

**(1968) 07 AP CK 0006**  
**In the Andhra Pradesh High Court**  
**Case No : Appeal No. 523 of 1964**

Special Tahsildar, Land Acquisition, Srungavarapukota  
Vs  
Thatikonda Ramalinga Setty

APPELLANT  
RESPONDENT

**Date of Decision :** 03-07-1968

**Acts Referred:**

Land Acquisition Act, 1894 — Section 25(2), 25(3), 9

**Citation :** AIR 1969 AP 124

**Hon'ble Judges :** Venkateswara Rao, J

**Bench :** Single Bench

**Advocate :** M.V. Nagaramaiah, for Govt. Pleader, for the Appellant; K.V. Subrahmanyam, for the Respondent

## **Judgement**

1. This Appeal and Cross and Objections which arise out of land acquisition proceedings, are directed against the order of the learned Subordinate Judge, Visakhapatnam, in O. P. No. 6/63 on his file. Referring Officer is the appellant and the cross objections are preferred by the claimant.

2. Ac. 3-82 cents of the land belonging to the claimant and situated in Pandurti was acquired by Government for construction of a store-yard for the D. B. K. Railway project after due notification. No claim for compensation was made by the claimant before the Land Acquisition Officer in response to the notice issued to him u/s 9 of the Land Acquisition Act (hereinafter referred to as the Act). After making the necessary enquiry, the Special Tahsildar, Land Acquisition, Srungavarapukota, made his award on 20-12-62 providing for payment of compensation to the claimant at the rate of Rs. 2,310 per acre. He thereafter referred the matter to Court at the instance of the claimant. The learned Subordinate Judge enhanced the rate of compensation payable to the claimant from Rs. 2,310 to Rs. 2,775 per acre as against his claim at Rs. 4,000 per acre. Neither party is satisfied with this decision of the Court below and hence this appeal and cross objections.

3. It is contended for the appellant that the Court below should have simply

confirmed the award made by the Land Acquisition Officer having regard to the admitted fact that the respondent did not prefer any claim to compensation before that Officer in response to the notice served on him u/s 9 of the Act but that the learned Subordinate Judge erroneously condoned the omission to file a statement of claim for reasons which do not bear scrutiny and that even otherwise, the enhancement ordered by the Court below is not warranted by the evidence on record. It is on the other hand urged for the respondent that the learned Subordinate Judge should have awarded him compensation at the rate of Rs. 4,000 per acre as claimed.

4. The factum if receipt of notice u/s 9 of the Act and its validity are not contested by the respondent. It is also not disputed that no claim was preferred by him for compensation before the Land Acquisition Officer pursuant to the notice issued to him u/s 9 of the Act. It will be useful to extract Section 25 of the Act in this context having regard to the contention urged for the appellant and that Section reads thus;

"Section 25.(1) when the applicant 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 Collector u/s 11.

(2) When the applicant 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 Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by 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 Collector."

Sub-section (2) of Section 25 referred to above lays down that the amount awarded by the Court shall in no case exceed the amount awarded by the Collector when the applicant has refused to make a claim or has omitted without sufficient reason, to make such a claim pursuant to the notice issued to him under Sec. 9 of the Act. Sub-section (3) of Section 25 no doubt, gives discretion to the Court to award compensation in excess of the sum awarded by the Collector provided it is satisfied that the applicant has omitted to make the claim in question for a "sufficient reason" It is contended for the appellant and rightly too, that there are absolutely no grounds in this case justifying the omission by the respondent to prefer his claim before the Land Acquisition Officer within the time limited by the notice u/s 9 of the Act with which he was admittedly served. The claimant did not say a word in the course of his evidence to explain the reason why he failed to prefer the claim and he simply stated that he did not make any written statement claiming a particular amount before the Referring Officer prior to the passing of the award.

It is for the claimant to explain the reason why he could not prefer his claim for

compensation before the Land Acquisition Officer in pursuance of the notice issued to him u/s 9. But when he himself had nothing to say in this regard except confessing that he did not make any claim, it would be incorrect for the Court to suo motu make out a case for him to explain the omission and that too, without any material worth the name on record as was done in this case. The learned Subordinate Judge concedes that the claimant gave out in his examination-in-chief that he did not make any claim for compensation before the Referring Officer but went on to explain what the claimant meant when he stated so, notwithstanding that there is absolutely no ambiguity in his statement that he did not make "any written statement claiming a particular amount before the Referring Officer before the passing of the award" as can be seen from the following observations extracted from his judgment:

"In the first place it should be remembered as borne out by his testimony, that his brother Nukayya was representing him before the Referring Officer. So, it must be that when he made the aforesaid statement he meant that he never himself personally appeared before the Referring Officer and made the claim before him."

If really this is what the claimant meant when he said that he did not make any statement before the Referring Officer. nothing prevented him from stating that his brother, Nukayya, who was looking after the conduct of the affair made the necessary claim on his behalf but he did not say so either. It is therefore difficult to understand how the learned Judge could infer that the claimant meant that though he did not personally make a claim to the Land Acquisition Officer, his brother would or might have done so. There is further nothing on record to show that even Nookayya, the brother of the claimant, made the required claim for compensation before the Referring Officer. One other reason which appears to have weighed with the learned Judge in condoning the omission to file the same before the Land Acquisition Officer and in concluding that the default was not willful is that the respondent is a Government servant and was away at Visakahapatnam at about that time.

I fail to understand how any such surmises are warranted in this case when the claimant himself, who has had the opportunity of explaining the reason why he failed to make the claim before the Referring Officer. did not say a word about it in the course of his evidence. It is further difficult to believe that the respondent who is an educated person, did not find it convenient to forward his claim at least by post or through his brother who is said to have been looking after the affair even if it was not possible for him to go to the Referring Officer personally for delivering his claim. Yet another strange feature about this case is that the learned Subordinate Judge should have commented upon the failure of the appellant to make any suggestion to the claimant in the course of cross-examination that he had omitted to prefer his claim without sufficient reason as if the burden of proving by sufficient cause from making his claim to the Referring Officer lay on him.

Learned counsel for the respondent made a feeble attempt to support the aforesaid view of the Court below that it is for the Referring Officer to establish that the respondent had no sufficient reason to justify his omission to file the claim and that the omission was deliberate and willful but this contention is devoid of all substance it is for the respondent to satisfy the Court, by assigning proper and sufficient reasons , that he was prevented by sufficient cause from making the claim before the Land Acquisition Officer if he wants to avoid the penal consequences which would otherwise be visited on him u/s 25(2) of the Act.

It was held in *Nalamvari Annasatram and Another Vs. The Special Land Acquisition Officer, Co-operative Housing Schemes, Madras*, that penal as the consequences are, the parties interested are supposed to be aware of the provisions of the statute and that it is not the duty of the Land Acquisition Officer to draw the attention of the claimants to the penal consequences that follow a non-statement of the claim, for the Act does not impose any such obligation the burden cannot be placed on the Referring Officer having regard to the provisions of Sections 102 and 106 of the Indian Evidence Act Section 102 provides that the burden of proof in a suit or proceeding shall lie on that person who would fail if no evidence at all is given on either side. If, in the instant case, no evidence is adduced on either side to explain the reason why no claim for compensation was preferred before the Land Acquisition Officer pursuant to the notice u/s 9 of the Act. It is the claimant that fails and not the Referring Officer and so, the burden of proving sufficient cause justifying the omission lies on him. Likewise, the reason why he was unable to file his statement of claim before the Land Acquisition Officer is a fact which is especially within his knowledge and not that of the Referring Officer and for this reason also the onus is exclusively on the claimant as Section 106 of the Indian Evidence Act lays down that when any fact is especially within the knowledge of any person. the burden of proving that fact is upon him. In the absence of even whisper in the evidence of the respondent to explain the reason why he could not file his statement of claim before the Land Acquisition Officer in response to the notice u/s 9 of the Act, it has to be said, as rightly contended for the appellant that the Court below was not at all justified in condoning the omission and acting u/s 25(3) of the Act for the purpose of enhancing the compensation payable to him.

5. It was argued for the respondent that the Court below had discretion to condone the omission and award compensation exceeding the sum allowed by the Referring Officer but this discretion has to be exercised judiciously and on well-established principles and not arbitrarily or capriciously as was done in this case. The Court has certainly a duty to further the interest of justice but it cannot for this purpose, fill up lacunae by mere surmises when the party himself does not choose to take care of his interest as in this case. I am therefore satisfied that this is a case which the respondent has omitted without sufficient cause to make a claim before the Land Acquisition Officer and that the Court below had therefore no power to award compensation to him in excess of what

was granted by the Land Acquisition Officer.

6. In the view expressed above, it is unnecessary to go into the question as to whether the rate at which compensation was awarded by the Court below represents the market value of the acquired land or not.

7. In the result, therefore, the order of the Court below awarding compensation to the respondent in excess of what was allowed by the Land Acquisition Officer is set aside and the award made by the latter is confirmed. The Appeal is accordingly allowed but without costs in the circumstances of the case. The cross objections also, which fail for the same reason, are dismissed without costs.

8. Appeal allowed.