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the trial Court could, on the material before it, hold a witness guilty of perjury. If additional material is discovered subsequently, then the case would fall outside the purview of section 479A and the preceding sections 476 to 479 would come into play. I am clearly of the view that this was not the intention of the Legislature, and in any event in the present case there has been no discovery of additional evidence after the decision of the suit. Madan Lal actually gave details of the evidence which would prove Parshotam Lal's perjury and no further material has been discovered after the decision of the suit.

I would, therefore, hold that the provisions of section 479A override the provisions of sections 476 to 479, Criminal Procedure Code, in so far as they relate to the giving of false evidence or fabricating false evidence by a person who gives evidence during the course of the judicial proceedings.

The present petition must, therefore, be allowed and the proceedings under section 476 pending before the Sub-Judge quashed.

Gurnam Singh, J.

GURNAM SINGH, J.—I agree.

R.S.

APPELLATE CIVIL

Before Gosain, J.

GUJJAR MAL AND OTHERS,—*Appellants*

versus

PUNJAB STATE,—*Respondent*

First Appeal From Order No. 74 of 1954.

1958

Sept. 22nd

The Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Section 25(2)—Property

requisitioned under The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (XLVIII of 1948) but de-requisitioned after coming into force of Act XI of 1953—Compensation in respect of—Whether to be assessed under the new Act—Section 8(2)(b)—Compensation in respect of tortious act of a public officer—Whether payable—Notice for de-requisitioning—Whether necessary —Rent in lieu of notice—Whether payable.

Held, that the compensation in respect of property requisitioned under the provisions of Act XLVIII of 1948 and de-requisitioned after the coming into force of Act XI of 1953 is to be assessed according to the provisions of the latter Act, in view of section 25(2) of that Act.

Held, that section 8(2)(b) of Act XI of 1953 envisages a loss which is directly due to the act of requisitioning and not a loss which may be due to the tortious act of a public officer in throwing away the goods lying in the shop and not taking care of the same. The said loss cannot be assessed in the proceedings under the said Act.

Held, that the claim for one month's notice regarding de-requisitioning is not borne out by the provisions of Act XI of 1953 and so there is no basis for the claim for the payment of rent for that month.

First appeal from the order of Shri Mohinder Singh Arbitrator, Senior Sub-Judge, Hoshiarpur, dated the 2nd April, 1954, ordering that the claimant is not entitled to any damages in the present proceedings to the movable property.

B. S. CHAWLA, for Appellants.

N. L. SALOOJA, for the Advocate-General, for Respondent.

JUDGMENT

Gosain, J. GOSAIN, J.—The facts giving rise to this appeal are as under.

Seven shops belonging to Gujjar Mal appellant were requistioned by the Punjab State on 22nd August, 1951 under the provisions of the East Punjab Requisitioning of Immovable Property

(Temporary Powers) Act, 1948, and were released on 30th April, 1953. An arbitrator was appointed to fix compensation payable to the owner for this requisition. The claimant Shri Gujjar Mal claimed the rent from 21st August, 1951, to 31st May, 1953, on the ground that he was entitled to the same from the date of requisitioning to a date till after one month of derequisitioning. He made the following claims—

(1) Rs. 120 per mensem as rent for three shops Nos. NB-2205/R, NB-2206/R and NB-2207/R at the rate of Rs. 40 per mensem per shop;

(2) Rs. 180 per mensem as rent for four shops Nos. NB-2208/R, NB-2211/R, NB-2212/R and NB-2213/R at the rate of Rs. 45 per mensem per shop;

(3) Rs. 2,000 by way of damages for the shops having been damaged and put into bad state of repairs; and

(4) Rs. 30,000 as the price of the goods already stored in them by the claimant and thrown out by the District Magistrate at the time of getting possession of the shops.

Mr. Mohinder Singh Matharu, Senior Subordinate Judge, Hoshiarpur, who was the arbitrator, disallowed the last claim for Rs. 30,000 on the short ground that he had no jurisdiction to adjudicate on the same and that he was competent only to adjudicate on the compensation payable on account of the rental of the shops and the damages payable for putting the property out of

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repairs, etc. With regard to the rental of the shops he decided that the claimant was entitled only to Rs. 210 per mensem at the rate of Rs. 30 for each shop. The claim for Rs. 2,000 as damages was negatived. The arbitrator decided that the claimant was only entitled to rental of the shops for 19 months and 24 days, i.e., from 6th September, 1951, when actual possession of the shops was taken, to 30th April, 1953, when the shops were released. The claimant feeling aggrieved against the award has come to this Court in first appeal.

Mr. Bhagat Singh Chawla contends that the appellant's claim for Rs. 120 per mensem in respect of three shops and Rs. 180 per mensem in respect of the other four shops should have been allowed in full. It is in evidence that shop No. NB-2205/R, was rented by the claimant from the 10th November, 1949 to 10th November, 1950, to the Hill Motor Transport Company Limited, and that the said tenants were paying rent at the rate of Rs. 40 per mensem. The claimant has produced transliteration (Exhibit A. 15) of the relevant entries in the rent register and also a transliteration (Exhibit A. 19) of the relevant entries of his regularly maintained *rokar bahi* to prove the above fact. It is also in evidence that shop No. NB-2206/R, had been rented by the claimant from 21st December, 1949, to 23rd June, 1950, to the East Punjab Motor Stores, Hoshiarpur. Transliteration (Exhibit A. 12) of the relevant entries in the rent register and also transliteration (Exhibit A. 22) of the relevant entries in the *rokar bahi* coupled with the evidence of C.W. 6 Kartar Singh, fully establish this fact. Shop No. NB-2207/R, had been given by the claimant on rent to the Jullundur Ex-Servicemen Transport Co-operative Society, Limited, Jullundur, from 1st December, 1949 to 28th October, 1950, at a rental of Rs. 40 per mensem and this fact is fully proved by transliteration (Exhibit

A.13) of the relevant entries in the rent register, transliteration (Exhibit A. 21) of the relevant entries of the *rokar bahi* and rent deed (Exhibit A. 3) coupled with the evidence of C.W. 4, Nand Ram. The other four shops had been given on rent from February, 1947, to February, 1948, to Shri Charan Das, President, Foodgrain Syndicate; and this is proved by transliterations (Exhibits A. 7 and A 8) of the relevant entries in the rent register and transliteration (Exhibit A. 24) of the relevant entries in the *rokar bahi* coupled with the evidence of C.W. 7 Charan Das. The latter four shops had been given on rent at Rs. 45 per mensem. There is, however, no evidence to show what rent the said latter four shops were fetching from February, 1948, to the date of requisitioning. Considering the above evidence I am of the opinion that rent for all the seven shops should be allowed at Rs. 40 per mensem each.

Regarding the period for which compensation is allowable, the appellant's claim is that he should be allowed compensation from 22nd August, 1951 to 31st May, 1953. It is admitted that the actual possession was taken by the Government on 6th September, 1951, and the claimant in these circumstances cannot obviously be entitled to any rent from 22nd August, 1951 to 6th September, 1951. He claims rent for the month of May, 1953, on the ground that he should have been given one month's notice regarding the derequisitioning. There is no such provision in the Act, and I fail to appreciate any basis for his claim for the month of May. I am clearly of the opinion that the period for which the compensation is payable is from 6th Septemebr, 1951 to 30th April, 1953, i.e., 19 months and 24 days. The claimant will, therefore, be entitled to compensation for the aforesaid period at the rate given above.

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Regarding the claim for Rs. 2,000 on account of damage having been caused to the property, the claimant relies on the evidence of C.W. 3 Hans Raj, C.W. 8 Dwarka Das and on his own statement as C.W. 10. It is fully proved that the Government used the premises as godowns for foodgrains and got the doors, widows and ventilators, etc., mud plastered with a view to make them air proof. The mud plaster on the woodwork must naturally have caused damage to the property. C.W. 3 Hans Raj makes a clear statement that such damage was actually caused. Hans Raj also deposed that damage was also caused to the flooring, walls and plastering on the walls. He further states as under :—

> "I found the roof of shop No. 1, fallen down, the two rafters in shop No. 5 were hanging and at point X there was a crack in the wall. One beam in the verandah in front of the shop No. 7 was bent and was supported by a support."

C.W. 8 Dwarka Das and C.W. 10 Gujjar Mal also make similar statements. The arbitrator actually went to the spot and found that the mud plastering appeared to have damaged to some extent the woodwork, i.e., the frames of the main door, etc. From the very nature of things it is very difficult to assess the damages under this head at a very precise figure. Hans Raj, C.W. 3, has given an estimate of the damage at a figure of Rs. 1,903, but the said estimate appears to be exaggerated. Considering the evidence and the circumstances of the case, I am of the opinion that Rs. 1,000 should be allowed to the claimant under this head, and I allow the same accordingly.

There was some dispute between the parties as to whether the compensation is to be assessed according to the provisions of the 1948 Act or those

of the amended Act of 1953. Section 25(2) of the amended Act provides as under—

> "For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts shall, on the commencement of this Act, be deemed to be property requisitioned under section 3 of this Act, and all the provisions of this Act shall apply accordingly; * * * * * * *."

The new Act came into force on the 15th April, 1953, and the property was on that date admittedly under requisition. The case, therefore, clearly falls within the ambit of subsection (2) of section 25, and compensation must be assessed according to the provisions of the new Act. Sub-section (2) of section 8 of the new Act provides for criteria for assessment of compensation. This subsection is in the following terms—

> "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;

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

The claim for Rs. 30,000 does not fall within the ambit of any of the clauses of the above provisions. Mr. Bhagat Singh Chawla, learned counsel for the appellant, contended that the claim fell within (b)(i) of the said provision which reads—

"Pecuniary loss due to requisitioning."

It evidently envisages a loss which is directly due to the act of requisitioning and not a loss which may be due to the tortious act of a public officer in throwing away the goods lying in the shop and not taking care of the same. The remedy of the claimant, if any, with regard to the loss under this head is, in my opinion, a civil suit for damages on account of torts and the claimant, if he is so advised, may take that remedy or any other remedy which may be available to him. The said loss cannot be assessed in these proceedings.

As a result of the above I award to the claimant Rs. 280 per mensem as compensation by way of rental of the shops for a period of 19 months and 24 days which by calculation comes to Rs. 5,544.

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In addition to it I award another sum of Rs. 1,000 as damages for putting the building out of repairs and for damaging the woodwork, etc. In all, the claimant is, therefore, awarded a sum of Rs. 6,544 and to this extent the arbitrator's award is varied. In view of the fact that the claimant made a somewhat exaggerated claim for compensation, I allow him only half the costs in this Court.

R.S.

CRIMINAL MISCELLANEOUS

Before Tek Chand, J.

BHOLA NATH,—*Petitioner*

versus

THE DISTRICT MAGISTRATE, JULLUNDUR AND OTHERS,—*Respondents*

Criminal Miscellaneous No. 341 of 1958.

1958

Sept. 23rd

Code of Criminal Procedure (V of 1898)—Section 491—Writ of Habeas Corpus—*When can issue in the case of a minor or wife—"Imprisonment"—Import of—Minor girls lodged in a Rescue Home—Whether under physical restraint—Issuance of writ of* habeas corpus—*Whether discretionary with the Court—Right of parent to obtain custody of minor children—Whether absolute—Welfare of the minor —Whether to be considered.*

Held, that ordinarily the basis of the issuance of the writ of *habeas corpus* is an illegal detention, but in the case of the writ issued in respect of the wife or the child the law is not so much concerned about the illegality of the detention as the welfare of the person detained. The writ of *habeas corpus* is frequently resorted to by the courts at the instance of a guardian—be he a father or husband—for the custody of his ward. The term 'imprisonment' usually imports a restraint contrary to the wishes of the prisoner, and the writ of *habeas corpus* was designed as a remedy