Privy Council Appeal No. 21 of 1941
Allahabad Appeal No. 37 of 1938

Secretary of State – – – – – – – – *Appellant*

v.

Sri Narain Khanna – – – – – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1942

Present at the Hearing:

LORD THANKERTON
SIR GEORGE RANKIN
SIR CHARLES CLAUSON
SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

This appeal arises out of certain land acquisition proceedings. The property concerned consists of a house and outhouses belonging to the respondent situate within the Meerut Cantonment. The land on which it stands was held by him from the Government on what is commonly known as the cantonment tenure. Grants to individuals of lands within cantonments are regulated by General Order of the Governor-General in Council, No. 179, dated 12th September, 1836, which has been repeated in a series of subsequent regulations. Their Lordships had occasion to consider the nature of the cantonment tenure in a land acquisition case which came before the Board recently, *Hari Chand* v. *Secretary of State for India in Council* (1939), 66 Ind. App., p. 258, from the Peshawar Cantonment. In that case their Lordships observed that "where the Government grant any "rights to individuals within the area of the cantonments, one of the "cardinal conditions is that the Government retain the power of resumption at any time on giving one month's notice. If they give that notice "they are required to pay the value of such buildings as may have been "authorised to be erected."

In this case the property of the respondent had been in the possession of the Secretary of State on a lease for ten years at Rs. 325 a month, with a covenant to repair on the part of the tenant. The lease began on the 1st July, 1931, and rent had been paid by the Government up to the 10th May, 1934. In the meanwhile, the Government of India gave notice of resumption to the owner, resumed the land and instructed the Government of the United Provinces to acquire the buildings under the Land Acquisition Act I of 1894 for the public purpose of housing Government officers.

Their Lordships think it will be advantageous to state at the outset that though various questions were raised before the lower Courts the learned Counsel for the Secretary of State, the appellant, has presented for their Lordships' consideration only one question, namely, what is the correct principle that should be applied in valuing under the Land Acquisition Act a building which stands on land belonging to another and not to the owner of the building, as in the present case. The respondent has not been represented but Mr. Tucker has placed fully before their Lordships all the relevant facts and arguments.

The Land Acquisition officer awarded to the respondent as compensation for the buildings Rs. 11,605 together with Rs. 1,659-12-0 for compulsory acquisition under section 15 of the Act. Dissatisfied with this award, the respondent claimed a reference in the ordinary course.

The District Judge estimated from the evidence that the value of the buildings if newly constructed would be Rs. 30,858. From this amount he deducted Rs. 8,042 for depreciation. Government's claim for reduction of a further amount representing what it would have cost to bring the buildings into a reasonable state of repair was disallowed by him for reasons which it is not now necessary to examine, as the point was not taken in appeal to the High Court by the Secretary of State; and his learned Counsel has merely brought it to their Lordships' notice in the course of summarising the conclusions of the District Judge. Deducting the amount of depreciation the District Judge held that the respondent is entitled to Rs. 22,816 together with the usual 15 per cent. allowance for compulsory acquisition and also interest at 6 per cent. on the excess amount from the date of the award to the date of his order.

On appeal by the respondent the value of the buildings was increased to Rs. 31,426. The High Court arrived at the figure by capitalising the annual rental of the buildings at 8½ years' purchase, the Court deciding that 12 per cent. per annum simple interest may be taken to be a reasonable interest to expect from house property. This principle has thus been given effect to, as stated, in the judgment. " No doubt this lease was " made by the appellant under the impression that he was the owner of " the land of the compound, trees, plunge bath, polo pit, none of which " he in fact owns . But still we think that the lease should be taken into " account as Government was bound to carry out its obligations under " the registered lease. There were 7 years, 1 month and 20 days of the " lease to run from 10th May, 1934, till 30th June, 1941. At Rs. 325 per " month this comes to Rs. 27,843. The further period to make up 8⅓ " years' purchase (at 12 per cent.) is 1 year, 2 months and 10 days. For " this we think that in view of the materials of the house and the fact " that the appellant does not own the ground, etc., a fair rent would be " Rs. 250 a month. At Rs. 250 per month the total rent for 1 year, 2 " months and 10 days comes to Rs. 3,583. Adding these two sums we " get Rs. 31,426 for the 8⅓ years' purchase."

In this appeal by the Secretary of State it is contended that the basis of valuation adopted by the High Court is incorrect, and that the true principle of assessing compensation for the buildings, apart from the site, is to ascertain the cost of reproducing the buildings at the time of the compulsory acquisition, allowing for depreciation in consideration of the age and condition of the buildings, and for the cost of necessary repairs.

This principle was adopted as correct by this Board in *Hari Chand's* case, already referred to, where it is enunciated as the correct principle. In that case at page 262 their Lordships state it as follows:—

> " The subject to be valued being a building apart from the site, the principle of fixing value by ascertaining the cost of reproducing the building at the present time, and then allowing for depreciation in consideration of the age of the building and for the cost of such repairs as might be required apart from depreciation, is quite a well known and recognised method of valuing buildings for the purpose of compensation. That method was pursued here, and that method is not, as their Lordships conceive it, affected by the resumption notice, because the prices which would be taken, and were taken, in this case, for the purpose of ascertaining the cost of reproducing the building would not be affected by the resumption notice at all."

Although the learned Judges of the High Court agreed with the District Judge that the land was the property of the Government and that the Secretary was entitled to resume it without paying any compensation therefor, and that the only compensation due was compensation for the buildings, which alone were compulsorily acquired, they would appear to have thought that they were entitled to assess this latter compensation on an assumed rental basis and for that purpose to take into account the lease, which they said " should be taken into account as Government was bound to carry out its obligations under the registered lease." It is clear that

the lease was subject to the right of resumption by the Government, unless it could be maintained that the Government were not entitled to exercise the right of resumption during the currency of the lease, but the learned Judges agree that the land has been validly resumed, and it necessarily follows that, as from the date of resumption, the respondent ceased to have any right to keep the buildings on the land or to claim rent from a tenant, and there is no room for assessing upon an assumed rental basis the compensation for the value of the buildings as materials standing upon a site, but liable to be removed at any moment.

In their Lordships' opinion, the District Judge has applied the correct principle in valuing the buildings in this case. The result is that their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the District Judge's decree should be restored.

The appellant will get the costs of this appeal and also his costs in the High Court.

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In the Privy Council

SECRETARY OF STATE

v.

SRI NARAIN KHANNA

DELIVERED BY SIR MADHAVAN NAIR

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