courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(1953) 09 BOM CK 0007

In the Bombay High Court

Case No : First Appeal No. 250 of 1951

Dawoodali Rahematulla Versey — APPELLANT

Vs

State of Bombay and Others — RESPONDENT

Date of Decision : 28-09-1953

Acts Referred:

Bombay Land Requisition (Determination of Compensation) Rules, 1949 — Rule 3, 4, 4(3)
Bombay Land Requisition Act, 1948 — Section 20, 7, 8, 8(1), 8A
Bombay Land Requisition Ordinance, 1947 — Section 4(4)
Defence of India Rules, 1962 — Rule 75A
Land Acquisition Act, 1894 — Section 23, 23(1), 24

Citation : AIR 1954 Bom 323 : (1954) 56 BOMLR 238 : (1954) ILR (Bom) 752

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : G.K. Chandan, A.C. Chandan and C.K. Shah, for the Appellant; H.M. Choksi, Govt. Pleader, B.H. Lulla and N.B. Lulla, for the Respondent

Judgement

1. By two orders dated 23 January, 1948, the Government of Bombay in exercise of -powers conferred by Sub-section. (4) of Section 4, Bombay Land Requisition Ordinance, 1947, requisitioned 8 out of 9 rooms in Chawl No. 200 and 9 rooms in Chawl No. 201 of ''Versey Colony'' at Gundavali, Andheri. By the same orders the Government directed the Inspector of Land Requisition to allot the rooms to the tenants whose names were mentioned in a list supplied to that officer, on such conditions ''as may be found necessary''. The orders were modified by order dated 30 January, 1948, and all the 18 rooms in the two chawls were requisitioned & were allotted to the tenants in occupation thereof.

The terms of allotment in so far as they are material were :

"(1) Monthly rent of each room will be Rs. 25 including water-charges, but excluding electricity charges; Rs. 22 will be the rent and Rs. 3 will be water-charges.(3) The tenants should give one calendar month''s notice in case of their vacating failing which they are liable to forfeit one month''s rent in lieu of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-...

calendar month''s notice. (4) In case the tenant vacates after giving notice the landlord shall return the balance of the rent to the tenant and intimate to this office of his having done so. (5) As already indicated in this office Order No. R. E. Q. O. R. D. 7 dated 23rd January 1948, the allotment of this tenancy is subject to such conditions as may be imposed by Government hereafter in similar cases."

The Bombay Land Requisition Act (33 of 1948) came into operation on 11 April 1948. By Section 20 of that Act the Bombay Land Requisition Ordinance of 1947 was repealed, but the orders for requisition and the requisition made thereunder were continued as if the same were made under Act 33 of 1948. Section 8, Sub-section (1), of Bombay Act 33 of 1948, provides for payment of compensation to the owner of the property requisitioned. Section 19 confers upon the state Government power to make rules to carry into effect the purposes of the Act.

Even though the Act was passed in 1948, the rules under which compensation was to be ascertained for requisition of premises under the Act were not made by the Government of Bombay till June 1949. They were first published in June 1949. The rules are printed on pages 167 onwards of Vol. I of Rules and Orders under Bombay Acts, (1951 edition). After the rules were framed the allottees applied to the Government to settle the amount of compensation payable u/s 8 Clause (1), to the owner of the premises.

2. The allottees contended that the condition of allotment requiring them to pay Rs. 25 per month was not binding as the amount was excessive and unreasonable. They requested the Compensation Officer to ascertain reasonable compensation. The Compensation Officer thereupon issued notice to the owner under Rule 4(c) of the Bombay Land Requisition (Determination of Compensation) Rules, 1949, requiring him to produce documentary or other evidence in support of his claim for compensation. The owner thereupon appeared before the Compensation Officer and contended that the Compensation Officer had no jurisdiction to enter upon any inquiry.

The Compensation Officer held that the "rent terms" dated 30 January 1948, "and contained in para. 5 making the allotment conditional, subject to such condition as may be imposed by Government thereafter in similar cases", showed that the "rent terms" arrived at by the Collector were not final and the Compensation Officer who was authorised by the Government u/s 8(1), Bombay Land Requisition Act, 1948, had a right to proceed with the inquiry determining compensation. The Compensation Officer recorded the evidence led before him and came to the conclusion that the owner was charging rent from his tenants at the rate of Rs. 5 per month in respect of each room in the year 1942-43.

Having regard to the expenses incurred for making repairs and having regard to the area of the rooms and the amenities provided by him and after taking into account the order of the Collector which had been acquiesced in by the allottees, '' by his order dated 24 January 1951, the compensation Officer declared under Rule 4(3) of the Bombay Land Requisition (Determination of Compensation)

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

Rules, 1949, that the fair & reasonable rate of compensation for each of the 18 requisitioned rooms was Rs. 10 per month in respect of rent plus Rs. 3 per month as water charges plus permissible additional Municipal General Tax, and ordered that the same be paid to the owner from the date of occupation of each room by the respective tenant, as ordered by Government on January 30, 1948, subject to the condition that the owner executes an agreement in form "B" prescribed for the purpose under the rules. The owner has appealed to this Court u/s 8, Clause (3) of the Act.

3. The conclusion of the Compensation Officer that Rs. 10 per month is fair rent having regard to the circumstances, has not been challenged before me. But three points have been urged by counsel for the owner in support of the appeal : (1) That the proceedings commenced at the instance of the allottees were not maintainable; (2) that the Government having requisitioned the premises and having rented the same to the allottees on certain terms and conditions the conditions constituted a contract between the allottees and the owner and the allottees were bound by that contract; and (3) The ascertainment of compensation cannot be sustained because it is based on erroneous principles.

4. It appears that the proceedings for ascertaining compensation were initiated after an application was submitted by the allottees to the Government. It is also true that in the proceedings for ascertaining compensation the allottees have no ''locus standi''. The proceedings for ascertaining compensation are between the Government as the requisitioning authority and the owner whose property is requisitioned. The liability to pay compensation is of the requisitioning authority and the person to whom the land or the premises were allotted have no concern with the proceedings for ascertaining compensation.

In -- Chaturbhuj Hotchand Asarpota Vs. The State of Bombay and Others, , it has been held by a Division Bench of this Court that the allottee has no right to appeal against the decision of the Compensation Officer as he has no ''locus standi'' to appear in those proceedings. But Section 8, Clause (1), imposes an obligation upon the Compensation Officer to hold an inquiry for ascertaining compensation payable to the owner. The rules framed u/s 19 do require that the owner should make an application (see Rule 3) for ascertaining compensation. When, however, Section 8 imposes an obligation upon the Compensation Officer to make an inquiry as to compensation, an application by the owner is not a condition precedent to the initiation of proceedings, and even if the proceedings are initiated on a request made by the allottees, they cannot be regarded as without jurisdiction and consequently not maintainable.

5. The order of the Collector, Bombay Suburban District, under which the rooms were requisitioned and allotted was made subject to certain terms and conditions. Those terms and conditions'' did not and could not operate as a contract between the owner and the allottees. After requisition the premises were given by the Government to the allottees and the allottees became licensees of the Government. The liability for payment of com-pensation rests u/

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

s 8 of the Act upon the Government, as the requisitioning authority. The Government may levy a charge from the allottees in consideration of allowing them a right of occupation, but that can have no bearing on the amount of compensation payable by the Government to the owner.

In this connection the following observations made in Chaturbhuj Hotchand Asarpota Vs. The State of Bombay and Others, '' are pertinent at p. 165.

"Under the scheme of the Bombay Land Requisition Act, it appears that the requisition is to be made by Government and it is Government who are liable to pay the compensation in respect of the premises requisitioned. Under Subsection (3) of Section 8 B the allotment of any land to any person, or the continuance of any person or the permission to any person to continue to remain in occupation or possession of any land, referred to in Sub-section (1), shall be deemed to be a license in favour of such person for the use and occupation of the said land. Therefore even after the requisition, the person permitted to remain in occupation or the person to whom the requisitioned premises are allotted becomes a licensee of Government.

Formerly, u/s 9A of the Act, which has been subsequently repealed, it was within the competence of Government to make the allottee a tenant of the premises requisitioned and the relationship of landlord and tenant arose between the allottee and the person whose premises were requisitioned. But Section 9A has been deleted and the person to whom the requisitioned premises are allotted continues to hold them as a mere licensee from Government under Sub-section (3) of Section 8B."

Therefore, even if the allottees were permitted to pay the charges agreed to be paid by them to the Government directly to the owner, the allottees could not be regarded as tenants of the owner, and the payments made by the allottees must be regarded as made on behalf of Government, it is true that u/s 9A of the Act (which has since been repealed by Bombay Act 5 of 1952), it was open to the Government to make an allottee of requisitioned premises a tenant thereof. No order was, however, made under the provisions of Section 9A, Bombay Land Requisition Act making the allottees tenants of the owner, and consequently the allottees cannot be regarded as tenants of the owner by reason of the order of allotment.

As stated earlier, the liability for payment of compensation rests upon the Government and it is no concern of the owner whether the Government recovers anything from the allottee for allowing him to occupy the premises requisitioned. Under the Act requisition may be made for the purpose of the State or for public purposes. But if there is a valid requisition, the subsequent allotment does not create any privity of contract between the allottee and the owner of the property. It may be that Government in view of special circumstances give the premises requisitioned for occupation to an allottee free of charge, but thereby the Government cannot escape liability to pay compensation to the owner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

It may also happen that the Government makes a charge in excess of fair or economic rent of the premises, but provided the requisition is lawful, the extent of the liability of the Government as requisitioning authority cannot be judged by reference to such charges. The allottee is a licensee of the Government, and the charge made by the Government, if any, has no bearing on the liability of the Government to pay compensation to the owner. If the allottee fails to pay rent and the same cannot be recovered or the premises remain unoccupied, the liability of the requisitioning authority to pay compensation may not thereby be affected.

The "rent terms" in the order of the Collector cannot be regarded as a contract between the owner and the allottees. In any event, the owner is not entitled to recover anything more than the amount of compensation which is required to be ascertained u/s 8 of the Act and the owner''s right to statutory compensation cannot be prejudiced even if the requisitioning authority does not collect or is unable to collect the charges for which the allottees are permitted to occupy the requisitioned premises.

The mere fact, therefore, that under the order of allotment the allottees were required to pay ''rent'' at the rate of Rs. 25 per month for occupa-tion of the premises and were also required to pay the amount directly to the owner does not deprive the Compensation Officer of his authority to ascertain the amount of compensation payable to the owner.

6. The method Of ascertaining compensation is set out in Section 8, Sub-section (1). That Sub-section states :

"When any land is requisitioned or is continued to be subject to requisition under this Act, there shall be paid, subject to the provisions of Section 7, compensation to persons having interest in such land the amount of which shall be determined by an officer authorised in this behalf by the State Government who shall hold an inquiry in the manner prescribed. The officer shall determine such amount of compensation as he deems just having regard to all the circumstances of the case; and in particular he shall be guided by the provisions of Sub-section (1) of Section 23 and Section 24, Land Acquisition Act), 1894, in so far as they can be made applicable.''

Now, when the Government do not acquire the entire interest of the owner in the premises by requisition but merely acquire the right of user for an indefinite period, the ownership of the premises is not affected thereby. In the very nature of things, the compensation to be awarded to the owner in those circumstances is not the value of the property but the value of the user to which he is entitled and of which he is under the authority of law expropriated. Inasmuch as the requisition is not for a fixed period and the premises may be released from requisition at any time by the Government, the compensation must of necessity be a periodic payment which is to enure so long as the owner remains deprived of the use of his property.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

Section 8 requires that the Compensation Officer shall be guided by Sections 23 (1) and 24, Land Acquisition Act in so far as those provisions may be applicable. In the application of those provisions to cases where there is a requisition, that is expropriation of a limited interest for a period of undefined duration, the expression "land" must mean "the user of the land" and the expression "market value" u/s 23 (1) must mean the periodic payment which a willing owner may expect to receive in the open market from a willing transferee as consideration for parting with the right of user in favour of the transferee who is at liberty at any time to abandon the transfer but who cannot be compelled so long as he is unwilling to surrender it.

It is true that such transfers are rarely made voluntarily. But a monthly tenancy protected by the normal rent restriction statute is the nearest equivalent to it and the rent that such a monthly tenant may pay affords a fairly accurate basis for ascertaining the periodic compensation to be rendered.

7. It is true that the inability of the owner to compel the requisitioning authority to vacate does to a certain extent theoretically reduce the value of the reversion to the owner and he may be justified in claiming additional compensation for that reduction. But in view of the stringent provisions of the Rent Restriction Act which have considerably reduced the value of the reversion to the owner and have imposed upon him severe restrictions on the general liberty of contract between landlord End tenant, that theoretical reduction in the value of the reversion may be regarded as amply compensated by the comparatively greater security of the amount of compensation payable and by the regularity in payment thereof.

It is also true that u/s 8A of the Act an owner may be compelled by the Government to execute the necessary repairs, and on his failure to keep the premises in a good and tenantable condition, the Government may cause such repairs to be executed at the expense of the owner and recover the costs thereof. But the provision by which an owner is entitled when the premises are released from requisition to compensation for any deterioration caused to the premises otherwise than by reasonable wear and tear or irresistible force, confers an advantage upon the owner, whose premises are requisitioned, over a landlord who has demised the premises to a private tenant.

In my view, therefore, the rent which the premises would fetch, having regard to the provisions of any rent restriction statutes in force at the time of the requisition, must be accepted as an adequate basis for ascertaining the periodic compensation to be made to the owner.

8. In -- ''Province of Bengal v. Board of Trustees'', for the Improvement of Calcutta AIR 1946 Cal 416 (B), a bench of the Calcutta High Court in dealing with compensation to be awarded to an owner of premises requisitioned under Rule 75A of the Defence of India Rules, observed at p. 423 :

".....the effect of a requisition under the Defence of India Rules is to deprive the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

owner of his possession. He must, therefore, get the value of his possession. Looking from another aspect the requisitioning authority gets the possession from the owner and becomes, so to say, a statutory tenant. The basis of compensation must therefore be fair rent....."

Without endorsing the view that a requisitioning authority is in the position of a statutory tenant of the owner whose property is requisitioned, in my view, compensation based on fair rent which the premises would fetch in the open market having regard to the relevant rent restriction legislation in force at the time of requisition would be adequate compensation to the owner for loss suffered by him.

9. Counsel for the appellant contended that the market value for the loss of user must be ascertained on the basis of an economic rent which a willing tenant may pay to a willing landlord without reference to the restrictions imposed by the Kent Restriction Act. Counsel urged that requisition does not create any relation of landlord and tenant between the owner and the requisitioning authority and the value of the loss of user to the owner who is not willing to let out his premises cannot be arrived at by ascertaining the rent which a tenant may pay under the restrictive legislation which imposes disabilities upon the landlord and interferes with the liberty of contract, I am unable to accept that contention.

Section 8 of the Act requires that in ascertaining compensation the Compensation Officer must be guided by Section 23 and Section 24, Land Acquisition Act. Section 24 of that Act requires the Court in ascertaining compensation ''inter alia'' to exclude from consideration "any disinclination of the person interested to part with the land acquired." Therefore, the Court must ignore that disinclination of the owner to part with possession of the premises to be requisitioned and he must be assumed to be a willing transferor.

It is true that in ascertaining the market value the Court must have regard to the value of the property to the owner in its actual condition at the time when he is expropriated with all its existing advantages and potentialities; but the value must be ascertained in the light of circumstances existing at the time of requisition and not divorced therefrom. Any circumstance which puts statutory restrictions upon the liberty of contract or otherwise depreciates the value must be taken into consideration. In my view, therefore, the provisions of the Rent Restriction Act cannot be ex-eluded in ascertaining the periodic compensation.

10. Counsel for the owner relied upon a Judgment of the Calcutta High Court reported in -- Hazi Mahammad Ekramal Haque Vs. Province of Bengal, , and particularly upon the observations made at page 84, columns 1 and 2, to the following effect:

"..... It is clear that in case of a requisition.... where possession is taken, and there is not a complete acquisition of ownership of the land, or building, compensation has to be assessed u/s 23, Land Acquisition Act, on the basis of fair market value for such interest in land. The relationship created is not that of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

a landlord and a tenant. The requisition is by the Government by virtue of its suzerain position by which it can forcibly take away any one''s property. It is the superior authority which the State possesses by virtue of which such compulsory acquisition or requisition is made. It does not bring about any actual relationship of land-lord and tenant.

Therefore the Rent Control Order or other legislation or executive order with the backing of legislation have very little direct bearing upon the assessment of compensation. The market value of the interest taken away from the owner has got to be assessed .... Therefore, in deciding upon fair rent, for the purpose of Section 23, Land Acquisition Act, it must be a notional fair rent of a hypothetical tenant, and the assessment of such notional fair rent must be based upon a consideration which does not take into account restrictions temporarily imposed by any restrictive executive order or legislation like Rent Control Order etc. The assessment in practice should be as if it was of a house of like nature let out for the first time to a tenant who is not compelled to take it up and by a landlord who is not compelled to let it out. The practical method will be to assess rent is if it was a new house for the first time let out on that date."

It is difficult to accept the view that the ''notional fair rent must be ascertained unaffected by the rent restrictive legislation in force at the date of requisition. The rent which a building letches depends upon a variety of factors such as the nature of the construction, the locality, the convenience provided for the purpose for which the building may be used, the surroundings & the general economic conditions and the statutory restrictions imposed by legislation upon the quantum of rent which may be charged. The rent ascertained without considering all the circumstances and especially the legislative restrictions may in my view be regarded as unreal rent.

It is true that a relation of landlord & tenant does not result from requisition. But if the test for ascertaining compensation is the loss which the owner may suffer by being compelled to part with the land, the real basis for compensation can only be that which the owner would have obtained if he had parted with his right of possession to a willing transferee at the time of expropriation. If the statute imposes a limit upon what can legitimately be regarded as rent, any attempt to ignore the provisions of the rent restriction statute would be to ascertain rent by imputing to the parties an intention to agree to an unreal rent the liability for payment of which cannot be enforced by legal proceedings.

It has to be noted that another Bench of the Calcutta. High Court took a view different from the one stated in --''Mohammad Ekramal Haque''s ease (C). That case is reported in-- The Collector of Darjeeling Vs. C. Mackertich, . The learned Judge observed at p. 308 after referring to the decision in -- ''Mohammad Ekrarnal Saque''s case (C)''.

"The above observations (observations on page 84 of -- ''Mohammad Ekramal Hague''s case (C)'', which have been set out earlier) are somewhat broadly

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…

stated. In a case of requisition the Court is called upon to assess the market value of the possessory interest of the owner in the premises in question. Such a market value cannot be determined in the abstract. Market value means the value which a willing seller may expect from a willing purchaser in the open market. Transactions in the open market will be motived by the fact that the premises is subject to an order under the Rent Control Order. If the land had not been requisitioned the owner could have realised nothing more than the rent as determined under the Rent Control Order during the subsistence of that order. The owner cannot claim a higher value of his interest because of the requisition."

With respect the case reported in -- ''Collector of Darjeeling v. C. Mackertich (D)'', lays down the correct principles for ascertaining compensation based on fair rent in respect of premises requisitioned.

11. The Compensation Officer has held that the standard rent of each room was Rs. 5 per month. He has then taken into consideration the amount spent by the owner and has also taken into consideration the contract between the Government and the allottees and has ascertained the compensation at Rs. 10 per month in respect of rent plus Rs. 3 per month as water charges plus permissible additional Municipal General Tax. That conclusion is not challenged. The, only challenge was as to the correct principles applicable.

12. The order passed by the Compensation Officer must, however, be modified in certain respects. There can be no order for payment against the allottees. The allottees had no ''locus standi'' before the Compensation Officer and no order can be passed against them. The order should have been made by the Compensation Officer against the Government.

13. Accordingly I modify the order by striking out the words "by each respective tenant as ordered by Government on 30-1-1948" from the last paragraph of the judgment of the Compensation Officer. I further add the following clause :--

"Any payments made by the allottees to the owner or which may under any arrangement by the allottees with the Government be made directly to the owner shall be credited towards the liability of the Government to pay compensation at the rate hereby fixed."

Subject to that variation the order of the Compensation Officer is upheld. The appeal is dismissed with costs.

14. Appeal dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dawoodali-rahematulla-versey-…