

(1949) 07 CAL CK 0029
In the Calcutta High Court
Case No : A.F.O.D. No. 146 of 1945

Hazi Mahammad Ekramal Haque

APPELLANT

Vs

Province of Bengal

RESPONDENT

Date of Decision : 27-07-1949

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1)

Citation : AIR 1950 Cal 83

Hon'ble Judges : P.N. Mitra, J; K.C. Chunder, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Shyama Charan Mitter, for the Appellant;
Chandra Sekhar Sen, Jajneswar Majumdar and Smriti Kumar Roy Chaudhury, for the Respondent

Judgement

K.C. Chancier, J.—This is an appeal against a decision of the arbitrator in a proceeding in connection with the assessment of compensation for a building requisitioned under the Defence of India Act, Section 19, read with Defence of India Rules 81 (2) (bb) and Section 75A of the Rules.

2. Briefly, the facts are that premises No. 9 Chittaranjan Avenue used to be occupied by the Central Government under a lease which expired on 29th July 1943. The lease had been granted on 28th July 1940, the rent reserved being Rs. 1950 monthly. On the expiry of the lease, the owner refused to renew the tenancy. Therefore on 30th July 1943, a requisition order was served requisitioning the building for the Controller of the Army Factory Accounts. The Collector offered Rs. 2200 as the monthly rent inclusive of the Corporation rates. This was refused by "the landlord who claimed Rs. 3988 as the monthly rent inclusive of rates. He asked for a reference to arbitrator. The arbitrator came to the conclusion that as the House Rent Control Order had come into force from 26th June 1943, the landlord if he had let out the house on 30th July 1948, would not have been entitled to any increase in rent because of the limitations contained in Section 8 of that Order and he was not entitled to claim any

increased rent. Under the Rent Control Order, then in force, only an increase of rent by ten per cent. could have been claimed if the creation of the tenancy was prior to 1st December 1941 which it was in the present case, but the right to increase rent was limited by Section 8 of the Order, and in the present case, in view of Section 8 no increase would have been possible in the rent and so the arbitrator came to the conclusion that Rs. 1960 should be the fair rent, and as the Collector had offered much more than that, he did not disturb what the Collector had done. The landlord has come up on appeal.

3. It has been urged by Mr. Gupta on behalf of the appellant that the entire principle on which compensation has been assessed in the present case is wrong. According to him, the occupation will be for an indefinite period, and this fact is not contested. He urges that there is no provision in law, when once compensation has been assessed, for changing the same from time to time. This proposition cannot be contested.

4. The requisitioning authority is not a tenant in law, and therefore whatever changes are introduced in the rent control legislation cannot beneficially affect the claimant. It is clear, and is not disputed, that in the present case the appellant wrote to the Collector after the West Bengal Act of 1948 came into force that the amount paid by the Government ought to be increased by forty per cent. because such was the increment allowed by that Act. The Collector rightly contended that the Government was not a tenant, and so the claim did not come within the West Bengal Act of 1948 and the amount awarded by the arbitrator would not be increased by any percentage.

5. We are disposed to agree with the contention of Mr. Gupta after having heard both the Senior Government Pleader and the Junior Government Pleader. It is clear that in case of a requisition like this, where possession is taken, and there is not a complete acquisition of owner, ship 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 a landlord and a tenant. The requisition is by the Government by virtue of its suzerian 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 landlord 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. In the present case, it is the possessory interest which has been taken by the State, and, therefore, in assessing the fair market value of the case, fair rent is taken to be a good criterion. It is as a criterion of market value of the interest that the question of fair rent arises, and the only bearing that the rent control legislation may have is in so far as it affects by way of fall in rent the income which will be obtainable from the property in a proper market by a landlord. Rent may be brought down by means

of such legislation or Rent Control Order and, therefore, fair rent to be assessed may be lower, but it cannot for a moment be contended that the principle on which compensation should be assessed is the principle on which a rent controller will at that particular time assess that particular building or land to rent for the very simple reason that in spite of the Rent Control Order certain rights remain with a landlord e. g. in particular cases even mentioned in the Rent Control Order itself, a right of re-entry lies with the landlord but not in case of requisition. Then again a Rent Control Order being an executive order, though backed by legislation under the Defence of India Act has only a very limited duration, or expected to have a limited duration, whilst the requisition made by the Government was for an indefinite period. It has now been made clear that it is for an indefinite period. This was done when the appellant communicated with the collector and wanted to know when possession was likely to be given over. He was informed that the occupation by the Government would be for an indefinite period. The owner not being in the position of a landlord does not become entitled to any increment of rent, as was rightly pointed out by the Collector, that subsequent legislation might entitle a landlord to. 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 as if it was a new house for the first time let out on that date. This will exclude all the trouble that has been introduced in the present case by taking into account the Rent Control Order which has very little direct bearing except in so far as it has or has not succeeded in bringing down the market rate of rent. Rule 75A, Defence of India Rules corresponds in England with Regulation 51 of Defence General Regulations, 1939, as to power to take possession of land, and as to compensation under the Defence Compensation Act, 1989, was passed in England. Unfortunately there was no such elaborate provision for compensation made in India as it was done in England in the Act of 1939 so that we have all this trouble. If requisitioning is to be made a permanent method of acquiring subordinate interest in property forcibly by the Government, it is desirable that the rate and method of compensation should be settled by appropriate legislation after careful consideration.

6. In the present case, the arbitrator proceeded upon a wrong principle and his decision must be set aside and the matter is remitted back to him for further consideration and disposal of the case according to law in the light of the principles laid down and according to the evidence which both sides may have already adduced or may on remand adduce before him.

7. The appellant will get his costs from the respondent: Hearing fee twenty gold

mohurs.

P.N. Mitra, J.

I agree.