

(1994) 11 KAR CK 0020
In the Karnataka High Court
Case No : M.F.A. No. 1405 of 1985

Union of India (UOI)

APPELLANT

Vs

B.M. Krishnamurthy

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11

Citation : (1995) ILR (Kar) 347 : (1995) 4 KarLJ 607

Hon'ble Judges : V.P. Mohan Kumar, J;P. Krishna Moorthy, J

Bench : Division Bench

Advocate : Shylendra Kumar, for the Appellant; V.N. Satyanarayana and Nagendra Naidu, for the Respondent

Judgement

Mohan Kumar, J.—This Appeal is preferred by the Union of India u/s 11 of the Requisitioning and Acquisition of the Immovable Properties Act, 1952 (hereinafter referred to as "the Requisitioning Act") against the award made by the Arbitrator in a proceeding for the fixation of compensation payable with respect to the land in question requisitioned under the Act.

2. For the sake of convenience, as we proceed to state the facts of the case, we may also refer briefly to the statutory provisions relating to the requisitioning of a property. The said Act was enacted on 14.3.1952 to enable the Union of India to requisition/acquire Immovable property if the competent authority is of the opinion that the said property is needed or likely to be needed for a public purpose. Section 1(3) of the Act provided that the Act shall remain in force for a period of six years from the date of commencement of the Act. Section 3 thereof conferred the power to requisition the property if it "is needed or likely to be needed for any public purpose". Section 7 provided the procedure to acquire the requisitioned land and it also laid down the conditions as well, existence of which was condition precedent to empower the land requisitioned to be acquired. Section 8 provided payment of compensation with respect to the property requisitioned. Section 8(2) stated that the compensation payable for the property

shall consist of "a recurring payment in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for the period," As noted earlier, the Act was to expire with six years, meaning obviously that the requisitioning was also to end and the recurring payment was only to last for the said period.

3. On 27.2.1958, Section 1(3) of the Requisitioning Act was amended and the period of the Act was enlarged to twelve years from six years. Apparently there was an interregnum after the expiry of the 12 years referred to above. Then, the Government of India enacted the Defence of India Act, 1962 clothing the Government *pari materia* powers under the Requisitioning Act, referred to above.

4. Invoking the powers under the Defence of India Act, 1962 the following lands claimed to be in the possession of the predecessor of the respondents herein was requisitioned by the Union of India on 8.4.1963:

Sy.No. 103/1 Sy.No. 103/2 2 acres 39 guntas Sy.No. 104.... 2 acres 8 guntas
(in Byappanahalli village, Bangalore South Taluk)

Property in Sy.No. 71 was also requisitioned but we are not concerned with the same in the present controversy.

5. It is alleged that the predecessor of the respondent Sri B.M. Krishnamoorthy handed over possession of the above said property under protest. It is also alleged that the possession was taken from him on 12.6.1963, u/s 30 of the Defence of India Act, 1962. The Competent Authority fixed the compensation payable by its order dated 18.12.1954. But it is stated that the approval of this fixation was granted by the Central Government only in 1968 and the payment under the said fixation was made only thereafter.

6. In 1963, by Act 48 of 1963, the Requisitioning Act was amended deleting Section 1(3) and substituting the same by a new sub-section whereby the period of the Act was extended till 14.3.1970. Meanwhile the Defence of India Act 1962 stood repealed with effect from 10.1.1968. The Requisitioning Act was amended by the Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance 1968. By the said Ordinance the Requisitioning Act was amended to incorporate Section 25 in the Principal Act which provided that any Immovable property requisitioned under the Defence of India Act 1962 and which had not been released as on 10.1.1968 shall be deemed to have been requisitioned under the Requisitioning Act. It also provided that any determination of the compensation etc., made under the Defence of India Act, shall continue to be in force under the Requisitioning Act. It may be noted that the Ordinance was replaced by Act 31 of 1968 which enacted similar provisions.

7. In 1970, the Requisitioning Act was again amended by Act 1 of 1970. By this Section 1(3) of the Act was omitted thereby changing the temporary character of the legislation. By the same amendment Section 6(1A) was introduced in the Act providing a period for requisitioning the property. It was provided therein that

the property was to be released after a period of three years.

8. While the position stood thus, dissatisfied by the fixation of the rental compensation referred to above, the predecessors of the respondents herein made an application for fixation of the rental compensation with respect to the land requisitioned from him. This application was made in December, 1972. Obviously this was under the Requisitioning Act as it stood amended by Act 1 of 1970, though the requisitioning was actually done under the Defence of India Act, 1962.

9. The dispute raised by the predecessor of the respondents herein was referred to the Arbitrator as required u/s 8 of the Act. He numbered the same as ARB19/72-73. On the date of reference to the Arbitrator, Section 8(2) read as follows:

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

(i) pecuniary loss due to requisitioning;

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

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

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition."

It is to be noted that Section 6(1A) as it stood then contemplated the retention of the property for a total period of three years, and hence, provision was made only to fix the recurring payment of the rent for a short duration.

10. While this application was pending Section 6(1A) of the Requisitioning Act was again amended by enhancing the period of requisition to 5 years from three years.

11. Before the Arbitrator, the parties raised issue (i) as to the extent of the property requisitioned (ii) as to whether the requisitioned property was already acquired or not and (iii) as to the rate of rent payable. In particular, the Union of India had urged that 1 acre 11 guntas of land in Sy.No. 103/2 referred to above had already been acquired for the Defence Department in 1941 and that it was inadvertently requisitioned. It was urged that the total extent of land in Sy.No. 104 requisitioned is only 2 acres and the remaining 8 guntas had already been

acquired as per Notification dated 19.2.1963 for the New Government Electric Factory. In essence, the plea as raised then before the Arbitrator was that the rental compensation due was only with respect to 1 acre 27 guntas of land in Sy.No. 103/2 and 2 acres in Sy.No. 104.

12. Necessary issues were framed regarding the dispute. Issue No. (1) was as follows:

"What is the extent of land in Sy.No. 103/1, 103/2 and 104 of Byappanahalli requisitioned."

It is seen that as per Gazette Notification No. RD/85/AGW/72 dated 1.12.1972 the dispute that was referred to the Arbitrator and the Award that he was called upon to pass was with respect to the lands that was requisitioned on 6.4.1963.

13. On 17.7.1975, the Arbitrator passed an award wherein he awarded as follows:

"4) Converted lands concerned in ARB No. 19/72-73 compensation on the return 6% per annum on the capital value of the land assessed at Rs. 3/- per sq.ft. excepting the lands acquired in S.Nos. 103/2 and 104 of Byappanahalli."

In regard to the dispute raised regarding the extent of the property in Sy.No. 103/1 the Arbitrator entered a finding as follows:

"in view of this admission and also the fact that the extent of the land in S.No. 103/1 is noted as 1.27 guntas, the Records of Rights and Index Extracts I hold that the land measuring 1.27 guntas belonging to the claimant in ARB No. 19/72-73 has been requisitioned and taken possession by the Military Authorities in that behalf. In respect of the said extent of 1.27 guntas land in S.No. 103/1 of Byappanahalli the claimant in ARB No. 19/72-73 will be entitled to compensation."

As regards the contention urged on the basis of acquisition of the land under the Land Acquisition Act he held as hereunder:

"From the said Award it is clear that the (and which is acquired for Military purposes is 1.11 guntas of land in S.No. 103/1 of Byappanahalli and not in S.No. 103/2 as stated by the First Respondent. After the said award is made as per Ex.R.12(A) on 6.8.1941 the said Land Acquisition Officer has become "functus officio". In spite of this fact, contrary to the law he has made supplementary order passed on 22.8.1941 on the information furnished by the Tahasildar concerned stating, that the portion of the land taken by the Military Authorities is actually part of S.No. 103/2 and not S.No. 103/1 as mentioned in the Notification and he has substituted without any jurisdiction S.No. 103/2 in the place of S.No. 103/1. Hence, it is clear that the supplementary order made by the Special Land Acquisition Officer is without jurisdiction and it cannot be taken into consideration. From this fact, it is clear that no land is validly acquired for the Military purposes in S.No. 103/2."

He next considered the question of extent of the land in Sy.No. 103/2 and 104

with respect to which compensation has to be fixed. After considering the evidence he held as follows:

"From the evidence of RW-2 and also from the copy of the Ex.R-13 and possession certificate as per Ex.R-14, it is established that 24 guntas and 29 sq.yards of land in S.No. 103/2 and 8 guntas of land and 22 yards of land in S.No. 104 of Byyappanahalli were acquired for the purpose of NGEF and possession was taken by the NGEF deducting the said acquired portion of the land in S.No. 103/2 and 104 of Byyappanahalli the claimant would be the owner of the said lands in ARB No. 19/72-73."

There was a contention urged by the Union of India that the predecessor of the respondents had sold portions of the property in Sy.No. 104 and had inducted strangers. This contention was examined and it was held as follows:

"The said vendees also have not applied to the Competent Authority to refer the matter to the Arbitration and their claims and not pending before the Arbitrator and hence their claims cannot be decided in this arbitration. It is also not clear whether they have been put in possession by the claimant at the time when the sales were effected. Admittedly, the Military Authorities, have taken possession of the lands concerned in S.No. 104 from the claimant in ARB No. 19/72-73. Since several of the vendees concerned in respect of several portions of land in S.No. 104 sold by the claimant have not preferred claims it is open to them to take such action and they think to establish their claims against the claimant in ARB.No. 19/72-73. In view of these facts, I hold that the claimant in ARB.No. 19/72-73 will be entitled to receive the compensation in respect of S.No. 104 of Byyappanahalli deducting the portion of the land which is acquired for the purposes of NGEF as stated above."

The Award was thus passed on 17.7.1975.

14. Before the Award was passed the Requisitioning Act had under-gone further amendment by Act 2 of 1975. Section 6(1A) was amended and the words "five years" was substituted by the words "ten years". Perhaps the period of requisitioning having exceeded five years, Sub-section 2A and 26 were inserted after Section 8(2) in the Act. The said new Section reads as follows:

"(2A) The recurring payment, referred to in Clause (a) of Sub-section (2), in respect of any property shall, unless the property is sooner released from requisition u/s 6 or acquired u/s 7, be revised in accordance with the provisions of Sub-section (2B) -

(a) in a case where such property has been subject to requisition under this Act for the period of five years or a longer period immediately preceding the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975 -

(i) first with effect from the date of such commencement, and

(ii) again with effect from the expiry of five years from such commencement;

(b) in a case where such property has been subject to requisition under this Act immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of Sub-section (1A) of Section 6, be released from requisition or acquired, extends beyond five years from such commencement,-

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by the competent authority u/s 4, and

(ii) again with effect from the date of expiry of a period of five years from the date on which the revision made under Sub-clause (i) takes effect;

(c) in any other case, with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority u/s 4.

(2B) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in Sub-section (1), read with Clause (a) of Sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which the revision has to be made under such Sub-section (2A)."

Thus in a fixation u/s 8(2), with respect to the property subject matter of requisition for a longer period immediately before the commencement of the Amending Act 2 of 1975, the Arbitrator had to fix recurring payment as referred to in Section 8(2) first, with effect from the date of such commencement of this Amending Act and again with effect from the expiry of five years from such commencement. The Amending Act commenced on 7.3.1975.

15. Against the award of the Arbitrator dated 17.7.1975 an Appeal was preferred before this Court as MFA 722/75 by the Union of India. As can be seen from what is stated above the Award passed by the Arbitrator, related to the period of requisitioning made under the Defence of India Act, 1962 (i.e., upto 10.1.1968) and for the subsequent period under the Requisitioning Act. As regards fixation of the compensation for the period prior to 10.1.1968, the Arbitrator was exercising his power u/s 30 of the Defence of India Act, 1962, whereas, as regards for the subsequent period it was u/s 8 of the Requisitioning Act. Section 8(1) stated that there shall be paid compensation for the land requisitioned either by agreement or in the case of no agreement, the amount fixed by the Arbitrator appointed under the Act. Section 8(2)(a) provided that the recurring compensation shall be a sum equal to the rent which would have been payable -- besides the sums referred to in Section 8(2)(b). This was the statutory provision as on the date of the passing of the Award by the Arbitrator, which Award was as stated above challenged in MFA 722/75, by the Union of India.

16. Though several contentions were raised in appeal, one of the question that

was urged was as to whether the appeal would lie with respect to an award made by the Arbitrator for the period covered under the Defence of India Act, 1962. The question regarding the maintainability of the appeal was pending adjudication before the Supreme Court. Both sides filed a joint Memo and the Appeal was disposed of in terms of the Memo. The relevant part of the Joint Memo for the purpose of this case reads as follows:-

"1) It is agreed by the parties in the above appeals that portion of the impugned award passed by the Arbitrator subsequent to 10.1.1968 may be set aside and remanded to the Deputy Commissioner and competent authority who is at liberty to appoint an Arbitrator in view of the petition of the claimants, for reference to arbitration and disposal of the matter in accordance with law.

2) All the points raised by the parties in the above appeals are left open to be agitated before the Arbitrator and to adduce additional evidence if any.

3) The portion of the award of the Arbitrator fixing the compensation upto 10.1.1968 is final, subject to the decision on the maintainability of the appeals u/s 11 of the Requisitioning and Acquisition of Immovable Properties Act, 1952, pending before the Supreme Court in Civil Miscellaneous Petition Nos. 2681 and 2682 of 1975.

4) It is further agreed that till the disposal of the case by the Arbitrator, the compensation fixed at Rs. 3/- per square foot shall be in operation.

5) In case, the Hon"ble Supreme Court holds that appeals u/s 11 of the R.A.I-P. Act are not maintainable, then the compensation fixed under the impugned award herein becomes final. But on the other hand, the appeals also held maintainable, then the Arbitrator shall decide the question of fixing the compensation for the period prior to 10.1.1968 also, as per the decision of the Supreme Court."

Accepting the Joint Memo, this Court disposed off the Appeal on 21.7.1978 in the following lines:

"A joint memo signed by the Counsel for the parties is filed before Court. The memo is read and recorded. Parties have consented for the remand of case. Hence, a portion of the award passed by the Arbitrator for the period from 10.1.1968 is set aside subject to the terms of the memo and the case is remanded to the Deputy Commissioner and the Competent Authority to appoint an arbitrator for disposal in accordance with law. The appeal is partly allowed. Refund the Court fee as per Rules."

The Supreme Court by its Judgment reported in Special Military Estates Officer Vs. Munivenkataramiah and another, . subsequently held that the award covering the period of requisitioning under the Requisitioning Act, alone can be challenged in an appeal u/s 11 of the Act and any award made u/s 30 of the Defence of India Act 1962 is not appealable. It means, in this case, the fixation of the compensation for the period upto 10.1.1968 became final and what was to be

adjudicated in terms of the Judgment in MFA 722/75 was the fixation of the recurring compensation for the period subsequent thereto, and under the Requisitioning Act.

17. It may be noted that Section 8(1)(a) of the Requisitioning Act, provides that the compensation payable for the land requisitioned may be fixed by agreement. On the date of the passing of the award by the Arbitrator which award was challenged in MFA 722/75, Section 8(2A) the Requisitioning Act had no application to the facts of the case. Therefore the Arbitrator had merely to fix the recurring payment in the form of rent and other payments as referred to in Section 8(2) (a) & (b). This position altered by the Amendment brought about in 1975 and on the date of disposal of MFA 722/75 the amended Section was in force. Therefore the Arbitrator being appointed after the order of this Court, had to pass an award in terms of the amended statute i.e., Section 8 as it stood then.

18. Pursuant to the disposal of the appeal, Sri Chakrabhavi, was appointed as the Arbitrator. Before him evidence was tendered by both sides. He heard the respective Counsel and passed an award on 28.1.1985. He held as follows:

(i) The finding in the previous award (subject matter of appeal in MFA 722/75) in regard to the extent of land with respect to which compensation is payable in each Sy.No. has become final and cannot be reopened.

(ii) The fixation of compensation till 10.1.1968 may be accepted and basic fixation and rent may be increased for every five years subsequent thereto.

On the above finding the Arbitrator held that rental compensation payable per square feet for the period:

(a) 10.1.1968 to 10.1.1973:- Rs. 4.10

(b) 10.1.1973 to 10.1.1978: - Rs. 5.40

(c) 10.1.1978 to 10.1.1985: - Rs. 7.20

He followed the Decision of this Court reported in H. Narayaniah and etc. Vs. The Land Acquisition Officer, Bangalore, recognising the principal of annual increasing by 10% of the rental value. He applied this rule from 10.1.1968 for the rental yield and arrived at the above figures. The Union of India has come up in Appeal challenging the award.

19. We have heard the respective Counsels. The learned Counsel for the appellant urged that the Arbitrator has committed several errors, in that, he has not fixed the rent payable as on 10.1.1968, that he has not correctly fixed the extent with respect to which the rent is payable and that he has not fixed the period for which the rent has to be paid. He has also challenged the finding of the Arbitrator as regards the finality attached to the finding of the previous Arbitrator in regard to the extent found by him.

20. We are of the view that the finding of the Arbitrator that in this proceeding

either party cannot question the correctness of the finding of the Arbitrator in regard to the extent of the property in question is not correct. We have perused the grounds of appeal in MFA 722/75. Ground Nos. (3), (4) and (5) relate to the question of extent of the properties. They read as hereunder:

"3. In Sy.No. 103/2, 1 acre 11 Gs. of land has already been acquired for the defence purpose in the year 1941-42 and hence the land has been by mistake, included in the Notification in the present case. The said land 1 acre 11 Gs., is not available and thereby the claimant not entitled for any compensation. But the Arbitrator has, without any valid reason, rejected the contention of the appellant in this regard and ignored the oral and documentary evidence - placed before him.

4. As regards the Sy.No. 103/1, 1 acre 27 Gs., the entire land was the subject matter before the Inam Abolition Deputy Commissioner who has rejected the respondent's claim for the occupancy right and hence he has absolutely no interest in the said land. The evidence placed by the appellant in this regard has not been discussed and considered by the Arbitrator. Hence, the compensation in respect of this item of land is liable to be set aside.

5. Coming to Sy.No. 104-2 acres 8 gs; 8 Gs. and 22 S.yds. in it, has already been acquired by the N.G.E.F., which has been rightly upheld by the Arbitrator. But regarding the remaining lands, the owner made them into sites and had already sold to third parties thereby the claimant had no interest on the crucial date. In spite of the same and the evidence produced on behalf of the appellant, the Arbitrator has rejected it and awarded compensation for the remaining land. The Arbitrator never cared to look into this aspect of the case. On this count alone the Award in respect of this land has to be set aside."

Though this may not be stated to be a precise challenge in the way the Counsel for the appellant is now putting across the contention, all the same, it raises a dispute regarding the extent of land for which compensation is payable. Paragraph 2 of the Joint Statement referred to above has left open all the points raised in M.F.A. No. 722/75 to be decided afresh. If so, the Arbitrator was in error in having not decided the particular issue raised before him.

21. Highlighting the grievance regarding the extent of the land with respect to which rental compensation is payable, the learned Counsel for the appellant submitted that the Arbitrator has failed to decide the question Regarding the acquisition of the land in Sy.No. 103/1 and Sy.No. . 103/2. According to him, if this question is answered in favour of the appellant, then the area with respect to which the compensation payable would be less.

22. Now, as regards Sy.No. 103/2 is concerned, the case of the appellant is that the said land was acquired in 1941 as per Land Acquisition Case Nos. 420 and 423 of 1941-42. It appears that Section 4(1) Notification, Section G Declaration, etc., issued related to the property in Sy.No. 103/1. Sections 9 and 10 proceedings also related to the said land. An award was also passed on 6.8.1941

with respect to the said land. But the Land Acquisition Officer subsequently by a supplementary award dated 22.8.1941, corrected the survey number as Sy.No . 103/2 instead of 103/1. The learned Counsel for the appellant submits that by virtue of this proceedings, the land in Sy.No. 103/2 stood acquired instead of the land notified in Sy.No. 103/1. The learned Counsel for the respondents strongly opposes this submission. We are afraid, the learned Counsel for the appellant is not well founded in his contentions.

23. We may at this stage refer to Section 6 of the Land Acquisition Act, 1894. The said Section states that the appropriate Government may declare that any land is needed or likely to be needed for a public purpose. Thereafter, Section 7 provides that whenever any land has been declared to be needed for public purpose, the appropriate Government may direct the Collector to take orders for the acquisition of the land. It means, only with respect to the land declared u/s 6 of the Act, can the appropriate Government direct the Collector to take order for acquisition. Upon such directions, the Collector may proceed u/s 8 and demarcate the land and prepare a plan. Thereafter he may proceed u/s 9 and issue notice intimating the intention to take possession of the land and invite objections. As the next step, he may conduct an inquiry u/s 11 with respect to the land demarcated u/s 8 and pass an award u/s 12. After the award is passed, the Collector may take possession of the land and Section 16 provides that on such taking possession, i.e., after the Award, the property shall vest free from all encumbrances with the appropriate Government. It all shows that the genesis of the power for the Collector to pass an Award u/s 12 is the existence of a valid declaration u/s 6 of the Act with respect to that land, If it does not exist, then whatever award passed by the Collector will not divest the owner of his ownership over the land. Hence, by merely issuing a supplementary award the Land Acquisition Officer cannot get over the mandatory requirements of Sections 4(1), 6, 7, 8, 9, etc. Such an Award will not clothe the Collector to proceed u/s 16 of the Act and the ownership of the property will not vest in the appropriate Government as well. We cannot, therefore, hold that the land in Sy.No. 103/2 was acquired in 1941 as alleged by the appellant.

24. That apart, factually as borne out by records, the property in Sy.No. 103/2 continued to be in the possession of the predecessors of the respondents herein, Ex.A-7, produced before the Arbitrator, a copy of which was made available to us, shows that the Requisitioning Authority, i.e., the Deputy Commissioner, Bangalore (Urban) District, had certified on 12.6.1963 of having taken possession of the said land from the predecessor of the respondents in pursuance to the requisitioning order. Hence, the contention of the appellant in this behalf has to be rejected. We are aware that the Arbitrator has not considered this issue. But it being a legal issue and all relevant details are not in dispute, we have proceeded to consider the point at the appellate stage.

25. Another contention that was advanced was that the property in Sy.Nos. 103/1 and 104 were acquired as per Final Notification dated 4,12.1972 and,

therefore, no compensation is liable to be paid with respect to this land. The learned Counsel for the appellant urged that if, as a matter of fact, the land has been acquired and the compensation has also been received by the owner, then the land owner has no entitlement to receive rent as well under the Requisitioning Act. As pointed out by the respondents' Counsel, we should notice that no such contention was advanced by the appellant at any stage of the proceedings. It may be noticed that ground No. (3) in M.F.A.No. 722/75, referred to above, does not deal with this contention. The contention urged by the Counsel for the appellant is as seen from additional ground Nos.5 and 6 raised in the Appeal reads as follows:

"5. The Appellant, submits that the entire land in S.No. 104 was acquired in pursuance of Final Notification No. RD.335 AQB:72 dated: 4.12.1972 published in Gazette dated: 14.12.1972 u/s 6(1) of the Land Acquisition Act and respondent received the full compensation to the extent of 11,985.25 Sq. Ft. of land for which he was the owner and delivered possession of the said land on 5.4.1977 and hence he is not entitled to any rental compensation from the date of delivery of possession under the RAIP Act, from which day he ceased to have any connection with the acquired lands.

6. Similarly the learned Arbitrator erred in awarding rental compensation for land bearing No. 103/1 measuring 1 acre 27 guntas which was also acquired by the authorities and the respondent ceased to have any connection with this land and further the learned arbitrator erred in not considering that the occupancy rights in respect of this land was not conferred on the respondent though the land vest with the State Government and hence the Respondent was not entitled for any rental compensation."

According to the respondents, this is a contention urged by the appellant for the first time in Appeal and cannot, therefore, be permitted to be raised. We do not find any merit in this objection. As on the date of the dispute in the arbitration, the period of requisitioning u/s 6(1A) of the Act was only 3 years which was enhanced to 5 years in 1973. The alleged taking possession of the land was in 1977 and, therefore, the appellant could not have raised the contention in this Appeal in M.F.A. No. 722/75. We do not, therefore, entertain the objection raised by the respondents on this score and we proceed to consider this contention.

26. We will now proceed to examine the plea now urged. Ex.A-7, produced before the Arbitrator, shows that the land in Sy.No. 103/1 and Sy.No. 104 were requisitioned on 8.4.1963 and possession was taken on 12.6.1963. It means, the requisitioning authority was in possession of the land on the date of Section 6 declaration referred to in the above grounds Nos. 5 and 6. Then, one fails to understand as to what the appellant means by stating that the "owner delivered possession of the land on 5.4.1977." There is a tabular statement appended to the additional grounds filed in this Appeal, wherein also the appellant categorically states that rental compensation is payable upto 5.4.1977 i.e., the date of taking possession.

27. Pursuing his submissions, the learned Counsel for the appellant invited our attention to peruse the files relating to W.P.No. 16332/86 which had also been posted to be heard along with the above Appeals. In this Writ Petition filed by the respondent for appointment of an Arbitrator u/s 8 of the Act, the appellant has filed a detailed statement of objections producing the Notification issued under the Land Acquisition Act in relation to the properties in Sy.No. 103/1 and Sy.No. 104. Annexure-B therein is the Section 4(1) Notification, whereas Annexure-C is the Section 6 Declaration. In both the Notifications as far as the property in Sy.No. 103/1 is concerned, it is described as "unclaimed" though the predecessor of respondents is shown as "Anubhavadar". As regards Sy.No. 104 is concerned, the predecessors of the respondents are shown as the "Khathedar". It is not known as to what has transpired thereafter.

28. At this stage, we may advert to one of the contentions urged by the respondents as regards the procedure for acquisition of lands requisitioned. The learned Counsel for the respondents submitted that a property requisitioned under the Requisitioning Act can be acquired only by invoking Section 7 of the Requisitioning Act and in no other manner. Section 7 of the Requisitioning Act reads as hereunder:

"7. Power to acquire requisitioned property.-(1) Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the property in pursuance of this section:

Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in, such property to show cause why the property should not be acquired; and after considering the cause if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government from all encumbrances and the period of requisition of such property shall end.

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

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive

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

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

(5) For the purposes of Clause (a) of Sub-section (3) "works", includes buildings, structures and improvements of every description."

We are afraid that this submission is far fetched and cannot be accepted. As can be seen from Section 7(3) of the Requisitioning Act, a requisitioned property can be acquired only if the circumstances mentioned therein exist. May be in a given case, there might exist a public purpose needing the acquisition of the requisitioned property but nevertheless the circumstances mentioned in Section 7(3) may not exist. In such a situation, we cannot spell out any statutory bar from any of the provision in the Land Acquisition Act, disabling the Central Government from invoking the provisions of the Land Acquisition Act to acquire the requisitioned property.

29. But, u/s 8(2A), the land owner is entitled to be paid compensation till the property is released from the requisition u/s 6 or acquired u/s 7 of the Requisitioning Act. The procedure for acquisition u/s 7 shows that at first a notice u/s 7(1) will have to be issued by the Central Government intending to acquire the land and, thereafter Section 7(2) provides that from the beginning of the day on which the notice u/s 7(1) is published, the requisitioning of the property shall be deemed to have come to an end. In other words, Section 8(2A) provides that till the requisition has come to an end, the land owner is entitled to be paid the compensation. But, when the land is acquired under the land Acquisition Act, only after an award is passed by the Collector u/s 11 of the said Act, then alone will the Collector be entitled to take possession of the land which shall thereafter vest in the Government free from all encumbrances (vide Section 16 of the L.A. Act). It is only thereafter that the interest of the land owner (i.e., including his right to receive any rent) shall legally come to an end.

30. Therefore, if the authority proceeds u/s 7 of the Requisitioning Act and acquires the land, then the liability to pay the Compensation will cease with effect from the date of publication of the notice u/s 7(1), whereas if the acquisition is made under the provisions of the Land Acquisition Act, then the entitlement of the land owner to receive the compensation will come to an end only on the symbolic taking possession of the land u/s 16 of the L.A. Act.

31. In the instant case, there is no evidence to show as to whether notice u/s 4(1) had been served on the predecessor of the respondents in the proceedings for the acquisition of the Land. The Arbitrator should decide the effect of the acquisition proceeding if the mandatory notices are not served on the predecessors in interest of the respondents. Further, there is nothing to show as to when the Award was passed by the Collector and the symbolic taking of possession as contemplated u/s 16 of the Act. These are matters that require to

be enquired into afresh.

32. We may now advert to the dispute regarding the rate of rental compensation payable u/s 8 of the Requisitioning Act. The learned Counsel for the appellant submits that since all contentions urged were left open to be adjudicated afresh after remand, it was the duty of the Arbitrator to fix the rate of rent for the period prior to 10.1.1968 as well. He submits that this fixation is relevant for fixing the rent for the subsequent period. We are of the view that this contention cannot be accepted. u/s 8(1)(a) of the Requisitioning Act, the amount of compensation payable for the land requisitioned can be fixed by agreement between parties. We have to treat that the statement filed by the appellant before this Court in M.F.A.No. 722/75, referred to supra, in so far as it relates to the period prior to 10.1.1968 is concerned, is the statement representing the agreed compensation payable for the requisitioned land within the meaning of Section 8(1)(a) of the Act for the period upto 10.1.1968. Hence, there is no need to refix the rate of rent for the said period all over again.

33. But as regards the subsequent period, the Arbitrator has committed an error. The Arbitrator failed to see that it does not automatically follow that he should treat the amount fixed for the period prior to 10.1.1968 as basic figure and continue to increase the rent periodically as has been done in this case. In the light of the Joint Statement filed, the parties are free to tender evidence regarding the quantum/rate of rent payable. The Arbitrator has to fix it independently on the basis of the evidence after evaluating the same. It can be higher than what is paid prior to 10.1.1968 or less. Besides, u/s 8(2) of the Act the Arbitrator should fix the recurring payment in respect of the period of requisition. This period relates upto the introduction of Section 8(2)(A). The question of fixation for a period of 5 years arises u/s 8(2A) of the Act and he has to fix the recurring compensation first as on 10.1.1968 and then with effect from the date of commencement of the Amending Act 1975, and again with effect from the expiry of five years from such commencement. The slab of five years does not commence from 10.1.1968 as has been done presently. Therefore, a reading of Section 8(2A) discloses that the recurring compensation payable in this case from 10.1.1968 to the commencement of the Amending Act 2 of 1975, ie, upto 7.3.1975, shall be fixed and for the period from 7.3.1975, it should be done as indicated in Section 8(2A).

34. Section 8(2A) states that the fixation of the recurring payment as referred to in Section 8(2A) will be until either the property is released u/s 6 or acquired u/s 7. Hence, the Arbitrator has to enter a finding that the property has neither been released u/s 6 nor acquired u/s 7 of the Requisitioning Act. Only on his said finding does he get jurisdiction to pass an award fixing the rental compensation payable. This finding is absent in this case.

35. As regards the dispute as to the actual extent of each survey numbers, we feel that fresh finding has to be entered after the question of the acquisition of land is decided. The period for which the recurring compensation is payable also

depends on the finding entered on the said issues.

36. We, therefore, set aside the Award challenged in Appeal. We hold that the rate of rent fixed upto 10.1.1968 shall be final and does not call for any interference. We direct the Arbitrator to enter a finding as to whether the property has been either released u/s 6 or acquired u/s 7 or under the Land Acquisition Act and then proceed to pass an award u/s 8(2A) of the Act taking into account the direction referred to above. In doing so, the Arbitrator shall fix the sum equal to the rent which would have been payable for the property in question, without reference to the rate fixed for the period prior to and upto 10.1.1968. All payments made hereinbefore shall be adjusted according to the final fixation. The Appeal is disposed off as above. No costs.