

Naunehal Singh and others *v.* Union of India and another
(N. C. Jain, J.)

interest. The Administrative Authorities charged with the duty to renew the licences cannot be given unfettered powers which will obviously give them the chance of abusing the same. Once licence may be preferred, by the concerned authorities, to another by taking the advantage or vagueness of the instructions in question.

(12) The powers to grant or renew the licences have to be vested in certain public officers or bodies. Such officers or bodies have to be left with some discretion in such matters. If the powers vested are limited to that extent, no exception can be taken. A mischief, however can arise when the power conferred on such officers or bodies is arbitrary, unregulated by reason or principle and it is left entirely to their whim and fancy. If a rule provides such a sort of discretion, the same has to be struck down.

(13) In the light of the foregoing discussion we agree with the contention of the petitioners that the proviso added to clause 4 of the Control Order,—*vide* notification, dated 11th November, 1983, suffers from vagueness and as such, is liable to be struck down. We allow the writ petitions, with the directions that the licences of the petitioners shall be renewed in accordance with the Control order, without reference to the exception created by the instructions Annexure R. 1,—*vide* notification, dated 11th November, 1983. We also such quash the orders Annexures P-1 & P-4, of the Authorities in refusing the renewal of licences of the petitioners. No order as to costs.

R.N.R.

Before : N. C. Jain, J.

NAUNEHAL SINGH AND OTHERS,—Appellants.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Regular First Appeal No. 1400 of 1987.

16th November, 1990.

Land Acquisition Act (I of 1894)—S. 9—Notice to interested persons—Notice served on one of the co-sharers—Such notice—Whether sufficient.

Held that the Collector is under a bounden legal duty not only to cause service of a general notice as mentioned in S. 9(2) of the Act but he is under a legal obligation to serve a notice under sub-section (3) of S. 9 of the Act upon the occupier and also on such persons known or believed to be interested in the land. The State cannot take shelter behind the notice served upon one of the co-sharers.

(Para 5)

Regular First Appeal from the order of the Court of Shri Harjit Singh, Additional District Judge, Bhatinda, dated 21st February, 1987, declining the reference with costs, as barred by the time.

Claim : Application u/s 18 of the Land Acquisition Act, 1894.

Claim in appeal : For reversal of the order of lower court.

V. K. Kataria, Advocate, for the Petitioner.

H. S. Brar, Advocate, for the Respondent.

JUDGMENT

N. C. Jain, J. (Oral)

(1) Land measuring 2240, 82892 acres situated within the revenue estate of Bhatinda which belonged to various land owners including the appellants was sought to be acquired by the Government of India for cantonment,—*vide* notification, dated 9th October, 1974 issued under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act'). After the award was given by the Land Acquisition Collector, the land-owners sought reference under Section 18 of the Act and some enhancement was made. The matter came up before this Court and was ultimately decided in L.P.A. No. 279 of 1982—*Kartar Singh and others v. Union of India and others*, decided on 8th December, 1982. In the aforesaid appeal this Court determined the market value of the acquired land upto a depth of 500 metres alongwith municipal limits at the rate of Rupees 15 per square yard and for the rest of the land at the rate of Rupees 8 per square yard. The appellants before this Court, however, did not get the compensation at the aforesaid rate as they did not file any application under Section 18 of the Act at that time. They, however, filed an application for reference on 17th April, 1984. The respondents contested the application on the ground that since the award was announced on 11th June, 1975, the application was barred by time and, therefore, the reference was

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barred by time. On the pleadings of the parties, the following issues were framed:

1. Whether any valid notice under section 9(iii) of the Land Acquisition Act was given to the applicants and that the applicant was served personally? O.P.R.
2. Whether the land reference is barred by limitation? O.P.R.
3. What was the market value of the acquired land at the time of notice u/s 4 of the Act? O.P.P.
4. Relief.

Under issue No. 3 it has been held by the Additional District Judge in the Award under challenge before this Court that the claimants are entitled to the grant of compensation in accordance with the judgment rendered in *Kartar Singh and others'* case (supra) but did not grant the same compensation as the reference under issue No. 2 was found to be barred by time. Issue No. 1 was decided against the State.

(2) The learned counsel for the appellants has argued that the appellants came to know of the Award dated 11th June, 1975 on 24th October, 1983 only when the payment was received by them and, therefore, if the limitation is calculated from the afore-mentioned date, the reference filed by them on 17th April, 1984 is well within six months of their acquiring the knowledge of the Award. It has been argued that simply because notice was served upon the other co-sharers, it cannot be presumed that the appellants who were also co-sharers would be deemed to have been served. According to the counsel for the appellants, a land-owner has to be served with an actual notice under Section 9(iii) of the Act which has not been done in the instant case. It has further been argued that whatever finding recorded by the Additional District Judge imputing the knowledge of the Award to the appellants, the same has got to be set aside as being conjectural, and the findings are without any evidence on the record of the case. On the other hand, Shri H. S. Brar, learned counsel for the Union of India, has argued that the finding on the point of limitation has been recorded by the Land Acquisition Court on the basis of evidence produced by the parties and that no interference is called for.

(3) In order to appreciate the arguments advanced at the Bar, it is necessary to have a look at the evidence which has been led by the parties. The appellant-claimants have produced Balwinder Kumar A.W. 1 Clerk, Office of the Naib Tehsildar, Military Land Acquisition, who brought notices under Section 9 of the Land Acquisition Act and deposed on oath that there were no signatures of the appellants to whom notices were sought to be given under Section 9 of the Land Acquisition Act. He has further stated that the appellants received the payment on 24th October, 1983. In cross-examination, the above mentioned witness stated that notice under Section 9 of the Act was received by Amar Singh, a share-holder, on behalf of the other share-holders also. In the next breath the witness deposed that it was not written on the notice that Amar Singh received the notices on behalf of other appellants. In the last line of the cross-examination it was stated that when the khata is joint notice is given to one person on behalf of others. A.W. 2 is Mohinder Partap Singh Bali, attorney of the appellants who deposed on oath that no notice under Section 9 of the Land Acquisition Act was received by the appellants and that they did not know about the Award upto 1983. The payment, according to the witness was received in October, 1983. In cross-examination, he deposed that an application was given on 17th October, 1983 but corrected himself by saying that it was on 17th April, 1984. The witness did not remember the exact date of acquiring the knowledge but according to him he had informed the appellants Naunihal Singh etc. and on the next day they went to Jullundur and received the payment under protest. Kaviraj Singh etc. appellants were stated to be residing in Delhi. It was further stated that the witness did not know as to how the owners were getting their lands cultivated. The suggestion put to the witness that the land owners came to know about the Award immediately after the pronouncement was denied. No evidence in rebuttal worth the name was produced by the Union of India except by producing a formal witness Paramjit Singh R.W. 1, Patwari, who deposed that he had seen the acquired land and that he produced copies of the sale deeds Exhibits R. 1 to R. 5.

(4) After going through the statements of the witnesses produced on the record and after hearing the learned counsel for the parties I am of the view that finding under issue No. 2 on the point of limitation is unsustainable and the same deserves to be reversed. It has clearly been stated by A.W. 1 Balwinder Kumar that there are no signatures of the claimants on the copy of the notice Exhibit

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A. 1 and that it has been found as a fact under issue No. 1 by the Additional District Judge that there was no evidence that notice under Section 9 of the Act was given to the claimants. Once Balwinder Kumar has stated in so many words about the non-receipt of the notice and once on the basis of evidence led by the parties, issue No 1 has been decided against Union of India, there is absolutely no basis upon which the statement of A.W. 1 as a whole can be discarded. It is the admitted case between the parties that payment has been received by the claimants on 24th October, 1983 and it has been stated in so many words by A.W. 1 that after he acquired the knoweldge about the acquisition of the land, he informed the claimants and they went to Jullundur the next day and received the payment. This statement leads to only one and one conclusion that information about the acquisition of land was obtained near about 24th October, 1983 and, therefore, the reference application having been filed on 17th April, 1984 can well be held to have been filed within six months of the claimants' acquiring the knowledge about the Award. Simply because Mohinder Partap Singh Bali did not state in his statement as to where he was residing and whether he was present or not at the time of pronouncement of the Award does not mean that the claim of the claimants can be held to be barred by time. The designation of the witness has been described as Chief Project Manager Operating Information Services Northern Railway, New Delhi, against his name. Mohinder Partap Singh Bali when stepped into the witness box was not cross-examined on the point that he was not residing in Delhi and that he was residing in the village. In the absence of such a question having been asked from the witness, this Court can safely raise an inference that Mohinder Partap Singh Bali was not residing in the village. No presumption can be drawn that the claimants were visiting the land until and unless their attorney was cross-examined on this point. No witness has been produced by the State to depose that the claimants were visiting the village every now and then and that any one of them was residing there. In the absence of any such evidence, the statement of the attorney of the claimants to the effect that they did not know about the Award till they got payment has got to be accepted by the Court. The State has not led any evidence to show that the appellants were present at the time of announcement of the Award or that any actual notice was served upon them. On the other hand, reference can safely be made to the finding of the Additional District Judge under issue No. 1 wherein it has been observed that no evidence was led by

the respondents and that Paramjit Singh R.W. 1 did not state that notice under Section 9 of the Act was given to the claimants and that the same was served upon them. This Court is disinclined to agree with the reasoning of the Additional District Judge that Mohinder Partap Singh Bali did not give any reason about his not knowing the Award although the same was announced in the year 1975. The witness does not have to give any reason as to why he did not come to know about the Award once he has stated in so many words that he came to know about the Award in October, 1983.

(5) The finding of the Additional District Judge that since the khata was joint, notice given to one co-sharer was enough is legally unsustainable. The entire scheme of the Land Acquisition Act envisages the actual service of notice requiring the filing of claims to compensation by the persons interested in the land. After necessary notifications are issued under Sections 4 and 6 of the Act and after the completion of other formalities as required by Section 7 and 8 of the Act by the Collector, compliance of Section 9 and its sub-sections as a whole comes into play. Section 9(1) of the Act contemplates that the Collector would cause public notice to be given at convenient places on or near the land which has been acquired and the possession of which is intended to be taken by the Government. The notice would require the filing of the claims by all interested persons in the land. Section 9(2) of the Act envisages the mentioning of particulars of the land requiring all the persons interested in the land to appear personally or by the agent before the Collector at a time and place mentioned in such notice and requiring such persons to state the nature of their respective interests in the land. The claimants have to state their claim to compensation in reply to such notice along with their objections to the measurements made under Section 8 of the Act by the Collector. The statement is to be made in writing and signed by the parties or his agent. This provision specifically requires the parties to state the nature of their respective interests in the land as well as the amount and particulars of their claims. The notice has to be of not less than 15 days. Section 9(3) of the Act casts a legal obligation upon the Collector to serve notice to the above mentioned effect on the occupier, if any, of such land and upon such persons known or believe to be interested therein. Sub-Section (4) of Section 9 of the Act specifically lays down that any person who is interested in the land and has no agent, notice shall be sent to him by registered post at his last known residence, the

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address or place of business under Sections 28 and 29 of the Indian Post Office Act, 1898. From a bare perusal of all the sub-sections of Section 9 of the Act specifically and upon an examination of Section 9 as a whole, some propositions of law can safely be deduced. Section 9 of the Act prescribes the taking of certain steps by the Collector. It has to be ascertained by the Collector as to who are the persons interested in the land. Such persons are to be given opportunity of putting in claims to compensation for their respective interests including objections to the measurements made under Section 8 of the Act. It prescribes the giving of two notices. One notice is general or 'public notice' which is given in the locality intimating the fact of the proposed acquisition and inviting claims for compensation from all persons interested in the land. Second type of notice contemplates a special or 'a personal notice' which has to be served upon the occupant of the land and upon such other persons who are believed to be interested in the land. The first notice, thus, throws a duty on all persons interested to apprise the Collector of their interests and claim within specified time whereas the second type of notice enjoins upon the Collector to ascertain with all reasonableness the names of the persons who are interested in the land. The persons who are interested in the land are required to appear personally or through an 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, the amount and the particulars of their claims to compensation. Neither Section 9(2) nor Section 9(3) of the Act can be held to be directory. The Collector is under a bounded legal duty not only to cause service of a general notice as mentioned in Section 9(2) of the Act but he is under a legal obligation to serve a notice under sub-section (3) of Section 9 of the Act upon the occupier and also on such persons known or believed to be interested in the land. The State cannot take shelter behind the notice served upon one of the co-sharers. In *Nitai Dutt v. Secretary of State* (1) service upon one of the brothers was held not to be sufficient service. It was held in *Nitai Dutt's case* (supra) that it was not sufficient for the Collector merely to serve a notice on one of the three brothers, each of whom is equally interested and the mere fact that one of the three brothers accepts notice on behalf of the others, does not raise any presumption that he had any authority to do so. If the service upon one of the brothers can be held to be no good service, surely,

(1) A.I.R. 1924 Patna 608.

knowledge of one co-sharer in the acquisition proceedings cannot be held to be sufficient as has been done in the instant case by the Additional District Judge. The view of this Court that Sections 9(2) and 9(3) of the Act, are mandatory, does not find some support from the provisions of Sub-section (4) of Section 9 of the Act. It is for this precise reason that the necessity to draft another sub-section (4) of Section 9 of the Act, arose so that the persons interested can be served. Non-compliance of Sections 9(2) and 9(3) of the Act, does not mean that all proceedings of acquisition would be rendered null and void. Notifications under Sections 4 and 6 of the Act, would not be invalidated on account of non-compliance of Sections 9(2) and 9(3) of the Act.

(6) Once it is seen above that personal or special notice has to be served upon an occupier and once a finding has been recorded by the Additional District Judge in the present case that there was no evidence of any valid notice under Section 9(3) of the Act, having been served upon the appellants and that they were not served personally, the question arises as to what would be limitation in the instant case, particularly, when it is not the case of the state that any notice under Section 12(2) of the Act, about the award was served upon the appellants. In these circumstances, the ratio laid down by Hon'ble the Supreme Court of India, in *State of Punjab vs. Mst. Qaisar Jehan Begum and another* (2) and followed by this Court, in *Jaswant Rai vs. Land Acquisition Collector, Punjab Urban Land Development Mohali and another*, (3) becomes applicable, according to which the limitation of six months would start running from the date of knowledge of the Award, which in the instant case, according to appellants, is the date of payment of compensation or near about the time. Consequently, the reference under Section 18 of the Act, is held to be within time.

(7) In the light of the observations made above, the appeal has necessarily to be allowed as the present case is otherwise covered by the Award rendered by the Letters Patent Bench in L.P.A. No. 279 of 1982 *Kartar Singh's case* (supra). The appeal is, therefore, allowed with proportionate costs in the terms of Letters Patent decision in *Kartar Singh's case* (supra).

S.C.K.

(2) A.I.R. 1963 S.C. 1604.

(3) 1989 (1) P.L.R. 270.