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carry on his business without let or hindrance. His right to carry on business is subject to such reasonable restrictions as the Legislature may think fit to impose under the provisions of clause (5) of Article 19 of the Constitution.

For these reasons I am of the opinion that the petition must be dismissed but without costs. I would order accordingly.

Chopra, J.

CHOPRA J.—I agree,

APPELLATE CIVIL

Before Bishan Narain and Chopra, JJ.

SURJAN SINGH,—*Appellant*

versus

THE EAST PUNJAB GOVERNMENT,—*Respondent.*

Regular First Appeal No. 17 of 1949.

1957

Jan., 31st

Defence of India Act (XXXV of 1939) and Rules made thereunder—Whether temporary enactments—Effect of—Temporary Acts—Rights created by—Whether lapse with their expiry—Defence of India Act (XXXV of 1939)—Section 19 and Defence of India Rules—Rule 75A—Land acquired under—Right to receive compensation in respect thereof—Nature of—Whether such right fell with the expiry of the Act—Award made and appeals filed while Act in force—Whether can be heard after the expiry of the Act—Right of appeal—Nature and extent of—Defence of India Act (XXXV of 1939)—Section 19—Defence of India Rules—Rule 75—Whether inconsistent with Land Acquisition Act (I of 1894)—Expiry of Defence of India Act—Whether revives and makes Land Acquisition Act applicable—Appeals, whether can be heard under Land Acquisition Act—Interpretation of Statutes—Temporary Act making an earlier permanent Act ineffective during the time of its operation—Expiry of, whether revives the permanent Act—General Clauses Act (X of 1897)—Section 7—Whether applicable to temporary Acts—Banjar Jadid, Banjar Qadim *and* Ghair Mumkin—*Meaning of.*

Held, that Defence of India Act with the rules made thereunder was a temporary enactment but it cannot be said that all rights created thereby were necessarily temporary. When a temporary Act expires it has to be regarded as having never existed except as to matters and transactions past and closed. Whether a particular matter and transaction should be considered to be past and closed depends on the nature of the transaction or the nature of the rights given in the temporary Act. A person can acquire permanent and vested rights even under a temporary Statute.

Held, that the land acquired under Rule 75A of the Defence of India Rules cannot be said to have been effective only during the time that the Act remained in force. It was a permanent acquisition made under the Act which had become past and closed before it expired, and the right to receive compensation in respect thereof had become indefeasible by virtue of section 299(2) of the Government of India Act, 1935. On the acquisition of land, the claimants had a vested right to receive compensation which cannot be said to have been an inchoate right which fell with the statute.

Held, that where the land was acquired, award made and appeals filed in the High Court while the Defence of India Act was in force, it cannot be said that the appeals could be heard during the time the Act remained in force and not thereafter. The intention of the Legislature in enacting section 19 of the Act was that the parties had a right vested in them on the date of acquisition of the property and that the compensation therefor should be calculated as payable on that date in accordance with the principles and procedure laid down for this purpose in section 19 of the Act. The right of appeal is a vested right and it can be taken away only in express terms or by necessary or distinct implication. The right of having a claim reheard in appeal granted by the Defence of India Act to enable the parties to arrive at a just and fair compensation is a very valuable right and cannot be denied to the parties unless absolutely necessary. The appeals have not abated and can be heard and decided on merits even after the expiry of the Defence of India Act.

Held, that before the enactment of the Defence of India Act, the land could be acquired under the Land Acquisition

Act and after its enactment it could be acquired for some of the public purposes under the Defence of India Act and for others under the Land Acquisition Act. The procedure laid down under the two statutes were inconsistent and could not stand together and section 19 and rule 75-A of the Defence of India Act impliedly made the Land Acquisition Act ineffective to the extent of and as to matters to which the former Act applied. Subject to this exception the Land Acquisition Act remained unaffected and in force. On the expiry of the Defence of India Act the provisions of the Land Acquisition Act relating to appeals became applicable and these appeals can be heard under the latter Act but on the basis that the property was acquired under the Defence of India Act and the principles of compensation as laid down in that enactment have to be enforced.

Held, that if an Act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent unless there is anything to indicate that the intention of the legislature was to repeal the earlier Act absolutely.

Held, that the rule of construction laid down in section 7 of the General Clauses Act to the effect that if any enactment is repealed wholly or partially and if it is desired that any part of the repealed enactment be revived, then it shall be necessary to state that fact specifically, does not apply to temporary or expiring statutes which lapse at a certain date or on the happening of a certain contingency.

Held, that it is well settled that if on a piece of land for four harvests in succession no crop is sown then it is entered in the *Khasra Girdawari* in the fourth harvest and in the three succeeding harvests as *banjar jadid* and thereafter it is entered as *banjar qadim*. It is also well settled that pieces of land entered as *ghair mumkin* are indicative of the area being part of roads, parks, water-channels, etc., of permanent nature.

Regular first appeal from the award of Shri Mohindar Singh, Senior Sub-Judge, 1st Class (Arbitrator), Ferozepore, dated the 8th day of December, 1948, by which he awarded a further sum of Rs. 7,820 in respect of 31.29 acres of irrigated land besides the sum already awarded by the Collector by his order, dated the 12th March, 1945.

DASONDHA SINGH and DALJIT SINGH, for Appellant.

S. M. SIKRI, Advocate-General and D. R. MANCHANDA, for Respondent.

JUDGMENT

BISHAN NARAIN, J.—During the Second World War the Military Authorities required lands near Ferozepore for the purposes of an aerodrome and a landing ground. The Defence Co-ordination Department had by notification, dated the 25th of April, 1942, delegated its powers under rule 75-A, made under the Defence of India Act to the Collector, Ferozepore, who by notification, dated the 18th of December, 1942, requisitioned a considerable area of land lying in a number of villages near Ferozepore for this purpose, and then by notification, dated the 2nd of September, 1943, he acquired 21.12 acres for the purposes of approach road and 926/27 acres for landing ground. This area was acquired on behalf of the Central Government for securing defence of India and for efficient prosecution of the War. Out of this area 162.83 acres were situated in village Ghiniwala, and 123.47 acres out of the acquired area in this village belonged to Surjan Singh and his real brother Bachan Singh. The land acquired in this village also contained five tube-wells,—*vide* R.W. 1/12. Out of these five wells Surjan Singh and Bachan Singh owned four wells. The Collector by his order, dated the 12th of March, 1945, classified the acquired land in this village as irrigated and unirrigated (71.13 acres were held to be irrigated and 81.70 acres were held to be unirrigated land) and offered compensation at Rs. 250 per acre for the former and Rs. 125 per acre for the latter type of land. He also offered Rs. 1,000 for each of the tube-wells. Surjan Singh and Bachan Singh refused this offer though some other proprietors in the village accepted it. On the 14th of January, 1946, Shri Ram Narain was appointed arbitrator under the Defence of India Act. The two brothers in a joint claim, dated the 29th May, 1946, required compensation to be fixed for the entire area at

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about Rs. 1,600 per acre and at Rs. 2,000 for each well. They also claimed compensation for severance and loss of business etc. The arbitrator called upon the claimants to file separate claims. Accordingly, the brothers filed separate claims on the 31st of May, 1946. In these claims they alleged that by private partition Surjan Singh was the owner of 114.5 acres of the acquired land while Bachan Singh was the owner of 17 acres and the discrepancy was explained by the allegation that the Government took possession of 131.5 acres although only 123.47 acres were acquired under the notification. Both the brothers valued the wells at Rs. 2,000 each and out of this amount Rs. 1,333-5-4 were claimed by Bachan Singh and the balance was claimed by Surjan Singh. Bachan Singh claimed an unspecified sum while Surjan Singh claimed Rs. 20,000 for severance and loss of business etc. After recording some evidence Shri Ram Narain retired and in his place Shri Mohindar Singh was appointed arbitrator on the 12th of March, 1947, who after recording the entire evidence gave his separate awards on the 8th of December, 1948. The arbitrator held that the brothers were entitled to get compensation only for the area acquired, i.e., 123.47 acres. He allowed compensation at the rate of Rs. 500 per acre for irrigated land and maintained the offer of the Collector in other respects. The claim of 15 per cent as compensation for severance and loss of business and for interest was disallowed. Claimants being dissatisfied with the awards have filed Regular First Appeals Nos. 17 and 18 of 1949 in this Court to get the amount of compensation further enhanced while the Government has also filed Regular First Appeals Nos. 49 and 50 of 1949 to get the offer made by the Collector restored. It would be convenient to decide these four appeals by this judgment.

The Advocate-General has raised a preliminary objection to the hearing of these appeals. He has urged that these appeals have abated as the law under which these appeals were filed has expired by efflux of time. His contention is this. The land in question was acquired under the Defence of India Act of 1939 and rules and orders made thereunder. The Act has expired by efflux of time and as there is no effective saving clause relating to pending proceedings including appeals (particularly since the time that our Constitution came into force in 1950), the relief sought by the claimants cannot now be granted although the award was given and the appeals were filed before the 26th of January, 1950. It is necessary to decide this question before taking up the appeals on merits.

On the commencement of the Second World War the Defence of India Act was enacted which came into force on the 29th of September, 1939. Under section 1(4) the Act was to remain in force during the continuance of the War and for a period of six months thereafter. Under section 19 of the Act when any property was acquired compensation was payable to the claimants in accordance with the principles and procedure laid down in this section. Rule 75-A was inserted by notification, dated the 25th of April, 1942, in the rules made under the Defence of India Act laying down the procedure for requisitioning and acquiring movable and immovable property and for payment of compensation for immovable properties so requisitioned or acquired. By Ordinance No. 12 of 1946, dated the 30th of March, 1946, additions were made to section 1(4) of the Act whereby in substance principles of section 6 of the General Clauses Act were incorporated in this section. The result was that after the 30th of March, 1946, the expiry of the Act would not affect the applicability of the provisions of the Act to pending cases. Officially

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the Second World War was declared to have terminated on the 1st of April, 1946, and the Act expired on the 30th of September, 1946. As the Act then stood the proceedings under the Act and the rules and orders made thereunder could continue even after the 30th of September, 1946, by virtue of additions to section 1(4) on the 30th of March, 1946. The legislature enacted an Amending and Repealing Act II of 1948 which came into force on the 5th of January, 1948. The purpose of this Act as stated in the preamble is to expressly and specifically repeal enactments specified in the schedule attached to the Act which are spent or have otherwise become unnecessary or have ceased to be in force otherwise than by expressed specific repeal. This Act purported to repeal the Defence of India Act as well as Ordinance No. 12 of 1946. It appears that the Legislature intended by enacting this Act to make section 6 of the General Clauses Act applicable to the expired Defence of India Act and to repeal the Ordinance as unnecessary. Our Constitution came into force on the 26th of January, 1950. Article 395 of the Constitution repealed the Government of India Act and Article 372 laid down that all laws in force immediately before the commencement of the Constitution continued to remain in force with the exception *inter alia* of temporary Acts which were to expire in accordance with the tenure of those Acts. These provisions of law, however, did not have the effect of making section 6 of the General Clauses Act applicable to the Defence of India Act and to the rules and orders made thereunder, nor did the additions to section 1(4) made by Ordinance No. 12 of 1946, remain effective:—*vide the State of Uttar Pradesh* v. *Seth Jagamander Das and others* (1). It is well settled that after a temporary Act has expired no proceedings can be taken upon it and it

(1) A.I.R. 1954 S.C. 683

ceases to have any further effect. In *Jagamander Das's case* (1), their Lordships of the Supreme Court quashed criminal proceedings because they had been started after the Defence of India Act had expired although the offence was alleged to have been committed prior to the expiry of the Act. The learned Advocate-General basing his argument on this decision of the Supreme Court has urged that with the expiry of the Act the appeals filed thereunder have also abated as now no relief can be granted under the expired enactment.

I have, however, come to the conclusion that this principle of law as urged by the Advocate-General is not applicable to the present case. It is true that the Defence of India Act with the rules made thereunder is a temporary enactment, but it cannot be said that all rights created under this enactment are necessarily temporary. In the present case the land was acquired under the Defence of India Act by the Government and undoubtedly it has become the property of the Government for all times to come. The Government has also used the property on that basis and has completely altered the nature of the land acquired. When a temporary Act expires, then undoubtedly it should be regarded as having never existed except as to matters and transactions past and closed (*vide* Maxwell page 403). Whether a particular matter or transaction should be considered to be past and closed depends on the nature of the transaction or the nature of rights given in the temporary Act. In this connection I may refer to *Steavenson* v. *Oliver* (2). In that case under a temporary Act every person who held the commission as surgeon in the army was entitled to practise as an apothecary without passing the usual examination. The question arose whether such a person could so

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(2) (1841) 8 H. and W.

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practise even after the expiry of the Act. It was held in that case that he could so practise. Lord Abinger C.B. observed—

> "It is by no means a consequence of an Act of Parliament expiring that rights acquired under it should likewise expire. The Act provides that persons who hold such commissions should be entitled to practise as apothecaries, and we cannot engraft on the statute a new qualification limiting that enactment."

Park B. observed—

> "There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions are matters of construction."

Construing the Act under consideration it was held that the intention of the enactment was that those persons who had held warrants as assistant-surgeons in the navy or army remained entitled to practise notwithstanding the expiration of the statute. Alderson B. in the same case observed—

> "It seems to me that these persons who, during the year for which the last Act was to continue in force, or previous to that period, had obtained rights under it, had obtained rights which were not to cease by the determination of the act, any more than where a person commits

an offence against an act of a temporary nature, the party who has disobeyed the Act during its existence as a law is to become dispunishable on its ceasing to exist."

It is, therefore, clear that a person can acquire permanent and vested rights even under a temporary statute. In the present case it appears to me clear that it could not possibly have been the intention of the legislature to make the acquisition of property effective only during the time that the Defence of India Act remained in force. Such a conclusion will create considerable confusion in all cases in which the Central Government or the Provincial Governments had acquired land under the Defence of India Act. It must, therefore, be held that the transaction of acquisition made under this Act was past and closed before it expired. The right to receive compensation for the acquired property is also a right which could not have been intended to depend on the continuance of the temporary Act. Section 299(2) of the Government of India Act, 1935, laid down that an owner whose property had been acquired had a right to receive compensation therefor. It follows that when land is acquired, then its owner has an indefeasible right to receive compensation. That being so, it must be held that on acquisition the claimants had a vested right to receive compensation and it cannot be seriously urged that the right to receive compensation was an inchoate right which fell with the statute. Any other conclusion would result in grave injustice to the owners whose property has been acquired and whose compensation has not been finally determined and would also be in conflict with the Constitution Acts of 1935 and 1950. In the present case compensation was determined by the arbitrator before the Defence of India Act became ineffective and appeals were also

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filed by the claimants as well as by the Government in this Court in accordance with the provision of that enactment.

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The question that remains to be decided is whether the appeals can be heard now after the expiry of the Act. The learned Advocate-General's contention is that the right of appeal is remedial in character and nobody has a vested right in it and therefore on the expiry of the Act this right also ceases to be effective. The learned counsel argued that even if it be held that the parties' substantive right of acquisition and receiving compensation has been completed and got vested in them before the Act expired the statutory right to enforce that right under the Act has now ceased to exist on the expiry of the Act and the parties may be left as they were on the date of the expiry and therefore the appeals cannot be heard. In my opinion, this argument is devoid of any force. It appears to me impossible to suppose that the legislature ever intended that this right of appeal under section 19 is to be exercised only during the time that the Act remains in force and not thereafter. In the nature of things, proceedings for computation of compensation are lengthy and protracted. In the present case the property was acquired in 1943 while the award was given in 1948. The appeals were not heard till they came up before us in 1956-57. This history shows that if it was intended that the right of getting compensation should be determined by the High Court only as long as the Act remained in force and not thereafter, then it must be held that this right of appeal granted to the parties was merely illusory and such an intention cannot be attributed to the legislature. It is well settled that the right of appeal is a vested right and it can be taken away only in express terms or by necessary or distinct implication. The right of having a claim reheard

in appeal granted by the Act to enable the parties to arrive at a just and fair compensation is to my mind a very valuable right and it should not be denied to the parties unless absolutely necessary. In the present case there is no such compelling reason to deprive the parties of this right. As I read section 19, the intention of the legislature was that on acquisition of land fair compensation was to be paid to the owners of the property acquired and this compensation was to be computed and determined in the case of absence of agreement by an arbitrator subject to an appeal to the High Court. Therefore, under this provision of law there was no final determination of the compensation till a final decision had been obtained from the Court of Appeal. I am of the opinion that the legislature's intention in the present case was that parties had a right vested in them on the date of acquisition of the property that the compensation therefor should be calculated as payable on that date in accordance with the principles and procedure laid down for this purpose in section 19 of the Act. In this view of the matter the decision of the Supreme Court in *Jagamander Das's case* (1), is of no assistance in deciding the present case. In that case the Defence of India Rules had created a new offence which was unknown to the country and before prosecution was launched the Defence of India Act had expired. It is well settled that when a penal law is broken, the offender can be punished under it only if he was convicted before it expired even if the prosecution was begun while the Act was still in force (Maxwell page 403). That being so, I am of the opinion that the appeals under consideration have not abated and can be heard and decided on merits even after the expiry of the Defence of India Act.

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There is another way of looking at the matter of right of appeal. In the present case, the property was acquired for the purposes of the Central Government. This property could have been acquired under the Land Acquisition Act, 1894, or under the Defence of India Act. The Government chose to acquire it under the latter Act. It is not necessary to go into the history of law of acquisition in India before 1894, when the present Land Acquisition Act was enacted. This Act lays down the procedure for acquiring land and the principles and procedure for computing compensation including the right of appeal to the High Court. In 1939 the Defence of India Act was enacted and the provisions of section 19 read with rule 75-A lay down the procedure for acquiring property and principles and procedure for computing compensation. Under rule 75-A property was to be acquired for defence and safety etc. of the country, i.e., for some of the public purposes. Therefore, the principles and procedure for calculating compensation under the Defence of India Act apply to cases only when property was acquired for defence etc. of the country as distinct from other public purposes. The procedures laid down under the two statutes are inconsistent and cannot stand together. Therefore, it is clear that section 19 and rule 75-A of the Defence of India Act impliedly made the Land Acquisition Act ineffective to the extent of and as to matters to which the latter Act applied. Subject to this exception the Land Acquisition Act remained unaffected and in force. In such circumstances Sutherland in his Statutory Construction in sections 2037 and 2038 discusses the legal position in these words—

> "2037 * * * *, when a later statute, limited in time of operation, prescribes the controlling law while it is in force upon a subject previously controlled by

a statute of permanent validity and operation, a suspension is achieved by implication at the consummation of the later enactment."

"2038. As the suspension of a statute contemplates its eventual revival, upon the termination of the suspending statute that statute which it displaced is revived without express re-enactment."

Applying these rules it is clear that on the expiry of the Defence of India Act the provisions of the Land Acquisition Act relating to appeals become applicable to this case. In *Ex parte Williamson* (1), the legal position was described in the following words—

"The rule against the revival of a statute by the repeal of a repealing statute relates to absolute repeals only, and not to a case where the statute is left in force, and all that is done in the way of repeal is to except certain cases from its operation, in which case the original statute does not need to be revived, for it remains in force, and, the exception being taken away, the statute is to be applied without the exception."

Therefore, it can be said that section 19 read with rule 75-A was an exception to the Land Acquisition Act and on its expiry the Land Acquisition Act became applicable. In this American case the accused was proceeded against under an Act which was an exception to an existing Act. The new Act was suspended and it was ordered that the accused could be sentenced under the permanent Act and that was in spite of the fact that the proceedings were instituted under the new Act.

(1) 200 Pac. 329

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In England also before the Interpretation Act came into force it was presumed that the legislature intended to revive the repealed statute without using any formal words for that purpose when the statute that repealed it was itself repealed.

Craies on Statute Law has described the legal position at page 387 in the following words—

> "If an Act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent unless there is anything to indicate that the intention of the legislature was to repeal the earlier Act absolutely."

This rule was recognised by Best, C.J., in *Tattle* v. *Grimwood* (1), in the following words: —

> "It is an undoubted rule of law that if an Act of Parliament which repeals former statutes be repealed by an Act which contains nothing in it that manifests the intention of the legislature that the former laws shall continue repealed, the former laws will, by implication, be revived by the repeal of repealing statute."

and it was approved in *Mount* v. *Taylor* (2). In this connection it may be mentioned that section 7 of the General Clauses Act lays down that if any enactment is repealed wholly or partially and if it is desired that any part of the repealed enactment be revived, then it shall be necessary to state that fact specifically. It is, however, well settled that this rule of construction does not apply to

(1) 3 Bing. 493
(2) L.R. 3 C.P. 645

temporary or expiring statutes which lapse at a certain date or on the happening of a certain contingency,—*vide Karim Shah* v. *Mst. Zinat Bibi* (1). In this view of the matter also *Jagamander Das's* case (2), has no application as in that case the offender was being prosecuted for an offence which was for the first time created by the Defence of India Act and therefore that offence also fell with the expiry of that statute. Applying these rules, it appears to me clear that the present appeals can be heard under the Land Acquisition Act but on the basis that the property was acquired under the Defence of India Act and the principles of compensation as laid down in that enactment have to be enforced according to my decision in an earlier part of this judgment. The result is that this preliminary issue raised by the Advocate-General fails and is overruled.

Before discussing the evidence produced in this case it is necessary to deal with another preliminary objection raised on behalf of the Government. As I have already said, the two brothers have filed their appeals separately in this Court. They have paid court fee in their respective appeals on the basis of their ownership in accordance with their allegation of private partition. As Surjan Singh owns considerably more area than his brother out of the acquired land he has claimed in his appeal compensation according to his share and has paid far more court-fee than Bachan Singh who is content with the award of compensation according to the share he obtained in private partition. The objection is that the brothers should have claimed in their appeals in equal shares and the appeal of Surjan Singh so far as it relates to more than his share must be held to have been overvalued and dismissed to that extent. As regards Bachan Singh it must be held, according to

(1) A.I.R. 1941 Lah. 175
(2) A.I.R. 1954 S.C. 683

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the learned counsel for the Government, to have been undervalued, and, therefore, his contention is that he should be awarded compensation in accordance with the court-fee paid by him. This objection has no force whatsoever. The land is admittedly jointly recorded in the revenue papers in favour of the two brothers whose father Chanan Singh had purchased the land now in dispute. There is no dispute between the brothers regarding their respective shares in the property acquired. They are abiding by the private partition that took place between them about twelve years before the land was acquired. In the circumstances, I am unable to see how the Government can insist in these proceedings that the compensation should be paid to them in equal shares and not in accordance with the partition. Before us the claimants have stated that they will be satisfied if the compensation is assessed for the entire property acquired and is paid to them in accordance with the private partition or without apportionment. I have, therefore, no hesitation in rejecting this objection.

This clears the ground for decision of these appeals on merits. To start with it may be stated that under section 19 of the Defence of India Act fair compensation is to be paid in accordance with the provisions laid down in section 23(1) of the Land Acquisition Act. This is conceded by both sides. The claimants had alleged before the Arbitrator that the Government had taken possession of area in excess of the area acquired and compensation was claimed for this excess area. This claim was, however, negatived by the Arbitrator, and this conclusion of the Arbitrator has not been challenged before us. Therefore, the claimants are entitled to compensation for the area acquired under the notification in question which is 123.47 acres equal to 1,195 *kanals* 3 *marlas*

It is well settled that under section 23(1) of the Land Acquisition Act the market value is to be determined by considering what price a willing owner would on the date of acquisition be able to obtain from a willing purchaser. In the present case the land acquired is agricultural land and compensation is claimed on the basis of agricultural land including its potentialities as such. It is evident therefore that the first element that a hypothetical purchaser would consider in this case is the nature of the land. This land is situated near Ferozepore Town and is stated to be about 300 *karams* from the Canal Colony. It is irrigated partly by canal and partly by well and some portion of it depends on rains for cultivation. At the time of the acquisition the owner was running a dairy business there. In 1903 the then owner Joti Mal sold 2,617 *kanals* 5 *marlas* including the lands now acquired to Kanshi Ram. This represented about seven-eighths of the area in village Ghiniwala. At that time 2,346 *kanals* out of the entire area was recorded as irrigated. In 1920 Kanshi Ram sold it to Rai Bahadur Sardar Buta Singh. At that time about 2,300 *kanals* were recorded as irrigated. In the *jamabandi* of 1930-31 the irrigated area is shown as 2,004 *kanals*. The *jamabandi* for 1934-35 is not on this record. It is, therefore, clear that about the entire area was considered to be irrigated till that time. The acquisition order in the present case was made on the 2nd September, 1943. The 1938-39 *jamabandi* relating to the acquired land shows that about 860 *kanals* were either *chahi* or *nehri* or *nehri chahi*, while about 30 *kanals* were shown as *barani*. This *jamabandi* also shows about 260 *kanals* as *banjar qadim* and about 19 *kanals* as *banjar jadid*. The area recorded as *ghair mumkin* was 64 *kanals* 7 *marlas*. After the requisition of the property in 1942 and after the Government had started converting the area into a landing ground, the *jamabandi* of 1942-43

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was prepared. This is admitted by both sides. In this *jamabandi banjar qadim* and *banjar jadid* increased to 310 *kanals* 18 *marlas* and 126 *kanals* 12 *marlas* respectively. While *barani* area increased to 628 *kanals* 9 *marlas*. *Ghair mumkin* area also increased to 99 *kanals* 4 *Marlas*. On the other hand the revenue authorities prepared an extract showing the nature of the land acquired from this village (P.W. 38/12). It shows *banjar Jadid* and *banjar qadim* area to be 30 *kanals* 11 *marlas* and 476 *kanals* 11 *marlas*, respectively and *ghair mumkin* area is shown as 43 *kanals* 8 *marlas*. This document, therefore, clearly contradicts the *jamabandi* prepared in 1942-43. In the circumstances, I think it will be safe to rely on the *jamabandi* of 1938-39 for the purposes of this claim.

Now, it is well settled that if on a piece of land for four harvests in succession no crop is sown, then it is entered in the *khasra girdawari* in the fourth harvest and in the three succeeding harvests as *banjar jadid* and thereafter it is entered as *banjar qadim*. It is also well settled that pieces of land entered as *ghair mumkin* are indicative of the area being part of roads, parks, water-channels etc. of permanent nature. Bearing this in my mind I am of the opinion that at the time of the acquisition of the land in dispute it was irrigated with the exception of 259 *kanals* 11 *marlas*, 18 *kanals* 13 *marlas* and 64 *kanals* 7 *marlas* which are shown in the *jamabandi* of 1938-39 as *banjar qadim*, *banjar jadid* and *ghair mumkin* respectively.

It is argued that for the purposes of computing fair compensation the land shown as *banjar jadid* and *banjar qadim* should be considered as agricultural land which was not cultivated during the relevant period on account of market conditions but could easily be cultivated as and when the owner decided to do so. In this connection it

is pointed out that this area is not only well served by canal but also contained four tube-wells which could easily irrigate the entire area. It was also urged that ever since 1903 almost the entire acquired area has been under cultivation and that it was only due to slump that certain areas were not cultivated from time to time. The claimants have produced *lal kitab* (Exhibit P. 63) which shows that the price of wheat in 1926 was seven seers per rupee and the prices continued going down till 1931 when wheat was sold at the rate of 23 seers per rupee. Thereafter there was a slight improvement, but in 1937 the wheat was selling at the rate of 12 seers a rupee. In 1938 the wheat was being sold at 19¾ seers per rupee while in 1939 it was sold at 16½ seers per rupee. This document also shows that there was sharp rise in prices thereafter. In 1941 wheat was sold at the rate of 13 seers per rupee, in 1942 at 8 seers, in 1943 at 3¾ seers (the relevant period), in 1944 at 4/3.8 seers and in 1945 at 4 seers per rupee. It is therefore not surprising that in *jamabandi* 1938-39 about 280 *kanals* is shown as *banjar* and considering the entire area to be about 1,200 *kanals* this proportion does not appear to me to be too high. The learned counsel for the claimants also stated that he had carefully gone through all the *khasra girdawaris* produced in this case and he found that every piece of land in that area was at one time or other under irrigation. This statement of the learned counsel was not controverted by the learned counsel for the Government although he had ample time to do so. In these circumstances, I am of the opinion that a hypothetical purchaser would consider the entire area in dispute to be subject to irrigation and would pay price for the entire area as irrigated and agricultural land with exception of 64 *kanals* 7 *marlas* which is recorded as *ghair mumkin*. That being so, the compensation should be fixed on this basis.

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In the present case the Collector has offered different prices on the basis of the land being irrigated or not. The parties and the arbitrator have also adopted the same criterion and therefore in the present case there is no material to distinguish between various types of irrigated land, and it is too late now to accept the suggestion of the Advocate-General in appeal to consider the feasibility of awarding different compensations for different types of irrigated land. I shall therefore adopt the same bases as have been adopted hitherto and determine the compensation accordingly.

In these appeals, the claimants have claimed compensation at about Rs. 1,000 per acre for the entire area while the Government has urged that they should be paid at the rate of Rs. 250 per acre for the irrigated land and at Rs. 125 for the other land. The arbitrator relied upon the transactions recorded in mutations R. 1 to R. 3 and allowing for increase in prices of agricultural produce increased the compensation for irrigated land to Rs. 500 per acre.

I have carefully considered R. 1 to R. 3 and have come to the conclusion that the arbitrator was in error in relying solely on these transactions in awarding compensation. The transactions are really two in number. On the 11th of September, 1937, one Ahmed sold 120 *kanals* 18 *marlas* to Bagga for Rs. 900 (mutations R. 1 and R. 2). The price works out at Rs. 7-8-0 per *kanal*. This Ahmed again sold on the 7th of June, 1940 to Mohammad Bakhsh 27 *kanals* 6 *marlas* for Rs. 645 and the price comes to Rs. 17-4-0 per *kanal*. These lands are situated in this very village Ghiniwala. There is evidence that the vendor had no issue and had strained relations with his nephew on account of domestic differences. Moreover the prices of agricultural produce in 1937 and 1940 were one-third

or one-fourth of the prices prevailing in 1943. These two instances are therefore not such value as to serve as sole criterion for fixing compensation in the present case.

The Government has also relied upon three transactions in village Naurang Kaleli and on four transactions in village Fattuwal. These villages are near village Ghiniwala. I shall first deal with the instances of village Naurang Kaleli. On the 16th of February, 1935, Buta etc. sold about 80 *kanals* for Rs. 2,100 and the average works out at about Rs. 26 per *kanal*. The next transaction is of 16th June, 1939, when about 14 *kanals* were sold for Rs. 70. The last transaction is of the 18th June, 1942, when 64 *kanals* were sold for Rs. 550, i.e., at Rs. 8-4-0 per *kanal*. The average has been worked out by the revenue authorities to be Rs. 165-15-3 per acre (R.W. 1/7). In 1935 and in 1939 there was slump and wheat was selling at about 17 seers per rupee. The instance of 1942 seems to be relevant, but it is not understood how in 1935 one piece was sold at Rs. 26 per *kanal* while in 1942 another piece in the same village was sold at Rs. 8-4-0 per *kanal*. I think this discrepancy required explanation P.W. 45 Kishan Chand who has been for 34 years in the service of Grey Canal which irrigates this village Ghiniwala, is a retired overseer. He says that a part of the land in this village is sandy and portions of it are affected by saltpetre. If the parties to these transactions had been produced, the nature of the land could have been conclusively proved and also the circumstances in which all these transactions and particularly of 1942 took place. This brings me to the instances relating to village Fattuwal. The Government has proved one transaction of 1937, two transactions of 1939 and one of 1940. The average price works out at Rs. 133-3-6 per acre (R.W. 1/6). It will be noticed that these transactions took place during the slump

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period. P.Ws. 41, 42, 43 and 45 have stated that the quality of land in this village is very poor as compared to the land in Ghiniwala. Again the parties to the transactions have not been produced to prove the nature of the land and the circumstances in which these transactions took place. The Government has not produced any other evidence in proof of the compensation that should be paid to the claimants. Here I may say that in my view in acquisition cases under the Defence of India Act it is the duty of both sides to produce evidence to prove fair compensation that is payable to a claimant. This is different from cases under the Land Acquisition Act where the offer of the Collector prevails unless the claimant before the District Judge can show that the offer was inadequate. In my opinion these instances cannot serve as basis for awarding compensation in this case.

It was then argued on behalf of the Government that the Collector's offer had been accepted by a number of persons in this and neighbouring villages whose lands had been acquired by this very notification and that this circumstance serves as a valuable criterion for assessing the market price of the property now in dispute. Some of these persons have been produced as witnesses by the claimants. They have stated that they accepted the offer though it was below the market price because of their poverty or some other reasons. As regards the other persons similarly situated, there is no evidence of the nature of their lands and the circumstances in which they accepted the award. Moreover, it is clear that the area of each individual owner was very much less than the area acquired from the present appellants. I am, therefore, of the opinion that the mere fact that some of the land-owners have accepted the offer of the Collector does not serve as a criterion of the market value of the land in the present case.

Now, I proceed with the claimants' case. I shall first deal with the evidence relating to the income of the property in dispute. The claimants have produced a number of witnesses to show that the income from the property in question was about 350 per annum per acre. No documentary evidence, however, has been produced to prove the income that the claimants realised and mere opinion or statements of certain witnesses cannot serve as a criterion in this case. Even their account books have not been produced by the claimants although they were running *inter alia* a dairy business. They have produced *khasra girdawaris* but they have not cared to get a *naqsha jinswar* prepared from the *girdawaris*. If this statement had been got prepared, then the income could have been worked out with the assistance of the *lal kitab* (Exhibit P. 63), which gives the rate of agricultural produce during 1926—1945. I have therefore no hesitation in rejecting this oral evidence regarding the income of the property and therefore this method of calculating fair compensation is not available in the present case.

It has been argued on behalf of the claimants that the price that their own land fetched in transactions from 1903 to 1926 is of value in assessing the price as prevailing on the 2nd of September, 1943, particularly when the nature of land has since then been improved and the prices have risen four or five times since that time. The argument is that the year 1926 may be taken as the basic year when the claimants had purchased this land. They have then produced evidence to show that the prices have since 1926 steadily risen in this locality—at least four or five times. The nature of land in this village, according to the claimants, is superior to the land of the neighbouring villages and the land purchased by the claimants is superior to that of the remaining land in this village. The

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land acquired is, according to them, the best portion of the land that belonged to them. The property in 1926 was purchased at about Rs. 35 per *kanal* and working on that basis they claimed about Rs. 140 per *kanal* which would come to more than Rs. 1,000 per acre. It is therefore now necessary to find how far the contentions of the learned counsel for the appellants have any force.

In 1920 land measuring 2,617 *kanals* which is about seven-eighths of the village land was purchased by Buta Singh for Rs. 1,10,000, i.e., at a price of about Rs. 42 per *kanal*. His sons sold it in 1926 for Rs. 95,000, i.e., at about Rs. 35 per *kanal*. The claimants have produced two witnesses of sales, one of 1922 and one of 1927 from a neighbouring village Piranwala showing the sales at an average rate of Rs. 58 per *kanal*. Similarly, in village Satiawala four transactions took place in 1927 at an average rate of Rs. 48 per *kanal*. This circumstance, however, cannot prove that the claimants had purchased the land at a cheap price. In any case, it cannot serve as a criterion for prices in 1943. As regards the rise in prices between 1922 and 1943, instances from various neighbouring villages have been brought on the record. The first instance relates to village Suba Kahan Chand. The two transactions show a rise of about $14\frac{1}{2}$ times in prices between the year 1922 and 1945. But this must be to a great extent due to the landing ground in 1943-44. Instances of rise within the municipal limits of Ferozepore are wholly irrelevant to the present case. The instances of Bazidpur and Bajiwala are of the period 1926 and 1944 and part of this rise also must be due to the landing ground. There is, however, no doubt that the prices had considerably risen in 1943 as the agricultural produce was selling at a much higher figure than previously and the town of Ferozepore

which is very near had also developed considerably since then. Oral evidence is also to the same effect (*vide inter alia* P.W. 1 Nazir Beg and P.W. 2 Bahadur). There is also evidence that the land in this village is superior to the land in the neighbouring villages but it is impossible to accept such a general statement and to come to the conclusion that in fact the land of this village is superior to the lands in other villages.

There is no doubt that the land in dispute now is well irrigated as there are four tube-wells in this area and these wells are sufficient to irrigate the entire area. Since the purchasing of this land by the claimants they have sunk some tube-wells and improved the existing wells. Bachan Singh has also stated in the witness-box that in one of the wells double boring was done and an engine was set up with a view to irrigate the lands. He has also stated that the entire canal water was reserved for his land and other proprietors could not use the canal water as a matter of right. From all this evidence it is clear that the claimants' land as agricultural land is superior to the land of other proprietors of this village. The claimants have also produced instances of transactions from other villages. These transactions, however, mostly relate to periods either from 1926 to 1930 or from 1944 to 1946. These instances to my mind are wholly irrelevant. The instances relating to 1926 to 1930 are far too distinct to be of any service in this case. The instances relating to 1944 to 1946 are about two years after the property had been requisitioned for the purpose of constructing an aerodrome and a landing ground. After the requisition and acquisition of this property the development had reached a stage in this area which would result in increasing the price of all the neighbouring land and this increase must be ignored for the purposes of assessing fair compensation in the present case. There must have been

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some rise between the period of requisition and acquisition, and I think the claimants are entitled to get the benefit of the same. Having carefully gone through the entire evidence I have come to the conclusion that there is only one instance in this case which can be of some assistance in fixing fair compensation, and that instance relates to village Sainwala. This village is about four miles from village Ghiniwala. In this transaction 32 *kanals* of land was sold for Rs. 2,000 by a sale deed dated the 12th of January, 1941. This is about eleven month prior to the requisition of the property involved in the present appeals. At that time, according to *lal kitab*, the prices of agricultural produce were showing an upward trend. The purchaser Sajjan Singh P.W. 22 has stated that he owns land in a number of neighbouring villages and therefore it is clear that he was familiar with the market in this locality. In these circumstances I think the price of the agricultural land realised in this case should be treated as a criterion in the present case. The price works out at Rs. 62-8-0 per *kanal* or Rs. 604-6-0 per acre, calculating 9.67 *kanals* to be equal to one acre. There must have been some rise in prices between January, 1941 and 18th December, 1942 and there must have been a certain amount of rise between 18th December, 1942 and 2nd September, 1943.

Taking all the circumstances into consideration, i.e., the nature of the land and the prevailing prices of agricultural produce, I am of the opinion that compensation in the present case should be fixed at about Rs. 70 per *kanal* or taking it into a round figure at Rs. 650 per acre. I am conscious of the fact that this computation involves considerable amount of conjecture but such a conjecture is implicit in a decision which requires fixation of compensation on the basis of a hypothetical market.

The claimants have claimed Rs. 2,000 as price of each well. The Collector and the arbitrator have awarded Rs. 1,000 for each well. P.W. 21, Gopal Singh, a retired Overseer, inspected two of these four wells and came to the conclusion that the cost of constructing them came to about Rs. 2,000 each. The estimate, however, has been made according to the prices prevailing in 1942 or 1943. As a matter of fact, the Overseer should have found the present value of the wells and not the value for constructing a new well, and, therefore, this evidence is irrelevant for the purposes of fixing the value of these wells. The revenue authorities went carefully through this matter and came to the conclusion that the fair price of these wells is Rs. 1,000 each, and really there is no reason for differing from this conclusion. I would, therefore, agree with the finding of the Arbitrator regarding the price of the wells.

It was then argued on behalf of the claimants that they are entitled to 15 per cent addition under section 23(2) of the Land Acquisition Act. I have, however, held in an earlier part of this judgment that the compensation is to be fixed according to the provisions of section 19 of the Defence of India Act and not under the Land Acquisition Act. That being so, the Defence of India Act specifically lays down that compensation is to be fixed according to section 23(1) of the Land Acquisition Act which necessarily excludes the applicability of section 23(2) of the Act. This claim must, therefore, be rejected.

It was then half-heartedly argued that Surjan Singh had claimed Rs. 20,000 for severance and loss of business. The learned counsel for the appellants, however, was unable to point out any loss of business or any loss by severance. It is clear that the land of the appellants acquired by the

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notification is three-fourths of the land that belonged to the appellants in this village and about 33 acres are still left with them. Therefore, they have suffered no loss by severance, nor has any loss been proved to have been suffered by them because their business was adversely affected by this acquisition of the property. This claim is wholly without any substance and must be rejected.

The claimants have then claimed interest on the amount awarded by the Court in excess of the Collector's offer. Section 28 of the Land Acquisition Act has been amended and the interest that is to be allowed on such an excess has been fixed at the rate of 4 per cent per annum and this is to be fixed from the date on which the Government takes possession of the land to the date of the payment of such excess into Court. And even otherwise also even if it be held that section 28 of the Land Acquisition Act does not apply to the present case, I think that in equity the claimants should be paid interest on the basis upon which it is allowed under the Land Acquisition Act. I would, therefore, hold that the claimants are entitled to interest at 4 per cent per annum on the amount which is in excess of the sum which the Collector had awarded.

The result is that the appeals of the claimants, i.e., Regular First Appeals Nos. 17 and 18 of 1949, are partly accepted. They are entitled to receive compensation at Rs. 650 per acre on the entire land excepting 64 *kanals* 7 *marlas.* for which they are entitled to get only Rs. 125 per acre. They are entitled to receive Rs. 4,000 for the 4 wells acquired. They are also entitled to interest at 4 per cent per annum on the amount in excess of the amount offered by the Collector till the date of realisation.

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It is not necessary to separate the amounts that are payable to Surjan Singh and Bachan Singh respectively. Shri Dasaundha Singh stated before us that it is not necessary to divide their shares and he submitted that a consolidated amount may be awarded and it will be open to the two appellants to take their shares severally according to their share under private partition or jointly from the authorities. In these circumstances, I do not consider it necessary to calculate the respective shares of Surjan Singh and Bachan Singh.

The claimants are, therefore, entitled to receive Rs. 76,762-8-0 for the land and Rs. 4,000 for the four wells. Thus they are entitled to get Rs. 80,762-8-0 in all. The Collector had allowed them Rs. 27,254-11-0 in all while the Arbitrator had increased the amount by Rs. 15,642-8-0 bringing the total of compensation payable to the claimants to Rs. 42,897-3-0. It, therefore, follows that by this judgment the claimants' appeals are accepted to the extent of Rs. 37,865-5-0. They are also entitled to get interest at the rate of 4 per cent per annum as indicated above.

As regards costs, the claimants are entitled to proportionate costs.

In view of the above decision, the appeals, Regular First Appeals Nos. 49 and 50 of 1949, filed by the Government are dismissed, but there will be no orders as to costs.

CHOPRA, J.—I agree.

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APPELLATE CIVIL.

Before Bhandari, C. J. and Khosla, J.

ASSOCIATED CLOTHIERS, LIMITED,—*Appellants.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 49-D of 1955.

1957

Feb., 1st

Stamp Act (II of 1899)—Section 9(a)—Notification No. 1, dated 16th January, 1937, relating to Articles 23 and 62 of the Stamp Act—Scope and object of.