

Act could not be challenged under Article 19 of the Constitution during the continuation of the emergency. It is patent from the body of the judgment that the specified issue of pre-emergency legislation and delegated legislation emanating therefrom was never even remotely raised or considered by the Bench. Those observations are, therefore, clearly distinguishable. Even if it is otherwise, I am clear in my mind that the observations of Khanna J. are now directly contrary to what their Lordships have subsequently held in the cases (1) *Thakur Bharat Singh*, (2) *Bennett Coleman & Co.*; and (3) *Shri Meenakshi Mills Ltd.* (supra) to which detailed reference has earlier been made in this judgment. In view of this, that view cannot possibly hold the field any longer.

In fairness to the learned counsel for the petitioner it may be mentioned in passing that he had contended that the Stock Order was governed by section 3(2) clause (f) thereof and was bad because it travelled beyond the scope or violated the complementary provisions of section 3-B of the Essential Commodities Act. However, Mr. Bhandari on behalf of the State had taken up a categorical stand that the action was not sought to be taken under section 3(2) (f) and therefore section 3-B was not at all attracted. In view of this stand I deem it wholly unnecessary to examine this contention of the learned counsel for the petitioner. I may further notice that on behalf of the petitioner, no challenge to the Punjab Wheat Procurement (Levy) Order 1974, annexure P. 1, to the petition was made during the course of the arguments.

The Punjab Wheat (Restrictions of Stock by Producers) Order 1974, as hereby struck down. There will be no order as to costs.

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K. S. K.

APPELLATE CIVIL

*Before Bal Raj Tuli and A. S. Bains, JJ.*

SHRI SANGIT MOHINDER SINGH.—*Appellant.*

*versus*

THE PUNJABI UNIVERSITY, PATIALA,—*Respondent.*

Regular First Appeal No. 82 of 1968.

January 24, 1975.

*Land Acquisition Act (I of 1894)—Sections 18 and 25(1)—Code of Civil Procedure (Act V of 1908)—Order 41, Rule 22—Acquisition*

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*of Land by the State for a Company—Appeal by the Claimant against the award of the District Judge in reference under section 18—State—Whether a necessary party to the Appeal—Such Appeal filed prior to the appeal by the State—Whether can be treated as Cross-Objections to the State Appeal—Claim for compensation consisting of various items—Court—Whether can enhance compensation in respect of some items subject to the overall limit of the amount claimed.*

*Held*, that in a case where land is acquired by the State under Part VII of the Land Acquisition Act, 1894 for a Company, the State is a necessary party to an Appeal filed by the person whose land is acquired against the award given by a District Judge under section 18 of the Act. Cross-objection are preferred to an appeal which means that the appeal must have been filed prior to the filing of the cross-objections. In a case where a claimant of compensation under the Act files an appeal against an award given by the District Judge under section 18 of the Act before the State appeal against the same award, the appeal of the Claimant cannot be treated as cross-objections to such State appeal.

*Held*, that section 25(1) of the Act only means that the total amount that may be awarded by the Court on a reference under section 18 of the Act shall not exceed the total amount claimed by the claimant under section 9 of the Act. Where the claim consists of various items, it is open to the Court to enhance the compensation in respect of some items. The overall limit is that the amount of compensation awarded is not to exceed the total amount of compensation claimed by the claimant in reply to a notice under section 9 of the Act.

*Regular First Appeal from the order of the Court of Shri Surjit Singh Raikhy, Additional District Judge, Patiala, dated December 30, 1967, awarding the claimant compensation at the rate of Rs. 1,500 per bigha for land measuring 31 bighas and 13 biswas comprised in Khasra Nos. 45, 46, 47, 48, 51 and 52 and at the rate of Rs. 1,000 per bigha for the remaining land measuring 9 bighas and 19 biswas comprised in Khasra Nos. 49 and 50 (the total amount of compensation for the land thus comes to Rs. 57,425.00), Rs. 2,000 as compensation for the well, Rs. 1,850 as compensation for the building and Rs. 3,498.20 as compensation for the trees. The total amount of compensation thus granted is Rs. 64,773.20. The claimant shall be entitled to compulsory acquisition charges at Rs. 15 per cent and interest at 4 per cent per annum on the enhanced compensation from the date of taking of possession till the payment is made.*

K. N. Tewari, Advocate, for the appellant.

Atma Ram, Advocate with Mr. S. S. Dhaliwal, Advocate, for the respondents.

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**JUDGMENT**

TULI, J.—This judgment will dispose of R.F.A. 82 of 1968 *Sangeet Mohinder Singh v. The Punjabi University, Patiala*, and R.F.A. 115 of 1968 *State of Punjab and another v. Sangeet Mohinder Singh*, as they are cross appeals arising out of the award of the learned Additional District Judge, Patiala, dated December 30, 1967.

The Punjab Government acquired about 316 acres of land situated in villages Sheikhpura Kamboan, Nasinpur, Karheni and Phaloli, by notification dated March 27, 1963. The land of Sangeet Mohinder Singh (hereinafter called the claimant), measuring 41 *bighas* 12 *biswas* formed part of the acquired land. Not satisfied with the award made by the Land Acquisition Collector, the claimant filed an application under section 18 of the Land Acquisition Act (hereinafter referred to as the Act) for reference of the dispute with regard to the compensation to the Court of District Judge, Patiala. That reference was heard and decided by the learned Additional District Judge, Patiala. Both the parties have felt aggrieved and filed the present appeals which are being disposed of together.

The learned counsel for the State of Punjab and the Punjabi University has raised a preliminary objection to the maintainability of the appeal filed by the claimant. The claimant in his appeal only made the Punjabi University respondent and not the Punjab State. The land was acquired by the State of Punjab and not by the Punjabi University. It has been held by a learned Single Judge of the Andhra Pradesh High Court in *The Andhra Pradesh Agricultural University v. Begari Sayanna* (1) as under:—

“Part VII of the Act deals with acquisition of land for companies and provides for agreements to be entered into by the company with the Government for the payment of the cost of the acquisition, among other matters. This brief survey of the provisions of the Act shows that the land is acquired by the Government, the land vests in the Government after acquisition, compensation has to be paid to the claimant by the Government and it is to the Government alone that a claimant must look for payment of compensation. If any issue is raised by the claimant the issue has to be settled with the Government only and

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(1) A.I.R. 1974 A.P. 299.

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none else. The lis, if any, is between the Government and the claimant. The person for whose benefit the land is acquired and who may ultimately pay to the Government the cost of acquisition has nothing to do with the lis."

According to this dictum, the Punjab State was a necessary party to the appeal as the claimant could only claim enhanced compensation from the Punjab State and not from the Punjabi University. There is thus merit in the preliminary objection of the learned counsel for the Punjab State and the Punjabi University to the effect that the appeal filed by the claimant is not competent.

The learned counsel for the claimant, however, submits that the appeal can be considered as cross objections to R.F.A. 115 of 1968 filed by the State of Punjab and Punjabi University and reliance is placed on a Full Bench judgment of the Lahore High Court in *Labhu Ram and others v. Ram Partap and others* (2), wherein the following observations occur:—

"The third question whether the cross-appeal submitted by Labhu Ram and others can be treated as cross-objections is also not free from conflict of authority. Under Order 41, rule 22, Civil Procedure Code, cross-objections are entertainable if filed within one month from the date of service on the respondent or his pleader of notice of the day fixed for hearing the appeal or within such further time as the appellate Court may see fit to allow. Counsel for the appellants urges that inasmuch as their appeal had been filed after the appeal of Ram Partap and others had been admitted to a hearing and notice to the respondents had been issued, it could be heard as cross-objections to the appeal of Ram Partap and others, even if as appeal it was not competent. Reliance in this connection is placed on *Dasrupal Bhagchand Lal v. Narayan Mahadeo* (3) *Bawa Singh v. Thakur Singh* (4) and *Bhagat Ram v. Raghbar Dial* (5). Counsel for the respondents on the

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(2) A.I.R. 1944 Lahore 76.

(3) A.I.R. 1937 Nag. 105.

(4) A.I.R. 1922 Lahore 433.

(5) A.I.R. 1925 Lahore 57.

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other hand, relied on a Bench judgment of this Court as reported in *Mt. Koshalia v. Riaz-ud-Din* (6), and urges that this could not be done inasmuch as the cross-appeal had not been filed after the service of notice on Labhu Ram and others but before. That a cross-appeal can be treated as cross-objections admits of no doubt and there is no authority contrary to the rulings relied upon by the appellants in this connection. The only question is whether the right of a respondent to file his cross-objections is so restricted as is adumbrated in A.I.R. 1936, Lahore 362. In other words, could it be the intention of the Legislature in enacting Order 41 rule 22 to specify the point of time in which such cross-objections could be filed at both ends? After giving this matter my careful consideration, I have reached the conclusion that it could serve no purpose to restrict the right of a respondent to prefer his cross-objections in the manner suggested. No doubt, they cannot be presented after the expiry of one month from the date of the service of the notice on him or his pleader, but the right to submit his cross-objections, in my view, accrues to a respondent as soon as an order is made issuing notice of the date of hearing of the appeal to him and it is not necessary for him to wait until the service is actually effected on him. It is even open to him to appear in a Court of appeal on the date of hearing and present his objections there and then though not served at all. To put the restricted interpretation upon this provision of law would create situations which may look anomalous. I would, therefore, hold that, in the circumstances of this case, the cross-appeal presented by Labhu Ram and others could be treated as cross-objections.

Counsel for the respondents, however, argues that inasmuch as the list of parties attached to the cross-objections did not contain the names of the two respondents, Krishen Kumar and Inder Kumar, that defect would still be fatal to the cross-objections, as they would not be heard as against those two respondents. There is, however, no substance in this objection. The cross-objections are always preferred to an appeal that is pending and the title of the cross-objections remains the same as that of the appeal. It is

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(6) A.I.R. 1936 Lahore 362.

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admitted that the names of these respondents appear in that memorandum of appeal and consequently the appellants' cross-objections in respect of the decree granted against them would be entertainable even as regards those respondents."

According to this judgment, the cross-objections are preferred to an appeal which means that the appeal must have been filed prior to the filing of the cross-objections. In the instant case, the claimant had filed his appeal before the State of Punjab and the Punjabi University filed their appeal and, therefore, his appeal cannot be treated as cross-objections to the appeal of the Punjab State and the Punjabi University. Moreover, we find no merit in the appeal of the claimant even if it is considered as cross-objection to the appeal filed by the State of Punjab and the Punjabi University.

The following issues were framed by the learned Additional District Judge for determination of the amount of compensation to which the claimant was entitled:—

- (1) Whether the market value of the land acquired on 27th March, 1963, was more than what had been awarded by the Land Acquisition Collector and if so, what was that price?
- (2) Whether the claimant is entitled to enhanced compensation for the building and tube-well existing on the land acquired, if so, how much?
- (3) Whether the claimant is entitled to enhanced compensation in respect of the fruit-trees standing in the land acquired and if so, to what extent?
- (4) Whether the claimant filed a claim in pursuance to the notice served on him under section 9 of the Land Acquisition Act, if so, what is its effect?
- (5) In case no such claim was filed, whether the claimant is entitled to any enhancement and this petition is not barred under section 25 of the Land Acquisition Act?
- (6) Relief.

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Under issue No. 1 it has been held that the claimant was entitled to the market value of the land comprised in Khasra Nos. 45, 46, 47, 48, 51 and 52 (total 31 *bighas* and 13 *biswas*) at the rate of Rs. 1,500 per *bigha* and for the land comprised in Khasra Nos. 49 and 50 (9 *bighas* and 19 *biswas*) at the rate of Rs. 1,000 per *bigha*. This market value has been determined on the basis of the instances considered in the case of Ravendra Singh. We have upheld the award of the Additional District Judge with regard to that land in R.F.A. No. 174 of 1968, decided today. For the reasons stated in that judgment, the decision of issue No. 1 by the Additional District Judge is affirmed. There is thus no scope either for enhancement or reduction in the amount of compensation with regard to the land.

However, the learned counsel for the State of Punjab and the Punjabi University has submitted that in his claim filed in pursuance of the notice under section 9 of the Act, the claimant had claimed only Rs. 50,000 for the land whereas the learned Additional District Judge has allowed Rs. 57,425 which he could not do in view of the provisions of section 25 of the Act. According to that provision, the claim for compensation of the land could not exceed Rs. 50,000. We are of the opinion that the learned counsel has misread that provision. Sub-section (1) of section 25 is in the following terms:—

“25(1). When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.”

It only means that the total amount that may be awarded by the Court on a reference under section 18 of the Act shall not exceed the total amount claimed by the claimant under section 9 of the Act. It may be that the claim consists of various items and it is open to the Court to enhance the compensation in respect of some items and reduce it in respect of others. The overall limit is that the amount of compensation awarded is not to exceed the total amount of compensation claimed by the claimant in reply to a notice under section 9 of the Act. A reference in this connection may be made to the observations of a Division Bench of the Calcutta High Court in *Charu Prokash Ghosh v. State of West Bengal* (7), which

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(7) A.I.R. 1967 Cal. 631.

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are contained in para 12 of the report and are pertinent on the point:—

“It was urged further on behalf of the State that, in any view, the claimant was not entitled to any amount beyond Rs. 1,50,000 for the structures as that was the figure, mentioned by the claimant for the said structures in his petition of reference. This objection was overruled by the learned Land Acquisition Judge upon the view that the claimant was not restricted to the different valuations for the different items in his petition of reference, although he might be held limited to the amount, claimed for the entire property in the said petition. This view appears to us to be well supported by the decision of this Court, reported in *Province of Bengal v. P. L. Nun and K. C. Pal*, Receivers appointed by the High Court in Suit No. 252 of 1927 (8), explaining the earlier decision of this Court, reported in *Province of Bengal v. Ram Chandra* (9) in the light of the two Privy Council decisions, reported in *Pramatha Nath Mullick v. Secretary of State* (10), and *V. Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapattam* (11). We are, accordingly, of the view that the State’s objection to the award of the learned Land Acquisition Judge is unsustainable and its appeal F.A. No. 133 of 1965, would fail.”

The objection is thus repelled.

The claimant had claimed Rs. 10,000 on account of the value of the fruit trees in his application under section 18 of the Act against which the learned Additional District Judge allowed Rs. 3,498.20. It is worthy of note that in his claim before the Land Acquisition Collector under section 9 of the Act, the claimant had claimed only Rs. 2,000 as the price of the fruit trees. The learned Additional District Judge based this value on the report of a fruit specialist which has not been shown to be erroneous. We, accordingly, affirm the decision of the learned Additional District Judge on the point and hold that there is no scope either for enhancement or reduction.

A sum of Rs. 15,000 was claimed on account of the price of a tubewell in the claim filed before the Land Acquisition Collector

(8) A.I.R. 1945 Cal. 312.

(9) A.I.R. 1944 Cal. 247.

(10) 57 Ind. App. 100=A.I.R. 1930 P.C. 64.

(11) 66 Ind. App. 104=(A.I.R. 1939 P.C. 98).



but he found that there was no tubewell on the spot and none was acquired by the State Government. In his application under section 18 of the Act the claimant claimed a sum of Rs. 8,000 on account of the price of the tubewell. The learned Additional District Judge has observed that the entries in the Khasra Girdawaris support the statement of Shri Preet Mohinder Singh, the father of the claimant, about the existence of a tubewell on the land but there was no evidence as to the value of the tubewell and, therefore, its price could not be determined. He allowed Rs. 2,000 on account of compensation for a well and in view of what has been stated by the learned Additional District Judge, there is no scope either for enhancement or reduction in the amount.

The only other claim relates to a building on the acquired land. The claimant demanded Rs. 3,000 for the same but the Collector awarded a sum of Rs. 700 only. Shri Raj Kumar Goel, Draftsman, prepared plan, Exhibit P. 5, and estimated the cost of construction of the building as Rs. 1,850 in his report, Exhibit P. 6. He appeared as P.W. 4 to support his report. That report was accepted in the absence of any rebuttal on behalf of the State of Punjab. There is, therefore, no scope either for enhancement or reduction in the amount of compensation for the building.

As a result of the above discussion, we find no merit in these appeals which are dismissed but the parties are left to bear their own costs.

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B.S.G.

APPELLATE CIVIL

Before M. L. Verma, J.

THE CONTROLLER OF STORES, PUNJAB, CHANDIGARH  
AND ANOTHER,—Appellants

versus

M/S KAPOOR TEXTILE AGENCIES, CLOTH MERCHANTS  
AND COMMISSION AGENTS,—Respondents.

F.A.O. No. 197 of 1973.

January 24, 1975.

*Arbitration Act (X of 1940)—Sections 2 and 39—Interpretation of—Arbitration agreement providing for appointment of an arbitrator by one of the parties—Court not appointing the arbitrator named*