

---

**(2015) 09 SHI CK 0002**

**In the High Court Of Himachal Pradesh**

**Case No : Regular First Appeal Nos. 150 and 311 of 2005**

Krishan Kumar Upmanyu and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

---

**Date of Decision : 15-09-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 300-A

Land Acquisition Act, 1894 — Section 10, 11, 12, 18, 18(2)(b)

**Citation : (2015) 09 SHI CK 0002**

**Hon'ble Judges : Dharam Chand Chaudhary, J**

**Bench : Single Bench**

**Advocate : Karan Singh Kanwar, for the Appellant; Angrej Kapoor, Advocate, vice Counsel, Advocates for the Respondent**

---

## **Judgement**

Dharam Chand Chaudhary, J—This judgment shall dispose of the present appeal and also RFA No. 311 of 2005 arising out of the judgment and decree dated 29.3.2005, passed by learned Additional District Judge (Presiding Officer, Fast Track Court), Solan, in Case No. 66 FT/1 of 2004/2003, whereby the suit has been decreed partly for the recovery of Rs. 58,000/- in favour of the appellant hereinafter to be referred as "the plaintiff", against the respondents herein (appellants in connected RFA No. 311 of 2005), hereinafter to be referred as "the defendants".

2. The plaintiff is aggrieved by the decree as the suit has not been decreed for the recovery of whole of the suit amount, i.e., Rs. 9,90,000/-, whereas the defendants by the decree for the recovery of Rs. 58,000/- passed against them.

3. The challenge to the impugned judgment and decree in the present appeal is on the grounds inter alia that the trial Court has erred in passing the decree for the recovery of Rs. 58,000/- against the claim of the plaintiff to the tune of Rs. 9,90,000/-. The evidence on record has been misread and misinterpreted. The award of a meager amount towards damages on account of 18 Biswas of land belonging to the plaintiff used for construction of road without following due

process of law allegedly resulted in miscarriage of justice to the plaintiff. Non-issuance of notices mandatory in nature under the Land Acquisition Act, hereinafter to be referred as "the Act", the award is vitiated. Learned trial Court has erred in not placing reliance on the sale instances Ext. PG/1 to PG/4 produced in evidence by the plaintiff because as per these documents the total value of the acquired land comes to Rs. 8,96,310/-. The assessment of only a sum of Rs. 58,000/- as the value of the land in question on the basis of Exts. PD/1 to PD/4 is stated to be not legally sustainable. These documents without there being any evidence, the value attached thereto should have not been relied upon. The sale consideration, i.e., Rs. 9,000/- the plaintiff paid to purchase the suit land has erroneously been taken into consideration while determining the market value of the acquired land. Learned trial Court has also erred in adversely commenting against the plaintiff on account of his failure to produce on record the incomplete sale deed particularly when page No. 2 thereof initially omitted to be placed on record, was also produced because the plaintiff had nothing to gain by withholding of the said page of this document. The acquisition of the land without following due process of law being violative of Article 300-A of the Constitution of India, has not been taken into consideration.

4. On the other hand in the connected appeal, the defendants have questioned the legality and validity of the judgment and decree on the grounds inter alia that the same is wrong, illegal and based on surmises and conjectures. The land bearing Khasra No. 161/154, measuring 6 Bighas 7 Biswas on 3.12.1979, the day when notification under Section 4 of the Act issued, was in the name of one Krishan Singh son of Devi Singh. Out of it, the plaintiff purchased the land to the extent of 1 Bigha 3 Biswas in the year 1980 denoted by Khasra No. 205/161 in the Jamabandi for the year 1981-82. The award was passed by the Collector Land Acquisition on 14.11.1983, however, before that somewhere during the year 1980 out of the land measuring 1 Bigha 3 Biswas purchased by the plaintiff, 18 Biswas of land was acquired by the defendants. As per evidence on record, compensation thereof stood paid to the original owner, i.e., Krishan Singh aforesaid. Since the notification under Section 4 of the Act was issued on 3.12.1979 and was given wide publicity, therefore, the plaintiff could have filed objections before the Land Acquisition Collector. His plea of ignorance, therefore, was liable to be rejected. The trial Court has allegedly overlooked the facts of the case and law applicable. The factum of Krishan Singh, the original owner, was necessary party in the suit, has erroneously been ignored. The suit being bad for non-joinder of necessary party was required to be dismissed. Otherwise also, when the Act is a complete code and the remedy, if any, available to the plaintiff is under the said Act, the suit is not maintainable and the judgment and decree under challenge is bad in law.

5. Now coming to the factual matrix. One Krishan Singh admittedly was the owner of the land measuring 6 Bighas 7 Biswas bearing Khasra No. 161/154. There is no evidence to show that the land measuring 1 Bigha 3 Biswas bearing Khasra No. 205/161 has been purchased by the plaintiff from Krishan Singh out

of the land measuring 6 Bighas 7 Biswas aforesaid. The copy of the sale deed (mark-D) further reveals that khasra number of 1 Bigha 3 Biswas, land purchased by the plaintiff from said Shri Krishan Singh, was 161/154/4/9, new khasra number, as per the copy of field book Ext. PF/1, is 205/161. It is this very khasra number came to be reflected in the Jamabandis for the years 1981-82 and 1986-87 (Annexures-M and N). As per entries below column of remarks in the Jamabandi for the year 1991-92 (Annexure-O), a portion thereof measuring 18 Biswas denoted by Khasra No. 602/205/161/45 was mutated in the name of Central Government consequent upon the acquisition proceedings. Admittedly, 18 Biswas land out of Khasra No. 161/154/4/9 has been acquired for the construction of road. It is even recorded so in the copy of field book Ext. PF/1.

6. Although, as per the claim of the defendants, it is the original owner Shri Krishan Singh has received the compensation qua this land, yet no evidence to this effect has been brought on record and to the contrary the statement of compensation Ext. PF/3 reveals that said Krishan Singh has received compensation to the tune of Rs. 2,864/- in respect of the acquired land bearing Khasra No. 161/154/4/8. There is no iota of evidence that the land in dispute, i.e., 18 Biswas was also part of Khasra No. 161/154/4/8 qua which Krishan Singh had received the compensation.

7. It is the admitted case of the parties that the plaintiff was not served with any notice under Section 9(3) of the Act. He even not joined the further proceedings from that stage onwards till the award announced. He has also not received any compensation. Although, on the day when the notification under Section 4 of the Act was issued, he had no right, title or interest in the suit land as he acquired the suit land by way of sale deed dated 24.12.1980 (mark-D). There is nothing on record to show as to what was the stage of acquisition proceedings on that day. The fact, however, remains that out of the land measuring 1 Bigha 3 Biswas he purchased from Krishan Singh, 18 Biswas have been acquired by the defendants for the public purpose, namely construction of Barog bye-pass road. It is in view of the pleadings of the parties as aforesaid, learned trial Court framed the following issues:

"1. Whether the plaintiff was the owner of a portion of the property what was acquired by the State and the compensation whereof was assessed vide award dated 14.11.1983 of the Land Acquisition Collector? OPP.

2. If issue No. 1 is proved, whether no notice of acquisition proceedings was given to the plaintiff by the Land Acquisition Collector nor was any amount of compensation paid to him in respect of his portion of the acquired land i.e., Khasra No. 205/161? OPP.

3. If issue No. 2 is also proved, whether the plaintiff is entitled to the damages/compensation? If so, how much and from whom? OPP.

4. Whether suit is bad for non-joinder of Shri Krishan Singh from whom the plaintiff allegedly purchased the aforesaid portion of the acquired land? OPD.

5. Whether the suit is not maintainable against the present defendants and the remedy if any lies against said Krishan Singh or his LRs? OPD.

6. Whether the suit is not within time? OPD.

7. Relief."

8. The parties were put to trial on all these issues. The attorney of the plaintiff Shri Mohan Lal in turn has stepped into the witness box as PW-1. The plaintiff has also examined Shri Ashok Kumar, Patwari, Patwar Circle, Deon (PW-2), who has proved the statements qua average market price of the land in the area Exts. PD/1 to PD/4. PW-3 Yogesh Kumar, has proved the sale deed Ext. PE, vide which he had purchased 202 square meters of land in a sum of Rs. 3 lacs. PW-4 Gopal Singh, Patwari, LAO Office, Solan has proved the copy of award, Ext. PF, copy of field book, Ext. PF/1, copy of notification under Section 4 of the Act, Ext. PF/2, copy of statement of compensation Ext. PF/3/Exts. DB and DC and copy of map Ext. PF/4. PW-5 Kirpa Ram has proved the books (Vahis) Exts. PG/1 to PG/5 in which the copies of sale deeds were pasted. PW-6 Amar Singh deals in purchasing and selling the land in the area and as per his version the current market value of the land in that area is Rs. 1 lac per Biswa.

9. The defendants, on the other hand, have examined Shri Kirpa Ram Sharma, Naib Tehsildar as DW-1, who has proved the copy of the award Ext. DA, copy of para-55 Ext. DB and the copy of acquaintance roll Ext. DC.

10. On the completion of the record and hearing learned Counsel on both sides, the trial Court while answering issues No. 1 and 2 has arrived at a conclusion that the plaintiff was the owner of the property a portion whereof has been acquired by the defendants without issuing any notice of acquisition to the plaintiff and paying any compensation to him. The objections qua the suit bad for non-joinder of Shri Krishan Singh and that the suit is not maintainable against the defendants have been rejected while answering issues No. 4 and 5. With regard to issue No. 6, the suit is also held to be well within the period of limitation. While answering issue No. 3 the plaintiff, however, was held entitled to only a sum of Rs. 58,000/- as damages and the suit decreed accordingly.

11. The judgment and decree has been challenged by the parties on both sides on several grounds as taken note of at the very outset.

12. Having gone through the record and hearing learned Counsel on both sides, following points arise for determination in these appeals:

"(1) Whether learned trial Court has erred in law and facts in not decreeing the suit for the recovery of the entire suit amount, i.e., Rs. 9,90,000/-?

(2) Whether the suit was not maintainable and also bad for non-joinder of Krishan Singh, the original owner, hence no decree could have been passed?"

13. In a nutshell, the factual position is that on the day of issuance/publication of notification under Section 4 of the Act the owner of the acquired land was one

Krishan Singh Mehta son of Shri Devi Singh and not the plaintiff. Although, sale deed is not proved in accordance with law, yet its copy mark-D even if believed to be true reveals that land bearing Khasra No. 161/154/9 measuring 1 Bigha 3 Biswas was purchased by the plaintiff thereby on 24.11.1980, i.e., after the issuance of notification under Section 4 of the Act. The onus was on the plaintiff to have proved the stage of such acquisition on the day when sale deed qua the suit land was executed in his name. He, however, has produced in evidence only the copy of award Ext. PF. There is no iota of evidence to show as to whether notification under Section 6 and further proceedings under Section 9, Section 10, Section 11 and Section 12 of the Act were well before he acquired the suit land or after that. There is also no iota of evidence to show that when mutation on the basis of the sale deed was sanctioned and attested in his name. He has not produced in evidence even the order of mutation. The copies of Jamabandis for the year 1981-82 and 1986-87, no doubt, reveal that he was recorded as owner in possession of the suit land. These documents being not proved in accordance with law cannot be relied upon. The facts, however, remain that out of the suit land bearing khasra No. 161/154/4/9, measuring 1 Bigha 3 Biswas, 0-18-0 Bigha has been acquired for the widening of Barog bye-pass road.

14. As already observed, there is no iota of evidence to show that the previous owner of the suit land Shri Krishan Singh son of Devi Singh has received the compensation with respect to this land also because as per the entries in the field book Ext. PF/3 Shri Krishan Singh had received the compensation in respect of the land measuring 1 Bigha 1 Biswa bearing Khasra No. 161/154/4/8, whereas the khasra number of the suit land was 161/154/4/9. It was for the defendant-State to have proved by producing cogent and reliable evidence that the compensation in respect of the acquired land measuring 0-18-0 bigha was received by the previous owner Shri Krishan Singh.

15. Anyhow, the present is a case of post notification sale because the notification under Section 4 of the Act has been issued on 3.12.1979, whereas the sale deed if believed to be true executed in favour of the plaintiff on 24.12.1980. The Apex Court while dealing with similar proposition in State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, (1995) 8 JT 508 : (1995) 6 SCALE 391 : (1996) 1 SCC 299 : (1995) 5 SCR 39 Supp , has held as under:

"1. This appeal by special leave arises from the judgment and order dated 18.7.1979 made in Special Civil Application No. 92/75 by the High Court of Bombay. Notification under Section 4(1) acquiring an extent of about 5 acres of land was published in the State Gazette on 17.9.1970 for public purpose, namely, construction of staff quarters for Maharashtra Road Transport Corporation employees. Declaration under Section 6 was published on 29.7.1971. The award also was made on 15.9.1971. It would appear that respondents 1-3 had purchased three plots of land from Usmanshahi Mills which was under liquidation through the Official Liquidator on 17.6.1968. But the mutation of their

names in the revenue records was not effected. In consequence, notices could not be issued. They, in turn, sold these plots to 4th respondent in 1973. A writ petition was filed on 19.12.1974 challenging the validity of the notification and also the award. The High Court set aside the notification on the ground that notices as required under law have not been served on respondents 1-3.

2. It is seen that Section 4(1) does not require the service of the personal notice nor the one under Section 6 declaration. What is needed to be served in the locality and the Gazette which have been complied with. As regards the notices under Section 9 is concerned, it now transpires from the revenue records that the original owner namely, Usmanshahi Mill was served. Since mutation had not been effected in the name of respondents 1-3 though purchased prior to the publication of notification under Section 4(1), they could not be issued notices as required under Section 9. Notice to the 4th respondent is obviously impossible, since the award has already been made on 15.9.1971. His purchase thereafter is obviously illegal as it does not bind the State after the notification under Section 4(1) was published. Under these circumstances, the High Court was wholly unjustified in quashing acquisition in respect of three plots of land of respondents 1-3".

16. The legal principles settled by the Apex Court in the judgment supra thus leave no manner of doubt that in a case of post notification sale the notification cannot be quashed on the ground that the vendee had no knowledge and notice of the acquisition proceedings. True it is that in this case the plaintiff has not questioned the validity of the notification under Section 4 of the Act, however, his only grouse is that he had no notice or knowledge of the proceedings initiated qua the acquisition of the suit land nor has received any compensation.

17. As already noticed, at the time of issuance of notification under Section 4 of the Act it is Krishan Singh son of Shri Devi Singh who was owner of the suit land. Therefore, there is no question of issuance of notice to the plaintiff. The present at the most could have been said to be aggrieved from the non-issuance of notice under Section 9 of the Act, however, qua that also he failed to produce evidence to show as to when such notice was issued to various right-holders during the course of acquisition proceedings and that he had acquired the title in the suit land at that time. It is also not his case that the notice under Section 9 of the Act was not issued or published. He may be resident of District Chamba, however, his General Power of Attorney Shri Mohan Lal (PW-1) through whom he has filed the suit is resident of District Solan. Even if the plaintiff had no knowledge or notice of the acquisition proceedings, in that event also he cannot file a suit for the recovery of damages/compensation in a sum not the one determined by the Collector or by the reference Court or by any other higher Court in hierarchy. He can not claim the compensation/damages on the basis of the instances of sale or the average market price of the land in the area prevalent in the year 2003 when he allegedly acquired the knowledge about the suit land having been acquired by the defendants. The only remedy available to

him was to have filed the suit for recovery of the compensation of the land determined by the Land Acquisition Collector or enhanced amount of compensation, if any, re-determined by the competent Court. It is held so by a Division Bench of Andhra Pradesh High Court in *Shyam Rao Vs. Land Acquisition Officer (Spl.) cum-Dy. Collector Singoor Project of Sanga Reddy and others*, AIR 1991 AP 219 : (1991) 1 ALT 176 : (1991) 1 APLJ 143 . This judgment reads as follows:

"25. One other class of cases, however, presents no difficulty. Persons concerned who have not received notice under S. 9(2) can file suits to recover the amount of compensation due to them against the State as well as the parties who have earlier received the same from the Collector and recover the same by invoking the 3rd proviso to Section 31(2). (Vide *Birendra Nath Banerjee and Others Vs. Mritunjoy Roy and Others*, AIR 1962 Cal 275 : (1962) 1 CALLT 326 : 66 CWN 191 ; *Shivmal and Another vs. Ramchandra Bapu* AIR 1933 322 (Nagpur) ; *State of M.P. and Others Vs. Smt. Sugandhi and Others*, AIR 1980 MP 19 )."

18. Therefore, the plaintiff is not entitled to file a suit for recovery of Rs. 9,90,000/- as compensation on the basis of sale instances Exts. PG/1 to PG/5 produced in evidence and also the average sale price certificate Exts. PD/1 to PD/4, being not pertain to the relevant period nor in proximity to the issuance of the notification under Section 4 of the Act.

19. Above all, the present also is not a case where the notice under Section 9 of the Act has been withheld from him intentionally or deliberately or with malafide intention because at the time of issuance of notification under Section 4 of the Act he was not owner of the suit land. Since his name was not there in the record available with the Land Acquisition Collector, therefore, there was no question of issuance of notice under Section 9 of the Act to him. In such a situation and even if the plaintiff is entitled to any notice under Section 9 of the Act, will only effect his claim with regard to compensation which can be taken care of by Section 31(2) of the Act and also by entertaining his prayer to make a reference under Section 18 of the Act to the Court of District Judge without insisting upon the question of limitation. The plaintiff has miserably failed to prove that the compensation qua the suit land acquired by the defendants was determined and received by the previous owner Shri Krishan Singh. He even has failed to implead the previous owner or his legal representatives as party(s) in the suit despite specific objection to this effect raised by the defendants in the written statement. The defendants have also failed to prove that the compensation in respect of the acquired suit land measuring 0-18-0 Bigha has been received by the previous owner Shri Krishan Singh son of Shri Devi Singh. In such a situation the remedy available to the plaintiff is to approach defendant No. 4-Land Acquisition Collector, Solan, for determination of the compensation in respect of the acquired land and in the event of compensation stands determined and paid to previous owner Krishan Singh or lying un-disbursed with the Collector concerned and still not released in his favour, to file a suit for recovery

thereof in a competent Court having jurisdiction to try and entertain the same and also to approach the Collector for making a reference under Section 18 of the Act to the Court of District Judge, if not satisfied with the compensation, if any, determined. It is held so by Punjab and Haryana High Court in *Mani Ram Vs. The State of Punjab and Others*, AIR 1975 P&H 135 : (1976) 1 ILR (P&H) 651 . This judgment reads as follows:

"7. In *Shivdev Singh Vs. The State of Bihar and Others*, AIR 1963 Patna 201 , if I may say with respect, Untwalia, J. seems to be concerned with failure of service of notice which merely affected the party concerned in regard to its right of submitting claim of compensation to the Collector and further to the District Judge if dissatisfied with the award of the Collector; and it appears to have been assumed that as a result of non-compliance of the provisions of Section 9(3) of the Act, no prejudice would be caused to the person concerned. I am afraid such an assumption is incorrect when regard is had to the fact that if the person concerned had been served with the requisite notice, he might have taken the necessary step of submitting his claim to the Collector and for ought we know the Collector would have accepted his estimation of the valuation of the land, and he in return might well have been satisfied with the award of the Collector and thus would have left the matter at that stage, but on the contrary in the eventuality of the failure of compliance with the provisions of notice under Section 9, such a party would have no opportunity to make its claim to compensation known to the Collector and the Collector would, on his own, give the award which may not measure upto the expectation of the party concerned. In that case the said party would perforce have to initiate proceedings under Section 18 of the Act in the Court of the District Judge and expend money and energy in claiming what he, if he had notice, would otherwise have claimed before the Collector and may well have been awarded by the Collector. Hence prejudice to such a party is obvious in the event of the failure of the Collector to serve upon him the requisite notice under Section 9 of the Act. I, therefore, finding myself in respectful agreement with the view expressed by Chagla, C. J. in *Laxmanrao Krishnao Vs. Provincial Government of Bombay and Another*, AIR 1950 Bom 334 : (1950) 52 BOMLR 316 and the one expressed by Sambasiva Rao, J. in *Velagapudi Kanaka Durga Vs. District Collector, Krishna District, Chilakapadu and Others*, AIR 1971 AP 310 , as also the observations made, though in passing, in the Division Bench decision of this Court in *State of Punjab Vs. Karnail Singh and Others*, (1965) 2 ILR (P&H) 525 , hold that the requirement of Section 9(3) of the Act is mandatory and the failure to comply therewith renders the subsequent proceedings illegal and invalid".

20. Similar view of the matter has been taken by the High Court of Calcutta in *P.K. Shaikh Vs. State of West Bengal and Others*, AIR 1976 Cal 149 . This judgment also reads as follows:

"15. The decision of the Division Bench is binding on me. In view of this decision of the Division Bench it does not really become necessary for me to consider the

other decisions which were cited from the Bar. I may only note that the decision of the Patna High Court in the case of Shivdev Singh v. The State of Bihar, on a similar question under Bihar Town Planning and Improvement Trust Act adopts more or less the same view. The Patna High Court has observed at pp. 206-207:---

"In response to notice under Section 9, the only matter which can be agitated before the Collector by any person interested relates more or less to the question of compensation in respect of the land sought to be acquired. The order of acquisition or the act of taking possession cannot be challenged in a reference to Court either under Section 18 or Section 30 of the Land Acquisition Act. This also finds sup-post from the rules as to the amount of compensation provided in Section 25 of the Act. In my opinion, the petitioner, even if not served with a notice under Section 9 of the Land Acquisition Act could claim such compensation, if he was entitled to any, by asking the Collector to make a reference to the Court under Section 18 of the Act. He could do so within 6 months from the date of the Collector's award as provided for under Section 18(2)(b).

I may also observe that on proof of the fact that he was not served with a formal notice under Section 9(3) of the Act or had no notice or knowledge of any proceeding under the Land Acquisition Act, he would not be bound by the period of limitation provided for in Clause (b) of Sub-section (2) of Section 18. If the petitioner is so advised, he may pursue his remedy against his landlord and claim any portion of the compensation money of Rs. 44,318/25 np. paid to the owner of the premises. But it is clear to me that the proceeding or the award in relation to the acquisition of the premises in question cannot be held to be illegal or void or without jurisdiction for non-service of a notice on the petitioner under Section 9(3) of the Land Acquisition Act. The Collector's right, and as a matter of that, the right of the Chairman of the Improvement Trust to take possession of the property is consequently not affected".

21. In view of what has been said hereinabove, the suit for the recovery of Rs. 9,90,000/- was not maintainable nor the plaintiff was entitled to claim compensation/damages in respect of the acquired land at the rates prevalent in the market in the year 2003. As already pointed out, he could have at the most filed a suit for the recovery of compensation qua the suit land determined by the Collector, if able to establish his entitlement to receive the same and could have also sought a reference to District Judge under Section 18 of the Act irrespective of the limitation to do so expired long back. The judgment and decree under challenge, therefore, is not legally sustainable. Consequently, the connected appeal RFA No. 311 of 2005 filed by the defendants succeeds and the same deserves to be allowed, whereas the appeal filed by the plaintiff being devoid of merits, deserves to be dismissed. The points for determination framed hereinabove are answered accordingly.

22. In view of what has been said hereinabove, the appeal filed by the plaintiff

fails and the same is accordingly dismissed and the connected appeal filed by the defendants is allowed. Consequently, the judgment and decree under challenge in these appeals is quashed and set aside and the suit dismissed, of course, with liberty reserved to the plaintiff to file a suit against the Collector or the previous owner for recovery of the amount of compensation if the same, qua acquired land has been determined by the Collector and he otherwise is entitled to receive the same or if the same after determination by the Collector has been paid to the previous owner or is still undisbursed. No order as to costs. Both appeals stand disposed of.