

(1965) 12 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 254 of 1963

Smt. Sugandhi and Others

APPELLANT

Vs

Collector, Raipur and Others

RESPONDENT

Date of Decision : 22-12-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 11

Citation : (1966) JLJ 192

Hon'ble Judges : N.M. Golvalker, J;K.L. Pandey, J

Bench : Division Bench

Advocate : J.V. Jakaldar and A.P. Sen, for the Appellant; K.K. Dube, Deputy Govt. Advocate for respondents Nos. 1 and 2, G.C. Koshal and G.C. Jain for respondent No. 4 and respondent No. 3 was not represented, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Pandey, J.—This is a petition under Article 226 of the Constitution to call up and quash by certiorari the proceedings in Land Acquisition Case No. 13-A/82 of 1961-62 before the Collector and Additional Collector of Raipur (respondents 1 and 2) culminating in the Collector's award dated 11 May 1963 whereby compensation was determined u/s 11 of the Land Acquisition Act for a part of the acquired land, namely, 11986 sq. ft., out of plot So, 2/11 of Mandahapara in Raipur city.

2. The facts giving rise to this petition may be shortly stated. Chunnilal, father of Smt. Fadhabai (respondent 4), was a paternal uncle of Dammooolal (petitioner 1, who being now dead is represented by his numerous legal representatives). The Nazul lease of plot- No. 2 /11 stands in the name of "Chunnilal Dammooolal". The other like lease of plot No. 2 /24 is in the name of Dammooolal. There are on these plots two houses bearing municipal Nos. 396 and 397. Chunnilal died on 28 August 1947. Thereafter, Smt. Radhabai has been living in the house standing on plot No. 2/11 from about the year 1952. She had filed Civil Suit No. 8-A of 1955 against Dammooolal (her first cousin), petitioner 2 (her deceased sister's son)

and Smt. Kasturi bai (her only surviving sister) claiming a declaration that, as heirs of their father Chunnilal, she and her sister Smt. Kasturibai took his estate including the plots Nos. 2 /11 and 2/24 and the houses standing thereon. The Additional District Judge, Raipur, dismissed that suit on 19 November 1959 on the ground that Dammooolal had taken the property by survivorship and, in the appeal filed by Smt. Radhabai, this Court affirmed that decision on 8 February 1963.

3. While the appeal filed by Smt. Radhabai was pending in this Court, the Post Master General, Central Circle, Nagpur, by his communication dated 9 November 1961, moved the Collector of Raipur for acquiring 19,500 sq. ft., of open land out of plot No. 2/11 for the location of a telephone exchange. The usual notification under Sections 4 and 17(4) of the Act was issued on 20 August 1962 and it was also directed therein that, since in the opinion of the State government, Section 17(1) was applicable to the case, Section 5-A would not apply. This was followed by a notification u/s 6 dated 21 December 1962 with regard to 19,500 sq. ft. of land out of plots Nos. 2/11 and 2/24. Thereupon, a public notice as contemplated by Section 9(1) was given to all persons interested in the land and a special notice was served on only Smt. Radhabai. She alone appeared in response to these notices and objected to the acquisition inter alia on the ground that there was a Jain temple in one of the rooms of the building included in the land sought to be acquired. She was then directed to file a statement of her claim in regard to the land excluding the built-up area. Being dissatisfied, she filed in this Court Miscellaneous Petition No. 33 of 1863 under Article 226 of the Constitution to call in question the land acquisition proceedings. That petition was, however, dismissed in motion on 16 February 1963. Smt. Radhabai then filed a statement of her claim. Thus it was that, by the impugned order dated 11 May 1963, compensation amounting to Rs. 55,135.60 was determined for 11,986 sq. ft. out of the larger area sought to be acquired. On 12 July 1963, this amount was paid to Smt. Radhabai and possession of the land was directed to be delivered to the Posts and Telegraphs Department.

4. On 26 July 1963, the petitioner 1 made an application to the Collector of Raipur to say that, although he alone was entitled to the land and there was material on the record of land acquisition proceedings to indicate that fact, no notice was served on him with the consequence that he came to know about those proceedings only on 24 July 1963. Thereafter he made an application u/s 18(1) of the Act for a reference to the Court.

5. The petitioners have challenged the land acquisition proceedings and the award therein made mainly on the ground that though, as shown, the petitioner 1 is the owner in possession of the land and the petitioner 2 is an occupier thereof, being in possession of a part of one of the buildings for the office of "Paras Film Exchange", no notice was served on any of them and thus the mandatory requirements of Sections 9(3) and 12(2) of the Act were disregarded. According to them, the fact that the petitioner 1 was interested in the land as the

owner thereof was clear from the maintenance khasra and communication of the Nazul Officer dated 29 November 1961, which were on the record of the proceedings, and that fact was mentioned also in the order-sheets of the proceedings on 22 November 1901 and 29 November 1961. Being thus fully aware of the interest of the petitioner 1 in the land, the respondents 1 and 2 did not issue to them, wilfully and from wrong motives, the statutory notices and thus acted with supine indifference or mala fide intendments. That being so, all subsequent proceedings were ultra vires and the award made therein is inoperative in law in affecting the rights of the petitioners,

6. The respondents 1, 2 and 4 have resisted this petition. According to the first two respondents, only the respondent 4 was in possession of the property and, to their knowledge, she alone was the person interested in the property. The respondents 1 and 2 further averred that they had no knowledge that the petitioners 1 and 2, who were not in possession of the property, had any interest therein. The land acquisition proceedings in this case were open proceedings. The two notifications under sections 4 and 6 were published in the State Gazette. The respondents 1 and 2 and the Executive Engineer of the Posts and Telegraphs Department twice inspected the land in the presence of Birdhichand, husband of the respondent 4. Then the Nazul Surveyor demarcated the land twice. Finally, the general notice was published in the locality by beat of drum and a copy thereof was affixed to the boundary wall of the plot. If, as claimed, the petitioner 1 was in possession of the land and the petitioner 2 was an occupier, they could not have remained ignorant of the land acquisition proceedings and it should, therefore, be inferred that they knowingly abstained from participating in those proceedings. It was denied that the respondents 1 and 2 wilfully refrained from issuing any notice to the petitioners 1 and 2. On the other hand, the respondents 1 and 2 did not issue any such notice because they did not know or believe that the petitioners 1 and 2 had any interest in the land. In this situation, the land acquisition proceedings, which were otherwise in accordance with law, cannot be assailed only on the ground that special notices were not issued to the petitioners 1 and 2.

7. According to the respondent 4, the petitioners knew about the land acquisition proceedings, but they failed to appear or make their claims in time.

8. Having heard the counsel, we have, after careful consideration, formed the opinion that this petition should be dismissed. It is obvious, and is also accepted, that no special notice was served on the petitioners. The question is whether that vitiates the land acquisition proceedings. In this connexion, our attention was drawn to the result of failure of service of notice in other situations and reliance was placed upon *Raghunath Das v. Sunder Das Khetri* AIR 1914 P C 129 : I L R 42 Cel. 72 (P. C), *Rajagopala Aiyar by guardian Ramachandra Aiyar Vs. Ramanujachariar and Another*, and *Premchand v. Board of Revenue* 1964 M P L J 337. In our opinion, an omission to serve a notice under Order 41, Rule 22 or Rule 66 of the CPC or the sale of the property of a defaulter under the Madhya

Pradesh Land Revenue Code, 1959, without serving a notice on him stand on an altogether different footing.

9. The case before us is governed by the provisions of Section 9 of the Act which provides:

9 (1) The Collector should 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 each 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 willing 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 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 w situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

10. It is urged before us that, since the Collector wilfully abstained from issuing to the petitioners notices under sections 9(3) and 12(2) of the Act, the proceedings were mala fide and colourable with the consequence that the land should not be regardless vested in the State. In support of this argument, reliance is placed upon Laxmanrao Kristrao Vs. Provincial Government of Bombay and Another, . In that case, Chagla C.J. relied upon the following observations of the Calcutta High Court in Ganga Ram Marwari v. Secretary of State for India (2) I L R 30 Cal 576 at p. 579.

Where it is known or believed that a person is interested and yet the Collector wilfully and perversely refuses to give him notice, there his proceedings cannot be considered bona fide and should be held to be colourable and therefore inoperative in vesting the land in the Government....

The observations made in the Bombay case and the earlier Calcutta ease are obiter and both these cases are authorities for the view that, when the proceedings are bona fide and not colourable, the absolute vesting u/s 16 of the Act cannot be questioned. So, it has been repeatedly held that, apart from such

wilful refusal to serve notices on persons known or believed to be interested, mere failure to serve notices u/s 9(3) does not vitiate the award or affect the vesting: *Kasturi Pillai v. Municipal Council, Erode* I L R 43 Mad. 280, *Mahanta Sri Sukdev Saran Dev v. Raja Nripendra Narayan Chandradhvarjee* 76 Cal. L J 430, *Hunnikeri Bros. v. Assistant Commissioner, Dharwar Division* AIR 1962 Mys. 169 and *Shivdev Singh Vs. The State of Bihar and Others*,

11. The allegations of wilful refusal to issue notices and mala fides are founded mainly on the ground that the petitioners' interest in the land could be easily ascertained from the material already on the record of the proceedings. This seems to imply that the Collector failed to advert to that material. If so, as pointed out in the case of *Ganga Ram Marwari v. Secretary of State* ILR 30 Cal 576 at p. 579 non-service of notice on account of such inadvertence or mistake is rather allied to ignorance of the fact of the person being interested rather than to any wilful perversity in the sense of the act being done deliberately and intentionally. In any event, the respondents 1 and 2 have contested that they knew or believed that the petitioners 1 and 2 were interested or that there was any wilful abstention from issuing notices to them. These questions, which are essentially controverted questions of fact, can neither be investigated nor any relief granted on their basis in these proceedings. As pointed out by the Supreme Court in *Sohanlal Vs. The Union of India (UOI)*, and *Union of India (UOI) Vs. T.R. Varma*, it is not the practice of the Court to investigate in these proceedings questions of fact which are seriously in dispute and it is more appropriate that such investigation should be made in the civil Court in a properly instituted suit.

12. It is argued before us that the petitioners have no other alternative efficacious remedy. We do not agree. As we have indicated in the last paragraph, if the petitioners desire to question the land acquisition proceedings and the award on the ground of wilful refusal to serve notices and mala fides on the part of the respondents 1 and 2, their remedy is a property instituted suit. On the other hand, if they desire simply to lay claim to the compensation amount which has been paid to Smt. Radhabai, then too they are not without any remedy. Since no notices were issued to them, they are entitled to maintain a suit to claim the amount from her. This is clear from the third proviso to Section 31(2) of the Act. If any authority is required, we may refer to *Deo Sansthan Chinchwad and Others Vs. Chintaman Dharnidhar Deo and Another*, . and *Birendra Nath Banerjee and Others Vs. Mritunjoy Roy and Others*, . It is suggested that the petitioners may not be able to recover the whole amount from Smt. Radhabai, a woman, to whom the Collector, by his gross negligence, paid, the amount. Normally, once the Collector has paid the amount of compensation, the Court cannot direct him to pay the amount again to someone else. But if, in this matter, it can be shown that he was guilty of such negligence and blameworthy conduct that he should rightly be made liable to do so, the petitioners may, if they so think, maintain an action directly to that end. We may, however, add that we should not be regarded as expressing any concluded opinion on that aspect of the question.

13. Since all the grounds urged before us fail, this petition is dismissed but, in the circumstances, the parties are directed to bear their own coats. The security amount shall be refunded to the petitioners.