Surjan Singh Vs. the East Punjab Government

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Court : Punjab and Haryana

Decided On : Jan-31-1957

Reported in : AIR1957P& H265

Judge : Bishan Narain and; Chopra, JJ.

Acts : Defence of India Act, 1939 - Sections 1(4); Defence of India Rules - Rule 75A; Defence of India (Second Amendment) Ordinance, 1946; Repealing and Amending Act, 1948; Constitution of India - Articles 372 and 395; General Clauses Act, 1897 - Sections 6; Government of India Act, 1935 - Sections 299(2); Code of Civil Procedure (CPC) , 1908; Statute Law - Sections 2037-2038; Land Acquisition Act, 1894 - Sections 23, 23(1), 23(2) and 28

Appeal No. : First Appeal No. 17 of 1949

Appellant : Surjan Singh

Respondent : The East Punjab Government

Advocate for Def. : S.M. Sikri, Adv. General and; D.R. Manchanda, Adv.

Advocate for Pet/Ap. : Dasondha Singh and; Daljit Singh, Advs.

Judgement :

Bishan Narain, J.

1. 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 unler 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 ofvillages 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 926/97 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. 1000/- for each of the tube-wells. Surjari 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 about Rs. 1,600/- per acre and at Rs. 2,000/- for each well. They also claimed compensation for serverance and loss of business etc. The arbitrator called upon the claimants to file separate claims.

Accordingly, the brothers filed separate claim 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. 2000/- 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 uspecified 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.

2. 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.

3. On the commencement of the Second World War the Defence of India Act was enacted which came into force on the 29th of September, 1930. 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, 19(sic), 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 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, AIR 1954 S. C. 683 (A).

It is well settled that after a temporary Act has expired no proceedings can be taken upon it and it ceases to have any further effect. In Jagamgndar Das's case (A) 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.

4. 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 1ransactions past and closed (vide Maxwell page 403), Whether a particular matter or transaction should he considered to he past and closed depends on the nature pf the transaction or the nature of rights given in the temporally Act In this connection I may refer to Steavenson v. Oliver, (1841) 8 M. and W. 234 (B). 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 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 expring that 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 constructions.'

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, hadobtained 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 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 filed by the claimants as well as by the Government in this Court in accordance with the pro-visions of that enactment.

5. 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 he 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 pre-_ sent 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 asthe 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 the 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 (A) 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.

6. 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 tatter Act applied. Subject to this exception the Land Acquisition Act remained unaflected 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 intime of operation, prescribed 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 reenactment.'

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 200 Pac. 329 (C), the legal position was described in the following woras-

'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 I and 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 arcused could be sentenced under the permanent Act and that was in spite of the fact

that the proceedings were instituted under the new Act.

7. 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.

8. Oraies 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. inTattle v. Grimwood. (1826) 3 Bing. 493 (D), inthe 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 (1868) 3 C. P. 645 (E).

In this connection it may be mentioned that Section 7 of the General Clauses Act lays down thatif any enactment is repealed wholly or partiallyand 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 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, AIR 1941 Lah 175) (F). In this view of the matter also Jagamander Das's case, AIR 1954 S.C. 683 (A), 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 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.

9. 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 appeal 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 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 (and 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, 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.

10. 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 pos-session of area in excess of the area acquiredand 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 1196 Kanals 3 marlas.

11. It is well settled that under Section 23(1) of the Land Acqusition Act the market value is to be determined by considering what price a willing owner would oh 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 2617 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 2346 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 2300 kanals were recorded as irrigated. In the jamabandi of 1930-31 the irrigated area is shown as 2004 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 neri chahi, while about 30 kanals. were shown as barani. This jamabandi also shows about 260 kanals as barijar 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 covering the area into a landing ground, the jamabandi of 1942-43 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. Ghairmumkin 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.

12. 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 girda-wari 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 ofroads, paths, water-channels etc. of permanentnature. 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.

13. It is argued that for the purposes of computing fair condensation 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 1923 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 193/4 seers per rupee while in 1939 it was sold at 161/2 seers per rupee. This document also shows that there was a sharp rise in prices thereafter. In 1941 wheat was sold at 13 seers per rupee, in 1942 at 8 seers, in 1943 at 3 3/4 seers (to 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 1200 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 the exception of 64 kanals 7 marlas which is recorded as ghair mumkin. That being so, the compensation should be fixed on this basis.

14. 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.

15. 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 rateof Rs. 250/- per acre for the irrigated land and at Rs. 125/- for the other land (After discussing the instances of transactions adduced by the parties the Judgment proceeds) 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.

16. 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.

17. (After discussion of evidence adduced by the claimant the judgment proceeds.) 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.

18. The claimants have claimed Rs. 2,000/-as price of each well. The Collector and the arbitrator have awarded Rs. l,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 themcame to about Rs. 2,000/- each. The estimate, however, has been made accordingly 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.

19. 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 Art. 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.

20. 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 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.

21. 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 in to 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 has awarded.

22. 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. 4000/- 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.

23. It is not necessary to Separate the amounts that are payable to Surjan Singh and Bachan Singh respectively. Shri Dasundha 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.

24. The claimants are, therefore, entitled to receive Rs. 76,762/8/- for the land and

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

25. As regards costs the claimants are entilled to proportionate costs.

26. 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.

27. I agree.