
(1977) 01 CAL CK 0019
In the Calcutta High Court
Case No : A.F.O.D. No. 355 of 1961

Sudhangsu Kumar Mukherjee and Others	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 21-01-1977

Acts Referred:

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

Citation : AIR 1978 Cal 130

Hon'ble Judges : Arun Kumar Janah, J; Amar Nath Banerjee, J

Bench : Division Bench

Advocate : Amarendranath Gupta and Sumit Ghose, for the Appellant; Nani Gopal Das, for the Respondent

Final Decision : Partly Allowed

Judgement

A.N. Banerjee, J.—This appeal is directed against the award made by the Arbitrator on a reference made to him for determination of compensation for demolished building and structures on C. S. Plots Nos. 643 and 719 of Mauja Plata, P. S. Noappara, Dist. 24 Parganas. It appears that disputed properties were requisitioned by the State Government for public purpose, being purpose of Union of India under Rule 75-A of the Defence of India Rules. The said requisition was subject to the provisions of the Requisitioning and Acquisition of Immovable Property Ordinance 1952, subsequently repealed and replaced by the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act XXX of 1952). The requisition was made on 23-1-1943 and possession was taken on the same day. Monthly rent of Rs. 75/- was being paid to the claimants up to 15-4-1957. On 25-5-1957, an amount of Rupees 25,460/- was offered by the Collector, 24 Parganas to the claimants as replacement costs of the demolished building. It appears that the building and structures on the land were demolished shortly after taking possession in 1943. As claimants were not satisfied with the aforesaid amount so offered to them and there was no agreement between the parties fixing the amount of compensation, an Arbitrator was appointed in

accordance with the provision of the Requisitioning and Acquisition of Immovable Property Act, 1952 for determining the amount of compensation in respect of the said properties. Before the Arbitrator the claimants filed a Statement of Claim in which they claimed Rs. 29,267/- as compensation and damages for the demolished structures with interest at the rate of 6% per annum. Subsequently, they filed another application for amendment of claim in which they raised their claim to Rs. 63,265/- in place of Rs. 29,267/- on the ground that the earlier amount claimed by them was on the valuation of the demolished structures at the rate prevailing in Jan. 1943 but that they were entitled to the compensation at the valuation rate prevailing in April 1957. Thereafter, both the parties proceeded before the Arbitrator on the question whether compensation was to be allowed at the rate prevailing in Jan. 1943 or April 1957. The Arbitrator was of the view that the valuation of 1943 would prevail and after taking into consideration the evidence on record he raised the total valuation of the building to Rupees 37,422/-. A depreciation of 30% was given on the said amount and an award was made for Rs. 26,195/-. Being dissatisfied with the award as made by the Arbitrator, the claimants have preferred this appeal.

2. Mr. Amarendranath Gupta, learned advocate with Mr. Sumit Ghose appearing for the appellants contended before us that the learned Arbitrator fell into error in thinking that the compensation was to be awarded on the basis of valuation of the demolished structures as obtaining in Jan. 1943. According to Mr. Gupta, the valuation ought to have been made at the rate prevailing in 1957, i.e. the year in which the offer of compensation was made by the Collector to the appellants. In this connection he drew our attention to the provisions of Section 8 of Act (XXX of 1952) and to an unreported Bench decision of this Court in the case of Union of India v. Meher Khan, decided on 12-6-1970, in A. F. O. D. No. 264 of 1959. He also referred to another Bench decision of this Court in the case of Upendra Kumar Nandi and Another Vs. Union of India (UOI), .

3. Mr. Nani Gopal Das, learned advocate appearing for the respondent submitted that the appellants were not entitled to claim anything more than what was allowed by the award inasmuch as in their petition for reference they stated that Rs. 29,267/- would be a fair compensation for the demolished building and structures. It was also pointed out by Mr. Das that in their Statement of Claim before the learned Arbitrator they also referred to the aforesaid sum as fair and equitable compensation for the demolished structures. Mr. Das also contended that the report and the evidence of expert Engineer J. Roy who was examined as witness No. 2 for the claimants should not be accepted inasmuch as the learned Arbitrator was justified in disregarding them.

4. We were taken through the award and other materials on record. In our view, the learned Arbitrator was not justified in thinking that the amount of compensation payable to the claimants would be on the basis of valuation of the demolished structures as on the date of the requisition. A reference to Clause (iv) of Sub-section (2) (b) of Section 8 of Act (XXX) of 1952 may be made.

Clause (iv) says :--"That the amount of compensation payable for the requisitioning of any property shall consist of damages (other than normal wear and tear) caused to the property during the period of requisition including expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition". It is thus clear that the compensation must be made on the basis of the value of the demolished structures when the offer of compensation was made i.e. in April 1957 after allowing depreciation for the period the building was in existence since its construction. In this regard, we respectfully agree with the principle as laid down in the unreported Bench decision of this Court referred to above. There can be no manner of doubt that both the parties understood at the time of hearing of the reference before the learned Arbitrator that while the claimants were claiming that the valuation of the property was to be assessed at the rate as in April 1957, other side disputed it on the ground that it must refer to the year of requisition i.e. 1943. In fact, the appellants-claimants filed a petition for amendment of the Statement of Claim before the learned Arbitrator who proceeded on the footing as if such amendment has been allowed. That being so, it would not be open to the respondent to restrict the claim of the appellants to the amount as mentioned in their Statement of Claim and not to the one as stated in their application for amendment for claim.

5. We may now come to the question as to what would be the fair amount of compensation to be calculated on the basis of the valuation at the rate as obtaining in 1957. Mr. Gupta pinned his faith on the evidence of witness No. 2, J. Roy for the claimants. J. Roy is an Engineer and Valuer. According to his evidence he first inspected the building which according to him was one storied having a staircase room in the first floor on 17-1-1943. At that time he recorded the measurement in his Measurement Book and made his valuation report vide Exts. 2 and 4. Thereafter on being requested by the claimants he made valuation of the same structures following the rates of April 1957, PWD, West Bengal. Exts. 3 and 5. The respondent examined one witness who is expert in valuation work. He submitted a valuation report following the measurements made by the Collector. His valuation refers to the rates as in Jan. 1943. He did not see the building as per his own evidence inasmuch as the building was demolished shortly after requisition in 1943. In our view the learned Arbitrator was justified in disregarding the evidence of witness No. 2, J. Roy. One of the appellants examined himself before the learned Arbitrator. It can be gathered from his evidence that J. Roy took measurement of the building just after the receipt of the requisition notice by him. Requisition notice was served on him as it appears on 23-1-1943. But witness No. 2, J. Roy, says that he inspected the building on 17-1-1943. He could not have inspected the building on 17-1-1943 inasmuch as it is the positive evidence of one of the claimants that he took measurement of the building after the receipt of the requisition notice. In such circumstances, we cannot accept the report regarding the valuation of J. Roy as trustworthy. There can be no manner of doubt that the value of the structures rose considerably in

1957 from that of 1943. In fact, the witness examined on the side of the respondent has in his report added 50% over the rate obtaining in 1942 to arrive, at possible increase in the rate in 1943. Therefore, on the basis of the above report we would be justified in raising the value of the demolished structures by 50% on the valuation as made by the Arbitrator. The learned Arbitrator found that the total valuation of the building in 1943 would be Rs. 37,422/-. If we add 50% thereon, we arrive at the figure of Rs. 56,133/-. Structures were about 60 years old as would appear from the evidence. Having regard to the age of the structures and state at which those were kept we think we will be justified in allowing a depreciation at 35% on the aforesaid valuation. The valuation of the building would thus come to Rs. 36,486.45 p. The appellants would be entitled to get this sum from the respondent. In view of the fact that the appellants were given monthly compensation at the rate of Rs. 75/- p.m. from the date of the requisition till 15-4-1957, we allow no interest.

6. In the result, the appeal is allowed in part. The appellants would be entitled to get the sum of Rs. 36,486.45 p. from the respondent. The award is modified accordingly. The respondent is to pay Rs. 16,118.45 P. being the enhanced amount to the appellants after deducting Rs. 29,386/- being the 80 per cent of the Collector's award which has already been withdrawn by the appellants, within six months from this date.

Janah, J.

7. I agree.