APPELLATE CIVIL.

Before U Thein Maung, Chief Justice, and U San Maung, J.

H.C. 1948

Nov., 29.

M/S. AHMED EBRAHIM BROS. (APPELLANTS)

v.

BABU MADAN GOPAL BAGLA (RESPONDENT).*

Suit for compensation for use and occupation—Plea that the property was requisitioned by a Navy Officer of the Japanese during the occupation period—Whether valid plea—Japanese Currency Evaluation Act, s. 3 (1)—Applies to debt and contractual obligation—Principles by which the cases not covered by the Act to be governed.

Held : Under the International Law the invading power may only occupy temporarily private lands and buildings for all kinds of purposes demanded by the necessities of the war. In a claim for compensation for use and occupation of a building, the mere proof that a Japanese Officer requisitioned a portion of the building is no defence.

S. 3 (*1*) of the Japanese Currency (Evaluation) Act, 1947 applies to debt and contractual obligations only, it does not apply in specific terms to the case of claim of compensation for use and occupation during Japanese occupation but in assessing damages the Court cannot ignore the principle underlying it especially when the Court has to determine the reasonable amount of damages to be paid in legal currency for an act done during the Japanese occupation.

E. C. V. Foucar for the appellants.

S. N. Sastry for the respondents.

U THEIN MAUNG, C.J.—This is an appeal from a decree directing the appellants to pay Rs. 7,442 to the respondent as compensation for the use and occupation of ten rooms from the 6th December, 1942 to the 31st December, 1944 at the rate of Rs. 300 per mensem.

The learned Advocate for the appellants has given up the grounds of appeal Nos. 1 and 2 wherein he alleged that the respondent failed to prove what portion

* Civil First Appeal No. 32 of 1948 against the decree of the Original Side of the High Court in Civil Regular Suit No. 83 of 1946, dated the 30th April 1948.

if any of the suit premises were occupied by the appellants. He has argued the appeal only on two grounds, *viz*: that the trial Court should have held that the premises were lawfully requisitioned for the needs of the Japanese Army or in the alternative that compensation should have been assessed in accordance with the principle underlying the Japanese Currency (Evaluation) Act, 1947.

There is no evidence whatsoever as to the name, rank or authority of the Japanese Officer who is alleged to have requisitioned the rooms. The learned Advocate for the appellants relies on Exhibit E wherein the lawyer for the respondent has described the Japanese Officer as "one Navy Officer of the Japs". However, the description is not at all sufficient to justify the presumption that he was the Commander of the respective area or that he had authority to requisition the rooms.

The Hague Regulations which provide for requisitions in kind and service being made "for the needs of the army of occupation" do not provide for requisitioning immoveable private enemy property. (*See* Articles 46 and 52.)

Lawrence has stated at page 440 of The Principles of International Law "Dealing first with immoveables, we may lay down that as a general rule they are held to be incapable of appropriation by an invader. * * * The profits arising from them are free from confiscation and the owners are to be protected in all lawful use of them. But troops may be quartered in private houses though the inhabitants may not be ejected from their homes to make more room for the soldiery."

However, after referring to Article 46 of the Hague Regulations which expressly enacts that private property must be respected and may not be confiscated,

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Oppenhein has stated at page 319 of his International Law, Vol. II, Fifth Edition, "But confiscation differs from temporary use of private land and buildings for all kinds of purposes *demanded by the necessities of war.*" Pitt Cobbett has also stated in the Cases on International Law, Vol. II, Fifth Edition, "Land and buildings belonging to private owners may be temporarily used by an invader for purposes required by military necessity." So proper military authority might have had power to requisition the rooms for such purposes as might have demanded by the necessities of war.

However, it is clear from the evidence in the case that the rooms were not required for any such purpose at all. According to the appellants' own written statement the rooms were required just for the purpose of dumping their merchandise and goods which were then stored in their own premises.

Besides, the merchandise and goods so dumped were sold after a few days only. (*See* the evidence of Waris Ali, D.W. 2, at page 51 of the trial record.) The appellants then continued to occupy the rooms and to carry on their business there for over two years. (*See* the evidence of Ismail Fateh Mohamed, D.W. 1, at pages 43 and 44 ; *Ibid cp.* the evidence of Kasi Prasad Chowbay, P.W. 1, page 31 r., *Ibid.*)

Ismail Fateh Mohamed, who was one of the managers of the appellants' business was asked "After the goods which were shifted to the suit premises were sold, why did you not shift to some other place ?" and he answered "It depended on our wish." It is true that he corrected his answer by saying "It depended on the Japanese military." However, the Japanese military does not appear to have had any interest in the appellant's business and the witness appears to have spoken the truth in his first answer.

Moreover the respondent's case that the rooms were not requisitioned by the Japanese military authorities and that Barrot, who was a head clerk or one of the managers under the appellants, brought a Japanese officer just to frighten the respondent's agent and tenants is supported to a certain extent by Hajee Oomer, D.W. 2, a clerk in the appellants' firm. He has stated that Barrot was one of the managers of the firm and that Barrot had much influence with the Japanese (*see* pages 64 r. and 68 of the Trial Record). And according to Mohamed Yacoob, Barrot was working in the appellants' office "up to January or March 1944." As regards the Japanese, the learned Advocate for the appellants asked K. P. Chowbey in his cross-examination "And the Japanese did what they liked while they were in Rangoon ?" and the answer was "Yes." (*See* page 32 r. of the Trial Record.)

For the above reasons we are of the opinion that the trial Court is right in holding (1) that there was no lawful requisition of the premises by the Japanese and (2) that the appellants must pay compensation for the use and occupation thereof.

The trial Court is also right in fixing the compensation for use and occupation at Rs. 300 per mensem in accordance with the respondent's demand in Ex. 1, dated the 16th April 1943. However, it failed to note that the said demand could have been met by payment in Japanese currency.

Section 3 (*1*) of the Japanese Currency (Evaluation) Act, 1947 does not apply as the case does not relate to any debt or contractual obligation. However in assessing damages we cannot ignore the principle underlying it, inasmuch as we have to determine what will be the reasonable amount in the present legal currency.

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If Rs. 300 per mensem in Japanese currency would have been reasonable compensation in 1942, 75 per cent thereof in the present legal currency must, according to the principle underlying the said section, be reasonable compensation now.

At the same time there is no evidence of any subsequent fall in the rental value of the buildings in the locality and the appellants cannot claim to be put in a better position than a lawful tenant who has obtained a lease at a rent fixed in the present legal currency. So he is not entitled to the benefit of any further depreciation of the Japanese currency after 1943.

We accordingly reduce the rate of compensation from Rs. 300 per mensem to 75 per cent thereof, *i.e.* to Rs. 225 per mensem and modify the decreee of the trial Court by directing that the appellants shall pay Rs. 5,581 instead of Rs. 7,442 to the respondent as compensation for use and occupation. The parties shall bear their own costs in both courts since the claim was for Rs. 13,475 and the defence was total denial of liability.

U SAN MAUNG, J.—I agree.