

1962

Present : Basnayake, C.J., and de Silva, J.

H. ESUFALLY and 2 others, Claimants, and ASSISTANT GOVERNMENT AGENT, COLOMBO, Respondent

S. C. 1/61—Land Acquisition Case BRR. 79/CC. 390

Defence (Compensation) Regulations 1941—Case stated under Regulation 7—Method of computing compensation under Regulation 2—Defence (Miscellaneous) Regulations, Regulation 34—Special Areas (Colombo) Development (Amendment) Act No. 41 of 1952—Land Acquisition Act.

By virtue of the powers vested by Regulation 34 of the Defence (Miscellaneous) Regulations, the Competent Authority took possession of certain premises on 4th August 1942 and remained in possession of them till 9th December 1950, on which date possession was restored to the claimants after rent compensation had been paid to them. The buildings which had stood on the premises had been demolished by the Competent Authority whilst in possession.

The claimants claimed compensation under Regulation 2 (1) (b) of the Defence (Compensation) Regulations, 1941. In a case stated for the opinion of the Supreme Court under Regulation 7—

Held, “(i) that upon a correct construction or application of Regulation 2 (1) (b), the sum to be paid to the claimants is the cost of reinstating or reconstructing as on 9th December 1950, of the buildings on the said premises as they stood on 4th August 1942.

(ii) that Proviso (ii) to Regulation 2 (1) is applicable to a case such as the present where the entirety of the buildings which stood on the requisitioned premises as at the date on which possession thereof was taken from the claimants or owners, had been totally destroyed or demolished by the Competent Authority whilst in possession.

(iii) that the expression ‘the value of the land’ in Proviso (ii) to Regulation 2 (1) is not confined to the market value of the land ascertained according to the provisions of the Land Acquisition Act and is of wider significance than the expression ‘market value’ in that enactment and does not exclude any special value to the owner or owners, or any special value to any particular purchaser or purchasers; and the suitability of ‘the land’ for any particular or special purpose should be taken into account in ascertaining the value of the land.

(iv) that the word ‘land’ in Proviso (ii) to Regulation 2 (1) means in the case of a land with buildings ‘land and buildings’. The maximum sum payable in respect of damage to any building or buildings is restricted to an amount equal to the maximum amount of the value of the land and the buildings thereon which have been damaged or destroyed or demolished totally or partially.”

CASE stated for the opinion of the Supreme Court under Regulation 7, of the Defence Compensation Regulations.

H. V. Perera, Q.C., with S. J. Kadirgamar and K. N. Choksy, for Claimants.

H. W. Jayewardene, Q.C., with G. F. Seihukavaler, S. S. Basnayake, and N. R. M. Daluwatte, for Competent Authority

Cur. adv. vult.

March 5, 1962. BASNAYAKE, C.J.—

This is a case stated for the opinion of the Supreme Court under Regulation 7 of the Defence Compensation Regulations which reads as follows:—

“ Any dispute as to whether any compensation is payable under these regulations, or as to the amount of any compensation so payable, shall, in default of agreement, be referred to, and determined by, the appropriate tribunal constituted under the following provisions of these regulations, and the decision of that tribunal shall be final :

Provided that at any stage in proceedings before it the tribunal may, and, if so directed by the Supreme Court, shall, state in the form of a special case for the opinion of that Court any question of law arising in the course of the proceedings.”

Briefly the facts on which the question of law arise for decision are as follows:— By virtue of the powers vested by Regulation 34 of the Defence (Miscellaneous) Regulations, the Competent Authority, the Assistant Government Agent of Colombo, on 4th August 1942, took possession of premises bearing Municipal Assessment Nos. 212, 214, 220, 218 $\frac{1}{2}$ to $\frac{1}{2}$ and 218/36 to 72 Wolfendhal Street, Colombo, and remained in possession till 9th December 1950. On the latter date possession was restored to the claimants. The buildings standing on those premises were demolished by the Competent Authority whilst in possession. Rent compensation was paid to the claimants till possession was handed over to them on 9th December 1950. The claimants thereupon gave notice of their claim to compensation under Regulation 2 (1) (b) of the Defence (Compensation) Regulations 1941 by a Notice of Claim dated 6th March 1951 supplemented by an estimate. They claimed a sum of Rs. 193,015/65 as compensation under the Regulation referred to above. The Competent Authority assessed the compensation payable at Rs. 74,250 as the maximum amount of compensation payable in respect of the total demolition which had been effected of all the buildings on the above premises during the time the Competent Authority was in possession of the premises. In their claim on Form 2 the claimants stated that the value of land and buildings requisitioned at the date possession was taken on behalf of Her Majesty was equal to Rs. 340,555/65.

The claimants claimed that they were entitled to be paid such a sum of money as would have enabled them on 9th December 1950 to reconstruct the buildings as they stood on 4th August 1942 and they accordingly declined to accept the sum of Rs. 74,250 tendered by the Competent Authority to them and desired that the matters in dispute be referred to the Board of Review constituted under the Land Acquisition Act 1950 as being the appropriate Tribunal under the provisions of Regulation 7 of the Defence (Compensation) Regulations read with the Special Areas (Colombo) Development (Amendment) Act No. 41 of 1952 for the determination of the questions as to the right of the claimants to be compensated.

The Competent Authority accordingly referred the dispute to the Board of Review for hearing and adjudication. As questions of law of great importance arose on the arguments submitted by counsel, the Board has stated a special case. The questions of law that arose are stated by the Board in paragraph 5 of the Special Case as follows :—

(i) whether, upon a correct construction or application of Regulation 2 (1) (b), the sum to be paid to the claimants is to be the cost of reinstating or re-constructing as on 9th December 1950, of the buildings on the said premises as they stood on the 4th August 1942, or whether it is to be sum of money computed or ascertained on some other basis and if so, on what basis ;

(ii) whether Proviso (ii) to Regulation 2 (1) was applicable to a case such as the present where the entirety of the buildings which stood on the requisitioned premises as at the date on which possession thereof was taken from the Claimants or Owners, had been totally destroyed or demolished by the Competent Authority whilst in possession, or whether the said Proviso applied only to cases where buildings had been only partially destroyed or damaged ;

(iii) if Proviso (ii) did apply to a case of total destruction or demolition of buildings on requisitioned premises, whether the words 'the value of the land' in the said Proviso meant the *market value* of 'the land' as understood under the Land Acquisition Act 1950, or whether the words 'the value of the land' were intended to be of wider significance than market value, and should include any special value to the owner or owners, or any special value to any particular purchaser or purchasers ; and whether the suitability of 'the land' for any particular or special purpose should be taken into account in ascertaining its 'value' ;

(iv) in a case where compensation has to be assessed in respect of buildings that have been damaged or destroyed (wholly or partially) by the Competent Authority whilst it was in possession of the premises, whether the word 'land' in Proviso (ii) in the expression 'the value of the land' was to be construed as 'the value of the buildings' or was to be construed as equivalent to 'the value of the land and the buildings' thereon ; in other words whether the sum payable in respect of damage to any building or buildings was to be restricted to an amount equal (i) to the maximum value of the building or buildings destroyed or damaged or demolished wholly or partially as the case may be or (ii) to the maximum amount of the value of the land and the buildings thereon which had been destroyed or damaged or demolished totally or partially ; or whether the Claimants were to be restricted to a sum not greater than the value of the land only without taking into account the value of the building or buildings on the land which had been totally or partially damaged or destroyed or demolished. "

In paragraph 6 the Board states the questions on which the opinion of this Court is desired thus :

“ The Board of Review decided that the above questions of law were relevant to the determination of the dispute between the parties and were of sufficient importance to justify the Board exercising the power given by Regulation 7 to state the said questions of law in the form of a Special Case for the opinion of the Hon'ble the Supreme Court of Ceylon so that the Board may be informed of the correct construction and application of Regulation 2 (1) (b) and also Proviso (ii) of Regulation 2 (1) and of any other Regulations which, the Court may be of opinion, are appropriately applicable to the present case, so as to enable the Board to proceed further with the hearing of the matter in dispute and decide upon the correct method or basis or principle of computing compensation and of awarding the correct amount to be paid to the Claimants in respect of their claim. ”

We accordingly state our opinion as follows :—

- (i) that upon a correct construction or application of Regulation 2 (1) (b), the sum to be paid to the claimants is the cost of reinstating or reconstructing as on 9th December 1950, of the buildings on the said premises as they stood on 4th August 1942.
- (ii) that Proviso (ii) to Regulation 2 (1) is applicable to a case such as the present where the entirety of the buildings which stood on the requisitioned premises as at the date on which possession thereof was taken from the claimants or owners, had been totally destroyed or demolished by the Competent Authority whilst in possession.
- (iii) that the expression “ the value of the land ” in Proviso (ii) to Regulation 2 (1) is not confined to the market value of the land ascertained according to the provisions of the Land Acquisition Act and is of wider significance than the expression “ market value ” in that enactment and does not exclude any special value to the owner or owners, or any special value to any particular purchaser or purchasers ; and the suitability of “ the land ” for any particular or special purpose should be taken into account in ascertaining the value of the land.
- (iv) that the word “ land ” in Proviso (ii) to Regulation 2 (1) means in the case of a land with buildings “ land and buildings ”. The maximum sum payable in respect of damage to any building or buildings is restricted to an amount equal to the maximum amount of the value of the land and the buildings thereon which have been damaged or destroyed or demolished totally or partially.

It was agreed that each party should bear its costs.

DE SILVA, J.—*I agree.*

Opinion stated.