

(1952) 07 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Misc. First Appeal No. 25 of 1951

Dr. Jagat Ram Sud

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-07-1952

Acts Referred:

Constitution of India, 1950 — Article 31(2)
Contract Act, 1872 — Section 73
East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 — Section 5(1)
Punjab Requisitioning of Immovable Property (Amendment and Validation) Act, 1951 — Section 2(1), 3, 6

Citation : AIR 1953 HP 5

Hon'ble Judges : Chowdhry, J.C.

Bench : Single Bench

Advocate : B.D. Kashyap, for the Appellant; Bakshi Sita Ram, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chowdhry, J.C.

1. This is an appeal by one Dr. Jagat Ram Sud, hereinafter referred to as the claimant, u/s 5(1)(f) of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (XLVIII of 1948).

2. A three storeyed building, situate in Sanjauli, Simla known as the Jagat Niwas, consisting of two shops in the ground floor and two residential sets in each of the two floors above, was requisitioned by the Himachal Pradesh Government u/s 2(1) of the said Act on 1-8-1949 for the Himachal Government Transport. The claimant was actually dispossessed of the building on 8-9-1949. The building was derequisitioned by an order dated 25-1-1950 but possession was actually restored to the claimant on 31-1-1950. The building was thus in possession of the Himachal Pradesh Government for four months and twenty three days from

8-9-1949 to 31-1-1950.

3. As the amount of compensation could not be fixed by agreement, Sri H. L. Soni, District and Sessions Judge Mahasu and Sirmur districts, was appointed as arbitrator. The claimant put in a claim for six months at Rs. 7,675/- per annum, which he described as fair rent. The said Government filed a written-statement that Rs. 100/- per mensem would be reasonable compensation for the building inasmuch as it was incomplete and only a part of it could for that reason be used by the Transport department.

4. The Arbitrator by his award dated 29-6-1951 granted compensation to the claimant for only the said period of 4 months and 23 days and at Rs. 900/- per annum for the two shops and at Rs. 800/- per annum for the four residential sets, or at Rs. 1,700/- per annum in all. The claimant has now come up in appeal to this Court.

5. There was an objection, in the nature of a preliminary objection, raised by the learned Government Advocate on behalf of the respondent, the State of Himachal Pradesh. He contended that the Act was ultra vires of the Legislature as it did not limit requisitioning for public purposes only, and that therefore the award must be set aside in toto. This argument has no force in view of the enactment of the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act,, 1951, on 15-9-1951. u/s 3 of this latter Act the words "for a public purpose" were inserted, and were deemed always to have been inserted, in Sub-section (1) of Section 2 of the Requisitioning Act. Furthermore, u/s 6 of the same Act every requisition made before its commencement was, unless the contrary be proved, to be presumed to have been made for a public purpose under the Requisitioning Act as so amended. Neither party seeks to take advantage of the words "unless the contrary is proved" by contending that the present requisition was not made for a public purpose. That being so, the requisition in question will be deemed to have been duly made.

6. u/s 5(1)(e) of the Requisitioning Act the Arbitrator in making his award is to have regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act 1894, so far as the same can be made applicable. The only provision of the last mentioned Act under which the Arbitrator could, & in fact did, lay contribution was the first one relating to the market value of the property at the date of the publication of notification. He took into consideration the oral and documentary evidence produced by the claimant in respect of rents of shops and residential buildings in the vicinity. He did not discard that evidence as unreliable. Taking the means of the exemplars produced by the claimant, the rent of the 490 sq. ft. area of the two shops works out at Rs. 2,993/2/- per annum, or Rs. 1,496/9/- for six months, or Rs. 828/9/3 for 4 months and 23 days, and that of the 2000 sq. ft. area of the four residential sets at Rs. 4,000/- per annum, or Rs. 2,000/- for six months, or Rs. 1,508/3/9 for the actual occupational period of 4 months and 23 days. The Arbitrator did not however base his finding on the market rental value of the building thus ascertained. He

made a local inspection of the building and ascertained by means of local inquiries from the tenants that Rs. 450/- per annum had been fixed as the fair rent per shop by the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949. Accordingly, he fixed the aforesaid compensation of Rs. 900/- per annum for the two shops. So far as the four residential sets were concerned, he took into consideration the fact that the claimant had claimed compensation in respect of them at a rate which was less than half of that at which he had claimed compensation for the shops. Accordingly, he fixed compensation for the four sets at Rs. 800/- per annum.

7. There was a good deal of argument before me as to whether the learned Arbitrator was justified in fixing compensation on the basis of local inquiries from tenants. It is, however, unnecessary to go into the question since, on being required to do so, the learned counsel for the claimant has filed the order in question passed by the Rent Controller of Simla. It is dated 10-4-1951 and purports to fix on the statement of the parties Rs. 425/- per annum as fair rent for one of the residential sets and Rs. 400/- per annum as the fair rent for one of the shops in the building in question. The question for determination therefore is whether compensation in respect of the building should be fixed on the basis of its market rental value regardless of the fair rent of the building fixed u/s 4 of the East Punjab Urban Rent Restriction Act, 1949.

8. Now, there are, in my opinion, two reasons for answering the question posed at the end of the last paragraph in the negative. Section 5 of the Requisitioning Act lays down certain principles in accordance with which compensation has to be paid. One of the principles laid down thereunder is that the Arbitrator in making his award shall have regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act (1 of 1894), so far as the same can be made applicable. The use of the words "shall have regard" and "so far as the same can be made applicable" clearly shows that while the said provisions of the Land Acquisition Act were to serve as a guide, it was open to the Arbitrator to adapt them to the facts and circumstances of the case. That being so, the Arbitrator in the present case was not bound, regardless of other valid considerations, to fix compensation in accordance with the market rental value of the building. The next question that arises is whether restriction of the fair market rental value under the East Punjab Urban Rent Restriction Act, 1949, would be such a valid consideration. And this brings me to the other reason for answering the said question in the negative.

9. There is no doubt that rent fixed under the East Punjab Urban Rent Restriction Act cannot be accepted on the ground of the existence of the relationship of landlord and tenant between the requisitioning authority and the claimant. Not only is there nothing in the Requisitioning Act justifying any such conclusion, but the use of the word "compensation" in the Act clearly negatives the idea. At the same time, in a case where the market rental value of a building has been, or is capable of being, reduced in accordance with the provisions of the said

Restriction Act, it is this reduced rent and not the market rental value which would be the compensation recoverable by the claimant.

10. A fair guide to the connotation of the word "compensation" is to be found in the terms of Section 73 of the Indian Contract Act, 1872. That section prescribes the method of assessing compensation in cases of breach of contract, but that is immaterial. The section lays down that the party who suffers by breach of contract is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The measure of compensation should, therefore be the loss to the claimant. In other words, the claimant can only claim that amount as compensation which he would have realised as rent if the property had not been requisitioned. Where the requisitioned property is subject to the restrictions imposed by the East Punjab Urban Rent Restriction Act, 1949, the rent fixed under that Act would, in the words of Section 73 of the Indian Contract Act, therefore be the compensation for the loss to the claimant which "naturally" arose in the usual course of things", or which the claimant should have known as being likely to result in consequence of the requisition. I am supported in this view by the ruling of the Punjab High Court reported as the -- "Union of India v. Ram Pershad", AIR 1952 Pun, 116. Reliance was placed on behalf of the claimant on the following rulings: -- Hazi Mahammad Ekramal Haque Vs. Province of Bengal, -- "Governor-General-in-Council v. Indar Mani" A. I. R. 1950 E. P. 296; and -- "Lalit Kumar v. Bhagaban Ch. Sarma" A. I. R. 1950 Ass 133 .The last two rulings do not consider the specific question decided here. The first ruling does appear to hold a view to the contrary, but for reasons already recorded I respectfully differ from it and find support for my view from the above ruling in The Union of India (UOI) Vs. Ram Pershad and Others,

11. Applying the above principle to the present case, it has been seen that the Rent Controller of Simla fixed on the statement of the parties Rs. 425/- per annum as fair rent for one of the residential sets and Rs. 400/- per annum as fair rent for one of the shops in the building in question under the provisions of the East Punjab Urban Rent Restriction Act. It may be mentioned here in passing that the learned Arbitrator was not correct in saying that Rs. 450/- per annum per shop was the fair rent fixed by the Rent Controller. The mistake evidently occurred because instead of obtaining a copy of the Rent Controller's order he depended merely upon local inquiries made from the tenants. Had he obtained a copy of the order it would not have been further necessary for him to assess the compensation in respect of the residential portion of the building on the ground that the claimant had prayed for compensation in respect of the residential sets at a rate which was less than half of the rate at which he had claimed compensation for the shops. The copy of the Rent Controller's order, which has now been filed, shows that fair rent in respect of one of the residential sets was fixed at Rs. 425/- per annum. It was contended by the learned counsel for the

claimant that as the Rent Controller fixed the said rents on 10-4-1951 those rents should not be made the criteria for assessing compensation in respect of a requisition that had been made on 1-8-1949 and of the consequent dispossession on 8-9-1949. This contention has no force since the rules u/s 4 of the East Punjab Urban Rent Restriction Act for determination of fair rent are the same in respect of all buildings constructed after 1-1-1939. The present building was constructed in 1949. I, therefore, hold that the claimant is entitled to compensation at the above rates fixed by the Rent Controller. In fact this assessment errs, if at all, in favour of the claimant since it has come out in evidence that the building was not complete in many small ways (like plastering, fixing of door leaves and electric installation) even upto the time when it was derequisitioned.

12. A word about the period for which the claimant is entitled to compensation. It was contended on his behalf that the building was derequisitioned at a time when it could not be let out and therefore it remained vacant till 10-3-1950. The claimant, therefore, asks for compensation for six months. There is, however, no evidence in support of the contention. I hold that the claimant is entitled to compensation for only the period during which the property was in possession of the respondent, i. e. 4 months and 23 days. The amount of compensation for this period at the said rates fixed by the Rent Controller comes to Rs. 317/12/5 for the two shops and Rs. 675/4/5 for the four residential sets, or Rs. 993/-/10 in all.

13. The learned counsel for the claimant further contended that the claimant was entitled to interest and costs. At no stage of the case, however, not even in the grounds of appeal in this Court, did the claimant claim any interest. None of the grounds for granting interest specified in the well-known ruling of their Lordships of the Privy Council, AIR 1938 67 (Privy Council) exists here. This does not however affect the question of future interest which should certainly be granted to the claimant. As regards costs, in view of the fact that both the claimant and the respondent put forward figures which differed materially from the compensation actually awarded the parties should be left to bear their own.

14. The appeal is allowed, the award of the Arbitrator is set aside and the claimant is awarded Rs. 993/-/10 (Rupees nine hundred and ninety three and ten pies) as compensation with future interest at six per cent per annum. The parties will bear their own costs throughout.