on the compensation assessed. Also, the fact that Section 34 of the Code of CPC has no application to the proceedings before Arbitrator would not stand in the way of granting interest pendent lite. The Gauhati High Court held in *Deputy Commissioner Vs. Mamat Kaibarta (deceased by L.Rs.) and Others*, that interest should have been awarded by the Arbitrator from the date of the making of the award till the date of payment and not from the date of taking over possession of the land till final payment. In *Binu Nalufar Haq Vs. The Collector and Land Acquisition Officer*, , decided a few months earlier to the above decision, it held that though there was no specific provision for payment of interest under the Act, it was within, the discretion of the court, even at the appellate stage, to consider the point and award interest in the absence of a specific bar in the Act. The Arbitrator had not said anything in his judgment

about interest. The Court directed the payment of interest at the rate of 6 % per annum from the date of acquisition of the land till the date of final payment.

45. The question of payment of interest was considered by the Supreme Court also in respect of land acquisitions. In *Satinder Singh and Others Vs. Amrao Singh and Others*, land was acquired under the East Punjab Requisition of Immovable Property (Temporary Powers) Act, 1948. Speaking through Gajendragadkar, J., a three Judge Bench of the Supreme Court upheld the claim for payment of interest on the principle stated (in paragraph 19) thus:

?When a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation?

And, (in paragraph 21) thus :

?We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right ...

46. In a recent decision in *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others*, , Anr. Judge Bench of the Court, speaking through Chinnappa Reddy, J., said (in paragraph 6) that:

?The result is that while in cases arising after the Commencement of the Interest Act of 1978 an arbitrator has the same power as the Court to award interest up to the date of institution of the proceedings, in cases which arose prior to the commencement of the 1978 Act, the arbitrator has no such power under the Interest Act of 1839. It is, therefore, necessary, as we said, to look elsewhere for the power of the arbitrator to award interest up to the date of institution of the proceedings??? Loss of interest in the place of the right to remain in possession may be rightfully claimed in equity by the owner of a property who has been dispossessed from it.

(Emphasis supplied)

47. Several earlier decisions of the Supreme Court, including the one in *Satinder Singh*, were noticed in this judgment. Thereafter, the Court observed (in paragraph 22) that:

?The aibitiator is bound to make his award in accordance with law. If the arbitrator could not possibly have awarded interest on any permissible ground because such ground did not exist, it would be open to the Court to set aside the award relating to the award of interest on the ground of an error apparent on the record. On the other hand, if there was the slightest possibility of the entitlement of the claimant to interest on one or other of the legally permissible grounds, it

may not be open to the Court to go behind the award and decide whether the award of interest was justifiable?

(Emphasis supplied)

48. The grant of interest by the Arbitrator in the present appeals, cannot reasonably be interfered with for equity could compel the payment of interest, in the place of the right to remain in possession, by the claimants and, as also observed in the above case, "if there was the slightest possibility of the entitlement of claimant to interest on one 01 other of the legally permissible grounds, it may not be open to the Court to go behind the award and to decide whether tube award of interest was justifiable".

49. In consequence the Award made by the Arbitrator in these cases does not merit interference. All the appeals fail and are dismissed. However, parties are left to bear their own costs in this Court.