

(1951) 07 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 67 of 1950

The Union of India (UOI)

APPELLANT

Vs

Ram Pershad and Others

RESPONDENT

Date of Decision : 02-07-1951

Acts Referred:

Defence of India Act, 1939 — Section 19
Defence of India Rules, 1939 — Rule 75A
Land Acquisition Act, 1894 — Section 23(1)

Citation : AIR 1952 P&H 116

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : D.K. Mahajan and Rameshwar Nath, for the Appellant; Bishan Narain, for the Respondent

Final Decision : Allowed

Judgement

Harnam Singh, J.—This is an appeal against the award of the Arbitrator in a proceeding in connection with the assessment of compensation for Bungalow No. 4, Albuquerque Road, New Delhi, hereinafter referred to as the premises, requisitioned u/s 19 of the Defence of India Act, 1939, read with Rule 75-A of the Defence of India Rules.

2. Briefly summarised the material facts giving rise to these proceedings are these. In exercise of the powers conferred by Sub-rule (1)" of the Rule 75-A the Central Government by order No. Dy-2564/Camp (B), dated the 23rd of October, 1950 (1942?) requisitioned the premises for a period of one year from the 1st of October, 1942.

3. By order No. Dy. 4806-Camp (B) dated the 4th of October, 1943, the premises were requisitioned for a period of one year from the 1st of October, 1943, to the 30th of September, 1944.

4. By order No. Dy-7878/44/B dated the 21st of October, 1944, the premises

were requisitioned for a period of one year from the 1st of October, 1944 to the 30th of September, 1945.

5. On the 9th of March, 1945, in exercise of the powers conferred by Sub-rule (1) of Rule 75-A, the Central Government requisitioned the premises with effect from the 1st of October, 1945, until further orders of the Central Government.

6. As no agreement could be reached within Section 19 (1) (b) of the Defence of India Act, 1939, the Central Government appointed an arbitrator to assess compensation payable under the orders of requisition mentioned above by the Central Government to Raj Sahib Ram Parshad and Shri H. S. Gupta, hereinafter referred to as the claimants.

7. Before the arbitrator it was common case that the fair rent of the premises on the 1st of November, 1939, under the New Delhi House Rent Control Order, 1939 was Rs. 300/-per mensem exclusive of taxes and charges.

8. Now, the claimants claimed compensation at the rate of Rs. 3,600/- per year clear of all deductions, in addition to house tax for the three years commencing on the 1st of October, 1942 and expiring on the 30th of September, 1945. They then claimed compensation at the rate of Rs. 570/- per mensem in accordance with the principles laid down in the proviso to Article 9 (2) of the New Delhi House Rent Control Order, 1939 read with the Schedule to that Order for the period between the 1st of October, 1945 and the 24th of March, 1947.

9. On the 24th of March, 1947, the Delhi and Ajmer-Merwara Rent Control Act, 1947 came into force in the Province of Delhi and with effect from that date the claimants claimed compensation at the rate of Rs. 855/-per mensem clear of all deductions, in addition to house tax until the date of derequisition.

10. In proceedings before the Arbitrator the respondent resisted the claim pleading that the claimants were entitled to compensation at the rate of Rs. 300/- per mensem for the period beginning on the 1st of October, 1942, and ending on the date of derequisition less one month's rent per year spent by the respondent on annual repairs.

11. On the pleadings of the parties the Arbitrator fixed the following issue:

To what compensation are the claimants entitled?

12. In support of the claim Rai Sahib Ram Pershad and Shri Har Sarup Gupta gave evidence before the Arbitrator while the respondent examined Mr. Tek Chand R. W. 1 and Mr. N. K. Sahni R. W. 2 to show that the claimants were entitled to compensation at the rate of Rs. 300/- per mensem for the entire period of requisition less one month's rent per year on account of annual repairs. In the award the arbitrator awarded the compensation as under:

1. From 1st October, 1942 to 30th September 1945.

Rent as rupees 300 p. m. exclusive of all taxes and charges.

2. From 80th September 1945 to 29 March 1947.

Rent at Rs. 570 per mensem exclusive of all taxes and charges.

3. From 24th March, 1947, onwards.

Rent at Rs. 570 per mensem exclusive of all charge and taxes except those of which the recovery is prohibited by section 4(3), Delhi and Ajmer Merwara Rent Contro. Act, 1947

13. In the concluding paragraph of the award the Arbitrator ordered that the claimants were entitled to the increased rent of Rs. 712/8 per mensem after the end of the year in which the notice of increase of rent u/s 8 of the Delhi and Ajmer-Merwara Rent Control Act, 1947 is served on the respondent, that the claimants would be entitled to such further increases as may be allowed by rent laws to be made in future and that the payments would be subject to a deduction of one month's rent every year on account of repairs.

14. From the award made by the Arbitrator on the 10th of March, 1950 the respondent has come up in appeal u/s 19 (1) (f) of the Defence of India Act, 1939. The claimants cross-object. This order disposes of F. A. O. No. 67 of 1950 and the connected cross-objections filed in this Court on the 26th of October, 1950.

15. In assessing compensation the Arbitrator has proceeded on the basis that upon requisition the Central Government became a statutory tenant of the claimants, and that the claimants were entitled to Increase of rent under the New Delhi House Rent Control Order, 1939 and the Delhi and Ajmer-Merwava Kent Control Act, 1947,. On this point the Arbitrator has based himself upon the decision in F. A. No. 151 of 1948, D/- 25-5-1948 (E P). In that case Bhandari, J., said:

"The mere fact that the Government has requisitioned the fiats would not alter the fact that Government have become statutory tenants of the flats and can be required to pay the fair rent as fixed by the Controller."

16. In "F. A. No. 151 of 1946 (E P)" no reasons are given for the statement that Government on requisitioning the premises became a statutory tenant.

17. For the reasons given by me in "Governor-General in Council, New Delhi v. Indar Mani Jatia AIR 1950 E P 296 I find that the respondent is not a tenant within Article 2 (4) of the New Delhi House Rent Control Order 1939 or Section 2 (d) of the Delhi and Ajmer-Merwara Rent Control Act, 1947. For other authorities on the point reference mix be made to Hazi Mahammad Ekramal Haque Vs. Province of Bengal, and "Lalit Kumar v. Bhagaban ch. Sarma AIR 1950 GAU 133. In AIR 1950 EP 296 I pointed out that relation of landlord and tenant may be created by the operation of a statute, irrespective of the intention of the parties, but that relationship does not come into being if the statute does not make a provision in that behalf. In the Defence of India Act 1939 or the rules" made

thereunder there is no provision making the requisitioning authority a tenant of the owner of the requisitioned premises. In such cases the requisition by the State is by virtue of the superior authority which the State possesses to compulsorily acquire or requisition the premises and the relationship of landlord and tenant between the State and the landlord is not established unless the statute makes a provision to that effect. That being the position of law, the basis of the award has no legal justification.

18. As stated above, the award proceeds upon the basis that the relationship between the claimants and the Central Government is that of landlord and tenant and the tenancy for the period subsequent to the 30th of September, 1945 falls within the proviso to Article 9 (2) of the New Delhi House Rent Control Order, 1939. From what I have said above, it is plain that the relationship between the claimants and the Central Government is not that of a landlord and a tenant and the question of the application of the proviso to Article 8 (2) of the New Delhi House Rent Control Order, 1939 does not arise.

19. Rule 75-A of the Defence of India Rules read with Section 19 of the Defence of India Act, 1939 provides that in a case of requisition of Immovable property the claimant is entitled to compensation for the property requisitioned on the principle embodied in Section 23(1) of the Land Acquisition Act, 1894. In cases of requisition the market value of the property taken away from the owner has to be assessed but the powers of the Arbitrator are not limited to giving compensation on the basis of the market value of the requisitioned property "at the date of the requisition". In other words the award may give compensation at different rates for different periods.

20. In the present case it is the possessory interest which has been taken by the State, and, therefore, in assessing the market value of the premises rent of the premises may be taken to be a good criterion. Indeed, it is as a criterion of the market value of the property that the question of standard rent arises. Standard rent may be brought down or increased by the Rent legislation thereby affecting by way of fall or increase the income obtainable from the property in the market by the landlord, but it cannot be conceded that the principle on which compensation is to be assessed is the principle on which a Rent Controller will assess standard rent for that property. Clearly, the claimants could have realized nothing more than the rent as determined under the Rent legislation if the property had not been requisitioned.

21. In assessing compensation the Arbitrator seems to think that with effect from the 30th of September, 1945 the case of the claimants falls under the proviso to Article 9 (2) of the New Delhi House Rent Control Order, 1939. Considering that the Arbitrator gave the award on the 10th of March, 1950 for the period between the 30th of September, 1945 to the 10th of March, 1950 it was not correct for the Arbitrator to assume that for the period between the 30th of September, 1945 to the 24th of March, 1947 the claimants were entitled to compensation under the proviso to Article 9 (2) of the Order at the rate of Rs. 570/- per

mensem exclusive of taxes, and charges. That being so, the claimants were entitled to compensation for the- period between the 1st of October, 1942 and the 23rd of March, 1947, both days inclusive, at the rate of Rs. 300/- per mensem exclusive of taxes and charges and subject to a deduction of one month's rent every year on account of repairs.

22. From the 24th of March, 1947 the Delhi and Ajmer-Merwara Rent Control Act, 1947 came into force in the Province of Delhi. Section 7 of the Act read, with the Second Schedule makes provision for determining the standard rent of the premises in the Province of Dethi. Para 1 of the Second Schedule deals with the determination of basic rent in relation to any premises and enacts "inter alia" that the basic rent in the case of premises let on the 1st of November, 1939 is the rent at which the premises were let on that date. That being so, under the Act the basic rent of the premises is Rs. 300/- exclusive of taxes and charges. The Embassy of Iran lives in the premises and part of the premises is used for the office of the Iranian Embassy. Indeed, the premises are divided into three blocks and one of the three blocks is used for the office of the Iranian Embassy. Indisputably, the premises are used mainly as residence and incidentally for business within Para. 5 of the Second Schedule and the standard rent of the premises with effect from the 24th of March, 1947 would be Rs. 412/8/- per mensem exclusive of taxes and charges subject to a deduction of one month's rent on account of annual repairs. Clearly, with effect from the 24th of March, 1947 the claimants are entitled to compensation at Rs. 412/8/- per mensem exclusive of charges and taxes and subject to a deduction of one month's rent every year on account of annual repairs.

23. For the foregoing reasons I find:

1. that from the 1st of October, 1042 to the 23rd of March, 1947, both days inclusive, the claimants are entitled to compensation at Rs. 300/- per mensem exclusive of taxes and charges;
2. that from the 24th of March, 1947 the claimants are entitled to compensation at the rate of Rs. 412/-8/- per mensem exclusive of taxes and charges;
3. that for the period from the 1st of October, 1942 the Central Government is entitled to a deduction equal to compensation for one month every year on account of repairs;
4. that in case the premises have become or become business premises within the meaning of the Act the claimants would be entitled to compensation at the rate of Rs. 450/- per mensem subject to the deductions mentioned above from the date that the premises became or become business premises;
5. that in case possession of the premises is given up by the Union of India in any year before the completion of that year the claimants would be entitled to compensation for the period of that year during which the Union of India was in possession of the premises on the principle laid down in the proviso to Section 7

(3) of the Act read with the Third Schedule; and 6. that the compensation payable to the claimants would be increased or reduced on the basis of the increase or reduction in the standard rent of the premises as may be permitted by the rent laws in force for the time being.

24. In the result, I allow the appeal, set aside the award of the Arbitrator and order that the claimants be paid compensation on the principles set out in the preceding paragraph.

25. Having regard to all the circumstances of the case I leave the parties to bear their own costs throughout.