

(2003) 08 DEL CK 0061
In the Delhi High Court
Case No : CW No. 165 of 1980

Union of India (UOI) and Another	Vs	APPELLANT
Indian Youth Centres Trust and Another		RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Defence and Internal Security of India Act, 1971 — Section 23, 24, 29, 31
Punjab Municipal Act, 1911 — Section 3(1)

Citation : AIR 2004 Delhi 140 : (2003) 3 ARBLR 335 : (2003) 70 DRJ 516

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sanjay Poddar, for the Appellant; Sanat Kumar and Sanjay Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—The Union of India and the Administrator, Union Territory of Delhi have filed this writ petition under Article 226 and 227 of the Constitution of India for the issuance of a writ in the nature of certiorari, quashing the award made by the Respondent No. 2 on 16.10.1979.

2. The undisputed facts are that the respondent No. 1 (Indian Youth Centres Trust) is the owner of the building known as "Vishwa Yuvak Kendra" situated at Circular Road, Chanakyapuri, New Delhi. The building was requisitioned by the Delhi Administration u/s 23 of the defense and Internal Security of India Act, 1971 (hereinafter referred as "the Act") vide order dated 29.08.1975. Possession of the said building was taken over by the Delhi Administration on 30.08.1975. The said property remained in the possession of the Delhi Administration till 26.03.1977 when, by an order of the same date and passed in exercise of powers conferred by Section 29 of the Act, the Administrator rescinded its earlier order of requisition with immediate effect and directed that possession of the property be restored to the respondent No. 1. It is thus clear that the said

building remained in possession of the Delhi Administration during the period of the aforesaid requisition from 30.08.1975 to 26.03.1977.

3. Section 24 of the said Act reads as under

"24. Payment of compensation.- Whenever in pursuance of Section 23 the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:-

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

(iii) such sum or sums, if any, as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.- In this section and in Section 31, the expression "person interested" in relation to any property includes all persons claiming or entitled to claim an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Act."

From the aforesaid provision, it is clear that whenever property is requisitioned u/s 23 of the said Act, compensation in respect thereof is payable to the persons interested. It is further indicated in the aforesaid provision that while determining the amount of compensation several factors have to be taken into consideration such as, (i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality; (ii) if in consequence of the requisition the person interested is compelled to change the residence or place of business reasonable expenses (if any) incidental to such change; and (iii) such sum or sums, if any, as may be found necessary to

compensate the person interested for "damage caused to the property" on entry after requisition or during the period of requisition, other than normal wear and tear. It is also provided u/s 24 of the said Act that when a person interested is aggrieved by the amount of compensation so determined and makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine.

4. In the facts of the present case a Rent Fixation Committee was constituted to determine the rent for the requisitioned property. The said Committee in its meeting held on 21.08.1976 fixed the rent at Rs. 10, 340/- per month. The respondent No. 1, being dissatisfied with the rent so fixed, sought a reference to arbitration u/s 24 of the said Act. Accordingly, Shri G.R. Luthra, Additional District Judge was appointed as an arbitrator in terms of Section 24 of the Act. He was so appointed by an order dated 23.11.1977 to determine the compensation with regard to the said property. The arbitrator made his award on 16.10.1979 directing the Delhi Administration to pay a sum of Rs. 8, 37, 731.38 to the respondent No. 1 with interest at the rate of 6% per annum from the date of the award till the payment of the amount in addition to the amount of Rs. 1, 95, 459.36 already sanctioned by the Delhi Administration. It is pertinent to note that the total amount claimed by respondent No. 1 was Rs. 21, 86, 426.50 against the amount offered by the Delhi Administration which was Rs. 1, 95, 459.36 at the rate of Rs. 10, 340/- per month. The particulars of the amount claimed by the respondent No. 1 and the amount actually awarded by the learned arbitrator are set out in the table below:-

	Sl.	Particulars	Amount	Claimed	Amount
awarded No.					
15,20,000.00	1.	Compensation for the old wing for the period from 30.8.1975 to 26.7.1977 @ Rs. 80, 000.00 per month	Rs. 6,61,612.90		
	2.	Compensation for New Wing during which period construction was not allowed to be completed by Delhi Administration @ Rs. 25, 000.00 per month.	Rs. 2,25,000.00	Rs. 45,000.00	
	3.	Amount spent on account of requisitioned building to other place and amount spent in bringing back after de-requisitioning.	Rs. 8,124.45	Rs. 8,124.45	
	4.	Compensation paid on account of employees working in the building who could not be provided with employment and work on account of taking away of building.	Rs. 34,410.00	Rs. 34,410.00	
	5.	Compensation paid to building contractor in	Rs. 88,843.47	Rs. 88,843.47	

respect of New Wing on account of sudden termination of contract.

6. Compensation in respect of extra Rs. 1,81,559.73 Rs. 1,40,199.42 expenditure incurred by the Trust on account of paying enhanced rates in respect of completion of New Wing (Escalation charges)

7. Paying of higher charges in Rs. 29,500.00 Rs. 5,500.00 respect of Installation of Transformer by New Delhi Municipal Committee on account of termination of previous contract and entering into new contract when completion of construction of new Wing was allowed

8. Charges on repairs after the Rs. 31,881.86 taking over possession of old wing.

9. Compensation for damages caused Rs. 2,577.00 to the kitchen equipment and electrical fitting remained in possession of Delhi Administration.

10. Cost of damages to cement Rs. 6,988.85 on account of requisition.

11. Painting and whitewashing charges. Rs. 57,530.64 _____

_____ Total Rs. 21,86,426.50 Rs. 8,37,731.00 _____

It appears that by an order dated 2.3.1998, this Court had directed that the entire amount shall remain in deposit till the disposal of this matter.

5. Mr. Sanjay Poddar who appears for the petitioner submits as under:-

(i) that items 4, 5, 6 and 7 in the aforesaid table are beyond the scope of "damages" contemplated u/s 24 of the said Act. Hence, according to him, the arbitrator had no jurisdiction to give an award in respect of these items. His alternative argument is that the escalation paid by the respondent No. 1 to the contractor is not directly related to requisition. Therefore, the arbitrator should have, in any event disregarded the same.

(ii) that item Nos. 1 and 2 are not in accordance with the decision of the Supreme Court in the case of NDMC v. M.N. Soi: AIR 1977 SC 302.

6. In respect of his first submission i.e. with regard to items 4, 5, 6 and 7, Mr. Poddar submits that these items do not fall within the expression "damage caused to the property", appearing in Section 24 of the said Act. He contends that if at the time of entry after requisition or during the period of requisition any damage, other than the normal wear and tear, is caused to the property itself then compensation Therefore could be granted u/s 24 of the said Act. However, this expression i.e., "damage caused to the property" cannot be extended to rope in items such as the ones enumerated in Sr. Nos. 4, 5, 6 and 7 above. According to him, these items would clearly be beyond the scope and concept of damages u/s 24. Alternatively, Mr. Poddar had submitted that part of the building was under construction. The construction was to be completed by December, 1974,

i.e. much prior to the date of requisition. Therefore, even otherwise, there was no question of escalation being claimed against the petitioner.

7. In respect of his second submission, i.e., with respect to items 1 and 2, (compensation based on rent payable), Mr. Poddar reiterates that the Delhi Administration had determined the compensation under this head at the rate of Rs. 10, 340/- per month for the period 30.08.1975 to 26.03.1977 as indicated in the Delhi Administration's letter dated 08.06.1977. This amount was by way of rent-compensation for the requisitioned property. Mr. Poddar placed reliance on the Supreme Court decision in the case of NDMC v. M.N. Soi (supra). He submitted that the Supreme court in that case had held that rent cannot be more than standard rent. Accordingly, it was his contention that the rent payable in terms of Section 24(i) of the said Act could not exceed standard rent. He contends that the rental value of Rs. 10, 340/- per month that was fixed by the Delhi Administration was based on standard rent. However, from paragraph 25 of the impugned award, it appears that the learned counsel for the Delhi Administration tried to justify fixing of the rent at the amount of Rs. 10, 340/- per month on the basis of actual rent calculated by the New Delhi Municipal Committee u/s 3(1)(b) of the Punjab Municipal Act as extended to Delhi for the purposes of assessment of house tax.

8. Mr. Sanat Kumar, learned counsel who appeared on behalf of Respondent No. 1 (Indian Youth Centres Trust) made three submissions. The first submission was that the impugned award is a reasoned award made in pursuance of the statutory provisions of Section 24 of the said Act. He submitted that the scope of article 226 was limited inasmuch as there could be no reappraisal of the evidence unless some perversity or ex facie misapplication of law was pointed out. He further submitted that in exercise of writ jurisdiction under Articles 226 and 227, the High Court cannot substitute its views in place of those of the arbitrator particularly if the view taken by the arbitrator is one of the possible views. In this regard, learned counsel for Respondent No. 1 placed reliance on three decisions of the Supreme Court. The first decision which he refers to was rendered in the case of M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, . Paragraph 35 of this decision reads as under:-

"35. Be it noted that by reason of a long catena of cases, it is now a well settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to a proceeding u/s 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law: In the event however two views are possible on a question of law as well, the Court would not be justified in interfering with the award."

The next case which was referred to was the decision of the Supreme Court in

Sudarsan Trading Co. Vs. Government of Kerala and Another, . The learned counsel for respondent No. 1 relied on paragraph 29 of the said decision which reads as under:-

"29. The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, . In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator. See the observations of this Court in Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, ."

Lastly, he placed reliance on the Supreme Court decision in Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, , wherein the Supreme Court in paragraph 2 held as under:-

"2. The arbitrator gave reasons in support of the award. The question is whether reasonableness of the reasons in a speaking award is justiciable under Article 136 of the Constitution. We are of the opinion that such reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a proceeding like the present. It is desirable, however, that we state our reasons for so holding."

9. The learned counsel for respondent No. 1 next contends that rent payable u/s 24(i) of the said Act cannot be confined to standard rent. He submitted that the expression was "the rent payable in respect of similar properties in the locality" and it clearly had reference to actual rent payable or paid in respect of a similar property in the locality. In this case, the arbitrator had considered the property which had been let out near the Youth Hostel building to Canara Bank and after giving his thoughtful consideration on the facts and circumstances had arrived at a reasoned order taking into account the rent that was being paid by Canara Bank. This, according to the learned counsel for the respondent was in compliance with the provisions of Section 24 (i) of the said Act and, Therefore, the award could not be challenged on this ground.

10. The third and final submission of the learned counsel for respondent No. 1 was that items 4, 5, 6 and 7 of the table given above would definitely fall within the expression "damage caused to the property". He submitted that the building contract was terminated as a direct result of requisition of the property by the Delhi Administration. This resulted in retrenchment, compensation to contractor etc. As such, according to him this would constitute damage to property. Therefore, on this ground also the award made by the arbitrator and impugned herein could not be faulted.

11. The first question that arises for consideration in view of the rival contentions of the parties is, whether this Court, in exercise of its powers under Articles 226 and 227 of the Constitution, should interfere with the impugned award or not? In the case of *Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc.*, , the Supreme Court in paragraph 17 of the said decision, while reiterating the well settled principle that acting under Articles 226 and 227 of the Constitution, the High Court does not act as a court of appeal, held, at the same time, that patent errors of law however, could be corrected in exercise of this jurisdiction. It must also not be forgotten that the scope of judicial review in exercise of writ jurisdiction is limited to the decision making process and is, in fact, not directed against the decision itself. This is so observed by the Supreme Court in the case of *H. B. Gandhi v. Gopi Nath and Sons* as under:-

"8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

The same sentiment is reiterated in paragraph 11 of the Supreme Court decision in the case of *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, , where it is clearly mentioned that "the Courts are more concerned with the decision making process than the decision itself." A note of caution in the exercise of this, very potent, jurisdiction under Article 226 has been sounded by the Supreme Court in the case of *Chandigarh Administration and another Vs. Manpreet Singh and others*, thereof to the effect that while acting under Article 226, the High Court does not sit and/or act as an appellate authority over the orders/actions of the subordinate authorities/tribunals, its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the government and several other authorities and tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing

this function it does not overstep the well recognised bounds of its own jurisdiction.

12. From the aforesaid, it is clear that the High Court in exercise of its writ jurisdiction does not, so much examine the correctness of the decision impugned before it as it is concerned with the correctness of the decision making process. At the same time, the High Court may interfere with a finding of fact is related to the jurisdiction of the inferior tribunal or authority. It may also be interfered with if the finding is per se perverse, being totally un-supported by any evidence. It may interfere if the finding has been arrived at upon an ex facie violation of principles of natural justice, or if the finding is opposed to the Wednesbury principle of reasonableness.

13. In the present case, I find that the three judgments of the Supreme Court cited by the learned counsel for the respondent all pertain to challenges to the award under the Arbitration Act itself. None of these cases deal with Article 226 of the Constitution. However, those principles of interference with awards would also be applicable in view of what has been observed above. Since this Court does not sit as a court of appeal there cannot be a reappraisal of evidence unless some perversity or manifest error is shown. Nor can the Court substitute its view if the view of the arbitrator is one of the possible views. In this light, it must be examined whether the aspects of rent payable and "damage caused to property" have been properly construed by the arbitrator in the making of the impugned award. It is an admitted position that there is no error in the decision making process as it were. So the only question that has to be considered is whether the findings of the arbitrator on these two aspects are perverse or have been arrived at on the basis of some manifest error in law such as the arbitrator deciding claims beyond the scope of the reference as circumscribed by Section 24 of the said Act.

14. Insofar as the question of rent payable is concerned, I am unable to agree with the contention of the learned counsel for the petitioner that only standard rent has to be taken into consideration. Moreover, the decision of the Supreme Court in the case of NDMC v. M.N. Soi (supra) carted by him has no application to the facts of the present case. That was a case where the rateable value was to be determined for the purposes of property tax. The expression that was under consideration in that case was "may reasonably be expected to be let from year to year". The entire decision in that case was in the context of this expression which does not figure u/s 24 of the said Act. What is to be construed u/s 24 (i) of the said Act is the expression "rent payable in respect of similar property in the locality." The words are simple and plain, having reference to actual rent which is payable in respect of a similar property in the locality. The arbitrator in making the award has followed this approach and has considered the factual position of the rent being paid by Canara Bank for a similar property in the same locality. On the basis of this, he has arrived at a finding. That finding is not perverse nor is there any manifest error of law. This Court will not in these circumstances

reappraise the evidence and come to a difference conclusion. The finding with respect to items Nos. 1 and 2 of the aforesaid table cannot be faulted.

15. I now come to the question of "damage caused to the property." From a plain reading of Section 24 (iii) of the said Act, it is clear that while computing the amount of compensation, the "damage caused to the property on entry after requisition or during the period of requisition, other than the normal wear and tear" will have to be considered. On a plain reading and interpretation of the aforesaid provision, it would appear that the damage that is referred to is the actual physical damage to the property concerned. Now, that damage may be caused on entry after requisition or during the period of requisition. The important words are "other than the normal wear and tear." These words clearly give an indication that the damage that is being talked about is the actual physical damage to the property. If that was not the case, then the expression "other than normal wear and tear" would not have found place in the said provision. Wear and tear arise only upon actual user and since normal wear and tear is excepted, the damage caused to the property has refer to actual physical damage to the property. What is being claimed by the respondent No. 1 under items 4, 5, 6 and 7 are not damages which are actual or physical qua the property. These damages are contractual damages which are distinct and separate and are not provided in the aforesaid provision. Therefore, the arbitrator has committed a manifest error in allowing the claims in respect of items 4, 5, 6 and 7 which were clearly beyond the scope of reference u/s 24 of the Said Act. To this extent, the arguments of the learned counsel for the petitioner are accepted and those of the learned counsel for the respondent No. 1 are rejected.

16. Accordingly, in view of the aforesaid discussion the writ petition is partly allowed. The award is upheld to the extent of items 1, 2, 3, 8, 9, 10 and 11. Insofar as the amounts awarded under items 4, 5, 6 and 7 are concerned, the same are set aside. Accordingly, the respondent No. 1 would be entitled to a sum of Rs. 5, 68, 778.11 (Rs. 8, 37, 731.00 less Rs. 2, 68, 952.89 being the total of items 4, 5, 6 and 7) by way of compensation for the requisition of its property. The said amount which is lying in Court be released to the respondent No. 1 forthwith with interest accrued thereon till date the balance shall be returned to the petitioners. There shall be no order as to costs.