

Mehar Singh v. Kehar Singh and others (J. V. Gupta, J.)

the date of the application to the date of the payment of the amount awarded.

(12) The liability for the amount awarded shall be that of respondent—Jaswant Singh.

(13) In the result, both the appeals are hereby accepted with costs. Counsel fee Rs. 500 (One set only).

H.S.B.

Before J. V. Gupta, J.

MEHAR SINGH,—Appellant.

versus

KEHAR SINGH AND OTHERS,—Respondents.

First Appeal From Order No. 34 of 1985.

August 8, 1985.

Land Acquisition Act (1 of 1894)—Sections 18, 30, 45 and 53—Application under sections 18 and 30 of the Act made before the Collector—Said application referred to District Judge for decision—Summons issued by District Judge and service effected by registered post and affixation—Copy of application not served with the summons sent by registered post—Service of summon without application—Whether deemed to be valid service.

Held, that section 45 of the Land Acquisition Act, 1894 deals with the service of summons and section 53 thereof provides that the provisions of Code of Civil Procedure shall apply to proceedings before the court save in so far as they are inconsistent with anything contained in this Act. Since there is a specific provision for the service of the notice under the Act as provided under section 45 of the Act the service was to be effected accordingly. As such there was no need to send a copy of application alongwith summons as it was a reference made by the Collector in respect of application filed under section 18 and 30 of the Act and the only notice that was to be sent was that such a reference had been made by the Collector which could be contested. In this view of the matter it has to be held that although a copy of the application aforementioned had not been sent yet valid service had been effected on the party.

(Paras 4 & 5)

First Appeal From Order of the Court of Sh. V. M. Jain, Addl. District Judge, Ambala dated 17th December, 1984 dismissing the application.

S. K. Goyal, Advocate, for *the Appellant*.

K. G. Chaudhary, Advocate, for *the Respondent*.

JUDGMENT

J. V. Gupta, J.

(1) This appeal is directed against the order of the Additional District Judge, Ambala, dated December 17, 1984, whereby the application for setting aside the *ex parte* award dated August 8, 1984, filed on behalf of Mehar Singh appellant was dismissed.

(2) Kehar Singh and others respondents filed an application under section 18/30 of the Land Acquisition Act (hereinafter called the Act) before the Land Acquisition Collector alleging that the compensation with regard to 1/4th share of their brother Mehar Singh (appellant) be not given to him as Mehar Singh has already sold more than his share in the total joint land of the parties and that the compensation of 1/4th share of Mehar Singh be also paid to them. The Land Acquisition Collector made a reference under section 30 of the Act to the District Judge, Ambala, for determining the market value of the land and the person entitled to receive the compensation with regard to 1/4th share of Mehar Singh for a sum of Rs. 14706.34. On receipt of the reference since it transpired to be a reference under section 18 also notice was issued by the learned Additional District Judge,—*vide* order dated December 21, 1983, to Mehar Singh appellant for February 4, 1984. On that day, the registered envelope sent for the service of Mehar Singh appellant was received back with the report of the postal authorities that he was evading service. Consequently, service was ordered to be effected on Mehar Singh through proclamation by beat of drum and affixation for March 14, 1984. On that day it was reported that the service of Mehar Singh had been effected through affixation. Since no one was present on his behalf, he was proceeded *ex parte*. Consequently, the award dated August 8, 1984, was passed in favour of his three brothers, respondents 1 to 3. Mehar Singh filed an application on September 26, 1984, for setting aside the *ex parte* award. It was alleged that it had come to his notice from the reliable source in the village on September 24, 1984, that *ex parte* order had been obtained

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by Kehar Singh and others on August 8, 1984. According to him, a false and fictitious report was got made by his brothers that Mehar Singh was evading service of the summons and that he be served through proclamation by beat of drum. According to him, he never evaded service of the summons nor refused to accept the summons and thus the order passed against him *ex parte* was illegal. In the reply filed on behalf of Kehar Singh and others, the said allegations were controverted. It was pleaded that the summons were duly served upon him through registered post and that the same were refused by him. Later on he was duly served through affixation and *munadi* as he was evading service and the question of fictitious report did not arise. Mehar Singh did not appear in Court knowingly because he had no interest in the acquired land as he has already sold more than his share in the joint land. On the appreciation of the entire evidence led by the parties, the learned Additional District Judge came to the conclusion that Mehar Singh was duly served by substituted service by way of *Munadi* and affixation as he was evading service, as reported by the postal authorities. The argument of the learned counsel for the appellant before the learned Additional District Judge that even if it be assumed that he was duly served, since no copy of the application was attached with the summons he could not be said to have been served, was negatived on the ground that in a reference under the Act there was no question of attaching a copy of the application with the summons. However, it was also observed that the application filed by Mehar Singh appears to be *mala fide* one as he had not disclosed the source from where he came to know the *ex parte* award. In view of this finding the application was dismissed. Dissatisfied with the same, Mehar Singh has filed this appeal in this Court.

(3) The main argument raised on behalf of the appellant is that since the summons sent through registered post did not contain a copy of the application, therefore, under these circumstances it could not be held that there was any valid service.

(4) After hearing the learned counsel for the parties, I do not find any merit in this appeal. Section 45 of the Act provides the mode of service of notice under the Act which read as under:—

“45. Service of notices—

- (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the

case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

- (2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.
- (3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866 (14 of 1866), and service of it may be proved by the production of the addressee's receipt.

(5) Section 53 of the Act provides that the provisions of Code of Civil Procedure shall apply to proceedings before the Court save in so far as they are inconsistent with anything contained in this Act. Since there is a specific provision for the service of the notice under the Act as provided under section 45 reproduced above, the service was to be effected accordingly. The question of sending the copy of the application as such did not arise. Since it was a reference made by the Collector notice was to be served only that such and such reference has been made by the Collector which may be contested by the appellant herein. Thus, I do not find any infirmity or illegality in the findings of the learned Additional District Judge. Moreover, from the conduct of the appellant, it appears that he had already sold more than his share in the joint holding and was not interested in the award. Since the amount was enhanced by the learned Additional District Judge, he moved the application for setting aside the *ex parte* award against him with an ulterior motive. Consequently, this appeal fails and is dismissed with costs.

H.S.B.