(1970) 07 CAL CK 0022

Calcutta High Court

Case No: Appeal from Original Decree No. 226 of 1960

Calcutta Pinjrapole Society		APPELLANT
	Vs	
Habu Chandra Ghose alias Habu Charan Ghose and others		RESPONDENT

Date of Decision: July 10, 1970

Acts Referred:

- Constitution of India, 1950 - Article 286, 286(2)
- General Clauses Act, 1897 - Section 6
- Requisitioning and Acquisition of Immovable Property Act, 1952 - Section 11, 24, 24(1), 24(2), 3

Citation: 77 CWN 1

Hon'ble Judges: Salil Kumar Datta, J; S.K. Chakravarti, J

Bench: Division Bench

Advocate: J.K. Sengupta and Mahendra Kumar Ghose, for the Appellant;Bankim Chandra Banerjee and Noni Gopal Das for the Respondents Nos. 2 and 3 and Arun Prokash Chatterjee and Parimal Das Gupta, for the Respondent

Judgement

S.K. Chakravarti, J.

This appeal is against an Award passed by an Arbitrator appointed under Act XXX of 1952 in respect of a land acquisition proceeding. The main question that arises for determination in this appeal is as to whether the appellant Calcutta Pinjrapole Society hereinafter referred to as the Society will be entitled to the compensation or the respondent Habu Chandra Ghose. Certain plots in mouza Barea within P.S. Chakdah were requisitioned under the D.I. Rules on the 20th of November 1943 for military purposes and the same were acquired on the 3rd day of March, 1949 under Act XVIII of 1947, hereinafter referred to as the Act of 1947. An amount of Rs. 4116.70 was offered as compensation for acquisition to the Society and it accepted that money. Thereafter the respondent filed an application claiming that the valuation was not properly made and that he was entitled to the entire compensation. The matter was referred to the Arbitrator under Act XXX of 1952 hereinafter referred to as the Act of 1952, and the learned Arbitrator came to the conclusion that the respondent will be entitled not the Society to the compensation and he also increased the amount of the Award and directed that the enhanced amount amounting to Rs. 4091.31 be paid to the claimant Habu, and further made observations that "the claimant shall have the right to recover the sum of Rs. 4116.70 so taken by the Calcutta Pinjrapole Society from the Government by appropriate proceedings, if not otherwise barred".

Against this order the Society has come up in this appeal and it is urged by Mr. J.K. Sen Gupta that on evidence the learned Judge erred in holding that the claimant will be entitled to the compensation and not the Society.

2. Mr. A.P. Chatterjee, learned Advocate for the respondent has raised a preliminary objection to the maintainability of this appeal. According to him the Society did not raise any claim for enhancement of the compensation, and as such is not entitled to it, and further that it can have no grievance that the learned Arbitrator has found that the claimant is entitled to get back the sum paid to the Society inasmuch as in the operative part of the decree no such direction has been made, and only an opinion has been expressed that the claimant would be entitled to get this sum by appropriate proceedings. The point as to whether an appeal would lie in the circumstances so far as the amount paid to the Society is concerned is not free from doubts. But it is not necessary for us to determine this point, inasmuch as the Memorandum of Appeal would show that the Society has challenged the order of the learned Judge to pay the enhanced sum to the claimant and the valuation of the appeal includes this sum as well. The appeal therefore is competent.

3. The first point that is urged by Mr. Sengupta relates to the appointment of the Arbitrator and his jurisdiction to decide the point arising in this proceeding. "The Arbitrator is not a Court. The award is that of the Arbitrator, who is merely a persona designata under a particular Act and his award is not a decree, nor is it an order having the force of a decree". (1) Satya Charan Sur Vs. State of West Bengal, . In the circumstances it has to be seen whether the appointment of the Arbitrator in this particular case was in accordance with law. The order of appointment of this particular Arbitrator was made "in exercise of the power conferred by Clause (b) of Sub-section (1) of section 8 of the Requisitioning and Acquisition of Immovable Property Art 1952 (Act XXX of 1952) read with section 24 of the said Act and section 6 of the Requisitioned Land (Continuance of Powers) Act of 1947, (Act XVII of 1947)". It was further pointed out in that particular order that "whereas the acquisition of the said properties was not inconsistent with the provisions of the Requisitioning and Acquisition of Immovable Property Act 1952 (Act XXX of 1952), and, as such, was deemed by virtue of Clause (b) of sub-section (2) of section 24 of the said Act XXX of 1952 to have been in accordance with the provisions of the said Act."

4. It is clear from the above that the State considered that by virtue of Clause (b) of sub-section (2) of section 24 of the Act of 1952, it was competent to appoint the Arbitrator, and on that basis the Arbitrator has been appointed in this particular case. Mr. Sengupta however, contends that the Act of 1952 had no application to the facts and circumstances of this case inasmuch as herein the requisition was made on the 20th of November 1943 and the acquisition was made u/s 5 of Act 17 of 1947 on the 3rd of March 1949, and the offer which was made by the Collector was accepted by the present appellant, and there was no scope for any further appointment of the Arbitrator under the Act of 1952. According to Mr. Sengupta, the proviso (b) of subsection (2) of section 24 of the Act 1952, can only apply to a case where the properties stood requisitioned on the date the aforesaid Act had come into operation. His argument is to the effect that a proviso cannot be read independently of the main section, and must be read subject to that, and as such this proviso must be read to refer only to a requisition as in sub-section (2).

5. On the other hand, Mr. Chatterjee contends that this proviso (b) can be read as a substantive provision. It, therefore, now falls for determination as to whether that proviso in question will have to be read as subservient to the main sub-section (2), or is an independent provision. If Mr. Sengupta''s contention is accepted, it would follow that the appointment of the Arbitrator made under the authority of that provision would be an invalid one. If, however, the contention of Mr. Chatterjee is accepted, the appointment would hold good provided that the matter was still open for the appointment of an Arbitrator.

6. Learned Counsel on both sides have referred to a number of decisions of the Supreme Court on the point in issue, (1) The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, ; (2) The State of Orissa v. Debaki Debi AIR 1934 S.C. 1413; (2) Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator, ; (4) State of Rajasthan Vs. Leela Jain, ; (5) Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, ; (6) The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., . It would follow from the above decisions that "the proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment a portion of which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum, or dealing with a subject, which is foreign to the main enactment. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. Therefore, it is to be construed harmoniously with the main enactment. There may be cases in which the language of the statute may be so clear that a proviso may be construed as a substantive clause. But whether a proviso is construed as restricting the main provision or as the substantive clause, it cannot be divorced from the provision to which it stands as a proviso. It must be construed harmoniously with the main enactment." (The

Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, and Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator,). "Generally speaking it is true that the proviso is an exception to the main part of the section, but in exceptional cases a proviso may not be really a proviso in the accepted sense but may be a substantive provision itself". (The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.,). "The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso and there is no rule that the proviso must always be restricted to the ambit of the main enactment Occasionally, in a statute a proviso is unrelated to the subject-matter of the proceeding section, or contains matters extraneous to that section and it may have even to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the proceeding section". (vide Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai,). As a matter of fact, in some of the decisions referred to above, the provisions in certain particular Acts were interpreted as substantive provisions.

7. It is in the light of these principles that we have to interpret the proviso (b) to sub-section (2) of section 24, the main sub-section would clearly apply to a case where a property was subject to requisition under the provision of the Acts referred to in subsection (1). Proviso (a) clearly also relates to such a property which was under requisition at the time the Act of 1952 had come into operation and therefore, clearly relates to sub-section (2). But proviso (b) which stands as follows: "anything done or any action taken (including any orders, notifications, or rules made or issued) in exercise of the powers conferred by or under either of the said Acts or the said ordinance shall, in so far as it is not inconsistent with the provision of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under either of the said Acts or the said ordinance shall, in so far as thing was done or action was taken." It is obvious that this proviso (b) is unrelated either to proviso (a) or to the main sub-section (2). It contains matters extraneous to the earlier proviso or the sub-section and covers a much wider field. To read this proviso as subject to sub-section (2), would make it completely redundant. It is a common principle of interpretation of statutes that it should not be assumed that the legislature used words or even a proviso superfluously. In our view therefore the proviso (b) has to be read as a substantive provision and cannot be restricted to sub-section (2).

8. Mr. Sengupta submits that subsection (3) of section 1 of Act 17 of 1947 would continue to govern a proceeding which was instituted under the Act 1 of 1947 even after its repeal, and as such, the proviso (b) should not be interpreted as a substantive clause. Sub-section (3) of section 1 of Act 17 of 1947 stands as follows:

"It shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act 1946, except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act 1897 shall apply upon the expiry of this Act as if it had then been repealed by a Central Act." Mr. Sengupta, therefore, contends on the basis of this sub-section, that a proceeding instituted under the Act of 1947, would still continue to be governed by that Act, even after that Act had been repealed.

9. In my view, this contention has no substance. "The expiry of this Act" must mean that it dies a natural death on the expiry of the term of its existence, and not its repeal. Therefore, this clause will not apply when the Act of 1947 is repealed and it was necessary therefore to make a provision for the continuance of the proceedings and the rights and liabilities under the Old Acts. That has been provided for only in this proviso. In this view also the proviso (b) has to be read as a substantive provision.

In this view of the matter, the appointment of the Arbitrator would be right within the competence of the State Government.

10. Mr. Bankim Chandra Banerjee learned Advocate appearing on behalf of the State in this particular case has drawn our attention to the decision in (7) Satya Charan Sur Vs. State of West Bengal, ; (8) Balai v. The State of West Bengal 70 C.W.N. 363 to show that in these two decisions it has been held that even after the repeal of the Act 1947 the acquisition must be deemed to have been made in accordance with the provisions of the Act XXX of 1952. This point was taken for granted and does not appear to have been argued. In any view of the matter, as we have already pointed out, the proviso (1) has to be read as a substantive provision.

11. Mr. Sengupta however, contends that even if it be held that the appointment could be made under the Act of 1852 still the money had been offered and accepted, and the acquisition had been made on the 3rd of March 1949 and thus there was no further scope for the appointment of an Arbitrator. We however, cannot accept this proposition as a sound one. Though the acquisition had been made on the 3rd of March 1949, the proceeding still continues under the Act of 1952 and it would further appear that the objections which were filed by the present respondent were rejected by the learned Collector who referred him to a Civil Court. It is clear from the provisions of the Act of 1947 or of 1952, that the Land Acquisition Collector had no authority to do so. If any dispute had been raised as to the person who was entitled to the compensation, he was bound to refer it to the Arbitrator, and, as he did not do so, and later on that was done, on a separate application by the present respondent that reference would be quite competent.

12. Now we come to the question of facts we have been led through the evidence and we are not inclined to accept the findings of the learned Judge in this respect. With respect to soma plots the Society''s case is that Habu had surrendered these

lands by a written Istafanama (Ext. F). The learned Judge was of the view that this Istafanama was a manufactured document. This Istafanama has been proved by P.W. 1 Ram Gopal Mitra who was present at the time and his evidence would clearly show that Habu had put his thumb impression on it and had also signed it. Mr. Chatterjee contends that as Ram Gopal Mitra had not signed the document as a witness he cannot prove it. This is not a Will. There is no law that Istafanama can be proved only by an attesting witness. Ram Gopal Mitra was an important employee of the Society at the time and there is no reason to disbelieve his testimony that he was present at the time of execution of this document. No doubt this document was produced at a late stage but it was accepted by the learned Judge and therefore, the delay alone cannot be urged as a ground for holding this document as forged. There is an air of authenticity about it. Habu in his examination-in-chief did not deny the execution of this document and in cross-examination he denied his signature and not his thumb impression. There is an admitted signature of his on Ext. H another contemporaneous document and even to the naked eyes his signature on Ext. F are very similar to that on Ext. H. No steps were taken by Habu to show by evidence of experts that the signature on Ext. F or the thumb impression on it, were not his. It is extremely doubtful whether the Society would manufacture the document for the purpose of evidence. We are of opinion that this document was duly executed by Habu and that Habu did surrender these lands for self and cosharer.

13. With regard to certain other plots the case of the Society is that Habu had also verbally surrendered the same. The learned Judge is of opinion that there was no reason for verbal surrender when there was also a written surrender on the same date in respect of the other lands. No questions were put to the P.Ws. on this point. As a matter of fact, if Ext. F is manufactured then certainly these lands could easily be entered therein. We accept the story of oral surrender.

14. With regard to the other lands the case of the Society is that these lands were held by Habu under some landlords whose interest was auction purchased or taken settlement of by the Society, and these landlords had, before the auction purchase, or settlement by the Society, had made these lands khas and the Society had been in khas possession from him on delivery of possession or settlement. Habu had abandoned the same. There is no reason to disbelieve the testimony of witnesses of the objector in this respect. The most significant factor in this case is that Habu had not been paying a single farthing by way of rent for these lands for more than 20 years. It seems absurd that if Habu had been in possession, the landlords would allow him to go on possessing the same without the payment of rents. Habu at the time of trial tried to make out a case that he had been paying the rents and had made over the dakhilas to Ram Gopal Mitra in connection with another arbitration matter. He has not taken any action to get back the same. No such case was made out in the petition. No criminal case appears to have been brought against Ram Gopal Mitra for this. No demand in writing or even verbally appears to have been

made also for the same. What is worse, no question was put to Ram Gopal about it. It would further appear that in this proceeding before the Land Acquisition Collector he was not in a position to produce a single dakhila. In the circumstances, we cannot accept the fact that he paid rents for these lands, or that the dakhilas had been taken away by Ram Gopal. We accept the objector''s case in this respect in toto.

15. Another factor would also show that the claimant''s case is not true. It is a fact that the State took possession of these lands from the Society. Admittedly, therefore, on the date of requisition, the Society had been in possession of these lands and not Habu. For about five years the lands were under requisition. It was the Society which alone got the recurring compensation. Habu did not make any claim for this compensation. If Habu had been in possession of the same lands, certainly he would have claimed this recurring compensation from the State. But he does not appear to have done so, and, as we have already pointed out, that the State has got possession, not from Habu, but from Society. It is contended on behalf of Habu that he had left the village when the military came there. He had examined some witnesses on this point. We are not prepared to accept the evidence of these witnesses. Habu himself in another case said that he had left this place about 1939 (Ext. G). There is also satisfactory evidence adduced by the objector to show that it was the objector who has been in possession of the lands since more than 12 years before the same had been requisitioned and not Habu. In the circumstances, this Society alone is entitled to the compensation and not Habu, he not having any right, title, interest or possession in these lands for more than 12 years, and the learned Arbitrator was entirely in the wrong in directing the enhanced compensation to be paid to Habu, or in holding that Habu was entitled to get back the same which had already been paid to the Society, by the State from the Society.

16. In the normal course of things, we would have directed the State to pay the amount of the enhanced compensation to the Society in view of our findings above. But in this case, it appears that the Society accepted the offer of the Land Acquisition Collector about the compensation for acquisition, and did not claim any reference. In the circumstances, they cannot take the advantage of Habu''s petition, and get the enhanced amount.

The appeal, therefore, succeeds in part and is allowed in part and the Award of the learned Arbitrator is set aside and the application for reference is dismissed.

There will be no order as to costs in this appeal.

Salil Kumar Datta, J.

17. I agree that the appeal should be allowed in part, to the extent and in the manner indicated in the judgment of my learned brother on the findings arrived at.

18. I would, however, like to add a few words on the interesting points of law which have been raised before us by the Learned Counsel. It may be remembered that the appellant Calcutta Pinjrapole Society was offered an amount of Rs. 3856.92 P. as compensation for the acquisition by the Collector and the same was accepted by the said Society. The said amount with interest thereon amounting to Rs. 4116.70 P. was paid to the Society on July 19, 1957, by the Collector overruling the claim of Habu Chandra who, according to Collector, failed to produce any document in support of his claim. Thereafter at the instance of Habu Chandra who challenged the quantum of compensation and claimed the entire compensation disputing the right of the Society to any portion of the compensation, the State Government on February 18, 1958, appointed an arbitrator for determination of the compensation payable in respect of the said acquisition. The arbitrator, on trial on evidence, determined the compensation for lands acquired and of trees and bamboos thereon at Rs. 8208.01 P. Out of this amount, it was provided in the award, Habu Chandra would have the right to recover Rs. 4116.70 P. from the Society, which had no right to receive the same, and that such recovery to be made by appropriate proceedings if not otherwise barred and an award for the balance amount, with interest thereon upto date of award (December 29, 1959), in all Rs. 4590.68 was passed in favour of Habu Chandra. Against the said award the Society preferred this appeal which is valued at Rs. 8208.01 P.

19. Mr. Arun Prokas Chatterjee the Learned Counsel for the respondent No. 1, Habu Chandra, contended as preliminary objection that as compensation was fixed and paid to the Society on the basis of its agreement, it could raise no reference over the same nor was in entitled to any benefits of reference or to impugn its findings or to agitate over the matter further. The Society had, therefore, no right to prefer the appeal, to impugn on the one hand, the findings adverse to it and on the other hand, to avail of the benefits of award. Mr. Jitendra Kumar Sen Gupta, the Learned Counsel appearing for the appellant contended that the appeal at the instance of the Society is maintainable, as it was aggrieved by the award.

20. We find from the records that the Society filed a written objection to the claim of Habu Chandra praying for arbitration and the Society also adduced evidence, oral and documentary, before the Arbitrator, in support of its claim that Habu Chandra at the material time had no right, title and interest in the lands acquired. u/s 8(1) (e) of the Requisitioning and Acquisition of Immovable Property Act, Act XXX of 1952, the arbitrator will determine the amount of compensation which appears to him to be just and shall also specify the person or persons to whom such compensation shall be payable. Under clause (f) of section 8(1) where there is a dispute as to the person or persons entitled to the compensation the arbitrator shall decide such dispute and apportion the amount among such persons. The arbitrator, in the present case, on the materials on record awarded a sum of Rs. 8208.01 P. as the compensation for the acquisition of the lands with interest upto July 19, 1957. It was further provided in the award that Habu Chandra would have the right to recover a

sum of Rs. 4116.70 P. which the Society received from the Collector for the acquisition of the said land and also to receive the balance amount awarded. This order directly affects the Society which has been a party to the said arbitration. u/s 11 of the said Act any person aggrieved by an award of the arbitrator made u/s 8 of the Act may prefer an appeal to the High Court within 30 days of such award. In pursuance thereof, being aggrieved the Society has preferred this appeal, the value of the appeal being Rs. 8208.01 P. and in our view he is entitled in law to challenge the propriety of the said decision though in view of its agreement regarding compensation it was not entitled to challenge the agreed compensation. There is, therefore, no doubt that this appeal by the Society is competent and maintainable in law, and Mr. Chatterjee''s contentions to the contrary are without any foundation.

21. Mr. Sen Gupta''s main objection is that the entire proceeding including the reference to the arbitrator made by the State Government on February 18, 1958, was without jurisdiction. The property was originally requisitioned under the Defence of India Act, 1939 and its rules on November 20, 1943. Thereafter the said property was acquired under the provision of the Requisitioned Land (Continuance of Powers) Act (Act XVII of 1947) on March 3, 1949. According to Mr. Sen Gupta the compensation for requisition was received by the Society earlier and the compensation for acquisition was received by the Society again on July 19, 1957 also under the provisions of the said Act. The proceeding was therefore a closed chapter and could not be reopened by the making of reference as was purported to be done on February 18, 1958. Mr. Sen Gupta further contended that the Requisitioning and Acquisition of Movable Property Act (Act XXX of 1952), under which the reference was made, came in force on March 14, 1952 long after the acquisition and though the Act XVII of 1947 was repealed by section 24(1), by sub-section (2) it was provided that the property which was subject to requisition only immediately before such repeal was to be deemed property requisitioned u/s 3 of Act XXX of 1952. This sub-section provided for two provisos the first (a), about the agreement and award for requisition before the commencement of the Act which were to continue to be in force during the period of such requisition; the second proviso (b) provided that anything done or action taken inter alia under the said Act XVII of 1947 shall be deemed to be in exercise of the powers conferred by this Act as if such Act was in force on the day on which such thing was done or action taken. According to Mr. Sen Gupta, this proviso also related to acts of requisition only, being attached to sub-section (2), which in terms refers to requisition, as a proviso could not provide something by way of addendum or dealing with a subject which is foreign and outside the ambit of the main provision and proviso always carves out an exception to the provision to which it is attached and but no other.

22. Mr. Chatterjee contended that the scope of a proviso as enunciated by Mr. Sen Gupta is the ordinary rule but there may be cases where the provisions of the proviso are of such extensive and overriding character as to form an independent provision outside the ambit of the main provision. In the instant case, in view of its

terms, it is to be deemed as being not confined only to the main provision to which it is enacted, but of much wider scope and extent as to include matters not confined within its main enactment. On that basis Mr. Chatterjee contended that the acts done under the Act of XVII of 1947 is deemed to be done under the provisions of Act XXX of 1952 and accordingly the present reference is valued and maintainable in law. In support Mr. Sen Gupta and Mr. Chatterjee referred us to a number of decisions of the Supreme Court in support of their respective contentions.

23. The interpretation of a proviso and its scope and effect was considered by the Supreme Court in (9) Angurbala Mullick Vs. Debabrata Mullick, , where Mukherjea, J. (as he then was) observed :

A proviso is normally an excepting or a qualifying clause and the effect of it is to except out of the preceding clause upon which it is engrafted something which but for the proviso would be within it.

In (10) Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, on the construction of the proviso to Article 286 (2) of the Constitution (before amendment), the Supreme Court held that the proviso was meant to lift the ban under Article 286,(2) and of no other clause of Article 286. It was also observed :

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

24. Again in the (1) The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, , the Supreme Court declined to accept the interpretation for application of the proviso to section 24(1) of the Income Tax Act, 1822 to the head "business" outside the ambit of the sub-section, as it was felt that the object of the main section 24(1) was to set off loss of porfits or gain under one head against income, profits or gain under any other heart. The following observation in (11) AIR 1944 71 (Privy Council) was quoted with approval:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. Where, as in the present case, the language of the main enactment, is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment so as to exclude from it by implication what clearly falls within its express terms.

25. In the (2) The State of Orissa Vs. Dabaki Devi and Others, , the Supreme Court considered the second proviso to sub-section 6 of section 12 of the Orissa Sales Tax Act, which provide ed that no order of assessment of amount of tax due for any period shall be passed later than thirty-six months from the date of expiry of such

period. This proviso contained nothing by way or saving or exception to the main subsection which provided that any assessment made under this section (i.e. 12) shall be without prejudice to any prosecution instituted for an offence under the Act. It was held on its construction that the said proviso is not limited in terms to orders of assessment made u/s 12 but on its language applies to and governs any order assessing the amount of tax which would manifestly include an assessment under the provisions of the Act besides section 12.

26. In (11) State of Rajasthan Vs. Leela Jain, the consideration of the proviso to section 4(1) of the Rajasthan City Municipal Appeals (Regulations) Act, 1950 came up for interpretation. While in subsection (1) of section 4, it was provided that no appeal would lie from an order passed u/s 3, the proviso appended to the said sub-section (1) of section 4 provided that the Government may call for any record of any case to satisfy the correctness, legality and expediency of any order passed by a Commissioner or a Municipal authority and may pass such orders as it may consider fit and reasonable. It was contended that the word ''order'' was confined to the orders of the Commissioner passed on appeal and not to the orders of the. Municipal authority against which there was no appeal. The above contention was repelled and it was held that the more reasonable construction would be to construe the words "orders of a Municipal authority" as including its final orders not subject to appeal It was observed that:

the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is further obvious to us that the proviso is not coextensive with but covers a field wider than the main part of section 4(1).

27. Again in (3) Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator, it waft observed:

There may be cases in which the language of the statute may be so clear that a proviso may be construed as a substantive clause. But whether a proviso is construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision to which it stands as a proviso. It may be construed harmoniously with the main enactment.

28. In (5) Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, it was laid down:

The proper function of a proviso is except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso; and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section.

29. The decision in (6) The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., , was concerned with the proviso to sub-section 2 of section 41 of the Madras General Sales Tax Act, which provided for search of a purely residential accommodation while the main provision did not provide for search of residential accommodation. It was contended that the proviso must be deemed to be otiose. Repelling the said contention, the court observed that in exceptional cases as in the case under consideration, a proviso may be a substantive provision itself.

30. From the survey of the relevant cases, the position appears to be that ordinarily a provision is intended to be a part of the section to which it is appended and will not provide something by way of addendum to the main provision or deal with a subject which is foreign and outside the ambit of the main provision to which it is attached More, a proviso carves out an exception to the main provision to which it is enacted as a proviso and to no other. At the same time the question is always of one interpretation of the proviso on its terms and there is no binding rule that the proviso must always be confined to the scope and ambit of the main section to which it is appended. There may be instances where a proviso is not related to the subject-matter of the main provision or contains matters extraneous to that section. In such cases it may be interpreted as pointed out in Iswarlal Thakorelal v. Motibhai Nagjibhai (supra) that the proviso is substantive provision, dealing independently with matters specified therein and not as qualifying the preceding section.

31. Coming now to the provision with which we are concerned, it appears that this proviso (b) is not related wholly to the main provision to which it appended. Section 24 of Act XXX of 1952 is as follows:

24. (1) "The Requisitioned Land (Continuance of Powers) Act, 1947, the Delhi Premises (Requisition and Eviction) Act, 1947, and the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 are hereby repealed

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts or the said Ordinance shall, on the commencement of this Act be deemed to be property requisitioned u/s 3 of this Act, and all the provisions of this Act shall apply accordingly:

Provided that--

(a) all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement;

(b) anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Acts or the said Ordinance 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 Act was in force on the day on which such thing was done or action was taken.

The main provision in sub-section (2) undoubtedly is confined to cases of requisition under the Acts and Ordinance referred to therein which were pending immediately before the repeal of the said statutes by commencement of Act XXX of 1952, and proviso (a) relates to such requisition. The proviso (b) with which we are concerned in this appeal, clearly appears by its terms to be confined not merely to cases of requisition. It states in unambiguous and overriding terms that anything done or any action taken in exercise of the powers under the said Acts or Ordinance shall, in so far as it is not inconsistent with the Act (Act XXX of 1952) shall be deemed to be done or taken under the Act of 1952 as if it was in force on the day on which such thing was done or action taken. The proviso embraces all things or acts under the said Acts or Ordinance without any limitation and it is not possible to limit it to cases of requisition only. By its own terms it is an independent and substantive section though appended to a provision for requisition and is to be interpreted as such. While the acquisition of the lands under Act XVII of 1947 is not in any way inconsistent with the provisions of the Act XXX of 1952, the over-riding provisions of the instant proviso are also consistent with the provisions of sub-section (1) of section 24 of the said Act of 1952.

32. Such interpretation does not create any prejudice to any party when we remember that the assessment and offer of compensation by the Collector was pending when the Act XXX of 1952 came in force. Further u/s 1 (3) of Act XVII of 1947, on its expiry, section 6 of the General Clauses Act, 1897, was to apply as to things done or omitted to be done, Act XXX of 1952 repealed the 1947 Act on March 14, 1952 and on such repeal, the provisions of Act XVII of 1947 could have no further application. By reason of proviso (b) to section 24(2) of the repealing Act on the above interpretation, the acquisition and thereafter the proceedings that were pending in connection therewith are to be deemed to have been made and governed in accordance with the provisions of the 1952 Act and in view of the provisions made therein for acts done and action taken under 1947 Act, section 6 of the General Clauses Act would be inapplicable. The construction of the relevant proviso (b) to section 24 (2) as indicated above will ensure continuance of all pending proceedings relating to acquisition and requisition under the 1947 Act, avoid any manifest contradiction with the purpose of the Act as also any hardship and injustice and will lead TO consistency, harmonious with the other provisions of

the Act. The proviso (b) to section 24 (2) of Act XXX of 1952 thus relates to all things done and actions taken including requisition and acquisition under the statutes before its repeal by the said Act Such things or action are deemed to have been done or taken under the 1952 Act as if the Act was in force on the day when such things were done or action taken. The reference by the Government to the arbitrator, for which no limitation is provided for, and which it was incumbent on the Government to make which it did later in view of the dispute, was under the authority of the said Act and such reference and the proceedings following are thus not without jurisdiction as contended by the appellant.

I concur with the judgment passed by my learned brother.