Constitution of India. So, both the writ petitions are without substance and must fail. Consequently, I dismiss both the writ petitions with no order as to costs.

B. S. G.

Before D. S. Tewatia, J.

MANI RAM,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 4429 of 1973.

August 1, 1974.

Land Acquisition Act (1 *of* 1894)—*Section* 9(3)—*Requirement of the service of notice on the occupier of land under acquisition—Whether mandatory—Failure to comply therewith—Whether renders subsequent acquisition proceedings invalid.*

Held, that under section 9(3) of the Land Acquisition Act, 1894, an obligation is cast upon the Collector to serve a notice on every occupier of the land which is to be acquired. The Collector must serve a notice on the occupiers of the land and the obligation cast upon him for this class of persons is absolute. Failure of the Collector in this behalf causes prejudice to the occupier of the land. Such a person would have no opportunity to make his claim to compensation known to the Collector, who would, on his own, give the award which may not measure up to the estimation of such occupier of the land. In that case, he will have to perforce initiate proceedings under section 18 of the Act in the Court of District Judge for enhancement of compensation and expend money and energy in claiming what he, if he had notice, would otherwise have claimed before the Collector and may well have been awarded by the Collector. The prejudice to such a party is obvious. Hence requirement of section 9(3) of the Act is mandatory and failure to comply therewith renders the subsequent land acquisition proceedings under the Act illegal and invalid.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the Notifications, dated* 25*th August,* 1972 *and* 22*nd November,* 1972 *and directing the respondents Nos.* 1 *and* 2 *not to dispossess the petitioner from the land in dispute and further praying that the petitioner not be dispossessed from the land in dispute during the pendency of this writ petition.*

S. C. Goyal, Advocate with Shri O. P. Goyal, Advocate, *for the Petitioner.*

M. L Sarin, Advocate, *for* Advocate-General, Punjab.

JUDGMENT

D. S. TEWATIA, J.—Mani Ram petitioner through the present writ petition has challenged the land acquisition proceedings initiated by notifications under sections 4 and 6 (annexures 'C' and 'D' respectively) of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) primarily on two grounds (1) that the substance of the notification under section 4 of the Act had not been published as required by sub-section (1) thereof, and (2) that although he as a tenant and occupier on the part of the land acquired through the said notification was entitled to be served with a notice under section 9(3) of the Act yet no such notice was served on him and that failure to serve such a notice on him rendered the subsequent land acquisition proceedings invalid.

While on behalf of the State it has been conceded that the petitioner is a tenant on part of the land acquired and that he had not been served with a notice under section 9(3) of the Act, it has been denied that the substance of the notification under section 4 of the Act was not published in terms of sub-section (1) thereof or the petitioner was an interested person, as envisaged by the provisions of section 3(b) of the Act.

The primary question that falls for determination is as to whether service of notice under section 9(3) of the Act is mandatory and failure of such a notice would render the subsequent steps in the acquisition of the land invalid.

Various High Courts have taken diametrically opposite views in the matter. Whereas Andhra Pradesh High Court and Bombay High Court in *Velagapudi Kanaka Durga* v. *District Collector, Krishna District Chilakapudi and others*, (1), *Laxmanrao Kristrao* v *Provincial Government of Bombay and another* (2), respectively; and our own High Court in *State of Punjab* v. *Karnail Singh and others*, (3) (on which decisions the learned counsel for the petitioner

(1) A.I.R. 1971 A.P. 310.
(2) A.I.R. 1950 Bom. 334.
(3) I.L.R. 1965 (2) Pb. 525.

has placed reliance), have taken the view that the requirement of service of notice under sub-section (3) of section 9 of the Act is mandatory and failure thereof would vitiate the subsequent proceedings. The opposite view received support from Patna High Court in *Shivdev Singh* v. *The State of Bihar and others* (4) and Punjab High Court in *Jhandu Lal Budh Ram and others* v. *The State of Punjab and another* (5).

Before proceeding with the consideration of the question posed, it is necessary at this stage to notice the relevant provisions of section 9 of the Act which read:

> "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.
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> * * * * *
>
> (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.
>
> * * * * *."

In *Laxmanrao Kristrao's case* (supra), Chagla, C.J., speaking for the Court expressed his view with some vehemence as would be clear from the following observations:—

> "It will be noticed that an obligation is cast upon the Collector to serve a notice on every occupier of the land which is to be acquired. There is also an obligation cast upon him to serve a notice on persons who are known to him to be interested in the land or whom he believes to be interested in the land. Therefore, the Legislature has made a clear distinction between occupiers of the land and persons who are interested in the land. As far as occupiers are concerned, the Collector must serve a notice upon the occupier. As far as persons interested are concerned, the obligation is cast upon

(1) A.I.R. 1971 A.P. 310.
(2) A.I.R. 1950 Bom. 334.
(3) I.L.R. 1965(2) Pb. 525.
(4) A.I.R. 1963 Patna 201.
(5) A.I.R. 1959 Pb. 535.

him only if he knows of such persons or believes that there are such persons. With regard to the first class the obligation is absolute."

In *Velagapudi Kanaka Durga's case* (supra), Sambasiva Rao, J. while considering the import of the provisions of sub-section (3) of section 9 of the Act, had the following to say:

"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 persons in actual occupation of such land. A 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(1) 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 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 under section 9 or under section 10, he is deemed to be legally bound to do so as per the provisions of section 10(2). 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 proceeding

* * * * *

It is, however, urged that this lack of notices did not really prejudice the petitioner for the reason that she did, in fact,

> appear before the Land Acquisition Officer on 14th October, 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 provision. Strict compliance with such a provision is expected and insisted upon by 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 not 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 had been no section 5-A enquiry because it had been dispensed with. In the circumstances, failure to give a valid notice under sections 9(3) and 10 vitiates the proceedings taken subsequent to and in pursuance of sections 9(3) and 10 notice. These proceedings including the award passed in pursuance of the said notice are hereby quashed and the respondents are directed to forbear from proceeding with the acquisition proceedings in pursuance of the said invalid notice."

A Division Bench of this Court in *Karnail Singh and others' case* (supra) though was not dealing with the provisions of section 9(3) as such directly, but nevertheless had the following observations to make in regard to the importance of service on the occupier in terms of section 9 of the Act:—

> "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 prerequisite of the Collector's power to acquire. Its absence or grossly defective character may adversely affect subsequent proceedings....."

In *Shivdev Singh's case* (supra), Untwalia, J. speaking for the Court, appears to be equally emphatic in taking the view that service of

notice under sub-section (3) of section 9 of the Act is not mandatory. For his view he sought sustenance from the following observations of the Calcutta High Court made in *Mahanta Sri Sukdev Saran Dev* v. *Raja Nripendra Narayan Chandradhvarjee*, (6).

> "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 under section 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."

The decision of this Court relied on by Mr. Sarin on behalf of the State reported in *Jhandu Lal Budh Ram and other's case* (5) though pertains to the consideration of the provisions of section 9(1) of the Act, but nevertheless the following observations of G. D. Khosla, A.C.J. (as he then was), who delivered the judgment, are relevant—

> "Another argument raised before us was that because no notice under section 9(1) was issued, the proceedings were bad. This matter was considered by the learned Single Judge and he took the view that he cannot go into the facts. It has been urged on behalf of the Government that such a notice was issued. In any event, the omission to issue a notice is nothing more than an omission of a preliminary step and it cannot be said that by the non-issue of the notice the entire proceedings have been invalidated."

As would be seen from the above observations of Khosla, A.C.J., the assertion of fact that no notice was issued under section 9(1) of the Act was disputed and the observations made were merely in passing. From the above observations, it is not clear as to whether in using the expression 'entire proceedings' he had in mind the notifications

(6) 76 Cal. L.J. 430.

under sections 4 and 6 of the Act as well or not, for there can be no doubt that failure of service of notice under section 9 of the Act would not, in any eventuality, vitiate the notifications under sections 4 and 6 of the Act. I am, therefore, of the view that the above-quoted observations of Khosla, A.C.J. cannot be of much help to the State for holding that the provisions of section 9 are of directory nature and not mandatory and the failure of compliance thereof does not render subsequent acquisition proceedings invalid.

In *Shivdev Singh's case* (supra), if I may say with respect, Untawalia, J. seems to be concerned with failure of service of notice which merely affected the party concerned in regard to its right of submitting claim of compensation to the Collector and further to the District Judge if dissatisfied with the award of the Collector; and it appears to have been assumed that as a result of non-compliance of the provisions of section 9(3) of the Act, no prejudice would be caused to the person concerned. I am afraid such an assumption is incorrect when regard is had to the fact that if the person concerned had been served with the requisite notice, he might have taken the necessary step of submitting his claim to the Collector and for ought we know the Collector would have accepted his estimation of the valuation of the land, and he in return might have been satisfied with the award of the Collector and thus would have left the matter at that stage, but on the contrary in the eventuality of the failure of compliance with the provisions of notice under section 9, such a party would have no opportunity to make its claim to compensation known to the Collector and the Collector would, on his own, give the award which may not measure up to the expectation of the party concerned. In that case the said party would perforce have to initiate proceedings under section 18 of the Act in the Court of the District Judge and expend money and energy in claiming what he, if he had notice, would otherwise have claimed before the Collector and may well have been awarded by the Collector. Hence prejudice to such a party is obvious in the event of the failure of the Collector to serve upon him the requisite notice under section 9 of the Act. I, therefore, finding myself in respectful agreement with the view expressed by Chagla, C.J. in *Laxmanrao Kristrao's case* (supra) and the one expressed by Sambasiva Rao, J. in *Velagapudi Kanaka Durga's case* (supra), as also the observations made, though in passing, in the Division Bench decision of this Court in *Karnail Singh and other's case* (supra), hold that the requirement of section 9(3) of the Act is mandatory and the failure to comply therewith renders the subsequent proceedings illegal and invalid.

As regards the attack on the validity of notification under section 4 based on non-publication thereof in terms of sub-section (1), the same must fail, for the allegations of facts in this regard have been emphatically denied.

In view of the above, I allow the writ petition with costs and direct the Collector (respondent No. 2) to serve notice upon the petitioner in strict compliance with the provisions of section 9(3) of the Act and thereafter give his award in accordance with law.

B.S.G.

Before R. N. Mittal, J.

NIKKA SINGH,—*Appellant.*

versus

BABU SINGH AND ANOTHER,—*Respondents.*

R.S.A. 904 of 1963

August 5, 1974.

Code of Civil Procedure (Act V of 1908)—Section 11—Punjab Tenancy Act (XVI of 1887)—Section 77—Cases exclusively triable by a Revenue Court under—Finding by the Revenue Court on the Collateral question of title in such a case—Whether operates as res-judicata on its general principles in a subsequent civil suit.

Held, that if a Revenue Court, while deciding cases falling within its jurisdiction under section 77 of Punjab Tenancy Act, 1887 has to decide Collateral questions which are not within its exclusive jurisdiction, the decision on the Collateral question can. not operate as res-judicata when such a question comes up before a Civil Court in a subsequent litigation. The section does not confer on the Revenue Court jurisdiction to decide the questions of title. The Revenue Court can, however, decide the question of title collaterally while deciding a suit falling within its jurisdiction, but the finding of the Revenue Court regarding question of title so decided does not operate as res-judicata in a subsequent civil suit between the parties involving question of title.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Additional District Judge Patiala, dated the 2nd day of February, 1963, affirming with costs that of Shri R. K. Battas, Sub-Judge, 1st Class, Rajpura, dated the 8th January, 1962, granting the plaintiff a decree for declaration that he became