It is axiomatic that what is void is *non est*. In this situation, the assessee was not precluded from urging the grounds 2 to 5. By giving them up the assessee could not confer jurisdiction on the Income-tax Officer where he had none. Therefore, the Tribunal was bound to hear the assessee and could not reject the appeal on the ground that grounds 2 to 5 were not agitated before the Appellate Assistant Commissioner and thus could not be permitted to be agitated before it.

(5) Mr. Awasthy fairly and frankly conceded that in view of the decision of the Supreme Court in *Kurban Hussain's case*, the question referred has to be answered in the negative, that is, in favour of the assessee and against the department. We return the said answer to the Tribunal. There will be no order as to costs.

SURI, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before R. S. Narula and B. R. Tuli, JJ.

RAGHBIR SINGH,—*Appellant.*

versus

THE UNION OF INDIA,—*Respondent.*

R.F.A. No. 291 of 1961.

March 25, 1974.

Land Acquisition Act (I of 1894)—*Sections* 9, 23(1) *and* 25—*Acquisition of land under un-expired period of lease at the time of acquisition—Construction of brick-kiln thereon by the lessee along with a water channel for making bricks—Lessee—Whether entitled to compensation for such water channel—Obtaining of a site by the lessee for another brick-kiln soon after the taking possession of the acquired land by the Government—Whether deprives the lessee of compensation for 'loss of earning'—Compensation for the un-expired period of lease—Whether allowable.*

Held, that where land, which is under un-expired period of lease and on which the lessee has constructed brick-kiln along with a channel for carrying water from a well to the brick-fields for

moulding kutcha bricks to be baked in the kilns, is acquired, the lessee is entitled to compensation for such water channel. The mere fact that the material of the water channel can be removed, does not deprive the lessee of the compensation. The channel can be used by the lessee during the un-expired period of the lease. It may be that after the expiry of lease, the lessee might not think it worth while to remove the material and might abandon it, but he is entitled to the use of the channel for the un-expired period of lease of which he is deprived. Compensation, therefore, is due to the lessee on account of deprivation of the use of water channel.

Held that where a lessee obtains another site for a brick-kiln soon after the taking possession by the Government of his previous brick kiln after acquisition, he is not deprived of compensation for loss of earning. It always takes time for a new business to be started at anotehr place and to earn profit therefrom. The District Judge is competent to award compensation under the head "loss of earnings" in such circumstances in view of the provisions of section 23(1) and 25 of Land Acquisition Act.

Held, that compensation in respect of loss of lease-money paid in advance to the lessors for the unexpired portion of the lease cannot be allowed under any clause of section 23(1) of the Act.

Regular First Appeal from the order of the Court of Shri Sant Ram Garg, District Judge, Ambala, dated the 2nd May, 1961, *decreeing the claim of Shri Raghbir Singh against the respondent for compensation as follows:—*

		Rs.
(1) *Under issue No.* 6	..	950.00
(2) *Under issue No.* 7	..	6,000.00
(3) *Under issue No.* 8	..	1,250.00
(4) *Under issue No.* 11	..	500.00
Total	..	8,700.00

The claimant will also get 15 *per cent premium on the above sum of compensation and interest at* 6 *per cent on the total compensation from the date the Union of India took possession of the acquired land to the date of actual payment and leaving the parties to bear their own costs since the claim was exaggerated.*

H. L. Sibal, Sr. Advocate, with Mr. S. C. Sibal, Advocate, *for the appellant.*

M. M. Punchhi, Advocate, assisting J. N. Kaushal, Advocate-General, (Haryana); *for the respondent.*

JUDGMENT

TULI, J.—This judgment will dispose of two cross-appeals—Regular First Appeal No. 291 of 1961 (Raghbir Singh v. Union of India) and Regular First Appeal No. 297 of 1961 (Union of India v. Raghbir Singh) which have been directed against the same award made by the District Judge, Ambala, on May 2, 1961.

(2) The matter concerns the quantum of compensation payable to Raghbir Singh claimant for the acquisition of his brick-kilns. The President of India issued notification No. 4/E, dated March 1, 1957, under section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), for the acquisition of certain land mentioned in that notification. Thereafter, another notification No. 6/E, dated March 2, 1957, under section 6 of the Act was issued. Emergency provisions of section 17 were invoked and the filing of objections under section 5-A of the Act was dispensed with. The claimant Rabhbir Singh filed his claim under section 9 of the Act claiming the sum of Rs. 2,10,100. The Collector asked for a report from the Revenue Assistant who recommended the payment of Rs. 26,254 by way of compensation and 15 per cent solatium thereon. The Collector, however, rejected the claim of the claimant in its entirety by his order, dated August 3, 1959. The claimant filed an application under section 18 of the Act requiring the Collector to refer the matter of compensation payable to him to the District Court for determination. In that application, the amount of compensation claimed was Rs. 1,07,475 under the following heads and interest thereon :—

	Rupees
(a) For brick-bats that remained on site which the applicant was not allowed to remove	913
(b) For two rooms which the applicant had to leave on account of their becoming useless for the applicant	2,000
(c) For one well situate in the leased area constructed and owned by the applicant	3,500
(d) For 500 ft. long channel constructed for carrying water from the well to the place where the bricks were moulded.	1,000

	Rupees
(e) For 4 iron sheet chimneys each 32 feet long	2,000
(f) for brick-kilns of the capacity 6 *lakhs* and 8 *lakhs* bricks, respectively	20,000
(g) For carriage including loading and unloading of 250 tons of coal from the site of the kiln to the new site which is at a distance of 3½ miles from the site of the kilns in dispute	1,250
(h) For 6,60,000 moulded *kutcha* bricks left in the fields which were ready for being placed for burning in the kiln.	4,000
(i) Compensation for change of place of business from Dhulkot to Ambala-Hissar Road at a distance of 3½ miles from the site of the kilns	40,000
(j) For all weather approach road connecting Ambala-Kalka road to kiln site 340 ft. long and 20 ft. wide	2,000
(k) For the lease money paid to the lessors for the period upto 1960	5,137
(l) Compensation for compulsory acquisition at 15 per cent	12,270
(m) Interest at the rate of 6 per cent per annum from May 1, 1957 to September 14, 1959	13,405
Total :—	1,07,475

(n) Interest from September 14, 1959, to the date of payment at the rate of 6 per cent per annum.

The Collector forwarded that application to the District Judge, Ambala, for disposal. The Union of India opposed the application by filing a written statement. The learned District Judge framed the following issues for trial :—

(1) Whether the Collector took possession of the kiln sites on April 30, 1957 ?

(2) Whether the brick-bats worth Rs. 913 belonging to the claimant were lying at the kiln sites at the time of taking possession and were not allowed to be removed ?

(3) Whether the two rooms worth Rs. 2,000 belonging to the claimant were present at the acquired site and the claimant could not remove them ? If so, whether he is entitled to compensation on this account ?

(4) Whether a well of the value of Rs. 3,500 belonging to the claimant was present in the acquired site ? If so, whether he is entitled to compensation on this account ?

(5) Whether the claimant had constructed five hundred feet long channel on the acquired site worth Rs. 1,000 for carrying water from the well to another place for preparation of bricks ? If so, whether he is entitled to compensation on this account ?

(6) Whether four iron sheet chimneys, each 32 feet long, of the value of Rs. 2,000 belonging to the claimant remained at the acquired site and the claimant could not remove them ? If so, whether he is entitled to compensation on this account ?

(7) Whether the claimant had constructed two brick kilns on the acquired site at a cost of Rs. 20,000 ? If so, whether he is entitled to compensation on this account ?

(8) Whether in consequence of the acquisition, the claimant had to remove 250 tons of coal from the site of the kiln to the new site at the cost of Rs. 1,250 ? If so, whether he is entitled to compensation on this account ?

(9) Whether in consequence of the acquisition the claimant was forced to abandon 6,60,000 moulded *kutcha* bricks at the acquired site of the value of Rs. 4,000 ? If so, whether the claimant is entitled to compensation on this account ?

(10) Whether in consequence of acqusition the claimant was forced to change his place of business from Dhulkot to Ambala-Hissar road and is entitled to compensation in the amount of Rs. 40,000 on this account ?

(11) Whether the claimant had constructed an all-weather approach road at a cost of Rs. 2,000 for the old brick kiln, which he had to abandon as a result of acquisition ? If so, whether he is entitled to compensation on this account and how much ?

(12) Whether the claimant had paid a sum of Rs. 5,137 to the lessors for the acquired premises for the period upto 1960 ? If so, whether he is entitled to be compensated on this account ?

(13) What interest, if any, the claimant is entitled to on the amount of compensation ?

(14) Relief.

(3) After recording evidence and hearing arguments, the learned District Judge allowed the sum of Rs. 8,700 by way of compensation and 15 per cent solatium thereon. The interest at the rate of 6 per cent per annum on the aggregate amount was also directed to be paid from the date of taking possession of the acquired land to the date of actual payment. The learned District Judge awarded Rs. 950 under issue No. 6, Rs. 6,000 under issue No. 7, Rs. 1,250 under issue No. 8, Rs. 500 under issue No. 11 and rejected the claims under other issues. The claimant has filed his present appeal claiming the amount of Rs. 98,775, that is, the difference between the amount claimed and the amount allowed to him by the District Judge. On the other hand, the Union of India has filed the appeal challenging the award of Rs. 8,700 made in favour of the claimant.

(4) It is convenient to deal with the various claims of the claimant-appellant under the issues framed by the learned District Judge.

(5) *Issue No.* 1: It relates to the date on which the Collector took possession of the kiln sites and it has been held by the learned District Judge that the possession was taken on April 30, 1957. The Union of India has not challenged that finding in the grounds of appeal nor at the hearing. The finding of the learned District Judge on this issue is, therefore, affirmed.

(6) *Issue No.* 2: This issue has been found by the learned District Judge against the claimant on the ground that there is no evidence to show that he was not allowed to remove the material which was capable of being removed. The claimant admittedly removed the *pucca* bricks which were lying on the spot on the date of acquisition, but he did not remove the brick-bats and the third class bricks for which this claim has been made. This claim has, therefore, been rightly disallowed by the learned District Judge. That finding is also affirmed.

(7) *Issue No.* 3: This issue has been found against the claimant by the learned District Judge on the ground that the two rooms, for which compensation has been claimed, were admittedly built on the site which was not acquired by the Union of India. These rooms were situated in field No. 426 adjoining the acquired land. Admittedly, the claimant had a plot of 8 *bighas* 8 *biswas* of land at that site which had not been acquired by the Union of India. It has not been stated how that land was utilised after the acquisition of the brick kilns. All that has been stated is that the rooms were abandoned. The compensation claimed is too remote and has been rightly disallowed by the learned District Judge. The result is that the decision of the learned District Judge on this issue is also affirmed.

(8) *Issue No.* 4: The compensation under this issue has been claimed for a well which existed on the acquired land which belonged to Bishan Singh and was on lease with the claimant. The value of the well was determined as Rs. 2,000 by the learned District Judge. The compensation for the well was paid to Bishan Singh, the owner of the land. The proper procedure for the claimant to follow was to ask for apportionment from the Collector and by making an application under section 30 of the Act to the District Judge. No such application was made nor was Bishan Singh made a party to the reference before the learned District Judge. The compensation for the well, having been admittedly paid to Bishan Singh, in such circumstances, cannot be allowed also to the claimant in these proceedings.

The decision of the learned District Judge on this issue is also affirmed.

(9) *Issue No.* 5: The claim under this issue relates to a *pucca* water channel from the well in field No. 443 to the brick fields where *kutcha* bricks were moulded for the purpose of baking in the kilns. The existence of that water channel has not been disputed. Raghbir Singh claimant stated that he constructed water channel 500 feet in length at a cost of Rs. 1,000. The books of account in support of that expense were not produced. The learned District Judge came to the conclusion, on the evidence, that the estimated market value of the water channel on the date of acquisition was Rs. 500. No amount was allowed to the claimant on the ground that the lease of all the alleged brick fields had to come to an end at the close of March, 1961, and the lessee, that is, the claimant had no option to get them renewed. On the expiry of the lease, the claimant had to remove the material of his water-course at his own cost and he was at liberty to remove his material of water-course in consequence of the acqusition in the same manner as he would have done after the expiry of the lease. It has further been observed by the learned District Judge that there was nothing on the record to show that the claimant was not allowed to remove the material of his water-course. In my opinion, the approach of the learned District Judge to the issue is not correct. The water channel admittedly existed on the spot and had been constructed for carrying water from the well to the brick fields for the moulding of *kutcha* bricks to be baked in the kilns. It was thus necessary for the working of the kilns on the site. It cannot be said that the material of the water channel could be removed by the claimant and, therefore, he was not entitled to any compensation therefor. Admittedly, another period of four years remained during which the water-course could have been used by the claimant if the land under the lease had not been acquired. It may be that after the expiry of the lease in March, 1961, the claimant might not have thought it worthwhile to remove the material and might have abandoned it, but he was entitled to the use of that water-course for another period of four years of which he was deprived. Some compensation was thus due to the claimant on account of the deprivation of the use of the water channel which he had constructed at his own cost and of which the market value on the date of acquisition was Rs. 500. In these circumstances, I allow Rs. 300 to the claimant under this issue.

(10) *Issue No.* 6: Under this issue, a sum of Rs. 950 has been allowed to the claimant on account of the price of the chimneys on the date of acquisition. The learned counsel for the claimant has not pressed for any enhancement in this amount. The learned counsel for the Union of India has, however, submitted, that no compensation should have been allowed for the chimneys because they could be removed from the site of the kiln to the new site. I, however, find no substance in this submission because the chimneys were in such a condition that they would have broken down in transit as the material of which they were made, had become brittle as a result of their past use. Each chimney was 32 feet in length and the distance for transportation was at least 3½ miles. Shri Nand Kishore, Revenue Assistant, in his report dated May 8, 1958, found that the chimneys could not have been physically removed and suggested Rs. 950 as compensation to be paid to the claimant. In spite of that report, no evidence was led by the Union of India to prove that the chimneys were in such a condition that they could be removed without damage and thus the claimant was not entitled to any amount. I, therefore, repel the objection of the Union of India to the allowance of this amount as compensation for the chimneys and affirm the decision of the learned District Judge on this issue.

(11) *Issue No.* 7: Under this issue, the claimant claimed Rs. 20,000 on acocunt of the value of the two kilns on the acquired land at the time of acquisition. The existence of these two kilns on the spot is not in dispute. The learned District Judge found that these two kilns had been constructed by and belonged to the claimant. One of the two kilns was situated in the land, the lease of which was for an idefinite period with the claimant Raghbir Singh. He had the right to have the lease renewed from time to time and, on that account, the learned District Judge allowed a sum of Rs. 6,000 to the claimant for that kiln which had been constructed in 1948. The learned counsel for the claimant has not pressed for any enhancement in the amount of compensation allowed to him for that kiln. The Union of India has, however, challenged the allowance of compensation to the claimant for this kiln. The evidence was led by the claimant as regards the market value of the two kilns before the learned District Judge, according to which a brick kiln was wroth Rs. 8,000 which had the capacity of baking 8 *lakh* bricks. Shri Nand Kishore, Revenue Assistant, estimated its value as Rs. 7,341 on the evidence of the Assistant Garrison Engineer who determined its cost

of construction as Rs. 7,679. The Assistant Garrison Engineer stated that out of that amount, Rs. 338 should be deducted for specification and workmanship, depreciation for age should be Rs. 5,240, cost of repair was stated to be Rs. 262 and the cost of filling vessel was stated to be Rs. 3,000. After deducting all these amounts, the resultant value of the brick kiln was stated to be Rs. 918 by the Assistant Garrison Engineer. Ch. Badlu Ram Tahsildar only accepted the deduction of Rs. 338 on account of the cost of specification and workmanship and determined the value of the kiln as Rs. 7,341. The reason stated was that no depreciation could be allowed because, according to the Assistant Garrison Engineer himself, the kiln could go on for an indefinite period if the repairs were regularly done and that the kiln was in good condition. The Revenue Assistant had, therefore, recommended that Rs. 7,341 should be paid to the claimant on account of compensation for this kiln. As against that amount, the learned District Judge has allowed Rs. 6,000. In spite of the detailed report of the Revenue Assistant which had been accepted in the case, the Union of India did not choose to lead any evidence on the point. The claimant, however, led evidence by producing Mohan Lal (A.W. 5), Nand Kishore (A.W. 9) and Badlu Ram (A.W. 10). In the absence of any rebuttal, the learned District Juge, in my opinion, correctly came to the conclusion that Rs. 6,000 should be allowed as compensation to the claimant for this brick kiln. The objection of the Union of India is repelled.

(12) With regard to the other kiln, the capacity of which was 6,00,000 bricks, the Revenue Assistant, in his report (Exhibit A. 15), estimated its value as 3/4th of Rs. 7,341 the price assessed for the bigger kiln—that is Rs. 5,506. The learned District Judge, however, has not determined its market value either under issue No. 7 or under issue No. 10. This brick kiln had to be abandoned by the claimant after the expiry of the lease at the end of March, 1961. He is, therefore, entitled to the proportionate price of this kiln which had been constructed in 1952. It had already worked for 5 years before acquisition and it could work for another period of 4 years. On the basis of the value determined by the Revenue Assistant, Nand Kishore (A.W. 9) as Rs. 5,506, I am of the view that the sum of Rs. 2,500 may be allowed to the claimant. I order accordingly.

(13) *Issue No.* 8: Under this issue Rs. 1,250 have been allowed to the claimant on account of the transport charges of 250 tons of

coal from the old site to the new site. This amount comprised of two items—Rs. 1,180 on account of the cost of transport and Rs. 70 on account of the wages of the chowkidar who looked after the coal at the old site before it was removed to the new site in July, 1957. The Union of India has challenged the allowance of this amount as compensation to the claimant on the ground that there is no reliable evidence in support of the two items. Shri Raghbir Singh claimant produced his register of stocks of coal (A.W. 21/15-A) which showed that 251 tons of coal were in stock on April 30, 1957, the date on which the possession of the acquired land was taken. This coal had been supplied to him for the manufacture of bricks and the Civil Supplies Officer granted him the necessary permission to remove that coal to the new site, vide Exhibit A. 8 dated July 20, 1957. The claimant produced two receipts (Exhibits A.W. 19/1 and A.W. 19/2) which were proved by Charan Dass (A.W. 19). The executant of the receipts was Sita Ram, truck owner. Charan Dass stated that Sita Ram signed the receipts in his presence and the amounts were paid towards the cartage of coal from the old kilns of the claimant to his new site. In cross-examination, he stated that he had seen Sita Ram actually transporting the coal of the appellant to his new site over a period of 3 or 4 days. He, however, did not know how many trips he made on each day. No evidence to the contrary was led by the Union of India. The only criticism levelled by the learned counsel is that receipt (Exhibit A.W. 19/1) dated July 24, 1957, shows the rate of transportation as Rs. 5 per ton while the receipt (Exhibit A.W. 19/2) dated July 28, 1957, shows the rate of transportation as Rs. 4 per ton. The receipt (Exhibit A.W. 19/1) relates to the transportation of 180 tons of coal while the other receipt (Exhibit A.W. 19/2) relates to the transportation of 70 tons of coal. I do not think any doubt can be cast on the genuineness of the two receipts. If the claimant wanted to claim these amounts at an exaggerated rate, he could have got the receipts made at the rate of Rs. 5 per ton instead of preparing one receipt at the rate of Rs. 5 per ton and the other receipt at the rate of Rs. 4 per ton. This fact alone proves that the receipts were correctly and truly prepared. The objection of the Union of India is, therefore, repelled and the decision of the learned District Judge on this issue is affirmed.

(14) *Issue No.* 9: It has been observed by the learned District Judge that he had no hesitation in agreeing with the claim of Shri Raghbir Singh that there were about 5 or 6 *lakh kutcha* bricks on the

kiln on April 30, 1957. The report of the Revenue Assistant (Exhibit A. 15), however, shows that the Tahsildar had reported that no *kutcha* bricks were to be found on the site, possibly because the earth had been thrown on the site after acquisition and before he visited the site. The report further shows that Raghbir Singh had claimed that 10 *lakh kutcha* bricks had been loaded in the brick kiln for manufacturing and 5 *lakh* were out. No reasons had been shown why those *kutcha* bricks, which were lying, had not been loaded in the brick kilns. The Union of India had submitted that he could remove those bricks, as he was given 1½ months' time by the Air Force authorities to remove the same. According to the claimant the removal of the *kutcha* bricks from the old kiln site to the new one was not worthwhile nor was it economical. Shri Devi Chand (A.W. 12) stated that the *kutcha* bricks could be removed, but the removal would have been uneconomical. The learned District Judge expressed the opinion that the claimant had enough time at his disposal to remove the *kutcha* bricks if he chose to do so and could have mitigated the loss to some extent. There is no evidence on the record to indicate how the loss under this head could be mitigated by removal of the *kutcha* bricks from the old kilns. Shri Raghbir Singh claimed before the Revenue Assistant that the cost of moulding *kutcha* bricks was Rs. 8 per thousand while in the Court of the District Judge, he claimed the cost to be Rs. 6 per thousand. Earlier he had made the claim that about 5 *lakh kutcha* bricks were lying there, but before the learned District Judge, he claimed that 6,60,000 *kutcha* bricks were lying for which he had to be compensated at the rate of Rs. 6 per thousand. Shri Badlu Ram, Tahsildar, in his report (Exhibit A. 21) stated that there were some *kutcha* bricks in the field at the time of discontinuation of the brick kilns, but those bricks had not been counted at that time. No record was produced by the claimant showing that any bricks had been moulded which lay there unbaked. It is pertinent to note in this connection that on April 4, 1957, the claimant had written a letter to the Air Force authorities to grant him time to work his kiln upto June 30, 1957, and that request was declined by letter dated April 9, 1957. The suggestion is that the alleged bricks must have been moulded after the kilns had been fired and their quantity could be easily proved by leading evidence of the persons engaged on the work or the records maintained by the claimant as kiln-owner. The only evidence is of 3 witnesses, including Raghbir Singh himself. Shri Charan Dass (A.W. 19) stated that "*kutcha* bricks 6 or 7 *lakhs* in number were

lying there. Those bricks remained there." Shri Amin Chand (A.W. 20) stated that he had been employed as Jamadar in charge of preparation of *kutcha* bricks with Raghbir Singh claimant since 1952, who had to spend in connection with the preparation of *kutcha* bricks at the rate of Rs. 4 per thousand for moulding, annas 8 per thousand as commission, annas -/8- per thousand for sand, annas -/8/- per thousand for water and annas -/8/- per thousand for clay. He thus worked out the cost of moulding as Rs. 6 per thousand and stated that that was the rate since 1952. When the State took possession, there were 6 or 7 *lakh kutcha* bricks lying on the spot and those bricks remained there and were not removed by Raghbir Singh. The claimant himself as A.W. 21 stated that 6,60,000 *kutcha* bricks also remained on the spot, the cost of which was Rs. 4,000 at the rate of Rs. 6 per thousand. In cross-examination, he, however, stated that the moulding of bricks continued upto June 30, 1957, but the burning process continued upto July 25, 1957. There is no indication on the record, apart from the statement of the claimant, with regard to the period during which these *kutcha* bricks had been fabricated. In any case, the claimant was not justified in continuing with the fabrication of the *kutcha* bricks after April 9, 1957, when his request for continuing the brick kiln upto June 30, 1957, was expressly refused. If he got any *kutcha* bricks fabricated after that date, he did so at his own risk. I, however, find that his statement that the moulding of bricks continued upto June 30, 1957, and the burning process continued upto July 25, 1957, cannot be believed, in view of the fact that the possession of the kiln sites had been taken by the Patwari on behalf of the Union of India on April 30, 1957, as has been held under issue No. 1. It thus, follows that the claim of Raghbir Singh for Rs. 4,000 has been rightly disallowed by the learned District Judge.

(15) *Issue No.* 10 : The claimant Raghbir Singh has claimed Rs. 40,000 as compensation for loss of earnings due to the change in place of business from the old kiln site in the area of Dhulkot to the new kiln site near the Ambala-Hissar road at a distance of about 3½ miles. This claim is covered by clause fourthly of section 23(1) of the Act, which reads as under :

> "the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his

other property, movable or immovable, in any other manner, or his earnings."

(16) Admittedly, Raghbir Singh was a person interested within the meaning of that expression in section 3(b) of the Act as he was the lessee of the brick kilns and was entitled to compensation in respect of the acquisition. That acquisition affected his earnings from the date of the acquisition till he was able to establish himself at another site. Raghbir Singh claimant stated that after the acquisition of his two kilns by the Union of India, he should start one new kiln only in November, 1957, and the other kiln in November, 1958, after acquiring land for the purpose. He claimed that for one kiln at the old site, which he could have worked upto July 31, 1957, he would have prepared at least 21 *lakh* of *pucca* bricks between May 1, 1957 and July 31, 1957. The preparation of 21 *lakh* of *pucca* bricks would have cost him Rs. 52,500, on which investment, he could have earned profit at the rate of 13 per cent of which he has been deprived by the act of acquisition by the Union of India. He thus, worked out his loss of earning on this account as Rs. 6,750 for one kiln. Similarly, for the second kiln, the substitute of which he was able to start at the new site only in November, 1958, he claimed that he had suffered loss of earnings from May 1, 1957 to October 31, 1958, which he assessed at Rs. 20,000. Rs. 10,000 were claimed as compensation for the loss of goodwill. The only evidence with regard to his income from the kilns is his own statement as a witness wherein he asserted that for the financial year 1955-56 he paid Rs. 2,800 as income-tax while the cases for the years 1956-57, 1957-58 and 1958-59 were still pending. He did not remember the particulars of his income which he had mentioned in his returns of income for the purpose of assessment for those years. He had also some income from a contract which he executed in 1955-56 of the aggregate value of Rs. 10,000. It is true that the claimant did not file any document to support the quantum of income that he was deriving from his kiln business, but his statement that he had paid Rs. 2,800 as income-tax for the year 1955-56 was not challenged in cross-examination. It was open to the Union of India to obtain copies of the assessment order from the Income-tax Department and to produce the same if his statement with regard to the payment of Rs. 2,800 by way of income-tax for the year 1955-56 was not believed. Similarly, copies of his returns

of income could be produced to prove the income which he had mentioned in his returns of income for the subsequent years. It was also open to the Union of India to lead some other convincing evidence with regard to his income from the kiln business. Nothing of the sort was done. The learned District Judge has refused to allow any compensation on account of loss of earnings to the claimant on the ground that he had obtained site for one kiln on May 4, 1957, within four days of the taking of possession of his kiln by the Union of India and he could have started his business immediately, thereafter. With regard to the second kiln, the reason for disallowance of the claim for compensation is that the claimant did not secure the site for both the kilns at the new place simultaneously and for this reason, his claim for compensation for loss of profits in shifting of his second kiln could not be allowed. In my opinion, the learned District Judge has not correctly appreciated the stand of the claimant. It always takes time for a new business to be started at another place and to earn profit therefrom. The anxiety of the claimant to start his kilns at another site as early as possible is sufficiently revealed by his earnest efforts that he made to acquire new sites quite expeditiously after the acquisition of his old sites by the Union of India. He acquired one site on May 4, 1957, but the construction of the vessel of the kiln had to take time and it could reasonably not be possible before November to work it. He was, therefore, entitled to compensation of his loss of earnings from May 1, 1957 to July 31, 1957, for which he gave an estimate of Rs. 6,750. That estimate was not challenged in cross-examination. He had to be compensated for that loss as well as for his inability to earn income from the other kiln till November, 1958. The Supreme Court in *Collector, Saharanpur* v. *Jagdish Saran* (1) allowed Rs. 5,000 per year as compensation for the loss of earnings for four years. That case also related to the acquisition of land in which brick kiln of Shri Jagdish Saran was situated. Notices under section 9 of the Act were issued by the Collector inviting claims for compensation for the land in June, 1943. The Collector awarded Rs. 8,023/4 as compensation for the land and did not award any amount for the loss of earnings. The possession of the land had been taken by the Collector on June 1, 1944. It was contended in that case that the District Court was incompetent to award compensation under the head "loss of earnings" which contention was not accepted, in

(1) C.A. No. 457 of 1965 decided by Supreme Court on 1st March, 1968.

view of the provisions of section 23(1) fourthly and section 25. The learned District Judge, on a consideration of the evidence, came to the conclusion that the loss of earnings for each year suffered by the respondent was Rs. 5,000 and for the period from 1944 to 1947 he had suffered a total loss of Rs. 20,000. He, therefore, awarded that amount as compensation to the claimant which was upheld by the Supreme Court. A plea was raised before the Supreme Court that the compensation for the loss of earnings could not be allowed for 4 years and could be allowed only for 3 years. That plea was not allowed to be raised because it had not been raised before the District Court. This judgment is an authority for the proposition that compensation on account of loss of earnings can be allowed to a claimant who has perforce to abandon his business at the site acquired by the Government and restart it at another place. Having regard to all the circumstances of the case, I award Rs. 9,000 to the claimant under this issue for loss of earnings in respect of both the kilns.

(17) *Issue No.* 11 : The claimant was allowed a sum of Rs. 500 as compensation for the loss of the road due to its severance from the acquired kiln and becoming useless in consequence of acquisition. No further enhancement of this amount has been claimed by the claimant and no convincing argument has been advanced by the learned counsel for the Union of India as to why this amount could not be allowed. The claim for this amount was covered by clause thirdly of section 23(1) of the Act. The existence of an approach road to the kiln site was admitted by Shri Hans Raj, Assistant Garrison Engineer, Air Force, Ambala Cantt. Raghbir Singh stated that he had spent the sum of Rs. 2,000 on the construction of the road which was 350 feet in length and 20 feet in width. He, however, did not produce any accounts to support the expenses mentioned by him. Shri Devi Chand (A.W. 12) estimated the price of the road as Rs. 900,—*vide* Exhibit A. 25. He measured the length of the road as 350 feet. The claimant was entitled to the use of this road for another period of 4 years at least and, therefore, some compensation had to be allowed to him. In my opinion, the compensation allowed by the learned District Judge is not on the high side and there is no scope for any reduction therein.

(18) *Issue No.* 12 : Raghbir Singh has claimed that he had paid to the lessors Rs. 5,137 in advance for the period upto 1960 on

account of lease-money for the period from May, 1, 1957, onwards. He had filed suits against the lessors for the refund of the amount for the unexpired portion of the period of lease, but the suits were dismissed. Copies of some of the judgments in these suits have been filed as Exhibits A.W. 21/29, A.W. 21/30 and A.W. 21/31. The Revenue Assistant in his report (Exhibit A. 15) had determined the value of the unexpired portion of the lease as Rs. 5,137 and recommended this payment to the claimant. The loss on account of the advance payment of the lease-money to the lessors for the unexpired portion of the lease is thus proved to the extent of Rs. 5,137. A question, however, arises whether any compensation on account of this loss can be allowed to the claimant under the provisions of the Act. It is contended on behalf of the Union of India that compensation in respect of the various matters mentioned in section 23(1) of the Act can alone be allowed as is evident from the provisions of section 26 of the Act. These two sections read as under :—

"23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration :

First, the market-value of the land at the date of the publication of the notification under section 4, sub-section 1 ;

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

Fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings ;

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to

change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

Sixthly, the damage (if any) *bona fide* resulting from diminuation of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of 15 per centum on such market-value, in consideration of the compulsory nature of the acquisition.

26. (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause

First, of sub-section (1) of section 23, and also the amount (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908."

After due consideration, I find substance in the submission made by the learned counsel for the Union of India and hold that compensation in respect of loss of lease-money paid in advance to the lessors for the unexpired portion of the lease cannot be allowed under any clause of section 23(1) of the Act. This claim has, therefore, been rightly disallowed by the District Judge.

(19) *Issue No.* 13 : Under this issue, the learned District Judge has awarded interest at the rate of 6 per cent per annum on the amount of compensation from the time of taking possession until the compensation amount was paid or deposited. It is contended by the Union of India that the interest could not be allowed at a rate higher than 4 per cent, in view of the amendment in sections 28 and 34 of the Act made by the Land Acquisition (Punjab) Amendment) Act, 1953 (Punjab Act No. 2 of 1954), which came into force on January 9, 1954, and from that date onwards, the interest could not be allowed at a rate higher than 40 per cent per annum, as the

figure "6" was substituted by the figure "4" in both these sections. The rate of interest was again raised to 6 per cent per annum by the Land Acquisition (Haryana Amendment) Act, 1967, which came into force with effect from July 1, 1967. It, therefore, follows that interest at the rate of 6 per cent per annum could not be awarded to the appellant by the learned District Judge. The learned counsel for the appellant has, however, urged that the acquisition was made for the Union of India and the amount of compensation was to be paid by that Government. The rate of interest was, therefore, rightly allowed at 6 per cent per annum which is the rate mentioned in section 28 and 34 of the Act, ignoring the amendment made by the Punjab Legislature in 1954. In my opinion, there is no substance in this argument. The rate of interest has to be paid in accordance with the provisions of sections 28 and 34 of the Act as applicable to the State in which the acquired land is situated. It has no concern with the Government for which the acquisition of the land is made. In every case, the compensation is to be paid by the Collector and the claimant for the compensation has no concern with the source from which the Collector gets the money for payment as compensation. Admittedly, the rate of interest applicable to the State of Punjab from 1954 onward till the amendment was made by the Land Acquisition (Haryana Amendment) Act, 1967, was 4 per cent per annum and, therefore, the Collector could not award more than 4 per cent per annum as the rate of interest on the amount of compensation. The interest at that rate could be awarded from the date of the taking of possession of the land to the date of actual payment, if full payment was made prior to July, 1967. If any part of the compensation was or is paid on or after July 1, 1967, the rate of interest payable on that part of the compensation would be 6 per cent per annum. The respondent is, therefore, entitled to the refund of interest at the rate of 2 per cent per annum out of the interest paid to the appellant. Since the date of the actual payment of the amount awarded by the learned District Judge to the appellant is not ascertainable on the record, the amount of refund allowed to the Union of India cannot be worked out. That amount shall be determined by the District Judge on an application to be made by the Union of India.

(20) As regards solatium, the claimant is entitled to it on the market value of the land in accordance with section 23(2) of the Act. The land includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached

to the earth as per section 3(a) of the Act. The claimant is, therefore, entitled to solatium on the amounts of Rs. 300, allowed under issue No. 5, Rs. 8,500, allowed under issue No. 7 and Rs. 500, allowed under issue No. 11. On the amounts of Rs. 950 allowed under issue No. 6, Rs. 1,250 under issue No. 8 and Rs. 9,000 under issue No. 10, no solatium is payable.

(21) *Issue No.* 14.—The appeal of Raghbir Singh is accepted in part to the extent of allowing him an enhancement of Rs. 11,800 in the amount of compensation already awarded by the learned District Judge. In the result, the amount of compensation is enhanced to Rs. 20,500. Solatium at the rate of 15 per cent will be paid on the sum of Rs. 9,300 awarded under issues Nos. 5, 7 and 11 and not on the remaining amount. On the amount already paid to the claimant by the Collector under the award of the District Judge, the interest shall be calculated at the rate of 4 per cent per annum. On the additional amount allowed in this appeal, the interest shall be calculated at the rate of 4 per cent per annum from the date of taking possession of the brick-kilns to June 30, 1967, and thereafter at the rate of 6 per cent per annum. Out of the aggregate amount thus determined, the compensation already paid to Raghbir Singh by the Collector in pursuance of the award of the District Judge shall be deducted and the remaining amount will be paid to him. A decree in these terms is passed. Raghbir Singh is allowed proportionate costs of this appeal. The appeal of the Union of India is allowed in respect of the rate of interest and solatium on Rs. 2,200 only as indicated above and the parties are left to bear their own costs.

NARULA, J.—I agree.

K.S.K.

INCOME TAX REFERENCE

Before D. K. Mahajan and P. S. Pattar, JJ.

THE ADDITIONAL COMMISSIONER OF INCOME TAX, PUNJAB,—*Appellant.*

M/S. HINDUSTAN MILK FOOD MGF. LTD., NABHA,—*Respondent.*

I.T. Ref. No. 28 of 1972

March 27, 1974.

Income Tax Act (*XLIII of* 1961)—*Section* 2(18) (b) (*ii*)—*Interpretation of*—*Phrase "at any time during the relevant previous*