

The Indian Law Reports

APPELLATE CIVIL

Before Mehar Singh and H. R. Khanna, JJ.

RAVI KANTA,—Appellant.

Versus

THE PUNJAB STATE,—Respondent.

First Appeal from Order No. 89 of 1960.

Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—S. 8—Compensation payable under—Whether cannot exceed the fair rent permissible under the East Punjab Urban Rent Restriction Act (III of 1949) in the case of premises governed by that Act.

1963

Oct., 18th.

Held that there is no justification for limiting the recurring payment to which an owner of requisitioned property is entitled under clause (a) of sub-section (2) of section 8 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, to the fair rent permissible under the provisions of the East Punjab Urban Rent Restriction Act, 1949, in case the requisitioned premises are governed by that Act, but where the fair rent of the premises has been assessed under the Rent Restriction Act, that order would be taken into account as a relevant piece of evidence and would not form the sole basis for determining the recurring payment. The arbitrator can take into consideration, apart from the factors mentioned in sub-section (2) of section 8 of the Act, the other circumstances of the case before arriving at the figure of compensation which appears to him to be just for the requisitioned property.

Case referred by Hon'ble Mr. Justice Gurdev Singh on 22nd August, 1961 to a larger Bench for decision owing to the important question of law involved in the case. The

Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice H. R. Khanna after deciding the question referred to them on 18th October, 1963, and returned the case to the Single Judge for decision. The case was finally decided by Hon'ble Mr. Justice Gurdev Singh on 29th May, 1964.

First Appeal from the order of Shri G. D. Jain, Senior Sub-Judge, Hissar, dated the 30th June, 1960, awarding the compensation at the rate of Rs. 100 per mensem under Section 8(2) (b) to the appellant (Shrimati Ravi Kanta), in respect of the requisitioned premises.

J. N. KAUSHAL, ADVOCATE, for the Appellant.

M. R. SHARMA, ADVOCATE, for the Advocate-General and
R. L. SHARMA, ADVOCATE, for the Respondent.

ORDER

Khanna, J.

KHANNA, J.—The question relating to the interpretation of the provision of section 8 of the Punjab Requisitioning and Acquisition of Immovable Property Act (Punjab Act No. XI of 1953) arises for determination in this case which has been referred to the Division Bench.

The facts of this case have been given at length in the order of reference made by Gurdev Singh, J., on August 22, 1961. Briefly those facts are that the District Magistrate, Hissar, requisitioned in 1952 house No. B. XVII-IS-23, situate near Police Lines, Hissar, along with the servants quarters and the adjacent agricultural land in accordance with the provisions of East Punjab Requisitioning of Immovable Property (Temporary Powers) Act No. 48 of 1948. The aforesaid property belonged to Uggar Sen deceased. As there was a dispute between the parties regarding the amount of compensation payable for the requisitioned property, the Government of

the Punjab by an order, dated December 15, 1952, referred the same to the arbitration of the Senior Subordinate Judge, Hissar, under section 5 of Act No. 48 of 1948. In the meanwhile the Punjab Requisitioning and Acquisition of Immovable Property Act No. XI of 1953, hereinafter referred to as the Act, came into force on 15th of April, 1953. By section 25 of this later Act the earlier Act 48 of 1948 was repealed. On October 10, 1953, Uggar Sen put in a petition under the new Act claiming Rs. 250 per mensem as fair compensation for the requisitioned property. Besides that, an amount of Rs. 80,000 was claimed on account of the pecuniary loss suffered by Uggar Sen due to requisitioning of the property. The Punjab State resisted the claim and contended that the owner of the property was not entitled to anything beyond the fair rent of the premises, which did not exceed Rs. 50 per mensem. The Arbitrator framed the following issue—

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

“What is the fair compensation of the building in question?”

After recording the evidence adduced by the parties the Arbitrator awarded Rs. 100 per mensem as compensation to Shrimati Ravi Kanta, who had in the course of the proceedings been substituted as the legal representative of Uggar Sen on his death. The arbitrator refused to award any compensation on account of the pecuniary loss which was alleged to have been suffered due to the requisitioning of the premises. Cross-appeals Nos. 89 and 94 of 1960 were filed respectively by Shrimati Ravi Kanta and Punjab State against the order of the Tribunal.

When the appeals came up for hearing before Gurdev Singh, J., the learned counsel appearing

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

for the State argued that in view of the provisions of clause (a) of sub-section (2) of section 8 of the Act, in addition to the amount which the claimant might be found entitled under clause (b) of the sub-section, the arbitrator could not award him anything beyond the fair rent as determined under the provisions of the East Punjab Urban Rent Restriction Act, 1949, as the recurring payment for the period of requisition. Reliance on behalf of the Punjab State was placed upon the observations of Dulat, J., in *Shrimati Attar Kaur v. The State* (F.A.O. No. 90 of 1956), which were to the effect that compensation to be paid under section 8 of the Act could not exceed the lawful rent payable within the definition of the Rent Restriction Act. As Gurdev Singh, J., doubted the correctness of the above view taken by Dulat, J., he expressed the opinion that the case be referred to a larger Bench. It is in these circumstances that the case has been referred to the Division Bench.

Before dealing with the respective contentions of the parties it would be useful to reproduce the relevant provisions of the Act. Clause (e) of sub-section (1) of section 8 reads as under:—

“8(1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say:—

* * * *
* * * *

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation

which appears to him to be just and specify the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3) so far as they are applicable."

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

Sub-sections (2) and (3) of section 8 are in the following terms—

"(2) The compensation for the requisitioning of any property shall consist of:—

- (a) a recurring payment, in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and
- (b) such sum, or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:—
 - (i) pecuniary loss due to requisitioning;
 - (ii) expenses on account of vacating the requisitioned premises;
 - (iii) expenses on account of re-occupying the premises upon release from requisition; and
 - (iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

have to be incurred for restoring the property to the condition in which it was at the time of requisition.

- (3) Where any property is acquired in connection with the new Capital of the State of Punjab compensation may be paid, whether by agreement or by award of the arbitrator, either in money or in kind or partly in money and partly in kind, and where there is no person competent to alienate the property or there is a person with limited interest in such property or there is any dispute as to the persons entitled to receive the compensation or as to the apportionment thereof, the arbitrator shall make an award in such manner or make an arrangement in such a way as may be equitable having regard to the interests of the persons concerned."

According to Mr. Sharma, learned counsel for the State, in determining the compensation payable for the requisitioned property, the arbitrator can take into account only the factors mentioned in sub-section (2) of the above section and cannot consider any other circumstances. It is accordingly urged that in the case of premises which are governed by the provisions of East Punjab Urban Rent Restriction Act, it is only the fair rent permissible under the provisions of that Act which should be allowed as recurring payment mentioned in clause (a) of sub-section (2) besides the amount, if any, which may be allowed under clause (b) of that sub-section.

As against the above the contention of Mr. Kaushal, learned counsel for Shrimati Ravi

Kanta, is that the arbitrator is not precluded from considering the other circumstances of the case apart from taking into account the fair rent of the property as well as the other amounts which can be allowed under sub-section (2) of section 8 of the Act.

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

I have given the matter my consideration and am of the view that if sub-section (2) of section 8 had stood by itself and there had been no other provision like clause (e) in sub-section (1), the contention of Mr. Sharma would have carried weight, for it is expressly provided in sub-section (2) that the arbitrator, besides considering the sum which may be payable under clause (b) of sub-section (2), has to take into account recurring payment in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period. The words of clause (a) reproduced above in my opinion indicate that in the case of premises governed by the East Punjab Urban Rent Restriction Act, the rent allowed by that Act should be taken into consideration as a relevant factor in arriving at the figure of compensation for the requisitioned property. It would, therefore, follow that the arbitrator should have also regard in that contingency to the fair rent of the premises. Sub-section (2), however, is a part of section 8, of which clause (e) of sub-section (1) is also an integral part. Clause (e) makes it clear that in determining the amount of compensation for requisitioned premises, the arbitrator should award compensation which appears to him to be just and he should have regard to the circumstances of the case and the provisions of sub-section (2) so far as they are applicable. The language of clause (e) shows that in determining the amount of compensation for requisitioned property the arbitrator

Shrimati Ravi
Kanta
v.
The Punjab
State
Khanna, J.

is not confined only to the factors mentioned in sub-section (2) but can also take into account the other circumstances of the case. It is thereafter that the arbitrator is to assess the amount which appears to him to be just. Any other view, in my opinion, would have the effect of rendering the words "which appears to him to be just" and "he shall have regard to the circumstances of each case" in clause (e) nugatory. It is an established principle that in construing the parts of a Statute the Court should so interpret them that they can all be harmonized together. A legislature is not supposed to give with one hand and simultaneously take that away with the other. Reference in this connection may be made to the observations on page 160 of Maxwell on the interpretation of the Statutes, tenth edition, which are to the following effect:—

"An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it. It cannot be assumed that Parliament has given with one hand what it has taken away with another. * * * *

Mr. Sharma has referred to the unreported case, *Shrimati Attar Kaur v. The State* (F.A.O. 90 of 1956) decided by Dulat, J., on November 8, 1957, and has laid particular stress on the following observations of the learned Judge—

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

“Under section 8 of Act IX of 1953, compensation is to be equivalent to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease, and it is obvious that the rent payable means the rent which could be recovered under the law. This is determined under the provisions of the Urban Rent Restriction Act on the basis of the rent payable for similar premises in the year 1938.”

The above observations no doubt go to show that the arbitrator should take into consideration, while determining the amount of compensation for requisitioned premises, the rent payable for those premises under the Urban Rent Restriction Act but it is not laid down therein that other circumstances of the case cannot be taken note of. On the contrary it is clear from that judgment that Dulat, J., took into account the other circumstances of the case because in arriving at the figure of compensation, he relied upon an earlier offer made by the Government to pay rent at the rate of Rs. 37-4-0 per mensem. The above-cited case would thus instead of helping Mr. Sharma go to show that other circumstances can also be taken into consideration.

A Full Bench case, *Union of India v. Roshan Lal Gupta* (1), may also be referred to in the above context. Although this was a case relating to premises requisitioned under the Defence of

(1) I.L.R. 1960 (2) Pb. 119 (F.B.)=1960 P.L.R. 812.

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

India Act (Act 35 of 1939) according to which compensation for the requisitioned premises was to be paid in accordance with the provisions of section 23 of the Land Acquisition Act of 1894 keeping in view whether the acquisition was of a permanent or temporary character, there are certain observations made in that case which have a bearing. It was observed by Khosla, C.J., who spoke for the Court as under:—

“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 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.”

Gurdev Singh, J., in the course of his order for reference has observed :—

“In view of all these facts, I am of the opinion that there is no justification for limiting the recurring payment to which an owner of requisitioned property is entitled under clause (a) of

sub-section (2) of section 8, but as laid down by the Full Bench in *Union of India v. Roshan Lal Gupta* (1) where the fair rent of the premises has been assessed under the Rent Restriction Act, that order would be taken into account as a relevant piece of evidence, but it would not form the sole basis for determining the recurring payment."

Shrimati Ravi
Kanta
v.
The Punjab
State

Khanna, J.

After giving the matter my consideration I am of the opinion, though for somewhat different reasons, that the above view expresses the position correctly. I would, accordingly, hold that an arbitrator can take into consideration, apart from the factors mentioned in sub-section (2) of section 8 of the Act, the other circumstances of the case before arriving at the figure of compensation which appears to him to be just for the requisitioned property.

The case shall now be sent back to the learned Single Judge for decision in accordance with law.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

SETH CHIRANJI LAL JAIPORIA,—Appellant.

Versus

HARDWARI LAL AND OTHERS,—Respondents.

F.A.O. No. 72-D of 1962.

Partition Act (IV of 1893)—Ss. 2 and 3—Order for sale of property made under S. 2 at the instance of some of the

1963

Dec., 13th.