doubt, a lacuna in the Retirement Rules. Even a person charged with very serious irregularities or acts of commission or omission or indispline can seek premature retirement after completing 25 years' qualifying service or attaining the age of 50 years. Not only that he is entitled to a retiring pension and death-cum-retirement gratuity also. However, it is for the rule-making authority to look into the matter and make suitable amendments. This case has to be decided in accordance with the extant law.

(8) Consequently, I hold that the petitioner stood automatically retired under rule 3 of the Retirement Rules after three months of the service of notice, dated May 12, 1977. There was no need for any approval of the Government. The absence of any such approval is of no consequence. Since the petitioner already stood retired in August, 1977, no disciplinary proceedings could continue against him and the orders of dismissal, dated May 22, 1978, passed against him are wholly void. In the result this writ petition is allowed and the order of petitioner's dismissal, dated May 22, 1978 is quashed. The petitioner shall be deemed to have retired from service in the month of August, 1977. He shall be entitled to the pension and death-cum-retirement gratuity. The respondents shall take immediate steps to decide his case of pension and payment of death-cum-retirement gratuity. The respondents shall pay the petitioner Rs. 300 as costs.

H. S. B.

Before I. S. Tiwana, J.

RAM LABHAYA,—Appellant.

versus

STATE OF HARYANA,—*Respondent.*

Regular First Appeal No. 145 *of* 1983

March 29, 1984

Land Acquisition Act (I of 1894)—Section 23(1) Clause 'fourthly'—Person seeking compensation running brick kiln functioning on the acquired land at the time of notification under section 4—Functioning of a brick kiln subsequently stopped—Possession of land taken after brick kiln ceased to function—Brick Kiln awners

—*Whether entitled to compensation under clause 'fourthly' of section* 23(1).

Held, that a reading of clause 'fourthly' of section 23(1) of the Land Acquisition Act, 1894 makes it abundantly clear that in order to claim compensation under this head, damage must have been sustained, whether on account of the injurious affection of the other property or on account of loss of earnings at the time of Collector's taking possession of the acquired property. In other words, the date relevant to the assessment under this clause is the date of Collector's taking possession of the land and not the date of publication of the notification under section 4 of the Act. The reason is obvious. As per section 16 of the Act, the acquired land only vests in the Government from the date the Collector has taken possession of the same after making the award. Till that date the title in the acquired property remains with the owner of the same and he can transfer or deal with the property in such a manner as desired. Where on the date the possession of the suit land was taken by the Collector no brick kiln was being operated no compensation would be payable under clause fourthly' afore-mentioned.

(Para 4).

Regular First Appeal from the order of the Court of Shri R. C. Jain, Additional District Judge, Ambala, dated 2nd November, 1982, *directing that the claimant will be entitled to enhanced compensation at the rate of Rs.* 18,800 *per acre over and above the compensation already awarded to him by the Collector solatium at the rate of* 15 *per cent on the enhanced compensation, interest at the rate of Rs.* 6 *per cent per annum from the date of possession having been taken over till actual payment and costs of the reference.*

Mani Subrat Jain, Senior Advocate, with Ram Sarup Sharma, Advocate, *for the Appellant.*

Harbhagwan Singh, A. G. Hy. with Kamal Sharma, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) These ten R.F.As. Nos. 145 to 154 of 1983 by landowner claimants are directed against the same judgment of the land acquisition Court, Ambala, and are thus being disposed of together. The said Court too had consolidated the respective land references under section 18 of the Act and recorded evidence at one place, i.e., in Land Acquisition Case No. 124/4 of 1982 (*Ram Labhaya* v. *The State of Haryana*).—*Vide* this judgment the Court has determined the market value of appellant's land acquired in pursuance

of a notification published under section 4 of the Land Acquisition Act, 1894 (for short, the Act) on June 22, 1973, for development and utilisation of the same as residential and commercial area (it now undisputably forms part of the Urban Estate, Panchkula), at the rate of Rs. 28,000 per acre. For this conclusion the Court has primarily depended on two awards of this Court, Exhibits P.8 and P.10, relating to the acquisition of land in villages Ferozepur Khurd and Devi Nagar the boundaries of which villages undisputably adjoin that of village Judian where the presently acquired land is located. The claim of some of the appellants under Clause fourthly of sub-section (1) of section 23 of the Act on account of their loss of earnings as brick-kiln operators has, however, been declined. Now this judgment is assailed by the appellants on both the counts, i.e., (i) for not awarding fair and proper market value of the acquired land and (ii) for not adequately compensating the concerned appellants for their loss of earnings from the brick-kilns.

(2) So far as the potentiality of the acquired land for being utilised as residential-cum-commercial area is concerned, the same is neither in dispute nor are the learned counsel for the parties at variance about the conclusion of the lower Court, in this regard.

(3) For their claim at (i), the appellants' stand is that instead of following the awards Exhibits P.8 and P.9 relating to the acquisition of lands in villages Ferozepur Khurd and Devi Nagar, the lower Court should have preferred and gone by its two earlier awards Exhibits P.12 and P.13 whereby the market value of the lands acquired in villages Dhillan and Judian itself had been determined by the said Court at Rs. 35,000 per acre. To cut short the argument it may be stated here that award, Exhibit P.13 pertaining to the acquisition of land in village Judian where the suit land is located has already been set aside by me,—*vide* my judgment in (*Dr. Kirpal Singh* v. *The State of Haryana*) (1). So far as the other award, i.e., Exhibit P.12, is concerned, no doubt the same stands accepted and approved by me,—*vide* my order, dated (*The State of Haryana* v. *Atma Singh and another*), (2) but I find that the appellants are not well justified in claiming compensation at that rate in preference to the awards, Exhibits P.8 and P.10. The lands covered by these latter awards were acquired in pursuance of a notification published under section 4 of the Act on January, 30, 1973, that is, about five months earlier to the present notification under section 4 of the Act. The boundaries of these villages, as already pointed

(1) R.F.A. 662/82 decided on 16th March, 1984.

(2) R.F.A. 808/82 decided on 2nd March, 1984.

out, adjoin that of village Judian. A bare reading of the judgment in R.F.A. 808 (supra) makes it manifestly clear that it was on account of the very high degree of potentiality of land of village Dhillan—as compared to the suit land—that the market value of Rs. 35,000 per acre as determined by the lower Court was approved. A look at the site plan, Exhibit R.1 makes it further clear that the land of village Dhillan is closer to Mani Majra Township which undisputably has come to form the hub of the whole development of the Urban Estate, Panchkula, than the suit land. In this site plan the acquired area has been shaded in blue. In the light of this factual position I find no infirmity in the conclusion of the lower Court in placing primary reliance on Exhibits P.8 and P.10 for determining the compensation payable to the appellants. Their learned counsel is not in a position to show that in the light of these awards the appellants can possibly claim any higher compensation.

(4) So far as the claim of some of the appellants on account of their loss of earnings as a result of the present acquisition is concerned, I find that there is hardly any basis for the same. As already pointed out, the claim of the appellants in this regard is founded on Clause fourthly of sub-section (1) of section 23 of the Act. It reads as follows :—

> "23. Matters to be considered in determining compensation.—
>
> (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—
>
> ** * * * *
>
> 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;"

A bare reading of this clause makes it abundantly clear that in order to claim compensation under this head, damage must have been sustained, whether on account of the injurious affection of the

other property or on account of loss of earnings *at the time of Collector's taking possession of the acquired property.* In other words, the date relevant to the assessment under this clause is the date of Collector's taking possession of the land and not the date of the publication of the notification under section 4 of the Act. The reason is obvious. As per section 16 of the Act, the acquired land only vests in the Government from the date the Collector has taken possession of the same after making the award under section 11 of the Act. Till that date the title in the acquired property remains with the owner of the same and he can transfer or deal with it in the manner he likes. In the instant cases it is the conceded position that the Collector took possession of this property on February 2, 1979 and the concerned appellants had stopped their business of running the brick-kilns much earlier to the same. In other words, on the date of possession of the suit land was taken by the respondent authorities, no brick-kilns was being worked or operated. Statement of Fateh Singh, one of the claimants, who concededly is the only witness who has entered the witness-box to support the claim on this count, makes an interesting reading. The relevant part of this statement is as follows :—

> "I, Kaka Singh, Baryam Singh Ram Labhaya and Harbans Lal owned brick-kilns in the acquired land. We ran the brick-kilns up to the year 1974 and after that we received a letter from the Country Town Planner, Panchkula, Chandigarh, which is marked 'A' .... It is correct that according to Mark A we had applied for the sanction of the running of the brick-kilns, of all the claimants mentioned in marked 'A' but the same was declined. There is no other letter,—*vide* which the Governmtnt might have intimated us that we could not run the brick-kilns as no licences were issued thereafter. We did not receive any intimation regarding cancellation of the brick-kiln licences. As a matter of fact our licences were not renewed as the Government did not accept the renewal fee but we have got no letter to this effect. * * * * * * * Possession was taken from us in the year 1979."

It is thus amply clear from this statement that the appellants could not run their brick-kilns with effect from the year 1974 in the

absence of any valid licence in their favour. Again it is more than clear that the day they were dispossessed from the suit land neither any brick-kiln was being worked nor were they deriving any income from the same. Mr. M. S. Jain, learned Senior Advocate appearing for the appellants, however, sought to contend that since the letter marked 'A' intimating the refusal to renew the appellants' licences for running the brick-kilns was issued on account of the impending acquisition, it can safely be taken that the appellants had to stop their business of running the brick-kilns on account of the initiation of these acquisition proceedings and thus on that account they are entitled to be compensated for their losss of income. Firstly, I find that letter marked 'A' does not form part of the evidence as nobody has legally proved the same. That is why it has not been exhibited by the trial Court. No argument thus can be raised on the basis of this letter. Secondly, the fact remains that the alleged loss of earnings, as it being claimed by the appellants, is not on account of the taking of possession of the suit land by the Collector. If the appellants felt that the authorities concerned had no right or jurisdiction to refuse to renew their licences for the reason that the land in question had been notified under section 4 of the Act, then they had to assail that order or action of the authorities or in the alternative had to claim damages in a proper forum. They certainly are not entitled to any damages under the Act.

(5) For the reasons recorded above these appeals fail and are dismissed bunt with no order as to costs.

H. S. B.

Before S. S. Sodhi, J.

KAUSHALYA DEVI AND ANOTHER,—*Petitioners.*

versus

MOHAN LAL AND OTHERS,—*Respondents.*

First Appeal from Order No. 442 *of* 1981

April 2, 1984

Motor Vehicles Act (IV of 1939)—Section 110-A—Sub-section (1) proviso—Claim application filed by all legal representatives except