

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC NO.1606 of 2013**

Rajesh Kesharwani, son of Shyamlal Kesharwani, aged about 40 years,
R/o. Surajpur, P.S. and Tahsil Surajpur, Revenue District Surajpur, Civil
District Surguja (CG)

----Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Raipur (CG)
2. Collector, Surajpur, District Surajpur (CG)
3. Land Acquisition Officer-cum-Sub Divisional Officer, Surajpur, District Surajpur (CG)

---- Respondents

 For Petitioner : Ms Hamida Siddiqui, Advocate
 For Respondents : Mr.Anand Dadariya, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****19/07/2018**

1. Learned counsel for the petitioner would submit that no notice under Section 9 of the Land Acquisition Act, 1894 (hereinafter called as 'the Act of 1894') was served to the petitioner, therefore, he could not have filed claim for determination of compensation as per market value.
2. Learned Deputy Government Advocate for the respondents/State would submit that remedy of the petitioner is to approach before the Collector for reference under Section 30 of the Act of 1894.
3. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

4. The Supreme Court in the matter of **May George v. Special Tahsildar and others**¹ while dealing with non-service of notice under Section 9 of the Act of 1894 held as under:-

“26. The instant case is required to be examined in the light of the aforesaid settled legal provision. In fact, failure of issuance of notice under section 9(3) would not adversely affect the subsequent proceedings including the Award and title of the government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under section 30 of the Act.

28. In fact, the land vest in the State free from all encumbrances when possession is taken under section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings. In spite of the fact that Section 9 Notice had not been served upon the person-interested, he could still claim the compensation and ask for making the reference under section 18 of the Act. There is nothing in the Act to show that non-compliance thereof will be fatal or visit any penalty.

29. The view taken by us hereinabove stands fortified by large number of judgments of this Court wherein it has been held that if there is an irregularity in service of notice under sections 9 and 10, it could be a curable irregularity and on account thereof, Award under Section 11 would not become invalid (see : State of Tamil Nadu Vs. Mahalakshmi Ammal & Ors.² and Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal and Ors.³)”

5. In view of the legal position, remedy of the petitioner is to make the application for reference to the Collector under Section 30 of the Act of 1894.
6. Accordingly, the writ petition is disposed of with reserving the aforesaid liberty in favour of the petitioner to make an application for reference before the Collector under Section 30 of the Act of 1894, if he so desired. The said authority would take notice of the

¹ (2010) 13 SCC 98

² (1996) 7 SCC 269

³ (1997) 4 SCC 199

fact that writ petition remained pending from 17.10.2013 till this date. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-