
(1958) 01 PAT CK 0003

In the Patna High Court

Case No : Misc. Judl. Case No. 721 of 1956

Mt. Banarasi Devi Jhunjhunwala

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-01-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 12(2), 18(1), 18(2), 45, 45(3)

Citation : AIR 1959 Patna 83 : (1958) 6 BLJR 350

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Goraknath Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner, Mosam-mat Banarsi Devi Jhunjhunwala. has obtained a rule from the High Court calling upon the opposite parties to show cause why the order of the Collector of Purnea, dated 10-7-1956, declining to make a reference to the District Judge under the provisions of Section 18(1) of Act I of 1894 should" not be set aside and why a writ in, the nature of mandamus should not be issued commanding the Col-Jector of Purnea to make a reference to the District Judge of the dispute with regard to the amount of compensation u/s 18(1) of the same statute.

2. Section 18(1) of Act I of 1894 is in the following terms :

"18. Reference to Court: (1) 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 the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

3. Section 18(2) states thus :

"(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made :

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice; from the Collector u/s 12; Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

4. Section 19 of Act I of 1894 is also important. That section is to the following effect :

"19. Collector's statement to the Court: (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand :

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has "reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded u/s 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively."

5. It appears that the award of the Land Acquisition Officer was made in this case on 24-2-1956, and thereafter notice of the award appears to have been issued to the petitioner. The peon's report, which is Annexure A to the application, shows that the notice was served upon "Sita Ram Jhunjunwala son of Mosst. Banarsi Debi Jhunjunwala." The case of the petitioner is that notice was not served personally upon her and that she came to know about the contents of the notice on the 3-3-1956. The application was actually made by the petitioner for reference on 10-4-1956.

The view taken by the Collector is that the application was barred by limitation of six weeks imposed by Section 18(2), proviso (b) of the statute. The case of the petitioner, however, is that there was no service of the notice upon her on 27-2-1956, and, therefore, the period of limitation would be six months from the date of the Collector's award and not six weeks from the date of service of

notice. In our opinion, the contention put forward on behalf of the petitioner is right and the period of limitation is six months from the date of the Collector's award, and so the application for reference made by the petitioner on 10-4-1956, is not barred by limitation. The reason is that service of the notice upon the petitioner in this case is not valid in view of the terms of Section 45 of the Act" which is in the following terms :

"45. Service of notices. : (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice u/s 4, by the officer therein mentioned, and, in the case of .any other notice, by or by order of the Collector or the Judge,

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer-door of the house in which the person therein named "ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired ;

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866 (XIV of 1866) and service of it may be proved by the production of the addressee's receipt."

The service, report does not state in the present case that the lady, Mosammat Banarsi Debi Jhunjhun-wali, was not found and so Clause (3) of Section 45 does not apply, and it was not open to the Peon to make the service upon Sita Ram Jhunjhunwala, who is a nephew of the petitioner. "There is also no finding in this case that Sita Ram Jhunjhunwala had authority from the petitioner to receive the notice on her behalf and so the service of notice upon Sita Ram Jhunjhunwala is not a legally valid notice in terms of Section 45 of the statute:,

This view is supported by a decision of a Division Bench of the Madras High Court in Rajah Papamma Rao Garu, being dead M.R. Ry. Gopisetti Narayanasami Naidu Garu, Reciever and Others Vs. Revenue Divisional Officer, , which is a decision of Sir John Wallis, C. J., and Kumara-swami Sastri, J. It was held in that case that service of a notice u/s 12(2) of the Land Acquisition Act must be made on the person named in the notice and, when such person could not be found, in the manner provided in Section 45(3) of the Act. In that case the notice u/s 12(2) was served upon the Manager of the estate for which a Receiver had been (appointed, but there was nothing to show that the Receiver had authorised the Manager to accept notice on his behalf. In these circumstances it was held by the Division Bench of the Madras High Court that the service was not valid.

6. We accept the principle laid down in the above decision as correct and for the reasons given above, we hold that there was no valid service of notice u/s 12(2) of the Act upon the petitioner, Mosammat Banarsi Devi Jhunjhunwala, and, therefore, the period of limitation for filing the application u/s 18(1) of the Act would be six months from the date of the Collector's award. namely, six months from 24-2-1956. If that is the correct "view of the law, it follows that the application of the petitioner u/s 18(1) of the Act is" not barred by limitation. For these reasons we hold that the Collector was bound in the circumstances of this case to make a reference to the District Judge u/s 18(1) of Act 1 of 1894.

7. We, accordingly, allow this application and order that a writ in the nature of mandamus under Art. 226 of the Constitution should be issued commanding the Collector of Purnea to make a reference to the District Judge u/s 18(1) of the Land Acquisition Act (I of 1894).

8. The application is allowed, but there will be no order as to cost of hearing of this application.