# Kamala Kunwar Vs Lakshan Goala and Another

**Court:** Calcutta High Court

**Date of Decision:** March 10, 1965

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Section 9
Land Acquisition Act, 1894 â€" Section 12, 12(2), 31

**Citation:** AIR 1967 Cal 105 : (1967) 1 CALLT 335

**Hon'ble Judges:** P.B. Mukharji, J

**Bench:** Single Bench

**Advocate:** Bijan Bihari Das Gupta and Asoke Kumar Sen Gupta, for the Appellant; Abinas Chandra Ghose, for the Respondent

**Final Decision:** Dismissed

## Judgement

@JUDGMENTTAG-ORDER

P.B. Mukharji, J.
This application u/s 115 of the CPC raises an important question about the jurisdiction of the Civil Court in matters

which have already been the subject of an award under the Land Acquisition Act.

2. The petitioner is a defendant in a civil suit instituted by the opposite parties Nos. 1 and 2 as plaintiffs being Title Suit No. 699 of 1959. In that

suit the plaintiffs pray for a declaration of their title to the amount of compensation awarded in favour of the petitioner defendant by the Land

Acquisition Collector and for an injunction restraining the petitioner from withdrawing the said amount from the Court of the Special Land

Acquisition Judge of 24 Parganas. Analysing the plaint it appears that the whole of the plaintiffs'' allegation in that suit is that one of them did not

receive notice u/s 12(2) of the Land Acquisition Act, that the defendant obtained the award fraudulently behind their back, that the plaintiffs were

the owners in possession of the structures for the acquisition of which compensation was awarded, and that the plaintiffs and not the defendant

petitioner were entitled to the compensation. In that suit the defendants were petitioners and the Stat of West Bengal was a pro-forma defendant.

3. The petitioner in his written-statement in the suit denied the claim of the plaintiffs and denied further that the plaintiffs were the owners in

possession of the structures. The petitioner defendant also set out his title to those structures.

4. The learned trial Judge framed a preliminary issue on the point whether the Court had jurisdiction to try the suit and come to the conclusion that

the Court had such jurisdiction and answered the issue affirmatively. It is against this decision and order that the petitioners obtained this Rule.

5. Some more relevant facts require to be staled at this point before discussing the question of law. Certain lands in Tollygunge in the district of 24

Parganas together with structures thereon were acquired under the pro visions of the Land Acquisition Act for the purpose of widening and

extending Chingri Ghata Road, Beliaghata, by the Corporation of Calcutta, Proceedings were started, L. A. D.22/ 57-58 after the service of

notice upon the opposite parties with respect of the land and further proceedings in a similar case was registered in respect of the structures, being

L. A. Case No D22B/57-58 after service of notice u/s 12(2) of the Act upon one of the plaintiffs being opposite party No. 1 Incidentally, it may

be said that the two plaintiffs are brothers On objection before the Land Acquisition Collector. 24 Parganas, by the defendant petitioner and the

opposite parties, two cases were started, one L. A. Case No 3 of 1969 and L A Case No. 19 of 1959, before the Special Land Acquisition

Judge of 24 Parganas, as a result of the reference made by the Collector u/s 18 of the Land Acquisition Act Land Acquisition Case No. 3 of 1959

relates to apportionment of compensation for both the land and structures thereon acquired by the Collector. The Collector made an award

granting compensation in respect of some of these structures in favour of the two plaintiffs and also made an award in favour of the petitioner

defendant in respect of the remaining portion of the structures. Another land acquisition case being No. 20 of 1959 was started before the Special

Land Acquisition Judge on reference by the Collector at the instance of the plaintiff opposite parties objecting to the amount awarded and praying

for enhancement of valuation.

6. In other words, case No. 3 is a reference in respect of the land, case No. 19 is the Collector''s reference at the plaintiff''s instance u/s 18 of the

Land Acquisition Act in respect of compensation for structures and case No. 20 was the Collector''s reference at the instance of the defendant u/s

18 of the Land Acquisition Act in respect of compensation It was in this case No. 20 that the plaintiffs tried to intervene before the Land

Acquisition Judge unsuccessfully and failed whereupon they filed the present suit.

7. Mr. Das Gupta appearing for the petitioner defendant in this case submits that this suit is misconceived and that the Court has no jurisdiction to

try such a suit because the Land Acquisition Act provides a special remedy and a special procedure. He has relied on the Privy Council decision in

Rajah Nilmoni Singh v. Ram Bundhoo Roy 8 Ind App 90 which lays down that this Act for the settling of compensation for land taken for public

purposes made provisions which were intended to be final and where its amount and distribution had been settled by a competent Court, that

decision not having been appealed against, the settlement was final and could not be questioned in a suit brought by a person whose claim was so

adjudicated upon. Delivering the advice of the Privy Counsel Sir Robert P Collier at pages 92 and 93 of the report observed as follows :

Their Lordships are of opinion that the Courts in India, who both concur on this point, have rightly held that this proviso applies only to persons

whose rights have not been adjudicated upon in pursuance of Sections 38 and 39, and that it has not the effect, which it would certainly not he

reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act, to have that claim

reopened and again heard in another suit Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended

to be final: and that the amount and the distribution of the compensation having been settled in this case by a competent Court, and the decision not

having been appealed against, the settlement is final, and the present suit cannot be maintained.

8. These observations are also material on the point to answer the arguments made by Mr. Ghose on behalf of the respondents plaintiffs that such a

suit is permitted by reason of the third proviso in the present Section 31(2) of the Land Acquisition Act saying:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation

awarded under this Act, to pay the same to the person lawfully entitled thereto.

9. The Privy Council makes it clear that the expression ""the person lawfully entitled therein"" in the above proviso cannot include the person whose

rights have already been adjudicated in accordance with the Land Acquisition Act and the procedure laid down thereunder.

10. Mr. Ghose for the opposite parties also contends that because there was no notice u/s 12(2) of the Land Acquisition Act in this case on one of

his clients, namely, on one of the plaintiffs, the award was bad, ultra vires and without jurisdiction. In saying that be was uttering the words of the

pleading in the plaint. Curiously enough, in the plaint itself the award was not challenged on either area or measurement or quantum of

compensation given The plaintiffs opposite parties are prepared to accept the valuation and the quantum staled in the Award and that their claim in

the plaint is for a declaration of their right to that money as being lawfully entitled to the same within the meaning of the proviso to Section 31 of the

Land Acquisition Act quoted above Following the observations of the Privy Council that argument is not apparently open to the plaintiffs in this

case for the simple reason that they were parties to those land acquisition proceedings and they could have followed the procedure laid down in

the Land Acquisition Act.

11. It is admitted on the facts that the notice u/s 9 of the Land Acquisition Act was duly received by both the plaintiffs in this case. Now land u/s

3(a) of the Land Acquisition Act includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached

to the earth. Therefore, structures also come within the definition of land under that Act. If notice u/s 9 of the Act is once admitted it is difficult to

see the point of Mr Ghose for the plaintiffs.

12. A Division Bench of this Court, Woodroffe and Walmsley, JJ., in R. C. Sen v. Trustees for the Improvement of Calcutta ILR Cal 892 AIR

1921 Cal 3401 took the view that where there was one holding there could not be piecemeal acquisition, as the Land Acquisition Act referred

only to one notice one proceeding, and one award to be given, taken, and made regarding one holding and one ownership Woodroffe. J. in his

judgment in that case ILR Cal 900: AIR 341 makes the point clear in dealing with, this point as follows:

We must distinguish between two cases of what has been called piecemeal acquisition. A declaration may be issued for a quantity of land

consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land

covered by a single declaration.

There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, a different matter where (as here) there is

one holding. In such a case it does not seem reasonable to hold that there can be a piecemeal acquisition.

13. In another Division Bench decision of this Court, Corporation of Calcutta v. Omeda Khatun Bewa, reported in AIR 1950 Cal 122

Chakravartti, C. J. observed as follows at page 131 :

There may be, and indeed have to be, separate award cases and separate enquiries with regard to claims concerning different parcels of land

belonging to different owners, where the land covered by declaration comprises such parcels. Such separate enquiries may also be needed in

respect of separate holdings owned by the same person.

But such separate cases arc all parts of one acquisition proceeding, stemming out therefrom after the stage of Section 9 of the Act, carried on

simultaneously as far as possible and covering between themselves the entirely of the land when they terminate in awards.

The plurality of awards made in such circumstances, which is coupled with simultaneity can furnish no argument in favour of separate acquisition

proceedings, each relating to a portion of the land, initialed at successive points of lime and producing a succession of awards.

14. Mr. Das Gupta has also relied on behalf of the petitioner on the Division Bench decision in Saibesh Chandra Sarkar v Bijoy Chand 26 CWN

506: (AIR 1922 Cal 4) for the proposition that under the third proviso Lo Section 31(2) of the Land Acquisition Act a person who was a party to

the apportionment proceeding could not reopen the question by a regular suit and that proviso must be given a limited application. It must,

however, be observed that in that case it was said that the proviso applied to cases where the person was under a disability or was not served with

notice of the proceedings before the Collector. This notice of the proceedings mentioned there obviously was a notice u/s 9 of the Land

Acquisition Act and not u/s 12(2) of the Act.

15. I must repeal that the facts in this case are quite clear Notice is admitted in the case of land by both the plaintiffs in this case. Notice u/s 12(2)

is also admitted by one of the brother plaintiffs What is denied is that one of the co-plaintiff brothers did not receive notice u/s 12(2) of the Act.

16. Now absence of notice u/s 12(2) of the Act does not in my view vitiate the award. Notice u/s 12(2) unlike a notice u/s 9 of the Land

Acquisition Act is not a notice intended to Invite objections to an act which has not been done and completed yet. A notice u/s 12(2) is only a

notice ex post facto and a notice of a fait accompli, namely it is a notice of an award already made. Section 12(2) of the Land Acquisition Act

provides:

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.

17. The whole object of this notice is to inform such interested persons who were not present personally or by representatives when the award

was made. It is only an informative notice. The purpose of such information is to enable such persons to call for reference u/s 18 of the Land

Acquisition Act within the time allowed by the proviso to Section 18(2). It is not a kind of notice which goes to the root of the matter in the sense

that failure to give notice that an award has already been made will vitiate the award itself.

18. Besides, there are other difficulties on the way of the plaintiffs opposite parties. On the authorities discussed above the land acquisition

proceeding is really one in character The main notice u/s 9 of the Act is admittedly received by the plaintiffs in this case. What is worse, it does not

appear on the facts that the plaintiffs in this case have established the statutory qualification to receive a notice u/s 12(2) of the Act proving that

they were not present either personally or by representatives when the award was made. Unless that condition is satisfied, they cannot claim a

notice at all u/s 12(2) of the Act. On the contrary their presence either by themselves or by their representatives is proved by the fact that the

plaintiffs themselves called and obtained a reference u/s 18 of the Land Acquisition Act in the case being case No. 19 objecting to the amount of

compensation in respect of structures awarded to them. Now this is the same award. They were calling for a reference to enhance compensation

awarded to them in respect of certain structures and omitted Lo call for a reference under the same award giving compensation for certain other

structures to the petitioner defendant Items of properly or structures in this case are different, but it is the one and the same award allotting,

apportioning and giving different compensations to different people for different items of structures. It is, therefore, not open to the plaintiffs legally

and factually to assert that one of the plaintiffs did not receive a notice of the award u/s 12(2) of the Act or that he was even entitled to such a

notice in the facts of this case.

19. In fact the plaintiffs themselves wanted to intervene in case No. 20 which was a reference u/s 18 at the defendant petitioner"s instance

objecting to the amount of compensation in respect of structures.

20. On these facts it was clearly the plaintiffs" duty, in the first place, to call for a reference u/s 18 of the Land Acquisition Act; in the second place,

they could have even called for a reference u/s 30 of the Land Acquisition Act which expressly provides for the ease when the amount of

compensation has been settled u/s 11 of the Act and a dispute arises as to the apportionment of the same or any part thereof or as to the persons

to whom the same or any part thereof, is payable. The plaintiffs never raised that dispute and never called for such a reference- They could have

done so because they knew that an award had been made and that they themselves had called for a reference in respect of the compensation

awarded to them under the very same award in respect of certain other structures. The plaintiffs" unsuccessful attempt to intervene in the defendant

petitioner"s case No. 20, a reference mode at the instance of the defendant petitioner, goes very much against the plaintiffs" objection now. That

intervention was, according to the Judge, immediately after the 31st August 1959. But the point remains that even thereafter, namely, after the

plaintiffs" attempt to intervene had failed in the defendant"s reference in case No. 20 the plaintiffs did not even take steps u/s 31(2) of the Act to

raise any dispute about the title of the defendant to receive compensation money.

21. At least at three crucial stages, therefore, first, at the stage of Section 18, next, at the stage of Section 30 and third, at the stage of Section

31(2), the plaintiffs allowed the remedies under the special Act to go by default It must be noted here that payment of this compensation to the

defendant petitioner was made on the 6th January 1960. The result is that some of the prayers even in the plaint are out of date and had become

irrelevant.

22. Mr. Ghose for the plaintiffs opposite parties has made a submission before me that a remedy under the Special Act was not open to him

because of the alleged absence of notice u/s 12(2) of the Act and he wanted to come within the ambit of the decision of a Division Bench of this

Court in Birendra Nath Banerjee and Others Vs. Mritunjoy Roy and Others, . Before coming to that decision Mr. Ghose"s attempt to come within

that principle cannot succeed on the facts of this case. His basic assumption that he had no notice of the award at all cannot be accepted on the

grounds I have already discussed and mentioned. He himself disputed the award in his own case No. 19 in respect of compensation given to the

plaintiffs for certain structures. What that Division Bench in Birendra Nath Banerjee and Others Vs. Mritunjoy Roy and Others, decided was that

the liability to resort to the special jurisdiction arises when a person is alerted by the special notices provided for in the Act, namely, notices under

Sections 9 and 12(2) of the Act and thereafter, it becomes the duty of such a person to pursue the proceeding and to take steps, in time, as

provided in that Act. Therefore, that Division Bench decision observed that those persons, on whom notices neither u/s 9 nor u/s 12(2) of the Act

were served, were entitled to maintain a suit of the description as in the case before the learned Judges. According to Mr. Ghose"s clients the

plaintiffs, the date of their alleged knowledge of the award was on the 31st August 1969 which was beyond the time mentioned in Section 18(2),

provisos (a) and (b), namely, six weeks from the receipt of the notice u/s 12(2) or six months from the date of the Collector"s award whichever

period expired first. Therefore, Mr. Ghose pleaded that he had no other option but to approach the Civil Court for determination, I have said

already that on the facts he is not justified in making this argument at all. Hut even assuming that he could, he is faced today by the two decisions of

the Supreme Court, namely (1) Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , and (2) State of Punjab

Vs. Mst. Qaisar Jehan Begum and Another, . At page 1606 of the last Supreme Court decision mentioned above the learned Judge observed as

follows:

As to the second part of Clause (b) of the proviso, the true scope and effect thereof was considered by this Court in Harish Chandra''s case. It

was there observed that a literal and mechanical construction of the words ""six months from the date of the Collector''s award"" occurring in the

second part of Clause (b) of the proviso would not be appropriate and ""the knowledge of the party affected by the award, either actual or

constructive, being an essential requirement of fair play and natural justice, the expression used in the proviso must mean the date when the award

is either communicated to the party or is known by him either actually or constructively. Admittedly the award was never communicated to the

respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively? .....

Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.

23. On that interpretation the plaintiffs opposite parties in this case could have called for a reference u/s 18 of the Land Acquisition Act even after

31st August 1959, a date when the plaintiffs said that they came to know of this award, a version of the plaintiffs which I do not accept on the facts

of this case.

24. I shall make a brief reference here to the Privy Council decision in T. B. Ramachandra Rao v. A. N. S. Ramachandra Rao 49 Ind App 129:

(AIR 1922 PC 80). It is laid down in that case that where under the Land Acquisition Act. Section 31(2), a dispute as to the title to receive the

compensation has been referred to the Court, a decree thereon not appealed from renders the question of title, res judicata in a suit between the

parties to the dispute or those claiming under them, whether or not the decree is to be regarded as one ""in a former suit within the meaning of

Section 11 of the Civil Procedure Code. At pages 137 to 138 of the report find App): (at pp. 83-84 of AIR) Lord Buckmaster discussed the

scheme of the Land Acquisition Act and observed :

There has in the present case been a clear decision upon the very point now in dispute which cannot he reopened. The High Court appeal only to

have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for, as pointed out

in Badar Bee v. Habib Merican Noordin 1909 AC 615 it is not competent for the Court, in the case of the same question arising between the

same parties, to review a previous decision no longer open to appeal, given by another Court having jurisdiction to try the Second case. If the

decision was wrong, it ought to have been appealed from in due time. Nor in such circumstances, can the interested parties be heard to say that the

value of the subject matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal

from it, if such a plea were admissible, there would be no finality in litigation. The importance of a judicial decision is not to be measured by the

pecuniary value of the particular items in dispute.

25. I am not unaware of the amendments to the Land Acquisition Act after the two decisions of the Privy Council in 8 Ind App 90 and in 49 Ind

App 129: (AIR 1922 PC 80) but then it is not necessary to discuss their effect on those decisions for the purposes of the particular point for

determination in this application before me. In conclusion, I must say that the trial Court made a mistake in finding in this case that no notice was

served u/s 9 of the Land Acquisition Act, and confused this with notice u/s 12(2) of the Act. It is the admitted case of the plaintiffs in their plaint

that notice u/s 9 of the Act was duly received by them.

26. For these reasons I set aside the order of the Trial Court. I hold that the Civil Court has no jurisdiction to try the suit on the facts of this case as

stated above and in the view of the law that I have taken. I, therefore, make the Rule absolute. It must follow that the suit is dismissed on the

preliminary point of jurisdiction.

27. There will be no order as to costs.