(2) Now this writ petition has been filed by the same petitioner and the additional ground raised is that in the earlier writ petition the point was not taken that wihout notification under Section 31 of the Act wheat could not be taxed.

(3) Challenge is to the levy of tax on the wheat under the Act and general principles of law require that all points should be raised in one and the same writ petition and there can be no piecemeal consideration of points. Filing of the second writ petition seems to be an effort to again get stay which was not granted in the earlier writ petition. In fact the Motion Bench did grant stay of recovery on 28th November, 1990 but the stay was declined on 25th January, 1991.

(4) On a consideration of the matter, we decline to entertain another writ petition. In case the petitioner left some point in the earlier writ petition, the proper remedy for it is to seek amendment. Certainly filing of a fresh writ petition is not the remedy.

(5) With these observations, the writ petition stands disposed of. No costs.

R.N.R.

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

UNION OF INDIA,—*Petitioner.*

versus

HARBANS SINGH TULI & SONS BUILDERS PRIVATE LTD., CHANIDGARH,—*Respondents.*

Civil Revision No. 2934 of 1990

14th April, 1991.

Arbitration Act, 1940—S. 8—Appointment of Arbitrator—Arbitration clause in the contract providing for appointment of Arbitrator by named authority and not by consent of parties—Appointment by resort to S. 8, therefore, is illegal.

Held, that if under the arbitration clause in the contract the arbitrator is to be appointed by a named authority and not by consent

of the parties, the provisions of S. 8 of the Arbitration Act, 1940 cannot be invoked for the appointment of an arbitrator and if such an arbitrator is appointed to arbitrate the dispute, the very appointment of an arbitrator by resorting to S. 8 of the Act is void being wihout jurisdiction and the award made by the arbitrator, so appointed, will be *non-est.*

(Para 9)

Union of India *v.* M/s Ajit Mehta and Associates A.I.R. 1990 Bombay 45.

(FOLLOWED)

Petition u/s 115 C.P.C. for revision of the Order of the Court of Shri Anil Kumar Suri, Sub Judge Ist Class, Chandigarh dated 20th August 1990 appointing Shri Puranjit Singh, Superintending Engineer, Capital Project, Chandigarh as arbitrator to adjudicate upon the claims of the petitioner in accordance with law. His appointment shall become effective from 1st September, 1990. This order also revokes the appointment of Shri A. V. Gopal Krishna who has been appointed arbitrator on 25th July, 1990 for the second time during the pendency of the present petition.

Claim : Petition u/s 8 of the Arbitration Act, 1940 for the appointment of an arbitrator in place of Shri V. Badrinath to adjudicate the claims of the petitioner.

Claim in Revision : For reversal of the order of the lower court.

Anand Sarup, Sr. Advocate with Ajay Tiwari, Advocate, *for the Petitioner.*

R. S. Bindra, Sr. Advocate with Gurpreet Singh, Advocate, *for the Respondents.*

JUDGMENT

(1) The present revision petition is directed against the orders of the Sub Judge 1st Class, Chandigarh, dated 30th July, 1990 and 20th August, 1990, whereby the application filed by the respondent under section 8 of the Arbitration Act, 1940 (hereinafter referred to as the 'Act') has been allowed and Shri Puranjit Singh, Superintending Engineer, Capital Project, Chandigarh, has been appointed Arbitrator to adjudicate upon the dispute between the parties. The facts leading to the filing of this petition are thus :

(2) Messrs Harbans Singh Tuli and sons Chandigarh, respondent herein, entered into an agreement No. CE NZ/PGH(P)/16 of 1969-70 with the petitioner for provision of Officers 'Mess and Single Officers'

quarters at Pithoragarh, U.P. The contract between the parties was signed at Lucknow. It appears that after the respondent undertook the work on the project, some dispute between the parties arose and taking recourse to Condition No. 70 of the general conditions of the Contract, which forward part of the agreement, the respondent applied to the Engineer-in-Chief, Army Headquarters, New Delhi, for appointment of an Arbitrator. In accordance with the requisition of the Contractor, Brig. EMA Da Costa Chief Engineer, Pune and Rajasthan Zone, was appointed as Arbitrator on 23rd November, 1973.

(3) The chequered history thereafter has been elaborately mentioned in the grounds of revision. The respondent,—*vide* letter dated 2nd December, 1973, protested against the appointment of Brig EMA DA-Costa as Arbitrator. The proceedings before Brig DA-Costa were dragged on interminably by the respondent by raising all kind of frivolous objections, with the result, the appointment of Brig DA-Costa as Arbitrator terminated in February, 1976, on his release from the Army. Thereafter,—*vide* order dated 27th April, 1976 Brig SDL Jaini was appointed Arbitrator and he, too, could not make any substantial progress in the arbitration proceedings upto his retirement on 18th March, 1978. On 29th April, 1978 Mr. G. R. Mirchandani was appointed Arbitrator and he relinquished his appointment on 11th April, 1980, as he was to superannuate on 31st July, 1980. The next Arbitrator to be so appointed on 12th June, 1980 was Mr. V. Badrinath and he relinquished his appointment on 14th September, 1984, as the respondent-Contractor had not co-operated with him for more than four years. In the vacancy so created Shri Y. N. R. Rao was appointed Arbitrator on 4th December, 1989 and he relinquished his appointment on 23rd April, 1990 on his transfer. Thereafter, Shri A. V. Gopal Krishana was appointed Arbitrator on 25th July, 1990. It is his appointment, which had been quashed by the Sub-Judge 1st Class, Chandigarh,—*vide* impugned order dated 20th August, 1990. A reading of the ground of revision would further indicate the obstructive attitude of the respondent in the conduct of the arbitration proceedings. It would also be clear that the Union of India represented by the Engineer-in-Chief did not delay at any stage the appointment of arbitrators during the span of almost 18 years. The vacancy created by one arbitrator relinquishing the charge was with one exception speedily filled up by the appointment of another arbitrator and there was neither any negligence or refusal by the petitioner in filling up the vacancies.

(4) On 6th June, 1989, the respondent filed an application under section 8 of the Act before the Sub Judge 1st Class, Chandigarh, for appointment of an Arbitrator to adjudicate upon the claims of the petitioner. Notice of the application was given to the petitioner (Union of India) who appeared and filed a written reply dated 13th October, 1989, on which various issues were raised. Issue No. 4 was strenuously pressed before the Sub Judge and it was pleaded that the Court at Chandigarh did not have territorial jurisdiction to entertain the application because the contract/agreement had been executed at Lucknow and the work undertaken and the payments made at Pithoragarh. It was urged that the application should have been filed either at Lucknow or at Pithoragarh and no cause of action having arisen at Chandigarh, the Courts at Chandigarh had no jurisdiction to entertain the application. After discussing the various issues raised, the learned Sub Judge 1st Class, Chandigarh,—*vide* his judgment dated 30th July, 1990, allowed the application and in consequence of the aforesaid order, the learned Sub Judge,—*vide* his order dated 20th August, 1990, appointed Shri Puranjit Singh, Superintending Engineer, Capital Project, Chandigarh, Arbitrator and also revoked the appointment of Shri A. V. Gopal Krishana, who had been appointed Arbitrator on 25th July, 1990, by the Engineer-in-Chief, in terms of the Contract. As already mentioned above, both the aforementioned orders have been impugned in the present revision petition.

(5) Mr. Anand Swaroop, learned Sr. Advocate, appearing for the Union of India, has urged two points; (i) that the Courts at Chandigarh had no territorial jurisdiction to entertain the application of the respondent and (ii) the matter in hand did not fall within the purview of section 8 of the Act with the result the Sub Judge had no jurisdiction to appoint an Arbitrator.

(6) In support of his case, Mr. Anand Swaroop, has reiterated the arguments which had been advanced before the Sub Judge. He has emphasised that the contract between the parties was signed at Lucknow, executed at Pithoragarh and the payments were also made to the respondent in the State of Uttar Pradesh. As no part of the contract was required to be performed in Chandigarh, the Courts herein had no jurisdiction.

In reply, Mr. R. S. Bindra, Sr. Advocate, has sought to rely on Section 21 of the Code of Civil Procedure, as interpreted by the

Supreme Court in *Pathumma* v. *Kuntalan Kutty* (1). Section 21 *ibid* reads as under :

> "21. *Objection to jurisdiction.*—(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.
>
> (2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.
>
> (3) No objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

(7) While admitting that the objection regarding the place of suing was taken by the petitioner at the earliest possible stage, he has urged that before the objection regarding territorial jurisdiction can be legitimately sustained, the aggrieved party has to show that there has been a consequent failure of justice on account of a court deciding a matter outside its territorial jurisdiction. After going through the record, we are of the opinion that a failure of justice is writ large on the facts of the present case.—*Vide* order dated 20th August, 1990, Shri Puranjit Singh was appointed Arbitrator with effect from 1st September, 1990. While the respondent had been tardy and obstructive in pursuing the arbitration proceedings before the arbitrators appointed in terms of the contract he seems to have shown extraordinary enthusiasm in pursuing the matter before the court appointed arbitrator. Even Shri Puranjit Singh seems to have accepted his appointment with alacrity, and in a remarkable burst of speed from start to finish,

(1) A.I.R. 1981 S.C. 1683.

concluded the arbitration proceedings which had gone on for well nigh eighteen years, in a period of five weeks and an award of Rs. 11,64,114.00 has been made in favour of the respondent. A reading of the award would show that the Arbitrator first issued a direction to the Union of India to submit its defence on or before 20th September, 1990, and also fixed the hearing of the case from 4th to 7th October, 1990, at Chandigarh. In response to the direction of the Arbitrator, a telegram was received from the Chief Engineer, requesting him not to proceed with the arbitration proceedings. As the pleadings in defence were not received by the Arbitrator before 20th September, 1990, another opportunity was granted to do the needful on or before 1st October, 1990. As the required defence was not filed even by 1st of October, 1990, and nobody put in appearance on behalf of the Union of India before the Arbitrator on the date fixed, an *ex parte* award dated 8th October, 1990, was made.

(8) It is clear from the facts narrated above, that the Arbitrator proceeded with extraordinary zeal and rendered the award within a period of five weeks of his appointment. In the very first order issued to the respondent the date of hearing was fixed and no further date was given. The conduct of the arbitrator becomes more suspect on an examination of the award. While it is true that the arbitrator is not required to give any reason in support of his award, yet this rule is to be deviated from when the arbitration agreement itself provides that some reasons have to be recorded. We are supported in this view by a few judgments of the Hon'ble Supreme Court reported as *Raipur Development Authority and others* v. *M/s Chokamal Contractors and others* (2), *and S. Harcharan Singh* v. *Union of India* (3). It will be clear from clause 70 of the General conditions of the contract that the Arbitrator shall give his award on all matters referred to him and shall indicate his "findings", along with the sums awarded, separately, on each individual item of dispute. The word "findings" in the clause clearly requires the Arbitrator to give some reasons in support of his award. A reading of the award, however, indicates that no reasons whatsoever have been given for the amounts awarded. For this additional reason also, the award dated 8th October, 1990, is *mala fide*. From the resume of the above facts, it is clear that prejudice

(2) (1989) 2 S.C. Cases 721.
(3) (1990) 4 S.C. Cases 647.

has been suffered by the petitioner in the filing of the application under section 8 of the Act in Chandigarh and, as such, it has to be held that the Sub-Judge 1st Class, Chandigarh, had no jurisdiction to entertain the application under section 8 of the Act.

(9) The second point raised by Mr. Anand Swaroop is that even assuming that the Courts at Chandigarh had jurisdiction to entertain the application under Section 8 of the Act, yet the conditions necessary for the exercise of the power of the Court under that section are not made out.

Mr. Bindra, on the other hand, has argued that the case of the respondent is covered by section 8(1) (b) of the Act. The aforesaid section reads as under :

"Section 8(1) In any of the following cases—

(a)..... xx ..... xx ..... xx ..... xx .....

(b) If any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting or dies and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators as the case may be, do not supply the vacancy; or

(c) ..... xx ..... xx ..... xx ..... xx .....
any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice, and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties."

We are, however, of the view that section 8(1)(b) of the Act also has no applicability to the facts of the present case. Clause 70 of the general conditions of the contract reads as under :

> "All disputes, between the parties to the contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.
>
> Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the Works or the determination.
>
> If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.
>
> The Arbitrator shall be made to have entered on the reference on the date the issue notice to both the parties, fixing the date of hearing.
>
> The Arbitrator may, from time to time with the consent of the parties, enlarge the time, for making and publishing the award.
>
> The Arbitrator shall give his award on all matters referred to him and shall indicate his findings, along with the sums awarded, separately on each individual item of dispute.
>
> The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.
>
> The award of the Arbitrator shall be final and binding on both parties to the Contract.'

A reading of the aforementioned clause clearly indicates that the Arbitrator is to be appointed by the Engineer-in-Chief and, in case, the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever,

the authority appointing him may appoint another arbitrator to act in his place. The following three substantive requirements are to be satisfied before Section 8(1)(b) of the Act can be applied:—

(i) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting or dies,

(ii) the arbitration agreement does not show that it was intended that the vacancy should not be supplied; and

(iii) the parties or the arbitrators, as the case may be, do not supply the vacancy."

The aforesaid three conditions are not satisfied in the present case. There has been no negligence or refusal by the Arbitrator appointed by the Engineer-in-Chief to proceed with the arbitration proceedings and, in fact, a number of arbitrators have been appointed, who were not allowed by the respondent to proceed with the arbitration proceedings. Secondly, it would be clear that clause 70 aforementioned specifically provides that in case of a vacancy for the post of an arbitrator, the said vacancy is to be filled in under that clause. It may be pertinent to note that even when the order of the Sub Judge dated 20th August, 1990 was passed, an arbitrator was, in fact, in position and the appointment of that arbitrator was specially quashed. It is further clear that if under the arbitration clause in the contract the arbitrator is to be appointed by a named authority and not by consent of the parties, the provisions of section 8 of the Act cannot be invoked for the appointment of an arbitrator. We are fortified in the view we have taken by a judgment of the Division Bench of the Bombay High Court in *Union of India* v. *M/s Ajit Mehta and Associates* (4), wherein clause 70 (which is exactly in the same terms as clause 70 in the present case) was interpreted. It has also been held in the aforesaid judgment that when there is an express term in the contract that the dispute will be determined only by an arbitrator appointed by a named authority and when an arbitrator is appointed to arbitrate such dispute, the very appointment of an arbitrator by resorting to section 8 of the Act is void being without jurisdiction and the award made by the arbitrator, so appointed, in non-est. It has also been held that the award being non-est can be set aside or ignored at any stage of the proceedings.

(4) A.I.R. 1990 Bombay 45.

(10) For the reasons recorded above, the present revision petition is allowed. The orders dated 30th July, 1990 and 20th August, 1990, of the Sub Judge 1st Class, Chandigarh, are set aside, with the result that all proceedings taken by the arbitrator pursuant to his appointment are also quashed. It is further directed that the appointment of Shri A. V. Gopal Krishana, who was appointed arbitrator, on 25th July, 1990, be restored, and if he is not available, the Engineer-in-Chief is at liberty to appoint another arbitrator. In case, the respondent does not co-operate with the arbitrator, the arbitrator would be at liberty to take ex-parte proceedings.

R.N.R.

Before : *S. S. Sodhi, J.*

MAJ. GENERAL RAM SINGH (RETD.),—*Petitioner.*

versus

THE CHANDIGARH HOUSING BOARD, CHANDIGARH,
—*Respondent.*

Civil Writ Petition No. 15903 *of* 1989

15th January, 1991

Constitution of India, 1950—Art. 226—Allotment of shop-cum-flats—Revision of price—Tentative price fixed—Allottees paying 70 per cent of the amount within stipulated period—Demand for enhanced price at par with subsequent higher auction price of similar sites is illegal—Allottee entitled to possession of flats at old price.

Held, that the increase in the price of the land by the Chandigarh Administration is an exercise by it of its executive power in an arbitrary and unreasonable manner amply justifying interference under Article 226 of the Constitution of India. The Chandigarh Administration having earlier decided to allot land at the rate of Rs. 500 per square yard, and the Board thereupon having framed a Scheme and fixed the tentative price for these flats in terms thereof and the petitioners having paid the money demanded within the stipulated period, it cannot now be permitted to turn round and claim any amount as price of this land in excess of that mentioned earlier. The fixation of the price of these shop-cum-flats therefore by taking the price of the land on which they had been constructed to be Rs. 2,500 per sq. yard, is clearly contrary to law. The Chandigarh