
(1953) 03 CAL CK 0007
In the Calcutta High Court
Case No : A.F.O.D. No. 102 of 1948

Amiyo Pal Choudhury and Others

APPELLANT

Vs

Province of Bengal

RESPONDENT

Date of Decision : 16-03-1953

Acts Referred:

Defence of India Act, 1939 — Section 19, 19(1)
Defence of India Rules, 1939 — Rule 75A
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1954 Cal 551 : 58 CWN 347 : (1955) 1 ILR (Cal) 198

Hon'ble Judges : R.P. Mookerjee, J; P.N. Mookerjee, J

Bench : Division Bench

Advocate : Amarendra Nath Bose and Nagendra Mohan Saha, for the Appellant; Hemendra Kumar Das and Tapendra Kumar Pal, for the Respondent

Final Decision : Allowed

Judgement

R.P. Mookerjee, J.—Premises described as plot No. 489 of Southern Avenue in South Calcutta was requisitioned under Rule 75A of the Defence of India Rules on 2-10-1944. -Possession was taken on 20-10-1944, of the ground floor and of the entire premises on 15-11-1944. As no agreement could be reached between the owner & the Government as u/s 19(1) (a), Defence of India Act as to the compensation to be paid for such requisition, the question of proper compensation was referred to an arbitrator. The Land Acquisition Collector had offered compensation at Rs. 250/- per mensem for the period when only the ground floor had been requisitioned, such compensation being inclusive of the charges for payment of rates and taxes and for repairs. As from the date when the entire premises had been taken possession of by the requisitioning authority compensation at Rs. 450/- per mensem inclusive of municipal taxes but exclusive of repairs had been offered. This was not accepted by the owner.

2. On receipt of the records the Arbitrator directed notices to be issued on the claimant and the Government to state their respective opinion as to the fair

amount of compensation. On behalf of the Government the offer as made by the Collector was stated to be a fair one. The claimant stated that Rs. 1000/- per mensem was the proper compensation for the entire premises, and the amounts offered whether for the ground floor only or for the premises in its entirety as made by the Collector were not fair or proper.

3. In the petition filed by the claimant on 11-11-1947, giving his estimate of their amount of compensation it was mentioned that the documents to be relied upon by the claimant had been already filed before the Land Acquisition Collector when the case was pending before him and those records should be called for as they would be relevant and necessary at the time of the hearing of the matter by the Arbitrator.

4. After the Arbitrator had directed the case to be put up on 13-5-1947, for settling a date of hearing a petition was again filed by the claimant on 5-5-1947, praying that the records in the relevant Land Acquisition Case be called for from the Land Acquisition Collector. The Arbitrator recorded an order to the effect that as the date of hearing had not yet been fixed this petition might be put up after such a date had been fixed. On successive dates when the matter was put up before the Arbitrator the case was adjourned to another date for settling a date of hearing until 3-7-1947, when it was noted that as there was no chance of the case being taken up in the near future the case be adjourned sine die. On that date the claimant had filed a list of witnesses to be called.

5. A new Arbitrator having in the mean time been appointed the case was brought back to the file on 20-11-1947, when 12-1-1948 was fixed as the date for hearing. Thereafter on 3-12-1947, the Arbitrator's attention having been drawn to the earlier prayer made by the claimant for the calling of the records in the relevant Land Acquisition Case, such records were called for and the requisition was sent out to the Land Acquisition Collector on 8-12-1947. On 12-1-1948, hearing was adjourned on the prayer of the claimant, and 28-2-1948 was fixed for hearing.

On 17-2-1948 the claimant again prayed for the calling of the records pointing out that those had not yet been sent by the Collector. A reminder was sent by the Arbitrator on 19-2-1948, but such records were never sent, and there is no paper in the records explaining as to why the Land Acquisition Collector in spite of the requisitions from the Arbitrator neglected to send up the relevant records.

In the meantime further prayers by the claimant citing witnesses were filed, and in some of those applications summonses were sent out except that the notice on the Agent of the Central Bank of India summoning him to produce certain cheques, although prayed for previously, and made ready on 8-3-1948, were not handed over to the peon before 2-4-1948, that is about two weeks after the disposal of the case by the Arbitrator.

6. Reference had been made in detail to the various steps taken by the claimant and the different stages of the proceedings for the purpose of showing the

unsatisfactory procedure which is generally followed in disposing of references made for fixing the fair amount of compensation under the Defence of India Act. This is not a solitary instance where laxity prevailed, but in other cases also our attention had been drawn to similar circumstances.

7. This is due in the main to the fact that it is forgotten by the Arbitrators generally, that their duty and responsibility when fixing the fair amount of compensation u/s 19(1) (a), Defence of India Act is materially different from those in the case of a reference under Part III of the Land Acquisition Act.

When a reference is made under Part III of that Act the referring claimant occupies the position of a plaintiff and the Government is in the position of a defendant in a civil suit (-- "Ezra v. Secretary of State" 30 Cal 36 (A)). It is for the referring claimant to show that the valuation as fixed by the Collector is wrong (-- Ananta Ram Banerjee Vs. Secretary of State,). If, however, no evidence had been recorded by the Collector during the enquiry by him or if no reasons had been given by him to support his conclusion the claimant had a very light burden to discharge. The mere expression of opinion, without reasons or materials, is not accepted as prima facie evidence that his award was either correct or proper (-- "Harish Chandra Neogi v. Secretary of State" 11 Cal WN 875 (C)). Except in those cases where the Collector has "not given any reason in support of his decision the party claiming an enhanced compensation must produce evidence to show that the award was inadequate. If the claimant produces no sufficient evidence the Collector's award must stand. If the claimant is able to prove a prima facie case that the award is inadequate the Government must support the award by producing evidence (-- " The Assistant Development Officer Vs. Tayaballi Allibhoy Bohori,).

8. The provisions u/s 19(1) of the Defence of India Act, however, place upon the Arbitrator the duty and responsibility of fixing fair compensation. In these proceedings on compulsory acquisition or requisition, unless the compensation can be fixed by agreement under Clause (b) of Sub-section (1) of Section 19, Defence of India Act, the Central Government shall appoint an Arbitrator who must be a person occupying a certain status to fix the compensation.

9. The procedure to be followed by the Arbitrator is determined by Clauses (d) and (e) of Sub-section (1) of Section 19, Defence of India Act which are as follows:

"(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(e) the arbitrator in making the award shall have regard to-

(i) the provisions of Sub-section (1) of Section 23, Land Acquisition Act, 1894, so far as the same can be made applicable; and

(ii) whether the acquisition is of a permanent or temporary character."

10. Rule 75A of the Defence of India Rules furnishes more detailed provisions about the procedure before the Arbitrator. Sub-rule 5 (a) of Rule 75A aforesaid is in the following terms:

"5(a) Without prejudice to any powers conferred by these Rules, any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purpose of determining whether, and if so, in what manner an order under this rule should be made in relation to such premises or property, or with a view to securing, compliance with any order made under this rule."

11. It is quite clear from the provisions referred to above that when properties are acquired or requisitioned under the Defence of India Act and/or the Defence of India Rules, it is for the Arbitrator to require any person to furnish him such information in his possession relating to the property as he may require for "determining the proper, value and compensation". The duty to produce such materials as may be within the special knowledge and under the control of either the claimant or the Government must be discharged by them, irrespective of and independent of any question of onus being on either of the parties. It is fundamentally different from what the duties are as fixed under the Land Acquisition Act on the Special Judge hearing References under Part III of the Land Acquisition Act. It is for the arbitrator to fix the reasonable compensation on the materials produced before him. There is no question of the Collector's offer being accepted on the abstract rule of any onus being placed on the claimant.

12. In the case now before us, in spite of the fact that the claimant had been from the very beginning when the Arbitrator was placed in seisin of the case, drawing the attention of the latter that the relevant materials were with the Land Acquisition Collector it is inexplicable from the records in the present case why the Land Acquisition Collector failed in his duty to send the records in spite of such requisition by the Arbitrator more than once. This was overlooked by the Arbitrator also when the matter was put up for final hearing. It is time that the attention of the Arbitrator, the Land Acquisition Collector and the parties before the Arbitrator should be pointedly drawn to the nature of the proceedings before the Arbitrator and to the duty which each is to discharge under the law.

13. There are no materials on the record to explain the circumstances under which the summons directed to be issued by the Arbitrator had not been issued from his Court till after the case was heard out and disposed of.

14. So far as the claimant is concerned, he examined one witness, an Engineer, who had built the house in question, and the State examined one witness who attempted to prove that the average rent per 100 square feet in the locality was Rs. 15/-.

15. The requisition Had taken effect so far back as 1944. In the best interest of

the parties concerned the amount of compensation should be fixed without any further delay on such evidence as had been adduced in this case, particularly when the evidence adduced by the claimant as to the monthly rent for the first floor of the premises in question remains unrebutted. Only the average to be calculated on the same for the entire premises was attempted to be questioned during the cross-examination.

16. The premises in question is a south facing one abutting on the Southern Avenue and on the southern side of the latter are the Lakes and open grounds. On the west of the premises is another Municipal Road, Abdul Rasul Road. The major portion of the structures consists of a two-storied house with a garage, a mezzanine floor and certain other sheds.

The building was a newly constructed one, the ground floor being in the occupation of the then owner, and the first floor was admittedly let out to an I. C. S. Officer who paid Rs. 325/- per mensem for the same. The testimony of the witness examined on behalf of the claimant taken along with the plan, Ext. 1, in the case show what the total area in the different floors was as also the areas covered by portions other than the main building. That the I. C. S. officer paid Rs. 325/- per month was not questioned by the Government. When the witness stated that on the basis of the rent so paid the two-storied house would bear a fair rental of Rs. 775/- per month, the only questions put to the witness were (1) that the rent for the ground floor was sometimes less than that for the first floor, and (2) if an entire house is let out to one party, the rent would be comparatively less than what two different tenants would pay for the two floors separately.

17. The witness examined on behalf of the State described himself as the Technical Adviser to the Land and Hiring Department, and stated that he was concerned with the assessment of compensation in respect of the houses requisitioned on the Southern Avenue. The substance of his deposition is that the Collector had allowed Rs. 15/- per 100 square feet in respect of eight houses in the locality facing the Lakes. He admitted that he had assessed the rental values of all these houses from the actual rent of only one house, viz., Plot No. 202 Southern Avenue." He did not give any "particulars of either the accommodation or the conveniences and the facilities of even the particular house which only he had examined to assess the average rate of Rs. 15/- per 100 square feet,

18. The learned Arbitrator points out that the Collector having offered a rent which works out according to the former at Rs. 18/- per 100 square feet in place of Rs. 15/-, stated by the witness to have been allowed in the case of seven other houses, such compensation must be considered to be a proper compensation for the main building. Additional rent was allowed by the Arbitrator for certain portions of the house which had not been taken into consideration, according to the Arbitrator, by the Collector. The total area on which the square foot rate was applied by the Arbitrator was by excluding all spaces other than what he considered to be the "living rooms".

19. From the evidence as adduced by the claimant, the nature of the building and the amenities available, as also the fact that Rs. 325/- per month was being paid by the officer for the first floor remain uncontroverted. The assessment of compensation by ignoring the amount of rent paid by the officer cannot be justified.

The Arbitrator also has accepted the claimant's case that the officer paid Rs. 325/- per month as rent. But according to the Arbitrator that rent works out at Rs. 29/- per 100 square feet of "living rooms" and he was not prepared to accept this as a reliable basis for fixing the compensation for the premises. He also proceeded to refer to what in his view, other officers of his class purported to do and what the particular tenant officer might have done also. It was highly improper for the Arbitrator to introduce in his judgment observations which were not based on any material on the record. Such extraneous matters ought not to have found a place in the judgment far less being utilised as one of the grounds for decision by the Arbitrator. Even the Government had not raised any such question during the cross-examination of the witness examined for the claimant nor was it even suggested by the Government witness.

20. The position taken up by the Government, therefore, is substantially this: Rs. 15/- per 100 square feet is the average rate for houses in the locality in question, and should be applied to the present case. Fixing a standard rate of rent per 100 square feet for residential houses in Calcutta is not at all an easy task; even if it can be so fixed in any particular locality sufficient, materials must be made - available to the Court before a particular rate can be accepted as the prevailing rate for residential houses in that locality.

In business quarters, no doubt, particular rates in particular localities can be much more easily fixed, as the amenities and facilities necessary for such business quarters may be of particular standards in particular localities. In the case, however, of residential quarters such a method is a very risky one as there are so many uncertain quantities which influence and regulate the rate of rent of a particular premises, as distinguished from the rent payable, it may be even for the contiguous house. What is the nature of the, structure? What are the amenities available? For what particular class of persons is the premises meant for letting out? Whether there are open lands, lawns etc.? The arrangements made for attached bath rooms to each living room? The arrangements for servants' quarters? Whether the premises are within easy reach from the tramways or bus routes etc.? Whether the premises stand at the junction of two roads or with one frontage only? There may be various other considerations in particular cases and particular localities. Even when there are comparable considerations no average is possible to be worked out from one or two cases only.

21. The rent of a particular premises would depend on considerations mentioned above and others as well. In the present case the so called expert had determined the rate of rent per 100 square feet from the actual rent of one

house only. The particulars of that house even have not been stated before the Arbitrator. Although that witness stated that Rs. 15/- per 100 square feet had been worked out and applied in the case of all houses, no question was put to him by the Government to elucidate whether this rate of Rs. 15/- per 100 square feet is to be calculated on the "living" room" area only, as done by the Arbitrator, without any material in the record, or for the entire floor area.

22. Apart from the initial difficulties attending the fixation of an average rate of rent for residential houses in the locality, the records in the present case do not contain any materials on which such a rate can be fixed unless the "ipse dixit" of the expert who fixed the rent with reference to one house only be accepted. This will be most improper. The only relevant material, therefore, on which the Court can proceed to fix the fair rent and compensation in the present case is by taking the admitted rent of Rs. 325/- per month for the first floor without considering any extraneous matter.

23. If the rent for the first floor be taken as the index for arriving at the rent of the entire premises, subject to certain qualifications and limitation, in our view the fair monthly rent for the entire premises should be Rs. 675/- inclusive of taxes, but exclusive of repairs. The rent which was being paid by the officer tenant is not shown to be inclusive or exclusive of the occupier's share of rates. In the absence of such evidence it would be only fair to take it that the usual share of the occupier's share of taxes on the rental was paid by the tenant in addition to the rent as under the normal provisions of the Calcutta Municipal Act.

24. The Arbitrator has overlooked that for some period, viz., from 20-10-1944. to 15-11-1944, only the ground floor had been taken possession of and the compensation for that period will not be the compensation for the entire premises. We assess the compensation for that period for the ground floor at Rs. 325/- per month inclusive of rates and repairs.

25. This appeal is accordingly allowed and the compensation is to be fixed according to the directions given above. The appellant will be entitled to the costs of this Court, the hearing fee being assessed at five gold mohurs.

26. We further direct that the compensation from the date of the original occupation to the date of giving up possession be paid by the Government less such amount as might have been paid in the meantime within one month from the date of the arrival of the records in the lower Court.

P.N. Mookerjee, J.

27. I agree.