1958

Maharana Shri Jayavantsinhji, Ranmalsinhji
v.
The State of Bombay and Others

Subba Rao J.

occupants with the result that they would be liable to pay land revenue in accordance with the provisions of the Land Revenue Code. If sub-s. (2) was not inserted in s. 5, they would be liable to pay land-revenue under the Code, notwithstanding the declaration made or the agreement entered into by the Government with them in regard to the jama payable by them. Sub-section (2) was only enacted to preserve to them the concession till the period fixed had expired. We, therefore, hold that the declaration made by the Governor in Council in 1925-26 expired in 1955-56 and the appellants became liable to pay the entire land-revenue according to the settlement registers from the year 1955-56.

In the result, all the appeals and the Writ Petitions are dismissed with costs, the State of Bombay and the Collector of Ahmedabad, who are the respondents herein, getting one set of hearing costs in all.

Petitions dismissed.

1958

December 16.

HAJI MOHAMMAD EKRAMUL HAQ

v.

THE STATE OF WEST BENGAL

(JAFER IMAM, S. K. DAS and J. L. KAPUR, JJ.)

Requisition—Compensation—Potential value of property—Defence of India Act, s. 19—Land Acquisition Act, 1894 (I of 1894), s. 23.

The four storied premises in suit belonging to the appellant were requisitioned by the respondent for the purposes of the Controller of Army Factory Accounts who already had his office in a neighbouring house. The arbitrator, to whom the question of compensation was referred, awarded compensation of Rs. 2,581-8-0 according to the rent prevailing in the locality for similar buildings with similar accommodation and amenities. This included an additional award of 10% for the potentialities of the premises consisting of the special value of the premises for the Controller, the indefinite period of the requisition and additional burden on the lift. On appeal by the appellant the

1958

Haji Mohammad Ekramul Haq v. The State of West Bengal

High Court held the compensation to be Rs. 2,773/- per mensem. It rejected the additional award of 10% for potential value.

Held, that the High Court was wrong in ignoring the potential value of the premises which had been evaluated at 10% by the arbitrator. The principles for the award of compensation are the same under s. 19 Defence of India Act as under s. 23 Land Acquisition Act, and one of them is to evaluate the potentialities of the premises which differ under different circumstances. Such value is to be ascertained by the arbitrator as best as he can from the materials before him.

Vyricherla Narayana Gajapatiraju v. *The Revenue Divisional Officer*, (1939) L.R. 66 I.A. 104, followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 191 of 1955.

Appeal by special leave from the judgment and decree dated July 31, 1953, of the Calcutta High Court in First Appeal No. 88 of 1950, arising out of the judgment and decree dated May 18, 1950, of the Arbitrator, 24-Parganas, Alipore, in L. A. Case No. 71 of 1944.

A. V. Viswanatha Sastri and *Naunit Lal*, for the appellant.

B. Sen, *P. K. Ghose* for *P. K. Bose*, for the respondent.

1958. December 16. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This is an appeal pursuant to special leave granted by this Court against the judgment and order of the High Court of Calcutta varying the order of the arbitrator in regard to compensation for compulsory requisitioning of the premises in dispute.

The appellant before us is the owner of the premises in dispute which at the relevant time consisted of four storeys, the ground floor and three upper floors and the respondent is the State of West Bengal which was the opposite party before the arbitrator. This building (No. 9 Chittaranjan Avenue) was constructed before July 28, 1940, and was taken on a registered lease for three years by the Bengal Central Public Works Division on a rental of Rs. 1,950 per mensem inclusive of taxes. On the termination of the lease the building was requisitioned by the West Bengal Government and taken possession of on July 30, 1943. The Land

1958

Haji Mohammad Ekramul Haq
v.
The State of West Bengal

Kapur J

Acquisition Officer offered Rs. 2,200 per mensem inclusive of taxes in the form of rent as compensation. As the appellant did not agree to this compensation the matter was referred under s. 19 of the Defence of India Act to an arbitrator Mr. J. De. He held that Rs. 2,200 per mensem fixed by the Land Acquisition Collector was a fair compensation. Against this order the appellant took an appeal to the High Court who set aside the order of the arbitrator, remanded the case to the arbitrator and laid down the following principle for the ascertainment of compensation :—

" therefore, in deciding upon a fair rent, for the purpose of section 23 of the Land Acquisition Act, it must be a notional fair rent of a hypothetical tenant, and the assessment of such notional fair rent must be based upon a consideration which does not take into account restrictions temporarily imposed by any restrictive executive order or legislation like Rent Control Order, etc. The assessment in practice should be as if it was of a house of like nature let out for the first time to a tenant who is not compelled to let it out. The practical method will be to assess rent as if it was a new house for the first time let out on that date ".

On remand the appellant who had previously claimed Rs. 3,998 as compensation plus Rs. 125 for working and maintaining the lift, increased his demand to Rs. 7,700 per mensem exclusive of municipal taxes, and also Rs. 125 for the use of the lift. He stated in his application that the amount previously claimed by him " was unduly low and was made through mistake and miscalculation and misconception of things and principle and moreover it was due to the want of proper information at the time ". After the remand he examined further evidence and the respondent also examined some witnesses. The new arbitrator Mr. J. C. Mazumdar held that the matter must be decided according to the rent prevailing in the locality in 1943 for similar buildings with similar accommodation and amenities and proceeding on this basis he awarded compensation of Rs. 2,581-8 per mensem inclusive of all taxes, cost of normal and essential

repair, cost of the upkeep of the lift and potential value of the building in an important commercial locality having regard to the fact that the period of requisition was indefinite. This sum was to be paid as from August 1, 1943. This order did not satisfy the appellant and against it he took an appeal to the High Court who fixed the compensation at Rs. 16 per hundred sq. ft. for the ground floor and Rs. 13 per hundred sq. ft. for the 1st floor and Rs. 12 per hundred sq. ft. for the second floor and Rs. 11 per hundred sq. ft. for the third floor and thus calculating for the total floor area i.e. 5333 sq. ft. per floor it held the compensation to be Rs. 2,773 per mensem. It rejected the additional award of 10% on account of potential value but allowed Rs. 77 per mensem on account of the lift and thus it awarded a total compensation of Rs. 2,850 per mensem. The High Court however observed :—

"We must make it clear further that in making the above calculation of the monthly compensation at Rs. 2,850 we have also taken into consideration the additional advantages due to the special adaptability of the disputed premises for the purposes of the Controller of the Army Factory Accounts and his possible willingness to pay a somewhat higher rent for the same (Vide 66 I.A. 104)".

Against this judgment the appellant has brought this appeal by special leave.

It was argued on behalf of the appellant that the method adopted by the High Court for arriving at the figure of compensation was erroneous because it proceeded on wrong principles in that it took averages of rent paid for the premises No. 5 Chittaranjan Avenue and for No. 22 Chittaranjan Avenue and ignored the expert opinion of witness U. P. Malik according to which the rent for ground floor should have been Rs. 23 per hundred sq. ft. and Rs. 17-8 per hundred sq. ft. for other floors and also that the potentialities of the building had not been taken into consideration.

The High Court found that premises No. 22 Chittaranjan Avenue was a little better than the premises

1958

Haji Mohammad Ekramul Haq
v.
The State of West Bengal

Kapur J.

in dispute and they (premises in dispute) were "somewhat better than the premises No. 5 Chittaranjan Avenue". In these circumstances it cannot be said that the High Court committed any error of principle in taking an average of the two premises No. 22 and 5 Chittaranjan Avenue. The evidence of U. P. Malik was merely an opinion unsupported by any reasons and in the circumstances of this case the High Court has rightly not placed any reliance upon it.

It was then urged that the High Court had erred in taking into consideration the rent payable for the premises No. 22 Chittaranjan Avenue, as recitals with regard to premises No. 22 in Ex. D, which was an award for premises No. 31 were inadmissible in evidence. This document has not been printed and we do not know what its contents are or its language is. No objection was taken to its admissibility either before the arbitrator or before the High Court. It was referred to in the evidence of the witness for the respondent, Nanibhushan Sen Gupta who stated that Rs. 2,200 would be a fair rent for the premises and in coming to this conculsion he based his calculation "on the award in L. A. Case No. 61 of 1944 in respect of premises Nos. 22 and 31 Chittaranjan Avenue and Ex. D was the judgment of that case". In these circumstances no objection as to the admissibility of this document can be allowed to be raised at this stage.

It was then argued that the High Court in arriving at the amount of compensation had ignored the potential value of the premises in dispute in an important commercial locality which the arbitrator Mr. J. C. Mazumdar had evaluated at 10% of the amount determined by him. This contention is well founded. The High Court disallowed this award of 10% without assigning any reason. It said :—

"and although we are not wholly accepting his additional award of 10% on account of so called potentialities, etc., including the lift, we are inclined to assess this further compensation on account of the lift at Rs. 77 per month".

The principles on which compensation is to be ascertained under the provisions of s. 19 of the Defence of India Act are the same as those given in s. 23(1) of the Land Acquisition Act, 1894, and one of the principles of ascertaining compensation is to evaluate the potentialities of the land or the premises as the case may be which differ under different circumstances. The arbitrator in evaluating the potentialities said:—

"In 1943, when the building was first requisitioned, the Controller of Army Factory Accounts had already his office in the neighbouring house of 5 Chittaranjan Avenue. This building had, therefore, a special value to the Controller as it would certainly be more advantageous to him if he could locate his office in the premises in question. This gave greater bargaining power to the landlord and, therefore, the potential value to him was greater. It has also been conceded that the requisition is for an indefinite period. The Municipal assessment valuation (Ex. B series) was based purely upon the rental which the building was fetching prior to 1943 and did not take into account the potential value, the value which will be maintained for a long period of lease and the additional burden on the lift. For all these three factors, I allow an additional 10 p. c. compensation of Rs. 234-12 As. per mensem."

The value of potentialities is to be ascertained by the arbitrator as best as he can from the materials before him. In *Vyricherla Narayana Gajapatiraju* v. *The Revenue Divisional Officer* (1), Lord Romer said:—

"The truth of the matter is that the value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and without indulging in feats of the imagination."

Another objection taken was in regard to compensation for the lift. The High Court awarded Rs. 77 but on what basis it is not clear. In our opinion this claim of Rs. 125 per mensem was not excessive considering that two departments of the Government were using this lift, which is clear from the fact that an overhead bridge had been constructed for going from

(1) (1939) L.R. 66 I.A. 104, 118.

1958

Haji Mohammad Ekramul Haq
-v.
The State of West Bengal

Kapur J.

premises No. 9 Chittaranjan Avenue to the other building which the Government had also requisitioned. This will work out to Rs. 3,175. In the circumstances Rs. 3,200 per mensem would be a fair compensation and we would therefore enhance the compensation to that figure and the appeal would be allowed to that extent.

Although the appellant has not succeeded in getting the whole of his claim decreed, there is no reason for depriving him of his costs proportionate to his success. We accordingly allow proportionate costs.

Appeal partly allowed.

1958

December 17.

ATTAR SINGH & OTHERS

v.

THE STATE OF U. P.

(S. R. DAS, C. J., N. H. BHAGWATI, B. P. SINHA, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Agricultural Holdings, Consolidation of—Constitutional validity of enactment—Procedure, if discriminatory—U.P. Consolidation of Holdings Act (U.P. V of 1954) as amended by Act No. XVI of 1957, ss. 8, 9, 10, 14 to 17, 19 to 22, 49—Constitution of India, Arts. 14, 31(2).

The petitioners challenged the constitutional validity of the U.P. Consolidation of Holdings Act (U.P. V of 1954), as amended by the amending Acts, which was intended to encourage the development of agriculture by the allotment of compact areas to tenure-holders in lieu of scattered plots so that large-scale cultivation might be possible with all its attendant advantages. A notification was issued under s. 4 of the impugned Act declaring the decision of the State Government to formulate a scheme of consolidation in respect of the area where the petitioners held their lands. This was followed up by a statement of proposals under s. 19. The petitioners objected to these proposals and thereafter appealed to the Settlement Officer (Consolidation) but to no effect. It was contended, inter alia, on their behalf that (1) the provisions of ss. 8, 9 and 10 read with those of s. 49 of the impugned Act were discriminatory in that they laid down a procedure for correction and revision of revenue records for