
(1969) 12 MAD CK 0030
In the Madras High Court

The State of Madras

APPELLANT

Vs

T.K. Srinivasa Iyengar and Another

RESPONDENT

Date of Decision : 17-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 18, 25, 4, 4(1)

Citation : (1971) ILR (Mad) 453 : (1970) 83 LW 571 : (1970) 2 MLJ 628

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—This appeal is directed against the judgment and the decree of the learned Subordinate Judge, Kumbakonam in O.P. No. 12 of 1962, which was heard and decided by him on a reference made u/s 18 of the Land Acquisition Act (I of 1894). An extent of Acre 1.92 cents, wet and dry lands in the village of Raghunathapuram in Papanasam Taluk of Thanjavur District was proposed to be acquired for providing house sites to Harijans. The notification u/s 4 (1) of the Act was made on 10th October, 1961, and it was followed up by a notification u/s 6 of the Act dated 1st November, 1961. The Land Acquisition Officer in his award would say that he caused notices under Sections 9 and 10 to be published and served on the persons interested. According to him, the respondents appeared before him at the time of the award enquiry and presented an objection petition through their advocate seeking for the avoidance of the acquisition. He would also state that no claim for compensation was made by them on the date when the award enquiry was to take place. Notice u/s 9 was served on the respondent on 6th November, 1961, and they were asked to be present for the enquiry on 24th November, 1961. Hardly 17 days' time was given to the respondents. It is not disputed that the respondents were objecting to the acquisition ever since the notification u/s 4 was issued and were making frantic efforts to avoid the same by approaching the State Government. In fact, their objection petition dated 17th November, 1961, a copy of which was filed as Exhibit B-3 in the lower Court reflects their mind and their conduct in this behalf.

On the date of the award enquiry the respondents and their advocate were present. But even on that date they bona fide thought that they would be in a position to successfully persuade the Government to postpone or avoid the acquisition, and in that behalf according to the respondents, an adjournment of the enquiry was sought for. This was refused in their case. But the Land Acquisition Officer, who was examined as R.W. 1, would deny that any such attempt to seek for an adjournment was made on that date and he stated in the witness box that the respondents deliberately omitted to file their objections and their claim statement before him. In cross-examination, however, it was brought out that the Land Acquisition Officer was in a hurry to pass the award as he was to be transferred shortly and that he refused to give an adjournment to the respondents, notwithstanding their request in that behalf. It is curious that the award itself was made on the date when the enquiry was proposed to be held and the lands were taken possession of by the Government on 27th November, 1961. It is therefore indisputable that the entire proceedings were hurriedly heard, decided and concluded. The respondents, however, were bona fide taking further steps to avoid the acquisition and from the record it appears that W.P. No. 1440 of 1961 was filed in this Court on 6th December, 1961, questioning the notification u/s 6 of the Act. It appears that the writ petition was subsequently dismissed. We are not, however, concerned with it.

2. The Land Acquisition Officer, as already stated, concluded his enquiry and passed the award on 24th November, 1961. The respondents, not satisfied with the award, sought for a reference u/s 18 of the Land Acquisition Act and claimed a compensation of Rs. 15,000 on the whole. The Land Acquisition Officer, acting on the said application for reference, made the following remarks:

The above petitioners have put in the petition stating that the compensation awarded for the lands acquired is very low. They have also requested that the matter may be referred to the Civil Court u/s 18 of the Land Acquisition Act. Hence the reference.

3. It is to be noted that the person who made the reference was an officer who was different from the one who made the award. Apparently this accounts for the absence of any reference to the non-filing of a claim for compensation by the respondents before the Land Acquisition Officer. The lower Court on such a reference, took it up on file, heard the parties and disposed of the matter, against which the present appeal arises. A preliminary objection was raised before him that Section 25 of the Land Acquisition Act was a bar to the respondents seeking compensation in excess of that awarded by the acquiring officer. Reliance was placed on Sub-sections (2) and (3) of Section 25. The learned Subordinate Judge recorded oral evidence and after considering the documentary evidence as well, came to the conclusion that he was not inclined to hold that there was any deliberate refusal on the part of the respondents to file a statement of claim on the date of hearing of the award enquiry. He also found that there was sufficient cause for the omission on the part of the

respondents to make a claim. He differed from the Land Acquisition Officer in the matter of the grant of compensation. Whereas the Land Acquisition Officer gave a sum of Rs. 1,875 per acre for dry land, for an extent of Acre 1.46 cents out of the locality of the acquired lands, and at the rate of Rs. 2,942 per acre for the balance area of wet land, the Court below granted a sum of Rs. 2,500 per acre for the former type of lands and at Rs. 4,000 per acre for the latter. The State has come up on appeal, reiterating the preliminary objection raised before the Court below, which provoked the memorandum of cross-objections on the part of the respondents. They have in their cross-objections asked for further enhancement in compensation at the rate of Rs. 4,500 per acre for the dry lands and at Rs. 5,000 per acre for the wet lands.

4. We shall now take up the preliminary objection, which looms large in this appeal. Section 25 which lays down the rules as to amount of compensation to be awarded by the Court on a reference u/s 18, creates two situations. The first one is a case where the applicant or claimant has refused to make a claim. The second instance is one which arises in a case where the claimant has omitted without sufficient reason to make a claim. If the claimant has omitted, for sufficient reason to make a claim, then the Court has the discretion to accept the reference and grant compensation in excess of the amount awarded by the Collector, but not below it. But in cases where the Court finds that there was a deliberate refusal on the part of the claimant to make such a claim, or the omission was without sufficient reason, which fact also has to be found by the Court on a reference, then the amount awarded by the Court shall not exceed the amount awarded by the Collector. Sub-sections (2) and (3) are complementary of each other, and projects rather a penal provision. Undoubtedly, it is stringent, and, therefore, it is that strict proof is necessary for the Court to act under it. The proof that is required is that the Collector or the land Acquisition Officer did act in accordance with the other provisions of the Act, and in particular, has caused the public as well as private notices, contemplated u/s 9, to be duly published and served on the persons interested. Such service of notice in the manner prescribed is a condition precedent for the operation of Sub-sections (2) and (3) of Section 25. In the instant case, it is common ground that the claimants did appear before the Land Acquisition Officer, which presupposes the service of notices as prescribed. The question, however, is whether notwithstanding such presence of the claimants before the Land Acquisition Officer, they refused to make a claim before him or omitted to make one without sufficient reason. The refusal envisaged in Sub-section (2) and (3) of Section 25 is, and ought to be, an attribute, resulting from an overt act or conduct on the part of the claimants. It is not susceptible to an inference. It is to be established as a positive fact. If such were the intendment of the word "refused" in Sub-section (2) of Section 25, it is to be considered in the instant case whether the conduct of the claimants tantamounts to a refusal. The Court below found that the claimants did appear before the Land Acquisition Officer, presented the objection petition (Exhibit B-5) before him questioning the acquisition and,

according to the respondents, they sought for an adjournment of the hearing. R.W. 1, the Land Acquisition Officer would however, refute that any such application for adjournment was made. The Court below, after taking the entire circumstances, and particularly the great hurry with which the proceedings were initiated and the award was passed, into consideration, came to the conclusion that it was possible that an adjournment was asked for by the respondents and refused by the Land Acquisition Officer. He was unable to accept the evidence of R.W. 1, that the respondents bluntly refused to file any statement and went away, thereby coming within the mischief of the expression "refused to make such claim." Even otherwise, we are satisfied that the respondents in this case bona fide omitted to make a claim before the Land Acquisition Officer. Ever since the proceedings for acquisition were set in motion, the respondents were particular to secure redress in avoiding the same. It was not in their mind to participate in the enquiry and secure compensation thereunder. But at all times they thought that they could successfully persuade either the Government or the Court, in exercise of its jurisdiction under Article 226 of the Constitution, to quash the acquisition proceedings and relieve them of such expropriation. Right enough the Court below thought that, it is unreasonable to accept that the claimants, who were so keen on avoiding the acquisition and who were concentrating on the subject of acquisition, could have refused to make a statement before the Land Acquisition Officer and omitted with a sufficient cause to make a claim for compensation for compulsory acquisition. Again, if one such claim for compensation was filed by them at or about that time, they would be blowing hot and cold. In order to avoid inconsistent stands, presumably, the claimants were insistent upon an adjournment or postponement of the award enquiry. Such an attitude on their part does not reflect supine indifference or deliberate avoidance to file their claim statement for compensation for the expropriated lands. In our view, the Court below came to the correct conclusion that far from there being any refusal on the part of the respondents, they had sufficient cause for omitting to make a claim on the date of the award enquiry. We are, therefore, unable to agree with the learned Government Pleader that the respondents are not entitled to any compensation over and above that granted by the Land Acquisition Officer and that the stringent provisions of Section 25 ought to prevail,

5. If thus the preliminary objection raised is disposed of, nothing survives in the appeal.

6. As regards the memorandum of cross-objections, the learned Counsel for the respondents would vaguely suggest that the compensation awarded by the Court below does not reflect the fair market value of the property. He would invite our attention to Exhibits A-4 and A-5 which fetched a price of about Rs. 4,800 and or Rs. 5,000 per acre and say that the claim, as made in the cross-objections, is well founded. The lands covered and negotiated under Exhibit A-4 and A-5 are for removed from the lands so acquired and these sale data were, therefore, rightly rejected even by the Land Acquisition Officer, and the Court below, though

they noticed them. Apart from it, we are not able to find any justification for the claim of the respondents at Rs. 4,500 per acre for dry lands. There are no data to support this at all. The Court below rightly assessed the compensation at Rs. 2,500 per acre for the dry lands and at Rs. 4,000 per acre for the wet lands. We do not see any justification to interfere with decree and judgment of the Court below.

7. The appeal and the Memorandum of cross-objections are dismissed. There will be no order as to costs.