
(1983) 01 DEL CK 0005
In the Delhi High Court
Case No : F.A.O. No. 220 of 1978

Kali Pershad

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 11-01-1983

Acts Referred:

Citation : (1983) 24 DLT 28

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : V.B. Andley and Rajinder Mathur, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Allowed

Judgement

Sultan Singh, J.—This appeal u/s 11 of The Requisitioning and Acquisition of Immovable Property Act, 1952 (for short "the Act") is for enhancement of compensation determined under the award dated 23rd October, 1978 of an arbitrator appointed under the Act.

2. Property bearing Municipal No. 895, known as "Morwali Kothi" Ward No. VIII, Mehrauli, New Delhi, owned by the appellant, was requisitioned by the Collector, Delhi under the Act vide his order dated 26th February, 1971. Agreement with regard to the amount of compensation payable in respect of the said property could not be reached and Therefore an arbitrator was appointed u/s 8 of the Act to determine the compensation. The arbitrator has held that possession of the requisitioned property was taken by the authorities on 29th March, 1971, that the covered area of the requisitioned property is 7549 sq. ft. and the open area is 30030 sq. ft. He determined compensation with respect to the covered area only at 30 paise per sq. ft. No compensation was granted to the appellant with respect to the open area on the ground that the open area could not be let out separately and it was part and parcel of the covered area. The arbitrator determined the compensation on the basis of the rent of the similar premises in the year 1971.

3. Section 8 of the Act relating to determination of compensation of the requisitioned property as amended by the Requisitioning and Acquisition of Immovable Property (Amendment) Acts i.e. Act No. 2 of 1975 and Act No. 35 of 1980 is as under :

"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 persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

(2) The amount of compensation payable for the requisitioning of any property shall, subject to the provisions of Sub-section (2A) and (2B) consist of :--

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely,--

(i) pecuniary loss due to requisitioning; (ii) expenses on account of vacating the

requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition;

(2A) The recurring payment, referred to in Clause (a) of Sub-section (2), in respect of any property shall, unless the property is sooner released from requisition u/s 6 or acquired u/s 7, be revised in accordance with the provisions of Sub-section (2B)--

(a) in a case where such property has been subject to requisition under this Act for a period of five years or a longer period immediately preceding the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975--

(i) first with effect from the date of such commencement, and

(ii) secondly with effect from the expiry of five years, and thirdly with effect from the expiry of ten years, from such commencement;

(b) in a case where such property has been subject to requisition under this Act immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of Sub-section (1A) of Section 6, be released from requisition or acquired extends beyond five years from such commencement,

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the Competent authority u/s 4, and

(ii) secondly with effect from the date of expiry of five years, and thirdly with effect from the date of expiry of ten years, from the date on which the revision made under Sub-clause (i) takes effect;

(c) in any other case--

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to or taken by, the competent authority u/s 4, and

(ii) secondly with effect from the date of expiry of five years from the date on which the revision under Sub-clause (i) takes effect.

(2B) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in Sub-section (1), read with Clause (a) of Sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which

the revision has to be made under Sub-section (2 A).

(3) The compensation payable for the acquisition of any property u/s 7 shall be the price which the requisitioned property would have fetched in 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."

Learned counsel for the appellant submits that compensation for the requisitioned property is to be determined on the basis of rent of similar property in the locality and that the same is liable to be redetermined after the expiry of every five years as provided in Sub-sections (2A) and (2B) of Section 8 of the Act, and standard rent of the requisitioned property would not be the basis for fixing compensation. Counsel for the respondents on the other submits that compensation would be equivalent to the standard rent of the property.

4. In Union of India (UOI) Vs. Sh. Roshan Lal Gupta and Another, , a case for determination of the compensation with respect to the property compulsorily requisitioned u/s 19 of the defense of India Act, 1939, a Full Bench of the Circuit Court of the Punjab High Court at Delhi has observed as under :

"Where property is compulsorily requisitioned, the amount of compensation should not be determined solely on the basis of fair rent as fixed under the Rent Control Laws. The figure so fixed is merely a piece of evidence which may be taken into consideration as giving a indication of the market rents; other circumstances must be taken into consideration also".

5. In Seth Satnarain Goenka and Others Vs. Union of India, a single Judge of this court referring to Section 8(2)(a) of the Act, held that provisions of Rent Laws in terms were not applicable while determining compensation under the said section. He however held that the principles laid down for fixation of standard rent can furnish useful guide. A Division Bench of this court in 1 (1965) D.L.T. 406 Amar Nath etc. v Union of India and Anr. by judgment dated 22nd May, 1973 on a reference by the Single Judge held that so long as the Delhi Rent Control Act, 1958 governed the requisitioned property, it was the standard rent, as computed u/s 6 of the Delhi Rent Control Act, 1958 which would be the "rent payable" postulated by Clause (a) of Sub-section (2) of Section 8 of the Act. The single Judge thereafter by his judgment dated 6th September, 1974 (reported as 1975 (1) Delhi 216) held that if cost of material and wages was not available then amount of compensation may be fixed u/s 9(4) of the Delhi Rent Control Act, 1958. It was also observed in Amar nath (Supra) that the arbitrator under the Act should determine standard rent u/s 6 of the Delhi Rent Control Act and he should find out value on date of construction and not on the date of requisition. Thus it has been held that the principle for determining compensation would be fixation of standard rent u/s 6 of the Delhi Rent Control Act and in case it is not possible to determine the standard rent as such then the compensation would be determined on the principles laid down in Section 9(4) of the Delhi Rent Control Act, 1958 and rent so determined would be the rent payable within the

meaning of Clause (a) of Sub-section (2) of Section 8 of the Act. These decisions are under the unamended Act.

6. Sub-sections (2A) and (2B) of Section 8 of the Act as inserted by the Amendment Acts of 1975 and 1980 provide for revision of compensation with respect to the requisitioned property with effect from the date of expiry of five years from the date of requisition and thereafter with effect from the expiry of ten years. The Act thus provides for re-determination of the compensation as if property has been again requisitioned. There was no provision for revision of compensation under the unamended Act. It is well known that there is no scope for enhancement of Standard Rent determined under the Delhi Rent Control Act, 1958. It is Therefore held that the provisions of the Rent Act alone laying down the method for determination of the standard rent cannot be the sole basis for determination or re-determination of the compensation u/s 8 of the Act. u/s 8(2) (a) of the Act compensation is equivalent to the rent which would have been payable if the property had been let. In other words, the rent of similar premises in the vicinity considering the location, type of construction, amenities available in the property and any other circumstance which may help in determining the fair rent is to be taken into consideration for determining compensation of the requisitioned property. The compensation so determined shall be re-determined in accordance with the provision contained in Sub-section (2A) and (2B) of Section 8 of the Act after the expiry of five years.

7. In the instant case parties have not produced any evidence to determine standard rent of the requisitioned property u/s 6 of the Delhi Rent Control Act, 1958 and Therefore it would be necessary to determine the rent compensation on the basis of the rent of the similar premises in the locality considering also the situation and condition of the premises and the amenities provided therein. The respondents have not produced any evidence.

8. The appellant has led evidence to prove the rent of two properties situated at a distance of 150 and 300 yards from the requisitioned property, Property No. 963, Mehrauli, New Delhi, is owned by Qaumuddin (P.W.2). He has deposed that it is a three storeyed house let to Central Bank of India at Rs. 1401.40 per month. The area is 1078 sq. ft. The clerk of the Central Bank who appeared as P.W.1 has deposed that the bank had taken the said property on rent from P.W.2. It is also in evidence that this property was constructed in 1972-73 and it is situated at a distance of 300 sq. yards from the requisitioned property on the main road. The appellant has also stated that the property is situated on the main road. Thus the rate of rent of this property is Rs. 1.30 per sq. foot.

9. The other property bears Municipal No. 274 situated at Mehrauli, New Delhi which is owned by Kailash Chand (P.W.4) who has deposed that he let out the same to Punjab National Bank in 1970 on a monthly rent of Rs. 900/-, that the covered area is 2700 sq. ft. while the open area in the said property is 540 sq. ft. The property is situated near the bus stop, Mehrauli and near the main bazar. The clerk of Punjab National Bank has appeared as P.W. 3 who has deposed to

the same effect. Kailash Chand (P.W. 4) has further deposed that the requisitioned property is a puce building and is the best building in Mehrauli. The facts deposed by the owners of the two buildings have not been challenged in cross-examination by the respondents. Kailash Chand has admitted that his building and the requisitioned building both are situated in main bazar, Mehrauli. He has further deposed that the uncovered area of his factory can be rented at 30 or 35 paise per sq. ft.

10. The appellant owner has appeared as P.W.5 in support of his case. He has deposed that the rate of rent of the covered area is Rs. 1.75 per sq. ft. while the rate of uncovered area is Rs. 1.25 per sq. ft. He has also placed on record a map of the requisitioned property (Ex.P.W.6/A). The plan shows that the requisitioned property is situated on main road, Mehrauli. The total open area is 30030 which consists of 25,540 sq. ft. on the ground floor, 1950 sq. ft. on the first floor and 2540 sq. ft. on the second floor. The open area on the first floor and the second floor cannot be let out separately and is part and parcel of the covered area. On the ground floor there is a passage 140"x139", which may also be treated as part and parcel of the covered area. The building cannot be conveniently used unless this passage forms part of it. Excluding the open area on first floor, second floor and the passage as shown in the said plan the open area on the ground floor which can be let out independently and used separately would be 23,450 sq. ft. as detailed below:

Total open area 30,030 sq. ft.

LESS : (a) Open area on the first floor 1950 sq. ft.

(b) Open area on the second floor 2540 sq. ft.

(c) Open area of the passage 140" x 131/2" 1890 sq. ft. (--) 6,380 sq. ft.

23,650 sq. ft.

11. The arbitrator has not taken into consideration the rate of rent at Rs. 1.30 per sq. ft. as deposed by P.W. 2 Qaum-uddin with respect to his property at No 963 Mehrauli on the ground that the property in dispute is not in the same locality. But it is not correct to say that the requisitioned property is not situated on the main road Mehrauli. The plan shows that the requisitioned property is situated on the main road Mehrauli. Kailash Chand P.W. 4 also says that the requisitioned property is situated on the main road Mehrauli besides the statement of the appellant. These facts have not been disputed in cross-examination. Further the arbitrator has observed that the property No. 963 was let out to Central Bank of India in 1973 while the requisitioned property was taken possession in 1971 and Therefore rent of this property cannot be the basis for fixation of compensation. I do not agree. The requisitioned property was taken possession in March, 1971. The property of Qaum-uddin P.W. 2 was let out in 1973. Kailash Chand P.W. 4 says that the requisitioned property is the best property in Mehrauli. It is immaterial that the property in question was

requisitioned in 1971 and the property of Qaum-uddin P.W. 2 was let out in 1973. At the time of determination of fair compensation the arbitrator has to take into consideration the rent of similar properties. The requisitioned property is the best in the locality i.e. better than the property of the owners who have appeared as P.W. 2 and P.W. 4. I do not think it would be just and proper to refuse the appellant to grant compensation even at the rate at which P.W. 2 Qaum-uddin is receiving rent from his tenant. Central Bank of India has been paying rent @ Rs. 1.30 per sq. ft. with respect to the covered area. Kailash Chand P.W. 4 has deposed that the requisitioned property is the best in the locality. In other words, the requisitioned property is better than the property of Qaum-uddin P.W. 2 under the tenancy of Central Bank of India. The arbitrator was, Therefore, not correct in saying that the rate of rent at Rs. 130 per sq. ft. payable by Central Bank to the owner P W. 2 Qaum-uddin was not the correct basis for fixation of compensation. The property of Kailash Chand P.W. 4 is an inferior property according to his own admission. There is no comparison between the requisitioned property and the property of Kailash Chand P.W. 4. I am, Therefore, of the view that the appellant ought to have been granted compensation at Rs. 1.30 per sq. ft. of the covered area.

12. The arbitrator has held that no compensation is payable with respect to the open area on the ground that open area is part and parcel of the covered area. As discussed above, open area to the extent of 6380 sq. ft. only is part and parcel of the covered area. The covered area of the building cannot be used without taking into consideration the open area to the extent of 6380 sq. ft. only. The remaining open area to the extent of 23,650-sq. ft. is on one side of the requisitioned property which may be let out separately and can be used independently. This open area is not a part and parcel of the covered area of the constructed building and it cannot be said that the covered area cannot be used without the open area i.e. 23,650 sq. ft. The arbitrator, Therefore, was not correct in refusing any compensation with respect to the open area to the extent of 23,650 sq. ft. The appellant in this appeal has claimed compensation for the open area at 0.25 paise per sq. ft. and has paid court fees accordingly. He has deposed that the compensation for the open area is Rs. 1.25 per sq. ft. Kailash Chand P.W. 4 has deposed that the open area can be let out at 30 or 35 paise per sq. ft., but as the claim is restricted to 0.25 per sq. ft. and there is no evidence in rebuttal, I would grant compensation for the open area of 23,650 sq. ft. at the rate of 25 paise per sq. ft. i.e. Rs. 5912.50 per month. The appellant is thus entitled to :

(b) Compensation for open area 23,650 sq. ft. @ 0.25 per sq. ft. Rs. 5,912.50

Total : Rs. 15,726.20

Say Rs. 15726/- per month.

13. The appellant is also entitled to interest on arrears of compensation as well as future monthly compensation. The appeal is accepted modifying the award.

14. I award Rs. 15,726/- per month as compensation for the covered area and open area of the requisitioned property with effect from 29th March, 1971. The arrears for the period ending 31st March, 1983 may be paid on or before 30th April, 1983 failing which the appellant would be entitled to interest on the arrears of compensation for the period ending 31st March, 1983 @ 6% per annum from 1st May, 1983 till payment. The respondents, it is alleged, have paid compensation to the appellant in accordance with the impugned award. The amount already paid may be adjusted. Monthly compensation for the period from 1st April, 1983 shall be paid by the respondents by the 20th of the succeeding month. If the respondents fail to pay monthly compensation by the 20th of the succeeding month, the appellant shall be entitled to interest on the amount of monthly compensation as well @ 6% per annum from the date of default till payment.

15. Learned counsel for the appellant also submits that there has been an amendment in Section 8 of the Act, and the appellant is entitled to the revised rates of compensation after the expiry of five years from the date of taking over possession by the respondents. There is no material on record for determining compensation at the revised rates after the expiry of five years and Therefore the appellant will be at liberty to take such further action as may be available to him. The appellant is entitled to recover costs of this appeal from the respondents.