have been recorded by Bakhshi Sher Singh in favour of the petitioner could have been pressed or presented in a new perspective or dimensions before the Vice-Chancellor and such reasoning might have commended itself to him. I think the bare statement of the Vice-Chancellor that he accepted the majority opinion could not be regarded as a "decision" contemplated by regulation No. 21 and I also think that before the Vice-Chancellor reached a decision, he should have called upon the petitioner to make his submissions on the material which he was entitled to be apprised of.

I would, therefore, allow this petition and quash the impugned order. It would be open for the Vice-Chancellor to take a decision under regulation No. 21 according to the observations made aforesaid. In the circumstances, there would be no order as to costs.

A copy of this order should be sent forthwith to the Panjab University for compliance.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover and Prem Chand Pandit, JJ.

THE UNION OF INDIA,—*Appellant*

versus

SHEELA DEVI AND ANOTHER,—*Respondents.*

Regular First Appeal No. 212 of 1959.

March 14, 1967

Land Acquisition Act (I of 1894)—Ss. 9 and 25—Notice issued by Collector—Claim filed by owner beyond the time fixed by Collector but before the award—Whether valid—Claim not made with regard to certain items of property specifically—Whether can be allowed by Court even if total compensation awarded does not exceed the amount claimed.

Held, that if a claimant makes his claim in pursuance of the notice issued by the Collector under section 9 of the Land Acquisition Act beyond the time fixed in the notice but before the award is made, the Collector has the jurisdiction to deal with his claim and such a claim is a claim pursuant to the notice

given under that section within the meaning of section 25 of the Act although not made by the date originally fixed in the notice and the claimant can get compensation in excess of the one awarded by the Collector.

Held, that under section 9 of the Land Acquisition Act a claimant must give particulars of his claim and if an item is not specified, merely because the amount awarded does not exceed the total amount claimed, he will not be awarded compensation on that score.

Regular First Appeal from the order of Shri Des Raj Dhamija, Arbitrator, Ludhiana, dated 18th April, 1959, ordering that the claimant was entitled to interest on the entire amount of compensation from 25th August, 1955 to 28th August, 1956, at the rate of four percent and upon the balance after deducting Rs. 33,396 from 28th August, 1956, till the date of payment. In the circumstances of the case the two Governments were also burdened with the costs of the claimant, Counsel fee having been fixed at Rs. 500.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH S. S. DEWAN, ADVOCATE, for the Appellant.

B. R. TULI, SENIOR ADVOCATE WITH S. K. TULI, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—This is an appeal filed by the Union of India under section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) against the award given by Shri Des Raj Dhamija, Senior Subordinate Judge, Ludhiana, on a reference made to him under section 18 of the Act.

Land measuring 3 acres, out of Khasra No. 924, situate in the city of Ludhiana and belonging to Mukand Lal, was acquired by the State of Punjab, for the construction of a Post and Telegraph colony. The relevant notifications under sections 4 and 6 of the Act were issued on 18th of March, 1955. The Collector awarded the compensation at the rate of Rs. 2 per square yard, but since Mukand Lal was not satisfied with the same, he made an application to him for a reference under section 18 of the Act. Thereafter, Mukand Lal died and his widow, Shrimati Sheela Devi was substituted in his place as a legatee under the will made by him. In this application, Mukand Lal, submitted that the area acquired by the Government was 4.03 and not 3 acres as mentioned by the Collector; that the Collector had erroneously held that there were no trees on

the land, because in fact there were 30 trees, the value of which was Rs. 2,000 which should have been awarded to the applicant; that no compensation had been assessed for the electric installation, comprising electric poles, over-head wirings and light fittings, on the land and the Collector should have awarded a sum of Rs. 2,000 therefor, that no compensation had been assessed for the compound wall standing on the land, the pucca cemented drain constructed through the entire land, and for the severance of his other land as a result of this acquisition and the applicant should have been awarded Rs. 15,000, Rs. 1,000 and Rs. 10,000 respectively for these three items; and that the land had been greatly under-valued and its market value should have been held to be not less than Rs. 8 per square yard.

The claim of Mukand Lal was resisted by both the Union of India and the State of Punjab. Their case was that the land acquired was 3 acres and the compensation fixed by the Collector for the same was quite fair and reasonable. The existence of the trees, electric installation, compound wall and the cemented drain on the land was denied. There was no severance as alleged by the claimant. It was stated that since the claimant did not object to the valuation made by the Collector within the time fixed by the notice under section 9 of the Act, he was, therefore, estopped from claiming any compensation in excess of that awarded by the Collector. According to them, the claimant had no right to make this application even. Lastly, it was submitted that since he had given clear understanding that he would accept the price fixed by the Government, he could not, therefore, object to the compensation awarded by the Collector.

On the pleadings of the parties, the following issues were framed:—

"(1) What is the area of the land acquired ?

(2) What is the market-value of the land acquired?

(3) Were there any trees on the land acquired? If so, of what value?

(4) Was there any electric installation comprising of electric poles, overhead wirings, and light fittings ? If so, of what value?

(5) Was there any compound wall and pucca cemented drain on the land acquired ? If so, what is the value thereof ?

(6) Whether there has been any severance of the other land of the petitioner? If so, what damage has been caused to the petitioner on this account?

(7) Is not the applicant entitled to claim compensation for electric installation, trees, compound wall, pucca drain and damage sustained on account of severance?

(8) Is the applicant estopped to claim compensation for electric installation, trees, compound wall, pucca drain and damage sustained on account of severance?

(9) Is not the applicant entitled to file this application?

(10) Was any undertaking given by the applicant that he would accept the price as fixed by the Government? If so, what is its effect?

(11) Relief.

The learned Senior Subordinate Judge held that the land acquired measured 3 acres, that the market value of this land was Rs. 6-8-0 per square yard, that there were a boundary wall, a pucca cemented drain, three Sheesham trees and two electric poles with 11 electric wirings on the land and the compensation for these things amounted to Rs. 2,470-8-0; that there had been severance of the other land of the claimant by this acquisition and the compensation payble to him on this account was Rs. 2,418; that the claimant was entitled to claim compensation for the electric installation, trees, compound wall, pucca drain and on account of severance; that the claimant was not estopped from claiming compensation in excess of that awarded by the Collector, that the claimant was entiled to file the application under section 18 of the Act and that no undertaking had been given by him that he would accept the price as fixed by the Government. On these findings the compensation awarded by the Collector was enhanced and it was held that the claimant was entitled to 15 per cent for compulsory acquisition and interest on the amount of compensation.

Against this award, the present appeal has been filed by the Union of India.

The first argument raised by the learned counsel for the appellant was that since no claim was preferred by Mukand Lal in response to the notice under section 9 of the Act issued by the Collector within the time fixed by the latter in the said notice, he was, under

the law, debarred from claiming anything more than what was fixed by the Collector in his award. Reliance for this submission was placed on the decision in *Land Acquisition Officer* v. *Fakir Mahomed and another* (1).

The said notice under section 9 of the Act issued by the Collector, Ludhiana, was dated 2nd of April, 1955, and it had called upon Mukand Lal to prefer his claim with regard to compensation on 21st of April, 1955. This notice was served on him on the date it was issued. On 20th of April, 1955, in reply to this notice, he wrote to the Collector that he was seriously ill for the last three weeks and confined to bed. In view of that he would not be able to put his claim personally, but he would not object to any reasonable, just and fair price being paid to him for his land. In the alternative, he might be given some other date for appearance in court in person. Thereafter, on 16th of June, 1955, he sent another letter to the Collector, through his counsel, in which he again mentioned that he was still in bed and was unable to come to Ludhiana to file his claim personally. As his adjoining land had been acquired for the Government College Hostel at the rate of Rs. 6-8-0 per square yard, the question of the market value of the land in dispute, the situation of which was better than the land acquired earlier, could be easily decided on that basis. It was mentioned in this letter that the claimant might be paid compensation at the rate of Rs. 8 per square yard. The award by the Collector was, however, given on 18th of August, 1955. Thus, it would be seen that Mukand Lal, had made a claim pursuant to the notice given to him by the Collector under section 9 of the Act, though it is true that the said claim had not been filed within the time prescribed by the Collector in the said notice. The argument of the learned counsel for the appellant is based on section 25(2) of the Act which reads as under:—

> "(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 case of the claimant, on the other hand, was that the letter, dated 16th of June, 1955, which had been sent to the Collector was a claim under section 9(2) of the Act and was made in pursuance of the

(1) A.I.R. 1933 Sind 124.

notice given under that section within the meaning of section 25(1) of the Act which says:—

> "(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed.....".

This precise objection came up for decision before the Punjab Chief Court in *Secretary of State for India* v. *Sohan Lal* (2). There, the Division Bench consisting of Scott-Smith and Shadi Lal, JJ., held as under:—

> "A Collector at any time, before giving his award, has jurisdiction to deal with any claim made to him under section 9(2) of the Land Acquisition Act, and such a claim is a claim pursuant to the notice given under that section within the meaning of section 25 although not made by the date originally fixed in the notice."

Following this decision, I would hold that there is no merit in this objection and the claimant could get compensation in excess of the one awarded by the Collector. So far as the Sind decision is concerned, it is of no assistance to the appellant. The Punjab Chief Court decision, referred to above, was noticed in that authority and it was not dissented from. As a matter of fact, the Sind court was also of the same view and had held that where the claimants had not put in their claims at the time required by the notice under section 9, but did so later, the amount which the court could award was governed by section 25(1).

The next submission of the learned counsel was that the Senior Subordinate Judge was in error in awarding compensation to the claimant for trees, electric installation, compound wall, cemented drain and the loss on account of severance, because he had not filed any claim with regard to these items in reply to the notice issued by the Collector under section 9 of the Act. In the letter, dated 16th of June, 1955, he had only prayed that he should be paid Rs. 8 per square yard as the price of the land acquired. Nothing was claimed for any other thing. In this connection, learned counsel

(2) 60 P.R. 1918.

referred to a Bench decision of the Lahore High Court in *Secretary of State* v. *Tikka Jagatar Singh* (3), where it was observed:—

> "Under section 9 of the Act a claimant must give particulars of his claim. And if an item is not specified, merely because the amount awarded does not exceed the total amount claimed, he will not be awarded compensation on that score."

There is substance in this contention. As a matter of fact learned counsel for the claimant had to frankly admit that in view of the decision of the Lahore High Court, he could not press his claim with regard to the compensation on account of these various items, since nothing had been claimed by Mukand Lal, for them in his letter, dated 16th of June, 1955. Following this decision, I would hold that the amount of Rs. 4,888-50-0 awarded as compensation to the claimant on account of these items cannot be allowed to her.

Lastly, it was submitted by the learned counsel that the market value fixed by the Senior Subordinate Judge for the land acquired was exorbitant and it should be appreciably reduced. The main ground urged in this connection was that the learned Judge should have accepted the price of Rs. 1-7-9 per square yard, paid by the D.A.V. College for the land purchased by them on 16th of November, 1954, as the basis for fixing the compensation for the land in dispute.

In determining the market value of the land, the learned Senior Subordinate Judge had taken into consideration a number of circumstances. So far as the situation of this land was concerned, it was within the Abadi and in the Civil Lines of Ludhiana City. There was evidence to show that on the west of this land there was a metalled road 30′ wide, on the north there was the Rajpura Road and on the south the college road. This land was near the Government College Hostel and the Government College for boys. The Daya Nand Hospital was at a distance of 2-3 furlongs from this place. The police Lines was one furlong away from the plot in dispute. Between this land and the police Lines, there were many buildings including Kundan Wood Factory, Kashana Hostel and Murari Engineering Works.

In addition to the above locality, the claimant had produced a number of mutations about the sales with regard to the neighbouring lands. A/25 was the mutation sanctioned on 5th of June, 1951.

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(3) A.I.R. 1936 Lahore 733.

By this a very large area of land belonging to the claimant himself was acquired by the Punjab State for the construction of a Hostel for Government College, Ludhiana, at the rate of Rs. 7-8-6 per square yard. On 19th of September, 1951, some land out of Khasra No. 924 itself of which the land in dispute was a part was sold at the rate of Rs. 12-11-6 per square yard (A/23). On 30th May, 1952, another plot, out of this very Khasra number was sold at the same rate (A/24). Some land out of Khasra numbers 911 to 915 was sold on 23rd March, 1953 (A/22) at the rate of Rs. 10-4-0 per square yard. According to the mutation sanctioned on 30th of December 1953, (A/28) land out of these very khasra numbers was sold at the rate of Rs. 9-7-0 per square yard. By mutation A/27, land out of Khasra Numbers 911 to 922 was sold at the rate of Rs. 13-5-6 per square yard. This mutation was sanctioned on 19th of February, 1954.

Apart from these mutations there are on the record averages for the different years, which were got prepared by the Collector during acquisition proceedings. According to A/5, the sales for the years 1949-50 gave an average of Rs. 48,325/1/9 per acre. For 1950-51, the average was Rs. 36,616/11/1,—vide A/4. As regards 1951-52, the average was Rs. 28,327/3/2,—vide A/3. A/2 gave the average as Rs. 38,859/2/8 for 1952-53. According to A/1, Rs. 41,673/12/- was the average for 1953-54. Thus the average for the five years from 1949 to 1954 worked out to Rs. 39,432/5/2 per acre, i.e., Rs. 8/2/4 per square yard.

The claimant had also got an extract A.W.1/1 prepared from Behari Lal, Patwari, in which the sales for the period 1st of April, 1954 to 18th March, 1955, were given. The average sale price worked out to Rs. 45,216/10/8 per acre or Rs. 9/5/0 per square yard.

Thus, it will be seen that the compensation awarded to the claimant is less than the averages worked out above or the price mentioned in the various mutations referred to hereinbefore. Learned counsel did not contend that these mutations were not relevant for determining the market value of the land in dispute or were not a proper guide for that purpose. With regard to the sale made in favour of the D.A.V. College and on which a lot of emphasis was laid by the learned counsel for the appellant, this is what the learned Senior Subordinate Judge has to say:—

> "That purchase was made at the rate of Rs. 1-7-9 per square yard, but the reasons for the purchase at that cheap rate

are amply given by Shri R. N. Kapur, the Principal of that College. According to him with the exception of a width of ten to 12 feet at the front which was at the same level as the adjoining road the rest of the land was at different lower levels. In front of the main College building they have made a hockey ground for which they had to build a retaining wall on the western side about 15 or 16 feet high and had to do a lot of earth filling and still the hockey ground is three or four feet lower in level than the road. The earth work cost Rs. 3 to 4 thousand and the retaining wall about an equal amount. Two of their fields on the back side still get submerged with water during floods. Adjoining those two fields they have raised the level by about 8 feet to provide a football ground. The earth work cost Rs. 5/6D, thousand the retaining wall which, according to the witness, was likely to cost Rs. 40 thousand was still in the process of construction. That ground is still 10/12 feet lower in level than the base of the main College building. He has spoken of other disadvantages also and other expenses incurred for making the place serviceable. I need not refer to all those in details. It is sufficient to remark that the plot was most uneven at the time of the purchase by the College and though it has cost pretty money, but still the level of the entire plot is not one, but of various depths. Such a purchase cannot furnish any safe guide for determining the valuation of the plot in dispute which is a levelled one and not lower than the adjoining lands or the road upon which it rebuts....."

That being so, the learned Senior Subordinate Judge was right in not making this sale as the basis for fixing the market value of the land in dispute. In this connection, it is noteworthy that even the Collector had awarded Rs. 2 per square yard which was more than what the D.A.V. College had paid for the land which they had purchased. No valid reason had been advanced by the learned counsel for the appellant for disturbing the finding of the learned Senior Subordinate Judge, regarding the market value of the land acquired. This contention, therefore, also fails.

In view of what I have said above, I would partly accept this appeal and reduce the amount awarded by the learned Senior Subordinate Judge by only Rs. 5,259.07 Paise and interest, if any,

paid thereon. It may be mentioned that this figure was calculated by the learned counsel for the parties and was agreed to by them. In all other respects, the appeal is dismissed. In the circumstances, there will be no order as to costs in this Court.

A. N. GROVER, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

GAJJAN SINGH, AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 2046 of 1966.

March 15, 1967.

The Northern India Canal and Drainage Act (VIII of 1873) as amended by Act XXIII of 1965—Ss. 30-A, 30-B and 30-E—Scheme prepared for water-course under S. 30-A of unamended Act and approved by Superintending Engineer finally—Application for changing water-course made after coming into force of the Amending Act and Superintending Engineer, acting under S. 30-B(3) altering the water-course—Order of the Superintending Engineer—Whether valid—Power of review—Whether can be exercised by Superintending Engineer—Constitution of India (1950)—Article 226—Order without jurisdiction but no manifest injustice done—Whether can be challenged.

Held, that if the Superintending Engineer had passed an order under section 30-E of the Northern India Canal and Drainage Act and given effect to what had been approved by him earlier, no objection could have been taken to that order. But what the Superintending Engineer did was that instead of giving effect to what he had approved under the old Act, he provided a new water channel from B to C, from C to D, and from D to F. This course could only be adopted by recourse to the provisions of Section 30-A and not otherwise. This is abundantly clear from the combined reading of the old provisions as well as the new ones. No power of review has been conferred on the Superintending Engineer and he cannot review his own order. The power of revision is only against an order of a subordinate authority. Therefore, the impugned order, by which he has altered his own previous order, is certainly without jurisdiction.