

(1939) 06 BOM CK 0011
In the Bombay High Court

Hari Chand

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 30-06-1939

Acts Referred:

Citation : (1940) 42 BOMLR 138

Hon'ble Judges : Macmillan, J;M.R. Jayakar, J;George Rankin, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Macmillan, J.—Their Lordships are invited in these twelve consolidated appeals to reconsider a number of awards made by way of compensation for the acquisition by the Government of certain bungalows in the Cantonment of Peshawar. In the Courts below a large number of questions were raised and debated in relation to the awards, but before their Lordships, Mr. Dunne, on behalf of the appellants, confined himself to two or three main issues.

2. As a matter of history the cantonments are regulated, so far as regards grants to individuals, by an Order of the Governor-General in Council dated so far back as 1836. That Order appears to have been carried forward to date by a series of subsequent Orders more or less identical in their terms. Where the Government grant any rights to individuals within the area of the cantonments, one of the cardinal conditions of the grant is that the Government retain the power of resumption at any time on giving one month's notice. If they give that notice, they are required to pay the value of such buildings as may have been authorised to be erected.

3. In this case the Government proposed to resume twelve or thirteen of properties originally granted out, and they issued notifications of resumption, of which there is an example in the case of the first appellant's, Hari Chand's, property. It runs as follows :-

Whereas the land comprising the site of the property known as Bungalow No. 5

Fort Road, Peshawar Cantonment, belongs to Government and is held by you on Cantonment tenure under which Government are entitled to resume the said land subject to paying the value of such buildings as may have been authorised to be erected thereon ; And whereas Government have decided to resume possession of the said land and to obtain possession of the buildings standing thereon : Take notice therefore that Government will under all powers enabling them in that behalf through their Agent on 15th October, 1932, resume possession of the said land and your occupation and any rights, easements and interests you may have in the said land and the buildings thereon shall cease as from that date.

4. The notification also contained an offer of compensation.

5. Apparently none of those to whom the notices were addressed was satisfied with the offer, and, while the natural and ordinary course would have been to proceed to arbitration for the purpose of assessing the compensation, for some reason or other that course does not seem to have been pursued or to have been acceptable to the parties, and the Government accordingly resorted to the Land Acquisition Act, 1894, for the purpose of expropriating the owners of the bungalows on the terms of that Statute. Accordingly a notification was served on each of the proprietors of the bungalows, and in the recital of each notification it was set out that the Government claimed to be the owners of the land upon which the various bungalows and out-houses had been erected. That is set out as a matter of narrative in the notification. Then it proceeds to state that the Government have given notice that the land has been resumed by them and that they are desirous now of acquiring the buildings thereon and any other outstanding interest therein ; and for that purpose they invoke the provisions of the Land Acquisition Act, 1894.

6. The first point taken here has been that the notification was bad because it was not a notification for the acquisition of the land, but a notification of an intention to acquire only buildings on the land. It was said that the Land Acquisition Act only authorized notification of an intention to acquire land and therefore that the whole proceedings under the Land Acquisition Act were fundamentally bad because the notification upon which the proceedings started was invalid. It has to be noticed, however, that in the Land Acquisition Act " the expression " land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth." In the present case, the Government's position being that they were the owners of the site, it would have been manifestly idle for them to have proposed to acquire what was already their own, and therefore when they sought to put in force the provisions of the Land Acquisition Act they naturally requisitioned what was not their own but what they desired to acquire, namely, the buildings on the land. It appears to their Lordships that in any event this objection to the notification comes too late, because the parties proceeded under the Land Acquisition Act to follow forth all the procedure which that statute lays down right up to and

including the final determination of compensation. The Court that dealt with the matter was really a compensation Court, and if it had been intended to attack the whole proceedings as initially invalid this would more properly have been done before some other tribunal. The Court did, however, incidentally consider the question of the validity of the notice, and their Lordships agree with the view taken that the notification is not open to objection.

7. Junior counsel for the appellants sought to satisfy their Lordships that the statement in the recital, namely, that the site belonged to the Government, was in fact inaccurate, and that the claimants were entitled to the sites upon which the various bungalows were erected. One thing is quite clear from the legal point of view and that is that a claimant who desires to obtain compensation must establish his title, and in the case to which we were referred, the recent case of the (1931) ILR 58 858 (Privy Council) , where the question of cantonment tenure in Bengal was under consideration, it was made clear that a claimant must establish his title affirmatively. In the present case it may be that there might be some question as to the Government's title, but it was for the claimants themselves to establish affirmatively their title to the sites. The Court below which had the advantage of having documents before them which have not been before their Lordships, went very fully into the matter and satisfied themselves that the claimants here had not established their title to the sites. Their Lordships see no reason to differ from this conclusion.

8. That being so, the only remaining question is whether the compensation to which the claimants are entitled for the deprivation of their buildings has been ascertained according to law. It is not the practice of their Lordships to consider detailed criticisms of valuation. It is always open to an appellant before their Lordships to raise a question of principle relating to the method of assessment, and if their Lordships are satisfied that the compensation officer or the Court which reviewed his award has erred on a matter of principle then relief will be given. In the present instance the subject-matter of valuation or compensation being the buildings and not the site, inasmuch as the site was already the property of the Government, the question is what was the appropriate method of valuing the buildings. It was made a matter of complaint that, in consequence of the resumption notice having been served, the value of all these buildings, some of them no doubt attractive residences, had been seriously depreciated. Their Lordships could have appreciated that criticism if the principle of valuation adopted had been that of proceeding upon the rental value of the buildings, but in the present case the method adopted has been what is commonly known as the contractor's method. The subject to be valued being a building apart from the site, the principle of fixing value by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation in consideration of the age of the building and for the cost of such repairs as might be required apart from depreciation, is quite a well-known and recognised method of valuing buildings for the purpose of compensation. That method was pursued here, and that method is not, as their Lordships conceive it, affected by the resumption

notice, because the prices which would be taken and were taken in this case for the purpose of ascertaining the cost of reproducing the building would not be affected by the resumption notice at all. The buildings accordingly in their Lordships' view have been valued for the purpose of compensation on a perfectly admissible and perfectly legitimate principle, and that being so there would appear to be no valid objection on this score to the awards that were made.

9. One further point was taken, however, a point of detail, to which it is proper that allusion should be made. It is said that nothing has been given in the awards in respect of what might be called the appurtenances of the buildings, such things as roads, pathways, culverts, gardens, trees, and various things which were enjoyed by the occupants of the bungalows as useful amenities in connection with them. The Court below considered this matter and were of opinion that it was not proper to include any figure for these items in the awards, with one small exception ; they did allow something, a small acknowledgment, in respect of what are described as necessary roads, presumably accesses which were necessary for the enjoyment of the bungalows, and a small addition was made to the awards under this head. Their Lordships do not feel called upon to comment upon that circumstance, but they are of opinion that in the case of premises such as had to be valued here and which were enjoyed throughout on terms which were certainly precarious, namely, that at any time the Government might resume the premises on giving one month's notice, and that all that the grantee was to be entitled to receive in the event of that power being exercised was the value of the buildings erected on the ground, anything which might be done by the grantee in the way of utilising the ground surrounding the building for the purposes of amenity or enjoyment was, as the Court below has held, associated rather with the site than with the building. If the compensation has to be restricted, as it has to be in this case, to the value of the buildings, their Lordships agree with the Court below that no additional allowance should be made in respect of amenities such as trees and gardens and so on associated with the enjoyment of the bungalows.

10. Mr. Dunne, on behalf of his clients, has brought before their Lordships all that could be advanced by way of criticism of the awards, but these criticisms, in their Lordships' opinion, fail. The result is that their Lordships will humbly advise His Majesty that the appeals should be dismissed with costs.