

(1970) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4966 of 1968

Velagapudi Kanaka Durga

APPELLANT

Vs

District Collector, Krishna District, Chilakapudi and Others

RESPONDENT

Date of Decision : 10-06-1970

Acts Referred:

Land Acquisition Act, 1894 — Section 10(1), 9(3)

Citation : AIR 1971 AP 310

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : B. Bhimaraju, for the Appellant; P. Anjaneya Sarma, for Govt. Pleader, for the Respondent

Judgement

1. The question that has to be answered in this writ petition is whether there should be fifteen clear days notice for holding an enquiry u/s 11 after issuing a notice or notices under Sections 9(3) and 10(1) of the Land Acquisition Act, 1894, (hereinafter called the Act).

2. The petitioner is the owner of Ac. 3-06 cents of land in Survey Number 80-3 in Prasadampadu Village, Vijayawada taluk in Krishna District. She alleges that until she was given the notice under Sections 9(3) and 10(1) of 19-8-1968, she was not aware of any acquisition proceedings in respect of this land of Ac. 3-06 cents. It however transpires and the same is evident from the counter-affidavit filed by the respondent that Section 4(1) notification and also the one u/s 17(4) dispensing with the enquiry u/s 5A were published in the official Gazette dated 29-9-1966. It was stated that the land was acquired urgently for providing houses to the houseless poor Harijans and consequently the urgency provisions of the Act were invoked. It is not disputed that the declaration u/s 6 followed afterwards. It is commenced that a single notice under Sections 9(3) and 10 of the Act dated 13th August 1968 fixing the date of enquiry to 2nd September, 1968 was received by the petitioner only on 19-8-1968. From the counter-affidavit it appears that the enquiry was not held on 2-9-1968 but was conducted

on 14-10-1968 and the award was passed on 24-10-68.

3. In view of these facts, Shri Bhima Raju appearing for the petitioner urges subsequent to and in pursuance of Section 9(3) and Section 10 notices are illegal for the reason that the petitioner was not given fifteen clear days notice of the enquiry to be held. It is to be noted that though the notice was dispatched on 13-8-1968 fixing the date of enquiry to 2-9-1968, it was actually received by the petitioner on 19-8-1968 and when that is so, there was only thirteen clear days notice and not fifteen clear days notice from the date of service. Shri Bhima Raju contends that the notice given under sub-section (3) of Section should also satisfy the requirements of the notice under sub-section (1) as laid down by sub-section (2). In so far as a notice contemplated by sub-section (1) is concerned, sub-sec. (2) lays down that such notice shall fix the time for appearance of the claimants which is not earlier than fifteen days after the date of publication of the notice. Then sub-section (3), which provides for service of individual notices on the occupiers of such land in addition to the publication of the notice u/s 9(1), says that the said notice should be to the same effect as the notice under sub-section (1). The argument of the learned counsels that is clear from the words "to the same effect" occurring in sub-section (3) that fifteen days time should be given even for a notice under sub-section (3).

4. Learned Government Pleader on the other hand, contends that sub-section (3) does not contemplate giving of any time, much less fifteen days time after the service of the notice. The requirement under sub-section (2) of giving fifteen days time applies only to the notice contemplated by sub-sec. (1). Therefore, according to him there is no prescription (3). He further argues that, in any case, the fifteen days time has to be reckoned only from the date of the dispatch of posting of such notice and not from the date of its service on the occupier of the land.

5. It has to be noticed even at the outset that the notice issued to the petitioner is not only u/s 9(3) but also under Section 10 of the act. Reading Sections 9 and 10 and also noticing the content in which they occur it is clear to my mind that the requirement of sub-section (3) is mandatory one. The notification under Section 4(1) and the declaration u/s 6 are required to be published in the official Gazette. In addition, the Collector is required to cause public notice of the substance of Section 4(1) notification to be five at convenient places in the locality of the land that is sought to be acquired. After the declaration u/s 6 is published, the appropriate Government is enabled to accrete the land in the manner provided in the subsequent provisions of the Act (vide section 6(3)). Then the actual award proceedings start by publishing notice to persons interested calling upon them to appear personally or by agent before the Collector at a time and place mentioned in 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 interest and their objections, if any to the measurements made u/s 8. Such notice should be published at convenient places on or near the

land to be taken. A separate notice should be served on the occupier of such land. Further, Section 10 of the Act empowers the Collector to require any person, who is in occupation of the land, to make or deliver to him a statement containing the names of all persons possessing any interest in the land and the nature of their interest, and of the rents and profits, if any, received from the land. It is pertinent to note that sub-section (2) of Section 10 lays down that every person required to make such a statement u/s 10 or Section 9(3) shall be deemed to be legally bound to do so within the meaning of Section 175 and 176 of the Indian Penal Code. The actual award enquiry should be conducted as per the provisions of Section 11 on the date fixed under the notice or on any other date to which the enquiry stands adjourned. It is thus clear that the Act accords great importance to the service of notice on the persons in occupation of the land so that all available information in respect of such land could be secured during the course of the enquiry. It may be difficult to learn about all the persons interested in such land but it is not so to know the person or person in occupation can reasonably be supposed to have all the necessary particulars about the property of which he is in possession. That is why sub-section (3) clearly insists upon the service of a notice on the occupier of land and Section 10 empowers the Collector to require any such person to make or deliver to him a statement containing particulars relating to the land and the persons interested therein. It is obviously the surest way of gathering the necessary information about the land. The notice contemplated by sub-section (1) of Section 9(3) is intended to give intimation to all persons interested and that is required to be published in or near the land to be taken, because it is in several cases, difficult to know all the persons interested. The case of the occupier of the land is, however, obviously different, because his occupation is certain. It is for that reason the word "shall" is used in sub-section (3) making it obligatory on the part of the Collector to serve notice on the occupier. Once a person is required to make a statement either u/s or under Sec.10, he is deemed to be legally bound to do so as per the provisions of Section 10. Therefore there cannot be any doubt that Section 9(3) is a mandatory provision and the notice provided thereunder is an integral and essential part of the land acquisition proceedings.

6. When that is so, could it be said that the statute leaves it wholly to the sweet will and pleasure of the Collector to issue notice to the occupier of the land at any time he likes. To hold so would, in my opinion, be illogical and unjust. When fifteen days notice is contemplated even u/s 9(1) it is difficult to hold that the same requirement need not apply to a notice to the occupier of the land. The words "to the same effect" occurring in sub-section (3) are also important. They indicate that the notice provided under sub-section (3) should be of the same nature as the one contemplated by sub-sections (1) and (2). In the absence of any other provision as to the time factor in sub-section (3), it is reasonable to hold that the words "to the same effect" take in the requirement of fifteen days notice as provided by the earlier sub-section. To hold that no time limit should be imported into the service of notice under sub-section (3) would be wholly

unreasonable and unjust. It may result in several cases in the occupiers of the land and persons known or believed to be interested in the land not participating in the award enquiry at all. As I have said it is exactly to avoid such a contingency that the provisions of Sections 9(3) and 10 have been made.

7. Moreover, Section 10 reiterates that at least fifteen days time should be given to the persons to whom a requisition is made by the Collector to make or deliver a statement containing the required particulars. If the requirement as to time prescribed by sub-section (2) does not apply to the notice under sub-section (3), there is no reason whatever for absence of any provision as to the time limit in sub-section (3) when Section 10 also provides for such a time limit. Further, the notice given to the petitioner is not only u/s 9(3) but also u/s 10. Section 10(1) clearly provides that the time granted to the persons in occupation should not be earlier than fifteen days after the date of the requisition. It, therefore, follows that both for the purposes of Section 9(3) as well as Section 10(1), there should be fifteen days notice to the petitioner. The first objection of the learned Government Pleader that no time limit is prescribed for notice u/s 9(3) therefore fails.

8. The second argument of the learned Government pleader need not detain me long. His argument that the time should be reckoned from the date of the issuing of the notice is wholly unwarranted. It is significant that sub-section (3) refers to the service of the notice on the occupier and not sending notice to him. It insists upon service and not merely sending one. The purpose of a notice u/s 9(3) is to give intimation to the occupier and persons known to be interested in the land. When intimation is the purpose, service of the notice becomes relevant and important. Further even the time of fifteen days provided under sub-section (2) has to be reckoned from the actual publication, that is, from the date of making the notice available to public inspection. If the same principle is applied, to a notice u/s 9(3) it is clear that the fifteen days time should be reckoned from the date of service only. Such a construction seems to me to be not only logical but also just and reasonable.

9. There is no dispute before me that the fifteen days notice contemplated by Sections 9 and 10(1) is fifteen clear days notice, excluding the date of service and the date of enquiry. The learned Government pleader does not dispute this position and rightly, in my opinion.

9. There is no dispute before me that the fifteen days notice contemplated by Section 9 and 10(1) is fifteen clear days notice, excluding the date of service and the date of inquiry. The learned Government pleader does not dispute this position and rightly, in my opinion.

10. This view I have taken, finds support from some decided cases. In *The District Labour Officer Vs. Veeraghanta Venkatasubramania Sastri*, a Division Bench was dealing with a notice under Sec. 9(3) which was served upon the claimant on the 19th August, 1925 directing him to appear on 3rd September,

1925. The learned Judges observed that

"S. 9(3), Land Acquisition Act, directs the Collector to serve notice on the claimant to the same effect as the notice in sub-clause (2). The notice in sub-clause (2) is to notify the claimant to appear before the acquiring officer.

"at a time and place mentioned therein such time not being earlier than 15 days after the date of publication of the notice"

When that is applied to sub-section (3) it would mean that the notice to be served upon the claimant should direct him to appear at a time not earlier than 15 days after the service of notice. The question is whether "not earlier than 15 days means that the claimant is to have pear, i.e., before the date of the enquiry or whether the date of enquiry maybe on the 15th day." Having posed this question, the judgment proceeds, after referring to the decision in Tara Prasad Chaliha Vs. Secy. of State and Another, to agree with the Calcutta High Court in holding that there should be fifteen clear days notice.

11. In Prasanna Kumar Das and Others Vs. State of Orissa, a Division Bench of the Orissa High Court held that in computing the fifteen days, the day of service be excluded. It was further observed that Section 9(3) is a clear and mandatory provision. Then the learned Judges said at page 122:

"The notice were ordered on 16-6-1955. Assuming that they were served on the earliest day, i.e., the next day (which in my view is not possible considering the large number of persons to be served and the many particulars to be noted in the notices) which is 17-6-55 and the date of hearing objections being fixed on 2-7-1955, there are no fifteen days between the notice and the date of hearing as required by the Section."

12. The High Court of Himachal Pradesh has also taken the same view in The Land Acquisition Collector Vs. Smt. Parvati Devi, There, the notice was served on the claimant on 25-10-1956. She was directed to appear before the Collector on 9-11-1956. Holding that the date of service of the notice and the date fixed for the appearance are to be excluded while computing the period of fifteen days, the learned Judge held that the time given to the claimant was less than fifteen days and therefore the notice was not valid.

13. There is, therefore, no doubt that the notice given to the petitioner on 19-8-1968 does not satisfy the requirements of Sections 9 and 10(1) of the Act and is, therefore, an invalid one. Even so, the learned Government Pleader submits that there was a second notice served that there was a second notice served on the petitioner on 8-10-1968, as no enquiry had been held on 2-9-1968 as contemplated by the earlier notice. But on a perusal of the record, it is manifest that even this notice does not satisfy the legal in pursuance there was held only six days later, i.e., on 14-10-1968. There was not fifteen days notice even on the later occasion. Thus, there was no valid sections 9(3) and 10(1) notice to the petitioner when the enquiry u/s 11 was held.

14. It is however, urged that this lack of notice did not really prejudice the petitioner for the reason that she did, in fact, appear before the Land Acquisition Officer on 14-10-1968 and file her objections. This attempt to salvage the proceedings is futile because Section 9(3), as I have already held, is a mandatory provisions. Strict compliance with the provision is expected and insisted upon the statute. Failure to do so would vitiate the subsequent proceedings. The question of prejudice does not arise in cases of failure to comply with the mandatory provisions of law. Further, it is shown to me whether the petitioner has had full opportunity to place all her objections before the Land Acquisition Officer within the short time made available to her. It is not therefore possible to hold that no prejudice was caused to the petitioner. It should also be noted in this connection that there has been no Section 5A enquiry because it has been disposed with. In the circumstances, failure to give a valid notice under Ss. 9(3) and 10(1) vitiates the proceedings taken subsequent to and in pursuance of Ss 9(3) and 10(1) notice. These proceedings including the award passed in pursuance of the said notice are hereby quashed and the respondents are directed to for-bear from proceeding with the acquisition proceedings in pursuance of the said invalid notice.

15. The writ petition is accordingly allowed with costs. Advocate's fee Rs.100/-.

16. Petition allowed.