

26th. June, 1953.

Judges :

H.H. Dr. L. A. Camilleri, LL.D., *Chief Justice*;
The Hon. Mr. Justice Dr. A.J. Montanaro Gauci, LL.D.
The Hon. Mr. Justice Dr. W. Harding, B.Litt., LL.D.
Andrew Francis Joseph Grant *no. versus* Chev. Erik Golkoher *no.*

**Emergency Compensation Board — Jurisdiction —
Requisition — Judgment — Nullity — Appeal —
Reg. 59 of the Malta Defence Regulations 1942 —
Compensation (Emergency) Regulations 1943 —
Government Notice 326 of 1943.**

According to the Malta Defence Regulations, no statutory appeal lies from a decision of the Emergency Compensation Board. This, however, does not mean that the Board is altogether free from liability to review by the Courts of Law.

That Board exercises judicial functions; because it has the power to decide a question of legal right in a dispute between parties involving the finding of facts, and the application of the law to those facts.

But the control of the Courts of Law over the decisions of the Emergency Compensation Board is limited to the research whether there is anything "ultra vires" in the decision, or whether the rules of natural justice have been infringed.

In the case of premises which were requisitioned before the enactment of art. 59 of the Malta Defence Regulations by Government Notice 326/1942, the assessment of compensation by the Board remained

governed by these Regulations, which imposed no limitation with regard to the component elements of the compensation assessable by the Board; and consequently that assessment was left in the discretion of the Board, which could even take into consideration the element of damage in the assessment of the rental compensation; and that discretion cannot be revised by the ordinary Court. But when that regulation 59 was re-enacted in 1943, a set of rules was laid down to guide the Board in such assessment; which rules applied only to cases of compensation for the possession, requisition or works ordered after the date of enactment.

The Board, therefore, cannot apply regulation 59, as amended in 1943, to cases of compensation arising before that enactment. Such an application is a wrong application of the law.

But a wrong application of the law, which does not apply to the case, is not an act of excess of jurisdiction, and does not render the judgment null and void. Such a wrong application of the law would lead to a decision which is based on an error of law, which has nothing to do with jurisdiction. And consequently, a decision of the Emergency Compensation Board which applies to a case of assessment of compensation arising before the enactment of the Compensation (Emergency) Regulations of 1943 the rules set out by the latter Regulations, is not a case of excess of jurisdiction on the part of the Board; and is not subject to revision by the ordinary Courts on that ground.

Nor is a decision of that Board subject to revision by the ordinary Courts as being given "ultra vires" on the ground of its assessing an enhanced compensation, as is the case in which a compensation is awarded for a period longer than that for which it is claimed.

This is an appeal from a judgment of the Commercial Court;

Plaintiff, by writ-of-summons lodged in Her Majesty's Commercial Court, premised that defendant had applied to the Emergency Compensation Board for the assessment of compensation due to him for the use by the Admiralty of the slipway and store at Hay Wharf, Marsamxett, which had been requisitioned on the 13th. October, 1941, and released on the 1st. October, 1946; and that the Emergency Board, applying the Emergency Compensation Regulations, 1943,

assessed the rent claimed for the use of the slipway and store and workshop at £900 per annum, from the 9th. July, 1941, to the 1st. October, 1946;

He further premised that the said compensation was not arrived at on the basis of the fair rent of the land immediately before the requisition, as required by regulation 3 (1) (a), but also on the basis of the damages which the defendant claimed to have been caused on the land, and on the basis of compensation for alleged works carried out in the land, in such a way as to increase the fair rent of the land in question;

He premised also that such considerations are not to have any bearing on the assessment of rent due to defendant — reg. 3 (1) (a), as was wrongly held by the Board, and thus the Emergency Compensation Board wrongly applied the law;

Plaintiff also contended that defendant's claim before the Board was limited to the assessment of the compensation for the use of the commodities requisitioned, without any reference to the damages of works done on the land, so much so that, before the case before the Emergency Compensation Board, the parties had come to an arrangement on the matter of the alleged damages, and defendant accepted the improvements left by the Admiralty in full and final settlement of all the claims against the Admiralty for all damages and losses suffered in the land, without prejudice only to the rent of the slipway and store; and that further defendant paid to the Admiralty, as supplementary compensation, the sum of £65 for the same purpose;

Plaintiff further contended that thus the decision of the Emergency Compensation Board of the 14th. August, 1952, was given in contravention of the Regulations which fix the jurisdiction of the Board, and was "ultra petita"; because it allowed rent from the 9th. July, 1941, while the claim was for rent from the 13th. October, 1941;

Plaintiff, therefore, requested that the said decision of the Emergency Compensation Board of the 14th. August, 1952, be annulled by the Court, the parties being restored

"in integrum" to the juridical position in which they were before the said decision. With costs;

In his statement of defence defendant pleaded that the decisions of the Emergency Compensation Board are final, and the claim in the writ-of-summons has for its aim an appeal, or a rehearing; and he, therefore, submitted that the Court lacked the necessary competence to take cognisance of the case;

By judgment of the 29th. January, 1953, the Commercial Court dismissed the claim, with costs; having relied on the following reasons;

That the facts which gave rise to the case may be briefly stated as follows: On the 9th. July, 1941, the Vice-Admiral, Malta, acting on behalf of His Excellency the Governor and Commander-in-Chief, Malta, under Defence Regulations 1939, Part VI, paragraph 55, directed the National Steam Ferry Boat Company to hand over to him immediately the slipway and adjacent workshops near Misida Bastion for Admiralty purposes. This property was surrendered on the 1st. day of October, 1946. The parties failed to reach an agreement as regards the rental compensation payable by the Admiralty for the occupation of the aforesaid property, and on the 19th. August, 1946, the defendant, acting on behalf of the National Steam Ferry Boat Company, applied to the Board above mentioned for the assessment of that compensation. The Board considered that the defendant was entitled to have included, in the rental compensation recoverable from the plaintiff, all the damages which he suffered in consequence of the requisition, and that the compensation for those damages should be in the form of rent payable only during the period of the requisition; and on the 14th. August, 1952, awarded that the plaintiff, in his afore mentioned official capacity, do pay to the defendant nomine the sum of £900 per annum as from the 9th. July, 1941, till the first day of October, 1946, "for rent of the slipway, warehouse and workshop aforesaid, as enhanced owing to all the damages and disadvantages above referred to". In its decision the Board quoted section 3 (1) (a) and (b) and section 4 (1)

of the Compensation (Emergency) Regulations, 1943 ;

Section 3 (1) (a) and (b) lays down :— "The compensation payable under these Regulations in respect of the taking possession of any land, shall be the aggregate of the following sums, that is to say :— (a) A sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained in the exercise of emergency powers, under a lease granted immediately before the beginning of that period ; (b) A sum equal to the cost of making good any damage to the land which may have occurred during the period for which possession thereof is retained (except in so far as the damage has been made good during that period by a person acting on behalf of a competent authority), no account being taken of fair wear and tear, or of damage caused by war operations" ;

Section 4 (1) lays down :— "Compensation under these Regulations in respect of the doing of any work on any land, shall be payable only if the annual value of the land is diminished by reason of the doing of the works" ;

The following are the main heads of criticism which the plaintiff submitted in support of his claim and contentions :—

1. That the Board has no jurisdiction to apply, and wrongly applied, the Compensation (Emergency) Regulations, 1943 ; because those Regulations only apply to cases where possession of the land was taken after the date of the same Regulations, which were made on the 30th. June, 1943 (Government Gazette of the 30th. June, 1943) ; whilst possession of defendant's slipway and workshops or store was taken before that date ;

2. That in so far, however, as the 1943 Regulations may be held to be applicable by the Board, because, whilst according to section 3 (1) (a) the rent which the Board may award is to be settled on the basis of the reasonable rent of the land under a lease granted immediately before the date on which possession thereof was taken, and in accordance with the provision of section 3 (1) (b) damages are to be compensated by the award of a sum equal to the cost of

making good the damages, and according to the proviso in (ii) of section 3 (1) that sum is not to exceed the value of the land when possession thereof was taken — which means that this sum cannot but be a lump one, and not recurrent—the Board did not fix the rent on the basis of the reasonable rent, as aforesaid, but in awarding the rent of £900 per annum, took into consideration damages consequent upon the requisition, and also took into account work done on the land, granting damages which were not claimed, and merging the compensation thereof with that awarded for rent — a thing that cannot be done if the sum payable for damages is not to exceed the value of the land when taken over, as required by the above-quoted proviso in section 3 (1) ;

3. That the proceedings before the Board were for the payment of compensation for the use by the Admiralty of the slipway and store, and the defendant could not, honestly, have claimed compensation for damages, as he had already received compensation to the premises, in full and final settlement of all claims arising out of the occupation ;

As a matter of fact, on the 19th. July, 1946, the defendant, for the National Steam Ferry Boat Company, signed a declaration of the following tenor:— "I, the undersigned, E.W. Gollcher, on behalf of the National Steam Ferry Boat Company, hereby declare to accept, upon completion by the Admiralty, the work and replacements as detailed in the attached schedule, in so far as they concern the Admiralty, in full and final settlement of all claims against the Admiralty arising out of naval occupation of Hay Wharf slipway and store at rear, previously requisitioned by the Admiralty, for loss of, or damage to fixtures, fittings, chattels or any part of the slipway or store, with the exception of items 49 and 50, for which a fair and reasonable occupation shall be paid in lieu. It is understood that this declaration does not, in any way, prejudice my right to recover from the Admiralty rental compensation for the occupation of this slipway and store" (page 21, record of these proceedings) ;

This document was not produced before the Emergency Compensation Board. The reason given by plaintiff's learned

counsel for not producing it, is that the application before the Board was only for the assessment of compensation for the rent of the slipway and of the store, and not also for damages (page 25 of the record of these proceedings). It is well, however, to point out since now that the record of the proceedings before the Emergency Compensation Board shows that the claimant, that is to say the defendant in this case, claimed that the compensation for which he had applied be assessed "having regard to the hardship and to the loss suffered with regard to the ferries, to the goodwill, and to the running of the public service in general" — a fact of which the plaintiff could not have been, and was not, unaware;

The objection raised by the defendant to the plaintiff's claims is that the same aim at an appeal from the decision of the Emergency Compensation Board, or at a re-hearing of the case before the Board; whose decisions are, however, final;

This Court carefully examined the record of the proceedings before the Emergency Compensation Board and the documents produced in support of the claims and defences, read the written submissions made by the plaintiff and by the defendant, and made the following considerations;

Paragraph 3 of Regulation 59 of the Malta Defence Regulations lays down that the decision or award of the Emergency Compensation Board "shall in all cases be final". No statutory appeal therefore, lies from a decision of that Board. This, however, does not mean that the Board is altogether free from liability to review by the Courts of Law;

The Emergency Compensation Board, like the General Claims Tribunal established for the same object by the Compensation Defence Act, 1939, which is the source of the Malta Defence Regulations, 1939, exercises judicial functions; because it has the power to decide a question of legal right in a dispute between parties involving the finding of facts and the application of the law to those facts. It is often difficult to distinguish clearly between quasi-judicial functions and those which are strictly judicial. Wade and Philips, on this point, state:— "In general, it may be said that a power in-

volves a judicial element whenever it involves the decision of a dispute. When the decision primarily involves the application of law to facts, it is a judicial process. When the final decision primarily involves an exercise of discretion based on policy, it is a quasi-judicial process" (Wade and Philips, Constitutional Law, Longman's, New Impression 1952, page 274);

When no statutory right of appeal is given from these special or administrative tribunals, their decisions are liable to review by the Courts of Law only on purely technical grounds, such as lack of jurisdiction or want of "natural justice". Wade and Philips state:— "Unless a statute provides for an appeal, the jurisdiction of the High Court over Administrative Tribunals is confined to the control of excess of jurisdiction and the enforcement of the rules of natural justice" (page 320). And Robson, in his book on "Justice and Administrative Law" (Stevens 1951), states:— "A statutory right of appeal is seldom given from an administrative tribunal to an ordinary Court; so, normally, the only recourse is to the supervisory jurisdiction of the High Court. This can be invoked only if the appellant can challenge the jurisdiction, the procedure, or the conduct of the tribunal" (page 529);

Therefore, in the present case, where the decision of the Emergency Compensation Board, which is being challenged, is final, because there is no statutory appeal from it, the control of this Court is limited to the research whether there is anything in it "ultra vires", or whether the rules of natural justice have been infringed";

The rules of natural justice denote certain principles which must be followed by all who discharge judicial functions. These are that a man must not be judge in his own cause and that both parties must be heard. With respect to this point, Robson states:— "It was said, in one case, that it is impossible to lay down the requirements of natural justice; but the phrase is actually employed to denote two or

three elementary principles which, according to English ideas, must be followed by all who discharge judicial functions. Thus, it is against natural justice to arrive at a decision before both parties have had an opportunity of stating their case. No one must be condemned unheard". And it is stated in Halsbury's Laws of England (page 478) :— "They (body or persons exercising judicial or quasi-judicial functions) must have due regard to the dictates of natural justice; that is to say, the members of the tribunal must not be judges in their own case, or have any interest or bias in the matter; and each party must be given an opportunity of stating his case" (Vol. XXVI) ;

The application of the "ultra vires" rule is the following :— "When an act is done in excess of power, or where jurisdiction to adjudicate upon a dispute is plainly excluded" (Wade and Philips, page 288) ;

The plaintiff does not complain that the rules of natural justice have been infringed. It is well to recall at this point that during the hearing of this case, his Counsel submitted that the above mentioned declaration by the defendant with regard to damages was not produced before the Board, because the application before the Board was not for damages, but only for the assessment of rental compensation. That submission might perhaps be taken to suggest that the plaintiff was not given the opportunity of being heard on the question of damages. It has already been pointed out, however, that the plaintiff had full knowledge of the fact that the defendant asked that compensation be assessed having regard to the damage he alleged to have suffered. As a matter of fact, in his written submissions before the Board (page 76), the plaintiff objected to that request, pointing out that "no damage was caused to the premises and no sum is due in respect of such damage. On the other hand, as already stated, the Admiralty expended on the land a sum exceeding £20,000". The plaintiff, therefore, cannot complain that he was not given the opportunity of being heard on that issue. Further, as may be seen from the written submissions which the plaintiff has made before this Court (page 46), this ac-

tion is not based on the violation by the Board of any rule of natural justice, but it is based merely on the alleged fact that the Board exceeded its jurisdiction; indeed, plaintiff's first submission is of the following tenor:— "This is not an appeal from the decision of the Emergency Compensation Board, nor it is a re-hearing of the case, but a request that the decision of the Board be quashed on the grounds that the Board wrongly applied the law whereby it was constituted, thus exceeding its powers and consequently deciding "ultra vires";

With regard to this claim, — that the Board acted "ultra vires" — it is well to point out that the premises were requisitioned in 1941, before the re-enactment of regulation 59 of the Malta Defence Regulations in virtue of Government Notice no. 326 of 1943, and before the enactment of the Compensation (Emergency) Regulations, 1943, which consequently do not apply to the present case, as they apply only to the requisitions made after the 30th. June, 1943. This may be evinced from the words "where after the date hereof" in the second paragraph of the said Regulations;

The present case, therefore, falls under the generic provision of Regulation 59 of the Malta Defence Regulations, 1939, which imposed no limitation whatsoever, as the Compensation (Emergency) Regulations, 1943, do, with regard to the component elements of the compensation, and consequently left the assessment of the compensation in the discretion of the Board, which could even take into consideration the element of damage in the assessment of the rental compensation. That discretion cannot be reviewed by the ordinary courts, because they cannot substitute their own discretion for that of the body to whom the discretion had been entrusted (Wade and Philips, pages 276-278). The fact that the Board quoted in its decision the section above referred to of the Compensation (Emergency) Regulations, 1943, does not per se render "ultra vires" that decision, which is within the limits of the law in force at the time of the requisition, and which is, therefore, applicable to the case for the reasons which have been given above. The fact that laws are quoted

which are not applicable, or even the application of laws which do not apply, does not for itself alone bring an excess of jurisdiction. That might be a mistake in law, a wrong application or conclusion in point of law, against which, however, there is no remedy; for it is now settled law that mistakes or wrong conclusions on the facts, or wrong applications or conclusions on points of law, do not authorise the ordinary Courts to interfere, so long as the special tribunal does not exceed its jurisdiction (Robson, pages 528-530);

For the reasons given above, the Emergency Compensation Board did not exceed its jurisdiction in the present case;

Another point of criticism of the Board's decision, which the plaintiff submitted in support of his contentions, is that, while compensation was claimed with effect from the 18th. October, 1941, it was granted with effect from the 9th. July, 1941, and consequently that decision was given in excess of the demand. With regard to this point of criticism it is well to note that, in the first place, that requisition order was made on the 9th. July, 1941, but the premises were not taken over before the 18th. October, 1941 (pages 55 and 60 of the record of the proceedings before the Emergency Compensation Board). But even if the Board granted compensation for a period longer than that for which possession of the land was retained, and longer than that for which it was claimed, and its decision is consequently faulty in that respect, this Court has no supervisory jurisdiction on that ground. "It should be clearly understood", Lord Justice Denning writes, "that, although the High Court has some degree of control over the tribunals, it is not such as to enable it to correct any of the faults or injustices which may arise, unless the statute gives an appeal. The High Court proceeds on the footing that, if Parliament has thought fit to entrust jurisdiction on all these new matters to new tribunals, without any appeal from them, then, so long as the tribunals do not exceed or abuse their jurisdiction, the High Court should not interfere with them. If a tribunal should come to a wrong conclusion on the facts, or, indeed, if there is no evidence on which it could come to its conclusion, the High Court cannot inter-

tere; nor, if the tribunal come to a wrong conclusion in point of law, can the High Court interfere. So long as the tribunal keeps within its jurisdiction, and is not guilty of any flagrantly unjust procedure, its decision is final both on facts and law" (Robson, page 528) ;

Plaintiff entered an appeal to this Court from the said judgment of the Commercial Court of the 29th. January, 1953, and by petition prayed that the judgment aforesaid be revoked, and that his claim be allowed, with all costs against defendant ;

In his reply, defendant pleaded that the general terms of his application before the Board included rental and damages, which latter were not claimed as such, but were mentioned to be taken into account in fixing the rent ; that the annulment of the Board's ruling is being asked on the strength of a document which had never been produced before the Court, and the contents of which is controversial ; the Court defined on which grounds a ruling of the Board can be annulled, and the one on which plaintiff relied is absent ; that the rulings of the Board are final ; and, therefore, he requested that appellant's petition be disallowed ; with costs ;

This Court has perused the records of this case as well as those of the matter determined by the Emergency Compensation Board and mentioned in the summons, and heard counsels on both sides ;

The grounds on which appellant bases his claim are that the Emergency Compensation Board, by applying the Compensation (Emergency) Regulations, 1943, to the matter in question, exceeded its jurisdiction ; and that, by applying the wrong provisions of the Regulations, it exceeded its restricted powers. In the summons plaintiff also contended that the Board's decision was also "ultra petita" ;

It is quite correct to say that the said Board had a restricted jurisdiction which it could not overstep ; that jurisdiction is derived from Regulation 59 of the Malta Defence Regulations 1939. Before it was amended by Government Notice 326 of 1943, dated 30th. June, 1943, Regulation 59 empowered the Governor to appoint a Board "for the purpose

of determining the amount of any compensation payable in consequence of the occupation of any land, building or other immovable property, or in consequence of the requisition of animals, vehicles, ships, boats, articles of food, and other personal property whatsoever, belonging to any person and required in connection with the defence of Malta.....” It further stated that “the decision or award of the Board shall in all cases be final”. By the said Government Notice 326 of 1943, that regulation was amended by the substitution of a new one, which stated that:— “For the purpose of determining whether any compensation is payable in respect of the taking of possession of land, the requisition or acquisition of property other than land, or the doing of work on land, and of determining the amount of such compensation, the Governor shall appoint an Emergency Compensation Board.....” Under both Regulations the Board’s jurisdiction comprised the determining of the amount payable; whilst under the regulation of 1939 it extended to the determination also whether any compensation is payable at all; and within those limits the Board had the power to hear and determine cases of compensation. Under the Regulations of 1939 there were no set rules to guide the Board. Such rules were only enacted on the 30th. June, 1943. By subsection 2 of Regulation 59, as amended in 1943, it was enacted that “in determining the amount of compensation, the Board shall apply the Compensation (Emergency) Regulations, 1943, or such other Regulations as may from time to time be in force”. But by subsection 1 of section 2 of the Regulations of 1943, the latter were made applicable only to cases of compensation for the possession, requisition, or works, ordered after the date of their enactment;

Consequently, the Board could not apply to the matter in question that Regulation of 1943 as such, although in the absence of other definite rules and in the exercise of its discretion it could apply to that matter some of, or all, the criteria laid down in those Rules. To apply those Rules as such was to apply the wrong law and to base the decision on an error of law. This, however, has nothing to do with ju-

risdiction, which concerns the power of the Board to take cognisance of, hear and determine the case. An error of law does not render the judgment null and void per se. It is not a case in which the plea of nullity is admissible in terms of article 792 of the Code of Civil Procedure, which by Regulation 59 (6) of the Malta Defence Regulations 1939, as amended in 1943, and by Government Notice 553 of 1939, is applicable to the Board. Article 814 of the Code of Civil Procedure, the provisions of which, as far as practicable, are applicable to the Board, makes a marked distinction between excess of jurisdiction and wrong application of the law; and for the latter case it makes provision for a re-hearing of the case; but in no part of the Code is provision made for the annulment of the decision;

The same considerations apply to the plea of "ultra petita" for having the Board awarded an enhanced rent. This Court, however, is unable to accept appellant's contention that the Board exceeded its terms of reference and decided "ultra petita". The concluding part of the award does not seem to go beyond the original claim;

The Court, therefore, dismisses plaintiff's appeal and affirms the judgment aforesaid of the Commercial Court of the 29th. January, 1953; with costs against appellant.
