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**(2011) 08 DEL CK 0398**

**In the Delhi High Court**

**Case No :** FAO 189 of 1980

Thakur Kuldeep Singh and Others — APPELLANT

Vs

The Collector, Delhi and Another — RESPONDENT

**Date of Decision :** 25-08-2011

**Acts Referred:**
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11

**Citation :** (2011) 08 DEL CK 0398

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Proxy, for the Appellant; Ruchi Sindhwani and Bandana Shukla, for the Respondent

**Final Decision :** Allowed

## Judgement

Valmiki J Mehta, J.—This case has been passed over on three occasions on the request of the Appellants. It is not possible to give a fourth pass-over. On the first pass over it was said that counsel was just coming. On the second pass over it was said that the counsel was supposed to be held in a "traffic jam". On the third pass over it was prayed that the matter be posted after lunch. I am thus not inclined to give further indulgence in this appeal which is pending for over 31 years. The matter was partly argued on 10.8.2011, and on which date, parties were asked to file written synopsis. Both the parties have filed written synopsis along with the judgments. I may also note that when this case first came up on 20.7.2011, an adjournment was granted at the request of the Appellants, making it clear that the matter would be argued on 10.8.2011. On 10.8.2011 again there was a request for adjournment however, only after the request for adjournment was declined, the matter was argued in part. I have therefore perused the written synopsis and the judgments and am proceeding to dispose of the appeal. There is the limited issue of the prayer for enhancement in the rate of rent alongwith grant of interest inasmuch as the compensation which was determined by the Award has since already been paid to the Appellants.

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2. This first appeal u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (in short "the Act") impugns the Award dated 29.2.1980 passed by the Additional District and Sessions Judge/Arbitrator whereby the Appellants/owners were granted the following reliefs:

(8) In view of what has been stated above I award to the claimants against the Respondents the compensation for the requisitioning of the property in dispute as follows:

(A) At the rate of Rs. 4200/- P.M from the date of requisitioning i.e. 10.5.70 till the date of the demolition of the property in dispute by Delhi Municipal Corporation.

(B) At the rate of Rs. 200/- P.M. in respect of vacant site of the property in dispute from the date of demolition of the built portion by Delhi Municipal Corporation till the requisitioning order is withdrawn and the vacant possession thereof is delivered back to the claimants. The Government shall pay the arrears of the aforesaid amount within 4 months from today and the rental compensation accruing hereafter by the 20th of each succeeding month till possession of the vacant site of the property in dispute is delivered back to the claimants after the order of derequisitioning. In case of default on the part of the Government in the matter of the payment as aforesaid, the claimants shall be entitled to interest on the arrears of compensation or compensation then due at the rate of 6% P.A.

3. A reading of the impugned Award shows that the property which was acquired was property No. 874, East Park Road, Karol Bagh, New Delhi. This property was constructed on a plot having an area of about 2453 sq. yards and on which there is a constructed area of 12730 sq. feet on the ground floor and an area of 2520 sq. feet on the first floor. The disputed property was purchased by the Appellants/ owners in a public auction on 23.1.1961 from the Ministry of Rehabilitation for a sum of Rs. 1,16,000/-. There was an adjoining property bearing No. 875-A of about 1250 sq. yards of one Sh. Manmohan Singh. In fact, two properties bearing Nos. 875-A and 875 were purchased by two brothers Sh. Manmohan Singh and Sh. Gurbachan Singh for a total amount of Rs. 1,36,000/- and total area of both these properties was roughly the same area as the property in dispute. The properties were however divided roughly half and half between Sh. Gurbachan Singh and Sh.Manmohan Singh which properties were given numbers 875-A and 875. Whereas the disputed property consisted basically of the ground floor and a small construction on the first floor/barsati totalling to about 40 rooms, there were in all about 42 rooms totally in property No. 875 and 875-A belonging to Sh. Gurbachan Singh and Sh. Manmohan Singh.

4. The Arbitrator has considered the fact that the ground floor of the property No. 875-A was let out to one M/s. J.D.Tytler School for a sum of Rs. 1200/- pm in the year 1965 and there were over five tenants who were paying a total rent of Rs. 210/-. Property No. 875-A was therefore fetching a rent of Rs. 1410/-. The Arbitrator has thereafter noted that the condition of the property of Sh.

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Manmohan Singh was far better than the disputed property which was a ramshackle/dilapidated property and which was in fact demolished being a property in dangerous condition in the year 1977 i.e. within seven years of the requisitioning. The Arbitrator has after considering all aspects including comparison with the adjoining property, covered area, physical condition of the property and various other aspects granted a rent at Rs. 4200/- per month from the date of the requisitioning i.e. 10.5.1970 till the date of demolition of the property in 1977 and after demolition at Rs. 200/- per month for the vacant site. The relevant observations of the Arbitrator are contained in paras 5 and 6 of the impugned Award and which read as under:

Now being satisfied with the substantial similarity of the property in dispute with the ground floor of the property No. 875-A of AW1 Manmohan Singh, I would proceed to assess the rental compensation of the property in dispute with the help of the rental yield of the ground floor of property No. 875-A of Manmohan Singh. The testimony of AW1 Manmohan Singh and AW 4 Dwarka Nath are of importance in this connection. Dwarka Nath AW4 has been working as the office supdt. In J.D.Tytler School since 1958 and this school has been located in a portion of the ground floor of property No. 875-A, East Park Road, New Delhi belonging to AW-1 Mamohan Singh as a tenant at a rate of Rs. 1200/- P.M. since 1965 and the rent by this school is now being paid by means of payee''s account cheques and, as such, No. rent receipts are obtained by this school which earlier used to obtain rent receipts from the landlord Manmohan Singh and these facts find mention in the testimony of AW-4 Dwarka Nath. From the testimony of Manmohan Singh AW-1 this factum of a portion of the ground floor being under the tenancy of this school at the monthly rental of Rs. 1200/-, finds clear corroboration. The testimony of Manmohan Singh further shows that besides the aforesaid rent of Rs. 1200/- P.M. the ground floor of his property No. 875-A also fetches the following amounts of rent per month in respect of the portions mentioned against the same:

Rent Per Month. Premises as shown in the Plan Ex.A-1 of property 875-A

1.

Rs.40/-

Garrage marked A.

2.

Rs.25/-

shop marked B.

3.

Rs.50/-

shop marked C.

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4.

Rs.70/-

servant quarter marked D.

5.

Rs.25/-

Servant quarter marked E.

Total

Total

Rs.210/-

Thus the total rental yield of the ground floor of property No. 875-A of AW-1 Manmohan Singh comes to Rs. 1410/- (Rs. 1200+Rs. 210/-). Manmohan Singh has deposed that he receives rent against receipt and that he issues rent receipts from the regular receipt book and gets the signatures of the tenants on their counterfoils and he produced counterfoils Ex.A-2 to Ex.A-4 of the rent receipts issued by him to the 3 tenants, in occupation of the garage and the two shops referred to above. He also produced the counterfoil Ext. A-5 of the rent receipt issued to the tenant Bhagat Singh who was in occupation of the servant quarter room shown as "D" in the aforesaid plan at a monthly rent of Rs. 70/-. Regarding the tenant named Manwasi who is in occupation of the servant quarter room marked "E" he has deposed that No. rent receipts are issued to him as he deposits the rent in his bank account. He also produced counterfoils Ex.A-6 dated 2.2.67 in respect of the rent receipt of Rs. 1200/- issued in favour of the Principal of J.D.Tytler School. There is hardly any justification to disbelieve the aforesaid testimony of these two witnesses. It would also be seen that whereas in the ground floor of property No. 875-A of Manmohan Singh a very large portion is in the possession of a school and there are two shops besides the school, the ground portion of this property is substantially non-residential and almost in the similar manner the ground floor of the property in dispute being in occupation of a hospital, is also for non-residential use and that also establishes an important item in the matter of similarity of the two premises. As already pointed out above that whereas there are 14 rooms including the garage and two shops in property No. 875-A of AW1 Manmohan Singh, there are as many as 40 rooms in the ground floor of the property in dispute and there is only barsati covering a small portion in the first floor there of. Furthermore the substantial rent of Rs. 1200/- p.m paid by J.D.Tytler school to Manmohan Singh is since the year 1965 and the property in dispute was requisitioned 5 years later in the year 1970 and it is a matter of common knowledge hardly needing any evidence that rents have been increasing year by year any evidence that rents have been increasing year by year and this fact was also taken note of by Shri S.R.Goel (Arbitrator) Addl. District Judge, Delhi in his Award Ex.AW2/a, in respect of the

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property No. 875 of Gurbachan Singh and had allowed increase over the rental value of 1965 uptil 1970 at the rate of 5% per year. Taking all these factors into consideration as also the relatively better condition of property No. 875-A of AW-1 Manmohan Singh then that of the property in dispute, as already pointed out above. I am of the view that the property in dispute should be assessed at a rental value of Rs. 4200/- P.M. which is almost 3 times of the rental value of the ground floor of property No. 875-A, because there are 14 rooms in the ground floor of property No. 875-A and there are 40 rooms of the corresponding sizes in the ground floor of the property in dispute and the barsati portion on the 1st floor together with the roof of the property in dispute may be reasonably taken to be equivalent to two such rooms of the ground floor, thus making the total accommodation of the property in dispute to the tune of 42 rooms which number is three times the 14 rooms of the ground floor of property No. 875-A and the inferior condition of the property in dispute vis-?-vis property No. 875-A may reasonably be off set against the probable increase in the rate of rent from 1965 up to 1970 and thus the rental value of the entire property in dispute may reasonably be assessed at Rs. 4200/- P.M. from the date of its requisitioning by the Government.

(6) As already pointed out above it is also in evidence that the property in dispute has since been demolished by Delhi Municipal Corporation in the year 1977, even though the date of this demolition has not come on the records of this case. The requisitioning order was not withdrawn by the Govt. after the demolition of the property in dispute and consequently the Govt. is liable to pay the rent compensation in respect of the vacant site underneath the property in dispute from the date of demolition till the order of requisition is withdrawn and possession of this site is restored to the claimants and the reasonable rental compensation in respect of the vacant site appears to be to the tune of Rs. 200/- P.M.

(Emphasis added)

5. I do not find any illegality or perversity in the impugned Award of the Arbitrator to interfere in appeal. Some amount of legitimate guess work has always to take place with respect to determining the rate of rent by comparing rents of equivalent premises. In this case the best evidence with respect to adjoining premises was available and taking into consideration the ages/condition of the respective premises, their covered area, the number of rooms and so on, the Arbitrator arrived at a plausible figure of rent. A higher figure of rent was arrived at for the subject premises after considering its number of rooms when as compared to the adjoining premises 875-A. It is also a fact which has emerged on record that the disputed premises were really in a run-down condition and therefore were in fact demolished within 7 years of the requisitioning. I, therefore, do not find any reason to interfere with the finding of the Arbitrator which has awarded rent at Rs. 4200/-pm. I also do not find error in granting rent Rs. 200/- per month for vacant land till the time requisitioning

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order was withdrawn. As a Court of appeal with regard to findings of fact and also law I would reach the same conclusion which the Arbitrator has arrived at.

6. There are however two aspects with respect to which I am inclined to interfere with the subject Award. Firstly, there has to be reasonable increase of rent every year by virtue of the provision of Section 8(2A) of the Act. As per the provision of Section 8(2A) of the Act, rent has to be increased after every period of 5 years. In the present case, the Arbitrator has granted by the impugned Award only a fixed amount for the period from 1970 to 1977. I, therefore hold that the rate of rent, which is fixed, shall be the rent on the date of passing of the order of the requisitioning on 10.5.1970 and therefore on such figure the Appellants/owners will be entitled to an increase of 5% per year over the rent fixed of Rs. 4200/- per month. I may note that the Award of Sh. S.R.Goel, ADJ Ex.AW2/1 was relied upon in the impugned Award, and by which, rent of Rs. 3300/- was determined for the property No. 875-A, with increase of 5% per year was granted from 1965 to 1970. Ordinarily, I would have granted an increase of 10% per year in normal circumstances with respect to the premises, however, since it has been sufficiently established on record that the disputed property was in a rundown condition, and which in fact had to be demolished within 7 years of the requisitioning, I feel that increase at 5% per year is more than enough to compensate the Appellants. In fact, I am being liberal because it could have been also argued strongly by the Respondents that considering the condition of the premises, even 5% per year increase ought not to have been granted. Accordingly, I hold that the rent of Rs. 4200/- per month will be applicable as on the passing of the order of requisitioning i.e. 10.5.1970, and the Appellants will be entitled to 5% increase every year on this amount till the premises were demolished in 1977.

7. One other aspect on which I am inclined to give relief to the Appellants is that the impugned Award does not grant interest for the period, for which the rent was payable. The Arbitrator has only granted interest at 6% per year if the awarded amount was not paid within four months of passing of the impugned Award on 29.2.1980. Interest has not been granted on the arrears of the rent due. It has been held by the Supreme Court in the case of Abhay Singh Surana and Others Vs. Secretary, Ministry of Communication and Others, that an owner is entitled to interest at 6% per year simple on the amounts of rent during the period of requisitioning. It has also been held by the Supreme Court in the decision of Indian Oil Corporation v. Saroj Baweja 2005(12) SCC 298 that courts are entitled to grant interest on the arrears of mesne profits. Therefore, I hold that the Appellants will also be entitled to 6% p.a. simple from the end of each month for which the rent became payable firstly at the quantified rate of Rs. 4200/- per month and also thereafter at the increased rent of 5% per year. The Appellants will also be entitled to an interest at 6% per annum simple on the amount of Rs. 200/- per month with respect to the vacant land as granted by the impugned Award and which will be granted till the requisitioning order was withdrawn.

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8. In view of the above, the appeal is allowed to the extent of allowing increase of rent of 5% every year and also granting interest at 6% per annum simple on the arrears of rent. In case, the arrears as per today''s judgment are paid within two months from today, interest will remain at 6% per annum simple, however, if the amount is not paid within two months, thereafter interest from the date of this judgment will be payable at 12% per annum simple in terms of the ratio in the case of Abhay Singh Surana (supra).

9. Before disposing of the appeal, I must finally mention that the Appellants have filed an application under Order 41 Rules 2,3 and 33 being CM No. 4416/1998 for amendment of the appeal to rely upon an Award passed by Justice P.K. Bahari. This application is liable to be dismissed on the ground that the application has been filed 18 years after filing of the appeal and 13 years after the Award passed by Justice P.K.Bahari. Further, though the Appellate Courts have powers in certain cases to remand the matter back for trial, I may note that this appeal is pending since over the last 31 years and the present is therefore not a fit case to again remand the case for retrial because allowing of the amendment would be setting the clock back by 31 years. The main reason for dismissing the application is that the case is decided by the Arbitrator in the present case under the Requisitioning and Acquisition of Immovable Property Act, 1952 is in terms of the evidence as led. On the basis of the evidence which has been led in this case, the Arbitrator has passed the impugned Award thoroughly examining all the aspects and appreciating the evidence in a thorough manner. By allowing of an amendment basically the Appellants want to lead evidence again in the matter and which is impermissible in law and in the facts of the present case because if the same is permitted, then, there would be No. end to trial and litigation in a case. I may note that in order to do complete justice, I have awarded increase of rent at 5% every year although the disputed premises were in a totally rundown condition and were demolished within 7 years of requisitioning. I have also awarded interest on the arrears of rent. Considering of the facts and circumstances, I am of the opinion that the application deserves to be dismissed and CM No. 4416/1998 is therefore dismissed as such.

10. The appeal is therefore partly allowed and disposed of accordingly. Trial court record be sent back.

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