
(1968) 11 CAL CK 0026
In the Calcutta High Court
Case No : Civil Revision No. 4159 of 1967

Union of India (UOI)	Vs	APPELLANT
Provat Kumar Bagchi		RESPONDENT

Date of Decision : 18-11-1968

Acts Referred:

Defence of India Act, 1971 — Section 29, 30

Citation : (1969) 2 ILR (Cal) 375

Hon'ble Judges : S.K. Chakravarti, J; P.N. Mookerjee, J

Bench : Division Bench

Advocate : Prosanta Kumar Ghose, for the Appellant; Lala Hemanta Kumar and Surathi Mohan Sanyal, for the Respondent

Judgement

P.N. Mookerjee, J.—This Rule was obtained by the Union of India against an award of the Arbitrator fixing monthly compensation of the disputed requisitioned premises at Rs. 744 per month which, on proper calculation, should be Rs. 630 even on the basis adopted by him.

2. The learned Land Acquisition Collector fixed the above compensation at Rs. 266 per month on the basis of the monthly rental of Rs. 242 which the property in question was fetching at the time of its requisition. The requisition was made under the Defence of India Act and the matter before us is governed by Section 30 of the said Act, the requisition having been made u/s 29 of the same.

3. There were two portions of the same property, this requisitioned part being one portion. The other portion was requisitioned and compensation was fixed therefore by the learned Land Acquisition Collector at the rate of 36 P. per sq. ft. for the area 312 sq. ft. The disputed property comprises an area of 1,750 sq. ft.

4. The Collector, as we have said above, fixed the monthly compensation at Rs. 266 per month on the basis of the current monthly rental at the time of requisition, namely Rs. 242. He obviously fixed it u/s 30, Clause (i). The owners being dissatisfied applied for a Reference and the matter went to the Arbitrator.

5. The learned Arbitrator, in view of the above rate of 36 P. per sq. fit. for the other portion of the disputed property, which was not challenged by the Government, came to the conclusion that the fair compensation for this requisitioned property would also be at the same rate and on the said basis assessed the same at Rs. 744 per month, wrongly as a matter of calculation in place of the correct figure Rs. 630.

6. In support of this Rule, it is contended before us that the learned Arbitrator was bound by inter alia Clause (i) in the matter of determining compensation and, having regard to the fact that, at the time of the requisition in question, the property was fetching a rental of Rupees 242 per month, he should not have disturbed or altered the Land Acquisition Collector's award in the matter.

7. Clause (i) speaks of "rent payable" and, although normally it may not be synonymous with rent paid, having regard to the wording of the said clause, "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", the above contention may not be open to straight rejection. At the same time, however, we are of the opinion, that under the proviso the Arbitrator has a free discretion in the matter in fixing a fair amount of monthly compensation and his powers are not restricted or limited by the above Clause (i) of Section 30. This is emphasised by the language of the proviso which says inter alia that where any person interested being aggrieved by the amount of compensation, so determined, which obviously means determined in accordance with the above principles which include Clause (i) of Section 30...the amount of compensation to be paid shall be such as the Arbitrator...may determine. It is clear from this proviso, in the light of what we have stated above, that the said proviso makes a distinction between a determination in accordance with Section 30(i) and a determination by the Arbitrator, or, in other words, the learned Arbitrator is not fettered by the tests laid down in the different clauses of Section 30 and he is free to assess fair compensation for the disputed property. In this view, we hold that the learned Arbitrator was right in rejecting the Government's argument that the compensation in the instant case had to be determined on the basis of the actual rent and, on the materials before him, the Collector's award should not be altered.

8. We feel, however, that having regard to the area test the rate of 36P. per sq.ft. for the smaller area of 312 sq.ft. should not be accepted for the considerably larger area of 1,750 sq. ft. and the larger area should have a reduced rate and, in our opinion, in fairness to both the parties, that rate should be 30 P. per sq. ft. Working at this rate, the monthly compensation of the disputed property would come to Rs. 525 per month. The Arbitrator's award of monthly compensation in respect of the disputed requisitioned property would, accordingly, be reduced to Rs. 525 per month, his award in respect of the other portion being maintained at the figure awarded by him and the Land Acquisition Collector, namely Rs. 114 per month.

9. The Rule is disposed of accordingly and the award of the learned Arbitrator is modified to the above extent and subject to the said modification, the said award will stand.

10. There will be no order for costs in this Rule.

S.K. Chakravarti, J.

11. I agree.