

(1943) 08 AHC CK 0010
In the Allahabad High Court

L. Murari Lal

APPELLANT

Vs

Governor-General in Council and Another

RESPONDENT

Date of Decision : 25-08-1943

Acts Referred:

Citation : AIR 1944 All 13 : (1943) 13 AWR 217

Hon'ble Judges : Dar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dar, J.—This is an appeal against a judgment and decree dated 12th September 1910, of the District Judge of Meerut by which he affirmed a judgment and decree dated 13th March 1940, of the Munsif of Meerut in a suit for recovery of rent and compensation. The plaintiff Murari Lal is the proprietor of a firm called Kalka Das and Sons at Meerut and he or the firm owned at one time three bungalows in Meerut Cantonment Nos.156, 228 and 230. The site of these bungalows is admittedly the property of the Government. Many years ago the site was leased out to the predecessors-in-interest of the plaintiff for constructing these bungalows and this was done under the General Order of the Governor-General in Council dated 12th g September 1836, which is generally known as G.O. No. 179 of 1836. Admittedly the bungalows were constructed and were held on what is generally known as the Cantonment tenure. Sometime ago these three bungalows were given on rent by the plaintiff to the Officer Commanding the Station of Meerut Cantonment for military purposes on a rent which was varied from time to time and the last rent reserved was Rs. 275 a month. On 15th March 1939, the Government served a notice upon the plaintiff Murari Lal for the resumption of these bungalows under para. 6 of G.O. No. 179 of 1836. By this notice one month's time provided by the said paragraph was given for the resumption of the bungalows and a tender was made of a sum of Rs. 28,585, as compensation for the cost of the building of the bungalows. The plaintiff claimed that this sum was entirely inadequate and he was entitled to compensation not

only for the buildings but also for the site and refused to accept the compensation offered by the Government. Thereafter the Officer Commanding the Station of Meerut refused to pay rent to the plaintiff.

2. On 2nd September 1939, an action was raised by the plaintiff in the Court of the Munsif of Meerut for recovery of a sum of Rs. 1164 as the rent due for these bungalows from 24th April 1939 to August 1939, against the Officer Commanding the Station of Meerut and the Governor-General in Council. The plaintiff's claim shortly stated was that notwithstanding the notice of resumption the ownership of the bungalows still remained in him and the rent was wrongly withheld and he was entitled to the same. The claim was contested by the Governor-General in Council mainly on the ground that a lawful resumption had been made of the bungalows under para. 6 of G.O. No. 179 of 1836, and a proper tender having been made to the plaintiff which he had wrongly refused, in the events that had happened the plaintiff's title in the bungalows had determined and he was not entitled to recover any rent. Both the Courts below found in favour of the defence and dismissed the claim and in this appeal the main question of law that arose for our consideration was as to what was the legal effect of the notice of resumption which was given by the Government accompanied by a proper tender. On behalf of the appellant it is contended that by the mere service of notice and a tender of the amount of compensation the ownership of the person who had constructed the bungalows under the Cantonment tenure was not destroyed and it is necessary for the Government to follow up the proceedings in a law Court by having the amount of compensation determined and recovering possession of the bungalows and so long as this is not done the lawful ownership of the bungalows remained in the person who had constructed the same. The material words in para. 6 of G.O. No. 179 of 1836, are as follows:

6. No ground will be granted except on the following conditions which are to be subscribed by every grantee, as well as by those to whom his grant may subsequently be transferred.

Resumption of land. - 1st. The government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.

3. Upto a certain stage there is not much difficulty in construing this provision. If a proper notice is served by the Government accompanied with a proper tender then after due notice and tender the title of the owner of the bungalows is determined and if thereafter he refuses to accept the compensation or to vacate the premises, he does so at his own peril and though the Government cannot take forcible possession of the property, an action will lie for the ejectment to which the owner who has wrongfully refused to receive the compensation would have no defence. We have no doubt that merely by refusing to accept a valid tender the owner of the bungalows cannot retain any ownership in the bungalows. We have already stated that even in a case where a valid notice has

been served and a valid tender has been made the Government has got no right to take forcible possession and their remedy is in case possession is withheld, to have recourse to law. It is also clear enough that mere service of a proper notice without a valid tender of the compensation money would not necessarily determine the rights of the ownership of the bungalow. If there is a bona fide dispute about the compensation and it cannot be determined without the assistance of the Court, that assistance will have to be taken. If the tender made by the Government is inadequate or insufficient, the owner is not bound to accept it and it is not necessary for the purposes of this case to decide all possible consequences which follow as a result of a proper service of notice but an improper tender of compensation.

4. It may be possible in a case of bona fide dispute in certain circumstances for the owner of the bungalows to be able to collect rent subject to a liability of these rents to be adjusted in a proper suit which may later on arise to determine the amount of compensation, but in a case like the present where the bungalows are in possession of the Government either actually or constructively, if a, proper notice is given accompanied by a proper tender, in our opinion, under G.O. No. 179 of 1836, the ownership of the person in these bungalows is so far affected that it would not be open to him to maintain a suit for recovery of rent against the Government. The fact that the Government has served a notice and has made a proper tender would, in such a case, be a complete answer to an action for recovery of rent against the Government.

5. As the dispute in this case was also with regard to the compensation which was offered by the Government to the plaintiff, we thought it desirable that the future litigation should be terminated and this controversy should also be set at rest. Accordingly with the consent of all parties by an order dated 30th March 1943, arbitrators were appointed to fix the compensation of the bungalows and on 20th July 1943, the arbitrators gave an award by which they found that the proper valuation of the bungalows was a sum of Rs. 28,585.

6. The plaintiff has taken objections to this award, but in our opinion, there is no substance in them. The arbitrators had a perfect jurisdiction to decide some of those questions which are now raised before us by the plaintiff and whether they decided rightly or wrongly we cannot sit in judgment over them. One objection of the plaintiff before the arbitrators was that he was entitled to a 15 per cent, compensation because the acquisition in this case was a compulsory one. The statutory allowance of 15 per cent, compensation rests only on the provision of the Land Acquisition Act and it does not apply to a case where the bungalows are resumed under G.O. No. 179 of 1886. The claim for 15 per cent, compensation was, therefore rightly disallowed by the arbitrators. One other question is raised before us, namely, that the plaintiff is entitled to a reasonable interest on the sum of Rs. 28,585 which has now been found due to him for the compensation of the bungalows. It is contended that since 1939 the Government had been in possession of these bungalows without paying any rent and it had also had the

benefit of this sum of money which should have been paid as compensation. This may be a fact, but we have to determine the legal rights of the parties and on the facts found that the tender made to the plaintiff was a proper one which he wrongly refused to accept, the Government cannot be held liable for payment of interest. The tender should have been accepted under protest by the plaintiff reserving his right to claim rent. The award is accordingly upheld and in substitution for the decrees passed by the Courts below a decree in terms of the award has to be passed in the present litigation. As the arbitrators have fixed Rupees 28,585 as the value of the three bungalows the plaintiff-appellant is entitled to receive this amount from the Government. This amount shall be paid by the Government to the plaintiff-appellant within three weeks from to-day's date. Mr. Khwaja, the counsel for the respondents, offered to pay the amount by cheque, but the counsel for the appellant refused to accept that offer. The respondents will be at liberty to deposit the amount to the credit of the appellant in the Court of the Munsif of Meerut in suit No. 1128 of 1939 and the plaintiff will be at liberty to withdraw the amount. The parties will bear their own costs of this litigation in all the Courts as provided by para. 3 of the statements of parties recorded on 30th March 1943. A decree will be drawn up in the above terms.