Supreme Court of India
Union Of India (Uoi) vs Hari Krishan Khosla (Dead) By Lrs. on 16 September, 1992
Equivalent citations: JT 1992 (5) SC 574, 1992 (2) SCALE 621
Author: S Mohan
Bench: L Sharma, S Mohan, N Venkatachala
JUDGMENT

S. Mohan, J.

1. Leave granted.

2. These appeals which are dealt with under a common judgment raise the only question of law as to whether Section 8(3)(a) of the Requisitioning and Acquisition of Immovable Property Act, 1952(Act 30 of 1952) hereinafter referred to as the Act), is violative of Article 14 of the Constitution of India.

3. It is enough if the facts in Civil Appeal No. 1129 of 1975 are noted. It is preferred against the judgment of a Full Bench of the Punjab and Haryana High Court in Writ Application No. 608 of 1972 dated 30th of May, 1974 [the judgment has since been reported in AIR 1975 (Punjab) 74].

4. A large extent of land in the Village of Malo Majra Tehsil,-District Patiala was requisitioned by an order of the District Magistrate, Patiala, dated 17th March, 1967. The order of requisition was made under Section 29(1) of the Defence of India Act, 1962. The requisitioned land included 157 Bighas and 6 biswas belonging to Diwan Hari Krishan Khosla who died during the pendency of the proceedings in the High Court. His sons Avtar Krishan Khosla and Chand Khosla were impleaded as his legal representatives by an order dated 6th May, 1974. Later on, these lands were acquired by the Central Government under Section 7(1) of the Act. The Competent Authority, Jullundur, determined the compensation at Rs.1,62,109.37/-. An offer of payment was made to Hari Krishan Khosla who was called upon to communicate his acceptance. By his written reply dated 22nd July, 1971 he requested that the payment be made to him under protest. At the same time, he objected to the inadequacy of the amount awarded to him. He wanted an arbitrator to be appointed and claimed interest of the rate of 6 percent per annum. The Competent Authority refused to pay even the amount of compensation determined. Aggrieved by the said refusal, Hari Krishan Khosla filed a writ petition.

5. When the matter came up before the learned Single Judge he directed that it should be heard by a Division Bench. The Division Bench, however, directed that the case be placed before the Chief Justice to be heard by a larger Bench. This was how the writ petition came up for adjudication before the Full Bench.

6. The only point agitated before the Full Bench was as follows:

No provision had been made in Section 8 of the Act for payment of solatium at the rate of 15 per cent of the compensation amount to the land owner as is available under the provisions of Section 23 of the Land Acquisition Act, 1894. There is no provision under the Act for payment of interest at the rate of 6 per cent perineum as is provided under Section 34 of the Land Acquisition Act, 1894. There is no justification in depriving the land owner of the amount of solatium and interest simply because the land has been acquired under the provisions of Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952. The provisions of Section 8(3) of the Act are discriminatory, in so far as, they deny the land owner of the amount of solatium and interest and thus these provisions of the Act offend against the provisions of Article 14 of the Constitution of India.

7. The Full Bench, after referring to the case law, relied mainly on the decision of this Court in Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors. and upheld the contention that the said provision was violative of Article 14 of the Constitution for the following reasons:-

(i) The fact that the owner of the requisitioned property has been receiving compensation even if it be equivalent to the market rent, does not make any difference as the owner of a non-requisitioned property may indeed be getting even a higher rate of rent from a private tenant before his property is acquired.

(ii) There is nothing in the Act to suggest that the requisitioned property cannot be acquired under the Land Acquisition Act, 1894 since there is no prohibition to do so. The result is that the Act leaves it to the arbitrary and unguided discussion of the Government to acquire the requisitioned land of one owner by resort to Section 7(1) of the Act while the requisitioned land of another exactly similarly situated could be acquired under the Land Acquisition Act.

(iii) The case arising out of the Bombay Town Planning Act stands on a different footing since there is no option to the local authority to resort to one or other of the alternative methods which resulted in acquisition. Therefore, the cases cited in this behalf are clearly distinguishable.

(iv) The classification between requisitioned and non-requisitioned land for the purpose of paying less compensation to one and more to the other is not founded on any intelligible differentia. Nor is there any rational nexus to the object of acquisition of property for a public purpose.

(v) The liability to pay interest is totally absent under the Act while there is a specific provision concerning the same under the Land Acquisition Act. Thus, Civil Appeal No. 1130-31 of 1975 are directed against the judgment and order dated 30th May, 1974 of the Punjab and Haryana High Court in Civil Writ Nos. 1572 and 1574 of 1972, questioning its correctness.

8. Mr. N.N. Goswamy, learned Counsel, appearing for the Union of India submits that. Section 8(1) of the Act lays down the principles and the method of determining compensation and under Clause (e) of Sub-section (1) of the said section the Arbitrator is enjoined to determine the compensation which appears to him to be just. Therefore, what is required to be paid under the Act is the just compensation. Section 8(3)(a) provides for just equivalent. As a matter of fact, this Court had the occasion to deal with the validity of Section 8(3)(b) of the Act. While . striking down that provision in the case in Union of India v. Kamlabhai Harjiwandas Parekh and Ors. it was observed that Section 8(3)(a) provides for the payment of just equivalent. If this be so, there is no scope for awarding solatium and interest. The absence of such a provision under the Act would not, in any way, make it violative of Article 14 of the Constitution.

9. In his submission, the High Court is not correct in holding the fact that the owner of the requisitioned property was receiving compensation during the period of requisition, is of no significance. Equally, the High Court is again wrong when it held that the deprivation of solatium and interest cannot be justified on the basis of the terms of Section 7(3) of the Act.

10. The finding that there is nothing in the language of the Act which prohibits or makes illegal acquisition under the Land Acquisition Act, overlooks the scope of Section 7(3) of the Act. Beside, what is more important is in the case of an acquisition under the Land Acquisition Act, the ownership which is compendium of all rights, inclusive of the right to possession and enjoyment, comes to be acquired. On the contrary, in the case of the acquisition of the property which has been under requisition, the right of possession and enjoyment is already there with the Government. Such a right to possession and enjoyment is a very valuable right. Therefore, minus that right for which compensation is paid to the owner during the period of requisition, as per Section 8(2) of the Act, the remainder comes to be acquired. This important distinguishing feature had escaped the attention of the High Court.

11. On the same line of reasoning, the decision in Nagpur Improvement Trust (supra), would be inapplicable to an acquisition under the Act. Reliance placed by the High Court on that decision is incorrect. That was a case of acquisition of ownership.

12. In the case of Prakash Amichand Shah v. State of Gujarat , arising under the Bombay Town Planning Act, while repelling a similar argument, it was held that the said Act was not discriminatory in juxtaposition to Land Acquisition Act. In this ruling, the scope of Nagpur Improvement Trust (supra) was explained. It is the ratio of this judgment which squarely applies to this case.

13. Without prejudice to the above submissions, learned Counsel for the appellant argues that in any event the Act had come to be included in the 9th Schedule of the Constitution with effect from 10th August, 1975 as Item 89. The effect of such inclusion will be; the protection under Article 31B of the Constitution will be available. The said Article forbids an attack on any one of the legislations included in the 9th Schedule as violative of Articles 14 and 19 of the Constitution. This will be so, notwithstanding the impugned judgments of the High Court as though the said provision was valid from the beginning. That exactly is the ratio in Jagannath etc. etc. v. The Authorised Officer, Land Reforms and Ors. etc. .

14. There is one other case to which reference has to be made where this Court upheld the grant of solatium under the Assam Requisitioning Act. That turned on the language of Section 4(3) of the Act. Therefore, that cannot be the ground to award solatium in a case falling under the Act, more so, in the absence of any specific provisions in this regard. Hence, it is submitted that the judgment of the High Court calls for interference.

15. Mr. D.V. Sehgal, learned Counsel appearing for the respondents in Civil Appeal Nos. 1129-31 of 1975 cites the case in Abhay Singh Surana and Ors. v. Secretary, Ministry of Communication and Ors. and submits that the persons whose premises are

requisitioned are entitled to interest on the principal amount of compensation. Therefore, the award of compensation, according to him, is not, in any way, bad.

16. Mr. R.K. Jain, learned Counsel appearing for the petitioners in SLP(C) 6912 of 1990, addressing the main arguments, would submit that merely because the Act had come to be included in the 9th Schedule of the Constitution it does not mean that it gets complete protection or is immune from attack on the ground of violation of Article 14 of the Constitution. It would be so only if the Act does not damage or destroy the basic structure of the Constitution. It cannot be gainsaid that Article 14 enshrining the principle of equality is a basic structure of the Constitution. If the impugned provision, namely, Section 8(3)(a) is violative of Article 14 of the Constitution, it will still be open to challenge. In support of this submission, learned Counsel strongly relies on the decision in Waman Rao and Ors. etc. v. Union of India and Ors. etc. .

17. Where the property has been under requisition for a long time, it would deprive the owner of the use of the property and ultimately acquiring the same would amount to fraud on power as laid down in H.D. Vora v. State of Maharashtra and Ors. .

18. Where different compensation came to be paid under the Kerala Town Planning Act in contradistinction to the Land Acquisition Act, this Court in State of Kerala and Ors. v. T.M. Peter and Ors. held that it would be unjust. The same ratio was laid down earlier in P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and Ors. . In a recent case Narain Das Jain (since deceased) by Lrs. v. Agra Nagar Mahapalika, Agra this Court has taken the view that the award of

solatium is a must in all cases of acquisition. Even in a case arising under the Defence of India Act, 1962 where the Act provided no solatium this Court has upheld the award of solatium in Civil Appeal No. 3058 of 1983 on 31st January, 1983. These authorities fully support the stand of learned Counsel for the respondent. From this point of view the judgment of the High Court should be upheld.

19. Mr. Harish N. Salve, learned Counsel appearing on behalf of respondents in SLP (C) No. 1780 of 1991 submits that the Arbitrator in November 1977 award 15 per cent solatium and 6 percent interest on the enhanced compensation. It is that which is questioned. Therefore, should the Court agree that the appellant's

only this part of the award will go while the rest would remain

20. In Civil Appeal Nos. 4688-94 of 1989 for 16 years no Arbitrator was appointed. Under exactly similar situation this Court in Civil Appeal Nos. 470 and 471 of 1985 dated 11th February, 1985 took the view that the award does not call for any interference.

21. In Civil Appeal No. 995 of 1992, Mr. O.P. Sharma, learned Counsel for the respondents urged that should the arguments of the appellants prevail, it is only the enhanced compensation that could be interfered with.

22. Mr. D.V. Sehgal, learned Counsel for the respondents in Civil Appeal No. 1981 of 1991 supports Mr. R.K. Jain, learned Counsel for the petitioners in SLP (C) No. 6912 of 1990. However, in Civil Appeal Nos. 2674-2685 of 1989, Mr. Sanjay Sarin, learned Counsel for the respondent argued that there is a delay of 16 years in the. appointment of Arbitrator and, therefore, the same principle as laid down in Civil Appeal Nos. 470 and 471 of 1985 dated 11 th February, 1985 should be applied.

23. In Civil Appeal NO. 2073 of 1990, Mr. V.C. Mahajan submits, where the Government is a tenant and if the land under tenancy is acquired under the Land Acquisition Act, it is in no way different from the acquisition under this Act. Therfore, differential treatment cannot be accorded, based on the statute employed for the purposes of acquisition.

24. Prior to the enhancement of the compensation under the impugned judgment the State had preferred SLP NO. 4298 of 1984 and that was dismissed. That would constitute res judicata and the same cannot be interfered with. If, at all, it is only the enhanced compensation that would be affected. Mr. Sehgal, learned Counsel for the respondents appearing in C.A. Nos. 1320-22 of 1990 would argue that in these cases the impugned judgment has been upheld with reference to others in SLP No. 4291-4348 of 1984. Therefore, that having become final cannot be reopened now.

25. In Civil Appeal No. 1742-1756 of 1986 the State of Haryana is the appellant. The acquisition is under Section 7 of the Punjab Requisitioning and Acquisition Act of 1953. That Act is not in the 9th Schedule. The award came to be made under 8(4)(a) of the State Act. Even in that award solatium at 15 per cent and interest at 6 per cent have been given. That part of the award is liable to be set aside as there is no provision for giving them.

26. IN opposition to this, the learned Counsel for the respondent would urge that when this award had been made in the year 1961, the Court may consider whether after long lapse of time the award should be interfered with and unsettle it which has stood the test of time.

27. Having regard to the above submissions two questions arise for our determination, (i) Whether Section 8(3)(a) of the Act is violative of Article 14 of the Constitution? (ii) What is the effect of the inclusion of the Act in the 9th Schedule of the Constitution?

28. Before we proceed to determine the questions, it is necessary to set out the circumstances in which the Act came to be enacted. During the World War, lands and buildings were requisitioned under the Defence of India Act, 1939 and the rules made thereunder. Those properties continued to be subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947). However, this Act was to expire on 31st of March, 1952. With regard to the property outside the Delhi area Government of India had no power to requisition. In some cases, the States were asked to requisition the property for the purpose of Union. A judicial decision held that the exercise of the State power for the purpose of Union would not be proper. Finding that a large number of" houses in the various cities of India had been requisitioned for Central Government purposes it was considered necessary to have an Act empowering the Central Government to requisition and acquisition. For this purpose, Requisitioning and Acquisition of Immovable Property Ordinance, 1952 (III of 1952) was promulgated. This Ordinance was replaced by the Act.

29. In the above background, we will proceed to consider the salient features of the Act and as to how they stand in comparison to the Land Acquisition Act (Central Act 1 of 1894). Section 3 empowers a competent authority to requisition a property for a public purpose, being a purpose of the Union. However, before the exercise of the power the competent authority must form an opinion that the property is needed or likely to be needed for a public purpose.

Under Section 7, the requisitioned property could be acquired, if the Central Government is of the opinion that it be so acquired for a public purpose. Sub-section (3) of Section 7 lays down certain embargo on the exercise of the power. This sub-section contains two clauses. Under Clause (a) where works have been constructed during the period of requisition, which works require to be secured or preserved for the purpose of Government; while under clause j (b) it is provided that the cost of restoration of the property would be excessive.

Thus, it is not in every case the acquisition is or can be resorted to.

30. As regards compensation during the period of requisitioning, Sub-section (2) of Section 8 takes care, subject to the provisions of Section 2(a) and 2(b).

31. The principles and the methods of determining compensation are set out in Clauses (a) to (g) of Sub-section (1) of Section 8.

Now, we come to Section 8(3) which is as below:-

8(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 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.

32. The above Clause (b) was struck down by this. Court in Union of India v. Kamlabhai; Harjiwandas Parekh and Ors. . In this case, at page 472 it is observed:

In Bela Banerjee's case 1954 SCR 558 as also in the other cases mentioned, viz., State of Madras v. D. Namasivaya Mudaliar , Vajrevalu Mudaliar v. Special Deputy Collector and Jeejeebhoy v. Assistant Collector

, 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.

33. Again at page 474 it is observed:

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 Section 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 Clause (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 Clause (a) over that in terms of Clause (b). The position bears a close similarity with the facts in Bela Banerjee's case, where the legislature directed that the excess of the value as on the 31st December, 1946 was to be ignored. The basis provided by

Clause (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 satisfied the requirements of Art. 31(2) of the Constitution.

(Emphasis supplied).

34. From the above, it is clear that what the Court required was payment of just equivalent on the date of acquisition. According to this ruling that was not so in cases falling under Clause (b). Hence, it came to be struck down. The underlined portion which deals with Section 8(3)(a) thus makes a pointed reference that this provision aims at giving the owner just equivalent on the date of acquisition.

35. We now go on to Land Acquisition Act of 1894.

36. The power of Sovereign to take private properties for public use is based upon the doctrine of Eminent Domain. Consequently, right of the owner to compensation for the deprivation of such a property is also well-recognised. A justification of this exercise of the power is based on two Latin maxims; (i) Salus populi supreme est (regard for the public welfare is the highest law) and (ii) necessities public major est quam private (public necessity is greater than private necessity).

37. The entire Land Acquisition Act is based on the above principles. When the properties are acquired under the Act there is a displacement of private ownership by the ownership of the State. However, the sine qua non for such an acquisition is public purpose. In the absence of such a public purpose the power of the acquisition will be rendered void. What is important to be noted is with reference to an immovable property, the ownership, the compendium of all rights, comes to be acquired.

38. The points of similarities and dissimilarities between the Act and the Land Acquisition Act are as under: -

In both the cases unless and until there is a public purpose, acquisition cannot be resorted to.

Coming to dissimilarities, in the case of requisition, one of the important rights in the bundle of rights emanating from ownership, namely, the right to possession and enjoyment has been deprived of, when the property was requisitioned. It is minus that right for which, as stated above, the compensation is provided under Section 8(2), the remaining rights come to be. acquired.

39. In contra-distinction under the Land Acquisition Act, as stated above, the sum total of the rights, namely, the ownership itself comes to be acquired. We may usefully quote from Salmond on Jurisprudence 1966 Twelfth Edition Chapter 8 at page 246-247:

Ownership denotes the relation between a person an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons (a). Though in certain situations some of these rights may be absent, the normal case of ownership can be expected to exhibit the following incidents (b).

First, the owner will have a right to possess the thing which he owns.

Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it....

40. Then again, under the Act, the acquisition even though it is for a public purpose is restricted to the two clauses of Section 7(3) of the Act to which we have already made a reference. Thus two clauses of Section 7(3) constitute statutory embargo.

41. Under the Land Acquisition Act, the power of Eminent Domain could be exercised without any embargo so long as there is an underlying public purpose. In our considered view, these vital distinctions will have to be kept in mind while dealing with the question of violation of Article 14 of the Constitution. We may, at once, state, when examined in this light, the reasonings of the High Court to make out a case of discrimination, seem to be incorrect.

Question No. 1: Whether Section 8(3)(a) of the Act is violative of Article 14 of the Constitution?

42. We have already referred to Kamlabhai Harjiwandas Parekh's case (supra). Though the case did not directly deal with the vires of Section 8(3)(a) yet the observations which we have extracted above are apposite. The cases which hold the award of compensation, if different from Land Acquisition Act, would constitute discrimination, may now be examined. Vajrevalu Mudaliar (supra) is a case of acquisition under the provisions of land acquisition Madras (Amendment) Act of 1961. That amending Act itself laid down principles for fixing compensation different from those prescribed in the Principal Act. Therefore, it was held to be bad. Bal v. State of Madras 1968 SC 1425 was a case of acquisition under Madras City Improvement Act (37 of 1950) where the owners were deprived of the right to solatium. Under those circumstances, it was held to be a clear case of discrimination infringing the guarantee of equal protection of laws.

43. Strong reliance was placed by the High Court on the decision in Nagpur Improvement Trust case (supra). This again is a case of acquisition of property. While holding it to be discriminatory this Court observed in paragraphs 29 and 30 as follows:

Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment against, can claim the protection of Article 14.

44. We will now refer to Prakash Amichand Shah's case (supra). This case considered the rulings in Vajravelu Mudaliar s case (supra) as well as Nagpur Improvement Trust case (supra). A contention was raised that the denial of solatium of 15% of the market value of the land in addition to compensation would render the provisions of Bombay Town Planning Act, 1954 discriminatory. In this regard reliance was placed on Nagpur Improvement case (supra).

45. After analysing the provisions of the Bombay Town Planning Act, 1954 it was observed at page 609-610:

The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the

expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are, the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust case as laying down generally that wherever land is taken away by the Government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala v. T.M. Peter also Section 34 of the Cochin Town Planning Act which came up for consideration was of the same pattern as the provision in the Nagpur Improvement Trust Act, 1936 and for that reason the Court followed the decision in the Nagpur Improvement Trust case. But in that decision itself the court observed at pages 302 and 303 thus (SCC p. 564, para 21):

We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further asa it does not arise here although we are clear in our kind that under given circumstances differentiation even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed.

The decision in P.C. Goswami v. Collector of Darrang both of which are again distinguishable from the present one.

It cannot also be said as a rule that the State which has got a supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium. The interest of the public is equally important. In any event it is not shown that the compensation payable in this case is illusory and unreal.

This ruling is an authority for the proposition that solatium is not a must in every case disregardful of the circumstances. Mr. Goswami, learned Counsel for the Union of India is justified in placing reliance on this ruling to advance his contention that the provision in question is not discriminatory.

46. The next case that could be usefully referred to is T.M. Peter's case (supra). This case ; arose under Town Planning Act, 1932 (Travancorc Act 4 of 1108). This was a case of acquisition. The contention was raised in paragraph 16 to the following effect:-

The more serious submission pressed tersely but clearly, backed by a catena of cases, by Shri Viswanathan merits our consideration. The argument is shortly this. As between two owners of property, the presence of public purpose empowers the State to take the lands of either or both. But the differential nature of the public purpose does not furnish a rational ground to pay more compensation for one owner and less for another and that impertinence vitiates the present measure. The purpose may be slum clearance, flood control or housing for workers, but how does the diversity of purposes warrant payment of differential scales of quantum of compensation where no constitutional immunity as in Article 31-A, B or C applies? Public purpose sanctions compulsory acquisition, not discriminatory compensation whether you take A's land for improvement scheme or irrigation scheme, how can you pay more or less, guided by an irrelevance viz. the particular public purpose? The State must act equally when it takes property unless there is an intelligent and intelligible differentia between two categories of owners having a nexus with the object, namely the scale of compensation. It is intellectual confusion of constitutional principle to regard classification good for one purpose as obliteration of differences for unrelated aspects. This logic is neatly applied in a series of cases of this Court.

47. Relying on Nagpur Improvement Trust it was held that the basis of 'equality jurisprudence is, that classification is not permissible for compensation purposes, so long as the differentia relied on has no rational relation to the object in view viz., reduction in recompense. Ultimately, it was held as under:-

We hold that the exclusion of Section 25 of the Land Acquisition Act from Section 34 of the Act is unconstitutional but is severable and we sever it. The necessary consequence is that Section 34(1) will be read omitting the words 'and Section 25'. What follows then? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes Section 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like Section 25(1) of the Land Acquisition Act and in the light of what we have just decided Section 25(2) will also apply and "in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition.

48. In Narain Das Jain (since deceased) by Lrs. v. Agra Nagar Mahapalika, Agra where the property was acquired by the Agra Town Improvement Trust under the provisions of U.P. Town Improvement (Appeals) Act, 1920 (3 of 1920), the question arose whether the award of solatium should be made. In paragraph 7 at page 215 it was stated thus:

The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

49. However, it is to be noted that the denial of solatium by the High Court was in the following circumstances set out in paragraph 9:

The denial of the solatium to the appellant on the sum awarded by the Tribunal is based on the reasoning that firstly the Collector had not awarded solatium and the appellant while taking the matter to the Tribunal had not raised such claim. Secondly after the order of the Tribunal the appellant when taking the matter to the High Court in appeal, had not made a grouse and laid claim to it in his grounds of appeal. The High Court, it appears was even then prepared to grant solatium to the appellant and offered the appellant to seek amendment of the grounds of appeal but the appellant declined to do so asserting that his claim to solatium was not based on any demand at his instance but was rather a statutory duty of the court to grant it, as otherwise, the mandate of Section 23(2) would fail. The High Court negatived such contention.

50. In Civil Appeal No. 3058 of 1983, allowed on 31.1.83, where the property was acquired under the Defence of India Act, 1962, while dealing with the question whether the High Court should have awarded solatium, a Division Bench of this Court observed:

We are satisfied that the appellants are entitled to relief on both counts. The payment of solatium at 15% is an obligatory duty under the Land Acquisition Act and for the same reason it should be regarded as obligatory under the Defence of India Act. The circumstance that the appellants did not specifically pray for solatium'in their petition does not disentitle them to an order directing payment of solatium. As regards the appellants for the entire period upto the date of payment, the rate of interest being that at which interest has already been awarded by the High Court for the period ending May 18, 1967.

These are the rulings cited by Mr. R.K. Jain learned Counsel for the appellants.

51. We are of the firm view that cases of acquisition of land stand on a different footing than those where such property is subject to a prior requisition before acquisition.

Therefore, the cases relating to acquisition like Vajravelu Mudaliar's case (supra), Balammal's case (supra), Nagpur Improvement Trust case (supra) and Peter's case (supra) are not helpful in deciding the point in issue here. Goverdhan and Ors. v. Union of India and Anr. (Civil Appeal No. 3058 of 1983, allowed by this Court

on 31.1.83) no doubt was a case of acquisition under the Defence of India Act, 1962 but it contains no discussion. It has already been noticed that the award of solatium is not a must in every case as laid down in Prakash Amichand Shah's case (supra). One more authority requires to be referred to. In P.C. Goswami v. Collector of Darrang it has been held as under:

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 (State of Kerala v. T.M. Peter, 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 acquisition under another Act in so far as 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. We accordingly direct that the State Government shall pay to the appellant solatium at the rate of 15 per cent on the compensation awarded to him by the High Court. Except for this modification, the decree passed by the High Court is confirmed. The order of remand passed by the High Court will stand.

It should be noted clearly that these reasonings were based on the language of Section 4(3) of Assam Act which empowered the application of the provisions of Land Acquisition Act, 1894. But here the position is not so.

52. We are of the opinion that the amount of compensation can be fixed by agreement under Section 8(1)(b). In the absence of such an agreement it is left to the discretion of the Arbitrator. The Arbitrator under Section 8(1)(e) is to hear the dispute. Thereafter he is to determine the compensation which appears to him to be just. He must have regard to the circumstances of each case while applying the provisions of Sub-section (3)(a) of Section 8 which reads as under:

8(3): The compensationpayable 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 requisitioning and been sold on the date of acquisition, or, (b)

(Emphasis supplied).

53. In our view, the significant omission of solatium is indicative of the legislative intent necessitating stress on the expressions "just and circumstances of each case" occurring in subsection (1)(a) thereof.

54. Yet another distinguishing feature is the expression "open market". The reason why solatium has not been provided is that "open market" contemplates a bargain between a free buyer and a free seller unfettered by the consideration of requisition and consequent acquisition.

55. Now we will deal with the reasons which prompted the High Court to hold that this provision is discriminatory. To say that the owner of requisitioned property was getting compensation does not make any difference, is not correct. Equally, to hold, as the High Court does, that the property requisitioned under the Act can be acquired under the Land Acquisition Act, does not seem to be correct. We have already pointed out how the power of Eminent Domain comes to be exercised under the Land Acquisition Act and how an acquisition under this Act is subject to the statutory embargo unless there is a derequisitioning of the immovable property and separate proceedings arc taken under the Land Acquisition Act, there is no

possibility of acquiring the property under the Land Acquisition Act.

56. Reference should also be made to Section 8(1)(e) of the Act. That refers to three things:

(i) The amount of compensation which appears to be just;

(ii) the circumstances of each case; and

(iii) the provisions of Sub-sections (2) and (3).

The effect of this classification, in our opinion, is that the Arbitrator must determine the amount of compensation which appears to him to be just but he must have regard to Sub-sections (2) and (3) of Section 8. Therefore, where, a property which was subject to prior requisition comes to be acquired the compensation should be awarded on the basis of the principles adumbrated in this Act.

57. The comparison of acquisition under this Act to an acquisition under the Land Acquisition Act seems to be odious in view of the dissimilarities between the two Acts which we have clearly indicated above. It is true that originally the requisition was under the Defence of India Act, 1962 in some cases. Even then the property could be acquired in view o f Section 25(1) of this Act which reads as under:

25(1) Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, under the Defence of India Act, 1962, and the rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the 10th January, 1968, shall, as from that date, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of this Act shall apply accordingly. Provided that -

(a) all determination, agreement and awards for the payment of compensation in respect; of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date;

(b) anything done or any action taken (including any orders, notification or rules made or. issued) by the Central Government or by any officer or authority to whom power in this behalf have been delegated by that Government, in exercise of the powers conferred by or under Chapter VI of the Defence of India Act, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this section was in force on the date on . which such thing was done or action was taken.

58. As a matter of fact in Hari Narain and Ors. v. Union of India and ors the similar acquisition was held to be valid.

59. In the result, we hold that the failure to provide solatium at 15% or interest at 6% under Section 8(3)(a) of the Act does not make it discriminatory.

60. Thus we answer Question No. 1 that Section 8(3)(a) is not, in any way, violative of Article 14.

Question No. 2: What is the effect of the inclusion of the Act in the 9th Schedule of the Constitution of India?

61. This Act came to be included in the 9th Schedule as Item No. 89 with effect from 10.8.75. The effect of such inclusion of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 which was declared void

by this Court came up for consideration in Jagannath etc. etc. v. The Authorised Officer, Land Reforms and Ors. etc. . Paragraphs 15 and 16 are extracted as below:

On behalf of some of the respondents and the intervener, the Attorney-General of India, it was argued that no re-enactment of the Act was necessary. Our attention was drawn to the wide scope of Article 31-B which sought to cure the defect, if any, in the Acts specified in the Ninth Schedule on the ground that any such Act or any provision thereof was inconsistent with or took away or abridged any of the rights conferred by any provisions of Part III of the Constitution. The words of Article 31-B, it was argued, made it amply clear that this was sought to be done not only prospectively but retrospectively by the use of the words "None of the Acts.... shall be deemed to be void or ever to have become void on the ground of the inconsistency mentioned." The removal of the defect was to have effect...

Notwithstanding any judgment, decree or order of any court or tribunal to the contrary." In other words, this meant that if the defect in any such Act had been the subject-matter of any decision of a court of law and any provision of the Act had been held to be void as being inconsistent with Part III of the Constitution such judgment, decree or order was not to be operative on the provisions of the Act. In effect, it was contended that the inclusion of an Act in the Ninth Schedule to the Constitution read with Article 31-B overrode and rectified all defects in the Act because of inconsistency of any provision therein with any of the fundamental rights conferred by Part III of the Constitution, as from the date of the commencement of the Constitution, no matter whether the defect had been pointed out in any judgment of a court of law and the Act held to be void on that ground. Counsel for the respondent and the interveners drew our attention to the dicta of learned judges of this Court in several decisions which according to them fortified their contention. The first doctrine referred to by the learned Attorney-General was that State of Maharashtra v. Patilchand where the judgment of a Bench of Seven Judges of this Court was delivered by our present Chief Justice. The Act impugned there was the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended by Act 13 of 1962. The preamble to that Act is practically identical with that of the Madras Act which is under consideration in this case. It was contended on behalf of the appellants there that Article 31-B did not protect from challenge on the ground of violation of fundamental rights the provisions of the Acts amending Agricultural Lands (Ceiling on Holdings) Act, 1961, as originally enacted and that the Seventeenth Amendment Act in spite of the decision in Golaknath's case (supra) was invalid. Negativing these contentions it was said (see at p. 719):

...the High Court was right in holding that Article 31-B does protect the impugned Act from challenge on the ground of violation of fundamental rights. There is no doubt that Article 31-B should be interpreted strictly. But even interpreting it strictly, the only requirement which is laid down by Article 31-B is that the Act should be specified in the Ninth Schedule.

Section 28 of the Act which was the main target of attack and which the High Court had finally found as violating Article 14 of the Constitution was held to be protected under Article B from the ground of attack based on infringement of Article.

62. Upholding these contentions it was observed in paragraph 23:

Apart from the question as to whether fundamental rights originally enshrined in the Constitution were subject to the mandatory process of Article 368 it must now be held that Article 31-B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringment of fundamental rights, and by the express words of Article 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Article 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule, read with Article 31-B of the Constitution. The States could not, at any time, cure any defect arising from the violation of the provisions of Part III of the Constitution and therefore, the objection that the Madras Ceilings Act should have been re-enacted by the

Madras Legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted.

63. An identical question arose before the Calcutta High Court as seen in State of West Bengal v. Paritosh Kr. and Ors 1984 Calcutta Weekly Notes 532. is enough if we extract the Head Note:

The Requisitioning and Acquisition of Immovable Property Act, 1952 having been included in the Ninth Schedule by the Constitution 39th Amendment Act, 1975, under Article 31-B of the Constitution, Section 8(3)(b) thereof is a valid provision in spite of the decision of the Supreme Court in Union of India v. Kamalabai .

Article 31B protects with retrospective effect an Act which is included in the Ninth Schedule by subsequent amendment of the Constitution. After such inclusion, such an Act becomes valid with retrospective effect even though held unconstitutional and void by a previous judicial and no re-enactment by a competent legislature is necessary. The method of valuation adopted by the arbitrator in the instant case was quite legal. There is no provision in the Requisitioning and Acquisition of Immovable Property Act, 1952 for payment of additional compensation and Section 23(2) of the Land Acquisition Act, 1894 for payment of solatium cannot be attracted to acquisition of land under the former Act.

64. As against this, learned Counsel for the respondent would draw our attention to the case in. Woman Rao and Ors. etc. v. Union of India and Ors. . Paragraph 51 is extracted as below:

Thus, insofar as the validity of Article 31-B read with the Ninth Schedule is concerned, we hold that all Acts and Regulations included in the Ninth Schedule prior to April 24, 1973 will receive the full protection of Article 31-B. Those laws and regulations will not be open to challenge on the ground that they arc inconsistent with or take away or abridge 3 any of the rights conferred by any of the provisions of Part III of the Constitution. Act and Regulations, which are or will be included in the Ninth Schedule on or after April, 1973 will not receive the protection of Article 31-B for the plain reason that in the face of the judgment in Kesavananda Bharati, there was no justification for making additions to the Ninth Schedule with a view to conferring a blanket protection on the laws included therein. The various constitutional amendments, by which additions were made to the Ninth Schedule on or after April 24, 1973 will be valid only if they do not damage or destroy the basic structure of the Constitution.

65. On this basis, it is contended that Article 14 is the basic structure and since Section 8(3)(a) offends that Article it damages or destroys the basic structure of the Constitution. We have already held in answer to Question No. 1 that there is no violation of Article 14. If this be so, the ratio of Jagannath's case (supra) would squarely apply.

66. In the result, these appeals will stand allowed with costs. The judgments of the High Court and the award are set aside and the matter is remitted to the Arbitrator to determine the award in accordance with the provisions of this Act.

SLP (C) No. 1780 of 1991:

67. Leave granted.

68. In this case, we set aside the award of 15% solatium and 6% interest on enhanced compensation since permissible under this Act. The appeal is allowed only to that extent.

Civil Appeal Nos. 4688-94/89 & 2674-85/89;

69. This is a case in which for 16 years no Arbitrator was appointed. We think it is just and proper to apply the principle laid down in Harbans Singh Shanni Devi and Ors. v. Union of India and Ors. (Civil Appeal Nos. 470

&471 of 1985, disposed of by this Court on 11th February, 1985). The Court held as under:

Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of the Arbitrator was not made by the Union of India for period of 16 years, we think this is a fit case in which solatium at the rate of 30% of the amount of compensation and interest at the rate of 9% per annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30% and interest at the rate of 9% per annum.

70. These appeals will stand dismissed accordingly. Civil Appeal No. 995 of 1992:

71. We set aside the enhanced compensation which is impermissible in law. The appeal is allowed only to that extent.

Civil Appeal NO. 2073 of 1990:

72. As rightly contended by Mr. V.C. Mahajan, learned Counsel for the respondents that the prior award before enhancement was unsuccessfully questioned in SLP (C) 4298 of 1984 by the Union; that having been dismissed, it would constitute res judicate as far as the original award is concerned. However, the enhanced award is illegal and that alone is set aside. The appeal is allowed only to that extent.

Civil Appeal Nos. 1320-1322 of 1990:

73. The impugned judgment has been upheld with reference to the decision in SLP (C) Nos. 4291-4348 of 1984. Therefore, that having become conclusive, it cannot be reopened. The appeals will stand dismissed accordingly.

Civil Appeal No. 1742-56 of 1986:

74. The award was made in the year 1961. Since we have settled the question of law and taking into consideration the peculiar circumstances of the case at this distance of time of 31 years, we are not inclined to disturb the award. Hence, the appeals will stand dismissed.

75. There shall be no order as to costs in any one of these appeals.