

(1973) 07 KAR CK 0010
In the Karnataka High Court
Case No : M.F.A. No. 341 of 1971

Special Land Acquisition Officer

APPELLANT

Vs

Sanagouda Paragouda Patil

RESPONDENT

Date of Decision : 25-07-1973

Acts Referred:

Citation : AIR 1974 Kar 74

Hon'ble Judges : Sadananda Swamy, J; Bhimiah, J

Bench : Division Bench

Advocate : V.G. Sabarad, for the Appellant; K.A. Swamy, for the Respondent

Final Decision : Dismissed

Judgement

Sadananda Swamy, J.—These appeals arise out of the common order passed by the Civil Judge, Belgaum in L.A.C. Nos. 1036, 1032 and 1034/70. The lands acquired are 26 acres 34 guntas in S. No. 98, 12 acres 17 guntas in S. No. 72/1, plus 2. 14 acres 23 guntas in S. No. 92/3, 1 acre 10 guntas in S. No. 96/7, and 1 acre 22 guntas in S. No. 96/10. The last three lands were the subject-matter of L.A.C. 1034/70 and the other two are the subject-matters of L.A.C. Nos. 1036 and 1032 of 1970 respectively. The lands are situated in Majati village. Hukkeri Taluk, Belgaum District. The purpose of acquisition was for the Hidkal Dam Project.

The preliminary notifications were issued on 26-6-1963. 12-1-1962 and 16-9-1963. The Land Acquisition Officer awarded Rs. 2,500 per acre for Bagavat Class I lands, at the rate of Rs. 2,000 for Bagayat Class II lands. Rs. 1,200 for Karesuli Class II lands, at the rate of Rs. 1,000 for Karesuli Class III lands, at the rate of Rs. 1,000 for Kempisuli Class II lands, Rs. 800 for Kempisuli Class III lands, at the rate of Rs. 1,000/- for Hal Soil and at Rs. 100 for waste land. The learned Civil Judge enhanced the compensation to Rs. 3,500 for Class I bagayat lands, Rs. 3,000 for Bagavat Class II lands, Rs. 1,500 for Karesuli Class III lands. Rs. 1,200 for Kempisuli Class III lands, Rs. 1,800 for Jawar and Groundnut

growing lands and Rs. 150 for waste lands. He also awarded compensation of Rs. 4,690 towards the value of the well situated in S. No. 98 in L.A.C. No. 1036/70 according to the valuation made by the Executive Engineer and for which no compensation has been paid by the Land Acquisition Officer.

The learned Civil Judge considered the oral evidence with regard to the yield and was of the opinion that the figures given by the claimants were exaggerated. The Land Acquisition Officer in his evidence has given the figures with regard to the yield from the respective lands on the basis of the crop cutting experiment held by competent-authorities and the rates obtained from the Agricultural Produce Market Committee. Adopting the rates mentioned by the Land Acquisition Officer himself, examined as D.W. 1, and multiplying the net income so calculated by 20 times, the learned Civil Judge arrived at the value of the lands acquired. Hence, the finding of the learned Civil Judge with regard to the valuation of the lands has to be confirmed.

2. The main contention urged on behalf of the appellant Land Acquisition Officer in these cases is, that the claim for enhanced compensation is barred u/s 25(2) of the Land Acquisition Act. It is relevant to state that the respondent-claimant in each of the appeals is the same person. The contention urged on behalf of the appellant is that the claimant who had been served with notices u/s 9 of the Act had either refused to make a claim or had omitted without sufficient reason to make such a claim, and is not therefore entitled to claim enhanced compensation.

The claimant has admitted that he had been served with the notices u/s 9 of the Act, but has not preferred any claim statements in response to the notices. He has stated in his evidence that he was not aware of the penal nature of the consequences of the failure to file his claim statements after the said notices and therefore did not file his claim statements. He has also pleaded that he is an illiterate villager and was ignorant of the penal consequences of such failure. The Special Land Acquisition Officer has stated in his evidence that he is not in a position to state whether the penal consequences flowing from non-compliance with the notices u/s 9 of the Act had been explained to the claimant or not since the notices had been issued long before he took charge of his office.

The learned Civil Judge held that the claimant has acted in good faith, that there does not appear to be any negligence on his part, that he was not aware of the technical provisions of Section 9 and Section 25 of the Act, that he therefore failed to prefer claims in response to the notices u/s 9, and came to the conclusion that there was sufficient reason for the omission u/s 25(3) of the Act, and that therefore the claimant is entitled to ask for enhanced compensation. The correctness of this conclusion is challenged before us.

3. In *Special Land Acquisition Officer City Improvement Trust Board, Bangalore Vs. Chikkaboranna*, it has been held that even if there was any formal defect in the claim for enhanced compensation put forward by the claimant, where the District Judge has chosen to exercise his discretion under sub-sec. (3) of Section

25 of the Act. Section 25(2) would not bar a claim for enhanced compensation. In *The Special Land Acquisition Officer, H.D.P. Ghataprabha Vs. Aparai Krishna Gadakari and Others*, where a copy of the notice issued by the Land Acquisition Officer under S. 9 of the Act had not been produced before Court, it was held that it is not possible to say whether the notice issued satisfied the statutory requirements of S. 9 of the Act. It was also held that unless it is shown that the notices satisfying the requirements of the Act have been served, it is not Possible to invoke the provisions of S. 25(2) of the Act. It was further held that when the trial Court has in exercise of its jurisdiction held that the omission to prefer a claim in the circumstances may be condoned, the Appellate Court ought not to interfere with the exercise of such discretion. In *V.S. Subramania Chettiar and Another Vs. State of Madras*, the claimants failed to make a claim in response to a notice u/s 9 under a wrong and bona fide impression that if such a claim was made, they would lose the chance of having the acquisition proceedings withdrawn in pursuance of their appeals to the higher authorities. It was held that it is desirable and sometimes even necessary, though it is not so required under the Act, that Acquisition Officers 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. Since the claimants were not informed of the implications of their failure to state the amount of the claim at the enquiry before the Acquisition Officer, it was held to be not a refusal to make such a claim or an omission without sufficient reason. It was further held that Section 25 of the Act, 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.

In *Ekkara Parambil Moideen Koya Haji and Others Vs. The Special Tahsildar for Land Acquisition and Another*, it has been held that Section 25 of the Act being a penal provision, must be applied only in cases where there is clear and convincing proof of deliberate refusal or omission to make a claim and that where there is neither negligence nor want of good faith the parties should not be deprived of the benefit of an enhanced valuation that might be fixed by the Court. In *State of Punjab Vs. Karnail Singh and Others*, it has been pointed out that Section 18 of the Act does not debar a person who has refused or omitted to make his claim before the Collector from seeking reference without showing sufficient cause for the omission, and that such omission is not intended by the legislature to go to the inherent jurisdiction of the Court so as to render its order void, that keeping in view its drastic effect. Section 25 calls for a reasonable construction inspired by a practical point of view and that a doctrinaire or rigid approach would be clearly out of place. It was further held that the rigour imposed by Section 25 should be applied only in cases where there is a clear and convincing proof of deliberate refusal or conscious or intentional omission without justifiable reasons. It was further observed that this stringent and penal

provision has not been designed as a trap for depriving the claimants of fair and proper compensation for their acquired property and that proof of good faith and absence of negligence would appear broadly speaking, to be safe tests to adopt in construing Section 25 of the Act. It was further observed as follows:

The Land Acquisition Officer enquiring into valuation, etc. and awarding the amount of compensation performs a statutory duty affecting citizens' property and in cases where land is to be acquired for a public purpose, the exercise of this duty must affect the expenditure of public money. In assessing compensation, therefore, he is rightly enjoined to exercise his own judgment, basing his award on correct principles discernible from the statutory scheme and with due regard to the interests of all parties affected. In cases, therefore, when his award is likely to be final and not open to reference and judicial review by the Court, it would be desirable, though not legally imperative, that he exercises his power of requiring statements in writing from the claimants u/s 9(2) of the Act; it would certainly promote the cause of justice, if ignorant claimants unrepresented by legal advisers are also properly informed that in the event of their omission to make the claim, as required by law, they would be disentitled to claim enhanced amount from the Court of reference. Even though the enquiry proceedings by the Land Acquisition Officer in this regard be considered to be administrative, nevertheless keeping in view the far-reaching effect of his award would be more in accord with the fundamental concept of our democratic welfare set U.P. for it would not only democratise the general tone and standard of our administrative machinery, but would also enhance and strengthen the people's faith and confidence in the administration, thereby promoting a feeling of satisfaction with our welfare set-up.

We respectfully agree with the ratio of the decisions referred to above. In the present case, it is no doubt admitted by the claimant that he has received the notices issued u/s 9 of the Land Acquisition Act. But what he has stated is in these words:

I had received two notices -- one u/s 9 and the other u/s 12(2) of the Act, directing me to receive the compensation amount. I did not file any objections or statements in response to notice u/s 9, as I was not aware that objection is required to be filed. Nobody had explained the penal consequences to me.

The lower Court has come to the conclusion that there was sufficient reason for the omission on the part of the claimant to file his claim statement in response to notices under S. 9 since he is an illiterate person and in view of the explanation offered by him. The claimant; in such cases should not be deprived of his right to claim enhanced compensation unless there is proof of deliberate refusal or omission, or negligence or want of good faith on his part. The Land Acquisition Officer has not established any one of these circumstances in this case.

4. There is another reason why the claimant is to be allowed to urge his claim for enhanced compensation. It is no doubt true that the claimant has admitted the

service of notice u/s 9, but the copy of the notice served on the claimant has not been produced. There is no evidence to show the date on which the notice in each case was served on the claimant. Hence, it is not possible to ascertain whether all the requirements of a valid notice u/s 9 of the Act had been complied with in order to attract the penal provisions of Sec. 25 of the Act. The burden of proving that a valid notice complying with the requirements of Section 9 had been served on the claimant is certainly on the Land Acquisition Officer. Therefore, it has not been established in this case that the notice served on the claimant is one which complied with the requirements of a valid notice u/s 9 of the Act, and the bar u/s 25 of the Act is therefore not applicable.

5. Mr. Swamy, next relied on the following observations of the Supreme Court in *Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi*,

In dealing with the matter raised before it at the appellate stage the appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion. As is often said it is ordinarily not open to the appellate Court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate Court to interfere with the trial Court's exercise of discretion.

These observations were made with reference to Section 34 of the Indian Arbitration Act under which the Court may stay the proceedings if it is satisfied as to the existence of certain circumstances. There is no reason why the same principle should not apply to the exercise of discretion by the trial Court u/s 25(2) and (3) of the Act. The lower Court has considered the explanation offered by the claimant for his failure to file his claim statement after service of notices u/s 9 of the Act, and has held that there was sufficient reason for such failure. There is no reason to interfere with the discretion exercised in favour of the claimant by the Lower Court in allowing him to urge his claim for enhanced compensation. Hence, the contention of the appellant has to be rejected.

6. It is next contended on behalf of the appellant that the Land Acquisition Officer was justified in refusing to award separate compensation for the well and that the lower Court should not have awarded compensation in respect of the same. The definition of "land" u/s 3 of the Land Acquisition Act includes things attached to the earth. The claimant would therefore be entitled to compensation in respect of the well. But the learned Government Pleader relied on the extract from the decision of the Madras High Court contained in 1955 Mad WN at page 111 of its Journal Section under the heading "Short Notes of Recent Cases". It is not possible to gather the facts of that case. But what has been decided in that

case is that ordinarily no compensation is awarded for a well which is situated on land acquired separately and in addition to the value of the water in the well. It also appears to have been held that in the absence of exceptional circumstances the award of compensation for a well in respect of the structures and in addition to the compensation for the water in the well cannot be supported. From the contents of this short note of the decision it can be gathered that in that case what was claimed was compensation for the structure of the well as well as separate compensation for the water in the well and it appears to have been held that apart from the compensation for the structure of the well, no compensation is payable separately for the water in the well unless there are special circumstances. Hence, the decision proceeds on the assumption that the claimant is entitled to compensation for the structure of the well. In the present case, the structure of the well has been valued by the Executive Engineer at the instance of the Land Acquisition Officer.

It has been elicited in the cross-examination of the Land Acquisition Officer that he does not remember how the land S. No. 98 is irrigated and whether the well is situated in survey No. 98. It is therefore clear that the Land Acquisition Officer did not award any compensation for the well situated in Survey No. 98. The lower Court was therefore justified in awarding compensation for the well also.

In the result, these appeals are dismissed with costs.