A

UNION OF INDIA

v.

KAMLABHAI HARJIWANDAS PAREKH & OTHERS

September 7, 1967

B [K. N. WANCHOO, C.J., R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.]

Requisitioning and Acquisition of Immovable Property Act, 1952, s. 8(3)(b)—*Compensation—Arbitrator given option to fix market value of property at the date of acquisition or twice the market value of the property at the time of requisition whichever was less —Section whether void as violative of Constitution of India, Art.* 31(2).

C A plot of land in Bombay belonging to the husband of the first respondent was requisitioned by Government for military purposes in 1942 under r. 75A(1) of the Defence of India Rules. In 1952 a notification was issued under s. 7(1) of the Requisitioning and Acquisition of Immovable Property Act enacted on March 14, 1952. According to the notification the land was to be acquired by Government and would vest in the Government from the date of the notification. In the absence of an agreement between the parties as to D compensation, the Chief Judge of Small Causes, Bombay was appointed as arbitrator under s. 8 of the Act. Shortly thereafter the first respondent preferred a petition in the High Court wherein it was prayed that s. 8(3) of the Act should be declared *ultra vires*, and the arbitrator should be directed to forbear from awarding compensation on the principles laid down in the section. Under the impugned section the arbitrator could award as compensation the E market value of the property at the date of acquisition or twice the market value of the property at the time of requisition, whichever was less. After the hearing before the High Court the challenge was limited to s. 8(3)(b) only. The High Court held s. 8(3)(b) to be *ultra vires* Art. 32 of the Constitution and as such void. The Union of India appealed with certificate under Art. 133(1)(b).

HELD: (i) The Act was passed before the Fourth Amendment F Act of the Constitution in 1955. Its *vires* were to be decided on the anvil of the Constitution as it stood before the said amendment. [467H]

(ii) The mode prescribed in cl. (b) of s. 8(3) is arbitrary. It has no relation to the value of the land on the date of the notice under s. 7 which may be many years after the date of requisition. It is impossible to say that the date of requisition has or can have any connection with the date of acquisition under s. 7. In assessing G the just equivalent of the value of the property at twice the price which the requisitioned property would have fetched in the open market had it been sold on the date of requisition, the arbitrator would be acting arbitrarily inasmuch as he would be proceeding on a formula for which there is no rational basis. [472D-473B]

Clause (b) of s. 8(3) leaves no choice of assessing the value in terms of cl. (a). The expression 'have regard to' in sub-cl. (e) H of sub-s. (1) of s. 8 therefore did not give the arbitrator any freedom of considering the two modes laid down in sub-s. (3) and accepting the one which he thought fair. [473C]

State of West Bengal v. *Mrs. Bela Banerjee and Ors.*, [1954] S.C.R. 558; *State of Madras* v. *D. Namasivaya Mudaliar*, [1964] 6 S.C.R. 936; *P. Vajravalu Mudaliar* v. *Special Deputy Collector*, [1965]

1 S.C.R. 614; *N. B. Jeejeebhoy* v. *Assistant Collector*, [1965] 1 S.C.R. 636; and *Ryots of Gerabandho* v. *Zamindar of Parlakimedi*, 70 I.A. 129, considered. A

East Ramnad Electric Distribution Co. v. *State of Madras*, [1963] 2 S.C.R. 747, distinguished.

In holding that the petitioner before it was not guilty of any laches the High Court was deciding a matter within its discretion. This Court will not normally interfere with the exercise of such discretion. [475C] B

Zacharia v. *Republic of Cyprus* [1963] A.C. 634, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1564 of 1966.

Appeal from the judgment and order dated August 7, 1964 of the Bombay High Court in Misc. Petition No. 378 of 1962. C

G. N. Dikshit, S. P. Nayar for *R. H. Dhebar*, for the appellant.

S. Sorabji, A. J. Rana, P. C. Bhartari and *J. B. Dadachanji* for respondent No. 1.

I. N. Shroff, for intervener No. 1. D

J. B. Dadachanji for intervener No. 2.

The Judgment of the Court was delivered by

Mitter, J. This is an appeal by a certificate under Art. 133(1)(c) of the Constitution granted by the High Court of Bombay against the judgment of that court dated August 7, 1964 in Miscellaneous Petition No. 378 of 1962 declaring cl. (b) of sub-s. (3) of s. 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) including the words "whichever is less" *ultra vires* Art. 31(2) of the Constitution and as such void. E

F

The facts are as follows. On May 2, 1942 a plot of land bearing S. No. NA-29-A of Juhu, Bombay, was requisitioned for the purposes of the Union of India under r. 75-A(1) of the Defence of India Rules for military purposes. It is common case that this plot of land was acquired for the construction of a road leading to a military aerodrome at Juhu during the last war. The land originally belonged to the husband of the first respondent who claims to have succeeded to it by virtue of a will. The owner of the plot was receiving compensation for the requisition until December 29, 1952 when a notification was issued under s. 7(1) of the Requisitioning and Acquisition of Immovable Property Act enacted on March 14, 1952, hereinafter referred to as the Act. The notification was to the effect that the land was being acquired by the Government of India, Ministry of Works, Housing and Supply, that it would vest in the Government from the date of the notification and there was a declaration of vesting in the notification itself. As a result of the notification, the owner of the G H

A land became entitled to claim compensation. The second respondent, hereinafter referred to as the Collector of Bombay, offered compensation at the rate of Rs. 11 per sq. yard on February 20, 1961. The petitioner, the first respondent herein, claimed at the rate of Rs. 100 per sq. yard plus the usual 15 % solatium for compulsory acquisition. In the absence of an agreement between the parties, the Chief Judge, Court of Small Causes, Bombay, was appointed as arbitrator under s. 8 of the Act. The arbitrator gave notice to the petitioner to put in her claim and also to the Government of India to put in its statement of valuation. The petitioner claimed compensation at the rate of Rs. 75 per sq. yard plus 15% solatium for compulsory acquisition while the offer of the State was only Rs. 11 per sq. yard without any solatium. Before the arbitrator could make much headway in the matter, the first respondent preferred a petition in the High Court of Bombay on September 18, 1962 wherein the main prayers were (1) a declaration that the provisions of s. 8(3) of the Act were unconstitutional as infringing Arts. 31(2), 19(1)(f) and 14 of the Constitution of India, and (2) the issue of an appropriate writ directing the arbitrator to forbear from awarding compensation on the principles laid down in s. 8(3) of the Act and commanding him to award just and proper compensation in accordance with law.

The Union of India filed an affidavit in opposition affirmed by an Executive Engineer of the Bombay Aviation Division wherein many and diverse objections were raised to the petition. Before the High Court, counsel for the petitioner confined the challenge to the validity of s. 8(3) of the Act to cl. (b) only. The arguments advanced on behalf of the Union of India were : (1) that s. 8(3) of the Act did not infringe any of the Articles of the Constitution mentioned in the petition and (2) that the petitioner was entitled to no relief because of the delay in presentation of the petition to the High Court.

The High Court negatived the contentions put forward on behalf of the Union of India and allowed the petition holding that cl. (b) including the words "whichever is less" of sub-s. (3) of s. 8 of the Act was *ultra vires* Art. 31 of the Constitution and as such void. The court gave a direction that the assessment of compensation would have to be made subject to this declaration. Hence the appeal.

In order to appreciate the contention put forward on behalf of the Union of India, it is necessary to refer to a few sections of the Act. The preamble shows that it was an Act to provide for the requisitioning and acquisition of immovable property for the purposes of the Union. As originally enacted, it was to remain in force for a period of twelve years from the date of its institution, but subsequently its life has been prolonged till the 14th of March 1970. S. 24 of the Act repealed several enactments therein mentioned, but any property which immediately before such repeal

was sbuject to requisition under the provision of any of the said Acts was to be deemed to be property requisitioned under s. 3 of the Act and all the provisions of the Act were to apply accordingly. It is agreed between the parties that the property which was originally requisitioned in 1942 was to be treated as requisitioned under s. 3 of the Act. Under s. 7(1) it became competent to the Central Government, if it was of opinion that it was necessary to acquire the property already subjected to requisition for a public purpose, to acquire the same by publishing in the Official Gazette a notice to the effect that the Central Government had decided to acquire the property in pursuance of the section. The proviso to this sub-section is to the effect that before such a notice is issued the Central Government must call upon the owner or other persons interested in the property to show cause why the same should not be acquired and the order under the section could only be made after considering the cause, if any, shown and giving the parties an opportunity of being heard. Under sub-s. (2) of the section,

> "When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end."

Sub-s. (3) of the section mentions the circumstances which must obtain for a property to be acquired under the section.

S. 8 of the Act has a marginal note "principles and method of determining compensation". Under cl. (a) of sub-s. (1) of s. 8 compensation is to be paid in accordance with the agreement, if any, reached between the owner and the Government. If no such agreement can be reached, an arbitrator has to be appointed for the purpose in terms of cl. (b). Under cl. (c) it is open to the Central Government to nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator in which case the person to be compensated has a similar right of nominating his assessor. Under cl. (d) the Central Government and the person to be compensated must state what in their respective opinion is a fair amount of compensation, at the commencement of the proceedings. As the main contention hinges on the interpretation of sub-cl. (e) of sub-s. (1) read with sub-ss. (2) and (3), it is necessary to set out the same in extenso. S. 8(1)(e) reads as follows:

> "Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—
>
> (a) to (d) . . . . . .

A (e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;"

B

Sub-ss. (2) and (3) read:

"(2) The amount of compensation payable for the requisitioning of any property shall consist of—

C (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 D of the following matters, namely:—

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

E (iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages (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 F which it was at the time of requisition.

(3) 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 same condition as it was at the time of requisi- G tioning 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 Act was passed before the Fourth Amendment Act of H the Constitution in 1955. Its *vires* is to be decided on the anvil of the Constitution as it stood before the said amendment. Several decisions of this Court have laid down the principles for testing the *vires* of State Acts providing for compensation for acquisition of land for public purposes.

In *The State of West Bengal* v. *Mrs. Bela Banerjee and others*(1) the Court examined the question as to what compensation for property acquired meant under Art. 31(2) of the Constitution. There the impugned West Bengal Act of 1948 in effect provided that in determining the amount of compensation to be awarded for land acquired in pursuance of the Act, the excess of the market value of the same on the date of the publication of the notification under sub-s. (1) of s. 4 of the Land Acquisition Act for the notified area over its market value on 31st December 1946, shall not be taken into consideration. Virtually this meant that no matter when the property was acquired, the owner could get compensation which was equivalent to its value on 31st December, 1946. This date was taken in view of the fact that large-scale immigration of people from East Bengal to West Bengal had taken place round about that date. There, the Attorney-General had argued that the word "compensation" in the context of Art. 31(2) read with entry 42 of List III did not mean in any rigid sense equivalence in value but had a reference to what the legislature might think was a proper indemnity for the loss sustained by the owner. Negativing this argument Sastri, C. J. said at p. 563:

> "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court."

The Court held that the fixing of the market value on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition was arbitrary and not in compliance with the requirements of Art. 31(2). The learned Chief Justice went on to add:

> "The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing

(1) [1954] S.C.R. 558.

A of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary..... Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appro-
B priated."

In *State of Madras* v. *D. Namasivaya Mudaliar*(1) the provision as to compensation for compulsory acquisition of land under Madras Lignite (Acquisition of Land) Act, 1953 came up for consideration by this Court. The point canvassed before the Court with which we are concerned was, whether the provision with
C regard to compensation to be assessed on the market value of the land prevailing as in August 28, 1947 and not on the date on which notification was issued under s. 4(1) of the Land Acquisition Act was in violation of Art. 31(2). On the assumption that April 28, 1947 was the date on which lignite deposits were discovered in the area to which the Act was extended, the Court observed:

D ".....there is no true relation between the acquisition of the lands in these cases and fixation of compensation based on their value on the market rate prevailing on April 28, 1947. Fixation of compensation for compulsory acquisition of lands notified many years after that date, on the market value prevailing on the date on which
E lignite was discovered is wholly arbitrary and inconsistent with the letter and spirit of Art. 31(2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1955. If the owner is by a constitutional guarantee protected against expropriation of his property otherwise than for a just monetary equivalent, a law which authorises acquisition of land not for its true value,
F but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some time in future, must be regarded as infringing the fundamental right".

As learned counsel for the appellant relied on certain ob-
G servations in this judgment at page 944, the same may be quoted here :

"The right which is guaranteed is undoubtedly the right to a just indemnification for loss, and appreciation in the market value of the land because of the proposed
H acquisition may in assessing compensation be ignored. Even the Land Acquisition Act provides for assessment of compensation on the basis of market value of the land not on the date on which interest of the owner of land

(1) [1964] 6 S.C.R. 936.

is extinguished under s. 16, but on the basis of market value prevailing on the date on which the notification under s. 4(1) is issued. Whether this rule in all cases irrespective of subsequent developments ensures just indemnification of the expropriated owner so as to be immune from attack, does not call for comment in this case. But any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of the notification under s. 4(1), must *prima facie*, be regarded as denying to him the true equivalent of the land which is expropriated and it is for the State to show that fixation of compensation on the market value on an anterior date does not amount to a violation of the Constitutional guarantee." A B C

After noting that it was a matter of common knowledge that land values had risen steeply after the last world war, the judgment proceeded :

"To deny to the owner of the land compensation at rates which justly indemnify him for his loss by awarding him compensation at rates prevailing ten years before the date on which the notification under s. 4(1) was issued amounts in the circumstances to a flagrant infringement of the fundamental right of the owner of the land under Art. 31(2) as it stood when the Act was enacted." D E

On October 5, 1964 judgments were delivered in two cases where the law on the subject came to be examined again. In *P. Vajravelu Mudaliar* v. *Special Deputy Collector*(1) it was said at p. 625:

"It may, therefore, be taken as settled law that under Art. 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955, a person whose land was acquired was entitled to compensation *i.e.* a "just equivalent" of the land of which he was deprived." F

It is to be noted that in *Vajravelu Mudaliar's* case(1) the Constitutional validity of the Land Acquisition (Madras Amendment) Act, 1961 (Act 23 of 1961) was before this Court. In *N. B. Jeejeebhoy* v. *Assistant Collector*(2) the requisite notification under s. 4 of the Land Acquisition Act was issued in May 1948 and that under s. 6 in August 1949, the possession of the land being taken in December 1949. The Land Acquisition Officer and the District Court awarded compensation in accordance with the Land Acquisition (Bombay Amendment) Act, 1948 on the basis of the value of the lands as on January 1, 1948 and not upon G H

(1) [1965] 1 S.C.R. 614.
(2) [1965] 1 S.C.R. 636.

A the value on the date of the s. 4 notification. A reference was made to the earlier cases and it was said that *Bela Banerjee's* case(1) laid down the following principles : (1) The expression "compensation" in Art. 31(2) of the Constitution meant just equivalent of what the owner has been deprived of; (2) The principles laid down by the legislature shall be only for the determination
B of the compensation so defined; (3) Whether the principles have taken into account the relevant elements to ascertain the true value of the property acquired is a justiciable issue; and (4) The fixation of an anterior date for the ascertainment of the value of the property acquired without reference to any relevant circumstances which necessitated the fixing of an earlier date for the purpose of ascertaining the real value is arbitrary.

C With regard to Art. 31(2) a twofold argument was put up before us by learned counsel for the appellant. It was argued that cl. (b) of s. 8(3) should be construed with reference to s. 8(1)(e). It was urged that the first portion of sub-s. (1) cl. (e) reading

> "the arbitrator shall, after hearing the dispute, make an
D award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid;"

was mandatory while the succeeding portion reading:

> "and in making the award, he shall have regard to the
E circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;"

was merely directory. It was said that the use of the expression "shall have regard to" so far as sub-ss. (2) and (3) were concerned only indicated that the arbitrator was to keep the said provisions in mind but he was not bound to guide himself strictly thereby.
F According to the shorter Oxford Dictionary the phrase "have regard to" is used when 'reference to a person or thing' is intended. The exact significance of this phrase will depend on the context and the setting in which it is used. The phrase finds a place in numerous sections of the Madras Estates Land Act discussed elaborately in *Ryots of Garabandho* v. *Zemindar of Parlakimedi*(2) There it was observed by the Judicial Committee of the Privy
G Council that the expression "have regard to" or expressions very close to this were scattered throughout this Act, but the exact force of each phrase must be considered in relation to its context and to its own subject matter. Consequently in considering the matters to which the arbitrator appointed under s. 8 of the Act is to have regard, we must examine the language of the provision
H to find out whether a mere reference to the matters mentioned is aimed at or whether the legislature wanted the arbitrator to be guided rigidly thereby.

(1) [1954] S.C.R. 558.
(2) 70 I.A. 129.

From the language used in s. 8, learned counsel for the appellant wanted to draw the inference that the expression "have regard to" only meant that the arbitrator was to keep the matters referred to in mind or be conscious of the same but that he was not compelled to guide himself thereby. In other words, the contention was that although the arbitrator had to consider the various circumstances mentioned in sub-s. (2) and modes prescribed in sub-s. (3), those circumstances or modes nowhere fettered his powers of awarding compensation. We cannot accept this proposition. The circumstances mentioned in sub-s. (2) are not related at all to the just equivalent for the land compulsorily acquired. These are only incidental to the requisitioning of the property and provide for the expenses, loss or damage to which the owner may be put as a result thereof; the measure of a just equivalent is indicated in sub-s. (3) alone. This sub-section leaves no choice to the arbitrator as to which of the two modes of assessing the compensation he is to accept. The words of sub-s. (3) are mandatory and compel the arbitrator to accept only the smaller figure arrived at after assessment on the two modes of valuation.

No exception is taken to the mode prescribed in cl. (a) of sub-s. (3) but the mode prescribed in cl. (b) must be held to be arbitrary. It has no relation to the value of the land at the date of the notice under s. 7 which may be many years after the date of requisition. In the present case, the original requisition was made in 1942. By the deeming provision of s. 24 of the Act the property was to be treated as requisitioned under s. 3 of the Act. The notice under s. 7 was given on April 2, 1953. No grounds were shown and no circumstances were brought to our notice which necessitated the fixing of the date of requisition as the one for ascertaining the real value of the property. The property might have continued in requisition for years and it is impossible to say that the date of requisition has or can have any connection with the date of acquisition under s. 7. In *Bela Banerjee's* case(1) as also in the other cases mentioned, *viz.*, *State of Madras* v. *D. Namasivaya Mudaliar*(2), *Vajrevalu Mudaliar* v. *Special Deputy Collector*(3) and *Jeejeebhoy* v. *Assistant Collector*(4), the date for the assessment of compensation was mentioned in the Act itself. In this case it is not so mentioned but such date is dependent on the original requisition. In any case it does not give the person to be compensated a just equivalent of the property he was losing at the date of acquisition. In this case too, it can be said that the just equivalent was frozen at the minimum of twice its value on the date of requisition. It is common knowledge that all over India there has been a spiralling of land prices after the conclusion of the last world war although the inflation has been greater in urban areas, specially round about the big cities than in the

(1) [1954] S.C.R. 558.
(2) [1964] 6 S.C.R. 936.
(3) [1965] 1 S.C.R. 614.
(4) [1965] 1 S.C.R. 636.

A mofussil. Land values in post-war India are many times the corresponding values before the conclusion of the last war.

In assessing the just equivalent of the value of the property at twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, the arbitrator would be acting arbitrarily inasmuch as B he would be proceeding on a formula for which there is no rational basis.

Clause (b) of sub-s. (3) of s. 8 leaves the arbitrator no choice of assessing the value in terms of cl. (a) even if he was of opinion that the mode fixed thereunder afforded a just equivalent of the property to its owner. He had to make his assessment in terms of C cl. (b). The expression "have regard to" in sub-cl. (e) of sub-s. (1) of s. 8 therefore does not give the arbitrator any freedom of considering the two modes laid down in sub-s. (3) and accepting the one which he thought fair.

The first point about the opening portion of cl. (e) being mandatory and the latter portion being directory cannot therefore be D accepted. So far as sub-s. (3) is concerned, it is couched in terms which are mandatory.

The second head of argument of learned counsel for the appellant that the impugned clause stood by itself and satisfied Art. 31(2) and the tests formulated in *Bela Banerjee's* case(1), is of no substance. The passage in the judgment of this Court in *State of* E *Madras* v. *D. Namasivaya Mudaliar*(2) at p. 944 where reference was made to the fact that even under the Land Acquisition Act of 1894 notification under s. 4 might be followed by a long interval before acquisition under s. 16 took place does not support the contention of the appellant. There this Court observed that the fixing of an anterior date for arriving at the market value of the land did not *ispo facto* invalidate the acquisition, but that there F might be circumstances which would justify such a fixation; and it was there pointed out that it was for the State to show that fixation of compensation at the market value of an anterior date did not amount to violation of the constitutional guarantee. This, in our opinion, the appellant has signally failed to do.

This case cannot be compared with the case of *West Ramnad* G *Electric Distribution Co.* v. *The State of Madras*(3) where the person to be compensated was given the right to choose among several methods of valuation prescribed by s. 5 of the Madras Electricity Supply Undertakings (Acquisition) Act of 1954. In that case also, the validity of the Madras Act had to be examined with reference to Art. 31(2) before its amendment in 1955. Section H 5 of the Madras Act provided that the compensation payable to a licensee on whom an order had been served under s. 4 or whose

(1) [1954] S.C.R. 558.
(2) [1964] 6 S.C.R. 936.
(3) [1963] 2 S.C.R. 747.

undertaking had been taken over before the commencement of the Act, would be determined under any of the Bases A, B and C specified by the section as might be chosen under s. 8. Then followed detailed provisions about these three Bases. The Court found that "in none of the three bases does the Legislature refer to the market value of the undertaking." But according to the Court

> "that itself cannot justify the argument that what is intended to be paid by way of compensation must necessarily mean much less than the market value. The failure of the legislature to refer to the fair market value cannot, in our opinion, be regarded as conclusive or even presumptive evidence of the fact that what is intended to be paid under s. 5 does not amount to a just equivalent of the undertaking taken over. After all, in considering the question as to whether compensation payable under one or the other of the Bases amounts to just equivalent, we must try to assess what would be payable under the said basis."

The argument on behalf of the appellant that the basis did not provide for the payment of just equivalent could not be accepted by this Court because of the fact that the appellant had produced no material on which its plea could be sustained. In this case, however, there is no such difficulty. Clause (a) of s. 8(3) lays down a principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition. Clause (b) however directs the arbitrator to measure the price arrived at in terms of cl. (a) with twice the amount of money which the requisitioned property would have fetched if it had been sold on the date of requisition and to ignore the excess of the price computed in terms of cl. (a) over that in terms of cl. (b). The position bears a close similarity with the facts in *Bela Banerjee's* case(1), where the legislature directed that the excess of the value of the land arrived at in terms of the Land Acquisition Act over the value as on the 31st December, 1946 was to be ignored. The basis provided by cl. (b) has nothing to do with the just equivalent of the land on the date of acquisition nor is there any principle for such a basis. We cannot therefore accept the proposition that the impugned clause satisfies the requirements of Art. 31(2) of the Constitution.

The only other contention which remains to be noted is that the High Court should have refused relief on the ground of delay in making the application under Art. 226 of the Constitution. This was turned down by the High Court and it was pointed out that although the original acquisition was made on 4th April 1953, so far as compensation was concerned, the arbitrator was appointed on 21st June, 1961. We were informed that the Collector assessed

(1) [1954] S.C.R. 558.

A the compensation on July 2, 1962 and the petitioner approached the Court on September 18, 1962. It was held by the High Court that in the case of an infringement of a fundamental right under the Constitution, mere delay would hardly affect the maintainability of the petition. The High Court was not satisfied that there was delay and said:

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> "In any case having regard to the importance of the points raised and, assuming that there was delay, we would certainly condone the delay."

In appeal we do not feel disposed to take a different view. If the High Court had any discretion in the matter—and it is not suggested that it had not—the exercise of such discretion ought C not to be over-ruled by us unless we are satisfied that the High Court had "acted on some wrong principle or committed some error of law or failed to consider matters which demand consideration". This is the principle which the House of Lords in England have always followed as observed by Viscount Simonds in *Zacharia* v. *Republic of Cyprus*(1) and nothing has been shown D to us as to why we should adopt a different principle.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

G.C.

(1) [1963] A.C. 634 at 661.