

(1964) 11 MAD CK 0006
In the Madras High Court
Case No : Second Appeal No. 2011 of 1961

The Tuticorin Municipal Council	Vs	APPELLANT
A.R.A.S. and Another		RESPONDENT

Date of Decision : 06-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 12, 12(2), 16

Citation : (1966) ILR (Mad) 336

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Advocate : A. Alagiriswami, V. Ramaswami and K. Venkataswamy, for the Appellant; G. Natarajan, for the Respondent

Final Decision : Allowed

Judgement

Ramamurti, J.—This second appeal arises out of the suit, Original Suit No. 100 of 1959 filed by the Respondents on the file of the District

Munsif's Court, Tuticorin, for a declaration that certain land acquisition proceedings in regard to the suit property taken by the Government at the

instance of the Tuticorin Municipal Council, the Appellant herein, are null and void as being vitiated by patent illegalities and that the Defendant (the

Municipal Council) should be restrained by an injunction from interfering with the Respondents' possession of the suit property and from

demolishing the construction on the suit property. The trial Court dismissed the Plaintiffs' suit on the ground that the proceedings taken under the

Land Acquisition Act have become final and conclusive and therefore binding upon the Plaintiffs. The learned Subordinate Judge, on appeal, came

to the contrary conclusion and decreed the suit on the ground that the Plaintiffs were not given the requisite notice u/s 9(3) of the Land Acquisition

Act and that the absence of such a notice vitiated the land acquisition proceedings. The Defendant, the Tuticorin Municipal Council, has preferred the present second appeal.

2. A narration of the following facts is necessary to appreciate the scope of the legal objection raised by the Defendant. The suit property originally belonged to one R.G. Pereira and he had leased the same to the first Plaintiff as early as 1955. The lessor R.G. Pereira died in the same year. Even during his life-time he had created an equitable mortgage in favour of the Indian Overseas Bank and in the auction held at the instance of the Bank, the first Plaintiff purchased the suit property on 17th June 1957. The sale deed in favour of the first Plaintiff was, however, executed on February 3, 1958.

3. At the instance of the Municipality the Government took steps for acquiring the property under the Land Acquisition Act, and the notice u/s 4(1) was published in the Gazette on December 1, 1956. A notice under Sections 3 and 7 was published on July 14, 1957. The award was passed on March 13, 1958. It is stated in the judgments of the Courts below that the compensation amount has been paid to some legal heirs of Pereira who had no rights to the property at that time.

4. The main point that was stressed in the Courts below and urged before me is that the Plaintiffs were in possession of the suit property, and, had also put up a building after obtaining the sanction of the Municipality on December 23, 1955, and that u/s 9, the Collector should have given notice to the occupier (in the instant case the Plaintiffs), and that as no such notice was given further proceedings were null and void, and that the Municipality cannot interfere with the Plaintiffs' possession. On behalf of the Municipality it is urged that even though the Plaintiffs had purchased the property, in the revenue records the property still stands in the name of Pereira and therefore it was not necessary that the Plaintiffs should be served with a notice u/s 9(3). It is also contended that the failure to issue such a notice u/s 9(3) is merely an irregularity and cannot affect the legality of the proceedings once the acquisition has become final and conclusive and that the notice u/s 9 is mainly with a view to enable persons interested in making their claim to compensation. The contention is that failure to comply with Section 9 may have some bearing upon the right to

compensation but would not affect the legality of the land acquisition proceedings and the right of the Collector to take possession of the property.

5. I shall first briefly refer to the relevant provisions bearing on the question. u/s 4(1), whenever it appears to the appropriate Government that land

in any locality is needed for public purpose a notification to that effect should be published in the official gazette, and the Collector shall cause

public notice of the substance of such notification to be given at convenient places in the said locality. u/s 5-A(1) any person interested in the land

may raise his objections to the proposal of acquisition. u/s 5-A(2) the Collector after hearing the objections of parties interested and after making

such enquiry as he thinks necessary submit the case for the decision by the appropriate Government, and the decision of the latter on the

objections shall be final. The declaration u/s 5-A(2) should be published in the official gazette and the declaration would be conclusive evidence

that the land is needed for public purpose. u/s 6(3) after the declaration the Government may acquire the land in the manner provided under the

Act.

6. u/s 8 the Collector is empowered to measure and to demarcate the land after preparing a plan of the land proposed to be acquired. Section 9,

which is the crucial section, in the instant case, is as follows:

9 (1) The Collector shall 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 such 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 writing 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 on 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 authorized to receive service on their behalf, within the revenue district in which the land is 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.

7. Section 10 empowers the Collector to require persons making claims u/s 9 to make a statement to the Collector containing particulars of any

other person possessing any interest in the land as co-proprietor, sub-proprietor, mortgagee, tenant, etc. Section 11 provides the machinery for the

enquiry and empowers the Collector to deliver an award to determine the nature of the interest of persons referred to in Sections 9 and 10, the

true area of the land the compensation as well as how the same should be apportioned amongst persons known or believed to be interested in the

land, whether or not some of them have actually appeared before him. Section 12 provides that such an award of the Collector shall be filed in the

Collectors" office, and shall be final and conclusive with respect to all persons interested whether or not they appeared before him and also with

respect to the true area, value of the land and the apportionment of the compensation. Section 12 (2) provides that the Collector shall give

immediate notice of his award to such of the persons interested as are not present when the award was made. Section 16 provides that after the

Collector delivers the award u/s 11, the Collector may take possession of the land which shall thereupon vest absolutely in the Government free

from all encumbrances. Section 18 provides that any person interested may in writing apply to the Collector requiring the Collector to refer the

matter for determination to the Court with regard to any objection as to the measurement of the land, the amount of compensation, persons to

whom it is payable and the apportionment of the compensation. Section 21 provides that the scope of the enquiry shall be restricted to a

consideration of the interests of the persons affected by the objection. Section 31(1) provides that the Collector after making the award u/s 11

shall tender payment of the compensation amount to the persons interested entitled according to the award. Section 31(2) provides that if there

should be any dispute, the Collector shall deposit the compensation amount into Court to which a reference u/s 18 could be made. The proviso to

Section 31(2) preserves the liability of the person who has received compensation to pay the same to the person lawfully entitled thereto.

8. The argument on behalf of the Respondents is that the title to the property would vest in the Government only when the Collector takes

possession after a valid award u/s 11 has been made by him, and that so long as the provisions of Section 9 are not complied with there can be no

valid award. In other words the right to take possession which would result in the vesting of the property in the Government should be preceded

by a valid award# He urges that when the property is acquired under the Act compensation should be paid to the owner, and that there can be no

valid acquisition so long as the Collector had not decided the person who is legally entitled to the compensation either as owner or in any other

capacity or the Collector had not deposited the amount in Court u/s 31(2) on the ground of some dispute or doubt as to title. It must be noticed

that the Court which exercises jurisdiction u/s 18 of the Act is a Court of strictly limited jurisdiction and it can only decide matters comprehended

within the scope of the enquiry. It cannot go into the question of the legality of the acquisition.

9. Learned Counsel for the Respondents relied upon certain decisions and contended that there was a difference between a notice u/s 9(2) and a

notice u/s 9(3), that the provisions for service of notice upon the occupier u/s 9(3) is a mandatory provision, and that failure to issue such a notice

would vitiate the entire proceedings. In this case, it is common ground that the Respondents were in possession of the property in which they have

put up a petrol bunk, and that the municipality on whose behalf the acquisition was commenced was well aware of this fact and that the revenue

authorities were clearly guilty of negligence in their not having served the Respondents with the notice u/s 9(3). But at the same time it is not

suggested that the failure to serve notice was due to any mala fides or fraud. There can be no doubt that the provision for notice u/s 9(3) is a very

important and a salutary provision and failure to give such notice under that provision should not and would not affect the rights of the occupier.

10. I shall first refer to the Bench decision of the Bombay High Court in Laxmanrao Krishtrao v. The Provincial Government of Bombay ILR

(1950) Bom. 366 on which considerable reliance was placed by the learned Counsel for the Respondents. In that case, the Plaintiff who was the owner filed a suit for a declaration that his right in the land was not affected by the Land Acquisition proceedings and the award was void as the requisite notice u/s 9(3) was not served upon him. The Bench of the Bombay High Court observed that there was a distinction between a notice u/s 9(2) and a notice u/s 9(3) and that in the case of an occupier the obligation to give notice u/s 9(3) was absolute. Even so, the Court held that the Plaintiff must allege and prove that the Collector wilfully or fraudulently or perversely omitted to serve the notice contemplated by Section 9(3). The observations in paragraph 4 of the judgment on the other hand seem to suggest that this qualification of the Collector acting wilfully or fraudulently would refer only to the notice u/s 9(2) as otherwise, it is difficult to understand the distinction between the incidents of a notice u/s 9(2) and a notice u/s 9(3) adverted to by the learned Judges, seeing that that case was a case u/s 9(2). The discussion in paragraph 5 of their judgment at pages 370 and 371 shows that the learned Judges were inclined to take the view that an occupier would not be bound by an award in respect of which no notice was given to him u/s 9(3). This decision dealt with a case of an owner governed by Section 9(2), and in the view I am taking it is unnecessary to consider the difference between a notice u/s 9(2) and a notice u/s 9(3).

11. Reference can next be made to the decision in *Prasanna Kumar Das and Others Vs. State of Orissa*, in which the acquisition proceedings were declared to be illegal and void as the notification u/s 17(4) exempting the provisions of Section 5-A was held to be bad. As Section 17(4) did not apply proper notice should have been given u/s 5-A. Further the notice u/s 9(3) did not fix the period of fifteen days specified therein. In view of these defects the Bench of the Orissa High Court held that the award passed u/s 11 was void and illegal. It must be noticed at the outset that the case did not deal with the effect of failure of notice u/s 9 alone but the decision rested upon both Section 5-A and Section 9. If Section 17(4) does not apply to an acquisition, it is clear that when the machinery u/s 5-A had not been followed the proceedings would be null and void. The Bench took the view that the provisions u/s 5-A, Section 6 and Section 9 are mandatory provisions, and that in order to give validity to the acquisition

proceedings all the statutory provisions in respect of an acquisition at every stage must be strictly complied with, and that a persons' private

property cannot be acquired until the requirements of law are strictly complied with. In the result it was held that the persons on whose behalf the

land was acquired were trespassers, even though the land was acquired for a project intended for the public good to protect people from the

ravages of floods. The Court applied the principle of the decision of the Privy Council in *Saunby v. London (Ont.) Water Commissioners* (2). It is

sufficient to set out the head note of that decision as it fully brings out its ratio:

In an action for trespass on the Appellant's land and interference with his water rights, the Respondents pleaded that they were authorized

thereunto by their incorporating Act, and that the Appellant's remedy (if any) was to proceed by arbitration under the Act.

Held that according to the true construction of Section 5 the arbitration clauses only come into operation on disagreement as to the amount of

purchase-money, value, or damages arising after definite notice of expropriation and treaty or tender relative thereto and that as the Respondents

had not proceeded in accordance with the directions of their Act, the Appellant has not lost his remedy by action.

An injunction was rightly granted in this case, but its effect will cease on the Respondents proceeding to expropriate in the manner directed by their

Act.

12. It is true that statutes which confer a special authority affecting the property of individuals must be considered strictly against the parties to

whom that authority is given. Before the statutory powers are exercised it is essential that all conditions precedent are complied with and any

prescribed procedure, followed. Vide XXX Halsbury, third edition, 688.

13. On a careful and anxious consideration of all the aspects of the matter I am of the opinion that failure to issue a notice u/s 9(3) would not

render the acquisition proceedings null and void. But this certainly does not mean that rights of parties would be in any way affected when the

requisite notice had not been sent to them. The crucial question to determine is at what stage of the proceedings there was a failure to serve the

requisite notice. If the notice u/s 4 and Section 5-A had not been issued, I have no doubt whatsoever that the entire proceedings would be null and

void and the party affected, i.e., the owner, will be entitled to recover possession or resist being dispossessed in pursuance of the award. This is because, if notice had gone to the party concerned he could have made his representations and the proceedings for acquisition would have been dropped. On the other hand if a proper notice has been given u/s 4 and Section 5-A and the declaration u/s 6 has become final and conclusive, the procedure under the Act having been strictly followed up to that stage, the question assumes entirely different complexion. The failure to issue the notice u/s 9 cannot invalidate or render nugatory the validity of the proceedings up to the stage of the declaration made u/s 6. In my opinion, the failure to give notice u/s 9 can only have the effect of preserving the rights of the party from that stage. Rights and advantages or benefits which would accrue to a party if a notice u/s 9 had gone to him would not be affected. At the same time the failure to issue a notice u/s 9 would not confer any fresh or higher rights upon the party. In other words he would be clearly bound by the consequences of the proceedings up to the stage of the notice u/s 39. If this is appreciated, the question whether the provision for notice u/s 9 is directory or mandatory will lose much of its significance. The person on whom the requisite notice u/s 9 was not served will not lose his right to a fair and just compensation and to question the manner of apportionment if there are other claimants as well as his right to apply to the Court for the determination of these questions on a reference u/s 18 despite the lapse of time prescribed thereunder. Equally the bar u/s 25(2) fixing the maximum amount as determined by the Collector would not apply. The Supreme Court in a recent judgment in State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, , following its earlier decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, has held that a literal mechanical construction of Section 18 proviso (b) would not be appropriate when the party affected had no knowledge of the proceedings resulting in the award and where there has been no communication of the award, and that in all such cases time would commence to run only when the party obtains knowledge of the award, meaning the essential contents of the award. A perusal of the provisions of Sections 9 to 12 would show that the Collector while functioning thereunder is not exercising any judicial functions and that all the essential questions will have to be decided by the

Court on a reference u/s 18. Reference may be made to the following observations of the Privy Council in *Ezra v. Secretary of State for India* ILR

(1905) Cal. 605 (P.C.) at page 629:

When the sections relating to this matter are read together it will be found that the proceedings resulting in this "award" are administrative and not

judicial; that the "award" in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the

owner of the lands ; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by

the Collector to the Court.

14. In this case there is no dispute about the measurement or the extent of the land. The only dispute is about the person who was entitled to

compensation. Even if notice had gone to the Respondents and they had made their claim the Collector would well have delivered the award

deferring the question of the Respondents right to claim compensation for adjudication by the Civil Court u/s 18. Objections which can be raised

under Sections 8 and 9 would not prevent the Collector from delivering the award u/s 12 and taking possession u/s 16. The Collector who holds

the enquiry and makes the award is not a Court and when he pronounces his award his decision is no decision of a Court of law. The award is

made when the Collector draws up and signs the same and all that is necessary is, the award, meaning thereby the essential contents of the award,

should be communicated to the party to start the running of time u/s 18(2). It should also be noticed that u/s 16 the taking of possession has not

been made conditional upon the payment of compensation. As observed earlier, any objection as to compensation or measurement for the purpose

of ascertaining the compensation will have to be finally decided by the Court u/s 18 in the manner prescribed by the Act but that cannot hold up the

taking of possession of the acquired property.

15. From this it will be clear that if notice u/s 9(3) had not gone to the occupier he would be entitled to ignore the Collector's determination of the

boundary, and the amount of compensation, the person entitled to and the apportionment or distribution of the compensation and straightaway

apply to the Court u/s 18 for establishing his rights and it would be no answer to his claim to say that the Collector has delivered the award and

also distributed the compensation. An examination of the cases shows that except the two cases of the Bombay and the Orissa High Courts

referred to above, all the Courts have taken the uniform view that if notice u/s 9 had not gone, the party could not claim title to the property but he

could claim compensation either by invoking the machinery of the Land Acquisition Act or under the general law.

16. I shall first refer to the leading decision of the Calcutta High Court in *Ganga Ram Marwari v. Secretary of State for India* ILR (1903) Cal. 576.

In that case it was held that land acquired under the provisions of the Land Acquisition Act vested absolutely in the Government free from all

encumbrances after a bona fide award by the Collector and that the Government will be entitled to take possession even though notice u/s 9 had

not been served on the person interested. The argument that the requirements of the Act regarding notice should be strictly complied with, and that

the objection as to the non-service of notice is not a mere technical objection and that it went to the root of the matter was not accepted.

17. I shall next refer to the decision of the same Court in *Rameswar Singh v. Secretary of State for India* ILR (1907) Cal. 470. In that case as a

result of the acquisition proceedings the claimants suffered certain damages of a permanent character to his ferry and he filed the suit for damages

against the Government as the notice u/s 9 of the Act was defective and did not contain the material facts which would enable the land owner to

identify the land intended to be acquired with a view to raise the necessary objections. The acquisition there was for the purpose of constructing a

railway bridge across a river and both the banks of the river were used as a landing place for the ferry. The main point that was debated in that

decision was whether the provisions of the Land Acquisition Act excluded the jurisdiction of the Court. The matter was put thus at page 485:

It is well settled, however, that, even where a specific remedy is provided by a Statute, it is necessary, in order to remit that owner to such remedy,

and exclude his remedy by suit, that the party acquiring the property should have substantially complied with its requirements, and where the

proceedings for acquisition are not perfected and completed, they will not debar the remedy by a regular suit. The essence of the matter is that the

party has his remedy before the special Court. Where, however, as here, the party has not been able to put forward" his claim by reason of

defects or irregularities in the proceedings, or where the claim has been put forward, but not adjudged, the jurisdiction of the Civil Court cannot be treated as super, seded.

18. Reference can next be made to the decision of this Court in *Kasturi Pillai v. Municipal Council Erode* ILR (1919) Mad. 280. In that case even

though the occupier was not served with the requisite notice u/s 9(3) he had notice of the award. He sued for a declaration and it was held that the

Collector's failure to serve notice of the intended acquisition on the occupier as required by Section 9(3) did not make the subsequent

proceedings, such as the award, void so as to entitle the occupier to resist a suit in ejectment. The decision in *Rameswar Singh v. Secretary of*

State for India ILR (1907) Cal. 470 was distinguished on the ground that it merely related to the claim for damages, and did not deal with the

validity of the award and the vesting of the land thereunder. The learned Judges held that the award must be regarded as passing title to the

property u/s 18, and that the occupier cannot make any claim to the property thereafter.

19. Learned Counsel for the Respondents placed considerable reliance upon the Bench decision of this Court in *Venkatarama Ayyar v. Collector*

of Tanjore ILR (1930) mad. 921. It will be at once noticed that if the observations in that judgment are understood in the light of the facts of that

case it does not help the Respondents. In that case the occupier or the owner filed an application u/s 18 for reference to the Court for the

determination of the compensation as the notice u/s 9(2) did not satisfy the test of fifteen days interval. The Bench held that by reason of this defect

the right of the owner to obtain a fair and just compensation would not be affected and the bar u/s 25(2) of the Act would not, therefore, apply. It

will be seen that this decision did not deal with the effect of the award as to vesting of the title in the Government. The matter again came up for

consideration before a Bench of the Calcutta High Court in *Mahanta Sri Sukadev Saran Dev v. Raja Nripendra Narayan Chandradhvarjee* (1942)

76 cal. L.J. 430. In that case the requirements of notice u/s 9(2) had not been satisfied as there were certain defects in the notice, and the question

arose whether the owner was there entitled to file a suit for possession and claim mesne profits. It was held that such a defect or failure would not

nullify the subsequent proceedings and the vesting of the title in the Government. The position was explained thus at page 434:

Considering the scheme of the Act, that the main question that can be agitated by a person to whom notice might be given was merely the amount

of compensation, and that any such person still has reserved to him u/s 31 a right to claim from the person actually receiving compensation any

amount to which he may consider himself entitled ; considering further the difficulties likely to arise if every failure to comply with the details of the

proceedings of acquisition is to render them null and void we can see no reason to think that the failure to give this notice must be given such

importance that the provisions must be held to be of a highly mandatory character such as that the failure to follow it will render the whole

proceedings null and void and inoperative. We are, therefore, unable to agree with the finding of the lower appellate Court on this point.

20. The question again came up for consideration before the Bench of the Calcutta High Court in *Birendra Nath Banerjee and Others Vs.*

Mritunjoy Roy and Others, . In that case it was held that if a person was not served with a notice u/s 9 of the Act and for that reason he failed to

prefer his claim or objection before the Collector who delivered the award u/s 12 the party aggrieved would be entitled to file a civil suit to

establish his rights in regard to the compensation. From this decision it will be seen that failure to issue notice u/s 9 does not affect the vesting of

title but only preserves the right to compensation.

21. The decision of the Calcutta High Court in *Mahanta Sri Sukdev Saran Dev v. Raja Nripendra Narayan Chandradhwarjee* (1942) 76 Cal. L.J.

430 referred to earlier was followed in a very recent judgment of the same Court in *A. Rahman v. Dy. Secy. Home Dept.* (1961) 66 C.W.N. 115.

In that case the notice did not give the period of fifteen days, and was therefore, defective u/s 9(2) and the owner filed an application under Article

226 of the Constitution, for quashing the proceedings. It was held that the irregularities of the notice did not make the acquisition itself bad. The

same view has been taken by the Patna High Court in two recent judgments. In *Shivdev Singh Vs. The State of Bihar and Others*, the person

affected filed an application under Article 226 of the Constitution to quash the land acquisition proceedings on the ground that the occupier was not

served with the requisite notice u/s 9(3), and that he had, therefore, no notice of the proceedings under the Land Acquisition Act. The decisions of

the Calcutta High Court and the Madras High Court referred to earlier were followed and it was held that the failure to issue the notice u/s 9(3)

would not render the acquisition proceedings null and void or affect the vesting of the title to the property in the Government. At page 206 the

matter was put thus:

I may also observe that on proof of the fact that he was not served with a formal notice u/s 9(3) of the Act or had no notice or knowledge of the

proceeding under the Land Acquisition Act, he would not be bound by the period of limitation provided for in Clause (b) of Sub-section (2) of

Section 18. If the Petitioner is so advised, he may pursue his remedy against his landlord and claim any portion of the compensation money of Rs.

44,318.25 nP. paid to the owner of the premises. But it is clear to me that the proceedings or the award in relation to the acquisition of the

premises in question cannot be held to be illegal or void or without jurisdiction for non-service of a notice on the Petitioner u/s 9(3) of the Land

Acquisition Act. The Collector's right, and as a matter of that, the right of the Chairman of the Improvement Trust to take possession of the

property is consequently not affected. The view which I have expressed in this regard finds support from some decisions referred to hereinafter.

22. The same view was again taken in another Bench decision of the Patna High Court in Sushila Devi and Another Vs. State of Bihar and Others,

that if there is no compliance with the requirements of notice u/s 9 the bar u/s 25(2) would not operate and that the Court is bound to determine the

proper amount of compensation.

23. My attention was also drawn to the decision in Rahim Bux v. Secy. of State AIR 1938 Sind. 6 in which it was held that a person to whom,

notice u/s 9 was not given would not be entitled to sue the Government and that the award would have the effect of vesting the title in. the

Government.

24. From the foregoing it will be clear that the failure to issue notice u/s 9 does not affect the validity of the award, the right to take possession and

the vesting of the title in the Government, while at the same time the party's rights to compensation and the other questions related thereto can be

agitated by the party aggrieved either u/s 18 of the Land Acquisition Act or in a separate suit.

25. The result, therefore, is that the Plaintiff's suit for a declaration and injunction will have to be dismissed as incompetent. The Plaintiff will be at

liberty to file an application to the Collector to make a reference u/s 18 for payment of the compensation and it will be no answer to the

Government to say that the compensation has been paid to some other person. In this case, the Plaintiffs are the owners and the occupiers and no

notice was served upon them. Alternatively, the Plaintiffs may also file a separate suit for recovery of compensation. It is needless to observe that

as the Plaintiff's right to recover possession of the property was finally negated by this Court under this judgment, time for filing an application u/s

18 or for filing a separate suit, in the alternative, would commence to run only from the date of this judgment of this Court.

26. The second appeal is allowed and the Plaintiffs' suit is dismissed. But the parties shall bear their own costs throughout. No leave.