

1952
 DAYARAM
 KASHIRAM
 v.
 BANSILAL
 RAGHUNATH

appeal Court must therefore mean that it was the appeal Court's decree for eviction that was to be executed. In this sense therefore when an appeal Court confirms a decree for eviction, it, in effect, passes a decree for eviction, and that is the only decree which is to be executed.

Raja-dhyaksha J.

In this view it follows that under sub-s. (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947, an appeal Court cannot confirm a decree for eviction if before the passing of the order in appeal, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit and also appeal. In the present case the tenant has paid only Rs. 200 which represent the rents due till the decree of the trial Court and costs of the trial Court. If the tenant-appellant wants the decree to be vacated and does not desire the appeal Court or the Court of revision to confirm the decree for eviction, he must pay all the arrears of the rent together with the costs of the suit, the appeal and the revision application. For the purpose of this payment we fix the date June 23, 1952, and if by that time all the amounts due to the respondent-landlord and costs are paid, then the decree of the trial Court for eviction will be vacated. Otherwise, the decree will stand confirmed.

Order accordingly.

M. W. P.

APPELLATE CIVIL

1952
 June 16

Before Mr. Justice Rajadhyaksha and Mr. Justice Chainani.

CHATURBHUI HOTCHAND ASARPOTA (ORIGINAL ALLOTTEE),
 APPELLANT v. THE STATE OF BOMBAY AND OTHERS, RESPONDENTS.*

Bombay Land Requisition Act (XXXIII of 1946), s. 8 (3)—Bombay Land Requisition (Determination of Compensation) Rules, 1949, Rule 3—Whether allottee has right to appeal against order passed by Compensation Officer.

An allottee of requisitioned premises has no *locus standi* in the proceedings before the Compensation Officer and has no right to file an appeal under s. 8 (3) of the Bombay Land Requisition Act, 1948, against an order passed by the Compensation Officer.

* First Appeal No. 598 of 1950.

Appeal against the decision of B. V. Trivedi, Compensation Officer, Bombay and Bombay Suburban District.

1952

CHATUR-
BHUIJ
HOTCHAND
v.
STATE

The facts are set out in the judgment.

P. R. Wadhwa and *N. N. Yagnik*, for the appellant.

M. G. Chitale, for the Government Pleader, for respondent No. 1.

Raja-
dhyaaksha J.

V. J. Taraporewala and *F. P. Kapadia*, for respondents Nos. 2 and 3.

RAJADHYAKSHA J.—This is an appeal against an order passed by the Compensation Officer, Bombay, and the Bombay Suburban District, in respect of certain premises which were requisitioned under the Bombay Land Requisition Act, 1948.

It appears that certain premises were, according to information received by Government, unauthorisedly occupied by Mr. Teheramani since March 1948. The Government, therefore, in exercise of the powers conferred by clause (a) of sub-s. (4) of s. 6 of the Bombay Land Requisition Act of 1948, requisitioned those premises by an order dated the 10th of November 1948. These premises were then allotted to one Shri Chaturbhuj Hotchand by an order of the same date. As the unauthorised occupant did not vacate the premises, the order was enforced by breaking open the lock on November 27, 1948. The applicant-landlords in whose name the property stood put in a claim for compensation at Rs. 60 per month. This claim was decreed by the Compensation Officer who considered that the fair and reasonable rate of compensation for the requisitioned premises should be Rs. 60 per month, and he directed that the applicants be paid accordingly. The present appeal has been filed not by Government, nor by the claimant whose claim was decreed in full, but by Chaturbhuj Hotchand to whom the premises were allotted on November 10, 1948, and it is his contention that the Compensation Officer has erred in fixing the compensation at Rs. 60 per month which the appellant has to pay by way of rent.

A preliminary objection has been taken by Mr. Taraporewala that the present appeal, at the instance of the allottee, is not competent and this submission has the support of Mr. Chitale who has appeared for the State of Bombay. We are of the opinion that this submission must succeed, and that the present appeal is not competent.

1952
 CHATUR-
 BHUJ
 HOTCHAND
 v.
 STATE

Raja-
 dhyaksha J.

The appeal has been filed under sub-s. (3) of s. 8 of the Bombay Land Requisition Act of 1948 which runs as follows:—

“An appeal shall lie against the decision of the officer under sub-s. (1) or (2), except in cases where the total amount of compensation in respect of the land does not exceed an amount prescribed in this behalf by the State Government,—

(a) in Greater Bombay, to the High Court, and

(b) elsewhere, to the District Court.

Such appeal shall be made within a period of sixty days from the date of the decision.”

It has been urged by Mr. Wadhwa on behalf of the appellant that this section does not lay down anything as to the parties who are competent to file the appeal and Mr. Wadhwa has urged that even an allottee in whose favour an order has been made by the Government in respect of the requisitioned premises is entitled to file an appeal. In our opinion, this submission cannot be accepted. The parties to the requisition proceedings were the Government of the State of Bombay who proceeded to make the requisition and the person whose premises were being requisitioned. Under r. 3 of the Bombay Land Requisition (Determination of Compensation) Rules, 1949, when any land is requisitioned, any person having an interest in such land may make an application to the Compensation Officer for claiming compensation in respect of such land. If the Compensation Officer considers that the claim made is reasonable and may be accepted, he can immediately make an order accordingly and direct the applicant to execute an agreement in form B annexed to the Rules. If the Compensation Officer thinks that the application is not reasonable, then he gives a notice to the applicant and directs him to produce documents in support of his claim. After hearing the applicant and taking into consideration evidence produced by the applicant, the Compensation Officer has to determine the compensation payable to the claimant. It is thus clear that the parties to the proceedings are the claimants on the one hand, and Government, at whose instance the proceedings for requisition are initiated, on the other. In any event, the persons to whom the requisitioned premises are subsequently allotted have no *locus standi* in the matter. Under the Rules, where the amount of compensation determined under the rules is in respect of rent only, the State Government may direct the tenant to pay the amount direct to the person in whose favour the order has been made. From this

also it would appear that the allottee comes into the picture after the land has been requisitioned and he is not the person directly concerned in the matter of fixation of the compensation to be paid to the claimant.

The Land Requisition Act is to some extent modelled on the Land Acquisition Act where Government acquire land at the instance of some public body. In such cases also the public body at whose instance Government proceed to acquire the land is not a party to the land acquisition proceedings. In the case of lands acquired under the Land Acquisition Act for a public purpose there is at least definite knowledge in some cases that the premises are being acquired at the instance of a particular body interested in that public purpose. Even so that body which has subsequently to pay the compensation awarded is not a party to the proceedings. But in the case of premises requisitioned under the Bombay Land Requisition Act, it is entirely at the discretion of Government to whom the requisitioned premises should be handed over for use and occupation. There is, therefore, much less justification for holding that the transferee from Government should be regarded as a party to the requisition proceedings. It is, therefore, not correct to contend that the person to whom the requisitioned premises are subsequently given for use and occupation under sub-s. (4) of s 6 of the Bombay Land Requisition Act, 1948, is a party to the proceedings, and the right of filing an appeal cannot vest in a person who is not a party to the land requisition proceedings.

It was contended by Mr. Wadhwa that in the course of the proceedings a notice was sent to the appellant. He appeared, was heard and thereafter a decision was given. But we do not think that the mere fact that the Compensation Officer decided to hear what the allottee had to say in the matter necessarily makes the allottee a party to the proceedings so as to enable him to file an appeal against the decision of the Compensation Officer.

Under the scheme of the Bombay Land Requisition Act, it appears that the requisition is to be made by Government and it is Government who are liable to pay the compensation in respect of the premises requisitioned. Under sub-s. (3) of s. 8B the allotment of any land to any person, or the continuance of any person or the permission to any person to continue to remain in occupation or possession of any land, referred to in sub-s. (1) shall be deemed to be a license in favour of such

1952

CHATUR-
BHUI
HOTCHAND
v.
STATE

Raja-
dhyaksha J.

1952
 CHATUR-
 BHUJ
 HOTCHAND
 v.
 STATE
 Raja-
 dhyaksha J.

person for the use and occupation of the said land. Therefore, even after the requisition, the person permitted to remain in occupation or the person to whom the requisitioned premises are allotted becomes a licensee of Government. Formerly, under s. 9A of the Act, which has been subsequently repealed, it was within the competence of Government to make the allottee a tenant of the premises requisitioned and the relationship of landlord and tenant arose between the allottee and the person whose premises were requisitioned. But s. 9A has been deleted and the person to whom the requisitioned premises are allotted continues to hold them as a mere licensee from Government under sub-s. (3) of s. 8B.

We, therefore, think that an allottee of the requisitioned premises has no *locus standi* in the proceedings before the Compensation Officer and has no right to file an appeal under s. 8 of the Bombay Land Requisition Act against an order passed by the Compensation Officer.

We must, therefore, hold that the present appeal which has been filed by the allottee is incompetent and must, therefore, dismiss it with costs.

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL

1952
 July 8

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.
 EBRAHIM ABBOKAR AND ANOTHER, APPELLANTS (ORIGINAL PETITIONERS) v. U. M. MIRCHANDANI, RESPONDENT.*

Administration of Evacuee Property Act (XXXI of 1950), ss. 2 (d) (i), 2 (d) (ii), 7, 24, 25—Order made by the Deputy Custodian declaring petitioners evacuees under s. 2 (d) (i) and s. 2 (d) (iii)—Petitioner's appeals to District Judge and to the Custodian—Whether appeal lies to the Custodian.

The Deputy Custodian passed an order under s. 7 of the Administration of Evacuee Property Act, 1950, declaring the properties of the Appellants as evacuee properties and holding that they were evacuees within the meaning of both s. 2 (d) (i) and s. 2 (d) (iii). The Appellants preferred an appeal from the order of the Custodian to the District Judge. They also preferred an appeal to the Custodian without prejudice to their contention that no appeal lay to the Custodian. When the

* O. C. J. App. No. 70 of 1952; Misc. Petition No. 87 of 1952.