

(1979) 02 CAL CK 0028

In the Calcutta High Court

Case No : First Appeal No's. 143 to 145 of 1976 with Cross-objection and 191 and 192 of 1976

Union of India (UOI)

APPELLANT

Vs

Deben Adhicary

RESPONDENT

Date of Decision : 13-02-1979

Acts Referred:

Constitution of India, 1950 — Article 31C, 39
Defence of India Act, 1939 — Section 19, 19(1)
Land Acquisition Act, 1894 — Section 23(2)
Limitation Act, 1963 — Article 137

Citation : AIR 1979 Cal 230 : 83 CWN 426

Hon'ble Judges : Sharma, J;M.M. Dutt, J

Bench : Division Bench

Advocate : Nirmal Kumar Chakravarti, Samarendranath Banerjee, in F.A. Nos. 143 to 145 of 1976, Amarendra Nath Gupta and Sumit Ghose, in F.A. Nos. 191 and 192 of 1976, for the Appellant; Amarendra Nath Gupta and Sumit Ghose, (in F.A. Nos. 143 to 145 of 1976), Amarnath Banerjee and Gouri Sankar De, (in F.A. Nos. 191 and 192 of 1976), for the Respondent

Judgement

M.M. Dutt, J.—These five appeals arise out of Arbitration Cases Nos. 24, 26 and 27 of 1972. All these cases have been disposed of by the learned Arbitrator appointed u/s 19 of the Defence of India Act, 1939 by one common judgment and award.

2. It appears that a total quantity of 6.79 acres of land of Mouza Banspole in the district of 24-Parganas, were requisitioned on April 25, 1942 by the Government under Sub-rule (1) of Rule 75A of the Defence of India Rules, 1939. Thereafter, the land was permanently acquired on Aug. 1, 1946 under Sub-rules (2) and (3) of Rule 75A on behalf of the Central Government, Ministry of Defence, for the purpose of Baigachhi Air Field. The acquired land consisted of Danga, Doba, Garden, Bastu and Sali land. The Collector assessed the final compensation for the acquired land at the rate of Rs. 35/- per bigha. The referring claimant,

Debendra Nath Adhicary purchased 17.64 acres of land of the said Mouza including the acquired land by five registered deeds of sale from different owners between 1948 and 1949, that is, long after the acquisition of the said 6.79 acres of land, for a consideration of Rs. 9,445/- only. The referring claimant did not accept the offer of compensation by the Collector at the rate of Rs. 35/- per bigha and, accordingly, the Central Government appointed an Arbitrator u/s 19(1) (b) of the Defence of India Act, 1939 by a Notification dated April 11, 1972 for the determination of compensation payable in respect of the acquired land. The referring claimant filed his statements of claim before the learned Arbitrator claiming compensation for the acquired land at the rate of Rs. 800/- per bigha. Further he claimed compensation for the trees at the rate of Rs. 600/- per fruit bearing tree. He also claimed statutory allowance of 15% on the market value of land, and interest at the rate of 6% per annum on the amount of compensation.

3. The Union of India contested the claim of the referring claimant by filing a written statement. It was inter alia contended that the claim of the referring claimant was barred by limitation, that the compensation assessed by the Collector was just and fair, and that the referring claimant was not entitled to statutory allowance of 15% or interest on the amount of compensation, as claimed by him.

4. At the hearing of the said arbitration cases before the learned Arbitrator, the referring claimant did not place reliance on any document of sale including those by which he purchased the acquired land. The Union of India also did not adduce any evidence as to the market value of the acquired land by the production of any document of sale. Accordingly, the learned Arbitrator had to determine the market value of the acquired land on the basis of the capitalised value of its return with reference to the materials on record. For the purpose of ascertaining the annual return from the acquired land the learned Arbitrator placed reliance on a report dated Feb. 4, 1943 sent by the Collector, 24-Parganas to the Commissioner, Presidency Division, indicating the basis of assessment of recurring compensation in respect of different classes of land of the disputed Mouza under acquisition (Exhibit 5). The learned Arbitrator took the view that the yearly amount of compensation for requisition multiplied by 16 would afford the correct market value of the acquired land and assessed the amount of compensation on that basis. He rejected the contention of the Union of India that the reference was barred by limitation. Further, he disallowed the claim of the referring claimant for payment of the statutory allowance of 15% as contemplated by Section 23(2) of the Land Acquisition Act, 1894. He, how ever, allowed interest at the rate of 6% per annum on the amount of compensation from the date of acquisition till the date of final payment and made an award accordingly in each of the three cases.

5. The Union of India being aggrieved by the awards of the Arbitrator has filed three appeals against the same, namely, F. A. Nos. 143 to 145 of 1976. The referring claimant has also filed two appeals against the awards made in

Arbitration Cases Nos. 24 and 26, being F. A. No. 191 of 1976 and F. A. No. 192 of 1976. He has filed a cross-objection to the award which is under challenge in F. A. No. 143 of 1976 preferred by the Union of India,

6. The first point that has been argued by Mr. Nirmal Chandra Chakrabarti, learned Advocate appearing on behalf of the Union of India, relates to the question of limitation. It is contended by him that the application for reference filed by the referring claimant before the Collector was barred by limitation. Section 19(1) of the Defence of India Act does not prescribe any limitation. Rule 5 of the Rules framed u/s 19 provides that where the amount of compensation payable u/s 19 of the Act cannot be fixed by agreement within three months of the receipt of the application for compensation or within such further time as the Provincial Government may in any particular case allow, the person or persons to be compensated shall submit an application to the Collector for referring the case to arbitration with necessary written statements of his or their claims. It further provides that the Collector shall refer the case with all relevant papers to the arbitrator and give notice of such reference having been made to the person or persons to be compensated, and inform the Provincial Government. Rule 5 also does not prescribe any time limit for making an application for compensation. It is, however, contended by Mr. Chakrabarti that in the absence of any provision for limitation, the provision of Article 137 of the Limitation Act, 1963 corresponding to Article 181 of the Indian Limitation Act, 1908 would apply. Article 137 is a residuary provision and It prescribes a period of three years for an application for which no period of limitation is provided from the date when the right to apply accrues. It is contended that the application for compensation having been made by the referring claimant 14 years after the Collector had assessed the compensation was barred by Article 137.

7. In support of the above contention, much reliance has been placed by Mr. Chakrabarti on a decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , In that case the Supreme Court held that Article 137 of the Limitation Act, 1963 will apply to any petition or application filed under any Act in a Civil Court. The Supreme Court overruled its earlier decision in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, where it was held that Article 137 was confined to applications contemplated by or under the Civil P. C. In view of the decision of the Supreme Court in the *Kerala State Electricity Board's* case, the application need not be one under the Civil P. C., but it may be an application under any Act filed in a Civil Court. Article 137 will, therefore, apply when an application is under any statute and when such an application is filed in a Civil Court. So far as an application for compensation under Rule 5 read with Section 19 of the Defence of India Act is concerned, it is an application under an Act, but the question is, whether the application can be said to be filed before a Civil Court. It has been noticed already that under rule 5 the application has to be filed before the Collector for referring the case to the Arbitrator. There can be no doubt that the Collector is not a Court, far less a Civil Court. The argument of the

appellant is that as the Collector is only to forward the application to the Arbitrator, the filing of the application before the Collector is really the filing of the same before the Arbitrator. We are unable to accept this contention. It is the Collector who has to make a reference to the Arbitrator. There can be no doubt that the application has to be addressed to the Collector and, indeed, by the application a request is made to the Collector to make a reference to the Arbitrator. The Arbitrator will have no jurisdiction to determine compensation so long as the Collector does not make a reference. The application for reference cannot also be filed before the Arbitrator. If the Collector does not make a reference the Arbitrator has no jurisdiction to direct the Collector to make a reference. It is, for these reasons, difficult to say that the filing of the application for reference is really filing of the same before the Arbitrator. In the circumstances, it is not necessary for us to consider whether the Arbitrator is a court or a civil court for the purpose of Article 137. The Collector, before whom the application for reference has to be filed, not being a court, Article 137 is not applicable.

8. Next it is contended on behalf of the appellant that although no period of limitation has been prescribed for such an application for compensation, yet it is to be made within a reasonable time. Further, it is submitted that what would be a reasonable period would depend upon the facts and circumstances of each particular case, and that in the absence of any special circumstance, the reasonable period would be the same period as provided in Article 137, that is to say, the reasonable period would be three years from the date of accrual of the right to make the application. In *Kajarilal Agarwala Vs. The Union of India and Others*, , it has been observed by Chakravarti C.J. that although there is no prescribed period of limitation, an application u/s 8(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 for reference must be made within a reasonable time, This decision no doubt supports the contention of the appellant, but we are unable to rely on it in view of the decision of the Supreme Court in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, . In that case, it has been observed by the Supreme Court in connection with the question of limitation for making an application u/s 33C(2) of the Industrial Disputes Act, 1947, that where the legislature has made no provision for limitation, it would not be open to the Courts to introduce any such limitation on grounds of fairness or justice. Further, it has been observed that the words of Section 33C(2) are plain and unambiguous and it would be the duty of the labour court to give effect to the said provision without any consideration of limitation. Similarly, in the instant case, Section 19(1) of the Defence of India Act or Rule 5 of the Rules framed thereunder has not prescribed any limitation for making an application for compensation. If the principle of reasonable period is followed as laid down in *Kajarilal Agarwala's* case (Supra) it would be introducing a limitation on grounds of fairness or justice which is not permissible under the decision of the Supreme Court in *Bombay Gas Co.'s* case (Supra). It seems to us that the legislature has not deliberately prescribed any time limit for making an application for

compensation on the ground of justice and fair play. In other words, the legislature did not want to deprive a citizen of both land and its value in the shape of compensation. We are, therefore, unable to accept the contention on behalf of the Union of India that as the application for compensation was not made within a reasonable period it should be held to be barred,

9. In this connection, we may note the argument of Mr. Amar Nath Gupta, learned Advocate appearing on behalf of the referring claimant. He supports the finding of the learned Arbitrator on the question of limitation on the strength of the provision of Section 19(1)(g) of the Defence of India Act which is as follows:

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

It is contended by Mr. Gupta that Clause (g) excludes the application of all other laws to arbitrations u/s 19 except those provided in this section. He submits that the application of the Limitation Act to the arbitration proceedings u/s 19 has been excluded. The learned Arbitrator has also taken the same view in holding that the application for reference is not barred by limitation. It has been observed by Patanjali Sastri, J. in a Bench decision of the Madras High Court in *Kollegal Silk Filatures Ltd. v. Province of Madras* AIR 1949 Mad 39; that the words of exclusion in Clause (g) of Section 19(1) are very wide and must cover the Limitation Act as to which no saving provision is to be found in the section and in any of the rules. Further, it has been observed that Clause (g) has the effect of excluding the application of the law of limitation to arbitration proceedings u/s 19. The same view has been taken by the Patna High Court in *Union of India v. Ramdas Oil Mills, Jamshedpur*, AIR 1968 Pat 352 and by the Calcutta High Court in a Bench decision in *the State of West Bengal Vs. Nandalal Dey*, . We may, however, point out that in *T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras*, , the Supreme Court does not seem to have interpreted the provision of Clause (g) of Section 19(1) as excluding all other laws except those provided in Section 19. In that case, the question before the Supreme Court was whether the provisions relating to payment of interest are excluded by virtue of Clause (g) of Section 19(1). Shah J. who delivered the judgment of the Supreme Court observed as follows: (at pp. 132, 133).

"But Clause (g) is not susceptible of any such interpretation. Clauses (a) to (f) of Section 19(1) are a Code relating to arbitration in determining the compensation payable to a person deprived of his property. Provisions relating to payment of interest are not, however, part of the law relating to arbitration and there is nothing in Clause (g) which excludes the application of the substantive law relating to payment of interest when the arbitration is determining the amount of compensation."

By that observation, it is meant to be said that Clause (g) only excludes any other law relating to arbitration and not any other substantive law, for example, law relating to payment of interest. In view of the above Supreme Court

decision, it is doubtful whether it can be said that the application of the law of limitation has been excluded by Section 19(1)(g). We do not, however, require to place any reliance on the provision of Section 19(1)(g) for the purpose of considering whether the applicability of the Limitation Act has been excluded by that provision as contended on behalf of the referring claimant, for we have already held on a different ground that the provision of Article 137 of the Limitation Act is not applicable to an application for reference in the circumstances as stated above.

10. The Arbitrator has assessed the value of the acquired land for the purpose of deciding the amount of compensation as on the date of the acquisition and not on the date of the requisition. It has been strenuously urged on behalf of the appellant Union of India that the Arbitrator should have assessed the market value of the land as on the date of requisition. It may be recalled that the disputed land was first requisitioned on April 25, 1942 and thereafter it was acquired on August 1, 1946. The learned Arbitrator assessed the market value of the land as on August 1, 1946. The proviso to Section 19 (1) (e) of the Defence of India Act provides that the Arbitrator shall take into consideration the market value of the property at the date of its requisition and not at the date of its subsequent acquisition. The proviso to Section 19 (1)(e) has since been declared ultra vires Section 299 of the Government of India Act, 1935, by a Division Bench of this Court relying on the principles of law laid down in Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, , F. A. No. 581 of 1960, disposed of on July 22, 1971 (Cal)). It was held by the Division Bench that compensation connotes the payment of just equivalent and any arbitrary rule or principle interfering with such payment would be ultra vires the provision of Section 299 of the Government of India Act, 1935 which, more or less, is comparable to Article 31 of the Constitution. The propriety of this decision has been assailed on behalf of the appellant. It is contended that in striking down the proviso to Section 19(1)(e) as unconstitutional, the Bench did not take into consideration that the Defence of India Act was a war-time legislation and should have been construed liberally. In this regard, reliance has been placed by the appellant on a decision of the Supreme Court in The State of Bombay Vs. Virkumar Gulabchand Shah, where it has been observed by the Supreme Court that war-time measures, which often have to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake, should be construed more liberally in favour of the Crown or the State than peace-time legislation, We are unable to follow how that observation of the Supreme Court is applicable to the consideration of the question as to the constitutionality of the proviso to Section 19(1)(e) of the Defence of India Act. All that has been said by the Supreme Court in the above observation is that war-time legislations should be construed liberally. But that does not, in our opinion, also apply to the question as to the constitutionality of a provision of such war-time legislation. Construction of a particular provision of a statute and a constitutional validity of that provision are completely different matters. When a

provision of a statute is ultra vires the Government of India Act or the Constitution of India, as the case may be, there is no question of taking any liberal view in the matter even though the statute may be a war-time enactment. We are, therefore, unable to accept the contention made on behalf of the appellant challenging the propriety of the said unreported Bench decision of this Court. The proviso to Section 19(1)(e) having been declared to be ultra vires by the said Bench decision with which we agree, the Arbitrator was justified in taking into consideration the market value of the acquired land as on the date of acquisition.

11. We may also note another argument made on behalf of the appellant in this regard. It is contended by Mr. Chakrabarti for the appellant that in view of Article 31C of the Constitution, any law enacted on the basis of the directive principles embodied in cls. (b) and (c) of Article 39 of the Constitution is protected against any challenge to its constitutional validity as offending the provisions of Article 14, Article 19 and Article 31. It has been submitted by him that the proviso to Section 19(1)(e) of the Defence of India Act falls in line with the directive principles under Clause (b) of Article 39 and, as such, it is beyond any challenge. We do not think that there is any merit in the contention which sounds absurd on the face of it. In our opinion, the contention has no visible connection with the facts and circumstances of the case. It is, accordingly, rejected.

12. The next contention of the appellant is that the Arbitrator was wrong in calculating the market value of the acquired land by capitalising the annual recurring compensation by 16 times. It is contended that the market value of the acquired land should have been decided by the Arbitrator on the basis of the sale deeds, Exhibits 10 to 10 (d), by which the referring claimant purchased the acquired land and other lands between 1948 and 1949. It has been stated already that by the above sale deeds, the referring claimant purchased a total quantity of 17.64 lands including the acquired land measuring 6.79 acres, at a sum of Rs. 19,445/-. It has been observed by the learned Arbitrator that the lands covered by Exhibits 10 to 10(d) were sold at a time when this part of the West Bengal had been facing large scale migrations following communal disturbances in both parts of divided Bengal, and it was not, therefore, improbable that the vendors of the referring claimant were in a hurry to dispose of their properties and leave the place. Further, he has observed that the sales of lands including the acquired land were compulsive sales and are not, therefore, dependable as reflecting the fair price of the land. The acquired land had already vested in the Government on the date the referring claimant purchased the same. He only purchased the right to get compensation from the Government. There can be no doubt that in such circumstances, the referring claimant did not pay the market value of the lands. It is apparent that the purchases made by the referring claimant were highly speculative in nature. In these circumstances, we are unable to accept the contention made on behalf of the appellant that the Arbitrator should have determined the market value of the acquired land on the basis of Exhibits 10 to 10(d).

13. In this respect, we may consider the contention of the referring claimant on the question of computation of the market value of the acquired land. One of the points that has been argued by Mr. Gupta in support of the appeals and cross-objection preferred by the referring claimant is, that the Arbitrator should have taken 20 times of the annual recurring compensation as the market value of the acquired land. In the absence of any evidence of comparable sales, one of the other modes of determination of the market value of land is the capitalised value of the annual return from it. It has been observed by the learned Arbitrator that such determination is usually made with the help of a multiple based on the return from gilt-edged security. The referring claimant produced before the learned Arbitrator a notification of the Government of India dated Nov. 8, 1946 relating to the issue of 2 1/4% loan in 1954. Again another notification dated Nov. 8, 1946 showed the issue of 2 3/4% loan in 1962. It was contended by the referring claimant before the learned Arbitrator that in view of the above notifications the return of gilt-edged security varied from 2 1/4% to 2 3/4% during the year 1946-47. It was submitted on behalf of the referring claimant that at least 20 times the annual compensation for re- question would afford the fair capitalised value of the acquired land. The learned Arbitrator, however, relied upon a decision of a Division Bench of this Court consisting of A. C. Gupta and Salil Kumar Datta, JJ. in *Union of India (UOI) and Others Vs. Asit Kumar Mondal and Another*, . In that case also, the land was requisitioned in 1943 and thereafter acquired on April 11, 1946. It was held that 6 1/2% would be a proper return of the investment at the material time, and that accordingly, the amount of compensation for acquisition multiplied by 16 would afford the correct market value of the acquired land. In the instant case, the learned Arbitrator, relying on the said Bench decision, computed the amount of compensation by multiplying the annual recurring compensation by 16.

14. Mr. Gupta has placed reliance on a few decisions to show that the market value has been calculated at 20 years of purchase. In *Bijaya Kanta Lahiri Chaudhury v. Secy. of State*, AIR 1934 Cal 97, the market value has been computed at 25 years of purchase. In *The Collector of Kamrup Vs. Raj Chandra Sarma and Others*, , the Supreme Court accepted the assessment of the market value by capitalising the income from the acquired land for 25 years. In *State of West Bengal Vs. Shyamapada and Others*, , the Supreme Court accepted the assessment of compensation by the High Court at a multiple of 20 times the annual income from the acquired land. In *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, , the Supreme Court, in accepting the assessment of market value at 25 times the annual profits derivable from the acquired properties, has observed that where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalise it by a number of years" purchase. The capitalised value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer.

15. After considering the above decisions, we are of the view that the Court in assessing the market value should be satisfied that the value that is assessed by the method of capitalisation is the real market value of the acquired land which is expected to be obtained from an intending purchaser at the material time. It has been stated already that in spite of the Government Notification relied on by the referring claimant showing that at the relevant time the return from the gilt-edged security varied from 2 1/4% to 2 3/4%, the learned Arbitrator relied on a Bench decision of this Court in Union of India (UOI) and Others Vs. Asit Kumar Mondal and Another, by multiplying the annual recurring compensation by 16 times to get the capitalised value of the acquired land. Even though the return from the gilt-edged security was 2 1/4% or 2 3/4% at the relevant period, the referring claimant could not claim more than 20 years of purchase as the capitalised value of the acquired land. The notifications which were produced before the learned Arbitrator do not find place in the record, nor could the learned Advocates produce the same before us at the hearing. It seems to us that there might be other Government notifications showing a higher percentage of return from gilt-edged security. Although, Exhibits 10 to 10(d) by which the referring claimant purchased the acquired land and other lands do not represent the real market value, yet, as argued by Mr. Chakrabarti, they should not be altogether ignored in the matter of assessment of the market value of the acquired land. Further, in view of the circumstances, prevailing at the time the acquisition was made as referred to above, it can be reasonably inferred that there was a fall in land value. After considering the circumstances, we are of the view that the Arbitrator was not unjustified in capitalising the market value of the acquired land at 16 times the annual recurring compensation.

16. It has been argued on behalf of the referring claimant that the Arbitrator should not have computed the annual recurring compensation on the basis of Exhibit 5, but he should have taken into consideration the assessment rolls, Exhibit 2 series, showing the actual payment of the recurring compensation to the referring claimant. It has been found by the learned Arbitrator that Exhibit 2 series do not appear to cover individually all the plots involved in the present cases. He has also pointed out the anomalies in the assessment rolls. Further, the rates of recurring compensation as mentioned in Exhibit 2 series differ to a little extent from the rates mentioned in the assessment report which is Exhibit 5. The assessment rolls relate to the first two years of payment, namely, 1350 and 1351 B. Section corresponding to 1943-44 and 1944-45, but the assessment rolls for the subsequent period of requisition were not forthcoming before the learned Arbitrator. It is not disputed that Exhibit 5 has laid down uniform basis of rates and for the sake of convenience and uniformity the learned Arbitrator relied upon the rates mentioned in Exhibit 5 in determining the capitalised value. We do not think that in the circumstances stated above, the Arbitrator was wrong in relying upon the rates mentioned in the assessment report, Exhibit 5, in preference to the assessment rolls, Exhibit 2 series.

17. In the appeals and the cross-objection filed by the referring claimant, he has

claimed solatium of 15% on the amount of the market value of the acquired land as contemplated by Section 23(2) of the Land Acquisition Act, 1894. The learned Arbitrator has not awarded any solatium. Section 19 of the Defence of India Act does not also provide for payment of solatium or statutory allowance as provided in Section 23(2) of the Land Acquisition Act. Sub-clause (i) of Clause (e) of Section 19(1) provides inter alia that the Arbitrator in making his award shall have regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable. Therefore, by necessary implication, Section 23(2) has been excluded. The referring claimant has placed reliance on a decision of the Supreme Court in *N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana*, . In that case, it has been held by the Supreme Court that both u/s 299 of the Government of India Act, 1935, and Article 31(2) of the Constitution, the word "compensation" has the same meaning. Under the Land Acquisition Act "Compensation" consists of market value plus the 15% solatium. It is argued on behalf of the referring claimant that as Section 19 has used the word "compensation", it should be held that it consists of both land value and the solatium of 15% as provided in Section 23(2) of the Land Acquisition Act. We are unable to accept this contention. It may be that under the Land Acquisition Act, the market value of the acquired land plus the statutory allowance of 15% will go [to constitute compensation for the acquired land. In the instant case, however, as there is no provision for any such statutory allowance under the Defence of India Act, the provision for statutory allowance of 15% u/s 23(2) of the Land Acquisition Act cannot be imported into Section 19 of the Defence of India Act.

18. The last point that remains to be considered by us relates to the question of payment of interest. It is contended on behalf of the Union of India that the learned Arbitrator was not justified in awarding interest on the amount of compensation from the date of acquisition till payment. It has been stated already that the referring claimant made the application for reference 14 years after the Collector had assessed the amount of compensation. The assessment was made by the Collector sometime in 1955 and the application for payment of compensation or for reference was made by the referring claimant on July 11, 1969. It is not disputed by the Union of India that Interest is payable on the amount of compensation from the date of acquisition till payment, but it is contended that when the referring claimant had deliberately made inordinate delay in making the application for reference, he would not be entitled to claim interest for the period before the filing of the application for reference. The case of the referring claimant in this regard is that the offer of the Collector about the amount of compensation was never communicated to the referring claimant and, accordingly, he could not make the application for reference. The learned Arbitrator has also come to the finding that the Collector did not communicate the offer of compensation to the referring claimant and so he was unable to make an application for reference. Neither Section 19 of the Defence of India Act, nor the rules framed thereunder provide for communication of the offer of

compensation by the Collector. Even though there is no such provision, yet we think that such offer should be communicated by the Collector, for, unless one knows about the offer, the question of acceptance of the same does not at all arise. But if a person has knowledge of the offer of the amount of compensation assessed by the Collector, it will be his duty to make the application for reference. He cannot defer the making of the application till the offer is communicated to him by the Collector. In the instant case, it is not disputed that the referring claimant came to know of the Collector's assessment of compensation at the rate of Rs. 36/- per bigha. The learned Arbitrator has also found that the referring claimant had knowledge of the Collector's assessment of compensation at the time it was made, but as the offer was not communicated to the referring claimant, he allowed interest on the amount of compensation from the date of acquisition till payment.

19. The referring claimant has not disclosed in his application for reference as to the date when he came to know of the Collector's assessment. It has been stated already that the application was filed on July 11, 1969. The Union of India filed its written statement on August 21, 1972. One of the points that has been taken in the written statement is that the claim of the referring claimant is barred by limitation. On the next day, that is, on August 22, 1972, the referring claimant filed an application in which he stated inter alia that he could not ascertain the assessment made by the Collector before June 30, 1969. Therefore, so long as the Union of India did not file any written statement and raise any objection to the maintainability of the application for reference on the ground of limitation, the referring claimant did not disclose when he came to know of the assessment made by the Collector. Even in the application that was filed by the referring claimant on Aug. 22, 1972, he did not disclose the source from which he came to know of the assessment order of the collector. In his evidence also, he did not disclose how and in what manner, he came to know of the Collector's assessment. The statement made by the referring claimant in the said application dated August 22, 1972 seems to be an after-thought. In this connection, it may be said that the Collector was also not serious in making the assessment in spite of the reminders that was given by the referring claimant by his letters which are Exhibits 1 to 1 (c). There is, however, no dispute that the assessment was made by the Collector after considering the documents that were produced by the referring claimant. There is also no dispute that the assessment was made by the Collector sometime in 1955. In our view, although the referring claimant was fully aware of the assessment made by the Collector or, in other words, when he was fully aware of the Collector's offer of compensation, he did not take any steps in making an application for reference for about 14 years. In these circumstances, in our opinion, it will not be proper to allow interest to the referring claimant on the amount of compensation for the entire period, that is, from the date of acquisition till payment. We are, accordingly, of the view that the referring claimant will not be entitled to get interest on the amount of compensation for the period from the date of

collector's making the assessment up to the previous day of the filing of the application for reference. The contention of the Union of India, therefore, succeeds. No other point has been urged on behalf of either party.

20. In the result, the appeals preferred by the Union of India are allowed in part. The awards made by the learned Arbitrator which are the subject-matters of these appeals, being F. A. Nos. 143, 144 and 145 of 1976 are modified to the extent that the referring claimant will be entitled to interest on the amount of compensation at the rate allowed by the learned Arbitrator from the date of acquisition up to the date of the Collector's making the assessment and thereafter from July 11, 1969 till payment of the compensation. The rest of these awards will stand.

21. The appeals and the cross-objection filed by the referring claimant are dismissed.

22. There will, however, be no order for costs in any of the appeals or in the cross-objection.

Sharma, J.

23. I agree.