

Shri Abey
Kumar
v.
Faquir Chand
Bhardari, C. J.

- (6) that it was not within the power of the Delhi State Government to extend the provisions of this Act to certain other areas by resorting to the simple expedient of including such other areas within the limits of a Local Body mentioned in the Schedule; and
- (7) that as the Central Government has not extended this Act to the new township of Gandhi Nagar it was not within the competence of the Courts to fix the standard rent of premises situated in the said area.

For these reasons, I would accept the petitions (Nos. 162-D to 268-D of 1953), set aside the orders of the Courts below and direct that the petitions for fixation of standard rent be dismissed. In view of the peculiar circumstances of the case there will be no order as to costs.

LETTERS PATENT SIDE.

Before Harnam Singh and Kapur, JJ.

RAGHBIR SARAN,—Appellant

versus

THE PUNJAB STATE,—Respondent

Letters Patent Appeal No. 21 of 1953

1954
May, 18th

East Punjab Requisitioning of Immovable Property (Temporary Powers) (Act XLVIII of 1948)—Section 5—Compensation for requisitioned premises—Whether can be fixed in excess of the standard rent permissible under section 4 of the East Punjab Urban Rent Restriction Act (III of 1949)—Land Acquisition Act (I of 1894), Section 23(1)—Effect of.

Harnam Singh, J.

Held, that in assessing the market value of the possessory interest it has to be borne in mind that on the 19th May, 1949, the Rent Controller had fixed the fair rent of

the house. No addition to the building was made subsequent to the 19th May, 1949. In the open market nothing more could have been realised than the rent fixed under section 4 of the East Punjab Rent Restriction Act, 1949. Therefore higher value cannot be allowed of the interest because of the requisition.

Kapur, J.

Held, that the control on rents which the law in existence imposes has to be taken into account and recognised in determining what compensation the appellant would be entitled to, and the submission that because of the provisions of section 23 of the Land Acquisition Act, which have been made applicable, a hypothetical market free from all restrictions imposed by law is intended is erroneous and the compensation to which the appellant would be entitled would be that which taking into consideration the restriction on rents will be available to the appellant on giving on rent his premises to a person who is willing to take it.

First Appeal from the order of Shri D. P. Sodhi, Arbitrator, Rohtak, dated the 18th November, 1952, assessing the compensation of the building at the rate of Rs. 60 per month.

SHAMAIR CHAND, for Appellant.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

HARNAM SINGH, J. In order to appreciate the point that arises for decision in F.A.O. No. 15 of 1953, it is necessary to set out the facts of the case so far material.

By order, Exhibit P.1, made on the 19th of October, 1949, the District Magistrate, Rohtak, in exercise of the powers conferred upon him by section 2 read with section 8 of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, hereinafter referred to as the Act, requisitioned the house in suit for the Principal, Government College, Rohtak. For the house requisitioned the amount of compensation could not be fixed by agreement within section 5(1) (a) of the Act. That being so, the State Government

Raghubir Saran appointed *Shri* Durga Parshad Sodhi to fix the amount of compensation within section 5 (1) (b) of the Act.

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Harnam Singh,
J. In proceedings before the arbitrator *Shri* Raghubir Saran claimed compensation at the rate of rupees 200 per mensem.

Ganeshi Lal, A.W. 1, Partap Singh, A.W. 2, Ram Rachhpal, A.W. 3 and Lachhman Sarup, A. W. 4, gave evidence that in October, 1949, the market value of the house requisitioned was rupees 15,000. In giving the award the arbitrator has not acted upon the evidence given by Ganeshi Lal, Partap Singh, Ram Rachhpal and Lachhman Sarup.

In proceedings before the arbitrator *Shri* Raghubir Saran stated:—

“It is a fact that on my application the fair rent of this building was fixed at Rs. 60 per month by S. Jawala Singh, Rent Controller, Rohtak, although the agreed rent was Rs. 40 per month. This order was passed on the 19th May, 1949. After that date no additions were made in this building by me.”

Finding that the rental value of the house requisitioned was the proper test in assessing compensation within section 5(1)(b) of the Act the arbitrator has fixed compensation for the requisitioned house at rupees 60 per mensem.

Shri Raghubir Saran appeals under section 5(f) of the Act against the award of the arbitrator.

Section 5 (1) (e) of the Act provides that the arbitrator in making his award shall have regard to the provisions of subsection (1) of section

23 of the Land Acquisition Act, 1894, in so far as Raghbir Saran
the same can be made applicable.

In the present case it is the possessory interest of the owner which has been requisitioned. In assessing the market value of that possessory interest it has to be borne in mind that on the 19th of May, 1949, the Rent Controller had fixed the fair rent of the house to be rupees 60 per mensem. Admittedly, Raghbir Saran did not make any addition to the building subsequent to the 19th of May, 1949. That being the position of matters, in the open market Raghbir Saran could have realised nothing more than the rent fixed under section 4 of the East Punjab Rent Restriction Act, 1949. In my opinion, Raghbir Saran cannot be allowed to claim a higher value of his interest because of the requisition.

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Basing himself on section 23 (2) of the Land Acquisition Act, 1894, Mr. Shamair Chand urges that the arbitrator ought to have awarded a sum of fifteen per centum on the rental value, in consideration of the compulsory nature of the requisition.

As stated hereinbefore, the arbitrator in making his award has to apply the provisions of subsection (1) of section 23 of the Land Acquisition Act, 1894, in so far as the same can be made applicable. If so, section 23(2) has no application to proceedings under section 5 of the Act.

• For the foregoing reasons, I find that the arbitrator was right in fixing compensation at the rate of rupees 60 per mensem. In this connection what I said in the *Union of India v. Ram Parshad and others* (1), may be seen.

In the result, F.A.O. No. 15 of 1953 fails and is dismissed *in toto*.

(1) A.I.R. 1952 Punjab 116

Ragbir Saran Parties are left to bear their own costs
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Kapur, J.

KAPUR, J. I agree and because the matter is of some importance as it has arisen in many cases which are before this Court I would like to give my reasons. Under section 5(1)(c) and (e) of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, in awarding the compensation regard has to be had to the provisions of section 23(1) of the Land Acquisition Act of 1894 as far as they can be made applicable. The question arises that if section 23(1) of the Land Acquisition Act were to be applied what would be the amount which the appellant will be able to get in the open market as rent. The provisions of the Requisitioning Act are not to be divorced from reality. What would the owner of the house get as rent on the date the property was requisitioned, i.e. on the 5th October, 1951. In pursuing that inquiry it must be assumed that on that date he could give on rent his premises subject to the law of the land and therefore any restriction or limitation which is imposed by law on the making of agreements for leases has to be recognised and taken into account. In *Priestman v. Northern District Valuation Board* (1), a similar question arose under section 13(4) of the Coal Industry Nationalisation Act, 1946, and it was there contended that the phrase "open market" in section 13(4) contemplated a market in which a seller could expect to receive the highest unlimited price resulting from the free competition of all potential buyers and, therefore, the order of control of prices could not be taken into account. It was held that the phrase "open market" in section 13(4) of the Act contemplated, not a purely hypothetical market which was to be regarded as exempt from any restrictions imposed by law, but

(1) (1950) 2 A.E.R. 129

a market in which a willing buyer and a willing seller could legitimately have operated and, therefore, the Board was obliged to take into account the existence of the order controlling prices at the material date.

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The control on rents which the law in existence imposes has, therefore, to be taken into account and recognised in determining what compensation the appellant would be entitled to, and the submission that because of the provisions of section 23 of the Land Acquisition Act which have been made applicable a hypothetical market free from all restrictions imposed by law is intended is in my opinion erroneous and the compensation to which the appellant would be entitled would be that which taking into consideration the restriction on rents will be available to the appellant on giving on rent his premises to a person who is willing to take it. I would, therefore, dismiss this appeal but leave the parties to bear their own costs throughout.

LETTERS PATENT SIDE.

Before Bhandari, C. J., and Bishan Narain, J.

THE PUNJAB COMMERCEBANK, LTD.,—*Plaintiff-Appellant*

versus

Shri BRIJ LAL MAHANDIRATTA,—*Defendant-Respondent*

Letters Patent Appeal No. 12 of 1953

Banking Companies Act (X of 1949) as amended by Banking Companies (Amendment) Act, LII of 1953—Section 45-O—Whether retrospective.

1954
May, 26th