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employee while imposing the sentence without putting that record to him, relying on the judgment of their Lordships of the Supreme Court in *The State of Mysore v. K. Manche Gowda*, (5). On the same reasoning, the report of the President as Enquiry Officer dated September 15, 1966, and the resolution passed by the Municipal Committee on the basis thereof are liable to be quashed.

(7) For the reasons given above, this writ petition is allowed with costs and the resolution of the Municipal Committee, passed on August 7, 1966, suspending the petitioner, and resolution dated September 19, 1966, terminating his services, are hereby quashed. The order of the Sub-Divisional Officer rejecting the appeals of the petitioner is also quashed. It will, however, be open to the Municipal Committee to take action against the petitioner in accordance with law, if it is considered proper. Counsel's fee Rs. 100.

R.N.M.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J., and Narula, J. (on a point of reference)
Before Bal Raj Tuli, J. (on merits)

D. S. GREWAL,—Appellant.

versus

PUNJAB STATE,—Respondent.

First Appeal From Order No. 119 of 1966

February 19, 1970.

Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 8(1) (b) and 8(2)—Appointment of Senior Sub-Judge as arbitrator—Whether valid—Transfer of such Senior Sub-Judge—Successor equally qualified to be appointed as arbitrator—Fresh notification for appointment as arbitrator—Whether necessary—Determination of compensation payable for the requisitioned property—Mode of—Stated—Fair rent of the property—Whether to be taken into consideration.

Held (per Mehar Singh, C.J. and Narula, J.).—That a notification issued by the State Government under section 8(1) (b) of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, appointing a Senior Subordinate Judge as an arbitrator to give an award in regard to the matter of compensation is not bad, as the notification does not make appointment of the office of the Senior Subordinate Judge as the arbitrator,

(5) A.I.R. 1964 S.C. 506.

but makes the appointment of the holder of that office, a natural person, the arbitrator in the matter under the said provision. Such an appointment of a natural person as an arbitrator by describing him by his office is obviously a valid notification and within the meaning and scope of section 8(1) (b) of the Act.

(Para 2).

Held, that it is not necessary for the State Government to issue a notification separately each time a Senior Subordinate Judge is transferred and is replaced by another judicial officer, if the successor is duly qualified to be appointed as arbitrator. It is the holder of that office for the time being who is appointed arbitrator by the notification, and the transfer of one judicial officer and the taking over of his place by another judicial officer as Senior Subordinate Judge, does not require the reissuing of the same notification in the name of the replacing officer.

(Para 3).

Held (per Tuli, J.) that an arbitrator cannot give a go-by to the principles for the determination of compensation embodied in section 8(2) of the Act and determine the fair compensation on the basis only of the capital cost of the building at the time of requisition. The legislature has given a statutory mandate by enacting section 8(2) of the Act as to the mode in which the compensation has to be determined and the matters to be taken into consideration for such determination. It is also necessary to determine fair rent of the premises under section 4 of the East Punjab Urban Rent Restriction Act in order to find the reasonable rent at which the requisitioned premises can be let for the requisitioned period.¹ The arbitrator is to proceed to determine the compensation payable under section 8(2)(a) of the Act on the basis of the fair rent. To the amount so determined, the arbitrator can add such amount as he may consider just under clause (e) of sub-section (1) of section 8 of the Act, having regard to the circumstances of the case, e.g., the nature of the use to which the requisitioned premises are put, or the recurring loss which the owners of the requisitioned premises suffer for providing for themselves any premises in lieu of the requisitioned premises, etc., etc. The increase under this clause has to be made in the exercise of judicial discretion of the arbitrator.

(Para 14).

Case referred by Hon'ble Mr. Justice Bal Raj Tuli, on 13th March, 1969, to a Division Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice R. S. Narula for an important question of law involved in the case after deciding the important question of law, the case was returned to the Single Bench on 16th January, 1970, and the case was finally decided by the Hon'ble Mr. Justice Bal Raj Tuli, on 19th February, 1970.

First Appeal from the order of the Court of Shri B. L. Mago, Arbitrator, Senior Subordinate Judge, Ludhiana, dated 25th April, 1966, determining the amount of compensation at Rs. 1,000 per month.

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K. L. SACHDEV AND MISS SURJIT TANQUE, ADVOCATES, for the Petitioner.

J. S. REIKHI, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

ORDER OF THE DIVISION BENCH

Mehtar Singh, C.J.—The appellants have filed an appeal from an award made under section 8 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (Punjab Act XI of 1953), by the Senior Subordinate Judge at Ludhiana on April 25, 1966. While the appeal was being heard by a learned Single Judge, question arose whether the appointment of the Senior Subordinate Judge as arbitrator under section 8(1)(b) of Punjab Act XI of 1953 was or was not valid, and it is in substance this question which made the learned Judge to make reference of this appeal to a larger Bench.

(2) In Punjab Act XI of 1953, section 8(1)(b) says that “where no such agreement can be reached, the State Government shall appoint as arbitrator a person, who is, or has been, or is qualified for appointment as a Judge of a High Court”. According to this provision, notification No. 9(29)-IJ-61/44217 was issued by the State Government on November 18, 1961, appointing the Senior Subordinate Judge of Ludhiana as an arbitrator to give an award in regard to the matter of compensation in the dispute between the appellants and the respondent State. The learned Judge was in doubt whether under section 8(1)(b) of the Act such a notification is a valid notification, as it does not appoint a natural person as an arbitrator. It is apparent that the notification does not make appointment of the office of the Senior Subordinate Judge of Ludhiana as the arbitrator, but makes the appointment of the holder of that office, a natural person, the arbitrator in the matter under the said provision. Such an appointment of a natural person as an arbitrator by describing him by his office is obviously a valid notification and within the meaning and scope of section 8(1)(b) of the Act. Similar approach was taken by Sinha, J. in *Mohammad Safi v. Union of India* (1). So on this account there is no defect in the notification appointing the arbitrator in this case.

(3) The learned Judge has given the names of six Subordinate Judges who were Senior Subordinate Judges at Ludhiana attending

(1) A.I.R. 1953 Cal. 729.

to the arbitration proceedings between the parties from the date of the notification, as referred to above to the date of the award. Four of them were appointed to the Provincial Judicial Service in 1947 and completed ten years' service as judicial officers by 1957, and the remaining two were appointed to the Provincial Judicial Service in 1951 and completed ten years' service as judicial officers by April, 1961. The date of the notification under section 8(1)(b) in this case has been November 18, 1961. So by the time that notification was issued, each one of those six judicial officers had already completed ten years of service in judicial capacity and each one of them was qualified to be appointed a Judge of the High Court. It is, however, true that not all were Senior Subordinate Judges at Ludhiana on the date of that notification, that is to say, on November 18, 1961. Between October 1, 1960, and February 20, 1967, there were six judicial officers who were Senior Subordinate Judges at Ludhiana. It has already been pointed out that each one of them was, before the date of the notification in question of November 18, 1961, qualified to be appointed a Judge of the High Court. It was the first officer, who held that office between October 1, 1960, and February 13, 1962, who was in office on the date of the notification. The remaining five officers, between March 5, 1962, and February 2, 1967, came to occupy that office for certain periods, as detailed in the referring order of the learned Judge, but after the date of that notification. The notification appoints a Senior Subordinate Judge at Ludhiana as the arbitrator in the dispute between the parties and, in my opinion, as each one of the Judicial officers successively succeeded the first Judicial officer who was there on the date of the notification, he also comes within the meaning and scope of the notification, so that the date on which he took office as Senior Subordinate Judge at Ludhiana he came within the scope of that notification and on the same date the Judicial officer who relinquished charge of that office at Ludhiana ceased to be within the meaning and scope of that notification an arbitrator in the case. It was not necessary for the State Government to issue a notification separately each time a Senior Subordinate Judge was transferred from Ludhiana and was replaced by another Judicial officer, for that would have been a mere idle formality. The substance of the matter is that the notification has appointed the Senior Subordinate Judge at Ludhiana as the arbitrator in the dispute between the parties. It is the holder of that office for the time being who has been appointed arbitrator by the notification, and the transfer of one Judicial officer and

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the taking over of his place by another judicial officer as Senior Subordinate Judge, but duly qualified to be appointed a Judge of the High Court, does not require the reissuing of the same notification in the name of the replacing officer. There is no manner of doubt that on the date each one of the six Subordinate Judges who dealt with the arbitration matter between the parties became Senior Subordinate Judge at Ludhiana, he was qualified to be a Judge of the High Court on the date, it having already been pointed out that he was even so qualified on the date of the notification in question, though the date relevant is the date on which the officer is Senior Subordinate Judge at Ludhiana on and from the date of that notification.

(4) In the approach as above, there is no defect in the appointment of the Senior Subordinate Judge who made the award in this case or in the proceedings of the arbitration as having been handled by any one of the six Senior Subordinate Judges, who handled the same, as each one of them was qualified under the notification referred to above and according to section 8 (1) (b) of the Act to be the arbitrator in the case and was duly so appointed.

(5) It has already been stated that above was the main ground which persuaded the learned Judge to make this reference and though the learned Judge has also observed that the remaining matters be disposed of by the larger Bench also, but those are matters which may properly be disposed of according to the rules by learned Single Judge and if after his decision there is any party aggrieved, he may take such proceedings to seek redress as may be admissible to him according to law. In the circumstances, with the decision as above we remit the case back to the learned Single Judge for disposal on merits on the remaining points in the appeal. There is no order in regard to costs resulting from this decision.

R. S. Narula, J.— I agree.

January, 16, 1970

ORDER OF THE SINGLE BENCH

(6) TULI, J.—This appeal under section 11 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (Act XI

of 1953) (hereinafter called the Act), is directed against the award made by the Senior Subordinate Judge at Ludhiana, on April 25, 1966, under section 8 of the Act. Section 8 provides for the appointment of an arbitrator in a case in which no agreement can be reached between the State Government and the owner of the requisitioned property. In the present case, house No. B-XIII-208, known as 'Ajit Villa' was requisitioned by the Additional District Magistrate, Ludhiana, by his order dated May 18, 1959, for the Government Girls High School, Ludhiana. This house belongs to the appellants and was requisitioned under sub-section (2) of section 3 of the Act, after notice to the owners who did not object to the requisition. There is no dispute about the shares of the appellants in the house. The only dispute is with regard to the amount of compensation that has been allowed to the appellants for the use and occupation of the requisitioned house. The District Magistrate, Ludhiana, fixed the compensation at Rs. 520-00 per mensem which was not accepted by the owners of the property who asked for reference to arbitration by letter dated July 25, 1961. The Governor of Punjab, by notification No. 9 (29) IJ-61/44217, dated November 18, 1961, appointed the Senior Subordinate Judge, Ludhiana, as an arbitrator for the purpose of making an award determining the amount of compensation payable under the Act and specifying the person or persons to whom it is payable. The Senior Subordinate Judge, Ludhiana, gave his award as arbitrator on April 25, 1966, determining the amount of compensation at Rs. 1000-00 per mensem to be paid to the appellants in the shares mentioned against the name of each of them. Dissatisfied with that award, the owners of the house have filed the present appeal in this Court.

(7) This appeal came up for hearing before me on March 6, 1969, 12, 1969, and the Judgment was reserved. While writing the Judgment, I doubted the validity of the notification of the Governor of Punjab appointing the Senior Subordinate Judge, Ludhiana, as the arbitrator and by my order dated March 13, 1969, referred the appeal for decision to a Division Branch. The Division Branch has held that the appointment of the Senior Subordinate Judge as arbitrator was valid and has remitted the appeal back to me for decision on merits, by order dated January 16, 1970.

(8) The only point that has been argued in this appeal is with regard to the amount of compensation reasonably due to the appellants for the use and occupation of the requisitioned house. Section

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8 (2) of the Act enumerates the various factors which have to be taken into consideration while fixing the compensation and reads as under:—

“8 (2). The compensation for the requisitioning of any property shall consist of :—

- (a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property if it had been taken on lease for that period; and
- (b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely —
 - (i) pecuniary loss due to requisitioning;
 - (ii) expenses on account of vacating the requisitioned premises,
 - (iii) expenses on account of re-occupying the premises upon release from requisition; and
 - (iv) damage (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.”

(9) The learned Senior Subordinate Judge framed the following issues for determination of the compensation:—

1. What is the proper rent of the premises under requisition and what compensation is payable for requisitioning the said property?
- (2) Who are the persons to whom the compensation is payable?

Evidence was led by the parties and it has been established that the house in dispute is situate on a plot measuring 5300 sq. yards, it is situate on Government College Road, Ludhiana, a part of the plot in which the house is situated was sold at Rs. 33-33 paise per sq. yard on April 29, 1964, no sale took place of any site near the house in dispute in 1959-60, and the prices of land in that area have risen by Rs. 3-00

per sq. yard between 1959 and 1964. P.W. 2 Diwan Chand, Assistant Patwari, deposed that land measuring 400 sq. yards was sold for Rs. 10,864-00 on April 8, 1959, according to which the average sale price per sq. yard comes to Rs. 27.00. Another piece of land measuring 300 sq. yards was sold on March 14, 1960, which works out to Rs. 21-66 per sq. yard. P.W. 3 B. S. Grewal, Executive Engineer, Ferozepore Provincial Division, assessed the fair rent of the requisitioned house on December 13, 1954, as Rs. 625-00 on the basis of 6 per cent return on the capital cost of the building without taking into consideration the cost of the land underneath it. He further stated that the assessment of the value of the building had increased from 6 per cent to 7½ per cent in 1962, that in 1959, the cost of construction had increased by 10 per cent over the cost of construction prevailing in 1954 and that he treated the house in dispute as a first class construction and assessed its capital cost on that basis. Takhat Singh, property broker, P. W. 4, has stated that in 1959 he made an offer of Rs.3 lacs to Shri D. S. Grewal for the house but he did not accept that offer as he was not prepared to sell it for that amount. In cross-examination he stated that he did not communicate his offer to Shri D. S. Grewal in writing. The buyer of the house was one Shri Paramjit Singh Grewal who had come from England and who did not buy any property as he went back to that country. He denied the suggestion that there was no such offer made by Shri Paramjit Singh Grewal for the purchase of the house for Rs. 3 lacs. P. W. 5 Baikunth Raj is a property dealer who stated that in 1959 the rate per sq. yard of vacant land near about Ajit Villa was Rs. 35/ or Rs.36/per sq. yard and at the time he was giving evidence on March 11, 1966, the rate was Rs. 50/ per sq. yard. In cross-examination he, however, admitted that he did not sell any plot on the College Road near Ajit Villa but sold plots in Sant Nagar which is situated at a distance of 150 yards from the said house. The plots in Sant Nagar were sold at the rate of Rs. 25/ or Rs. 26/ per sq. yard. Shri D. S. Grewal appeared as a witness on behalf of the appellants as P.W. 6 and stated that the value of the building at the time he was giving evidence on March 11, 1966, was about Rs. 3,50,000.00 and in 1959, when the property was requisitioned, the rate of the land near about Ajit Villa was Rs. 30/ to Rs. 35/ per sq. yard which had increased to about Rs. 55/ per sq. yard. In cross-examination he admitted that he had let out Ajit Villa to Director of Agriculture at Rs. 500/- per mensem after keeping to himself one big room and another small room. He went on to explain

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that the rate of rent of Rs. 500 was fixed tentatively as the department had no funds and the financial year was due to end. He further stated that the arrangement was for a temporary period as the department had to shift to Chandigarh. He admitted having written the document exhibit R-1 which was handed over to the Director of Agriculture and in that document only one room was mentioned as having been retained by him for his luggage. He further stated that the house was built in the year 1944-45 as far as he could recollect and that he had neither purchased nor sold any property in the area near about Ajit Villa. This was the entire evidence produced by the appellants which was not contradicted by any evidence produced by the State.

(10) The document, Exhibit R-1, is dated January 21, 1955, and is signed by Shri D. S. Grewal, who has filed the present appeal as the guardian of his minor sons and the attorney of the other two owners of the house. This document reads as under:—

“I have retained one room in the main building for storing my luggage and have agreed to give the remaining bungalow on Rs. 500 P. M., if so desired by the Director of Agriculture.”

It was admitted by Shri D. S. Grewal that he had given the house on rent to the Director of Agriculture as per the document Exhibit R-1 which means on or about January 21, 1955, that is, more than four years prior to the requisitioning order which is dated May 18, 1959. From these facts it follows and it is also admitted that the house was already on rent with the Director of Agriculture when it was requisitioned.

(11) The learned Senior Subordinate Judge has totally ignored the mandatory provision as mentioned in sub-section 2 (a) of section 8 of the Act while determining the rent which would have been payable for the use and occupation of the requisitioned property if it had been taken on lease for that period. The house in dispute is situated within the municipal limits of Ludhiana where the East Punjab Urban Rent Restriction Act is in force. The provision for the determination of fair rent is made in section 4 of the said Act. This section gives the manner in which fair rent has to be fixed in the case

of buildings in existence before January 1, 1939, and the buildings which are built thereafter. The learned Senior Subordinate Judge came to the conclusion that the house in dispute was built before 1939. He had, therefore, to fix the rent in accordance with the provisions of section 4 of the Rent Act. Instead of that, the learned Senior Subordinate Judge assessed the value of the building including the site at Rs. 1,34,035.00 and determined the rent as Rs. 838.00 per mensem, on the basis of $7\frac{1}{2}$ per cent per annum of the value determined. To this amount, he added Rs. 167.00, $\frac{1}{5}$ th of the said amount, on account of reasonable compensation in respect of the matters stated in section 8 (2) (b) of the Act, rounding off the figure to Rs. 1,000.00 per mensem.

(12) In the grounds of appeal, the value of the house as Rs. 1,34,035.00 determined by the learned arbitrator is challenged as arbitrary and it is submitted that the progressive increase in the market value of the house should have been taken into consideration. It has been prayed that the compensation for use and occupation of the house should be increased to Rs. 2,500.00 per mensem at least.

(13) The learned counsel for the appellants has relied on the following judgments :—

1. *Poonam Chand v. Tikam Chand* (2), wherein it was held that "in the absence of substantial evidence as to the rent payable in respect of the premises, a Court is justified in fixing the standard rent on the basis of spot inspection in accordance with the provisions of section 7(2)." The learned arbitrator inspected the spot and he determined the rent thereafter in the light of the evidence brought on the record. This judgment, however, is not applicable because it is not known whether the house was subject to a Rent Restriction Act and what the provisions of that Act were for the determination of the standard rent.

2. *Amiyo Pal Choudhry and others v. Province of Bengal* (3). This was a case for determination of compensation for use and occupation of a requisitioned premises under rule 75-A of the Defence of India Rules. This compensation had to be determined according to

(2) A.I.R. 1951 Ajmer 32.

(3) A.I.R. 1954 Cal. 551.

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the procedure prescribed by section 19(1)(d) and (e) of the Defence of India Act, 1939, reading as under :—

- “(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.
- (e) The arbitrator in making the award shall have regard to—
- (i) the provisions of sub-section (1) of section 23, Land Acquisition Act, 1894, so far as the same can be made applicable; and
- (ii) whether the acquisition is of a permanent or temporary character.”

This judgment is also inapplicable as there was no such direction, as is contained in section 8(2) (a) of the Act, to determine the recurring payment of a sum equal to the rent which would have been payable for the use and occupation of the property if it had been taken on lease.

3. *Haji Mohammad Ekramul Haq, v. The State of West Bengal*

(4). This judgment is also of no help because it concerned the assessment of compensation under section 19 of the Defence of India Act, 1939, wherein the provisions were entirely different from those contained in section 8(2)(a) of the Act.

4. *Paresh Chandra Chatterjee v. The State of Assam and another*

(5). This judgment is not applicable as in the Assam Act, the compensation had to be determined in accordance with the provisions of the Land Acquisition Act, 1894 and not on the basis of the rent that would have been payable for the requisitioned property if it had been taken on lease.

5. *Union of India v. Roshan Lal Gupta* (6), which was again a case for assessment of compensation under section 19 of the Defence of India Act. It was held, as per the head note, that—

“where property is compulsory requisitioned, the amount of compensation should not be determined solely on the basis

(4) A.I.R. 1959 S.C. 488.

(5) A.I.R. 1962 S.C. 167.

(6) I.L.R. (1960) 2 Pb. 119 (F.B.).

of fair rent as fixed under the Rent Control Laws. The figure so fixed is merely a piece of evidence which may be taken into consideration as giving an indication of the market rents; other circumstances must be taken into consideration also. The requisitioning authority cannot be deemed to be a tenant of the landlord and is, therefore, not governed by the rent laws. The fair rent as fixed by the Rent Controller is no more than a piece of relevant evidence. It certainly should not be taken as the sole criterion for determining compensation."

6. *Ravi Kanta v. The Punjab State* (7), is a Division Bench judgment of this Court and is the only judgment cited by the learned counsel for the appellants which directly covers the point. That was a case wherein compensation had to be determined under section 8 of the Act. It was argued before the learned Judges that in view of the provisions of clause (a) of sub-section (2) of section 8 of the Act, in addition to the amount which the claimant might be found entitled to under clause (b) of the sub-section, the arbitrator could not award him anything beyond the fair rent as determined under the provisions of the East Punjab Urban Rent Restriction Act, 1949, as the recurring payment for the period of requisition. For this submission, the learned counsel relied upon the observations of Dulat, J. in *Smt. Attar Kaur v. The State* (8), which were to the effect that compensation to be paid under section 8 of the Act could not exceed the lawful payable within the definition of the Rent Restriction Act. The case was referred to larger Bench by Gurdev Singh, J., because he doubted the soundness of the observations of Dulat, J., in view of the Full Bench judgment of this Court in *Union of India, v. Roshan Lal Gupta* (6), (supra). Khanna, J., with whom Mehar Singh, J. (as my Lord; the Chief Justice then was), concurred, after noticing the rival contentions, spoke for the Court as under:—

"I have given the matter my consideration and am of the view that if sub-section (2) of section 8 had stood by itself and there had been no other provision like clause (e) in sub-section (1), the contention of Mr. Sharma would have carried weight for it is expressly provided in sub-section (2) that the arbitrator, besides considering the sum which

(7) I.L.R. (1964) 2 Pb. 311.

(8) F.A.O. 90 of 1956, decided on 8th Nov. 1957.

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may be payable under clause (b) of sub-section (2), has to take into account recurring payment in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period. The words of clause (a) reproduced above, in my opinion, indicate that in the case of premises governed by the East Punjab Urban Rent Restriction Act, the rent allowed by that Act should be taken into consideration as a relevant factor in arriving at the figure of compensation for the requisitioned property. It would, therefore, follow that the arbitrator should have also regard in that contingency to the fair rent of the premises. Sub-section (2) however, is a part of section 8, of which clause (e) of sub-section (1) is also an integral part. Clause (e) makes it clear that in determining the amount of compensation for requisitioned premises, the arbitrator should award compensation which appears to him to be just and he should have regard to the circumstances of the case and the provisions of sub-section (2) so far as they are applicable. The language of clause (e) shows that in determining the amount of compensation for requisitioned property the arbitrator is not confined only to the factors mentioned in sub-clause (2), but can also take into account the other circumstances of the case. It is thereafter that the arbitrator is to assess the amount which appears to be just. Any other view, in my opinion, would have the effect of rendering the words 'which appears to him to be just' and 'he shall have regard to the circumstances of each case' in clause (e) nugatory."

Even according to this judgment of the Division Bench, the fair rent of the requisitioned premises as determined under the East Punjab Urban Rent Restriction Act is to be taken into consideration while determining the recurring payment for use and occupation of the premises during the requisitioned period. To that rent, the arbitrator can add a sum which he considers just having regard to all the circumstances. In my opinion, the arbitrator cannot give a go-by to the principles for the determination of compensation embodied in section 8(2) of the Act and determine the fair compensation on

the basis only of the capital cost of the building at the time of requisition. The legislature has given a statutory mandate by enacting section 8(2) of the Act as to mode in which the compensation has to be determined and the matters to be taken into consideration for such determination. After the compensation is determined in accordance with those principles, the arbitrator is left with a discretion to increase that amount according to the circumstances of the case as he may consider just. In so doing, the arbitrator has to exercise his judicial discretion in the matter.

(14) It will not be out of place to refer to the judgment of their Lordships of the Supreme Court in *The Corporation of Calcutta, v. Smt. Padma Debi and others* (9), the observations wherein are relevant to the decision of the point in issue in the instant case. The point for determination in that case related to the interpretation of the provisions of section 127(a) of the Calcutta Municipal Act, 1923, reading as under:—

“The annual value of land, and the annual value of any building erected for letting purposes or ordinarily let, shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent, for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent.”

The crucial words which their Lordships interpreted were “gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year”. Their Lordships referred to the provisions of the Rent Control Act under which the receipt of any rent higher than the standard rent fixed under that Act was made penal for the landlord. “Standard rent” was defined in section 2(10)(b) of that Act and the mode of its determination was prescribed in section 9. After noticing the various provisions of the Rent Control Act, their Lordships observed as under:—

“A combined reading of the said provisions leaves no room for doubt that a contract for a rent at a rate higher than the

standard rent is not only not enforceable, but also that the landlord would be committing an offence if he collected a rent above the rate of the standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let.

It is said that section 127(a) does not contemplate the actual rent received by a landlord, but a hypothetical rent which he can reasonably be expected to receive if the building is let. So stated the proposition is unexceptionable. Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a 'black market', a term euphemistically used to commercial transactions entered into between parties in defiance of law. In that situation, a statutory limitation of rent circumscribes the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit."

There is no doubt that the case before their Lordships of the Supreme Court was not the case of a requisitioned premises, but related to the determination of the property tax under the Calcutta Municipal Act. But the observations of their Lordships set out above clearly apply to the facts of the present case in view of the language of section 8(2)(a) of the Act. This will also be in consonance with the equality of law for all citizens as the landlord will be entitled to the same rent as he would have got if he had chosen his tenant voluntarily and that tenant had got the fair rent determined under the Rent Restriction Act which is the right given to him under that Act. Similarly, if the requisitioning authority had taken the requisitioned premises on rent on the date it was requisitioned as an ordinary tenant, he would have had the right to get the fair rent determined under the Rent Restriction Act. It is, therefore, necessary, in my view, to determine the fair rent of the premises under section 4 of the East Punjab

Urban Rent Restriction Act in order to determine the reasonable rent at which the requisitioned premises could be let for the requisitioned period. In fact, the arbitrator is to proceed to determine the compensation payable under section 8(2)(a) of the Act on the basis of the fair rent determined in accordance with the provisions of section 4 of the Rent Restriction Act. To the amount so determined, the arbitrator can add such amount as he may consider just under clause (e) of sub-section (1) of section 8 of the Act, having regard to the circumstances of the case, e.g., the nature of the use to which the requisitioned premises are put, or the recurring loss which the owners of the requisitioned premises suffer for providing for themselves any premises in lieu of the requisitioned premises, etc., etc. The increase under this clause has to be made in the exercise of judicial discretion of the arbitrator. Since the arbitrator has not proceeded on these lines, the award made by him cannot be upheld.

(15) There is another infirmity in the award of the arbitrator. In respect of the matters specified in section 8(2)(b) of the Act, the learned arbitrator has allowed a recurring sum as one-fifth of the rent otherwise determined by him. The compensation in regard to these matters cannot be of a recurring nature as they are incurred only once. The learned arbitrator shall have to determine the amount with regard to each matter mentioned in clause (b) of sub-section (2) of section 8 of the Act.

(16) For the reasons given above, this appeal is accepted and the award made by the arbitrator (Senior Subordinate Judge, Ludhiana), is set aside and he is directed to determine the compensation for use and occupation of the requisitioned premises afresh in accordance with the principles laid down in section 8 of the Act and in the light of observations made above. The learned arbitrator shall give an opportunity to the parties to adduce evidence for the determination of the fair rent under section 4 of the East Punjab Urban Rent Restriction Act and for compensation in respect of the items mentioned in section 8(2)(b) of the Act and also to bring to the notice of the arbitrator any special circumstances which may entitle the appellants to any increase in the rent determined under section 8(2) of the Act, having regard to section 8(1)(e) of the Act. The parties are left to bear their own costs of this appeal and are directed, through their counsel, to appear before the Senior Subordinate Judge, Ludhiana, on March 23, 1970.