(3) *Dhan Kumari Devi* v. *Mahendra Singh*, (1), and

(4) *Manoo Ali* v. *Hawabi* (2).

For the reasons which I have indicated aforesaid, I venture to think that custody means both actual and constructive custody. To exclude constructive custody would be to place a restriction which is not justified in the context of the Act. Likewise, the word 'removal' has to be construed liberally. It is not limited to physical removal and constructive removal clearly falls within the ambit of this word. This construction alone will enable Courts to entertain applications of such guardians who have been unjustifiably deprived of the custody of their wards.

In my opinion, the application of the respondent was clearly maintainable and has been rightly decided by the learned District Judge. This appeal fails and is dismissed. As a debatable point of law has been raised by Mr. Shambu Lal Puri, I would make no order as to costs of the appeal.

K. S. K.

FULL BENCH

Before G. D. Khosla, C.J., D. Falshaw and G. L. Chopra, JJ.

UNION OF INDIA,—*Appellant.*

versus

ROSHAN LAL GUPTA,—*Respondent.*

First Appeal from Order No. 62-D of 1960.

Defence of India Act (XXXV of 1939)—Section 19 and Rule 75A—Property requisitioned under—Compensation in respect of—How to be determined—Fair rent under Rent

1960

Jan., 12th

(1) A.I.R. 1923 Nag. 199
(2) A.I.R. 1936 Rang. 63

Control Laws—How far relevant—Requisitioning authority—Whether a tenant of the landlord.

Held, that where property is compulsory requisitioned, the amount of compensation should not be determined solely on the basis of fair rent as fixed under the Rent Control Laws. The figure so fixed is merely a piece of evidence which may be taken into consideration as giving an indication of the market rents; other circumstances must be taken into consideration also. The requisitioning authority cannot be deemed to be a tenant of the landlord and is, therefore, not governed by the rent laws. The fair rent as fixed by the Rent Controller is no more than a piece of relevant evidence. It certainly should not be taken as the sole criterion for determining compensation.

Case law discussed.

First Appeal from the order of Shri Hans Raj, Arbitrator, Delhi, dated the 21st April, 1954, fixing the compensation payable to Shri Roshan Lal at Rs 100 per mensem for each flat.

BISHAMBAR DYAL, S. C., with MR. KESHAV DAYAL, for the Appellant.

P. C. KHANNA, S. N. GUPTA and AVADH BEHARI, for the Respondent.

ORDER

G. D. Khosla, C. J.

KHOSLA, C. J.—In this case we are concerned with the compensation which should be awarded for requisitioning property under section 19 of the Defence of India Act read with rule 75 A of the Rules framed under that Act. The question, in short, is whether in assessing compensation for requisitioned property 'fair rent' as fixed under the Rent Control law should be taken into consideration and, if so, what is the extent to which the fair rent should be a determining factor in computing the compensation due. The matter came up before Bishan Narain, J. sitting singly in the original

instance and he noticed a conflict in two decisions of this Court, *Raghbir Saran* v. *The Punjab State,* (1), and *Governor-General in Council* v. *Indar Mani Jatia* (2). He accordingly suggested that the case be placed before a larger Bench. The matter then came before a Division Bench consisting of my brothers, Falshaw and Chopra, JJ., who took the view that the conflict could only be resolved by an authoritative decision by at least three Judges. The matter has now been argued before us at some length and all the relevant decisions bearing upon the question before us have been referred to by counsel at the Bar.

The facts are that Roshan Lal Gupta owned plots Nos. 23 and 24 in Block No. 14-A, Western Extension Area, Karol Bagh, Delhi. The ground floor of the building on plot No. 23 and two floors on plot No. 24 were requisitioned by Government under the Defence of India Rules in 1945. The question of compensation for the properties thus requisitioned arose and the matter was referred to an arbitrator. The owner claimed Rs. 80 per mensem per flat, i.e., a total of Rs. 240 per month. The Government contended that fair rent had been fixed for the ground-floor on plot No. 23 at Rs. 43-8-0 per mensem; and for the two floors on plot No. 24 at Rs. 96 per mensem; the owner was, therefore, not entitled to claim compensation at more than Rs. 43-8-0 plus Rs. 96 per mensem for the entire requisitioned property. The arbitrator took the view that the fair rent was not an adequate measure of compensation to be awarded under section 19 of the Defence of India Act and fixed Rs 100 per mensem per flat, i.e., a total of Rs. 300 per mensem for the entire property. The Union of India then filed the present appeal against the Arbitrator's award.

(1) 1954 P.L.R. 530
(2) A.I.R. 1950 E.P. 296

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The relevant portion of section 19 of the Defence of India Act is in the following terms:—

19(1) Where* * * by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say:—

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above-mentioned Act for appointment as a Judge of a High Court.

(c) * * *
(d) * * *

(e) The arbitrator in making his award shall have regard to—

(i) The provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable; and

(ii) Whether the acquisition is of a permanent or temporary Character:—

* * *".

Section 23(1) of the Land Acquisition Act requires the market value of the land to be taken into

consideration. Therefore, what we have to consider in assessing compensation in respect of requisitioned premises is what is the value of the income which the owner could have obtained in the market. The matter is complicated by the existence of Rent Control laws which impose restrictions upon free dealings of property, and the question at once arises what is the market-value of the income which can be derived by letting out these premises by the landlord. It has been argued before us on behalf of the Union of India that no landlord could have let out these premises at a higher figure than the fair rent fixed by the Rent Controller; therefore, that figure represents the market rent or market value. On the other hand, it has been argued that the restrictive laws are not to be taken into consideration when assessing compensation under section 23 of the Land Acquisition Act. Our attention has been drawn to a number of cases in which this matter was considered from various aspects. I shall first consider the cases which would appear to support the contention of the learned counsel for the Union. The first of these is *Raghbir Saran* v. *The Punjab State* (1), a Division Bench case in which it was held that compensation for requisitioned premises must be equal to the fair rent fixed by the Rent Controller. This case was heard by Harnam Singh and Kapur, JJ. The view expressed by the learned Judges was that in requisitioning property, Government acquired the possessory interest of the owner and in assessing the market value of the possessory interest the fair rent fixed by the Rent Controller had to be borne in mind. Kapur, J. observed that the provisions of the Requisitioning Act, were not to be divorced from reality and that the control on rents which the law in existence imposed had to be taken into

(1) 1954 P.L.R. 530

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account in determining compensation. It is somewhat surprising that an earlier decision of this Court by a Division Bench of which Harnam Singh, J., was a member was not cited or brought to the notice of the learned Judges. In that earlier case, *Governor-General in Council* v. *Indar Mani Jatia* (1), *Harnam Singh*, J., had expressed a wholly contrary view. He had said quite categorically that the authority requisitioning premises did not come within the meaning of the word 'tenant' as defined in clause 2(4) of the New Delhi House Rent Control Order, 1939, or clause 2(d), Delhi Rent Control Ordinance, 1944. Harnam Singh, J., after referring to a number of cases dealing with the matter, held that the fair rent as fixed by the Rent Controller was not adequate compensation for requisitioned premises. The facts in that case were that certain property was requisitioned by Government and after the order of requisition was made, the Rent Controller fixed Rs. 1,313 per mensem as fair rent. The landlord appealed against the order to the Chief Commissioner and the appeal was allowed mainly on the ground that this was not a case which should have gone to the Rent Controller and compensation should have been fixed by the appropriate authority under section 19 of the Defence of India Act. Compensation was awarded by the High Court at the rate of Rs. 3,600 per mensem. Although an appeal had been allowed against the order of the Rent Controller, it nevertheless remains a fact that the Rent Controller had determined fair rent at Rs. 1,313 per mensem and this figure had not been varied in appeal, and the only ground for allowing the appeal was that compensation should have been fixed not under the Rent Control Act, but under section 19 of the Defence of India Act. The earlier view expressed

(1) A.I.R. 1950 E.P. 296

by Harnam Singh, J., therefore, differs completely from the later view expressed by him in *Raghbir Saran* v. *The Punjab State* (1). There is also a Calcutta case, *Province of Bengal* v. *Board of Trustees for the Improvement of Calcutta* (2), in which the view expressed was that compensation must be fixed on the basis of what is fair rent, but the expression 'fair rent' was not used in reference to Rent Control law. No fair rent had, in fact, been fixed by the Rent Controller for the property requsitioned in that case. The learned Judges assessed fair rent themselves after going into all the evidence in the case and examining a large number of leases in respect of similar lands in the vicinity. Our attention was drawn to an observation contained in paragraph 35 of the report which seems to support the contention of the learned counsel for the appellant:—

> "We have already held that the effect of a requisition under the Defence of India Rules is to deprive the owner of his possession. He must, therefore, get the value of his possession. Looking from another aspect the requisitioning authority, gets the possession from the owner and becomes, so to say, a statutory tenant. The basis of compensation must therefore be fair rent, * * *"

But after making this observation, the learned Judges went on to examine the leases of lands in the vicinity and came to the conclusion that 5 per cent per annum was a fair return on the value of the property requisitioned. It was on this basis that the compensation was determined and the figure of 5 per cent per annum was accepted as

(1) 1954 P.L.R. 530
(2) A.I.R. 1946 Cal. 416

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fair rent. There is lastly a Single Bench decision of the Bombay High Court in *Dawoodali Rahematulla Versey* v. *The State of Bombay* (1). In this case Shah, J., obserbed that any statutory restrictions upon the liberty of contract must be taken into consideration when assessing the value of property. There is not a single case, therefore, apart from *Raghbir Saran* v. *The Punjab State* (2) in which standard or fair rent was fixed by the Rent Controller and the figure so fixed was accepted as determining the compensation which must be paid upon requisitioning the property in question. There are several cases in which the contrary view was taken. I have already mentioned the Punjab case. *Governor-General in Council* v. *Indar Mani Jatia* (3). Another case is *Hazi Mahammad Ekramal Haque* v. *Province of Bengal*, (4). In this case the Central Government held some property under a lease, the rent reserved being Rs. 1,950 per month. On the expiry of the lease the owner refused to renew it. A requisitioning order was then made and the owner was offered Rs. 2,200 as the monthly rent. This figure included the Corporation rates and, therefore, the rent offered remained at the original figure of Rs. 1,950. The offer was refused by the landlord who claimed Rs. 3,988, as the monthly rent. The arbitrator fixed Rs. 1,950 and the matter was taken up in appeal to the High Court. The High Court took the view that the requisitioning authority cannot be deemed to be a tenant in law. The learned Judges observed:—

> "It is clear that in case of a requisition like this, where possession is taken, and there is not a complete acquisition of ownership of the land or building,

(1) 1953 B.L.R. 238
(2) 1954 P.L.R. 530
(3) A.I.R. 1950 E.P. 296
(4) A.I.R. 1950 Cal. 23

compensation has to be assessed under S. 23, Land Acquisition Act, on the basis of fair market value for such interest in land. The relationship created is not that of a landlord and tenant. The requisition is by the Government by virtue of its suzerain position by which it can forcibly take away any one's property. * * * The market value of the interest taken away from the owner has got to be assessed. In the present case, it is the possessory interest which has been taken by the State, and, therefore, in assessing the fair market value of the case fair rent is taken to be a good criterion. It is as a criterion of market value of the interest that the question of fair rent arises, and the only bearing that the rent control legislation may have is in so far as it affects by way of fall in rent the income which will be obtainable from the property in a proper market by a landlord."

The matter was remitted to the arbitrator by the High Court. At a later stage it came before the Supreme Court, and the decision of the Supreme Court is reported as *Haji Mohammad Ikraamul Haq* v. *The State of West Bengal* (1). The Supreme Court awarded Rs. 3,200 per mensem as fair compensation, although on the basis of the Rent Control legislation Rs. 1,950 only could have been allowed. Harnam Singh, J. considered this matter sitting singly in *The Union of India* v. *Ram Pershad and others* (2). In that case also he held the view that the rent fixed by the rent Controller could not be equated with the compensation due when property was requisitioned.

(1) A.I.R. 1959 S.C. 488
(2) A.I.R. 1952 Punj. 116

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He observed that "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. " I may also make a reference to a Privy Council decision in a case which came from the Supreme Court of New South Wales. This was a case in which the Government compulsorily purchased certain lands and the question of compensation arose. The Privy Council held that where price control regulations compulsorily kept the price of land down, such price was not adequate compensation for compulsorily acquired land, see *Minister for Public Works* v. *Christopher Bowes Thistlethwayte and another*, (1).

Upon a careful consideration of the matter, it appears to me that there is a preponderance of authority for the view that where property is compulsorily requisitioned, the amount of compensation should not be determined solely on the basis of fair rent as fixed under the Rent Control laws. The figure so fixed is merely a piece of evidence which may be taken into consideration as giving an indication of the market rents; other circumstances must be taken into consideration also. The requisitioning authority cannot be a tenant of the landlord and is, therefore, not governed by the rent laws. The fair rent as fixed by the Rent Controller is no more than a piece of relevant evidence. It certainly should not be taken as the sole criterion for determining compensation. The case may now be remitted to the learned Single Judge for disposal in the light of the decision arrived at above. *Raghbir Saran* v. *Punjab State* (2), will be considered as overruled.

Falshaw, J.
Chopra, J.

FALSHAW, J.—I agree.

CHOPRA, J.—I agree.

R. S.

(1) 1954 A.C. 475
(2) 1954 P.L.R. 530