

(1961) 01 PAT CK 0017
In the Patna High Court
Case No : A.F.O.O. No. 198 of 1956

Harinarayan and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-01-1961

Acts Referred:

Defence of India Rules, 1962 — Rule 75A

Requisitioned Land (Continuance of Powers) Act, 1947 — Section 2(4), 3

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 24(2), 8(3)

Citation : AIR 1961 Patna 463

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Lal Narain Sinha and Choudhary Nawal Kishore Prasad, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is presented on behalf of Harinarayan and others u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act No. XXX of 1952) from an award of the District Judge of Patna acting as an arbitrator u/s 8(1)(b) of the same Act by virtue of a notification off the Government of India. The case of the appellants was that the property acquired should be valued at Rs. 18,00,000/-. But the case of the Union Government was that the value of the property was Rs. 2,47,990/-. The District Judge of Patna has accepted the case of the Government and fixed the valuation of the property at Rs. 2,47,990/- under the provisions of Section 8(3)(b) of Act No. XXX of 1952.

2. Section 7 of the Act deals with the power to acquire requisitioned property, and is in the following terms:

7. Power to acquire requisitioned property: (1) Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Central

Government has decided to acquire the property in pursuance of this section;

Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in such property to show cause why the property should not be acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end-

(3) No property shall be acquired under this section except in the following circumstances, namely:

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of, Or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property ,

(4) Any decision or determination of the Central Government under Sub-section (3) shall be final and shall not be called in question in any court.

(5) For the purposes of Clause (a) of Sub-section (3) "works" includes buildings, structures and improvements of every description".

Section 8 deals with the principles and method of determining compensation. Section 8 (1) reads as follows:

"8. Principles and method of determining compensation: (1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with, the principles hereinafter set out, that is to say, (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been or is qualified for appointment as a Judge of a High Court;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person

to be compensated may also nominate an assessor for the same purpose;

(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 opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of Sub-sections (2) and (3), so far as they are applicable;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more person than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this section."

Section 8(3) is in the following terms:

"8. (3) The compensation payable for the acquisition of any property u/s 7 shall be -- (a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less."

3. On behalf of the appellants the learned Advocate put forward the argument that Section 8(3)(b) has no application to this case and, therefore, the duty of the arbitrator was to fix the valuation u/s 8(3)(a) of the Act on the oral and documentary evidence furnished by the parties. It was conceded by the learned Advocate that if we should hold that Section 8(3)(b) of the Act applies to this case, the decision of the arbitrator was correct and there is no merit in this appeal.

4. The question for determination in this case, therefore is whether the arbitrator was right in holding that Section 8(3)(b) of the Act applies to this case. It was submitted on behalf of the appellants that the property was requisitioned in this case under Rule 75A of the Defence of India Rules and there was no requisitioning of the property under the provisions of Act No. XXX of 1952. It was, therefore, argued that Section 8(3)(b) of the Act has no application to this case. Reference was also made by the learned Advocate to Section 33 (1) of the Act which reads as follows:

"23. Validation of certain requisitions and acquisitions : (1) All immovable property which purports to have been requisitioned by a State Government for any public purpose, being a purpose of the Union, under any Provincial or State

Act and which immediately before the 25th day of January, 1952, was used or occupied by the Central Government or by an officer or authority subordinate to that Government shall, as from that date, be deemed to be property duly requisitioned u/s 3 of this Act, and every such requisition shall notwithstanding any judgment, decree or order of any Court, be deemed always to have been valid as if this Act had been in force on and from the date of the requisition and the requisition, had been duly made by a competent authority under this Act, and all the provisions of this Act shall apply accordingly: * * * *

It was pointed out that Section 23 only refers to immovable property which purports to have been requisitioned by the State Government for any public purpose under any Provincial or State Act. It was contended that Section 23(1) cannot apply to a case where property has been requisitioned under Rule 75A of the Defence of India Rules which were promulgated under the Central Act. We are unable to accept the argument of the learned Advocate as correct. It is important to refer in this connection to Section 24(1) and 24(2) of Act No. XXX of 1952, which state as follows:

"24. Repeals and savings--(1) The Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947), the Delhi Premises (Requisition and Eviction) Act, 1947 (XLIX of 1947) and the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 (III of 1952) are hereby repealed.

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts or the said Ordinance shall, on the commencement of this Act, be deemed to be property requisitioned u/s 3 of this Act, and all the provisions of this Act shall apply accordingly:

* * * *

We should also refer in this connection to Section 3 of Central Act No. XVII of 1947, namely, the Requisitioned Land (Continuance of Powers) Act, 1947, which reads as follows;

"3. Continuance of requisitions-- Notwithstanding the expiration of the Defence of India Act, 1939 and the rules made thereunder and the repeal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient: Provided that the appropriate Government may at any time release from the requisition any requisitioned land."

It is also important to note that Section 2, subsection (4), of this Act defines the expression "requisitioned land" as ""immovable property which at the commencement of this Act is subject to any requisition effected under the rules made under the Defence of India Act, 1939". Reading, therefore, Section 24(2) of Act No. XXX of 1952 in the context of Section 3 and Section 2 (4) of Central

Act No. XVII of 1947 it is manifest that the property requisitioned under Rule 75A of the Defence of India Rules in the present case is "requisitioned property" within the meaning of Section 8(3)(b) of Act No. XXX of 1952. It follows, therefore, that Section 8(3)(b) of Act No. XXX of 1952 applies to the present case and the District Judge of Patna was right in applying that provision in calculating the compensation payable for the property pf the appellants in the present case,

5. For these reasons we hold that there is no merit in this appeal and we accordingly dismiss it with costs.