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recommendation of the learned Additional Sessions Judge cannot be accepted. In view of the fact, however, that the learned Additional Sessions Judge has not decided the revision on merits the matter will have to go back for the determination of the issues on merits. The parties agree that it may now be sent back to Shri C. G. Suri, Additional Sessions Judge, Delhi. We accordingly direct that the matter will go back to the Court of Shri C. G. Suri, Additional Sessions Judge, who will go into the merits and decide the same in accordance with law. The parties will appear before the learned Additional Sessions Judge on the 28th of April, 1965.

Grover, J.

A. N. GROVER, J.—I agree.

B.R.T

APPELLATE CIVIL

Before I. D. Dua and R. S. Narula, JJ.

STATE OF PUNJAB,—*Appellant*

versus

KARNAIL SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 100 of 1962

1965

April, 7th.

Land Acquisition Act (I of 1894)—Ss. 9, 18 and 25—Scope and construction of—Omission or refusal to make a claim by the person whose land has been acquired—Effect of—Land Acquisition Officer—Whether should inform claimants to make claims for compensation.

Held, that section 9 of the Land Acquisition Act, 1894, provides for notice requiring all persons interested to appear before the Collector at a time and place not earlier than 15 days after the publication of the notice, and to state, *inter alia,* the nature of their interest and the amount and particulars of their claims to compensation. This notice is the essential pre-requisite of the Collector's power to acquire. Its absence or grossly defective character may adversely affect subsequent proceedings. The Collector is empowered to require such statement to be made in writing and signed by the party or his agent. This quite clearly suggests that the amount claimed can in law be stated orally. Section 25 lays down that the amount awarded by the Court of reference shall not exceed the amount awarded by the Collector when the claimant has refused to make such claim or has without

sufficient reason omitted to make it, but in that event, the Judge is empowered for sufficient reason to allow the making of such claim. Section 18 of this Act, however, does not debar a person who has refused or omitted to make his claim before the Collector from seeking reference without showing sufficient cause for the omission. It is thus clear that, however, strongly worded the inhibition to the Court of reference not to award amount in excess of the Collector's award in the event of a claimant's omission to make the claim, it is not intended to go to the inherent jurisdiction of the Court so as to render its order void or *non est.*

Held, that section 25 of the Act embodies only rules as to amount of compensation, its broad object being to protect the acquiring body and to make the claimant vigilant. Keeping in view the drastic effect of section 25, this section calls for a reasonable construction inspired by a practical point of view and a doctrinaire or rigid approach would be clearly out of place. The rigour imposed by this section should be applied only in cases when there is a clear and convincing proof of deliberate refusal or conscious and perhaps intentional omission without justifiable reason. This stringent and penal provision has not been designed as a trap for depriving the claimants of fair and proper compensation for their acquired property. Proof of good faith and absence of negligence would appear, broadly speaking, to be safe tests to adopt in construing the section.

Held, that the Land Acquisition Officer enquiring into valuation, etc., and awarding the amount of compensation performs a statutory duty affecting citizens' property; and in cases where land is to be acquired for a public purpose, the exercise of this duty must affect the expenditure of public money. In assessing compensation, therefore, he is rightly enjoined to exercise his own judgment, basing his award on correct principle discernible from the statutory scheme and with due regard to the interests of all parties affected. In cases, therefore, when his award is likely to be final and not open to reference and judicial review by the Court, it would be desirable, though not legally imperative, that he exercises his power of requiring statement in writing from the claimants under section 9(2) of the Act; it would certainly promote the cause of justice, if ignorant claimants unrepresented by legal advisers are also properly informed that in the event of their omission to make the claim, as required by law, they would be disentitled to claim enhanced amount from the Court of reference. Even though the enquiry proceedings by the Land Acquisition Officer in this regard be considered to be administrative, nevertheless, keeping in view the far-reaching effect of his award on the claimant in certain circumstances, such a course would be more in accord with the fundamental concept of our democratic welfare set-up, for it would not only democratise the general tone and standard of our administrative machinery, but would also enhance and strengthen the people's faith and confidence in the administration, thereby promoting a feeling of satisfaction with our welfare set-up.

Regular First Appeal from the order of the Court of Shri F. S. Gill, Senior Sub-Judge, exercising the powers of Land Acquisition Court, Ludhiana, dated the 22nd day of December, 1961, *enhancing the rate of compensation of land from Rs* 5,000 *to Rs* 10,000 *per acre and further allowing interest at Rs* 4 *per cent per annum on the difference between the Collector's award and the compensation now allowed from the date of taking the possession till the date of this order, dated 22nd December,* 1961 *and apart from this, the claimants shall be further entitled to* 15 *per cent compulsory acquisition charges on the enhanced amounts.*

References under section 18 *of the Land Acquisition Act for the enhancement of compensation.*

J. N. KAUSHAL, ADVOCATE-GENERAL AND MOTI RAM AGGARWAL, ADVOCATES, for the Appellant.

PARTAP SINGH AND BIRINDER SINGH, ADVOCATES, for the Respondents.

JUDGMENT

DUA, J.—These three appeals (Regular First Appeals Nos. 100, 101 and 102 of 1962) arise out of the same proceedings for compensation for acquisition of property and are, therefore, being disposed of by one order. The arguments have been addressed only in Regular First Appeal No. 100 of 1962 and it is conceded that the fate of the other two appeals would follow that of this one. Dua, J.

In order to understand the point raised before us, it may be stated that the Punjab Government required land for the construction of an Industrial Training School at Ludhiana and selected the land in dispute situated in village Gill for acquisition. Notification in respect of the land sought to be acquired under section 4 of the Land Acquisition Act (hereinafter described as the Act) was issued on 22nd August, 1959. Further proceedings followed in due course. The Collector gave his award on 12th January, 1960, assessing compensation at Rs. 5,000 per acre, i.e., at the rate of Re. 1 per square yard. A sum at the rate of Rs. 15 per cent on account of compulsory acquisition charges was also allowed.

Reference under section 18 of the Act was made and the learned Senior Subordinate Judge exercising the powers of Land Acquisition Court on 22nd December, 1961 increased the amount to Rs. 10,000 which works out valuation at the rate of Rs. 2 per square yard.

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The learned Advocate General took us through the impugned order of the Land Acquisition Court and we find that there is cogent evidence of the purchase of small bits of land in the vicinity preceding the relevant time of notification suggesting the price of the land to be at Rs. 7 or Rs. 8 per square yard. Since those pieces of land were small, the Land Acquisition Court valued the land acquired in the instant case at Rs. 2 per square yard. Realising that the rate fixed is not too high, the learned Advocate General rightly declined to question the valuation.

The learned counsel, however, very strongly urged the objection covered by issue No. 2 that the claimants had not stated the nature of their interest in the land and the amount and particulars of the claims to compensation for such interest as contemplated by section 9 of the Act and that, therefore, by virtue of section 25(2) the Land Acquisition Court had no jurisdiction to enhance the amount awarded by the Collector. It would be helpful here to read sections 9 and 25(2) of the Act:—

"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 under section 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 authorised 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 Offices Act, 1866."

"25. * * * * * * *.

(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."

The learned Advocate General has very fairly and frankly conceded before us that it was open to the Land Acquisition Court to award an amount exceeding the amount awarded by the Collector even if the applicant had omitted to make a claim to compensation pursuant to notice given under section 9 of the Act, if the Judge of that Court considered that there was sufficient reason for the omission, and *a fortiori* it would be competent for this Court on appeal to consider the question of sufficiency of the reason for the omission and if satisfied with the sufficiency, to similarly award an amount exceeding the amount awarded by the Collector.

In the award made by the Collector, it is stated that notices under section 9 of the Act were issued to all the interested persons, some of whom were actually present, some had refused to accept service and to some notices were issued through newspapers. The interested persons, according to this award, relied for their case on only one mutation prior to the date of notification but that was considered to be irrelevant because it related to sale of a site about half a mile nearer to town than the acquired site. In the application under section 18 of the Act for reference

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to the Court, it was alleged, *inter alia,* that individual enquiries had not been made, no proper notice had been served, and it was asserted more than once that the applicants had not been afforded opportunity to explain, much less to prove, their case. The applicants, according to their averments, had always claimed, and continued to estimate, the value of their land not to be less than Rs. 15 per square yard. In the written statement by the State, it was pleaded that the claimants had made no demand before the Collector nor had adduced any evidence to assist the Collector. It was also pleaded that notices had been issued and the claimants were given an opportunity which they should have availed. It was added that if the applicants had refused to accept service, it was their own fault and they could not claim enhancement of the amount. In the replication, it was reiterated that the applicants had not been duly served nor afforded full opportunity to represent and adduce full proof regarding value of land. In the presence of the parties, issue No. 2 was framed which reads as under:—

> "Whether the petitioner is debarred under section 9 of the Land Acquisition Act to claim compensation prayed for ?"

After the claimants' evidence, one witness for the State was examined on 14th July, 1961, and it was noted that the only other witness for the State was the Clerk of the office of the Deputy Commissioner but he was on long leave. The case was adjourned to 11th August, 1961, for which date, it appears, the Clerk was again not served. On 29th August, 1961, last opportunity was given to the respondent for producing the remaining witnesses. On 13th October, 1961, it transpired that the office had wrongly issued process for Ram Parkash Gosain, a witness for the respondent for 27th October, 1961 instead of 13th October, 1961. On 27th October, 1961, copies of some mutations and of *aks shajra* were produced and the case for the State closed. On 4th November, 1961, the Court after hearing the arguments for some time discovered that the Collector had relied on an earlier award which was not on the record and, therefore, it could not be checked up as to how far that award constituted reasonable material in support of the award in question in the present case.

The Government pleader was accordingly directed to produce an attested copy of the prior award which was produced on 16th November, 1961. On 20th November, 1961, inspection of the spot was considered necessary both by the parties and the Court which was duly inspected. It is in this background that the Court has observed that the Government pleader had not been able to show how the petitioner was debarred from claiming compensation prayed for and it has been expressly found that the claimants had actually represented their case before the Collector.

The contention of the learned Advocate General is that if the parties actually appeared before the Collector, then mere non-service of notice would be immaterial. This bald proposition sounds attractive and may ordinarily be correct, but this would not by itself conclude the matter in favour of the State in the light of the provisions of the Act and on the present record; more particularly in face of the inclination of the Court below to treat the fact that the claimants had represented their case before the Collector as sufficient compliance with section 9 and in face of the fact that the State has not properly proved the service of notice and its date. Reliance has been placed on behalf of the State on *Orient Bank of India, Limited* v. *Secretary of State* (1), *Chigurupati Subbanna* v. *District Labour Officer* (2), *A. P. S. Karuppaiah Nadar* v. *Special Deputy Collector* (3), *Nalamvari Annasatram* v. *Special Land Acquisition Officer* (4), and *Punjab State* v. *M/s. Lachhman Dass Mukand Lal* (5). I have, however, not been able to find in these decisions any binding precedent in support of sustaining the appeal, and indeed some observations in some of them would seem to help the respondents and go against the appellant's contention. In the Lahore decision, the Bank had been served under section 9 of the Act on 14th August, 1919, but no appearance was made on its behalf before the Collector. An uncertified copy of a sale-deed in its favour was sent to the Collector which was returned. Admittedly, no formal statement under section 9(2) of the Act was put in. On

(1) A.I.R. 1926 Lah. 401.
(2) A.I.R. 1930 Mad. 618.
(3) A.I.R. 1955 Mad. 406.
(4) A.I.R. 1959 A.P. 139.
(5) A.I.R. 1964 Punj. 68.

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26th April, 1920, an award was made granting a certain amount to the Bank. On 14th June, 1920, an application was made on its behalf to the Collector objecting to the amount awarded and praying for reference to the Court which was made in due course. On 8th November, 1921, another application was filed, with which was attached the original sale-deed, also pointing out that on 16th November, 1920, a statement had been made claiming Rs. 300 per kanal for the land acquired. On this application, the Court recorded that the whole case had been finished and judgment was about to be delivered and for that reason nothing could be done on that application. The *ratio decidendi* of this decision, so far as I can make out, is that the mere fact that the Collector was notified that this land had formed a portion of a plot of land purchased by the claimant could not be regarded as the statement of the amount claimed as compensation for the land acquired. It is also noteworthy that in this case, the District Judge had not found that there was sufficient reason for the omission on the part of the Bank to make the requisite claim and the High Court apparently considered this aspect to be of some significance. It said : "The learned District Judge has not acted under the third sub-clause of section 25 and, therefore, under the second clause of that section, he could not award a sum exceeding the amount awarded by the Collector." In *Chigurupati's case*, notice under section 9 had been served on the claimant. On consideration of the evidence, the Court of reference and the High Court both held that the claimant had not made the requisite claim and had also not appeared before the Land Acquisition Officer on the appointed day. He had of course filed copies of two sale-deeds which were taken into consideration by the Land Acquisition Officer, but this was found not to justify the argument that the said officer must be held to have treated the amount in the sale-deed as the valuation placed upon the land by the claimant. Beasley, C.J., one of the members of the Bench, has said:—

> "In this case, the claimant was not required in the notice to make any statement in writing, but we are satisfied that he did not like to make any statement orally. He placed no specific value upon the land, he did not state the nature

of his interest in the land but merely contented himself with putting the sale-deeds."

This,, according to the learned Chief Justice, did not constitute making a specific claim as required by section 25 read along with other sections. Curgenven, J., the other member of the Bench, has relied on the Lahore decision *in the case of Orient Bank*, for the view that merely filing a sale-deed does not amount to making a claim. The claimant's allegation of having filed a statement was not believed by the High Court. In *Karuppaiah's case*, notice under section 9 had not been properly served on the claimant. He, however, actually appeared before the Land Acquisition Officer but did not make any oral claim regarding quantum of compensation. He simply promised to produce certain documents relating to dispute as to title to the land acquired but did not turn up subsequently. After the award, the claimant sought reference under section 18. On the evidence, it was concluded that the claimant knew that he had to make a claim and having not done so, he could not ask on reference for an amount higher than that allowed by the Collector. In this case, there is a reference to *Subramania Chettiar and another* v. *State of Madras* (6), *N. M. Venkatarama Iyer* v. *Collector of Tanjore* (7) and to *Tara Prasad Chaliha* v. *Secretary of State* (8). In the first decision, objection to the acquisition was held to be a just cause for omitting to make a claim and the Court on a consideration of the circumstances permitted a cliam for enhanced compensation and in the next two decisions, importance of the minimum period of 15 days between the notice and the enquiry is emphasised. This aspect would apparently suggest that the submission of the learned Advocate General that mere appearance of the claimant would obviate as a matter of law the necessity of the statutory notice may not be so sound as it appeared at first sight. In the decision *in the case of Nalamvari*, there was a valid notice under section 9 and failure to present the claim. It was laid down in this background that there is no legal

(6) A.I.R. 1963 Mad. 943.

(7) A.I.R. 1930 Mad. 836.

(8) A.I.R. 1930 Cal. 471.

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obligation on the Land Acquisition Officer to draw the attention of the claimant to the penal consequences following non-statement of the claim. According to the decision of this Court *in the case of Messrs Lachhman Dass Mukand Lal,* an objection based on section 25(2) of the Act is permissible even at the appellate stage. It is noteworthy that after exhaustively discussing the various decisions cited, the Bench remanded the case so as to afford an opportunity to the claimant to show to the Court of reference sufficient grounds for not making the claim before the Collector. It may appropriately be pointed out that in this case it was "a fact that no claim was made by the claimants before the Collector" and the allegation of non-service of notice had been expressly given up by the claimants' counsel.

Section 9 of the Act provides for notice requiring, all persons interested to appear before the Collector at a time and place not earlier than 15 days after the publication of the notice, and to state, *inter alia,* the nature of their interest and the amount and particulars of their claims to compensation. This notice apparently seems to be the essential pre-requisite of the Collector's power to acquire. Its absence or grossly defective character may adversely affect subsequent proceedings. The Collector is empowered to require such statement to be made in writing and signed by the party or his agent. This quite clearly suggests that the amount claimed can in law be stated orally. Section 25 lays down that the amount awarded by the Court of reference shall not exceed the amount awarded by the Collector when the claimant has refused to make such claim or has without sufficient reason omitted to make it, but in that event, the Judge is empowered for sufficient reason to allow the making of such claim. It may be pointed out that section 18 of this Act does not debar a person who has refused or omitted to make his claim before the Collector from seeking reference without showing sufficient cause for the omission. It would thus seem that, however strongly worded the inhibition to the Court of reference not to award amount in excess of the Collector's award in the event of a claimant's omission to make the claim, it may be open to the submission that such omission is not intended to go to the inherent jurisdiction of the

Court so as to render its order void or *non-est*.. When the word "jurisdiction" is used in this context in some decided cases, it is perhaps used in a general or broad sense connoting that it is contrary to law. Of course, an important point of law can be permitted to be raised on appeal according to our law of procedure. Section 25, it may be remembered, embodies only rules as to amount of compensation, its broad object being to protect the acquiring body and to make the claimant vigilant. Keeping in view the drastic effect of section 25, this section calls for a reasonable construction inspired by a practical point of view and a doctrinaire or rigid approach would seem to me to be clearly out of place. The rigour imposed by this section should be applied only in cases when there is a clear and convincing proof of deliberate refusal or a conscious and perhaps intentional omission without justifiable reasons. This stringent and penal provision does not seem to have been designed as a trap for depriving the claimants of fair and proper compensation for their acquired property. Proof of good faith and absence of negligence would appear, broadly speaking, to be safe tests to adopt in construing section 25. Similar view has been taken in *Subramania Chettiar's case.*

Considered from this point of view, we are not satisfied on the present record that the claimants before us should be penalised by being deprived of their right to make their claim. The Court below also did not consider it proper to do so and on appeal we are far from convinced that the impugned order is by any means erroneous so as to justify reversal. It would not be out of place to observe that on behalf of the State, our attention has not been drawn to any material as to whether the statutory notice allowing statutory period was served on the claimants, as indeed, the learned Advocate-General based his submission on the assumption that proper notice has not been proved to have been served but the claimants actually appeared before the Collector; this circumstance, in my view, cannot be considered as wholly irrelevant.

I may now appropriately advert to another aspect which appears to me to be of some importance. The Land Acquisition Officer enquiring into valuation, etc., and

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awarding the amount of compensation performs a statutory duty affecting citizens' property; and in cases where land is to be acquired for a public purpose, the exercise of this duty must affect the expenditure of public money. In assessing compensation, therefore, he is rightly enjoined to exercise his own judgment, basing his award on correct principle discernible from the statutory scheme and with due regard to the interests of all parties affected. In cases, therefore, when his award is likely to be final and not open to reference and judicial review by the Court, it would be desirable, though not legally imperative, that he exercises his power of requiring statement in writing from the claimants under section 9(2) of the Act; it would certainly promote the cause of justice, if ignorant claimants unrepresented by legal advisers are also properly informed that in the event of their omission to make the claim, as required by law, they would be disentitled to claim enhanced amount from the Court of reference. Even though the enquiry proceedings by the Land Acquisition Officer in this regard be considered to be administrative, nevertheless, keeping in view the far-reaching effect of his award on the claimant in certain circumstances, such a course would be more in accord with the fundamental concept of our democratic welfare set-up, for it would not only democratise the general tone and standard of our administrative machinery, but would also enhance and strengthen the people's faith and confidence in the administration, thereby promoting a feeling of satisfaction with our welfare set-up. I should, however, not be understood to have expressed any opinion on the question, not canvassed, as to what extent the function of the Land Acquisition Officer is administrative, judicial or quasi-judicial; the distinction between these three categories of functions has perpetually posed for the Courts a vexed problem, because not infrequently they may all be blended in one and the same transaction, and to distinguish one from the other, may, at times, involve artificial reasoning.

In the result, this appeal fails and it dismissed with no costs.

Narula, J.

R. S. NARULA, J.—I agree.

K.S.K.