

(1954) 12 MAD CK 0009

In the Madras High Court

Case No : Appeal No's. 185 and 211 of 1951

A.P.S. Karuppaiah Nadar

APPELLANT

Vs

Special Dy. Collector for Land Acquisition, Virudhunagar and
Another

RESPONDENT

Date of Decision : 07-12-1954

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25(2), 45, 9(3)

Citation : AIR 1955 Mad 406 : (1955) ILR (Mad) 1207 : (1955) 68 LW 327

Hon'ble Judges : Rajamannar, C.J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : M. Natesh, for the Appellant; Govt. Pleader and V. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala Aiyangar, J.—These are appeals filed by a claimant from the judgment of the Subordinate Judge of Ramanatha-puram at

Madurai with reference to certain land acquisition proceedings and the point raised for consideration is whether the appellant was preclud-ed from

claiming enhanced compensation before the learned Subordinate Judge by reason of the absence of any claim made before the Land Acquisition

Officer.

2. App. No. 185 of 1951 has been filed against a reference u/s 18, Land Acquisition Act, which was numbered as O. P. No. 67 of 1948 on the

file of the Subordinate Judge of Ramanathapuram at Madurai and App. No. 211 of 1951 is directed against the order in O. P. No. 66 of 1948. In

O. P. No. 67 of 1948, the appellant was awarded by the Land Acquisition Officer Rs. 1604-7-3 in 12-3. These figures were based upon the

valuation of the lands at Rs. 24 per cent. The claimant-appellant made an application for reference claiming at the rate of Rs. 500 per cent. The

learned Subordinate Judge has rejected the claim for enhanced compensation by the appellant in these two original petitions on the ground that he

had not made any claim for any particular sum when he appeared before the Land Acquisition Officer in response to a notice u/s 9(3) of the Act.

In consequence of this failure on his part, the provision in Section 25(2) of the Land Acquisition Act was held to be attracted to the appellant's

case and his claim for enhanced compensation was rejected. Hence these appeals.

3. The facts necessary to appreciate the points raised on behalf of the appellant are shortly these; There was a notification u/s 4 of the Act in

respect of the lands sought to be acquired. The appellant appeared before the Land Acquisition Officer u/s 5(A) of the Act and filed a statement

on 28-2-1948 objecting to the acquisition on the ground that these lands need not be acquired as they were required for the purpose of a school.

Subsequently a notice u/s 9(1) was published and an individual notice u/s 9(3) of the Act was addressed to the appellant and was received by his

servant one Kasirajan. In response to this notice, the appellant appeared before the Land Acquisition Officer on 14-6-1948 and promised the

Officer to produce some documents within a few days. Subsequently however he never turned up.

It is now common ground that he did not make, any oral claim regarding the quantum, of the compensation payable for the acquisition on the date

when he appeared before the Officer. Records in this case show that the documents which the appellant promised to produce, had reference to a

dispute as to title to the property being acquired, between the appellant and another. This was all the part that the appellant took before the award.

The officer made an award on 7-7-1948 and the same was served upon the appellant, whereupon within the time limited by Section 18, Land

Acquisition Act, the appellant desired a reference to be made to the Court regarding the quantum of compensation payable to him which he

claimed on the basis of the figure already mentioned.

4. In the statement of claim requiring a reference, the appellant stated in paragraph 10 "The applicant has referred to the value in his objections to

the Special Deputy Collector and no opportunity was afforded to him to produce evidence regarding market value and compensation." It would be

seen that the appellant had made a definite and, positive assertion that he had filed before the officer a claim to compensation based upon a

particular value and there was a complaint that he was not given the opportunity by the Officer to prove his case. When the matter came up before

the Court, counsel on behalf of the Government denied the appellant's allegation regarding his having filed any statements of claim before the

Officer. The files of the Acquisition Officer as well as his notes papers were examined and it was found that there was no trace, of any such claim

having been filed.

Notwithstanding this, the appellant- in his evidence in the case repeated his assertion that he had filed such a statement and went on to add that he

had also a copy of this statement with him. In the circumstances, it is not surprising that he was unable to produce the copy which he admitted was

in his possession. On these facts, the learned Subordinate judge held (1) that there had been proper service of notice u/s 9(3) of the Act by its

being delivered to Kasirajan and (2) that the appellant had omitted without proper, excuse to make a claim before the Land Acquisition Officer

and was consequently debarred u/s 25(2) of the Act from claiming enhanced compensation on the reference. On these conclusions O. P. Nos. 66

and 67 were dismissed.

5. Before us, Mr. Natesan learned counsel for the appellant raised both the above points. His first objection was that on a proper construction of

Section 45 of the Act, the service of the notice on a servant, who is not a member of the claimant's family, is not proper service and the second,

that "if notice u/s 9(3) of the Act were not properly served, the appearance of the claimant before the Acquisition Officer would not amount to a

waiver of the irregularity and that Section 25(2) contemplated the existence of a valid notice to the claimant before it could be invoked.

6. In the view we are taking of the second contention of learned counsel, it is unnecessary for us to finally decide whether the service in the present

case on the servant was a sufficient compliance with Section 45. We will therefore proceed upon the assumption that the service of the notice was

irregular but in response to this irregular notice the appellant did appear before

the officer. It is stated that the claimant was not aware of the irregularity and that consequently"" we cannot draw any presumption against him of an acquiescence in or waiver of, this irregularity. Following on this, two contentions were raised by learned counsel. The first was that there was a duty cast upon the Acquisition Officer to inform the claimant that he should make a claim for a particular amount of compensation and that in the absence of any notice of warning, the provisions of Section 25(2) would not be attracted. It is conceded that there is no provision in the Land Acquisition Act directing this to be done and in the absence of any such provision it would be adding to the terms of"" the statute to import such a duty.

Learned counsel relied for this purpose on the decision of a Bench of this court in - V.S. Subramania Chettiar and Another Vs. State of Madras, .

Having carefully examined it, we find that it does not support any such proposition. The facts of that case were that at the time when the appellant

appeared before the Acquisition Officer in response to a notice u/s 9(3) of the Act, he was still objecting to the acquisition itself and was under the

impression that he had to formulate his claim only after his objections to the acquisition were disposed of. Acting on this belief, the claimant did not

make any claim specifying the amount of compensation for the property acquired. The learned Judges held that the claimant had a just cause for

omitting to make the claim within the meaning, of Section 25(2) of the Act and that the court could, on a consideration of the circumstances, permit

a claim for enhanced compensation to be made at the stage of the reference. The facts of ""the present case do not raise any such mistake or

misapprehension on the part of the appellant who has positively asserted that he did make a claim for compensation though his statement was

found to be false.

The next set of cases relied on are those reported in - N.M. Venkatarama Iyer Vs. Collector of Tanjore, ; and - Tara Prasad Chaliha Vs. Secy. of

State and Another, . In both these, the notice served u/s 9(3) of the Act did not conform to the requirements of the statute which prescribe a

minimum of 15 days between the date of the receipt of the notice and the enquiry. In both these, the learned Judges held that when in response to

such a notice, a claimant appears but has not made any claim, the provisions of

Section 25(2) are not attracted. We do not see how these cases afford any assistance to the appellant. In the first place there is a marked distinction between the irregularity in the manner of service of notice and a non-compliance with the terms of the enactment in regard to the duration of the notice. In the former case if the notice though served on a person not specified in Section 45 actually reaches the claimant and in response to such a notice he appears before the officer, we are of the opinion that the irregularity in the manner of service is completely waived.

It cannot be the law that when the claimant appears in response to such a notice, the officer has to send him back and serve another notice on him conforming to Section 45. The latter type of cases where the minimum duration of notice fixed by the statute is not complied with, stand on an entirely different footing. The statute intends this duration for the purpose of the objector gathering sufficient materials and acquainting himself with what he has to do when he appears in response to the notice. If in such a case an irregularity occurs, it would be for the Government to prove that notwithstanding the non-compliance with the statute, the claimant is not prejudiced. Unless therefore they are able to establish- that the claimant was informed of the steps he has to take and the statements he has to file to assert his rights, the infirmity arising out of the defect continues to afford protection to the claimant. These circumstances however can never apply to cases of defective service as distinguished from defective notice. We are therefore clearly of the opinion that the decisions do not afford any support for the contention so strenuously urged by learned counsel for the appellant,

7. We are further prepared to hold that in the present case where the appellant himself asserts that at the enquiry he did make a claim for compensation at a particular figure, there is sufficient proof of the claimant's knowledge of the steps he has to take to enable him to claim enhanced compensation.

8. The fact that this statement has turned out subsequently to be false has no bearing on the question of the appellant's knowledge of the procedure. We are, therefore, of the opinion that the terms of Section 25(2) are attracted to the present case and that the claimant has either refused or omitted to make a claim without sufficient cause as provided in

Section 25(2) of the Act.

9. In the result, we concur with the conclusion reached by the learned Subordinate Judge. These appeals fail and are dismissed with costs.