Patna High Court
State Of Bihar vs Anant Singh And Ors. on 22 August, 1963
Author: U Sinha
Bench: U Sinha, S Singh
JUDGMENT U.N. Sinha, J.

1. This batch consists of 83 appeals preferred by the State of Bihar from the judgment and decrees passed by the learned Additional District Judge, 1st Court, Patna, dated the 27th February, 1956, in a batch of land acquisition cases on reference under the Land Acquisition Act. This judgment will govern all these appeals which have been heard together.

2. By a notification dated the 13th of December, 1947, under Section 4 of the Land Acquisition Act, 1894 (Act I of 1894) the State Government had decided to acquire 242.884 acres of land for the improvement of the town of Patna. Ultimately, it was decided to acquire a smaller area, within the larger area mentioned above, in the first phase of the acquisition. By actual measurement, the acquisition in the first phase came to 112.033 acres. The subject-matter of these appeals fall within the smaller area acquired in the first phase. The acquired area is shown in a plan brought on the record and marked as Exhibit M. The awards of the Special Land Acquisition Officer acting as Collector in this case were ultimately given on the 5th of November, 1954, and delivery of possession was taken on the 29th of November, 1954. It may be mentioned here that in the meantime, Bihar Planning and Improvement Trust Act, 1951 (Bihar Act XXXV of 1951) had come into effect and the Patna Improvement Trust had come into being. Possession was taken, in fact, by the Patna Improvement Trust under its scheme for improvement.

3. Out of the controversies which had arisen before the learned Judge, only two matters have been agitated in this Court -- one, on the increase in the market value of some portions of the lands acquired, and the other, on the validity of some of the reference made under the Land Acquisition Act.

4. The question of valuation arises under the following circumstances: Upon a reference to exhibit M, it will appear that, roughly speaking the acquired land falls into two blocks, east and west of a road named Arya Kumar Road. Then, these two blocks have been divided into, what are called belts. There are two belts on the two sides of the road, immediately to the east and to the west which are of depth of 100 feet on each side. Then, coming to the block of land to the east of the road, leaving out the 100 feet belt, the remainder has been sub-divided into five belts running north and south, upto another road named Saidpur Road, Towards the west of Arya Kumar Road, leaving out the 100 feet belt, the block has been sub-divided into three more belts, running north-south. Thus, towards the east of Arya Kumar Road, there are six belts running more or less, in all, four belts running north-south, and one belt running more or less east-west at the extreme southern end. Then some of these belts to the east and west of Arya Kumar Road are again sub-divided into, what may be called, sub-blocks with different valuations. The first 100 foot belt to the east of Arya Kumar Road is divided into sub-blocks with the following valuations :- (a) F valued at Rs. 800/- per katha; (b) G valued at Rs. 900/- per katha, (c) H valued at Rs. 1,000/- per katha, and (d) J valued at Rs. 800/-per katha. The next belt to the east of this 100 foot belt is divided into two sub-block as follows

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(a) C valued at Rs. 600/- per katha, and (b) C1 valued at Rs. 550/- per katha. The next belt to the contiguous east is divided into two sub-blocks as follows (a) D valued at Rs. 450/- per katha, and (b) DI valued at Rs. 400/- per katha. The next belt to the east is divided into two sub-blocks as follows :- (a) E valued at Rs. 300/- per katha; and (b) E1R valued at Rs. 275/- per katha. The next eastern belt running from north to south is valued wholly at Rs. 250/- per katha. The last belt towards east of this block is divided into two sub-blocks, as follows :- (a) A valued at Rs. 300/- per katha; and, (b) A1 valued at Rs. 350/- per katha.

5. Coming to the block to the west of Arya Kumar Road, the matter stands thus; The first 100 foot belt adjoining west of Arya Kumar Road is divided into several sub-blocks as follows : - (a) N valued at Rs. 800/- per katha; (b) M valued at "Rs. 900/- per katha; (c) L valued at Rs. 1000/-per katha and (d) K valued at Rs. 800/- per katha; The next belt to the west of this has been, marked as P and has been valued at Rs. 400/-per katha. The next belt immediate west of this belt has been marked as S and valued at Rs. 600/- per katha. The last belt towards the very west running more or less north-south has been marked as R and it has been valued at Rs. 800/-per katha. The southern belt, mentioned above, has also been divided into several sub-blocks as follows:- (a) T valued at Rs. 450/- per katha; (b) Z valued at Rs. 100/- per katha; and (c) Sivam= ed at Rs. 600/- per katha. Some Rasta and ditch have been valued at Rs. 50/- per katha.

6. Upon hearing the parties, the learned Additional District Judge has varied the Collector's beltings and valuations thus: - The 100 foot belt adjoining east of Arya Kumar Road and running parallel to it, having sub-divided almost all the plots abutting on the road has not been accepted as a good piece of belting. It has, therefore, been held that all the plots abutting on the Arya Kumar Road should fall within the first belt running north-south parallel to the Arya Kumar Road and to the east of it. In this belt the value of sub-block G only has been raised from Rs. 900/- per katha to Rs. 1000/- per katha bringing it at par with the adjoining sub-block H. In the next two north-south belts, the value of sub-block D has been raised from Rs. 450/- per katha to Rs. 600/-per katha. Sub-blocks C1 and D1, which are in continuation of sub-blocks C and D, have been valued at Rs. 600/- per katha instead of their original valuation mentioned above. That is to say, the valuation C1 has been raised from Rs. 550/- per katha to Rs. 600/- per katha, and the valuation of D1 has been raised from Rs. 400/-per katha to Rs. 600/- per katha. Coming to the next belt to the east, the valuations of sub-blocks E and ET have been raised from Rs. 300/- to Rs. 600/- per katha, and from Rs. 275/- to Rs. 600/-per katha respectively. The valuation of the next belt to the east of this has been raised to Rs. 350/- from Rs. 200/- per kaha. In the extreme eastern belt containing blocks A and A1, the valuation of block A- has been raised from Rs. 300/- to Rs. 350/- per katha, bringing it at par with sub-block A1. Now, I come to the block to the west of Arya Kumar Road. In the first 100 foot belt, running parallel west of Arya Kumar Road, the valuation of sub-block M has been raised from Rs. 900/- per katha to Rs. 1000/- per katha. brining it at par with the contiguous sub-block marked as L. In the belt marked as P. the valuations of some of the plots have been raised from Rs. 400/ - to Rs. 600/- per katha. The valuation of the belt marked as S has been raised from Rs. 600/- to Rs. 800/- per katha bringing it at par with the extreme western belt marked as R. In the extreme southern belt of this western block, the valuation of sub-block T has been raised from Rs. 450/- per

katha to Rs. 800/per katha.

7. Learned Standing Counsel has urged that the width of the first 100 foot belt running parallel to Arya Kumar Road and to the east of it should not have been varied by the learned Additional District Judge. It is then contended that the increase in the valuations of the belt and the sub-blocks in some of the belts was unjustified. It appears to me, however, that the first, contention regarding the 100 foot belt in exhibit M has been rightly dealt with by the learned Judge in this case. In the 100 foot belt to the west of Arya Kumar Road all the plots abutting on the road were left intact. In the 100 foot belt to the east of Arya Kumar Road, as stated above, almost all the plots have been sub-divided. As a matter of fact, it appears that at least two plots abutting on the road were sub-divided into three bits having three different valuations according to Exhibit M. The areas of the various plots to the immediate east of Arya Kumar Road are small and, in my opinion, the learned Additional District' Judge has dealt with this point from a practical view point which must be upheld.

8. The second point regarding increase in the valuations of some of the belts and the sub-blocks, also appears to be without any merit. For instance, learned Standing Counsel has urged that the valuation of sub-blocks G and M should not have been made the same as the valuations of sub-blocks II and I., on the two sides of Arya Kumar Road, when the valuations of sub-blocks F and N were not changed. It is not possible to accept this contention and interfere in this matter, when the learned Additional District Judge was of the opinion that no ground had been shown for differentiating between sub-blocks G and M, and H and L. It may be that the lands at the southern end of Arya Kumar Road are less valuable than the iands to the northern end, but there is no reason to distinguish between the sub-blocks in the centre and on the two sides of Arya Kumar Road. With regard to sub-blocks C1, D1 and E1, the valuations of which have been raised by the learned Judge, reliance is placed by learned Standing Counsel on the evidence of J. P. Choubey (O. P. W. 1) and Prabhat Kumar Banerji (O. P. W. 2). It is urged that the learned Additional District Judge has erroneously held that these sub-blocks were accessible by any road adjoining north. Our attention has been drawn to the evidence of O. P. W. 2, where he has stated that the road besides sub-blocks C1, D1 and E1 is a private road going to the Maila Factory. This matter has been dealt with by the learned Additional District Judge thoroughly and I am not inclined to accept the contention of the learned Standing Counsel and differ from the conclusion of the learned Additional District Judge. A bald statement that some road was a private road was not sufficient to prove that the public had no access to it. If this road was a private property of the municipality to which public had no access, the matter could have been proved beyond doubt from the records of the municipality. As a matter of fact, in cross-examination O. P. W. I stated that ho did not know if this road was used by the general public or not. The argument raised in connection with sub-blocks C1, D1 and E1 must, therefore, fail. In my opinion, the other general arguments upon the increase of the valuation of some belts and sub-blocks are equally weak and must be rejected. For instance, it is urged that the valuation of sub-block A should not have been increased to Rs. 300/- per katha, as it is away from the inhabited locality towards the north to which sub-block Ai was nearer. This contention is not of much force, as sub-blocks A and A1 were both situated on Saidpur Road, having equal advantage of the road-side. In my opinion, all the arguments put forward by the learned Standing Counsel regarding valuation matters are unacceptable.

9. In the majority of these appeals, numbering 62, learned Standing counsel raised only the question of valuations arrived at by the learned Additional District Judge. All these appeals must, therefore, fail, including two First appeals, which are First Appeals Nos. 347 and 379 of 1956, where the question of competency of the appeals has also arisen. In First Appeal No. 347 of 1956 respondent No. 1 had died and the question of competency of the appeal, as it now stands, was left for determination at the time of the hearing. In First Appeal No. 379 of 1956 respondent No. 1 (c) had died and the question of competency of the appeal, as it now stands, was also left for consideration at the time of hearing. It is, however, not necessary to consider the competency of these two appeals on the ground of the death of the two respondents concerned, as these appeals fail on merit also. These two appeals also fail on the question of valuation.

10. In the remaining 21 appeals, some questions of law based on Sections 18 and 25 of the Land Acquisition Act have been raised, which appeals will be dealt with specifically.

11. In 6 of the 21 appeals learned Standing Counsel has urged that the references by the Collector were incompetent as the applications for reference under Section 18 of the Lam! Acquisition Act had been filed beyond six weeks from the date of the Collector's awards given on the 5th of November, 1954. Thus, it is argued that the awards given by the Collector in the corresponding cases could not have been varied by the learned Additional District Judge, as the references were hit by Sec-lion 18(2)(a) of the Act and were incompetent. In the other 15 appeals it is contended by the learned Standing Counsel that as the applicants had not made any claims before the Collector, pursuant to notices under Section 9 of the Act, the learned Judge could not have increased the compensations in their favour beyond the amounts awarded by the Collector. Reliance is placed on Section 25 of the Land Acquisition Act. Learned Standing Counsel has drawn our attention to paragraphs 71 and 72 of the judgment of the learned Additional District Judge where such contentions had been advanced before him. I will now deal with these two batches of appeals as argued in this Court. The appeals in which the references by the Collector are challenged by virtue of Section 18 of the Land Acquisition Act arc First Appeals Nos. 321/56, 344/56, 366/56, 380/56, 382/56 and 393/56. In order to appreciate the points raised in these appeals, Section 18 of the Act is quoted below :

"18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award :

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire"

I will now deal with these cases individually.

First Appeal No. 321 of 1956.

12. The award in this case was given by the Collector on the 5th of November, 1954. The application under Section 18 of the Land Acquisition Act was made by the claimant by a petition dated the agth of December, 1954. Upon these facts, learned Standing Counsel contended that the application under Section 18 had been filed beyond six weeks from the date of the Collector's award, and, therefore, the reference was incompetent. Learned counsel for the respondent has urged that before Section 18(2) (a) of the Act can be attracted, it must be proved that the claimant in this case was present or was represented before the Collector at the time when the award was made on the 5th of November, 1954. According to the learned counsel, it may be, that the claimant had filed a statement of claim on the 26th of February, 1952, but there is no evidence on the record to show that he was present before the Collector or was represented before him on the date of the award. On the contrary, it is urged that paragraph 1 of the petition under Section 18 states that a notice under Section 12(2) of the Land Acquisition Act had been issued and served on the claimant on the 28th of November, 1954, which is indicative of the fact that the claimant was neither present nor was represented before the Collector at the time when the award was made. Section 12 of the Act runs thus :

"12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

On the wordings of Section 12(2) it is urged by learned counsel for the respondent that the notice under that sub-section would not have been sent to the respondent if he was present or was represented before the Collector on the 5th of November, 1954. Reliance is further placed upon the evidence of J. P. Choubey (O. P. W. 1), the land Acquisi-tion Officer, where he has deposed in paragraph 53 that he had begun hearing from the 15th of July, 1952 and he had concluded on the 19th June, 1953. It is further argued by learned counsel for the respondent that in spite of the statement made in the claimant's petition under Section 18 of the Act, regarding service of notice under Section 12(2), when the claimant, Hiralal Rai was examined as A. W. 93, no questions were put to him to the effect that he was present at the time or was represented when the award was given. It appears to me that the contentions raised by the learned Counsel for the respondent are sound and must be accepted. There is no evidence on record on behalf of the appellant to the effect that the claimant in this case was present or was represented before the Collector at the time when

he had made the award. The award was given by O. P. W. 1 and he has not said anything about this matter. When notice under Section 12(2) had been sent out to the claimant, it must have been sent because the claimant was not present personally and was not represented by any one when the award was made. It is clear, therefore, that Section 18(2)(a) of the Land Acquisition Act is not attracted, so that the claimant was bound to file his application under Section 18 within six weeks from the date of the Collector's award. The case must, therefore, fall within Section 18(2)(b) and the application under Section 18 was obviously filed within time. This appeal must, therefore, fail.

First Appeal No. 344 of 1956.

13. This case is also a case where a notice under Section 12(2) of the Act had been given to the claimant. This case must also be governed by Section 18(2)(b) of the Act. In this case, however, the petition under Section 18 of the Act, dated the 23rd December, .1954, does not specifically state as to when the notice under Section 12(2) was served. But as soon as Section 18(2)(b) of the Act is attracted, it will be for the appellant to prove that the application under Section 18 had been filed beyond six weeks of the receipt of the notice under Section 12(2) of the Act, winch is the shorter of the two periods mentioned in that sub-section. Therefore, it is not possible to hold that in this case the reference was incompetent in view of Section 18 of the Act. This appeal must also fail, First Appeal No. 366 of 1956.

14. This case is also governed by Section 18(2)(b) of the Act and the notice under Section 12(2) was served on the 18th November, 1954, as mentioned in the petition under Section 18, dated the 17th December, 1954 (this application has not been printed in the paper book). The application mentions that the claimant had been served with a notice under Section 12(2) of the Act on the 18th November, 1954. It is clear, therefore, that this application had been filed within time as contemplated by Section 18(2)(b) of the Land Acquisition Act, There is no evidence that the claimant was present or was represented before the Collector at the time of giving the award, in order to bring the case within the scope of Section 18(2)(a) of the Act. The appeal must, therefore, fail.

First Appeal No. 380 of 1956.

15. The petition under Section 18 of the Act, dated the 20th December, 1954, filed in this case, states that on a "perusal of the notice it transpired that a nominal price of Rs. 432/4/- as estimated to be the cost of the said land, which is quite unfair and unjust." Obviously, therefore, this is a case where a notice under Section 12(2) had been served on the claimant. It has not been proved on behalf of the appellant as to when this notice had been served, and, therefore, it is not possible to hold that in this case the reference was within the mischief of Section 18(2)(a) of the Act. This appeal must, therefore, fail.

First Appeal No. 382 of 1956.

16. This case is also governed by Section 18(2)(b) of the Act. The notice under Section 12(2) had been served on the 29th of November, 1954, as stated in the petition under Section 18, dated the 4th

January, 1955. The application for reference was, therefore, filed within six weeks from the date of the notice under Section 12(2). This appeal also fails.

First Appeal No. 393 of 1956.

17. In this case also, the award had been given on the same date, namely, the 5th of November, 1954. The application under Section 18 of the Act is dated the 21st of December, 1954. There is no evidence to show that the claimant was present or was represented before the Collector at the time when the award had been made. Section 18(2)(a) of the Act cannot, therefore, be held to be applicable. If Section 18(2)(b) applies, neither does the petition dated the 21st December, 1954 state aa to whether any notice under Section 12(2) had been given to the claimant, nor is there any evidence on behalf of the appellant that any such notice had been given. Therefore, if Section 18(2)(b) applies, the claimant had six months' time from the date of the Collector's award to make bis application under Section 18. Therefore, it is not possible to hold that this case comes within the time bar mentioned in Section 18 of the Act. This appeal must also fail,

18. Now, I will deal with the appeals in which a question under. Section 25 of the Land Acquisition Act has been raised. These appeals are First Appeals Nos. 289/56, 290/56, 312/56, 334/56, 350/56, 3.55/56, 364/56, 367/56, 370/56, 373/56, 384/56, 385/56, 403/56, 414/56 and 424/56. In order to appreciate the points which will arise in these appeals, Section 25 of the Land Acquisition Act is quoted below :

"25. (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 or be less than the amount awarded by the Collector under Section 11.

(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.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may, exceed, the amount awarded by the Collector,"

The substance of the contentions raised by the learned Standing Counsel in these appeals is to the effect that the applicant of these cases had not filed statements of claim before the Collector, after receiving notices under Section 9 of the Land Acquisition Act, and, therefore, the learned Additional District Judge had no power to give awards which would exceed the amounts awarded by the Collector, unless the learned Judge was satisfied that the applicants had given sufficient reasons to satisfy the learned Judge as to why they had not filed statements of claims before the Collector's awards. Reliance is placed on Sub-sections (1) and (2) of Section 25 of the Act. The substance of the contentions raised on behalf of the respondents in these appeals is to the effect that before this objection can be successfully taken by the appellant, it must be strictly proved that the applicants had refused to make any claim or had omitted to make any claim before the Collector "pursuant to

any notice given under Section 9", as contemplated by Section 25(1) of the Act. It is contended that it is not enough to prove that statements of claim in writing had not been filed before the Collector by these petitioners. It is urged that what is to be proved under Section 25(1) is that the applicants had not 'made claims to compensation' and not that the applicants had not 'filed statements in writing' before the Collector. It is also argued that before Section 25(1) can be resorted to, it must be proved to the satisfaction of the Court, that the applicant had made no claim to compensation after valid notices under Section 9 had been given to them. Learned Counsel for the respondents of the appeals in which, this point has arisen, have drawn our attention to Sections 9 and 19 of the Act, in order to draw a distinction between 'making claims' to compensation before the Collector, contemplated by Section 25 of the Act, and, giving "statements in writing" to the Collector within the meaning of Section 19(2) of the Act. In order to appreciate the distinction raised, it will be necessary to refer to Sections 9 and 19 of the Act which are reproduced below :

"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 Office Act, 1866."

"19. (1) In making the reference, the Collector shall state, for the information of the Court, ia writing under his hand :

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the name's of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them and the amount of compensation awarded under Section u; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively." Thus, the two-fold attack made on behalf of the respondents of these appeals to the contentions raised by the learned Standing Counsel may be summarised as follows :-- (a) it is argued that it has not been proved that notices as contemplated under Section 9 of the Act were served on the occupiers of the lands in question, there being no controversy that the applicants were occupiers of the agricultural lands acquired, (b) It has not been proved that the respondents concerned had not made any claims to compensation before the Collector, even if some of the references made by the Collector show that statements of claim had not been filed before him. In my opinion, the arguments of the learned counsel for the respondents in these appeals are not without force. It is clear from Section 9(2) of the Act that what the Collector requires from the interested persona is to state the nature of their respective interests and the amounts and particulars of their claims to compensation for such interests and their objections (if any) to the measurements under Section 8. This sub-section itself says that the Collector may, in any particular case, require such statement to be made in writing and signed by the party or his agent. Therefore, there is no obligation on the interested persons to file statements in writing, unless they are required to do so. In these ap-peals, there is no evidence that the parties concerned were required to make statements in writing as contmplated by Section 9(2) of the Act. Therefore, although in some cases the references show that statements in writing had not been made, there is no evidence to show that the persons concerned, assuming that they had received proper notices, had not appeared before the Collector at any stage-and had not made statements required under Section 9(2) of the Act. For instance, in First Appeal No. 367 of 1956, the reference by the Collector states on the point as to whether any statement in writing had been made or not, in these words : -- "Statement of claim not/filed on ....." Assuming this expression to mean that the Collector has stated under Section 19(2) of the Act that a statement in writing had not been made by the interested parties, the relevant petition under Section 18 states, in the very first paragraph, that, "In spite of protest being made as to legality and genuineness of the acquisition of the lands involved in the case, the said land's had been acquired".

This gives an indication that the party concerned had at some stage appeared before the Collector and had put in some sort of objection. There is no evidence on behalf of the appellant to show that the protest, mentioned above, was not in the nature of the claim that this party should have made within the meaning of Section 9(2) of the Act before the award.

19. Moreover, the evidence given on behalf of the appellant as to service of notices under Section 9 of the Act is not at all sufficient to prove that valid notices had been served, as contemplated by Sub-sections (2) and (3) of Section 9- In spite of the fact that in the references it was mentioned that general and special notices had been served, in many cases it was specifically denied that any notice under Section 9 had been given. For instance, in First Appeal No. 373 of 1956, the reference by the Collector specifically mentioned that general and special notices under Section 9 had been served, The relevant application under Section 18 of the Act states, in the very first paragraph, that no notice under Section 9(1) of the Act was served on the party concerned, and the notice, if any, was

fraudulently suppressed and effected 'Bala Bala'. The evidence adduced in this case on behalf of the appellant is not sufficient to controvert this statement. The only oral evidence adduced on behalf of the appellant regarding the service of notice required under the Act, has been given by O. P. W. 1, the Land Acquisition officer; but all that he has stated is to the effect that all the required notices under the Act were served by his predecessor-in-office in February, 1952, When cross-examined, he stated that he himself had issued fresh notice for hearing the claim petitions by fixing dates and he had sent notices by post to those who had not appeared on the dates of hearing. He has stated further thus :

"It is not a fact that no individual notices were issued. This can be proved from the order sheet, noting in the petition, some service returns and also from the facts that lawyers and parties appeared before me several months. The service returns can be filed".

The connected papers, including the ordersheets of the Collector should have been produced to show that the requirements of Section 9 were strictly complied with. The oral evidence given by O. P. W. 1 is quite insufficient to prove that notices required under Section 9 were validly effected and that in spite of such notices, no claim had been made by the parties concerned, as contemplated by Section 9. For these reasons, the arguments advanced by the learned standing counsel, based on Section 25 of the Act cannot be upheld. In one or two of these appeals, it will appear further, that the contentions are invalid, even on facts. I will now deal with these particular appeals individually.

First Appeal No. 289 of 1956.

20. No doubt the reference by the Collector shows that claims in writing had not been filed by the persons concerned, and that notices under Section g had been served, but the evidence on record, is insufficient to hold that, the persons concerned, had not made any claim to compensation as required by Sub-sections (2) and (3) of Section g. The mere fact that they may not have made any statement in writing is not sufficient to uphold the contention of the learned standing counsel based on Section 25 of the Act. There is no evidence to show that the respondents had not made any oral claim before the Collector and the evidence is insufficient to prove that valid notices had been served upon them under Section 9 of the Act, This appeal must, therefore, fail.

First Appeal No. 290 of 1956.

21. The facts of this case are similar in nature to those of First Appeal No. 289 of 1956. The evidence is totally insufficient to prove that valid notices had been served under Section 9 and that thereafter the respondent had not made any claim to compensation, within the meaning of Section 25 of the Act. This appeal must also fail.

First Appeal No. 312 of 1956.

22. This appeal is of a similar nature in this case also, it has not been established beyond doubt that valid notices under Section 9 had been served and the respondent had not made any claim within the meaning of Section 25 of the Act. This appeal must also fail.

First Appeal No. 334 of 1956.

23. This case stands in no better position. In, the application filed under Section 18 of the Article it had been mentioned that no notice under Section 9(1) had been served upon the petitioner. It-is clear from the materials on record that the appellant has failed to prove service of valid notice under Section 9 of the Act and the fact that the respondent had not made any claim within the meaning of Section 25 of the Act. This appeal must fail.

First Appeal No. 350 of 1956.

24. In this case also, materials are insufficient to prove that valid notices under Section 9 had been served and the respondents had not made any claim within the meaning of Section 25 of the Act. This appeal must also fail.

First Appeal No. 335 of 1956.

25. In this case also, materials are insufficient to hold valid ser

First Appeal No. 364 of 1936.

26. The application under Section 18 of the Act in this case mentions receipt of notices under Section 12(2) of the Act and states that no opportunity had been given to hear the objections of the respondents, and, therefore the award was one-sided and arbitrary. This clearly shows that valid notices under Section 9 had not been served on the respondents. This appeal must, therefore, fail.

First Appeal No. 367 of 1956.

27. In the application under Section 18 of the Act in this case it was mentioned that in spite of the protest made by the respondent, the said lands had been acquired. It may very well be that the respondent had appeared before the Collector, although he had not filed any statement of claim In writing. Moreover, like other cases, the evidence is insufficient to hold that valid notices unuer Section 9 had been served, if it be held that the respondent has not been able to prove that he had made any claim before the Collector before the award. This appeal must also fail.

First Appeal No. 370 of 1956.

28. In the application under Section 18 of the Act, in this case, it was mentioned that
earlier. In view of this assertion, it should have
been proved conclusively that notices under Section 9 had been served on the responde
appeal. That not having been done, this appeal must also fail.

First Appeal No. 373 of 1956.

29. In the application under Section 18 of the Act, in this case, it was specifically me

First Appeal No. 384 of 1956.

30. In this case the evidence is insufficient to hold that valid notices had been served

First Appeal No. 385 of 1956.

31. In the application under Section 18 of the Act in this case, it was stated that the

mandatory provision of law. In the teeth- of this assertion, it has not been proved beyo
peal must, therefore, fail.

First Appeal No. 403 of 1956.

32. In this case also, materials are not sufficient to show that valid notices had been

First Appeal No. 414 of 1956.

33. This is a curious case indeed. The reference made by the Collector in this case left' the schedule of particulars required under Section 19(2) of the Act blank. No dates have been mentioned about the services of general and special notices under Section 9. In spite of this lacuna, it appears that an argument had been advanced before the learned Additional District Judge that this case was hit by the provisions of Section 25 of the Act. Sufficient materials were, however, not brought on the record to prove that valid notices under Section 9 had been served, although the brother of the applicant (A. W. 6) was cross-examined to some extent about the notice of acquisition. But, in my opinion, the answers elicited from A. W. 6 are not sufficient to prove valid service of notices under Section 9 on the real person concerned named Bijay Kumar Singh, the only respondent in this appeal. This appeal must also fail.

First Appeal No. 424 of 1956.

34. In this case it appears that the reference made by the Collector was not made carefully. In the schedule given pursuant to Section 19(2) of the Act there is no mention, either way, as to whether any statement of claim in writing had been made or not by the party concerned. Sufficient materials have not been brought on the record to prove that valid notices under Section 9 had been served.

This appeal also must fail.

35. In the result, the contentions raised by the learned standing Counsel in all these 83 appeals are rejected and the appeals dismissed. Parties should bear their own costs of the appeals.

36. In preparing the decree of First Appeal No. 395 of 1956, the office will have to make an amendment. In the memorandum of appeal filed in this Court the respondent has been described as Joge'sh Chandra Halder, son of late Sorashi Pode Banerjee. In the award prepared in the Court of the learned Additional District Judge also, the petitioner has been named as Jogesh Chandra Haldar. Sri N. N. Roy appearing for the respondent in this appeal has submitted that the name of the party concerned was ordered to be amended to Jogesh Chandra Banerjee by the learned Additional District Judge. The surname, therefore, must he taken to have been wrongly continued. In preparing the decree in this appeal (First Appeal No. 395 or 1956), the respondent will be described as Jogesh Chandra Banerjee.

S. P. Singh, J.

37. I agree.