PETITIONER:
C.G. GHANSHAMDAS & ORS.

Vs.

RESPONDENT:
COLLECTOR OF MADRAS

DATE OF JUDGMENT12/09/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
KHALID, V. (J)

CITATION:
1987 AIR 180 1986 SCR (3) 754
1986 SCC (4) 305 JT 1986 432
1986 SCALE (2)414

ACT:
Tamil Nadu Court Fees & Suits Valuation Act, 1955, s.51 and Article 3(iii) (A) (1) (a) of Schedule 11-Memorandum of Appeal u/s. 11 of Requisitioning Act, 1952-Court fee-Computation and payment of.
Requisition & Acquisition of Immovable Property Act, 1952, ss. 3, 5, 7-Requisition and acquisition of Property-Distinction between.
Words & Phrases - 'order' - Meaning of.

HEADNOTE:
The property of the appellants continued to remain under requisition by virtue of the several amendments made to the Requisitioning and Acquisition of Immovable Property Act 1952 and the compensation payable in respect of it was required to be revised for a period of 5 years from 7.3.75 to 6.3.1980. As there was no agreement between the parties on the question of compensation payable for the said period, the said question was referred to an arbitrator under s. 8 of the Requisitioning Act to determine the compensation payable. The arbitrator by his award fixed the compensation payable for the property at Rs.21,000 per month as against the claim of Rs.77,270 per month made by the appellants.
Aggrieved by the decision of the arbitrator the appellants filed an appeal before the High Court of Madras under s.11 of the Requisitioning Act. The Registry of the High Court raised an objection regarding the amount of court fee paid on the memorandum of appeal. The matter was placed before the Division Bench of the High Court and it held that the appellants were liable to pay court fee on the memorandum of appeal under s. 51 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 (for short, the Act) ad valorem on the amount of compensation which was in dispute in the appeal.
In appeal to this Court, the appellants contended that the amount
755
of court fee payable on a memorandum of appeal filed under s. 11 of the Requisitioning Act should not be computed in accordance with s. 51 of the Act as a fixed court fee was payable under the residuary provision, that is, Art. 3 (iii)

(A) (1) (a) of Schedule II of the Act. In support of this contention the appellants raised two points; (i) that since there is no transfer of title to the property which is requisitioned from its owner to the Government, the said transaction is not an acquisition and hence those provisions of the Requisitioning Act under which the property is requisitioned do not constitute a law providing for acquisition of property and therefore, s. 51 of the Act would not be applicable because it relates only to appeals filed against an order relating to compensation under any Act for the time being in force for the acquisition of land; and (ii) that the award made by the arbitrator under s. 8 of the Requisitioning Act not being an 'order' as defined in the Code of Civil Procedure 1908, the appellants cannot be called upon to pay court fee in accordance with s. 51 of the Act since s. 51 refers to court fee payable on a memorandum of appeal against an 'order'.

Dismissing the appeal,

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HELD: 1. The appeal before the High Court filed under s. 11 of the Requisitioning Act falls squarely under s. 51 of the Act. Therefore, the court fee has to be paid on ad valorem basis as provided in Art. 1 of Schedule I to the Act. It follows that the residuary Article, that is, Art. 3(iii) (A) (1) (a) of Schedule II to the Act is not attracted. [769E-F]

2(i) Section 3 of the Act states that in the Act 'unless the context otherwise requires' the words and expressions defined in that section shall carry the meaning given to them in various clauses in that section. It is relevant to note that in section 51 of the Act which arises for consideration the word 'order' does not appear in isolation. The section states that the fee payable under the Act on a memorandum of appeal against an order relating to compensation in any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellants. The 'order' referred to in s. Sl of the Act need not be an 'order' of a civil court as defined in s. 2(14) of the Code of Civil Procedure but should be an 'order' relating to compensation under any Act for the time being in force for the acquisition of property for public purposes. [768G-H; 769A-C]

2(ii) There is no doubt that the award passed by the Arbitrator

756

under the Requisitioning Act is a formal expression of a decision made by a competent authority which is binding on the parties and it relates to compensation payable under an Act for the time being in force for the acquisition of property for the public purposes. Therefore, even though the expression 'order' simpliciter has to be understood in the sense in which that expression is defined in s. 2 (14) of the Code of Civil Procedure, the word 'order' found in s. 51 of the Act bas to be read differently having regard to the words which qualify that expression in that section, namely, 'relating to compensation under any Act for the time being in force for the acquisition of properties'. The said order need not be an order of a civil court only. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. In the instant case, the award made under s. 8 of the Requisitioning Act satisfies these tests. [769C-E]

Sahadu Gangaram Bhagade v. Spl. Deputy Collector,

Ahmedanagar & Anr., [1971] 1 S.C.R. 146, relied upon.

Y. Venkanna Choudhary v. Government of India, by Military Estates officer, Madras & Anr., AIR 1976 Madras 41, Laxshminarayana Rao & Ors. v. Revenue Divisional officer, Kakinada & Ors., A.I.R. 1968 Andhra Pradesh 348, M. Ramachandran & Ors. v. State of Madras represented by the Collector, Coimbatore, 87 Law Weekly Madras 791, Balakrishnan Nambiyar & Ors. v. Kanakathidathil Madhavan & Ors., A.I.R. 1979 Kerala 40 & Ghouse Saheb v. Sharifa Bi & Ors., A.l.R. 1977 Karnataka 181, approved.

Hirji Virji Jangbari v. Government of Bombay, A.I.R. 1945, Bombay 348, Kanwar Jagat Bahadur Singh v. The Punjab State, Crown's case, A.l.R. 1957 Punjab 32 Crown v. Chandrabhanlal and Ors., AIR. 1957 Nagpur 8 and Mangal Sen v. Union of Indian A.l.R., 1970 Delhi 44, disapproved.

3(i) The expression 'acquisition' is not defined in the Act. Sections 3 to 6 of the Requisitioning Act deal with the powers of the Government in respect of requisitioning of property and section 7 of that Act confers power on the Government to acquire a property which has been requisitioned. Whenever a property is requisitioned by the competent authority it is entitled to call upon the owner or any other person who may be in possession of the property to surrender possession thereof to the Government. Section 5 of the Requisitioning Act provides that all properties requisitioned under section 3 shall be used
757
for such purposes as may be mentioned in the notice of requisition. Such requisitioned property may be released from requisitioning under section 6. The title to property requisitioned under the Requisition Act continues to rest with the owner, the Government being entitled to only the possession of such property. [761 B-E]

3(ii) Not only is a right to possession a right of property, but where the subject of proprietary rights is a tangible thing, it is the most characteristic and essential of those rights. Possession, it is said, is nine points in law. An owner without possession has only a mere shell while the person in possession enjoys the property in many ways. In this situation, it is difficult to say that there cannot be deprivation of property without deprivation of title also. Deprivation of possession for an indefinite period is acquisition of property during that period though the title may continue to rest with the owner. That is why the requisitioning law also had to satisfy Art. 19(1) (f) and Art. 31 of the Constitution when they were in the Constitution. [764B-D]

3(iii) The Supreme Court has treated both requisitioning of property and acquisition of property as meaning the acquisition of property in the large sense and there is no reason to depart from the views expressed by the two Constitution Benches of this Court in the State of West Bengal v. Subodh Gopal Bose and Ors,. 1954 S.C.R. 587 and Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. and Ors., [1954] S.C.R. 674.

The Minister of State for the Army v. Dalziel, 68 C.L.R. 261, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3040 of 1986

From the Judgment and order dated 24.6.1985 of the Madras High Court in S.R.No. 106081 of 1984.

Soli J. Sorabjee, Joel Peres and D.N. Mishra for the Appellants.

Abdul Khader, T.V. Ratnam and A.V. Rangam for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question which arises for
758
consideration in this appeal is whether under the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (hereinafter referred to as 'the Act') the court fee payable on a memorandum of appeal filed under section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) (hereinafter referred to as 'the Requisitioning Act') should be computed in accordance with section 51 of the Act or a fixed court fee is payable under the residuary provision that is Article 3 (iii) (A) (1) (a) of Schedule II to the Act.

The appellants claim to be the co-owners of the land and building bearing Door No. 745 E.V.R. Periyar High Road (Poonamallee High Road), Kilpauk, Madras. The land along with the building standing thereon was originally requisitioned under the provisions of the Requisitioning Act for the purpose of accommodating the NCC Headquarters through the Collector of Madras. The above property was taken possession of on 9.2.1963. In order to fix the compensation for the period of five years beginning from 9.6. 1963 to 20.2.1967, an Arbitrator was appointed. The Arbitrator by his award dated 5.1.1970 fixed the compensation at Rs.6000 per month and the compensation was being paid accordingly.

At this stage it is necessary to refer to the history of the Requisitioning Act. The power to requisition and to acquire immovable property for a public purpose was first provided in the Defence of India Act, 1939 which expired on the 30th September, 1946. It was, however, found necessary to retain some of the properties for a longer period in the occupation of the Government. Therefore, it was provided in the Requisitioned Land (Continuance of Powers) Act, 1947 that any property which had been requisitioned under the Defence of India Act, 1939 would continue to remain under requisition. Subsequently, the Requisitioning and Acquisition of Immovable Property Act, 1952 that is the Requisitioning Act with which we are concerned in this case was passed in the year 1952 to confer powers on the Government in this regard. The Act was initially to operate for a period of six years but its duration was extended from time to time. The Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970 made the Requisitioning Act a permanent measure but restricted the period for which a requisitioned property could be retained under requisition to three years from the commencement of the above said Amendment Act in the case of properties requisitioned before such commencement and in the case of any other property requisitioned after such commencement to three years from the date on which possession of such
759
property was surrendered or delivered to or taken by the competent authority under section 4 of the Requisitioning Act. Thus properties requisitioned before the commencement of the said Amendment Act could be retained under requisition up to the 10th March 1973. A large number of properties requisitioned under the Requisitioning Act could not be released by the said date and the maximum period for which properties could be kept under continued requisition was extended for a further period of two years by the

Requisitioning and Acquisition immovable Property (Amendment) Act, 1973. A number of properties requisitioned under the Requisitioning Act were still in possession of the Ministry of Defence and also some other Ministries. Although the Government was expeditiously implementing the policy of acquiring or de-requisitioning the requisitioned properties, a large number of them were expected to be needed by the Government even after the 10th March, 1975 for public purposes. On many of the properties valuable constructions of a permanent nature connected with the national defence or the conduct of military operations or other important public purposes had been put up. Due to financial stringency, it was not possible either to acquire the properties or take up large scale construction programmes in the immediate future to enable the Government to release the requisitioned properties. It was, therefore, found necessary to keep the properties under the continued requisition for a longer period. Parliament, therefore, passed the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975 (Act 11 of 1975) by which it amended the Requisitioning Act so as to extend by five years the existing maximum period for which properties could be retained under requisition and to provide for quinquennial revision of the recurring part of compensation .

The property in question by virtue of the several amendments made to the Requisitioning Act continued to remain under requisition and the compensation payable in respect of it was required to be revised as provided by the Requisitioning Act as amended by Act II of 1975 for a period of five years from 7.3.1975 to 6.3.1980. As there was no agreement between the parties on the question of compensation payable for the said period the said question was referred to the Principal Judge, City Civil Court, Madras who had been appointed as the arbitrator under section 8 of the Requisitioning Act to determine the compensation payable in respect of the property in question for the said period. The learned Arbitrator by his award dated August 31, 1984 fixed the compensation payable for the property at Rs.21,000 per
760
month as against the claim of Rs.77,270 per month made by the appellants.

Aggrieved by the decision of the Arbitrator the appellants filed an appeal before the High Court of Madras under section 11 of the Requisitioning Act. On an objection raised by the Registry of the High Court regarding the amount of the court fee paid on the memorandum of appeal the matter was placed before a Division Bench of the High Court of Madras for its decision. After hearing the learned counsel for the appellants the High Court following its earlier decision in Y. Venkanna Choudhary v. Government of India, by Military Estates officer, Madras & Anr., AIR 1976 Madras 41 held that the appellants were liable to pay court fee on the memorandum of appeal under section 51 of the Act ad valorem on the amount of compensation which was in dispute in the appeal. The appellants have filed this appeal by special leave against the said order of the High Court.

Section 51 of the Act which arises for consideration in this case reads thus:

> "51. The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed

by the appellant. "

The corresponding provision in the Court Fees Act, 1870 (Central Act VII of 1870) which was in force prior to the Act coming into force in Tamil Nadu is section 8 of that Act. It reads thus:

> "8. Fee on memorandum of appeal against order relating to compensation. -The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

Two principal contentions are urged by the appellants in support of this appeal. The first contention is that since there is no transfer of title to the property which is requisitioned from its owner to the Go
761
vernment, the said transaction is not an acquisition and hence those provisions of the Requisitioning Act under which the property is requisitioned do not constitute a law providing for acquisition of property. On the above basis it is urged that section 51 of the Act would not be applicable because it relates only to appeals filed against an order relating to compensation under any Act for the time being in force for the acquisition of land.

The expression 'acquisition' is not defined in the Act. We will have to ascertain from the scheme of the Requisitioning Act whether an acquisition of property takes place when it is requisitioned under the relevant provisions of the Requisitioning Act. Sections 3 to 6 of the Requisitioning Act deal with the powers of the Government in respect of requisitioning of property and section 7 of that Act confers power on the Government to acquire a property which has been requisitioned. Whenever a property is requisitioned by the competent authority it is entitled to call upon the owner or any other person who may be in possession of the property to surrender possession thereof to the Government. Section S of the Requisitioning Act provides that all properties requisitioned under section 3 shall be used for such purposes as may be mentioned in the notice of requisition. Such requisitioned property may be released from requisitioning under section 6. The title to the property continues to rest with the owner, the Government being entitled to only the possession of such property.

In the State of West Bengal v. Subodh Gopal Bose and Ors., [1954] S.C.R. 587, Patanjali Sastri CJ., has explained the meaning of the word 'acquisition' at page 610 thus:

> "The word "acquisition" is not a term of art, and it ordinarily means coming into possession of, obtaining, gaining or getting as one's own. It is in this general sense that the word has been used in articles 9, 11 and 19(1) (f) and not as implying any transfer or vesting of title .... To say that acquisition implies the transfer and vesting of title in the Government is to overlook the real nature of the power of the State as a sovereign acting through its legislative and executive organs to appropriate the property of a subject without his consent. When the State chooses to exercise such power, it creates title in itself rather than acquire it from the owner the nature and extent of

> the title thus created depending on the purpose and
>
> 762
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> duration of the use to which the property appropriated is intended to be put as disclosed in the law authorising its acquisition. No formula of vesting is necessary."

In Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. and Ors., [1954] S.C.R. 674 Mahajan, J. has observed at page 704 thus:

> "In my judgment, the true concept of the expression "acquisition" in our Constitution as well as in the Government of India Act is the one enunciated by Rich J. and the majority of the court in Dalziel's case. With great respect I am unable to accept the narrow view that "acquisition" necessarily means acquisition of title in whole or part of the property. It has been rightly said that a close and literal construction of constitutional provisions made for the security of person and property deprives them of half their efficacy and ends in a gradual depreciation of the right as if the right consisted more in sound than in substance. In other words, such provisions can not be construed merely by taking a dictionary in hand. The word "acquisition" has quite a wide concept meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of."

In both the above decisions the learned Judges drew support for their views from the decision of the High Court of Australia in The Minister of State for the Army v. Dalziel, 68 C.L.R. 261. In that case the High Court of Australia had to consider the scope of the legislative power with respect to acquisition of property conferred on the Commonwealth by section 51 (xxxi) of the Commonwealth of Australia Constitution Act of 1900 including the power to take possession for indefinite period. In the said case the placitum of the Australian Constitution which came up for consideration read like this:

> "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to-the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make law."

Rich, J. who was one of the Judges constituting the majority in that Bench observed.

763

> "The language used is perfectly general. It says the acquisition of property. It is not restricted to acquisition by particular methods or of particular types of interests, or to particular types of property. It extends to any acquisition of any interest in any property ..... But there is nothing in the placitum to suggest that the legislature was intended to be at liberty to free itself from the restrictive provisions of the placitum by taking care to seize something short of the whole bundle owned by the person whom it was expropriating .... It would, in my opinion, be wholly

> inconsistent with the language of the placitum to hold that, whilst preventing the legislature from authorising the acquisition of citizen's full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession, indefinitely, on any terms it chooses, or upon no terms at all ..... I am not impressed by the argument sought to be based upon the fact that in the expropriation legislation of fully sovereign legislatures a distinction is sometimes drawn between the permanent appropriation of property and the temporary assumption of the possession of adjacent property for use whilst works are being erected on the property which has been permanently appropriated. It was pointed out that in such legislation the two types of appropriation are differently dealt with, and that different language has been used to describe them by learned judges who have had occasion to refer to them. This is no doubt so. ..... But, with all respect. I fail to see how the practice of such legislatures or the language used by judges in referring to their legislation, throws any light upon the construction or operation of placitum xxxi, occurring, as it does, in a Constitution which confers powers which are both limited and conditional. "

The majority in that decision ultimately took the view that the taking under regulation 54 of the National Security (General) Regulations by the Commonwealth for an indefinite period of the exclusive possession of property constituted an acquisition of property within the meaning of section 51(xxxi) of the Australian Constitution.

"Possession in the Common Law". by Pollock and Wright (1888)
764
says: 'So feeble and precarious was property without possession or rather without possessory remedies, in the eyes of medieval lawyers, that possession largely usurped not only the substance but the name of the property ..... Possession confers more than personal right to be protected against wrongdoers: it confers qualified right to possess, a right in the nature of property which is valid against everyone who cannot show a prior or better title..... ..... Possession is a root of title.' Not only is a right to possession a right of property, but where the object of proprietary rights is a tangible thing, it is the most characteristic and essential of those rights. Possession, it is said, is nine points in law. An owner without possession has only a mere shell while the person in possession enjoys the property in many ways. In this situation, it is difficult to say that there cannot be deprivation of property without deprivation of title also. Deprivation of possession for an indefinite period is acquisition of property during that period though the title may continue to rest with the owner. That is why the requisitioning law also had to satisfy Article 19(1) (f) and Article 31 of the Constitution when they were in the Constitution.

It is no doubt true that in India before the Constitution there were two modes of depriving a person of immovable property in exercise of the right of eminent domain of the State, namely, requisitioning of property and acquisition of property and even after the Constitution came

into force the same pattern of laws is continued to be maintained but this Court has treated both requisitioning of property and acquisition of property as meaning the acquisition of property in the larger sense and there is no reason to depart from the views expressed by the two Constitution Benches of this Court referred to above. We do not, therefore, find any substance in the argument that the requisitioning of property under the Requisitioning Act does not amount to acquisition and the provisions contained in the said Act providing for the requisitioning of property do not constitute a law relating to acquisition of property referred to in section 51 of the Act. The first contention, therefore, fails.

The second contention urged on behalf of the appellants is that the award made by the Arbitrator under section 8 of the Requisitioning Act not being an order as defined in the Code of Civil Procedure, 1908 the appellants cannot be called upon to pay the court fee in accordance with section 51 of the Act since section 51 of the Act refers to court fee payable on a memorandum of appeal against an 'order'. Elaborating the above contention the learned counsel for the appe-

765

llants submitted that the expression 'order' in section 51 of the Act can only mean an order as defined in section 2(14) of the Code of Civil Procedure in view of section 3(iv) of the Act which provides that expressions used and not defined in the Act or in the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act I of 1891), but defined in the Code of Civil Procedure, 1908 (Central Act V of 1908), shall have the meanings respectively assigned to them in the said Code, and the expression 'order' is defined in section 2(14) of the Code as the formal expression of any decision of a Civil Court which is not a decree. It is argued that since the Arbitrator appointed under section 8 of the Requisitioning Act is not a Civil Court, the award passed by him cannot be termed as an 'order' bringing it within the mischief of section 51 of the Act. Reliance is placed by the appellants in support of the above contention on the decision of the High Court of Bombay in Hirji Virji Jangbari v. Government of Bombay A.l.R. 1945 Bombay 348 which was a decision rendered on the basis of section 8 of the Court Fees Act, 1870 which was in force in Bombay at that time and which was more or less couched in the same language as section 51 of the Act. We have already quoted above section 8 of the Court Fees Act, 1870. The Act corresponding to the Requisitioning Act, which was under consideration by the High Court of Bombay in that decision was the Defence of India Act, 1939. In that case under rule 75A of the Defence of India Rules, 1939 framed under the Defence of India Act, 1939 a plot of land belonging to the claimant therein was acquired by the Government for and on behalf of the Defence authorities and as no agreement could be arrived between the claimant and the Government with regard to the amount of compensation payable, the Government of Bombay appointed the Chief Judge of the Court of Small Causes as an arbitrator under section 19(1) (b) of Defence of India Act, 1939 corresponding to section 8 of the Requisitioning Act, to determine the amount of compensation payable to the claimant. The artibtrator fixed the amount payable to him at Rs.45,855. The claimant being dissatisfied with that amount filed an appeal in which he claimed a further sum of Rs.47,896/8 in addition to the amount awarded to him by the arbitrator. The question that arose in that case was whether the appellant was liable to pay court fee on the memorandum

of appeal ad valorem, as required by section 8 of the Court Fees Act, 1870 or whether he was liable to pay a fixed fee under Schedule II Article 11 of the Court Fees Act, 1870. The learned Judge who decided the said case held that the order of the arbitrator in that case being not a decree nor an order having the force of a decree and there being no provision in section 19 of the Defence of India Act and the Rules made thereunder by which the awards made under that Act were deemed to be the
766
decrees, the award could not be treated as an order within the meaning of section 8 of the Court Fees Act. The learned Judge, therefore, came to the conclusion that a fixed court fee was payable under the residuary Article 11 of Schedule II to the Court Fees Act, 1870. It was brought to our notice that this decision had been followed in Crown v. Chandrabhan Lal and Ors., A.I.R. 1957 Nagpur 8. We find that earlier to the above decision a contrary view had been taken by the Calcutta High Court In re Ananda Lal Chakrabutty & Ors., A.I.R. 1932 Calcutta 346. In that case Rankin CJ. who decided it observed thus:

> "Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases, which it deals with, the amount of fee pay able under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an ad valorem charge and is not a fixed charge;
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> ..... The provisions of s. 8, involving as they do that fee in the class of cases dealt with is an ad valorem fee, are themselves sufficient to exclude any question of Article 11 of Schedule II being made applicable to such cases. It is not necessary to consider whether the Tribunal's award, which is an order and not a decree, is an order having the force of a decree. Whatever the effect of that phrase may be, section 8 shows one perfectly clear that an appeal regarding compensation in a Land Acquisition case is not under Article 11 of Schedule II, because it is not a fixed fee at all ...."

In Satya Charan Sur v. State of West Bengal, A.I.R. 1959 Calcutta 609 the High Court of Calcutta while following the decision in Ananda Lal Chakrabutty's case (supra) expressly dissented from the view expressed in Hirji Virji Jangbari's case (supra), After the Bombay Court Fees Act, 1959 came into force a similar question arose for consideration in C.B.G. Trust v. Union of India, [1970] Bombay Law Reporter, 4()7, regarding the proper court fee payable on an appeal filed against an award made under the Requisitioning Act. In the Bombay Court Fees Act, 1959 section 7(1) provided that the amount of fee payable
767
under that Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes should be computed according to the difference between the amount awarded and the amount claimed by the appellant. The language of that section was similar to the language of section 51 of the Act and of section 8 of the Court Fees

Act, 1870. A Division Bench of the High Court of Bombay, which heard the said case held that the Court fee payable on the memorandum of appeal preferred against award made under section 8 of the Requisitioning Act was as prescribed by Article 3 of Schedule 1 read with section 7(1) of the Bombay Court Fees Act, 1959. They disapproved the decision of the Bombay High Court in Hirji Virji Jangbari's case (supra) and followed the decision of the Calcutta High Court in Ananda Lal Chakrabutty's case (supra). An identical question came before this Court for consideration in Sahadu Gangaram Bhagade v. Spl. Deputy Collector, Ahmedanagar & Anr., [1971] 1 S.C.R. 146. In that case this Court approved the view expressed by the Calcutta High Court in Ananda Lal Chakrabutty's case (supra) and in C. B. G. Trust case (supra) and held that the contention that the award made by the Arbitrator had no effect and, therefore, it could not be considered as an order, was not acceptable. The Court proceeded to hold that though the award was not an order as defined in the Civil Procedure Code, 1908 having not been made by the Civil Court but since the expression 'order' had not been defined in that Act, the award of the Arbitrator was undoubtedly a formal expression of a E decision made by a competent authority which was binding on the parties to the proceedings in which it was made. The learned counsel for the appellants tried to distinguish this decision from the present case on the ground that while the expression 'order' had not been defined in the Bombay Court Fees Act, 1959 which arose for consideration in the said decision, in the present case it had been defined as stated earlier by stating in section 3(iv) of the Act that the expression used and not defined in the Act, but defined in the Code of Civil Procedure should have the meaning respectively assigned to them in the said Code, and in view of the above distinction the decision in Sahadu Gangaram Bhagade's case (supra) would not govern the present case. We do not find much substance in the above contention. On carefully going through the decision of this Court in Sahadu Gangaram Bhagade's case (supra) we find that the decision did not really turn upon the presence or the absence of the definition of the word 'order' in the Bombay Court Fees Act, 1959 although there is a reference to this aspect of the matter in the course of the decision. The relevant
768
part of the decision in Sahadu Gangaram Bhagade's case (supra) at page 150 reads like thus:

> "Section 11 provides for an appeal to the High Court against the award made by the arbitrator. In the Act there is no provision similar to sub-section (2) of s. 26 of the Land Acquisition Act, 1894 where under every award made by the Land Acquisition officer is to be deemed to be a decree of court. Therefore, the question whether the award made under s. 8 of the Act is executable or not is a matter that requires further considera-tion. For the present, we shall proceed on the basis that it, is not executable. But section 9 of the Act requires the competent authority to pay the compensation awarded to the person or persons entitled thereto. Therefore, we are unable to accept the contention of the learned counsel for the appellant that the award made by the arbitrator is something which has not effect and therefore it cannot be considered as an order. It is true that it is not an 'order' as defined in the Civil Procedure Code, the same having not been

made by a civil court. But the expression 'order' is not defined in the Act. The award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. Therefore the question whether the order in question is executable or not appears to us to be irrelevant for the purpose of determining the point in issue. "

(emphasis added)

The portion of the judgment of this Court which has been under lined clearly brings out the effect of an award. This Court has held that the award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. We are also of the view that much reliance cannot be placed on the definition clause found in section 3(iv) of the Act since the definitions given in that section have to be read subject to the context in which the expressions defined therein appear in the Act. Section 3 of the Act states that in the Act 'unless the context otherwise requires' the words and expressions defined in that section shall carry the meaning given to them in various clauses in that section. It is relevant to note that in section 51 of the Act which arises for consideration before us the word 'order' does not appear in isola-
769
tion. The section states that the fee payable under the Act on a memorandum of appeal against an order relating to compensation in any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellants. The 'order' referred to in section 51 of the Act need not therefore be an 'order' of a civil court as defined in section 2(14) of the Code of Civil Procedure but should be an 'order' relating to compensation under any Act for the time being in force for the acquisition of property for public purposes. There is no doubt that the award passed by the Arbitrator under the Requisitioning Act is a formal expression of a decision made by a competent authority which is binding on the parties and it relates to compensation payable under an Act for the time being in force for the acquisition of property for the public purposes. Hence we are of the view that even though the expression 'order' simpliciter has to be understood in the sense in which that expression is defined in section 2(14) of the Code of Civil Procedure, the wold 'order found in section 51 of the Act has to be read differently having regard to the word which qualify that expression in that section, namely, relating to compensation under any Act for the time being in force for the acquisition of properties'. The said order need not be an order of a civil court only. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. The award made under section 8 of the Requisitioning Act satisfies these tests. We do not, therefore, find any substance in this contention too. Since according to us the appeal before the High Court filed under section 11 of the Requisitioning Act falls squarely under section 51 of the Act, court fee has to be paid on ad valorem basis as provided in Article 1 of Schedule 1 to the Act. It follows that the residuary Article i.e. Article 3(iii)(A)(1)(a) of Schedule 11 to the Act is not attracted. The High Court was right in following its earlier decision in Y. Venkanna Choudhary's case (supra) and

directing the appellants to pay court fee an ad valorem basis under section 5 1 of the Act.

We may add that the decision in Srunguri Lakshmi Narayana Rao & Ors. v. Revenue Divisional officer, Kakinada & Ors., A.I.R. 1968 Andhra Pradesh, 348 M. Ramachandran & Ors. v. State of Madras represented by the Collector, Coimbatore, 87 Law Weekly Madras 791 Satya Charan Sur's case (supra), Balakrishnan Nambiyar & Ors., v. Kanakathidathil Madhavan & Ors., A.I.R. 1979 Kerala 40 and Ghouse Saheb v. Sharifa Bi & Ors., A.I.R. 1977 Karnataka 181 have taken the came view as we have taken.

770

The decisions in Hirji Virji Jangbari's case (supra), Kanwar Jagat Bahadur Singh v. The Punjab State, A.I.R. 1957 Punjab 32. Crown's case (supra) and Mangal Sen v. Union of India, A.I.R. 1970 Delhi 44 are not approved by us.

We, therefore, dismiss the appeal. There shall, however, be no order as to costs.

The appellants are granted three months' time to pay the deficit court fee on the memorandum of appeal.

M.L.A. Appeal dismissed.

771