
(1948) 04 AHC CK 0020
In the Allahabad High Court

Jagarnath Prasad Shah

APPELLANT

Vs

The Municipal Board

RESPONDENT

Date of Decision : 29-04-1948

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : AIR 1948 All 446

Hon'ble Judges : Malik, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Malik, C.J.—This is a plaintiff's appeal. The plaintiff claims that he has by various transfers become the owner of a plot of land, No. C.K. 37/5,5. To the north of this plot is the Khandhar of one Pandit Tikam Ram Shukla.

2. In the year 1914 land acquisition proceedings were started by the Collector of Benares who wanted to acquire the plots Nos. CK. 37/55 and 37/66 of the Khandhar of Pandit Tikam Ram Shukla for the Municipal Board so that the road known as Chauk and Neechibagh road may be widened. The notification u/s 6, Land Acquisition Act was published in due course and notices were also issued as required by Section 9. u/s 9, Sub-section (3) the Collector was also required to serve notice to the effect that the Government intended to take possession of the land and claims to compensation for interest in such land may be made to him. He also directed that notices be sent to Tikam Ram Shukla and to Mt. Chaurasi who were believed to be the owners of the two plots. The learned Judge has found that in the year 1914 plots Nos. CK. 37/55 and No. 37/56 belonged to Hari Das Rastogi and his brother Narsingh Das. No notices were given to Hari Das Rastogi and Narsingh Das.

3. After issue of notice, the Collector gave his award u/s 11 and orders were passed in accordance with the provisions of the Act vesting the land in the Secretary of State. This suit has been filed for a declaration that the proceedings

under the Land Acquisition Act were null and void as notice u/s 9, Sub-section (8) was not issued to Hari Das RaBtogi and Narsingh Das but was sent only to Mt. Chaurasi and Tikam Ram Shukla.

4. Learned Counsel has relied upon the provisions of Section 9, Sub-section (3). We have looked through the various sections of the Act and barring Section 9 there is no provision in the Act for sending notices to the persons interested. Section 9, Sub-Section (1) talks of a public notice be to given at a convenient place in or near the land which is sic be acquired. Sub-section (2) sets out the sic of such notice. Sub-section (8) is to the effect that the Collector shall serve notice on the occupier, if any, of such land and on all such, persons known or believed to be interested there in.

5. There is no provision which requires that the Collector has to give notice to the real owner and that if a mistake is made in serving notice on the real owner the whole proceedings are vitiated.

6. The object behind Sub-section (3) of Section 9 is that as far as possible the Collector may inform the person who is known or believed to be interested; but it does not require that if the Collector cannot find out the name of the persons who is interested or makes a bona fide mistake the proceedings are vitiated. It would appear from Sub-section (1) that the object of issuing notice is to enable the persons" interested in the land to claim compensation. The persons interested have to state the nature of their respective interests and the amount and particulars of their claims to compensation for such interest and they can also object to the measurements made u/s 8. No right is given u/s 9 to object to the acquisition of the land being made on the ground that the proceedings were either irregular or were, for some other reason, bad. We, therefore, see no force in the contention of learned Counsel that because the Collector did not serve notice on Hari Das Rastogi and Narshingh Das the whole proceedings were vitiated.

7. It is not denied that notice to the public was required under Sub-section (1) of Section 9 and that publication as required u/s 9, Sub-section (1) was made near the land which was to be acquired. It was the duty of Hari Das Rastogi and Narshingh Das, if they so wished, to come forward and file any objections that they could file under Sub-section (2) of Section 9. This point is covered by authority. In *Rahimbux v. Secy. of State* ("38) AIR 1938 Sind. 6 it was held that the Collector"s failure, when it is not wilful or perverse, to serve notice of any such intended acquisition on the occupier or the owner as required by Section 9, Clause (3) and in the manner laid down by Section 45, does not make the subsequent proceedings void.

8. There is nothing in the present case to show that the failure was either wilful or perverse.

9. The view in the earlier case cited can be supported by the decision of the Calcutta sic Court in the cases in *Mhanta Sri Sukdev v. Nripendra Narayan* ("43)

76 C.L.J. 430 and Gangaram Marwari v. Secy. of State ("03) 30 Cal. 576.

10. Learned Counsel has further urged that the land in question could not have been acquired for the purposes of widening the road as the site plan attached to the plaint would show that there were certain shops in between and sic (the shops) were not acquired till the sic 1942 The sic u/s 6 to the effect that the and being acquired for a public purpose is conclusive, and the Courts cannot go behind that notification and hold that the land was not being acquired for a public purpose. There is, therefore, no force in this contention either.

11. In view, however, of the fact that it must be accepted that there was some negligence on the part of the Municipal Board and the Land Acquisition Officer in failing to make proper inquiries, we consider that it would be proper, while dismissing the appeal, to direct the parties to bear their own costs of this appeal.