

(1962) 11 PAT CK 0019

In the Patna High Court

Case No : Misc. Judicial Case No. 802 of 1961

Shivdev Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-11-1962

Acts Referred:

Bihar Town Planning and Improvement Trust Act, 1951 — Section 48, 48(1)
Constitution of India, 1950 — Article 19, 19(1), 226
Land Acquisition Act, 1894 — Section 18, 18(2), 30, 9, 9(3)
Patna Municipal Corporation Act, 1951 — Section 132(1), 132(2)

Citation : AIR 1963 Patna 201

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : B.C. Ghosh and Shyama Pd. Mukherji, for the Appellant; Govt. Advocate, Govt. Pleader, Ray Paras Nath and Akbar Hussain, for the Respondent

Judgement

Untwalia, J.—In this application under Article 226 of the Constitution of India, the petitioner has obtained a rule against the State of Bihar, respondent No. 1, and the Chairman, Patna Improvement Trust, respondent No. 2, to show cause why an appropriate writ, order or direction should not be issued quashing the scheme, the order of acquisition and the order for eviction passed under the Bihar Town Planning and Improvement Trust Act, 1951 (Act 35 of 1951), and directing them to forbear from enforcing the Scheme and the order and evicting the petitioner from holding No. 217 of the Patna Municipal Corporation. It appears that the owners of the premises comprised in the said holding were added as respondents 3 and 4 in the application with the permission of the Court on 19-9-61, but the M.J.C. application stood dismissed as against respondent No. 4, on 19-3-62 for non-compliance of order No. 12 dated 12-3-62. (2) The petitioner's case in the application filed on 13-9-61 is that he

"owns a shop in the area commonly known as New Market and holds the same on rent from the landlord"

and that he "had been carrying on trade in that shop from before 23rd May, 1951". His further case is that in February, 1956, a notice of the Scheme was first issued by the Patna Improvement Trust constituted under the Town Planning and Improvement Trust Act and was communicated to all owners of the houses in the area known as New Market, Patna. The notices issued in February, 1956 were superseded and the Trust issued fresh notices in September, 1957 to the owners of the houses aforesaid. The petitioner's further case is that

"no notice was issued to the petitioner who occupies the Holding No. 217, Circle No. 7, in Ward No. 2 and has his shop therein where he carries on his trade"

and that

"without giving notice to the occupiers, the said Trust proceeded with the finalisation of the scheme and without hearing the petitioner, and other occupiers, the Government sanctioned the Scheme".

The petitioner's case proceeds that

"no notice u/s 9 was issued to the petitioner nor was the petitioner heard on either the acquisition or compensation"

and that

"the petitioner has been asked by the landlord to vacate the premises by the 15th September, 1961, for the purpose of its acquisition by the Trust under the Planning Act".

In the petition, the petitioner has challenged the order of acquisition or eviction as being illegal and without jurisdiction, for the failure of respondent No. 2 to comply with the mandatory provision of notice in the said Act and give an opportunity to the petitioner to be heard. At the time of hearing of the application, it was also submitted that, if on the interpretation of Section 48(1) (b) of the Act, it be held that the Trust was required to serve a notice on the occupier of each premises, whose name is entered in the municipal assessment list and not on an occupier like the petitioner whose name was not entered in the municipal assessment list, the Act is ultra vires and unconstitutional inasmuch as, it does not provide for an opportunity of hearing the person whose property is going to be affected and so, due to the defect in the procedural aspect of the law, it is an unreasonable restriction on the right of the petitioner to hold his property and to carry on trade or business in it. No attack, however, has been made on the substantive aspect of the law. The order of acquisition and the award made under the Land Acquisition Act, 1894 (Act I of 1894) have been challenged as being ultra vires and void for non-service of notice on the petitioner u/s 9 of the said Act.

3. The petitioner in the 19th paragraph of his application has said:--

"That on the objection of the owner, the Chairman of the Trust made the following reservation in favour of Stall-Holders:--

".....There is of course the question of providing the displaced persons with residential area as well as business area and this aspect has been taken into consideration in planning the scheme. The scheme will be implemented in phases so that the alternative accommodation is made ready before disturbing the people from one area which is to be demolished and rebuilt Our proposal is to ask them to vacate only when some stalls in the Corporation market are ready. They will also be provided with an alternative land for residential accommodation subject to the conditions that they are prepared to pay for the same....."

In the supplementary affidavit filed on 15-9-61 it is stated by the petitioner-

"1. That I say that no stall in the Corporation market is ready to provide for the accommodation of the shop of the petitioner, nor has any alternative accommodation been offered to the petitioner."

4. In response to the notice, cause has been shown on behalf of respondents 1 and 2 by filing counter-affidavits and the learned Government Advocate and the learned Government Pleader have argued the cases on behalf of respondents 2 and 1 respectively. The case of respondent No. 2 in the affidavit sworn on his behalf on 15-1-62 is that an improvement scheme was framed by the Trust of its own motion and notice as required u/s 46 of the Town Planning and Improvement Trust Act was duly given. In pursuance of the direction given by the State Government in notification No. M/SI-3075/56-4783 L.S.G. dated 4-5-56, a general improvement scheme, which was designated as Scheme No. II for the improvement of a specified area, had been framed by the Trustees for the improvement of Patna. The said Scheme was duly published in 3 consecutive weeks in the official gazette as well as in local newspapers as required u/s 46 of the said Act. Thereafter, within 30 days next following the first day on which the notice u/s 46 was first published, the Trust served notice as required u/s 48 of the Act to all persons whose names appear in the municipal assessment list as being primarily liable to pay any tax assessed on the annual value of all buildings and lands which were proposed to be acquired in executing the Scheme and such notices were also served on occupiers of such premises whose names were entered in the municipal assessment list.

In this case the notice in question was served on the person whose name was entered in the municipal assessment register and the petitioner's name was not entered in the said register or in the assessment list as an occupier of the premises in question and, therefore, no notice u/s 48 was served on him. The case of respondent No. 2 further is-

"7 That the stalls in the Corporation Market have been ready and have been availed of by the several persons who have been displaced from the area acquired under the scheme in question."

5. On behalf of respondent No. 1, with reference to the non-service of notice of Section 9 of the Land Acquisition Act, the stand taken is that the proceeding in

question under the said Act does not suffer from any illegality or want of jurisdiction merely because no notice as alleged was served u/s 9. In the 6th paragraph of the affidavit sworn by the Bench Clerk to the Land Acquisition Officer filed on behalf of respondent No. 1 it is stated-

".....That during the month of March, 1960, Shri Safaquat Hussain, Overseer, Patna Improvement Trust, assisted by Shri Parak Lall and Tara Singh. Amins, and Samrendra Pd. Sinha and Baleshwar Gope, Chairman carried on detailed measurement of the locality the plot and the buildings and prepared plans thereof. The operations necessitated entering actually the buildings in question. In the circumstances the petitioner and the occupants of the oilier stalls had necessarily full information of the proceedings in connection with the framing of the scheme and the acquisition."

It is said in the 7th paragraph that the plan that was thus prepared was found not to agree with the municipal survey map and consequently a re-checking and surveying was ordered by the Land Acquisition Officer, whereupon substantially the operations were repeated in the months of June and July, 1960. It is further stated in the said paragraph-

"It is manifest, therefore, that all the occupants of the various stalls including the petitioner had full and complete knowledge of all the proceedings in connection with the framing of the scheme and the acquisition."

6. The argument put forward by the learned Government Advocate followed by the learned Government Pleader is that notice u/s 48(1) (b) of the Town Planning and Improvement Trust Act was required to be served only on Such occupiers whose names were entered in the municipal assessment list and an occupier who fails in his duty to get his name so entered in the said list u/s 139 of the Patna Municipal Corporation Act cannot complain that the restriction imposed upon his property right is unreasonable for want of a provision for issue of notice to the actual occupier of the premises sought to be acquired for the purposes of the Improvement Scheme. It was further submitted that for non-service of a notice u/s 9 of the Land Acquisition Act the proceeding of acquisition and the award made by the authority u/s 11 of the Act cannot be ultra vires and void and cannot affect the right of the authorities to take possession of the premises in question; at best, it can be said that the petitioner's "right, if any, to get the compensation or any portion of it is not affected and he can re-agitate the matter by an appropriate proceeding.

7. By an affidavit in reply filed on 21-11-62 the petitioner has stated with reference to paragraphs 6 and 7 of the counter-affidavit filed on behalf of respondent No. 1, that-

"I say that I have no knowledge as to when Overseers, Amins, and other Employees of the Patna Improvement Trust conducted detailed measurement of the locality, plot and buildings and prepared plans thereof. I say that I was never informed by any employee of the Patna Improvement Trust or by anybody else

that any measurement might have been conducted, in connection with impugned land acquisition proceeding and so, even if some measurement might have been conducted, the petitioner has no knowledge, thereof, and in no circumstances he can be estopped from challenging the impugned order and acquisition."

8. Before I proceed to deal with the respective contentions of the parties, I may dispose of a new point which was sought to be raised on the strength of a new affidavit dated 22-10-62 filed by the petitioner at the commencement of the hearing of the application on 21-11-62. In paragraph 2 of this affidavit, it has been stated-

"That the deponent in July, 1962 enquired from the office of the Patna Improvement Trust and came to know from there that no copy of master plan prior to the preparation of Scheme No. 2 is available and has been further informed by the office that scheme No. 2 was prepared and notice for acquisition was issued and acquisition proceeding held before any Master plan has been framed as required u/s 3 of the Patna Town Planning Improvement Trust Act of 1951."

It was submitted by Mr. B. C. Ghosh on behalf of the petitioner that this new point has been taken and the new affidavit has been filed in view of the decision of this Court in Smt. Lakshmi Devi and Others Vs. State of Bihar and Others, holding that the Improvement Trust cannot carry out any development or expansion scheme without preparing a master plan u/s 33 of the Bihar Act 35 of 1951 or without following the procedure prescribed u/s 42A of the amending Act. In that case, the scheme under consideration was different from the one in the instant case and since this new ground of attack on the whole scheme was taken on an assertion of a new fact at a very late stage of this case, we did not allow the petitioner to raise this point at the lime of the hearing of the application. It is no doubt true that a copy of the affidavit dated 22-10-62 was served in the office of the then Government Pleader on the same date, but no petition was ever filed for permission to amend the original petition or to treat the said affidavit by way of an amendment petition to the original petition. It appears to me that after the filing of the counter-affidavits on behalf of the two respondents, no new ground of attack on the whole scheme can be made, by merely mentioning a new fact in a supplementary affidavit without an amendment of the original application. In that view of the matter, the correctness of either the facts stated or the point of law raised has not been gone into and is not being decided in this case.

9. In order to decide as to whether the petitioner is entitled to any relief in this case 3 points fall for decision (i) whether it was incumbent upon the Trust to serve a notice on the petitioner u/s 48 (1) (b) of the Town Planning and improvement Trust Act; (ii) if not, whether the said Act imposes an unreasonable restriction upon the petitioner's fundamental rights under Article 19(1) (f) and (g) of the Constitution of India because of the allegedly procedural defect in not providing for service of notice on a person whose property rights are going to be affected by the acquisition of the property under the said Act; and (3) whether

the proceeding taken and the award made under the Land Acquisition Act are ultra vires and void for non-service of notice u/s 9 of the said Act on the petitioner.

10. Section 46 of Bihar Act 35 of 1951 provides for preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants and runs thus:

"(1) When any improvement scheme has been framed, the Trust shall prepare a notice stating:

(a) that the scheme has been framed,

(b) the boundaries of the areas comprised in the scheme, and

(c) the place at which particulars of the scheme together with a map of the area comprised in the Scheme, and a statement of the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee, may be seen at reasonable hours

(2) The Trust shall:

(a) cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in local newspapers specifying the period within which objections will be received, and

(b) send a copy of the notice to the Municipal Commissioners.

(3) The Chairman shall cause copies of all documents referred to in Clause (c) of Sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed." The fact that the requirements of the said section were complied with is not disputed.

Section 48 provides:

"(1) Within thirty days next following the first day on which any notice is first published u/s 46 in respect of any improvement scheme, the Trust shall serve a notice on.

(a) every person whose name appears in the Municipal assessment list as being primarily liable to pay any tax assessed on the annual value of any building or land which it is proposed to acquire in executing the scheme, or in regard to which the Trust proposes to recover a betterment fee, and

(b) the occupier of each premises, entered in the municipal assessment list, which the Trust proposes to acquire in executing the Scheme:

Provided that where any building or land is not recorded in the municipal assessment 1st, the notice shall be served on the person who may appear to the Chairman, after such enquiry as may be necessary, to be the owner of that building or land.

(2) Such notice shall:

(a) state that the Trust proposes to acquire such land or to recover such betterment fee for the purpose of carrying out an improvement scheme, and

(b) require such person, if he objects to such acquisition or to the recovery of such betterment fee, to state his reasons in writing within a period of sixty days of the service of the notice.

(3) Every such notice shall be signed by the Chairman or by a person authorised by him in that behalf."

The argument put forward on behalf of the petitioner is that the word "entered" in Clause (b) of Sub-section (1) of Section 48 qualifies and governs the word "premises" and not the word "occupier", as will be apparent from the language used in Clause (a) and proviso to Sub-section (1). On the other hand, it has been argued on behalf of the respondents that the word "entered" qualifies and governs the word "occupier" and not the word "premises". In my opinion, the argument put forward on Behalf of the petitioner is not correct and must be rejected. In order to appreciate the reason of my saying so, it is first necessary to refer to some provisions of the Patna Municipal Corporation Act, 1951 (Act 13 of 1952). The word "owner" is defined in Section 2(9) of the Town Planning Act as:

" "Owner" includes the person for the time being receiving, or entitled to receive, whether on his own account, or as agent, trustee, guardian, manager or receiver for another person, or for any religious or charitable purpose, the rents or purfits of the property in connection with which the word is used;"

but the word "occupier" is not defined there. The definition of such words as have" not been defined in the Planning Act but have been defined in the Municipal Act, has been adopted by Section 2(19) of the former Act. In Clause (dd) of Section 4 of the Patna Municipal Corporation Act the word "occupier" is defined as:

" "occupier" includes any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used, or damages on account of the occupation of such land or building, and also an owner living in, or otherwise using, his own land or building and a rent-free tenant;"

I may state that the definition of the word "owner" in the Municipal Corporation Act is more or less the same as given in the Planning Act. u/s 132, it has been provided-

"(1) Any tax which is assessed on the annual value of holdings, other than the latrine tax or drainage tax, shall subject to the provisions of Sections 223 and 224 be payable by the owners of holdings within the Corporation.

(2) The latrine tax or drainage tax shall, subject to the provisions of Section 225,

be payable by the persons in actual occupation of holdings within the Corporation-"

Assessment list is prepared u/s 137 of the Act which provides that the said list "shall contain the following particulars and any others which the "Chief Executive Officer may think proper to include:

X X X X (f) the name of the owner and occupier;

X X X X" Under Section 139 the Chief Executive Officer is empowered to alter or amend from time to time the assessment list in any of the following ways;

"(a) by entering therein the name of any person or any property which ought to have been entered, or any property which has become liable to taxation after the publication of the assessment list u/s 149;....."

publication of notice of the assessment list is provided in Section 149 of the Municipal Corporation Act. It is clear to me that after the publication of the assessment list u/s 149 the Chief Executive Officer, either of his own motion or on an application made in that behalf by any person whose name ought to have been entered in the assessment list either as owner or occupier but has not been so entered, can alter or amend the list by entering (herein the name of such person. If the provisions of Section 48 of the Town Planning and Improvement Trust Act are read and appreciated in this background, it would be clear that the persons spoken of in Clause (a) of Sub-section (1) are the owners of the holdings primarily liable to pay any tax assessed on the annual value of the building or land as provided in Section 132(1) of the Municipal Corporation Act and the occupier mentioned in Section 48 (1) (b) is one who is liable to pay latrine tax or drainage tax u/s 132 (2) of the Corporation Act and is the person whose name is so entered in the assessment list. It is unreasonable to assume that a duly has been cast upon the Trust to serve notice on the occupier of the premises even though his name is not entered in the municipal assessment list. In my opinion, the language of the proviso to Sub-section (1) supports the view I have expressed above and goes against the contention of Mr. Ghosh. According to the proviso, if any building or land is not recorded in the municipal assessment list (either in the name of the owner or the occupier), the notice is to be served upon the person who may appear to be the owner of that building or land. There is no corresponding provision to serve such a notice upon an occupier whose name is not entered in the assessment list. If the word "entered" were to qualify and govern the word "premises" and not the word "occupier", a comma ought not to have been given after the former word and ought to have been put after the word "occupier". I, therefore, hold that under the terms of Section 48(1)(b) of Bihar Act 35 of 1951 the Trust was not required to serve any notice on the petitioner.

11. In my opinion, the law is not unconstitutional or invalid merely because it has not provided for service of notice on all the occupiers of the premises sought to be acquired, whether such occupiers are entered in the municipal assessment list

or not It would be throwing an unreasonable burden on the improvement Trust to make a roving enquiry about all the occupiers of the premises and to serve notice on them. It is not always possible and easy to do so. A man living in any premises or carrying on any business in them may not necessarily be the occupier of such premises as he might be an agent or servant of the occupier to look after the demised premises or to carry on business therein. As I have said above, it is always open to, rather it is the duty of, the occupier to get his name entered as such in the municipal assessment list at the time of its preparation and publication or even thereafter. But, if he does not do so either due to negligence or to avoid his liability to pay the latrine or the drainage tax, he cannot complain that his property right has been affected without giving him any notice and opportunity of being heard and that such procedural defect in the law will make it unconstitutional and invalid. It is to be remembered that a general notice, which would be a notice to all the owners and the occupiers of the premises sought to be acquired for the improvement scheme, has been provided for in Section 46 of the Town Planning and Improvement Trust Act and, as I have said above, it is not disputed in this case that such a notice was given. In the circumstances, therefore, the attack on the constitutional validity of the law on the ground of the alleged infringement of petitioner's fundamental rights is unfounded and must be repelled.

I am also of the view that for the purposes of acquisition of premises persons mentioned in the 6th paragraph of the counter-affidavit of respondent No. 1 quoted above must have gone upon the land and the petitioner must have acquired knowledge of all the proceedings in connection with the framing of the Scheme and the acquisition as asserted in the 7th paragraph of the said counter-affidavit. I am not prepared to reject the said affidavit on the ground that it being sworn by the Bench Clerk of the Land Acquisition Officer is defective as the said facts stated therein could not be in the personal knowledge of the deponent. He being the Bench Clerk, it is no wonder that the facts stated were true to his knowledge. It is a matter of common knowledge that acquisitions cannot be made without carrying on such operations as aforesaid upon the site and the land. It is also provided in Section 4(2) of the Land Acquisition Act that after publication of a preliminary notification u/s 4(1)

"it shall be lawful for any officer, either generally or specially authorised by such Government or the Collector in this behalf, and for his servants and workmen,--

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear any part of any standing crop, fence or jungle:".

Under Section 8 of the said Act, it is provided that the Collector shall cause the land to be marked out if the land has been declared to be required for a public purpose u/s 6, unless it has already been marked out u/s 4. I am not prepared to believe the statement of the petitioner made in his affidavit-in-reply filed on 21-11-62 controverting the statements made in the 6th and 7th paragraphs of the counter-affidavit of respondent No. 1. Thus it is clear that the petitioner had had actual notice of the fact that the premises claimed to have been occupied by him were going to be acquired for the purposes of the planning and improvement scheme. That being so, he cannot complain of the infringement of his fundamental right for want of a formal notice to him or a provision to that effect.

12. Coming to the third and the last point urged on behalf of the petitioner, it is to be noted at the outset that it is not disputed that the requirements of the provisions of Sections 4, 5A and 6 of the Land Acquisition Act were complied with. The argument put forward on behalf of the respondents is that even assuming that the petitioner was a person who was entitled to a special notice u/s 9(3) of the Land Acquisition Act, the proceeding for the acquisition of the land and the award cannot be held to be illegal and ultra vires for the mere failure of the Collector to serve such a notice on the petitioner. It would appear from order No. 15 dated 30-4-62 passed on the application of respondent No. 2 filed in this miscellaneous judicial case that the award has been made by the Collector and the compensation money of Rs. 4431/25 nP. has been deposited by the Trust and withdrawn by the owner of the premises on the 21st of September, 1961. The petitioner was, by the said order, directed to deposit a sum of Rs. 800/- due for the last 8 months as security at the rate of Rs. 100 per month. After the making of the award u/s 11 of the Land Acquisition Act, the Collector is entitled to take possession of the land u/s 16, which shall thereupon vest in the Government, free from all encumbrances.

Under the Land Acquisition (Bihar Second Amendment) Act 1956 (Act XXXIV of 1956), it has also been provided in Section 17 (1A) that in cases of emergency

"the power to take possession under Sub-section (1) may also be exercised in the case of any land, other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development".

In response to notice u/s 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 u/s 18 or Section 30 of the Land Acquisition Act. This also finds support 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 u/s 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 u/s 18 of the Act. He could do so within 6 months from the date of the Collector's award as provided for u/s 18(2)(b).

I may also observe that on proof of the fact that he was not served with a formal notice u/s 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. 44318/25 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 u/s 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. The view which I have expressed in this regard finds support from some decisions referred to hereinafter.

13. It has been held in *Ganga Ram Marwari v. Secy. of State for India* ILR 30 Cal 576, while interpreting the provisions of the Land Acquisition Act 10 of 1870, that land acquired under the said Act vests absolutely in the Government free from all encumbrances, after a bona fide award or reference by the Collector has been made and possession taken, even when no special notice, as required by Section 9 of the Act, has been served on persons known or believed to be interested therein. Mr. Ghosh endeavoured to distinguish this decision on two grounds. Firstly he said that the proceedings were not bona fide in this case as even after knowing at the time of measurement etc., that the petitioner was the occupier of the premises, no notice was served on him mala fide, and secondly, that the principle laid down in that case would not apply where possession of the property had not been taken. I find no force in either of the points of distinction. No facts have been stated to make out any case of the proceeding or the award being mala fide for the alleged non-service of notice upon the petitioner. It is no doubt true that the land absolutely vests in the Government or the body for which it has been acquired after the taking of possession but the validity of the acquisition of the land or the award nonetheless is not affected, on a parity of reasoning, for non-service of notice u/s 9(3) of the Act.

In *Ezra v. Secy. of State for India* ILR Cal 605 with reference to the provisions of Section 9 and other provisions of the Land Acquisition Act, it has been observed at P. 629 by the Judicial Committee of the Privy Council:

"When the sections relating to this matter are read together, it will be found that the proceedings resulting in this "award" are administrative and not judicial; that the "award" in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and

that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court"

Following the decision in ILR Cal 576 it has been held in *Kasturi Pillai v. Municipal Council Erode* ILR Mad 280: (AIR 1920 Mad 417) that the Collector's failure to serve notice of the intended acquisition on the occupier or owner, as required by Sections 9(3) and 45 of the Land Acquisition Act, does not make the subsequent proceedings, such as the award, void so as to entitle the owner or occupier to resist a suit in ejectment. In the case of *Mahanta Sri Sukdev Saran Dev v. Raja Nripendra Narayan Chandradhvarjee* 76 CriLJ 430 notice u/s 9(3) was not issued and served on the owner of the land acquired under the Land Acquisition Act. Considering the effect of such failure, a Bench of the Calcutta High Court held:

"Considering the scheme of the Act, that the main question that can be agitated by a person to whom notice might be given was merely the amount of compensation, and that any such person still has reserved to him u/s 31 a right to claim from the person actually receiving compensation any amount to which he may consider himself entitled; considering further the difficulties likely to arise if every failure to comply with the details of the proceedings of acquisition is to render them null and void we can see no reason to think that the failure to give this notice must be given such importance that the provisions must be held to be of a highly mandatory character such as that the failure to follow it will render the whole proceedings null and void and inoperative."

14. All the points raised on behalf of the petitioner having failed, the application also fails "and the rule is discharged, but, on the facts and in the circumstances of the case, I would make no order as to cost.

Ramaswami, C.J.

15. I agree.