CIVIL MISCELLANEOUS.

Before R. S. Narula and S. S. Sandhawalia, JJ.

DIWAN ISHWAR DASS AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 627 of 1966.

September 27, 1968.

Defence of India Act (LI of 1962) Sections 30 & 38 Defence of India (Requisitioning and Acquisition of Immovable Property) (Punjab) Rules, 1963,—Rule 8—Competent authority under—Whether bound to apportion compensation amongst claimants—Rules 9 and 10—Reference to arbitrator regarding apportionment—When can be made—Constitution of India (1950)—Article 226—Arbitrator not lacking in inherent jurisdiction—Party not raising objection to the jurisdiction of the arbitrator—Such party—Whether becomes disentitled to claim relief under the Article.

Held, that Rule 8 of the Defence of India (Requisitioning and Acquisition of Immovable Property) (Punjab) Rules, 1963, provides for compensation both for acquisition and requisition of immovable property under the Defence of India Act, 1962. It casts a two-fold duty upon the competent authority, firstly, that it shall determine the compensation due for the property acquired or requisitioned and secondly, in all cases where there are more than one person interested in relation to such property, whose existence the competent authority has knowledge or information, it is bound to apportion the compensation between them. Upon a plain, literal, and grammatical construction of rule 8, the inference is irresistible that the said provision, in mandatory terms, directs that after compensation has been determined it shall also be apportioned where there is more than one person laying claim thereto. (Paras 8 & 10)

Held, that rules 8, 9 and 10 of the Rules have to be construed harmoniously and considering the sequence in which they are placed, the provisions of rules 9 and 10 are normally to be attracted after there has been a compliance with the provisions of rule 8. It is only after the compensation has been determined and its apportionment betwixt the rival claimants duly made that the persons aggrieved thereby would raise their claims

regarding the amount and the right to receive the same. If the parties are satisfied with the decision of the competent authority, that would be the end of the matter regarding their respective claims. However, the remedy of having the matter determined again by an arbitrator is provided only if the parties feel aggrieved by the decision of the competent authority in the first instance. The competent authority is first to act and is empowered to determine the whole issue of compensation and apportionment. Thereafter, in case of dispute regarding the quantum of compensation, the title to receive it, and its apportionment the second step of appointment of an arbitrator is envisaged by the framers of the statute and of the rules thereunder. (Paras 11 & 12)

Held, that if an arbitrator in giving the award does not lack inherent jurisdiction and a party participates in the arbitration proceedings and while submitting to the jurisdiction of the arbitrator, invites decision on merits without raising objection regarding jurisdiction, such a party disentitles himself to a relief under the extraordinary jurisdiction of the High Court under Article 226 of Constitution of India. (Para 20)

Case referred by the Hon'ble Mr. Justice P. D. Sharma, on 26th March, 1968, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice S. S. Sandhawalia on 27th September, 1968.

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, prohibition or any other appropriate writ, order or direction be issued quashing the orders, dated 2nd March, 1964, 29th June, 1964, 17th November, 1964, and lastly the award given by the arbitrator on the 4th of February, 1966.

Y. P. GANDHI, ADVOCATE, for the Petitioners.

D. C. AHLUWALIA, ADVOCATE, for Respondents Nos. 1 to 3.

RAJINDER SACHAR, AND S. P. JAIN, ADVOCATES, for respondents No. 4.

JUDGMENT

SANDHAWALIA, J.—In this petition under Article 226 and 227 of the Constitution of India, the provisions of rules 8, 9 and 10 of the Defence of India (Requisitioning and Acquisition of Immovable Property) (Punjab) Rules, 1963, fall for interpretation.

(2) This petition has, therefore, been directed to be heard by a Division Bench in pursuance of the reference order made by P. D.

Sharma, J., on the 26th of March, 1968, and this is how the matter is before us.

(3) The facts giving rise to this petition are that Bungalow No. 12 situated on the Mall, Jullundur Cantt., was on lease with the three petitioners along with respondent No. 5, as partners since the year 1946. The original lease deed. dated the 1st of October, 1942 was executed by Shri Mewa Lal, the father of respondent No. 4 in favour of petitioner No. 3 and has been annexed to this petition as Annexure 'A'. The petitioners along with respondent No. 5 were carrying on the business of hoteliers in the name and style of Chamier's Hotel on the premises above-said. This property, however, came to be required by the Military Authorities for use as married accommodation for military officers. The District Magistrate, Jullundur, therefore, in exercise of his powers under section 29 of the Defence of India Act and the rules made thereunder issued an order requisitioning the said property. A notice, dated the 9th of May, 1963, was issued by the District Magistrate, which according to the petitioners was served only on the three petitioners, respondent No. 5 and the Military Estate Officer, Jullundur Circle, Jullundur Cantt., for whose benefit the requisition was made. On the 21st of June, 1963, the petitioners along with respondent No. 5 filed a claim of compensation before the District Magistrate, Jullundur praying therein that because of the requisition order, they were going to suffer a heavy loss in their business and they had invested substantial amounts approximating to four times of the value of the original building thereon and that they should be suitably compensated. On the 26th of June, 1963, the owner of the said building namely Shri Ram Kishan, respondent No. 4, also submitted a claim for compensation praying therein that the amount of compensation be fixed at Rs. 400 per month for his Bungalow and the same be paid to him. It may be mentioned forthwith that the premises in dispute were on lease with the petitioners at a monthly rent of Rs. 110 per mensem only. The petitioners and respondent No. 5 subsequently filed another claim before the District Magistrate, which is Annexure 'G' to this petition wherein whilst giving the details thereof they claimed compensation at the rate of Rs. 2,830 per month. The District Magistrate, Jullundur considered the rival claims and by his order dated the 2nd of March, 1964, (Annexure 'H') fixed the amount of compensation payable at Rs. 1,503 per month for the Chamier's Hotel which was being run by the petitioners. Subsequently, in continuation of this order, he

determined the compensation in respect of the Bakery which was being carried on in part of the requisitioned premises and on the 29th of June, 1964 by an order of even date, the total amount of compensation was worked out to Rs. 1,553 per month which after relevant deductions was fixed at Rs. 1,500 per month. On the 30th of March, 1964, a petition was moved by the petitioners along with respondent No. 5 claiming that the entire compensation determined by the earlier orders of that District Magistrate was payable to them and they would therefrom pay the monthly rent of Rs. 110 per month due to the landlord (respondent No. 4), directly themselves or in the alternative it was prayed that his amount may be deducted by the Government and paid directly by them to the Landlord. Respondent No. 4, however, by a petition dated 31st of March, 1964, on his part claimed the whole amount of compensation for himself to the exclusion of the petitioners and respondent No. 6. The District Magistrate on receipt of those applications by his order dated the 29th of June, 1964, then directed that a reference for arbitration should be made to the State Government which had been even previously so decided at the time of making the original compensation award and that the parties should file objections to the order dated 2nd of March, 1964 (Annexure 'H'). The petitioners and respondent No. 5,—*vide* two applicants dated 29th of July, 1964, and the latter one on the 7th of September, 1964, reiterated their stand that under rules 8 and 9 of the Defence of India Rules the apportionment of compensation lay on the District Magistrate and no reference to the arbitration could be made until the said apportionment has been first made by him. These two applications are Annexures 'N' and 'O' to this petition. This petition was, however, controverted by respondent No. 4 and he prayed that the competent authority was bound by law to forward the case for the appointment of an arbitrator by the State Government. The District Magistrate, however, declined to decide the question of apportionment of compensation and,—*vide* Annexure 'Q' moved the Government of Punjab with the request that an arbitrator be appointed under rule 10 of the Defence of India (Requisitioning and Acquisition of Immovable Property) (Punjab) Rules, 1963 (hereinafter called the Rules). In pursuance of the said communication, the Government of Punjab appointed the Senior Subordinate Judge, Jullundur, by designation as an arbitrator to decide the dispute between the petitioners and respondent No. 5 on one side and respondent No. 4 on the other. Thereafter, claims were filed before

the arbitrator and the learned Subordinate Judge, Jullundur, acting as an arbitrator, decided the apportionment of compensation by his order dated 4th of February, 1966, copy whereof is Annexure 'V' to this petition. In substance, he decided that a sum of Rs. 300 per mensem, only be paid to the petitioner and respondent No. 5 and the remaining amount of Rs. 1,253 per mensem, be paid to respondent No. 4, the owner, of the requisitioned property. It is in this context that the petitioners have prayed for the issuance of a writ of *certiorari,* prohibition or any other appropriate writ for quashing the orders Annexures 'H', 'I', 'Q', 'W' and lastly Annexure 'V', the award given by the arbitrator on the 4th of February, 1966.

(4) Mr. Gandhi, the learned counsel for the petitioners has based his arguments primarily on the language of rule 8 and the sequence in which rules 8, 9 and 10, are placed. He argues that even on a plain reading of rule 8, the only reasonable construction that could be placed thereon is that a statutory duty is cast on the competent authority (in this case the District Magistrate) to apportion the compensation after it has been determined, where there are claimants thereto to his knowledge. He submits that in the present case, the competent authority was patently aware that the petitioners and respondents Nos. 4 and 5, were the persons interested in claiming the amount of compensation determined by him. His contention, therefore, is that the refusal by the District Magistrate to apportion the compensation is a patent refusal to exercise jurisdiction vested in him by rule 8 and this clearly attracts the writ jurisdiction of his Court. Particular reliance was placed by Mr. Gandhi on the words "and shall also apportion" used in rule, 8, and further on the direction in rule 8, that the determination of the compensation and the apportionment shall be communicated by the competent authority to the person or persons in whose favour the same has been made. In substance, Mr. Gandhi's contention is that the competent authority is bound in the first instance both to determine and apportion the compensation where there are claimants thereto and it is only after the provisions of rule 8, have been complied with that rules 9 and 10, could possibly come into play. According to him, rules 9 and 10 are ancillary and consequential to the exercise of the power under rule 8 or to put it in another language the exercise of power under rule 8 is the condition precedent for applying the provisions of rules 9 and 10.

(5) Mr. Sachar, the learned counsel for respondent No. 4, has first placed reliance on the second proviso to section 30 of the Defence of India Act, 1962. This is in the following terms :—

> "Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it should be referred to an arbitrator appointed in this behalf by the Central Government, or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator."

Arguing from the terms of the above, Mr. Sachar submits that the proviso raises an inference that whenever a dispute arises as to the apportionment of the amount of compensation, it shall be referred to an arbitrator. Further, he submits that proviso 1 to section 30, which pertains to compensation, is related to rule 9(1) and whereas this rule provides for an application by the person aggrieved, as regards the compensation, there is no such statutory provision in respect of the apportionment of the same. He submits that, therefore, any dispute pertaining to apportionment must necessarily be referred to an arbitrator. Regarding the provisions of rules 8, 9 and 10, the submission of Mr. Sachar is that rule 8 provides that the competent authority shall apportion the determination where it is necessary. He particularly relies on the use of the word "where necessary" and submits that this implies that the competent authority has a discretion in the matter and if there is a dispute, he may refuse to apportion the same and instead refer the matter to an arbitrator. Secondly, his contention regarding rule 8 is that the power to apportion given to the competent authority exists only if there is no dispute regarding the same. If the parties are agreed regarding apportionment then according to him, the competent authority may apportion, but as soon as there is a dispute, he is divested of the power of apportionment and the matter must necessarily be put under the jurisdiction of the arbitrator to be appointed under rule 10. Another contention raised by Mr. Sachar is that the language of rule 10 supports the construction he wishes to place on rule 8 and 9. He submits that rule 10 postulates three eventualities, namely, when an application for reference to arbitrator regarding compensation has been made; secondly, where there is a dispute as to the persons entitled to receive the compensation and thirdly, where there is a

dispute regarding persons entitled to the apportionment of the said compensation. Counsel contends that these three clauses of rule 10, should be read disjunctively and whenever a dispute arises pertaining to apportionment, it is madatory that an arbitrator of the requisite qualification be appointed for its determination.

(6) To appreciate the rival contentions,the scheme of Chapter 6 relating to the requisitioning, and acquisition of immovable property of the Defence of India Act, 1962, may be examined. Chapter 6 consists of sections 29 to 39 (both inclusive) and the first section confers the power on the Government to requisition immovable property and the procedure therefor. Section 30 provides for the compensation and principles for its determination which has to be paid regarding the requisition made under the section prior thereto. Sections 31 and 32 are ancillary and relate to the power of the Central Government or the State Governments to obtain information, give directions and the powers of entry and inspection of the requisitioned property, whilst section 33 confers the power for evicting persons including the use of force therefor from the requisitioned property. Section 34 is penal and provides punishment for the contravention of any order made under sections 29 and 31. Section 35 relates to the release of the requisitioned property. Sections 36 and 37, then pertain to the acquisition of the property under the Act, whilst section 36 is the empowering section, section 37, which is in material terms analogous to the earlier section 30, provides for the compensation and the principles for the determination of the same regarding the acquired property under the Act. Section 38, confers the power to make rules for carrying out the purposes of this Chapter on the Central Government or the State Governments. And lastly, section 39, provides that certain properties requisitioned under the provisions of law are to be deemed to be requisitioned under the Chapter.

(7) It is in pursuance o the power conferred under section 38 of the Defence of India Act, that Defence of India (Requisitioning and Acquisition of Immovable Property) (Punjab) Rules, 1963, have been framed. These rules are almost identical with the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1962, which have been issued by the Central Government under the same Act. A perusal of the Punjab Rules makes it wholly

clear that they are made in furtherance of the purposes enumerated in Chapter 6 of the Defence of India Act, 1962. It has not been argued or even suggested that these are, in any way, contrary to the provisions of the Act or *ultra vires* of the same. At very best, Mr. Sachar has argued that they should be read in consonance with the provisions of section 30 of the Act. Thus, the rules being *prima facie intra vires* of the statute, we have necessarily at first to look to the plain language of these rules for construing the same. As rules 8, 9 and 10, are primarily the provisions on which reliance in the submissions of the counsel had been based, it is necessary to set them down *in extenso*. They are in the following terms :—

" 8. *Compensation.*—The competent authority shall, as soon as may be, after the property has been requisitioned, released from requisition or acquired, as the case may be, determine the compensation payable under section 30 or 37, and shall also apportion it where necessary among the persons known or believed to be interested in the property of whom or of whose claim to compensation he has information. Such determination shall be communicated by the competent authority to the person or persons in whose favour the determination has been made.

9. *Application for Arbitration.*—(1) A person aggrieved by the amount of compensation determined by the competent authority shall, within thirty days of the receipt of the communication of such determination, make an application in writing to the competent authority for referring the matter to an arbitrator stating therein the reason for his being aggrieved by the amount of compensation so determined.

(2) Where no such application is made within the period of thirty days as aforesaid and the amount of compensation as determined by the competent authority has not been accepted by the person or persons in whose favour the determination has been made, or where there is dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, the competent authority may deposit the amount with the Court.

10. *Appointment of Arbitrator.*—On receipt of the application for reference to arbitration or where there is a dispute

as to the title to receive the compensation or as to the apportionment of the amount thereof, the competent authority shall appoint as arbitrator a person who is qualified under clause (2) of article 217 of the Constitution for appointment as a Judge of a High Court.

(2) Any such arbitrator shall complete the arbitration proceedings and give his award within four months:

Provided that the State Government may, if it thinks fit, enlarge the period for making the award whether the time for making the award has expired or not."

(8) Rule 8 provides for compensation both for acquisition and requisition of immovable property under the Defence of India Act, 1962. From the language and the plain construction of this rule, it is clear that it casts a two-fold duty upon the competent authority. Firstly, it provides that the competent authority shall as soon as may be determine the compensation due for the property. Having done that in equally peremptory language, a duty is cast upon the competent authority in the following words :—

"And shall also apportion it where necessary among the persons known or believed to be in interested in the property of whom or of whose claim to compensation he has information."

The language used in the rule leaves no manner of doubt that this duty is a mandatory one. Not only is the competent authority bound to apportion, but it has further laid down that such determination shall be communicated by the competent authority to the person or persons in whose favour the determination has been made. To our mind, therefore, the plain language of rule 8 and the use of the words shall and the categorical form in which the duty has been cast upon the competent authority wholly supports the submissions made by Mr. Gandhi, the learned counsel for the petitioners, to this extent that the provisions are mandatory.

(9) Mr. Sachar's contention that the use of the words "where necessary" makes it discretionary for the competent authority to apportion or not to apportion does not appear to us to be tenable.

Obviolsly, these words are intended to provide for certain situations where in fact no apportionment would be possible. Without attempting to be exhaustive, one such situation would be where there is only one person "interested" in relation to the acquired or requisitioned property who falls within the meaning of that word given in the explanation to section 30, of the Defence of India Act, 1962. Another such situation may arise where competent authority is not at all aware of the existence of other persons interested in the compensation determined by him. The words "where necessary" follow the pre-emptory command in the rule that the competent authority "shall also apportion". Therefore, it is patent that in the present case and at least in all cases where there are more than one person interested in relation to the property of whose existence the competent authority has knowledge or information, it is bound in the terms of rule 8 to apportion the compensation between them, which it has earlier determined.

(10) Mr. Sachar's second contention that the duty to apportion under rule 8 arises only if there is no dispute regarding apportionment between the rival claimants is also equally untenable. He has contended that in case the rival claimants are agreed then the competent authority may apportion the compensation under rule 8, but as soon as they differ betwixt themselves, the jurisdiction of the competent authority should be deemed to be divested and it must then stay its hands and refer the matter to an arbitrator. In our opinion, this construction, though ingenious, is not supportable on a plain and grammatical construction of the rule read as a whole. It would artificially imply the reading of the words "if there is no dispute regarding the apportionment" into the language of rule 8 after the words "and shall also apportion". There is hardly any warrant for reading these words into the said rule when the legislature has not at all thought it advisable to place them therein. Thus, upon a plain, literal, and grammatical construction of rule 8, the inference seems to be irresistible that the said provision in mandatory terms directs that after compensation has been determined it shall also be apportioned where there is more than one person laying claim thereto.

(11) Mr. Sachar has argued strenuously that on the language of rule 10(1), a possible inference does arise when read with the second proviso to section 30 of the Defence of India Act, that whenever there

is a dispute as to the apportionment of the compensation, the competent authority is bound to appoint a duly qualified person as an arbitrator for the determination thereof. This argument of Mr. Sachar is also not sustainable. Firstly, the language of rule 10 is hardly susceptible of the construction placed thereon by the learned counsel. Secondly, rule 10 cannot be construed in isolation. All the rules, particularly rules 8, 9 and 10 have to be construed harmoniously and considering the sequence in which they are placed, we are of the view that the provisions of rules 9 and 10 are normally to be attracted after there has been a compliance with the provisions of rule 8. It is only after the compensation has been determined and its apportionment betwixt the rival claimants duly made that the persons aggrieved thereby would raise their claims regarding the amount and the right to receive the same.

(12) Further assurance is lent to the above view if one scans the rules in the light of the scheme of Chapter 6 of the Defence of India Act. Sections 30 and 37 provide for and lay down the principles for the award of compensation or the requisitioning and acquisition of immovable property under the Act. The rules, therefore, in the first instance, provide for the determination of both the amount of compensation and the apportionment thereof by the competent authority. If the parties thereto are satisfied with the decision of the competent authority, that would be the end of the matter regarding their respective claims. However, the second remedy of having the matter determined again by an arbitrator appears to be provided only if the parties feel aggrieved by the decision of the competent authority in the first instance. The purpose of the statute and the rules seems to be plain. The competent authority is first to act and is empowered to determine the whole issue of compensation and apportionment. Thereafter, three kinds of situations are visualised; firstly regarding the quantum of compensation; secondly *qua* the title to receive the compensation, and thirdly *qua* the title to receive the apportionment. It is for these three contingencies that the second step of appointment of an arbitrator seems to be envisaged by the framers of the statute and of the rules thereunder.

(13) The history of the legislation on this subject is also instructive for the purposes of determining the meaning to be placed on the statute and the rules which fall for construction. The analogous provisions in the earlier act are sections 19 and 19-A of the Defence of

India Act, 1939 (hereinafter called as 1939 Act). Section 19 of the 1939 Act provided for the compensation to be paid and the principles for determining the same in case of compulsory acquisition of immovable property, whilst section 19-A confers the power to acquire the property which had been requisitioned earlier. Under section 19-B Central Government was empowered to appoint an arbitrator for the purposes of determining the amount of compensation and other disputed matter regarding proceedings under section 19. In furtherance of these provisions in the 1939 Act, rule 75-A was framed regarding the requisitioning of the property. These provisions under the 1939 Act came to be construed by the Calcutta High Court in *Pashupati Roy and others* v. *Province of Bengal* (1). A Division Bench of the Calcutta High Court held in the said case that under the Defence of India Act, 1939, an arbitrator appointed under section 19-B thereof had no jurisdiction only to apportion the compensation awarded for land acquired under that section between persons having different interests in the property, for example the landlord and the tenant. It was further held that the Collector, who was the authority in making the awards under rule 75-A of the Defence of India Rules framed under the 1939 Act, was not empowered to value separately the separate interests in the property acquired, but act only to assess one single amount as compensation. It was further laid down that it was not his business to apportion the amount between the holders of different interests in the property unless all the persons holding such interests appear before him and agree to the Collector's apportionment of the amount between them and accepting the amounts fixed by him. As a consequence of this judgment, the payment of compensation in all cases, where the parties interested could not agree, came to a stand-still and to remedy this urgent and complicated situation Ordinance No. XXII called the requisitioned Land (Apportionment of Compensation) Ordinance, 1949 was promulgated to enable disposal of the long pending cases. Subsequently, on the lapsing of the said Ordinance, Act, 1951 of 1949, the Requisitioned Land (Apportionment of Compensation) Act, was passed. The preamble of the said Act is in the following terms :—

> "Whereas doubts have arisen whether an arbitrator appointed under section 19 of the Defence of India Act, 1939 (XXXV of 1939) or under the said section as deemed to be continuing

(1) A.I.R. 1948 Cal. 195.

in force for the purpose of section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947), has power to apportion the compensation payable in respect of any requisitioned land among persons interested therein;

And whereas it is expedient to resolve the said doubts and expressly to provide for the apportionment of compensation in all such cases;

It is hereby enacted as follows"—

and section 3(1) of the said Act provided as follows:—

"*Apportionment of compensation.*—(1) Notwithstanding anything contained in either of the Acts mentioned in section 2, where there are several persons interested in any requistioned land, it shall be lawful, and shall be deemed always to have been lawful, for an arbitrator appointed in pursuance of either of the sections mentioned in clause (a) of section 2, to apportion by his award the compensation payable in respect of the requisitioning or, as the case may be, acquisition of the land among the persons interested."

From the above, it thus appears that when the construction, which is now sought to be placed on rule 8 by Mr. Sachar, was so placed by the Calcutta authority, the situation was immediately remedied by the promulgation of an Ordinance and the Act above-mentioned. The legislature must thus be deemed to be aware of the history of the statute and the complications which necessarily arise if the authority determining the compensation is not duly empowered to apportion the same between the rival claimants. It is obviously with this objective in view that the categorical language in rule 8 is used which directs that the competent authority "shall also apportion" the compensation which has been previously determined.

(14) In passing by way of analogy, the analogous provisions of the Land Acquisition Act, 1894, which is the earliest and the basic provisions regarding the compulsory acquisition of land may also be noticed. By section 19(e) of the Defence of India Act, 1939, it had been provided 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 for the purposes of applying the principles for determining the amount of compensation to be awarded. Section 11 of the Land Acquisition Act is in the following terms:—

> "On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—
>
> (i) the true area of the land;
>
> (ii) the compensation which in his opinion should be allowed for the land; and
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> (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

It is noticeable that the language of the second-half of rule 8, seems apparently to have been borrowed from the provisions of sub-clause (iii) of section 11 quoted above. It is a settled law that under the provisions of the Land Acquisition Act, the Collector is empowered both to determine the compensation for the land and also to apportion the same between the claimants thereto. It would thus not be unreasonable to assume that the provisions of compulsory acquisition and requisition under the Defence of India act, 1962 tended by and large to adopt the scheme as laid down in the earlier Land Acquisition Act of 1894.

(15) This matter may also be examined from another angle regarding the nature of the remedies made available to the subject whose immovable property is acquired or requisitioned under the provisions of the Act. In the earlier Defence of India Act, 1939, by the provisions of section 19 thereof, an appeal to the High Court had been provided against the award of an arbitrator except in

cases where the amount thereof did not exceed the amount prescribed by the rules. This right of appeal to the High Court does not now find any place in Chapter 6, of the Defence of India Act, 1962 or in the rules framed under section 38 of the said Act. If the construction which Mr. Sachar seeks to place on rules 8, 9 and 10, were to be accepted, to our mind, it will also lead to anomalous position regarding the remedies available to the subject. Admittedly, as regards compensation, the competent authority, even according to Mr. Sachar, is bound to determine the compensation. Any person aggrieved thereby has then an added remedy of applying and having the matter then determined by an arbitrator who under rule 10, has be a person who is qualified under clause (2), of Article 217 of the Constitution for appointent as a Judge of the High Court. If the contentions of Mr. Sachar were to prevail then strangely enough as regards the apportionment of compensation there will be only the solitary remedy before the arbitrator without any further right of appeal or revision. We fail to see why it should be so and find no indication to support such a construction in the provisions of the rules.

(16) In view of the above, we are of the opinion that rules 8, 9 and 10, when construed together, make it clear that the competent authority is under a mandatory duty to firstly determine the compensation and also to apportion the same amongst the persons interested therein.

(17) Mr. Sachar has then raised a number of contentions to the effect that even if it be held that under rule 8, the competent authority was empowered or under a duty to apportion the compensation yet an omission to do so would in no way affect the validity of the award given subsequently by the arbitrator under rule 10. He has argued that at the very worst, annexure 'H' the order of the competent authority can be said to be an erroneous order whereby it had failed to apportion the compensation. Parties were dissatisfied with this order and objections and counter-claims were made both by the petitioners and the contesting respondent. Acting under rule 10, a valid reference was made and the arbitrator was duly appointed after the issuance of a notification by an authority fully competent to do so. This arbitrator has then duly proceeded to give an award. It is, therefore, argued that any error or an omission preceding the appointment of the arbitrator would in no way vitiate the proceedings before him. In this very context it was submitted that if the competent authority under rule 8, acts erroneously or omits or fails

to act and any of the parties is aggrieved or disputes arise regarding it the issue has to be then taken to the arbitrator under rules 9, and 10. In the present case the issue was thus in fact ultimately carried before the arbitrator. The arbitrator under rule 10, is the final arbitrator in such disputes. It was contended that any defect in the order preceding that of the arbitrator would not in any way affect the validity of an award given by the latter. In any case it was argued that an arbitrator once duly appointed under rule 10, has jurisdiction to decide the matters of apportionment. In the present case no challenge is laid to the competency of the authority to appoint the arbitrator and thus there is no defect of jurisdiction which attaches to his award and which could possibly merit interference in the writ jurisdiction of this Court. Mr. Gandhi in reply has repeated that the exercise of powers under rule 10, is governed by the preliminary condition that there is a full compliance with the provisions of rule 8. On a consideration of the issues involved we are of the view that there is merit in the contention raised by Mr. Sachar.

(18) Secondly, the argument of Mr. Sachar in this very vein is that at very best the case of the petitioner cannot be placed any higher than this — "that there has been an irregular exercise or assumption of jurisdiction by the arbitrator." It is pointed out that the arbitrator was appointed as early as the 17th of November, 1964,— *vide* notification published to the said effect in the Punjab Government Gazette, Part I, which has been annexed as annexure 'W' to the petitioner. The proceedings before the arbitrator commenced on the 13th of January, 1965, and the award was given on the 4th of February, 1966. In this period the petitioners very willingly participated in the proceedings before the arbitrator. Evidence was led on their behalf and at no stage any objection whatsoever was raised to the jurisdiction of the arbitrator on behalf of the petitioners. As a matter of fact it is pointed out that the petitioners had earlier filed a Civil Writ No. 794 in 1963 in the High Court challenging the original order of requisition by the competent authority regarding this property This writ petition was dismissed by Shamsher Bahadur, J. on the 3rd of December, 1964, with the following observations :—

> "In view of the instructions received from the petitioner that the dispute has been referred to an arbitrator, his learned counsel has asked me to dismiss the petition as withdrawn and I do so accordingly. No order as to costs."

It is thus clear that the petitioners had in fact willingly submitted themselves to the jurisdiction of the arbitrator and had participated in the proceedings thereof and in fact invited a decision on merits by him. The contention, therefore, raised on behalf of the contesting respondent No. 4, is that having done so the petitioners have clearly waived any objection to the jurisdiction of the arbitrator if in fact any such objection was maintainable. Reliance has been placed on the observations in the Full Bench authority in *Davinder Singh and another* v. *Deputy Secretary-cum-Settlement Commissioner, Rural Rehabilitation Department, Punjab,* (2), where it has been held—

> "There is also a distinction between want of inherent jurisdiction and irregular excercise or assumption of jurisdiction, and while consent cannot clothe a Tribunal with jurisdiction where none exists, irregular exercise or assumption or jurisdiction can always be waived."

Basing himself on this authority the contention of Mr. Sachar is that clearly the present case is not one of the lack of inherent jurisdiction but at very best on behalf on the petitioners it can be argued as a matter of fact an irregular exercise or irregular assumption of jurisdiction. The petitioners having willingly submitted themselves to the jurisdiction therefore must be deemed to have waived any objection thereto by their conduct which is patent on the record. Reliance in this context was also placed on *Manak Lal* v. *Dr. Prem Chand Singhvi and others,* (3), wherein it has been observed as follows :—

> "Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

(2) I.L.R. (1964) 1 Pb. 905.

(3) A.I.R. 1957 S.C. 425.

Again in *Messrs Pannalal Binjraj and others* v. *Union of India and others*, (4), it has been laid down to the following effect :—

> "There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred. * * * * * * * * * * If they acquiesced in the jurisdiction of the Income-tax Officers to whom their case were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court."

The learned counsel has also cited *T. P. Davar* v. *Lodge Victoria*, (5), but the observations made in that case are not directly to the point. Mr. Gandhi in reply has relied on *Kiran Singh and others* v. *Chaman Paswan and others* (6). However, the observations therein relate to a case where there is a lack of inherent jurisdiction. This case is thus clearly distinguishable as it cannot be held in this case that the arbitrator was lacking in inherent jurisdiction. The case cited by Mr. Gandhi, therefore, does not in any way repel the contention advanced by the opposite side. We would, therefore, hold that the submission of Mr. Sachar on this point also is a tenable one.

(19) It was then argued on behalf of the respondents that the objections regarding the jurisdiction of the arbitrator not having been raised before him at any stage it was not open to the petitioners to do so for the first time in the High Court in Writ jurisdiction. Reliance was placed on *Bhagat Singh* v. *Additional Director, Consolidation of Holdings, Punjab and others*, (7), wherein it was held that in a consolidation matter if the objection regarding the limitation had not been raised before the Director in petitions under

(4) A.I.R. 1957 S.C. 397.
(5) A.I.R. 1963 S.C. 1144.
(6) A.I.R. 1954 S.C. 340.
(7) I.L.R. (1966) 2 Pb. 664=1966 P.L.R. 496.

section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, the same objection could not be allowed to be raised for the first time in writ proceedings in the High Court. To the same effect reliance was placed on *Balbir Singh* v. *Sikh Gurdwaras Judicial Commission, Amritsar and others* (8), where R. S. Narula J. has held—

> "That, questions other than those relating to inherent lack of jurisdiction cannot normally be permitted to be raised for the first time in a writ petition, if such objections had not been raised before the Tribunal, whose order is impugned in the High Court."

The counsel also cited *Pehlu Ram* v. *Kartar Singh and others* (9), where also similar observations have been made.

(20) The last argument in this context raised by Mr. Sachar was that the petitioners had disentitled themselves from seeking relief because they were guilty of gross and wholly unexplained laches in invoking the writ jurisdiction of this Court. It was pointed out that in substance the attack in the writ petition is directed against annexure 'H' which was passed as early as the second of March, 1964. The competent authority therein at the end of this order had very clearly expressed itself that the matter regarding the apportionment was to be referred to the arbitrator in the following words :—

> "Here there is a dispute between the owner and the lessees. Both parties should file their respective claims within thirty days from today so that the matter may be referred to the State Government for appointment of an arbitrator."

It is also noticeable that prior to the passing of the order, annexure 'H'on the 2nd of March, 1966, it was never contended before the competent authority that it must apportion the compensation as well. Again it is noticeable that annexure 'W' appointing the arbitrator by a notification was issued as early as 17th November, 1964. Nevertheless it was not till as late as the 1st of April, 1966, that the jurisdiction of this Court was first invoked on that day by the filing of

(8) 1967 P.L.R. Short Notes 32.
(9) 1967 P.L.R. Short Notes 19.

the present petition. On this fact Mr. Sachar has argued that the petitioners were obviously guilty of laches and no explanation is coming forth for the same. Mr. Gandhi in reply has placed reliance on *Mrs. H. M. Dhillon* v. *The State of Punjab and another* (10), but the facts of that case were wholly distinguishable. The petitioner in that case was a Government servant whose prospects of promotion, selection to the higher grades were being affected by the impugned order and in that case it was held that it was open to her to seek the reliefs agitated therein. Obviously the facts are entirely different in the present petition. We are, therefore, of the view that the arbitrator in giving the award was not lacking inherent jurisdiction; that the petitioners willingly participated and whilst submitting themselves to the jurisdiction of the arbitrator invited a decision on merits; that no such objection as to the jurisdiction of the arbitrator was raised before him and that the petitioners have also not been vigilant in the prosecution of their rights.

(21) In view of the above, we are of the opinion that the petitioners have disentitled themselves to the reliefs they seek in the extraordinary jurisdiction of this Court undre Article 226 of the Constitution of India. This writ petition, therefore, fails but in the circumstances of the case there will be no order as to costs.

R. S. NARULA, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Sodhi, J.

KHAZAN SINGH AND ANOTHER,—*Appellants.*

versus

DALIP SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 304 of 1959.

October 3, 1968.

Punjab Security of Land Tenures Act (X of 1953)—Section 18—Examination of the claim of tenants under—Exercise of jurisdiction by the Assistant Collector—Whether depends on the existence of any particular state of facts—Decision given by the Assistant Collector—Whether amenable to judicial review.

(10). 1966 Cur. L.J. (Pb.) 678.