
(1986) 11 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 120 of 1976

Abdulla Kadar Husseinbhai Lakdawala	APPELLANT
Vs	
Special Land Acquisition Officer, Thane	RESPONDENT

Date of Decision : 28-11-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 6, 9, 9(1)

Citation : AIR 1988 Bom 18

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : H.A. Solkar, for the Appellant; K.K. Tated, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal arises out of the land acquisition proceedings.

The appellant was the owner of the land in question viz. an area of 10 gunthas out of survey No. 150/2 (part) situate at village Kausa, District : Thane near Mumbra. It is unnecessary to set out the dates of Sections 4 and 6 Notifications. There is no dispute that though the notifications were duly published. The only question is as to whether the appellant-claimant received the notice u/s 9 of the Land Acquisition Act to enable him to make the claim for compensation before the Land Acquisition Officer. According to the Special Land Acquisition Officer, the notice in respect of the proceedings u/s 9 of the Land Acquisition Act which was fixed for hearing on 9-8-1978 was served upon the appellant-claimant on 25-7-1968. Further, according to the Land Acquisition Officer, no claim was made by the appellant-claimant before the Special Land Acquisition Officer by or on behalf of the claimant at any time before the making of the award, let apart within the time prescribed by the Limitation Act. He, therefore, proceeded to fix the compensation in respect of the land being acquired ex parte and the total compensation of Rs. 2887.25 Ps. was awarded by him by his award which was passed, signed and filed by him on 6-1-1971. It is claimed that the notice of the

Award was served upon the claimant on 23-3-1971. On 27-4-1971 the claimant filed an application u/s 18 of the Land Acquisition Act for reference to the Court for enhancement of the Compensation. Question that arose in the lower Court was as to whether the reference was competent having regard to the fact that the claimant had failed to make any claim before the Land Acquisition Officer within the time prescribed by law.

2. The contention of the claimant was that he never received the notice from the Talati at all. According to him, his signature was taken on some paper. The notice itself was never delivered to him. According to him, further, he resides permanently in Bombay. No notice was served upon him on his residential address at Bombay although that residential address was very much known to the Talati. That apart, according to the claimant on 26th and 27th July, 1968 he happened to be present in village Kausa and he was made by the Talati to act as a pancha in connection with some other land and he was made to believe that his signature was to be made on some Panchnama. According to him no notice was served upon him at all.

3. In the proceedings that ensued before the Court, evidence was led on behalf of the Government to prove the service of the notice contemplated by Section 9(3) of the Land Acquisition Act upon the claimant on 25-7-1968 itself. For proving this contention the Talati whose work was to serve the notice was examined on behalf of the Special Land Acquisition Officer. In his evidence he stated, that the original notice was the one which was produced at Exhibit 33. It was dated 16-4-1968 and the date of hearing fixed as per the notice was 7-6-1968. The Talati stated that the notice could not be served within time and hence the date of hearing was extended and was fixed on 9-8-1968. According to him the notice in respect of the extended date was served by him upon the claimant on 26-7-1968. He stated that he personally gave notice to the claimant and wrote one statement and obtained the signature of the claimant on the same which statement was produced by him at Exhibit 32. He also stated that he informed the claimant to remain present before the Special Land Acquisition Officer in connection with these proceedings. He also stated that he gave the original notice to the claimant.

In cross-examination he stated that he did not obtain signature of the claimant as regards service of the notice on the copy of the notice but that it was his practice to take signature on separate papers. He further stated that so far as Exhibit 33, the earlier notice was concerned, the time for hearing to be mentioned in the notice was extended till 7-6-1968, that the claimant had met him but all the same he did not serve upon him the notice before the expiry of that period and hence he gave another notice to him in the prescribed form but he stated further that only the copy of that notice served on the claimant and that the claimant's signature was not maintained by him.

4. In paragraph 5 of his deposition he stated that his office was at Mumbra and that he had called the claimant to his office for serving the notice upon him.

5 . The entire evidence of the Talati appears to be quite unnatural and somewhat curious. It defies understanding as to why and how he could have called the claimant to his office for serving notice upon him. Normally speaking, such is not the practice. Mr. Solkar invited my attention to the provisions of Section 9(4) of the Act which provide that in case the claimant is not residing within the revenue district in which the land is situate, the notice has to be sent to the claimant by post in a letter addressed to him on at his last known residence, address or place of business etc. If the claimant was not residing at Kausa, the notice would have been served upon him on his Bombay address. It is not the Talati's case that the claimant's Bombay address was not known to him. Evidence has come on record to show that the claimant was in the habit of visiting Mumbra, after about two or four days and in fact the Talati had taken his signature on certain Panchnamas in respect of some other lands.

6. But if there is any doubt about the unnatural character of the Talati's evidence, it is more or less resolved by the claimant's evidence. The claimant has explained the circumstances in which his signature appears on the statement, Exhibit 32. He stated in his evidence that no doubt, he put his signature on the said paper, Exhibit 30 but while putting his signature no notice or document was handed over to him at all. He stated that the Talati wrote something on a piece of paper and told him to attend his office on 9-8-1968 and thereafter obtained his signature on the paper. He stated that what he understood to mean was that the Talati had called him to his office at Mumbra but he stated it once again that the notice as such was not received by him and that was the reason why he did not file any application in respect of the compensation. He further stated that he could read Marathi and Devnagari script to the extent that he could read the headings in the newspaper.

7. Now on this evidence there is next to no cross-examination. The claimant had stated that though his signature was taken on some statement which he did not understand, no notice or no document as such was handed over to him. All sorts of questions are sought to be asked to the claimant, such as, as to whether he was wanting to file the claim or not. But as regards the claimant's statement that no notice or document as such was served upon him, there is no cross-examination at all. The claimant admitted that he was present at Mumbra on 26-7-1968 as also on 27-7-1968. In fact it was in his cross-examination that an admission was taken from him that on 27-7-1968 he had signed one Panchnama which was produced at Exhibit 35 and which was in relation to the land of the adjoining land owner. He stated that even a Panchnama was signed by him without reading its contents. Cross-examination was directed to the question as to whether the statement, Exhibit 38 was read out to him or not and as to whether the claimant asked about the contents of Exhibit 32 or not; but no cross-examination has been directed on the question as to whether the claimant's contention that no notice was delivered to him where his signature was taken on the document, Exhibit 32.

8. This is the state of the evidence on record on the basis of which the Court is required to decide as to whether the claimant's claim for enhanced compensation should be throttled on the ground that he has not preferred his claim after receipt of the notice. It goes without saying that if the notice was received by the claimant on 26-7-1978 he would not be entitled to any enhanced compensation at all by recourse to the machinery of reference to the Court. On the other hand, if the claimant had not received the notice as alleged by him, the question of limitation does not arise at all and hence, the Court shall have to apply its mind to the question as to whether the compensation awarded by the Land Acquisition Officer should be enhanced or not.

9. To my mind, in the instant case, there is reason to believe that the Talati's evidence is not quite acceptable. In the first place we find that the statement, Exhibit 32 is itself of somewhat unnatural character. It bears the date 26-7-1968 but the date itself discloses over-writing and re-writing. The Talati has not explained why if he had served the notice on 26-7-1968, the date should be of such a suspicious character. The Court has mentioned the date of service to be 25-7-1968. Further, there is practically no cross-examination of the claimant when he stated that though his signature was taken on some statement scribbled by the Talati, no notice or document as such was served upon him. In the absence of any cross-examination on the point, there is no reason why his statement should not be accepted. This is particularly so because normally speaking, there is no reason why a claimant would not file a claim for compensation. In the claimant's cross-examination itself the position is elicited by the advocate for the Government, that the claimant had always the desire to make the claim. In the cross-examination itself this position is elicited viz. that the claimant always wanted to make the claim and he was just waiting for the notice to be received from the Land Acquisition Officer. If this is the position, there is no reason why the claimant would not make the claim. For making the claim no Court fee is required to be paid. It is not disputed that the notice of the award was received by the claimant, he made application for reference to the Court and for making such application he was required to pay Court fee. If he was prepared to pay Court fee for such reference, he would definitely make an application for claim when no such Court fee was payable.

10. Mr. Tated appearing for the Government contended that the document, Exhibit 32 itself shows that the claimant had signed the statement. The fact that he signed is not disputed at all. Mr. Tated contended that the statement itself is to the effect that the hearing in question of fixation of compensation was fixed on 9-8-1968 and that the presence of the claimant on that date was necessary. But the notice contemplated by Sub-section (3) read with Sub-section (1) of Section 9 of the Act is not only as regards the hearing on the question of compensation. In this connection each of the provisions of Section 9 of the Act is of very much relevance. Section 9(1) reads as follows : --

"9(1). The Collector shall then cause public notice to be given at convenient

places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him."

From this it would be seen that as per Clause (1) of Section 9 the public notice that is required to be given must state that the claim to compensation for all interest in such land may be made to the Collector (whose power is delegated to the Land Acquisition Officer). Under Sub-section (2) of Section 9 the notice has to state the particulars of the land and must require the persons interested in the land to appear before the Collector, at a time and place therein mentioned (such time not being earlier than 15 days after the date of publication of the notice) and to state the nature of their respective interest in the land and the amount of their claim to compensation. Under Sub-section (3) notice to the same effect has to be served upon the persons interested in the land.

Now the contention of Mr. Tated is that all that is required to be done by Section 9 is to give intimation to the claimant as regards the hearing of the question of compensation. This argument is sought to be supported by a judgment of the Supreme Court under the Arbitration Act and I will presently deal with this argument; but at this stage what is required to be noted is that even if the service of notice as such is not mandatory as argued by the learned Advocate on the ground that mere intimation of the same is enough, point is that the intimation must be not about the date of hearing only; it must be also as regards the claim to be lodged by the claimant. Sub-sections (1) and (2) of the said Section 9 set out above leave no room for doubt about this position. The claimant is required to be informed not only the date of hearing but he is also required to be informed that he must make his claim for compensation within the time mentioned in the notice. If such intimation is not given to him then that intimation cannot partake the character of the notice contemplated by Sub-sections (1) to (3) of Section 9 of the Act.

11. Moreover, what is somewhat significant in this case is that according to the Court the notice was served on 25-7-1968. I asked the learned Counsel as to from where the Court has got this date. For an answer I drew a blank. But if we turn to the statement, Exhibit 32, we find that the date mentioned is 26-7-1968. As mentioned above the date itself is written in somewhat suspicious manner in that it involves a good deal of re-writing and over-writing. This over-writing is also not explained by the Talati. But even assuming that this notice was served upon the claimant on 26-7-1968 the point is that it is not a clear 15 days notice. I have emphasised above the significance of the words, "15 days after the date of publication of the notice." It means that the notice must be served upon the claimant on such a date that a clear period of 15 days must elapse between the date of the service of the notice and the date of the hearing of the question of compensation. In the instant case, if the notice was served upon on 26-7-1968, the first day viz. 26-7-1968, shall have to be excluded while computing the period of 15 days and in that case the date of hearing falls on the 14th day. Even

assuming that we do not exclude that first date, viz. 26-7-1968, the date of hearing falls on the" 15th day. This means that the date of hearing is not after the period of 15th day. If that is the position, then even assuming that the notice was served upon the claimant on 26-7-68 still there is no due compliance with the requirement of Section 9 of the Land Acquisition Act.

12. Let me now deal with Mr. Tated's contention relating to the question of service of notice. Contention is that mere intimation is enough and when the claimants read the statement written by the Talati, Exhibit 32 and obtained the claimant's signature on the same, the claimant must be deemed to have received the intimation about the date of hearing and that this is sufficient compliance with the requirements of service of the notice. In support of this contention reliance is placed upon the judgment of the Supreme Court in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others,

The Supreme Court in that case was dealing with the provisions of Section 158 of the Limitation Act which deals with the application which provides the period of limitation for application to set aside the Award under the Arbitration Act and in that case, the date of service of notice was construed to mean the date of intimation had by the claimant.

To my mind, the analogy of the requirement of the Arbitration Act is not at all correct. When a citizen's property is being acquired by the coercive procedure, each of the conditions precedent for acquisition has got to be strictly complied with. When the law requires that the notice to be served upon the claimant, it is not enough that he should be merely informed about it. The notice must be received by him in the documentary form. He must get the notice which he may be able to show to his Legal Adviser for the purpose of getting legal advice. There can exist no analogy between the proceedings in the Arbitration Act and the proceedings in the Land Acquisition Act.

13. But that apart there exists no such provision under the Arbitration Act dealing with the service of notice under that Act as is to be found in Sub-section (2) of the Land Acquisition Act. Sub-section (2) of the Act requires a notice to be in the particular form. It injuncts that by the notice, the claimant must be informed that he should lodge his claim for compensation, i.e. to say, that he should quantify the claim for compensation within 15 days, and that there has got to elapse a clear 15 days" time between the date of service of notice and the date of the hearing of the question.

If we turn to the statement, Exhibit 32 we find that the Tahsildar has followed a peculiar method. Instead of taking the claimant's signature upon a copy of the notice which is in the printed form, he has written in his pwn hand, the following : --

"Shri Abdul Kadar Husseinbhai Lakdawala residing at Kausa. Notice in respect of Survey No. 150/2 gunthas. Court intimation as regards requirements to remain

present in the office of the Special Land Acquisition Officer, Thane on 9-8-1968 at 1 p.m. Dated 26-7-1968." (Date bearing over-writing).

The above is the literal translation of the said statement, Exhibit 32. Even assuming that an intimation is enough and the service of notice is not necessary, still the intimation is only about the date of hearing and the time of hearing. The intimation does not mention that it is for fixation of compensation. The intimation does not require the claimant to lodge his claim or to quantify his claim.

Having regard to these facts, to my mind the authority of the Supreme Court reported in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, can have no bearing upon the question to be considered in this case.

14 . Moreover, apart from the fact that the procedural provisions in respect of the acquisition of land have got to be complied with strictly, in these matters when the claimant's claim is being throttled, the Court must be very much wary, the Government must not be allowed to smother the claim by just a technical plea of limitation. If a plea of technicality is deployed for setting at naught just claims of citizens the Court must be astute to be circumspect to satisfy itself whether the , technical plea has full statutory foundation. In the instant case it has none.

15 . Disagreeing from the view taken by the learned Judge, therefore, I hold that the reference was quite competent. The order passed by the lower Court is, therefore, set aside and the matter is remanded to the lower Court for disposal according to law. Government shall pay the costs of the claimant in respect of this appeal as also in respect of proceedings in the lower Court that has not taken place so far.