
(1976) 12 CAL CK 0023
In the Calcutta High Court
Case No : C.R. No. 2848 of 1973

Nirmala Bala Sen

APPELLANT

Vs

Jatindra Nath Sen

RESPONDENT

Date of Decision : 22-12-1976

Acts Referred:

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

Citation : AIR 1977 Cal 205 : 81 CWN 471

Hon'ble Judges : Salil Kumar Datta, J;H.N. Sen, J

Bench : Division Bench

Advocate : H.N. Ghosh and Sourendra Prasad Ghosh, P.N. Palit, for the Appellant; S.N. Mukherjee and D.P. Mukherjee, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule is directed against an order of the Additional Land Acquisition Officer dated 28/30-7-1973 whereby the application for reference filed by the petitioner u/s 18 of the Land Acquisition Act in L. A. Case No. 3 of 1972-73 was held to be time barred. It appears that in the above land acquisition case an Award was passed in respect of acquisition of various plots of land. The Award, as it appears from the record, contained provisions for payment to more than 900 persons interested and specific amounts were mentioned as payable to such persons. In the application for reference which was filed on 6-12-1972 it was stated that there has been joint Award in favour of the petitioner with other persons in respect of certain plots even though the said persons were not entitled to any amount as they had no right, title or interest in the lands acquired. Schedule of the lands was given in respect of which the Award In the above case was challenged. The petitioner moved against these orders rejecting her application for reference and obtained the instant Rule with a blanket injunction restraining the Land Acquisition Officer from making payment of money to the opposite parties till the disposal of the Rule.

2. The point for consideration is whether the impugned order holding that the application for reference was barred by limitation, is sustainable in law. Section

12(2) of the Land Acquisition Act is as follows:--

The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Section 18(1) provides that any person 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 and the objection which can be raised is inter alia about the person to whom the amount is payable or the apportionment of the compensation amongst the persons interested.

Sub-section (2) is as follows:--

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

Provided that every such application shall be made,--

(a) if the person making the application was 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 from 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,"

Section 45 provides the mode of service in the following manner-;

(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 some conspicuous part of the land to be acquired.

It may be noted that the last portion of the Sub-section (3) is analogous to the provisions of Order 5, Rule 20 (1) of the Civil Procedure Code.

3. In this case, there is no dispute that the petitioner was not present at the time when the Award was made. Of course, it appears from the record that steps were taken on her behalf to produce the relevant documents before the Collector prior

to making of the Award in support of her claim. But such appearance cannot be accepted as appearance at the time the Collector made his award, for an award is in the nature of an offer for acceptance by persons interested and their personal presence or presence through representative at the time of making the award is essential for acceptance or otherwise of the offer contained in the award. There is accordingly no dispute that the petitioner was entitled to a notice u/s 12(2) of the Act and in fact such notice was sought to be served on the petitioner.

4. The petitioner states that she did not receive any notice u/s 12(2) though it appears, it was served on her son. It will be seen under Sub-section (2) of Section 45 that it is always desirable whenever practicable that the service of the notice shall be made on the person named therein. Subsection (3) provides that if such person cannot be found service may be made on any adult member residing with him. This provision, it appears to us, does not imply that in the event of a casual absence of the person interested, the notice is to be served on any other adult member of the family. The use of the word cannot in Sub-section (3) is of significance and it amounts in our opinion to habitual absence of the person interested at the recorded address and not to a casual absence of such person. In the facts and circumstances of the case it would appear that the notice was served on the very first attempt on the son of the petitioner and this service cannot be considered to be a proper service of the notice u/s 12(2) of the Act in the context of the discussion indicated above. We accordingly hold that in this circumstance, the question of limitation of the application u/s 18 does not arise and accordingly the Additional Land Acquisition Officer committed error in exercise of jurisdiction in holding that the application for reference was time barred. We therefore set aside the impugned order and hold that the application u/s 18 was not time barred. We further direct that this application will not be entertained and considered in accordance with law. It however appears that the application u/s 18 suffers from lack of material particulars. The petitioner will furnish the number of items in the award in respect of which reference is sought to be made together with the names of the persons concerned against whom the relief is claimed. Such supplementary statement will be filed by the petitioner within a month from the date of arrival of the records at the office of the L. A. Collector and in default, the application as originally filed will be dealt with and disposed of by the authority concerned in accordance with law.

5. The Rule is accordingly made absolute. There will be no order as to costs.

Re: Application dated 9-9-1975.

6. Some of the opposite parties have filed an application on 9-9-1975 asking for release and payment of the amount of compensation to them which was restrained by the interim order issued on 14-8-1973. It is stated by the petitioners to this petition that in respect of the award made in their favour, the petitioner in the Rule was not in any way connected nor there was any joint award with her. In this state of affairs there is no reason why the interim order in

respect of the petitioners of this petition should be allowed to stand. We accordingly modify the interim order confining it to the persons with whom the petitioner was given a joint award in L. A. Case No. 3 of 1972-73. In respect of others the interim order will stand vacated. The application is thus disposed of. There will be no order as to costs.

H.N. Sen, J.

7. I agree.