

Bachan Singh I have said, the son inherits because of his descent
v. from a common ancestor and not merely because he
Mst. Nand is the son of the father. In these circumstances, I am
Kaur of the opinion that a widow has no right to succeed
 equally with a son in regard to the estate of a col-
Kapur J. lateral. I, therefore, hold that the widow was not
 entitled in this case to get any share out of the estate
 of Waryam Singh.

In the result this appeal succeeds only with regard to the share of Waryam Singh and fails in regard to the estate of Teja Singh. The appeal is partially allowed and the decree of the Courts below modified. As neither of the parties has wholly succeeded the parties will bear their own costs throughout.

APPELLATE CIVIL

Before Harnam Singh, J.

THE UNION OF INDIA,—Appellant,

versus

R. S. RAM PARSHAD, ETC.,—Respondents.

First Appeal from Order No. 67 of 1950

New Delhi House Rent Control Order, 1939, Article 2 (4) and Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947), Section 2 (d)—Premises requisitioned by Government under Rule 75-A of the Defence of India Rules—Government whether a statutory tenant thereof—Defence of India Act (XXXV of 1939), Section 19—Defence of India Rules, Rule 75-A—Compensation for Premises requisitioned, how to be fixed—Rule stated—Powers of the Arbitrator in fixing the compensation, whether limited to the date of the requisition.

Held, that in the Defence of India Act, 1939, and the rules made thereunder there is no provision making the requisitioning authority a tenant of the owner of the requisitioned premises. The requisition by the state is by virtue of the superior authority which the state possesses to compulsorily acquire or requisition the premises and the relationship of landlord and tenant between the state and the landlord is not established unless the statute makes a provision to that effect.

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Therefore the relationship between the claimant and the Central Government is not that of a landlord and tenant and there is no question of the application of the provisions of Article 9 (2) of the New Delhi House Rent Control Order, 1939.

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Held further, that in fixing compensation for the requisitioned premises the market value of the property taken away from the owner has to be assessed, and the powers of the arbitrator are not limited to giving compensation on the basis of the market value of the requisitioned property at the date of the requisition but compensation can be given at different rates for different periods. In assessing the market value of the premises rent of the premises may be taken to be a good criterion. It is only as a criterion of the market value of the property that the question of standard rent arises.

First Appeal from the order of Shri Manohar Lal Vijn, Senior Subordinate Judge, Delhi, Arbitrator, dated the 10th March 1950, awarding claimants certain amounts by way of compensation for the requisitioned Bungalow.

D. K. MAHAJAN , for Appellant.

BISHAN NARAIN and RAMESHWAR NATH, for Respondents.

JUDGMENT

HARNAM SINGH, J. This is an appeal against the award of the Arbitrator in a proceeding in connection with the assessment of compensation for Bungalow No. 4, Albuquerque Road, New Delhi, hereinafter referred to as the premises, requisitioned under section 19 of the Defence of India Act, 1939, read with Rule 75-A of the Defence of India Rules.

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Briefly summarised the material facts giving rise to these proceedings are these. In exercise of the powers conferred by sub-rue (1) of Rule 75-A the Central Government by order No. Dy-2564|Camp (B), dated the 23rd of October 1942, requisitioned the premises for a period of one year from the 1st of October 1942.

By order No. Dy. 4806|Camp (B), dated the 4th of October 1943, the premises were requisitioned for a period of one year from the 1st of October 1943, to the 30th of September 1944.

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By order No. Dy-7878|44|B, dated the 21st of October 1944, the premises were requisitioned for a period of one year from the 1st of October 1944, to the 30th of September 1945.

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On the 9th of March 1945, in exercise of the powers conferred by sub-rule (1) of rule 75-A, the Central Government requisitioned the premises with effect from the 1st of October 1945, until further orders of the Central Government.

As no agreement could be reached within section 19(1)(b) of the Defence of India Act, 1939, the Central Government appointed an arbitrator to assess compensation payable under the orders of requisition mentioned above by the Central Government to *Rai Sahib* Ram Parshad and Shri H. S. Gupta, hereinafter referred to as the claimants.

Before the Arbitrator it was common case that the fair rent of the premises on the 1st of November 1939, under the New Delhi House Rent Control Order, 1939, was rupees 300 per mensem exclusive of taxes and charges.

Now, the claimants claimed compensation at the rate of Rs. 3,600 per year clear of all deductions, in addition to house tax for the three years commencing on the 1st of October 1942 and expiring on the 30th of September 1945. They then claimed compensation at the rate of Rs. 570 per mensem in accordance with the principles laid down in the proviso to Article 9(2) of the New Delhi House Rent Control Order, 1939, read with the Schedule to that Order for the period between the 1st of October 1945. and the 24th of March 1947.

On the 24th of March 1947, the Delhi and Ajmer-Merwara Rent Control Act, 1947, came into force in the Province of Delhi and with effect from that date the claimants claimed compensation at the rate of Rs 855 per mensem clear of all deductions, in addition to house tax until the date of de-requisition.

In proceedings before the Arbitrator the respondent resisted the claim pleading that the claimants were entitled to compensation at the rate of Rs 300 per mensem for the period beginning on the 1st of October 1942, and ending on the date of de-requisition less one month's rent per year spent by the respondent on annual repairs.

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On the pleadings of the parties the Arbitrator fixed the following issue :—

To what compensation are the claimants entitled?

In support of the claim *Rai Sahib Ram Parshad* and *Shri Har Sarup Gupta* gave evidence before the Arbitrator while the respondent examined Mr Tek Chand, R. W. 1, and Mr N. K. Sahni, R. W. 2, to show that the claimants were entitled to compensation at the rate of rupees 300 per mensem for the entire period of requisition less one month's rent per year on account of annual repairs. In the award the arbitrator awarded the compensation as under :—

- (1) From 1st October 1942 to 30th ...
September 1945 Rent at rupees 300 per mensem
exclusive of all taxes and
charges
- (2) From 30th September 1945 to ...
23rd March 1947 Rent at Rs 570 per mensem ex-
clusive of all taxes and
charges,
- (3) From 24th March 1947 onwards... Rent at Rs 570 per mensem ex-
clusive of all charges and
taxes except those of which
the recovery is prohibited
by section 4 (3) of the Delhi
and Ajmer-Merwara Rent
Control Act, 1947.

In the concluding paragraph of the award the Arbitrator ordered that the claimants were entitled to the increased rent of rupees 712-8-0 per mensem after the end of the year in which the notice of increase of rent under section 8 of the Delhi and Ajmer-Merwara Rent Control Act, 1947, is served on the respondent, that the claimants would be entitled to such further increases as may be allowed by rent laws to be made in future and that the payments would be subject to a deduction of one month's rent every year on account of repairs.

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From the award made by the Arbitrator on the 10th of March 1950, the respondent has come up in appeal under section 19(1)(f) of the Defence of India Act, 1939. The claimants cross-object. This order disposes of F. A. O. No. 67 of 1950 and the connected cross-objections filed in this Court on the 26th of October 1950.

In assessing compensation the Arbitrator has proceeded on the basis that upon requisition the Central Government became a statutory tenant of the claimants, and that the claimants were entitled to increase of rent under the New Delhi House Rent Control Order, 1939, and the Delhi and Ajmer-Merwara Rent Control Act, 1947. On this point the Arbitrator has based himself upon the decision in F. A. O. No. 151 of 1946 decided on the 25th of May 1948. In that case Bhandari, J., said :—

“The mere fact that the Government has requisitioned the flats would not alter the fact that Government have become statutory tenants of the flats and can be required to pay the fair rent as fixed by the Controller.”

In F. A. O. No. 151 of 1946 no reasons are given for the statement that Government on requisitioning the premises became a statutory tenant.

For the reasons given by me in *Governor-General in Council, New Delhi v. Indar Mani Jatia* (1), I find that the respondent is not a tenant within Article 2(4) of the New Delhi House Rent Control Order, 1939 or section 2(d) of the Delhi and Ajmer-Merwara Rent Control Act, 1947. For other authorities on the point reference may be made to *Hazi Mahammad Ekramal Haque v. Province of Bengal*, (2) and *Lalit Kumar v. Bhagaban Ch. Sarma and others*, (3). In *Governor-General in Council, New Delhi v. Indar Mani Jatia* (1) I pointed out that relation of landlord and tenant may be created by the operation of a

(1) A. I. R. 1950 East Punjab 296.
(2) A. I. R. 1950 Cal. 83.
(3) A. I. R. 1950 Assam 133.

statute, irrespective of the intention of the parties, but that relationship does not come into being if the statute does not make a provision in that behalf. In the Defence of India Act, 1939, or the rules made thereunder there is no provision making the requisitioning authority a tenant of the owner of the requisitioned premises. In such cases the requisition by the State is by virtue of the superior authority which the State possesses to compulsarily acquire or requisition the premises and the relationship of landlord and tenant between the State and the landlord is not established unless the statute makes a provision to that effect. That being the position of law, the basis of the award has no legal justification.

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As stated above, the award proceeds upon the basis that the relationship between the claimants and the Central Government is that of landlord and tenant and the tenancy for the period subsequent to the 30th of September 1945, falls within the proviso to Article 9(2) of the New Delhi House Rent Control Order, 1939. From what I have said above, it is plain that the relationship between the claimants and the Central Government is not that of a landlord and a tenant and the question of the application of the proviso to Article 9(2) of the New Delhi House Rent Control Order, 1939, does not arise.

Rule 75-A of the Defence of India Rules read with section 19 of the Defence of India Act, 1939, provides that in a case of requisition of immovable property the claimant is entitled to compensation for the property requisitioned on the principle embodied in section 23(1) of the Land Acquisition Act, 1894. In cases of requisition the market value of the property taken away from the owner has to be assessed but the powers of the Arbitrator are not limited to giving compensation on the basis of the market value of the requisitioned property at the date of the requisition. In other words the award may give compensation at different rates for different periods.

In the present case it is the possessory interest which has been taken by the State, and, therefore, in

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of assessing the market value of the premises rent of the premises may be taken to be a good criterion. Indeed, it is as a criterion of the market value of the property that the question of standard rent arises. Standard Rent may be brought down or increased by the Rent legislation thereby affecting by way of fall or increase the income obtainable from the property in the market by the landlord, but 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. Clearly, the claimants could have realized nothing more than the rent as determined under the Rent legislation if the property had not been requisitioned.

In assessing compensation the Arbitrator seems to think that with effect from the 30th of September 1945, the case of the claimants falls under the proviso to Article 9(2) of the New Delhi House Rent Control Order, 1939. Considering that the Arbitrator gave the award on the 10th of March 1950, for the period between the 30th of September 1945, to the 10th of March 1950, it was not correct for the Arbitrator to assume that for the period between the 30th of September 1945, to the 24th of March 1947, the claimants were entitled to compensation under the proviso to Article 9(2) of the Order at the rate of Rs 570 per mensem exclusive of taxes and charges. That being so, the claimants were entitled to compensation for the period between the 1st of October 1942 and the 23rd of March 1947, both days inclusive, at the rate of Rs 300 per mensem exclusive of taxes and charges and subject to a deduction of one month's rent every year on account of repairs.

From the 24th of March 1947, the Delhi and Ajmer-Merwara Rent Control Act, 1947, came into force in the Province of Delhi. Section 7 of the Act read with the Second Schedule makes provision for determining the standard rent of the premises in the Province of Delhi. Para 1 of the Second Schedule deals with the determination of basic rent in relation to any premises and enacts, *inter alia*, that the basic rent in the case of premises let on the 1st of November 1939, is

the rent at which the premises were let on that date. That being so, under the Act the basic rent of the premises is rupees 300 exclusive of taxes and charges. The Embassy of Iran lives in the premises and part of the premises is used for the office of the Iranian Embassy. Indeed, the premises are divided into three blocks and one of the three blocks is used for the office of the Iranian Embassy. Indisputably, the premises are used mainly as residence and incidentally for business within para 5 of the Second Schedule and the standard rent of the premises with effect from the 24th of March 1947, would be rupees 412-8-0 per mensem exclusive of taxes and charges subject to a deduction of one month's rent on account of annual repairs. Clearly, with effect from the 24th of March 1947, the claimants are entitled to compensation at rupees 412-8-0 per mensem exclusive of charges and taxes and subject to a deduction of one month's rent every year on account of annual repairs.

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For the foregoing reasons I find :—

- (1) that from the 1st of October 1942, to the 23rd March 1947, both days inclusive, the claimants are entitled to compensation at rupees 300 per mensem exclusive of taxes and charges ;
- (2) that from the 24th of March 1947, the claimants are entitled to compensation at the rate of rupees 412-8-0 per mensem exclusive of taxes and charges ;
- (3) that for the period from the 1st of October 1942, the Central Government is entitled to a deduction equal to compensation for one month every year on account of repairs ;
- (4) that in case the premises have become or become business premises within the meaning of the Act the claimants would be entitled to compensation at the rate of

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Rs 450 per mensem subject to the deductions above from the date that the premises became or become business premises ;

- (5) that in case possession of the premises is given up by the Union of India in any year before the completion of that year the claimants would be entitled to compensation for the period of that year during which the Union of India was in possession of the premises on the principle laid down in the proviso to section 7 (3) of the Act read with the Third Schedule ; and
- (6) that the compensation payable to the claimants would be increased or reduced on the basis of the increase or reduction in the standard rent of the premises as may be permitted by the rent laws in force for the time being.

In the result, I allow the appeal, set aside the award of the Arbitrator and order that the claimants be paid compensation on the principles set out in the preceding paragraph.

Having regard to all the circumstances of the case I leave the parties to bear their own costs throughout.

REVISIONAL CRIMINAL

Before Bhandari, J.

TEJA SINGH,—Convict-Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 1181 of 1950

Motor Vehicles Act (IV of 1939), sections 42 and 123—
Section 42 whether applies to a driver of a motor vehicle
as distinct from its owner, when he contravenes the condi-
tions of the permit—Penal Statutes—Construction of—Rule
stated.

Held, that on a plain reading of sections 42 and 123 of
the Motor Vehicles Act, there can be no doubt whatever

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