

(1968) 02 KAR CK 0011

In the Karnataka High Court

Case No : Misc. Second Appeal No. 43 of 1963

Special Land Acquisition Officer City Improvement Trust
Board, Bangalore

APPELLANT

Vs

Chikkaboranna

RESPONDENT

Date of Decision : 20-02-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25, 25 (1), 25 (2), 25 (3)

Citation : AIR 1968 Kar 319 : (1968) ILR (Kar) 165 : (1968) 1 MysLJ 369

Hon'ble Judges : M. Santhosh, J

Bench : Single Bench

Judgement

(1) The appellant in this miscellaneous second appeal is the Special Land Acquisition Officer, City Improvement Trust Board, Bangalore. 22 guntas of dry land and one guntas of kharab land, belonging to the respondent out of S. No. 8/18 of Jedahalli Village Bangalore North Taluka was sought to be acquired by the preliminary Notification dated 5-11-1959. We are concerned in this appeal only with 22 guntas of dry land. The compensation awarded to one guntas of kharab land is not in question. The Land Acquisition Officer, by his award dated 31-3-1960, granted Rs. 3,188/- per acre for the said dry land. The reference made u/s 18 of the Land Acquisition Act of 1961 (which will be hereinafter called as the Act) was rejected by the Subordinate Judge, Bangalore. In the appeal filed by the claimant, the learned 2nd Additional District Judge of Bangalore enhanced the compensation to Rs.7,000/- per acre for this dry land. This appeal is directed against the said order passed by the learned District Judge.

(2) Sri Ramadas, learned counsel appearing on behalf of the appellant, has urged 2 points before me. He contends that as the respondent-claimant had not put forward his statement of claim u/s 9(2) of the Act, he is precluded u/s 25(2) of the Act from asking for any amount exceeding the amount awarded by the Land Acquisition Officer. The second contention of Sri Ramadas is that the learned District Judge has enhanced the compensation without proper justification to Rs.

7,000/- per acre.

(3) Sri Varadaraja Iyengar, learned counsel appearing on behalf of the respondent-claimant, has contended that no proper notice u/s 9 of the Act had been given to the respondent. Though notice was not served on the respondent, coming to know of the proceedings, he had filed Exhibit D-3, statement of his claim asking for a compensation of Rs. 12,000/- per acre for this land Sri Varadaraja Iyengar contended that even if it is held that there is no strict compliance with section 9 of the Act, the learned District Judge condoned the same u/s 25 Sub-section (3) of the Act.

(4) In view of the rival contentions, the point for decision is whether sub-clause (2) of Section 25 of the Act is a bar for claiming enhanced compensation Section 25 of the Act reads as follows:--

"25. Rules as to amount of compensation. (1) When a person interested 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 Deputy Commissioner u/s 11.

(2) When a person interested 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 Deputy Commissioner.

(3) When a person interested 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 Deputy Commissioner."

Sub-section (1) of the Act states that when a person interested 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 Deputy Commissioner u/s 11. It is apparent from this that a person interested has to make a claim to compensation pursuant to any notice given to him u/s 9. So the first point for consideration in this case is whether a notice u/s 9 had been served on the respondent. Serving of the notice seems to be a prerequisite to making a claim for compensation. In Exhibit D-3 dated 8-12-1959, at the earliest point of time, the respondent has stated that notice was not served on him and he found it lying at his door. He has also stated that he has himself sold certain portion of this land at the rate of Rs. 12,000/- per acre.

Sri Ramdas has contended that the claimant has admitted that he did not give any statement and that he put in his claim after he received the award notice. Irrespective of what is stated by the claimant when examined 3 years later, it is very clear from Exhibit D-3 which is dated 18-12-1959 and has been produced by the Land Acquisition Officer, that the claimant has specifically stated in Exhibit

D-3 that no notice was served on him. There is no evidence on record to show that the requisite notice u/s 9 of the Act had been served on the respondent. If the Land Acquisition Officer wants to plead that sub-section (2) of Section 25 of the Act acts as a bar from asking enhanced compensation, it is up to him to prove that the mandatory requirements mentioned in sub-section (1) of section 25 are complied with.

In *N.M. Venkatarama Iyer Vs. Collector of Tanjore*, , Chief Justice Beasley speaking for the Bench at page 840 of the judgment has observed as follows:-

"In the latter case Lord Macnaughten observed that where the promoters of the public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the appointment so far as it makes provision on his own behalf. I entirely agree with the views expressed by the Calcutta High Court and the Allahabad High Court in *Krishna Sah v. Collector of Bareilly* (1), and this High Court in *Collector of Chingleput v. Khadir Mohidin Sahib* (2), The stringent provisions of S. 25(2) of the Act can only be applied after a notice which is strictly in compliance with S. 9. sub-secs. (2) and (3) has been served upon the landowner."

Again another Bench of the Madras High Court in *The Collector of Chingleput District Vs. Kadir Mohideen Sahib*, has observed thus:

"The objection based on S. 25, Clause (2) of the Land Acquisition Act (I of 1894) is clearly untenable. Clause (1) says that the claim to compensation has to be made "pursuant to the notice given under S. 9 and this makes a proper notice a prerequisite. Now, as shown by the District Judge and by my learned brother, such a notice was not given in this case, the notices all being defective in one way or another. The claimant's omission, therefore, to make a claim before the Deputy Collector was not "without sufficient reason" and he escapes the application of the stringent provisions of Clause 92) to his case."

I am, therefore, clearly of opinion that the appellant has not proved that as per the mandatory provisions of sub-section (1) of section 25 of the Act, the requisite notice u/s 9 of the Act had been served on the claimant. The stringent provisions of sub-section (2) of the said section cannot be made use of unless the requisite notice has been served on the claimant.

(5) The next question to be considered in this case is whether the respondent has put forward any claim to compensation or has refused to make such claim or has omitted to do so without sufficient reason to make such claim. The learned District Judge has held that Exhibit D-3 can be held to be a claim for compensation made by the respondent. In Exhibit D-3 the respondent has mentioned that out of the land to be acquired he has sold a certain portion at the rate of Rs. 12,000-per acre. Sri Varadarajiengar has pointed out that neither section 9 nor section 25 requires that a written claim should be filed. Even an

oral claim made before the Land Acquisition Officer for compensation, would amount to claim for compensation made by the claimant. The learned Sub-Judge held that no claim for compensation was made by the respondent. But he totally failed to advert to Exhibit D-3 in the case. While on this question it is pertinent to point out that in Exhibit D-2 the award in para 9 the Land Acquisition Officer has specifically stated as follows:-

"The claimant in his claim application has objected to the correctness of the notified extent and has stated that Sr. No. 8/18 measures 30 guntas. A notice was issued to him, asking him to produce relevant documents in support of his contention. In response the claimant has not filed any document to show that S. No. 8/18 measures 30 guntas."

In view of what is stated by the appellant in the award that the respondent has filed a claim application, it is difficult for the appellant to contend that no claim application has been filed by the respondent. A Bench of the Patna High Court in *State of Bihar Vs. Anant Singh and Others*, has pointed out that before section 25(1) can be resorted to, it must be proved to the satisfaction of the Court, that the applicant had made no claim to compensation after a valid notice u/s 9 had been given to him. It must be strictly proved that the applicant had refused to make any claim or had omitted to make any claim before the Collector pursuant to any notice given u/s 9. It is not enough to prove that statement of claim in writing had not been filed before the Collector. What has to be proved u/s 25(1) is that the applicant had not made claims to compensation and not that the applicant had not filed statements in writing before the Collector. There is no obligation on the interested person to file statements in writing. Similarly view has been expressed by another bench of the patna High court in *State of Bihar v. Johal Mahto AIR 1964 Pat 207*.

(6) Sri Varadarajaiengar has contended that even assuming that the respondent has not filed any claim for compensation or claim for compensation put forward by him does not satisfy the requirements of law, the learned District Judge has exercised his discretion under sub-clause (3) of section 25 and has held that there was sufficient reason for the respondent's omission and once the Court acts under sub-section (3) of the section, there is no bar for enhancing the compensation to be given to the respondent. The learned District Judge has held that even if there was no strict compliance of Section 9 of the Act, in view of the provisions of section 25 sub-clauses (2) and (3) this was a case where the claimant should be allowed to make the claim.

That it was within the jurisdiction of the appellate Court to do so, is laid down by the decision in *AIR 1933 Sindh 21*. It has been observed in the said case that where the Lower Court has failed to apply its mind to the consideration of the question as to whether the failure of the claimant to specify the amount of his claim was with or without sufficient cause, the appellate Court can consider the question and condone the omission, provided that there were sufficient grounds.

In N.M. Venkatarama Iyer Vs. Collector of Tanjore, referred to earlier, omission to give full 15 days notice as required by Section 9 of the Act has been held to be sufficient cause for the Court to condone the said lapse u/s 25 sub-clause (3) of the Act. In The Revenue Divisional Officer, Vizianagaram Vs. Vommi Appalaswami and Others, it has been observed as follows:-

The rigour of S. 25(2) of the Act is mitigated by S. 25(3). According to it, if the Court is satisfied that there was sufficient reason for the appellant's lapse under S. 9, the Court can award a sum in excess of the sum awarded by the Collector. Thus, the Court on being satisfied about the bona fides of the claimant's conduct, can remove the penalty imposed by S. 25(2), and grant compensation in excess of what has been awarded by the Land Acquisition Officer."

Again at para 15, it has been observed as follows:-

"The language of S. 25(3) of the Act does not expressly state that there should be an application in writing to satisfy the Court that there was sufficient cause for the applicant omitting to make a claim pursuant to the notice under S. 9. The language only suggests that there should be a sufficient cause for the omission, which should be allowed by the Judge. In other words if at the time of hearing, the claimant contents that there was a sufficient reason for his failure to make the claim and that reason was accepted or allowed by the Judge the penal consequences would not follow."

(7) The decisions relied on by Sri Ramadas, learned counsel appearing for the appellant, are not of any assistance to him Chigurupati Subbanna Vs. The District Labour Officer, only states that there should be a specific claim mentioning the amount of compensation claimed by the applicant. In that case no claim for compensation was put forward by the claimant. In AIR 1926 Lah 401 no claim for compensation was made by the claimant. He only produced the plain copy of a sale-deed. In Nalamvari Annasatram and Another Vs. The Special Land Acquisition Officer, Co-operative Housing Schemes, Madras, the question that their Lordships considered was whether it was a duty of the Land Acquisition Officer to draw the attention of the claimant to the penal consequences of the Act if he fails to put forward any claim. I am, therefore, of opinion that decisions relied on by the appellant's counsel have no application to the facts of the present case.

(8) From what has been stated above, it is clear that the stringent provisions of section 25 of the Act do not apply to the instant case. The requisite notice u/s 9 of the Act has not been proved to have been served on the respondent. Even without the requisite notice, the respondent has put forward a claim for compensation. Even if there was any formal defect in the claim for compensation put forward by the respondent, the learned District Judge has chosen to exercise his discretion under sub-clause (3) of section 25 of the Act. In any view of the matter, it is clear that the stringent provisions of section 25 of the Act are not attracted to the instant case.

(9) The only other point that remains to be considered is whether the learned

District Judge was right in enhancing the compensation to Rs. 7000 per acre.

(10) P. W. 1 examined on behalf of the claimant has spoken to Exhibit P-1 wherein on 12-6-1961 he had purchased 42 guntas of dry land at Rs. 10,500 which is situated about 1 of 11/2 furlongs away from the lands acquired in this case. He has stated that the lands in that locality are worth Rs. 12,000/- to Rs. 13,000/- per acre. P. W. 2 has stated that the price of the lands in that locality is about Rs. 12,000/- to Rs. 13,000/- per acre. The respondent, who has examined himself as P. W. 3, has stated that he had sold 271/2 guntas of land for Rs. 7,906/- as per Exhibit P-3 dated 24-1-1960.

The learned District judge has observed that in the circumstances of the case there was no justification for rejecting the evidence produced by the claimant. He has also pointed out that the appellant has not let in any evidence on his behalf. The Land Acquisition Officer has not even gone into the box. The evidence given on behalf of the respondent has not been rebutted. It may be further mentioned that even the award, exhibit B-2 in this case, refers to another award and does not give the basis on which the compensation has been awarded. Sri has not pointed it out. Ramdas that the learned District Judge has committed any fundamental or radical error of principle in enhancing the compensation. It has been laid down in The Revenue Divisional Officer, Vizianagaram Vs. Vommi Appalaswami and Others, as follows:--

"It is well established that in cases of land acquisition and compensation, which raise the question of the adequacy of the amount that has been awarded by a Court or Tribunal which has got to assess the exact amount, it is a well settled principle that an appellate Court ought to bear in mind that except on the basis of a fundamental or radical error of principle, it would have no ground for justification for interference, (Vide T, Veera Venkamma v. Collector of West Godavari 1950 1 Mad LJ 725 : AIR 1950 Mad 65. No fundamental or radical error of principles has been alleged, much less established in this case."

I am therefore of opinion that there is no merit in the second contention put forward by Sri Ramdas on behalf of the appellants. No case has been made out for interference with the order of the learned District Judge.

(11) In the result, there is no merit in this appeal and the same is dismissed with costs.

(12) Appeal dismissed