
(1958) 09 AP CK 0021
In the Andhra Pradesh High Court
Case No : Appeal No. 312 of 1954

Nalamvari Annasatram and Another

APPELLANT

Vs

The Special Land Acquisition Officer, Co-operative Housing
Schemes, Madras

RESPONDENT

Date of Decision : 11-09-1958

Acts Referred:

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

Citation : AIR 1959 AP 139

Hon'ble Judges : Munikannaiah, J; Bhimasankaram, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao and M. Krishna Rao, for the Appellant; N.S. Raghavan, Govt. Pleader and M. Ramachandra Raju, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—This appeal is directed against the award passed by the learned District Judge of East Godavari on a reference made by the Land Acquisition Officer u/s 18 of the Land Acquisition Act. The appellant is a charitable endowment known as Nalamvari Annasatram, Rajahmundry represented by its trustees. Land of the extent of Ac. 40-96 cents comprised in Survey Numbers 258/1, 258/2 and 260 belonging to the trust and situate within the precincts of the town of Rajahmundry was acquired by the Government for the construction of houses under two House Building Schemes under the management of the two Co-operative Societies known as the Rajahmundry Co-operative House Construction Society and the Gandhipuram Cooperative House Building Society.

A notification u/s 4(1) of the Act was issued on 23-5-1950. The trustees of the Charitable Endowment filed objections to the acquisition u/s 5A of the Act on 25-9-1950 but their objections were overruled and a notification u/s 6 of the Act was duly issued by the local Government. There was a notice served upon the trustees u/s 9 of the Act calling upon them to prefer their claim for

compensation. The trustees however made no claim but on 6-6-1951 they filed an application under Article 226 of the Constitution of India before the High Court of Judicature at Madras, which had then jurisdiction in the matter, for the issue of a writ of certiorari to quash the acquisition proceedings.

Pending that application further proceedings by the Land Acquisition Authorities were stayed. On 9-11-1951 however that High Court dismissed the application. On 22-12-1951, the trustees were called upon to receive the compensation amount awarded by the Land Acquisition Officer which they stated they were willing to receive white stating that they did so without prejudice to their claim for a higher amount and asking for a reference u/s 18 of the Act, to the Court. The Land Acquisition Officer awarded a compensation at the rate of Rs. 1,500/- per acre which works out at rate of As. 0-5-0 per square yard. The trustees claimed a rate of Rs. 3/-per square yard. Upon the reference however the Court confirmed the valuation of the Land Acquisition Officer. The present claim by the trustee is limited to Re. 1/- per square yard.

2. It is unnecessary however to go into the merits of this appeal although we may say after having heard the learned counsel on both sides that the valuation of the suit site at As. 0-5-0 per square yard is very low. If we were free to award a compensation in excess of that awarded by the Land Acquisition Officer, we should be inclined to raise the rate to about As. 0-10-0 per square yard, but in view of an objection raised on behalf of the Government in the Court below and overruled by it but which has been repeated before us, we consider that the Court is debarred from awarding compensation in excess of the amount awarded by the Land Acquisition Officer.

That objection is based upon Section 25 of the Act. To consider the objection, it is necessary to read the section :

"25. Rules as to amount of compensation.

1. When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

2. When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

3. When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

It is also necessary to quote Sub-sections (1), (2) and (3) of Section 9 in order to appreciate the reference made in the above Section to the "notice given u/s 9" :

"Section 9(1): The Collector shall then 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 interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections if any to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) 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, or 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 situate."

Now in this case, it is not denied before us, though it would appear that the trustees were not so frank with the lower Court, that although a valid notice u/s 9 was served upon them, they did not present any claim for compensation within the time prescribed by that notice.

It is argued therefore on behalf of the Government that unless the Court is satisfied that the trustees had omitted to make the claim for a reason sufficient in the opinion of the Court, the Court cannot award a higher sum than the amount awarded by the officer. In an affidavit filed in the Court below it was wrongly stated by one of the trustees that the notice u/s 9 asking them to state their claim was received by them pending the writ petition before the High Court. But it is now admitted by the learned counsel on behalf of the appellant, on an examination of the relevant record available with the Government Pleader, that that statement is wrong.

The learned District Judge was of the view that as the trustees had objected to the validity of the land acquisition proceedings and as "they were contemplating an appeal to the Supreme Court, after the dismissal of the writ petition in the High Court" they were justified in not stating their claim before the Land Acquisition Officer. In say into so, the learned District Judge was presumably misled by the averment in the affidavit that the notice u/s 9 was served upon the trustees during the pendency of the writ petition.

As we have just now pointed out and it is no longer disputed the writ petition itself was presented long after the expiry of the time granted for stating the claim. As the affidavit stated that the notice u/s 9 was given to the trustees while the writ petition was pending it contains no reason whatsoever why the claim was not made within the time allowed by the Collector. The lower Court in taking

the view that the trustees were Justified in not making a claim observed that the Land Acquisition Officer had not pointed out to the trustees that a failure to make a claim would debar them from asking for a higher compensation from the Court.

It thought that it was the duty of the Land Acquisition Officer to have drawn the attention of the claimants to the penal consequences that follow a non-statement of the claim and his failure to do so was a sufficient justification for the trustees not making a claim. For the view which it took it found support in certain observations of a decision of a Divisional Bench of the Madras High Court reported in *V.S. Subramania Chettiar and Another Vs. State of Madras*, . Krishnaswami Naidu J., speaking for the Bench, remarked as follows in that case :

"We may ask the Acquisition Officer, as Curgenven J., pointed out in the decision above cited *N.M. Venkatarama Iyer Vs. Collector of Tanjore*, as to whether he explained to the appellants that it was necessary under the provisions of the Statute that they should put a price on the land and the consequences to them of the failure to do so? This becomes necessary especially when parties, whose lands are acquired against their will have to face an enquiry, where the Acquisition Officer proceeds to value the land, the parties having a wrong but bone fide impression that by making a claim they would lose the chance of having the acquisition proceedings withdrawn in pursuance of their appeals to the higher authorities.

It is therefore desirable and sometimes even necessary, though it is not so required under the Act, that Acquisition Officer should in a proceeding as to valuation make it clear to the owners of lands that any failure to state the amount of the claim would be a bar to their having a chance of the award being revised in their favour by the Court. In this case, there is no doubt that the appellants were not informed of the implications of a failure to state the amount of the claim at the enquiry before the Acquisition Officer on 30-11-1948.

It cannot therefore be a refusal to make such a claim or an omission without sufficient reason. The appellants stated why they were not making a statement as to the claim at that juncture and it could not be taken as a refusal. But would it not be a sufficient reason for the omission to make such a claim? Section 25 being a penal provision must be applied only in cases where there is clear and convincing proof of a deliberate refusal or an omission without justifiable reason, or a failure to make such a claim after having been made aware of the consequences of such a refusal or omission."

With great respect to the learned Judge, we may state that the view embodied in the above passage is neither justified by the terms of the statute nor by the observations of Curgenven, J., referred to by the learned Judge. In the first place, the learned Judge seems to have over-looked the relevant provisions in the statute. u/s 5A of the Act any person interested in any land notified for acquisition may object to the acquisition within 30 days after the issue of the notification u/s 4(1).

The objection is to be made to the Collector in writing and the Collector has to give the objector an opportunity of being heard either in person or by pleader. After hearing such objections and after making such further enquiries, if any, as he thinks necessary, he has to submit the case for the decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. Thereupon the Government decides on the objections and their decision is final. If the Government is satisfied after considering the report made u/s 5A(2) that the particular land is needed for a public purpose or for a company, a declaration is to be made by it to that effect, which is to be published in the Official Gazette.

That declaration is conclusive evidence that the land is needed for the purpose specified. It is only thereupon that there will be an order for the acquisition of the land, and the land is then to be marked out, measured and planned. The notice u/s 9 is given only then, in a case where objections are raised to the acquisition. The learned Judge was therefore not right in thinking that after the receipt of the notice u/s 9, the parties objecting could still be described as "having a wrong but bona fide impression that by making a claim they would lose the chance of having the acquisition proceedings withdrawn in pursuance of their appeals to the higher authorities."

Nor do we think that the observation of the learned Judge that the persons interested in the land should be informed of the implications of a failure to state the amount of the claim is justified, because, as the learned Judge himself recognised, the Act does not impose any such obligation upon the officer. Penal as the consequences are, the parties interested are supposed to be aware of the provisions of the Statute. It is quite another thing of course to say, as has been said in *Rameswar Singh v. Secy, of State for India*. ILR 34 Cal 470 . 480 that "in order to give validity to the proceedings and finality to the award in which they terminate, the power of acquisition with all statutory limitations and directions for its use, must be strictly pursued; every essential pre-requisite to the jurisdiction called for by the Statute must be strictly complied with."

We may also point out that the observations of Curgenven J., upon which Krishnaswami Naidu J., relies, do not support his view. These observations were made in *N.M. Venkatarama Iyer Vs. Collector of Tanjore*, in a judgment in which the learned Judge agreed with Beasley C. J. In that case, the claimant who was the appellant before the High Court was served with a notice u/s 9 on 17-10-1925 which called upon him to appear before the Acquisition Officer on the 26th of that month. He was thus given only 9 days' notice instead of fifteen days' notice as the learned Judges, in agreement with the views of the Calcutta High Court, found the claimant was entitled to under Sub-sections (2) and (3) of Section 9.

Notwithstanding the fact that the notice so served was not in accordance with the requirements of law, the appellant appeared before the officer and answered certain questions that were put to him. The answers so given did not amount to

a claim. It was argued for the Government that by appearing on the 26th of October, the appellant must be deemed to have waived the statutory requirement of 15 days' notice and that he not having made the claim when he so appeared, the case came within the mischief of Sub-section (2) of Section 25 of the Act.

In dealing with this argument, it is instructive to notice what Beaslev C. J., said before considering the views expressed by Curgenvén J. :

"In any view, it lies upon the Government pleader to show that the waiver has been clearly established. It is not sufficient to show that the appellant appeared before the Labour Officer and answered certain questions that were put to him. It has not been shown that the appellant knew that he was entitled to at least fifteen days' notice; nor has it been shown that, if he had known that he was, he would not have asked for an adjournment and there is nothing to show that there has been any waiver by the appellant."

The learned Judge therefore held that the appellant was entitled to have his claim for enhanced compensation considered on its merits.

3. Curgenvén, J., concurred in that view and dealing with the argument of the learned Government Pleader as to waiver stated as follows :

"To apply this doctrine it must, I think, be found that the applicant knew what his legal rights were and consented to forego them. In the present case, I can find no sufficient reason to make this assumption, or to infer with certainty against the claimant that, if he had due notice, he would not have presented a claim within the meaning of the Act"

Then the learned Judge proceeded to make these remarks :

"Apart from the question of insufficiency of notice, it appears to me that the applicant may be said to have had another sufficient reason, for not making a claim. When he appears, the Labour Officer took an oral statement from him which, had it comprised the necessary particulars, would have amounted to making a claim. It may be taken, I presume, that the Labour Officer knew what those particulars should be, and in particular that they should have included the applicant's own valuation of his property.

The Officer must be taken to have known also the penalty to which the applicant subjected himself by not furnishing this information. Did he explain to the applicant that it was necessary that he should put a price on his land and the consequences to him of the failure to do so? If not, may it not be said that he allowed the applicant to go away in the belief he had complied with the requirements of the Act. and that the adoption of such a course provided the applicant with sufficient reason for not having complied with them?"

We do not read these observations as applicable to cases where a valid notice u/s 9(2) is served upon the applicant. The remarks should be confined to the

circumstances of the case with which these learned Judges in 60 M LJ 410: (AIR 1930 Mad 636) were dealing.

If in that case, for instance, the applicant had been told that he was entitled to 15 days' notice and that the notice served upon him was defective, he would have had the option of either making the claim at once or asking for a valid notice. When the officer did not comply with the terms of the statute, it was his plain duty to inform the applicant of his rights under the statute before he could seek the aid of the penal provisions against the applicant.

We are definitely of the opinion that the observations of Curgenvén J., made in the above case do not justify the view expressed by Krishnaswami Naidu J., upon which the trial Court in the present case has founded itself. We think that the remarks of Krishnaswami Naidu J., should be confined to the facts of that particular case and cannot afford a guidance for the decision of other cases.

Indeed, an attempt to use those observations as casting a duty upon the Acquisition Officer to inform the claimant that he should make a claim for a particular amount of compensation and to warn him that otherwise the provisions of Section 25(2) would be attracted was repelled in a later case of the Madras High Court in A.P.S. Karuppaiah Nadar Vs. Special Dy. Collector for Land Acquisition, Virudhunagar and Another, by the learned Chief Justice and Rajagopala Ayyangar J.

They observed that there is no provision in the Land Acquisition Act requiring that the Collector should give the claimant any such warning and observed that "in the absence of any such provision it would be adding to the terms of the statute to import such a duty." They explained the case in V.S. Subramania Chettiar and Another Vs. State of Madras, as turning upon its special facts.

4. Our attention has also been drawn to certain observations of Raghava Rao J., in Revenue Divisional Officer Vs. S. Venkatarama Iyer, . There, the learned Judge was dealing with a case where the claimant who was called upon to state his claim in writing omitted to mention the amount of his claim. The learned Judge pointed out that it was not incumbent upon the Collector to draw the claimant's attention to the omission and to require him supply it. He remarked further that there were observations of Curgenvén J., in N.M. Venkatarama Iyer Vs. Collector of Tanjore, which supported the contrary view.

He then proceeded to say that "it is difficult however to find any warrant in the statute or in general legal principle for such view." In our opinion, the learned Judge's criticism of Curgenvén J.'s observations is not justified. Curgenvén J., was dealing with an oral statement of the claimant made to the Collector in response to a notice u/s 9 which gave the claimant less than the statutorily prescribed period of notice and observing that had it comprised the necessary particulars it would have amounted to making a claim, the learned Judge stated that it was the duty of the Labour Officer to have asked for the particulars he wanted.

It may be noticed that there may well be cases in which no particulars are necessary. Where an oral claim is advanced to an officer concerned -- unless the claim is directed to be made in writing -- if the claimant only states the amount of compensation he claims without giving any particulars, it is reasonable to expect the Collector to ask for them if he wants them and it would not be proper for him later to object to the validity of the claim before the Court for a higher amount on the ground that as no particulars were given, the claim could not be said to be a proper one. It may be noted that Section 25(2) refers only to the making of a claim and it may very well be defective in some particulars without ceasing to be a claim.

5. Coming to the facts of the present case, as we have already pointed out, the affidavit filed by one of the trustees, reliance upon the contents of which is placed to justify the omission, does not mention any ground whatsoever why the trustees failed to make a claim within time. It is futile to contend, in the absence of any such averment, that the trustees were under a bona fide impression that the statement of a claim would weaken the position they wanted to take up months later in their application under Article 226 of the Constitution.

A belated attempt is now made to plead such an impression as having been the reason for the omission. As already stated, it is not denied that there was a fairly long interval between the date before which they should have filed the claim and the date of the presentation of the writ petition in the High Court. The mere fact that they were contemplating the institution of other proceedings cannot in our opinion justify the omission, especially because the filing of a claim for compensation could not in law affect their right to agitate the validity of the acquisition proceedings before the High Court.

Indeed, it may be pointed out that they took quite a long time for filing a writ petition, which was actually presented in the High Court before the vacation Judge, during the closure of the High Court in the summer of 1951. The trustees seem to have taken their own time in filing the writ petition, and when they did file it, it was only with a view to obtain orders for stay of the passing of the award. The trial Judge was therefore, in our opinion, obviously in error in considering that the omission of the trustees to present their claim for compensation was justified. The point may be shortly put by saying that no justification was even alleged by the trustees and could not therefore be found.

6. Having regard to the fact that the appeal might have succeeded at least in part but for the above objection, it is with regret that we direct the dismissal of this appeal. The appellant will pay the costs of the Government. The appellant states that the costs may be collected from the amount of compensation in deposit with the Court.