to the estate of Mahan Kaur, deceased, being an heir of her father as provided under clause (d) of sub-section (1) of section 15 of the Act. Clause (a) or clause (b) of sub-section (2) of section 15 nowhere provides that if the property is inherited by a female Hindu either from her father or from her husband, then, it will only devolve upon her heirs and in the absence of any heirs as such, the property will be escheated to the State. As a matter of fact, if the property is inherited by a female Hindu either from her father-in-law or from her husband, only the order specified in sub-section (1) of section 15 of the Act is changed. In the present case, there being no heirs of the husband of Mahan Kaur, deceased, the property will devolve upon the heirs of her father which admittedly the plaintiff is. Thus, under both the contingencies, the plaintiff is entitled to succeed to the estate of Mahan Kaur, deceased.

8. As a result of the above discussion, this appeal succeeds and is allowed. The judgments and decrees of the Courts below are set aside and the plaintiff's suit is decreed with costs.

N. K. S.

Before S. S. Sandhawalia, C. J. & I. S. Tiwana, J.

GURCHARAN SINGH and others,—*Appellants.*

versus

THE UNION OF INDIA and another,—*Respondents.*

LETTERS PATENT APPEAL NO. 721 *of* 1981.

December 21, 1982.

The Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)—Section 8(1)(e)—Constitution of India 1950—Article 31-B and Ninth Schedule—Acquisition of Immovable property—Determination of 'just compensation' under section 8(1)(e)—Act not providing for payment of solatium—Solatium—Whether could be granted as part of 'just compensation'—Placing of the Act in the Ninth Schedule—Whether bars the grant of solatium while quantifying the compensation.

Held, that solatium essentially has to be treated as integral part of the compensation payable to a land owner on account of the acquisition of his land and if that is so, then clause (e) of

section 8(1) of the Act which enjoins on the Arbitrator to 'determine the amount of compensation which appears to him to be just' does not in any way disentitle him or the claimant to the solatium in addition to the market value of the land. It deserves to be highlighted that section 8 of the Act which incorporates the principles and method of determining compensation does not talk of 'market value' as is the case under the Land Acquisition Act, 1889. In case the Arbitrator finds while quantifying the compensation that 15 per cent of the market value be allowed to make it 'just compensation', there is no provision or principle which abhors him from doing so. The basic reason or justification for the grant of solatium at the rate of 15 per cent of the market value in terms of the Land Acquisition Act is the compulsory nature of acquisition of the property of a land owner. A land owner is equally helpless in matters of acquisition under the Act. Thus, in cases under the Act, if the Arbitrator deems it proper and fair in order to award just compensation to the land owner he should add up 15 per cent of the market value styling it as solatium or giving it any other nomenclature then the same cannot reasonably and plausibly be objected to. Therefore, the allowance of solatium or 15 per cent of the markat value of the suit land to make it fair and just compensation payable to the claimant cannot be said to be unjustified or violative of any principle or provision of the Statute. The placing of the Act in the Ninth Schedule of the Constitution does not make any difference to the question of determination of just compensation payable to the claimants. (Para 6)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated March 26, 1981 *passed by Hon'ble Mr. Justice M. R. Sharma, in F.A.O. No.* 397 *of* 1979 *modifying that of Shri S. S. Sohal, Senior Sub-Judge, Faridkot appointed arbitrator under section* 8(*i*)(*b*) *of the Requisitioning and Acquisition of Immovable Property Act,* 1952, *dated 26th May,* 1972 *awarding the compensation as under* :—

G. R. Majithia, Advocate with Salil Sagar, Advocate, *for the Appellant.*

Harphul Singh Brar, Advocate with G. S. Bal, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.—

(1) These 150 Letters Patent Appeals (Nos. 721 to 741, 743 to 748, 763 to 766, 767, 768 to 773, 872, 882 to 891, 914 to 931, 969 to 973, 987 to 989, 1000, 1001, 1038 and 1047 of 1981 filed by the land

owner-claimants and 377 to 381, 383, 385 to 391, 393, 397 to 399, 400, 401, 403 to 405, 407, 410 to 415, 434 to 436, 438 to 440, 442, 446 to 449, 450, 453, 454, 456 to 458, 461, 463 to 467, 469 to 471, 474, 475, 477, 479 to 489, 491 and 492 of 1982 filed by the Union of India) are directed against the same judgment of the learned Single Judge and are thus being disposed of together.

(2) An area measuring 1,646 Kanals 2 Marlas of land situated in three revenue estates of villages Lande Ke, Dosanjh and Moga Mehla Singh, near Moga, a sub-divisional headquarter was requisitioned by the authorities for a public purpose on December 1, 1965. Later in exercise of its power under section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short, the Act) the central government acquired this land in pursuance of a notification published on February 4, 1972. The Land Acquisition Collector categorised this land into three blocks, not essentially coinciding with the boundaries of the revenue estates for purposes of determining a fair compensation and fixed the rate of compensation primarily on the basis of the agricultural kind and quality of the land falling in different blocks. As the claimants did not feel satisfied with the adequacy of the compensation granted, they asked him to make a reference to the Arbitrator in terms of clause (c) of sub-section (I) of section 8 of the Act. The Arbitrator while maintaining the categorisation of land into above-noted three blocks enhanced the rate of compensation to some extent. Both the sides not feeling satisfied with this enhancement preferred appeals which as already pointed out, have been disposed of by the learned Single Judge through a common judgment now under appeal. *Vide* this judgment, the appeals preferred by the Union of India were allowed to a limited extent that the solatium granted by the Arbitrator at the rate of 15 per cent of the market value was set aside and in all other respects the appeals were dismissed. The appeals of the claimants were allowed by giving a further raise in the rate of compensation. Once again, as already pointed out, both the sides have come up in appeal. While the Union of India makes a grouse of the enhancement ordered by the learned Single Judge; the land owner-claimants clamour for a further increase in the same.

(3) After hearing the learned counsel for the parties at some length in the light of the evidence on record, we find that the determination of the rate of compensation by the learned Single Judge

is well supported by the evidence and is well justified. Neither of the two sides has been able to point out any violation of any relevant principle which has to be taken care of while determining the market value of the acquired land nor do we find any infirmity in the approach or the appreciation of evidence on record. We thus dismiss the State appeals as of no merit.

(4) So far as the appeals of the claimants are concerned, their learned counsel Mr. Majithia, urged that the learned Single Judge took a wholly erroneous view in disallowing solatium payable to the appellants. The learned Judge while upholding the order of the Arbitrator granted interest to the appellants at the rate of 6 per cent in the light of the observations made by the Full Bench of this Court in *Hari Kishan Khosla (dead) and others* v. *The Union of India and another,* (1) disallowed solatium with the following observations :—

> "The land owners will not be entitled to have any solatium because the requisition and acquisition of Immovable Property Act, 1952 (Act No. 30 of 1952) has now been placed under the Ninth Schedule of the Constitution of India and to that extent the judgment under appeal is set aside."

Vide this judgment of the Full Bench, clause (a) of section 8 (3) was found to be violative of Article 14 of the Constitution of India and was struck down. It deserves to be noticed that clause (b) of this sub-section had already been struck down by the Supreme Court in Union *of India* v. *Kamalabai* (2).

(5) To appreciate the argument, which has been raised on behalf of respondent-authorities by Shri Brar their learned counsel, and which appears to have prevailed with the learned Single Judge, it is proper to notice the provisions of sub-section (3) as it existed prior to its substitution,—*vide* Act No. 31 of 1968.

> "The compensation payable for the acquisition of any property under Section 7 shall be—
>
> (a) the price which the requisitioned property would have fetched in the open market, if it had remained in the

(1) A.I.R. 1975 Pb. & Hary. 74.
(2) AIR 1968 S.C. 377.

same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less."

The submission of Mr. Brar is that with the placing of the Act in the Ninth Schedule of the Constitution (entry 89) the Act as such has become immune from any attack, on the basis of the violation of any of the rights of a citizen specified in Part-III of the Constitution. The submission further is that this immunity has to be given effect with effect from the inception of the Act in view of the provisions of Article 31-B of the Constitution and any judgment, decree or order of any Court or Tribunal to the contrary has been rendered ineffective and has to be ignored. In a nutshell, the argument is that in spite of the Full Bench judgment in *Khosla's case* (supra) striking down clause (a) of section 8(3) of the Act, that clause has to be taken as part of the Act. According to the learned counsel, in the face of this proposition, the Act which does not envisage the grant of any solatium to a claimant whose land has been acquired, no solatium can be granted to the appellants in these cases. We, however, find that the conclusion of the learned counsel is not well merited.

(6) The short question that calls for determination is as to whether sub-section (3) of the Act as it stands after substitution,—*vide* Act No. 31 of 1968 or for that matter any other section of the Act militates against the grant of solatium to the claimants whose land has been acquired under the Act. It is not disputed before us in the light of *State* v. *Kailashwati*, (3) that solatium essentially has to be treated as integral part of the compensation payable to a land owner on account of the acquisition of his land. If that is so-as it is-then clause (e) of section 8(1) of the Act which enjoins on the Arbitrator to "determine the amount of compensation which appears to him to be just" does not to our mind in any way disentitle him or the claimant to the solatium in addition to the market value of the land. It deserves to be highlighted that section 8 of the Act which incorporates the principles and method of determining compensation does not talk of "market value" as is the case under the Land Acquisition Act, 1894. To our mind, in case

(3) AIR 1980 Pb. & Hary. 117.

the Arbitrator finds while quantifying the compensation that 15 per cent of the market value be allowed to make it "just compensation", there is no provision or principle which abhors him from doing so. The basic reason or justification for the grant of solatium at the rate of 15 per cent of the market value in terms of the Land Acquisition Act, 1894, is the compulsory nature of acquisition of the property of a land owner. A land owner is equally helpless in matters of acquisition under the Act. Thus in cases under the Act, if the Arbitrator deems it proper and fair in order to award just compensation to the land owner he should add up 15 per cent of the market value styling it as solatium or giving it any other nomenclature, the same cannot reasonably and plausibly be objected to. His keeping present to his mind the principles laid down in the Land Acquisition Act for the determination of compensation-without violating any of the mandates of the Act does not make his award unsustainable. This is more so in view of the weighty observations of the Supreme Court in a recent judgment in *P. C. Goswami* v. *Collector of Darrang* (4). That too was a case where certain piece of land was first requisitioned and later acquired under the Assam Land (Requisition and Acquisition) Act, 1948. Their Lordships without going in to the vires of the Act—which question to our mind neither arises in the cases in hand nor can be gone into in view of the placement of the Act in the Ninth Schedule of the Constitution observed as follows:—

> "There is, however, one contention advanced by Mr. Nandy which, in our opinion, deserves to be accepted. He contends that in the matter of payment of solatium, no discrimination can be made between acquisitions under the Assam Act and those made under the Land Acquisition Act. Section 4(3) of the Assam Act itself says that if a land is acquired under that Act, the State Government shall be empowered to apply to such land any of the provisions of the Land Acquisition Act, 1894. In a judgment (Judgment dated April 1, 1980 in Civil Appeal No. 848 of 1977 (reported in AIR 1980 SC 1438) given by this Court very recently, to which Mr. Nandy has drawn our attention, it was held that there is no justification for discriminating between an acquisition under one Act and an acquisition under another Act

(4) AIR 1982 S. C. 1214

is so far a payment of solatium is concerned. This should be more so in respect of an acquisition to which the State Government is empowered to extend the provisions of the Land Acquisition Act. Mr. Naunit Lal has not been able to controvert this position in view of the judgment to which we have referred above."

The fact that in that case the State Government was held entitled or empowered to extend the provisions of the Land Acquisition Act to the acquisitions under the Assam Land (Requisition and Acquisition) Act 1948 does not to our mind make any material difference for the reason that in these cases what the Arbirator is required to determine is not only the market value of the land acquired but a just compensation in terms of clause (e) of section 8(1) of the Act. This clause refers to three things, firstly the amount of compensation which appears to the Arbitrator to be just, secondly the circumstances of each case and thirdly the provisions of sub-sections (2) and (3) of this section. It does not indicate that one or the other of these three conditions is over riding or governs or controls the others. On the contrary, clause (e) deals with these concepts in equal terms. The effect of this clause, therefore, is that the Arbitrator himself determines the amount of compensation which to him appears to be just but in making the award he must have referred to the circumstances of each case and to sub-sections (2) (3). Sub-section (2) deals with the fixation of compensation payable for the requisition of any property. That is not the case here. Sub-section (3) as it presently stands only says that compensation payable for the acquisition of any property under section 7 shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition. It is no body's case here that the appellant-claimants are asking for any compensation on the basis of any improvement effected on the land in question, or other such factor brought about by the requisitioning authorities. The Arbitrator had admittedly assessed the "just compensation" on the date of acquisition (4th February, 1972) taking the condition of the property as it existed at the time of requisition (1st December, 1965). In such circumstances, the allowance of solatium or 15 per cent of the market value of the suit land as on February 4, 1972 to make it fair and just compensation payable to the appellants cannot be said to be unjustified or violative of any principle or provision of the Statute. The placing of the Act in the Ninth

Schedule of the Constitution does not make any difference to the question of determination of just compensation payable to the appellants.

(7) For the reasons recorded above, we allow the appeals preferred by the land owner claimants to the extent that over and above the amount granted to them by the learned Single Judge they would also be paid 15 per cent of that compensation by way of solatium to make that compensation as "just compensation". They are also held entitled to the proportionate costs of these appeals. In all other respects, their claims are declined. The State appeals also fail and are dismissed with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J., S. C. Mital and M. M. Punchhi, JJ.

BHAGAT SINGH SOHAN SINGH,—*Appellant.*

versus

SMT. OM SHARMA and others,—*Respondent.*

First Appeal from Order No. 159 *of* 1980.

November 23, 1982.

Motor Vehicles Act (IV of 1939)—Sections 110, 110-A to 110-F—Fatal Accidents Act (XIII of 1855)—Sections 1-A and 2—Motor accident—Claim for compensation by the dependants of the deceased-Dependants in receipt of insurance, provident fund, gratuity or pension benefits—Such benefits—Whether to be taken into consideration for determining compensation—Tribunal determining compensation under the Motor Vehicles Act—Whether exclusively governed by the provisions of the Fatal Accidents Act—Guidelines for determining just compensation.

Held, that the plain language of section 110-B of the Motor Vehicles Act, 1939 warrants the Tribunal to determine the amount of compensation which appears it to be just. In essence, therefore, the dependants are entitled to a just compensation for the loss. In a way, the question is liberated from narrow technicality and has to be decided on the larger perspectives of justice, equity and good conscience. The language of such wide amplitudes used in section 110-B of the Act, undoubtedly gives the Court some leverage and