

(1978) 09 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 372 of 1972

Lakhbir Chand

APPELLANT

Vs

Land Acquisition Collector, Delhi and Others

RESPONDENT

Date of Decision : 14-09-1978

Acts Referred:

Citation : AIR 1979 Delhi 53

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Manmohan Nath Madan, for the Appellant; Daljit Singh, for the Respondent

Judgement

1. This writ petition and C . W. Petition No. 371 of 1972 are under Arts. 226 and 227 of the constitution of India and pray for the issue of a writ, order or direction, declaring that the award No. 22/1970-71 made on 29th of July, 1970. by the Land Acquisition Collector is illegal and void, in so far as it relates to the land of the petitioners and consequently quashing the entire acquisition proceedings pertaining to the land and building of the petitioners.

2. One Mehta Krishan Lal was the owner in possession of an open plot of land bearing No. A-8 measuring 200 sq. yards forming part of killa No. 12 Rectangle 50 situated in village Khureji Khas, Delhi, known as Janta Park. Lakhbir Chand petitioner purchased half portion of the above-said plot Le. 100 sq. yards, by means of a sale-deed dated Aug., 10, 1955 (copy Annexure A in C. W. Petn. No. 372 of 1972). Smt. Saraswati Devi, predecessor-in-interest of the petitioner Ram Prakash, purchased the other half portion of the said plot i.e. 100 sq. yds. by means of a registered sale-deed dated August 10, 1955 (Copy Annexure A in C, W. Petition No. 371 of 1972) Lakhbir Chand claims to have constructed on the aforesaid land In Or about the year 1958. Ram Parkash claims to have constructed on the aforesaid land in the year 1960 and both claims to be residing there with their families. It is the admitted case of the parties that the land of Khasra No. 50/12/1 (in which the land of the petitioners is included] in village

Khureji Khas, Delhi was notified under S. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) vide Notification No. F-15/11/59/LSG dated November 13, 1959. This is commonly known as general notification in which 34,070 acres of land was covered. Certain owners filed objections under S. 5A of the Act. They were considered by the Land Acquisition Collector and a report made to the appropriate Government. The Delhi Administration issued a declaration under S. 6 of the Act for the acquisition of an area measuring 2936 Bighas 5 bids was of land situated in village Khureji Khas by the declaration dated March 18, 1966. It is again admitted that the aforesaid Khasra No. 50/12/1 in village Khureji Khas was covered by the declaration dated March 18, 1966.

3. The Land Acquisition Collector Issued notices under Ss. 9 and 10 of the Act. Lakhbir Chand claims that the Collector Issued notice dated February 20, 1970 in the name of Lakhbir Chand calling upon him to put up his claim for compensation on 6th of April 1970. This notice is stated to have been received by Lakhbir Chand's daughter aged 11 years Mohini on 8-4-1970 after the date of hearing. In the reply affidavit it is stated that the notices under Ss. 9 and 10 of the Act were served on Lakhbir Chand on 4-4-1970 through his daughter Mohini Sharma and the said notice called upon Lakhbir Chand to file his claim on April 20, 1970. In Ram Prakash's case the allegation is that no notice under S. 9(3) of the Act was served on the petitioner or his predecessor-in-interest. In the reply affidavit it is stated that the name of Ram Prakash did not exist in the revenue records of the village either as an owner or as an occupier, and, Therefore, no notice under Ss. 9 and 10 of the Act was served on Ram Prakash individually. It is, however, pleaded in both the cases that publicity as provided under S. 9(1) of the Act was given in the locality inviting claims/objections from all the interested persons in the land notified under S. 6 of the Act in notification dated 18th of March 1966. During the pendency of the proceedings before the Land Acquisition Collector, the land was measured on the spot by the Land Acquisition field staff and the details of the area proposed to be acquired are given in the award itself. It includes in it, inter alia, rectangle No. 50 Killa No. 12/- (1-15) measuring 2 Bighas 2 Biswas. The classification of the land according to the revenue records is given as G. M. Plot. The award number 22/70/71 covering the land of the petitioners was given by the Land Acquisition Collector on 29th July 1970. The present writ petitions were filed on 23rd of April 1972. Shri Manmohan Nath Madan learned counsel for the petitioners vehemently urges that the provisions of S. 9(3) of the Act are mandatory provisions of law and the non-compliance of it is fatal to the validity of all acquisition proceedings following thereafter and resulting in the award. He contends that in the notices under Ss. 9(3) and 10(1) of the Act, which is served on Lakhbir Chand's daughter, the land has been wrongly described as Khasra No. 50/8/2, and, Therefore, there is no notice at all in respect of the land of Lakhbir Chand. He also urges that assuming the notice was duly served on April 8, 1970 for 20-4-1970, then admittedly 15 days clear notice was not given thus vitiating the entire proceedings for making of the award and consequently the entire

acquisition proceedings are void. It is further urged that the plea of the respondents that the petitioners have not suffered any prejudice by reason of the defect in the notice, under Ss. 9(3) and 10(1) of the Act or non-service of notice, is not legally available to them as the service of a valid notice is the mandatory requirement of law.

4. To appreciate these arguments it is necessary to refer to the provisions of the Act. The preliminary investigation for acquisition of the land is provided in S. 4. Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose⁶ a notification to that effect is published in the Official Gazette and the Collector is directed to cause a public notice of the substance of such notification to be given at convenient places in the said locality. Thereupon it is lawful for any officer, his servants and workmen to enter into upon and survey the land in such locality and take other specified steps. Under S. 5A any person interested in any land which has been notified under S. 4. sub-s. (1) as being needed or likely to be needed for a public purpose, may within 30 days from the issue of the notification object to the acquisition of the land, The mode of filing objections, the procedure of hearing of the objections and the holding of the enquiry is -provided under S. 5(2) after hearing all such objections and after making such further enquiry as he considers necessary, the Collector makes a report to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of the appropriate Government The appropriate Government after considering the report made under S. 5A, sub-s. (2) that any particular land is needed for a public purpose makes a declaration to that effect in the manner provided in S. 6. As provided in S. 7, whenever any land has been so declared to be needed for a public purpose, the appropriate Government or some other officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land. One stage in the acquisition of the land is thus completed after orders under S. 7 for acquisition of the land are obtained. Section 17 confers special powers on the Government which are exercisable in case of emergency. Sub-sec. (4) of S. 17 provides that in those cases which fall under sub-s. (1) or sub-s. (2) the appropriate Government may direct that provisions of S. 5A shall not apply and also empowers the Government to make a declaration under S. 6 in respect of the land to be acquired at any time after the publication of the notification under sub-s. (1) of S. 4.

5. Thereupon the Collector is authorised to cause the land to be marked out and planned in pursuance of the powers conferred under S. 8. Under S. 9 the Collector is then to 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 interest in such land be made to him. The notice has to state the particulars of the land needed and requires the interested, persons to appear before the Collector at a time and place mentioned therein, such time not being earlier than 15 days after the date

of publication of the notice, and to state the nature of their claims, compensation or objections to the measurements. Sub-section (3) of S. 9 provides that the Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons, known or believed to be interested therein, to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf within the revenue District in which the land is situated. Under sub-s. (1) of S. 10 the Collector may also require any such person to make or deliver to him at a time and place mentioned (such time not being earlier than 15 days after the service of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing my interest in the land or any part thereof. Under S. 11, the Collector has to make an enquiry and then to give his award. Under S. 12 such award is to be filed in the Collector's Office and is made final and conclusive evidence, as between the Collector and persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation amongst the persons interested. Under S. 16, the Collector after making the award is authorised to take possession, of the land.

6. Sections 18 to 28 provide for reference to Court and procedure thereon. Under S. 18 any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable or the apportionment of the compensation amongst the persons interested. Under S. 19, the Collector is obliged to state for the information of the Court at the time of making reference, the specified particulars. The procedure, the matter to be considered and not to be considered, the rules as to compensation form of award and costs are provided in other sections; apportionment of compensation is provided in the manner contained in Ss. 29 and 30. Under S. 30, when the amount of compensation has been settled under S. 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons, to whom same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Under S. 31, on making an award under S. 11, the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and is obliged to pay it to them unless prevented by someone or more of the contingencies mentioned in sub-s. (2). Proviso 3 to sub-s. (2) provides that nothing therein contained shall affect the liability of any person who may receive the whole or any part, of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto.

7. The questions whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it used the word "shall" is merely directory cannot be resolved by laying down any general rule and depends entirely upon the facts of each case. It depends on the intent of the legislature and the same is

to be gathered not only from the language of the particular provision but also various other provisions contained in the Statute and other factors. The Court must in each case look to the nature and design of the statute and the consequences flowing from its violation to determine whether it is mandatory or directory. Not only the language used but the object or purpose of the legislation has to be determined. If the provisions of S. 9(3) are examined in the light of the scheme of the Act, then the proceedings for the acquisition of the land and the consequential award cannot be held to be illegal for the mere failure of the Collector to serve notice on Ram Parkash in one case and short or defective notice in Lakhbir Chand's case. The object in enacting sub-s. (3) of S. 9 is to afford to the persons occupying the land or interested in it to make a claim for compensation so that the Collector may decide the compensation payable to them. Thus in response to the notice under S. 9(3), the only matter which can be agitated before the Collector by any persons interested relates more or less to the question of compensation in respect of the land sought to be acquired. After the Collector has taken the orders for the acquisition of land under S. 7, the acquisition is complete except for the determination and apportionment of the compensation. If notices under Ss. 9(3) OR 10(1) are not served, or defective notices are served and the award is made, the right of the persons interested are not prejudiced in the matter of compensation. The proceedings resulting in the award after notices under Ss. 9(3) and 10(1) are administrative and not judicial. The enquiry up to award merely gives a decision as to what sum shall be tendered to the owners of the land. An award by the, Collector is strictly speaking an offer made to the person interested in the" land notified for acquisition, the latter may accept the offer, but is not bound to do so. After the award is made, the Collector can take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. The award is only made final and conclusive evidence, as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation amongst the persons interested. But this finality is subject to determination of the Court by reference under S. 18 of the, Act, to the measurement of the land, the amount of compensation, the persons to whom it is, payable, or the apportionment of the compensation amongst the persons interested. If a judicial ascertainment of the market value of the land is desired by the person interested, he can obtain it by requiring the matter to be referred by the Collector to the Court. Section 18(1) enjoins the Collector to refer a dispute as to quantum, apportionment, or as to title to receive compensation. If there be any dispute as to the persons entitled, it can still be determined under S. 30 or 31 of the Act on a reference. In the proceedings for determination of compensation by the Court, the applicant who has made a claim to compensation, pursuant to any notice under S. 9, is only bound and cannot be granted an amount exceeding the amount claimed. A person who has not preferred any claim is not bound and it is open to the Court to determine the compensation and direct payment. The scheme of the Act is that no real prejudicial consequences follow in the non-service of a notice or service of a

defective or short notice under Sections 9 and 10 and thus the provisions cannot be held as mandatory. The condition of service of notices up to the making of the award are imposed merely for administrative purposes.

8. The only authority placed before me by Shri Madan holding the mandatory nature of S. 9(3) is of the Andhra Pradesh High Court namely, *Velagapudi Kanaka Durga Vs. District Collector, Krishna District, Chilakpadui and Others*, , *Sambasiva Rao, J.* expressed the view that there cannot be any doubt that S. 9(3) is a mandatory provision and the notices provided there under is an integral and essential part of the land acquisition proceedings. With due respect to the learned Judge, I am unable to subscribe to that view. The consensus of judicial opinion is that the provisions of S. 9(3) are not mandatory. In *Skaria Francis Vs. State of Kerala and Others*, , *K. K. Mathew, J.* considered the arguments advanced that sub-section (3) of S. 9 is mandatory and non-issue of notice under sub-section would render the proceedings void. It was held (at p. 129):

"But decided cases hold that the proceedings would not be void - on that ground. See the rulings reported in *Ganga Ram Marwari v. Secy. of State for India*, (1903) 30 Cal 576; *Rahim v. Secy. of State*; Air 1938 Sind 6; *Sri Sukhdev Sarandev v. Raja Nripendre Narayan Chandradhvarjee*, (1942) 76 Cal Lj 430 ; *Naba Kumar Seal Vs. State of West Bengal and Others*, and *Jhandu Lal Budh Ram and Others Vs. The State of Punjab and Another*, and *Hunnikeri Bros. v. Asstt. Commr., Dharwar Division*, Air 1962 Mys 169. The petitioner would not in any way be prejudiced as he has a remedy by way of a suit under the proviso to S. 33(2) of the Kerala Land Acquisition Act. It has been recently held by the Supreme court in Civil Appeal Nos. 262 to 264 of 1964; *Dr. G.H. Grant Vs. State of Bihar*, that even after the Collector has made an award It is open to him to refer the question of apportionment under S. 30 of the Land Acquisition Act (Central) to the District Court. If that be so, it is open to the Petitioner to apply to the Collector to make a reference under S. 32 of the Kerala Land Acquisition Act corresponding to S. 30 of the Central Act. Although it was argued by the learned Government Pleader that it is also open to the petitioner to apply for reference under S. 20 of the Act, I am not quite clear whether such an application can be filed as the period prescribed in S. 20(2) has expired. I do not wish to express any concluded opinion on that point in this case. However, as it is clear from the rulings cited above that the proceedings would not be invalid on account of the non-issue of the notice under S. 9(3)."

9. *Basi Reddy J.* another Judge of the Andhra Pradesh High Court in *Yousuf Begam Vs. The State of Andhra Pradesh and Others*, . expressed the view that "it is well settled that the absence of a notice under S. 9(3) of the Act does not render an award made by the Land Acquisition Officer a nullity." It is unfortunate that the correct view of law or the earlier judgment of the same Court was not placed before *Sambasiva Rao, J.*, when he rendered, the judgment. In a recent judgment of Calcutta High Court *P.K. Shaikh Vs. State of West Bengal and Others*, , it was held that the non-service of a notice under S. 9(3) will not vitiate

acquisition proceedings or the award.

10. The failure to issue notice or failure to issue a correct notice under Sec, 9 (3) and 10 (1) cannot nullify the subsequent proceedings to the extent that the Government's title by acquisition should fail. The declaration made under S. 6 is made conclusive evidence that the land is needed for a public purpose. Thereafter the Government may acquire the land in the manner provided. After the declaration, the Collector takes order for acquisition. Thereafter the only interest of the person interested is to receive its compensation. The right to receive compensation as determined by the Court is reserved irrespective of notices under Ss. 9(3) or 10 or the participation in the enquiry. If any person wrongly receives the compensation, the right of the person interested is reserved to him under 3rd proviso to S. 31. In these circumstances, the failure to give notice or a correct notice loses all its importance and for these reasons the provisions of section 9(3) or 10(1) cannot be held as mandatory. The proceedings in relation to the acquisition of the land in dispute in the two cases cannot be held to be illegal or void or without jurisdiction for non-service of the notices on the petitioner Ram Parkash or service of a defective notice, on the petitioner Lakhbir Chand under S. 9(3) of the Act.

11. The only other argument addressed by the learned counsel for the petitioner is that the land had been built upon and the Government had issued directions and declared its policy that such lands would not be acquired. Another facet of this argument is that the superstructure on the land was not sought to be acquired and was not mentioned in the impugned notifications. No material has been placed on the record that Government had made any declarations that the land which had been built upon and occupied by the owners would not be acquired. The bare averment in the writ petition made by the petitioner has been denied by the respondent in the counter-affidavits. On the other aspect, the definition of land given in section 3-A of the Act is a complete answer. The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The superstructure, if any, existing on 13-11-1959 when the notification u/s 4 of the Act was issued, would be included in the notification for the acquisition of the land. There is, however, factual controversy about the existence of any superstructures on November 13, 1959. Such a controversy need not be considered in this writ petition.

12. As a result of the above discussion, the petitions fail, C. W. Petition No. 372 of 1972 and C. W. Petition No. 371 of 1972 are dismissed. In the circumstances of the case I make no order as to costs.

13. Petition dismissed.