

(1961) 08 MP CK 0033
In the Madhya Pradesh High Court
Case No : L.P.A. No. 5 of 1960

S.S. Nirmalchand Ratanchand APPELLANT
Vs
Collector, Jabalpur RESPONDENT

Date of Decision : 31-08-1961

Acts Referred:

Central Provinces and Berar Accommodation (Requisition) Act, 1948 — Section 4

Citation : (1962) J LJ 237 : (1962) MPLJ 109

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and P.R. Naolekar, for the Appellant; Rama Gupta, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This is a Letters Patent appeal from a decision of Shrivastava J. by which he upheld a decision of Shri S. K. Bose, 2nd Additional District Judge, Jabalpur, as an arbitrator appointed u/s 4 of the C. P. and Berar Accommodation (Requisition) Act, 1948, awarding a sum of Rs. 700 per month as compensation for requisitioning certain premises situated in Jabalpur and known as "Govind Bhavan" and belonging to the appellant.

The premises in question were requisitioned by the State Government on 4th October 1954 for locating Hargovind Home Science College for Women. As there was no agreement between the Government and the appellant with regard to the compensation payable for the requisitioning, a reference was made to the Additional District Judge u/s 4 of the Act for determining as an arbitrator the fair amount of compensation for the property. In the proceedings before the arbitrator the appellant made a claim for being paid Rs. 1,500 per month as compensation. The property had been requisitioned during the years 1942 to 1947 for the West Bengal Government for locating a Military Club. At that time

the appellant was paid Rs. 1,000 per month as compensation. It was again requisitioned in 1950 for the Posts and Telegraphs Department. The compensation paid this time was Rs. 700 per month. The appellant urged that since then he had spent considerable amount for repairs and for installing electric fittings; that the municipal taxes on the property had also been raised; and that on account of these factors he was entitled to be paid Rs. 1,500 per month as compensation after taking into account the increase in rent permissible under the C.P. and Berar Letting of Houses and Rent Control Order, 1949. Having regard to the compensation paid to the appellant in the past and to the rental value of houses in Jabalpur in the material period the arbitrator came to the conclusion that the fair amount of compensation would be Rs. 700 per month. He rejected the appellant's claim for enhancement of compensation on account of money spent on repairs, electric fittings and increase in taxes on the ground that the expenses incurred for repairs and fittings had not been proved and as there was also nothing to show that the municipal taxes on the property in question were raised during the period in which the property had been requisitioned. The arbitrator also observed that in any case the appellant's remedy for increase in the amount of the compensation because of money spent on repairs and fittings lay before the Rent Controller by an application under clause 7 of the Rent, Control Order, 1949.

Before the learned single Judge it was urged that the arbitrator should have determined compensation on the principles laid down in section 23(1) of the Land Acquisition Act, 1894, and not on the principles contained in the Rent Control Order, 1949, with regard to fixation of fair rent. The learned single Judge accepted this contention but he observed that the provisions of the Rent Control Order had to be taken into consideration "in fixing the value of the interest acquired as rent legislation has the effect on the rents payable by tenants and thus indirectly influences the market value of the possessory interest". On a consideration of the compensation secured by the appellant previously and in a period immediately preceding the present requisition and of the evidence on record with regard to the amount said to have been spent on electric fittings and with regard to the increase in taxes, the learned single Judge found that the conclusion of the arbitrator fixing the compensation at Rs. 700 per month could not be said to be erroneous. He also observed that the claim for increase in compensation on account of the amount expended on repairs was neither made before the arbitrator nor raised in the grounds of appeal before him.

Shri Sen, learned counsel appearing for the appellant, urged that u/s 4 (1) (iv) of the C. P. and Berar Accommodation (Requisition) Act, 1948, in making his award the arbitrator was bound to take into consideration the matters mentioned in section 23(1) of the Land Acquisition Act, 1894; that the market value of the possessory interest in the property which the state took by requisitioning it had to be determined in accordance with section 23(1); that the arbitrator totally omitted to pay regard to the provisions of section 23(1) of the Land Acquisition Act, 1894, and erred in determining the compensation solely on the provisions of

the Rent Control Order. Learned counsel relied on Hazi Mahammad Ekramal Haque Vs. Province of Bengal, and The Province of Bengal Vs. Pawn Kissen Law and Co., to support his contention.

There can be no doubt that in determining the amount of compensation the arbitrator must take into consideration the provisions of section 23(1) of the Land Acquisition Act, 1894. But it is not correct to say that he is bound by the terms of that provision. Section 4 (1) (iv) of the Requisition Act of 1948 says that "the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable...." The words "shall have regard to" show that section 4 (1) (iv) is not exhaustive of the matters which the arbitrator should take into consideration in the assessment of compensation. They only imply that the matters specified in section 23(1) of the Land Acquisition Act must be taken into consideration. But from that it does not follow that the arbitrator cannot take into consideration other matters which are allied or germane to the assessment of compensation. The meaning of the expression "have regard to" was considered by the Privy Council in Revote of Garabandho v. Zamindar of Parlakimedi AIR 1843P.C. 164, while construing section 168 (2) of the Madras Estates Land Act, 1908. That provision was-

In settling rents under this section the Collector...shall have regard to the provisions of this Act for determining rates of rent payable by a ryots.

The privy Council observed-

The view taken by the majority of the Collective Board of Revenue in making the order dated 19th October, 1936, which is now complained of, is that the requirement to "have regard to" the provisions in question has no more definite or technical meaning than that of ordinary usage, and only requires that these provisions must be taken into consideration.... This view of the effect of the direction "to have regard to" the provisions of the Act for determining rates of rent payable by a Ryot is supported by the decision of the High Court in AIR 49 Mad. 499 at P. 506.... Their Lordships find themselves on this matter in agreement with the view taken by the majority of the Collective Board.

Following this decision of the Privy Council, it was held in the Province of Bengal v. Pawn Kissen Law & Co. (2) that u/s 19 (1) (e) of the Defence of India Act, 1939, (which is somewhat analogous to section 4 (1) (iv) of the Act of 1948) the arbitrator is required to take into consideration the provisions of section 23(1) of the Land Acquisition Act but he is not strictly bound by the terms of that provision. If, therefore, the arbitrator takes into consideration the provisions of section 23(1) and other matters in reaching his conclusion about the fair amount of compensation it cannot be said that his award is vitiated. Now, u/s 23(1) of the Act of 1894 read with section 4 (1) (iv) of the C. P. and Berar Accommodation (Requisition) Act, 1948, the arbitrator is required to determine the market value of the possessory interest in the property requisitioned. It is

the possessory interest of the owner that is taken away when his property is requisitioned and the market value of that interest has to be determined in accordance with section 23(1) of the Land Acquisition Act. Now in determining the market value of the interest the prevailing rent level must be taken into consideration. That level affords a reasonable basis and a good criterion for determining the market value of the possessory interest. The prevailing rent level would, of course, be considerably influenced by the fact of the operation of a restrictive legislation such as a Rent Control Order. If, therefore, in determining the prevailing rent level the provisions of the Rent Control Order are borne in mind and the level so determined is taken as a guide for assessing the market value of the possessory interest, it does not mean that the market value of the possessory interest has been assessed on the principles on which a rent controller would under the Rent Control Order determine the fair rent of the property in question. The provisions of the Rent Control Order thus have no direct bearing on the assessment of compensation u/s 4 (1) (iv) of the Act of 1948, but they do enter in the fixation of the prevailing rent level on the basis of which the market value of the possessory interest can be determined. This is precisely what the decision in Hazi Mahammad Ekramal Haque Vs. Province of Bengal, holds and what the learned single Judge rightly held in the present case.

Now, here it is evident from the award made by the arbitrator that he did not bear in mind the provisions of section 23(1) of the Act of 1894 and wrongly directed the appellant to approach the Rent Controller for increase in the amount of compensation on account of repairs and improvements effected to the property. At the same time he did determine the market value of the possessory interest after taking into consideration the compensation obtained by the appellant on two previous occasions when the property had been requisitioned and the prevailing rent level. He rejected the appellant's claim for extra compensation on the ground of repairs and improvements and increase in taxes also on the finding that there was no evidence to support the appellant's claim for increase in the compensation on account of the above factors. Thus the arbitrator did unconsciously take into consideration the matters mentioned in section 23(1) in reaching the conclusion that he did about compensation.

Realising this, learned counsel for the appellant did not persist in the contention and press us to remit the matter to the arbitrator for a fresh determination of compensation in the light of section 23(1) of the Land Acquisition Act. He, however, urged that on the material on record the fair compensation for the property should have been at Rs. 1,200 as prayed before the learned single Judge. On this point we see no reason to disagree with the view formed by the learned single Judge as regards the quantum of compensation. The amount of Rs. 700 per month as compensation has been fixed after taking into consideration the prevailing rent level and the compensation obtained by the appellant in the past, as also the very material fact that the appellant himself claimed no more than Rs. 800 as compensation in his application made on 25th February, 1955, before the Land Acquisition Officer, Jabalpur. The appellant's

claim for enhancement of compensation on account of improvements and repairs effected to the property and increase in taxes is plainly unsupportable on the evidence on record.

For all these reasons, the decision of the learned single Judge is upheld and this appeal is dismissed with costs. Counsel's fee is fixed at Rs. 75 (seventy-five only).