IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 15TH MARCH 2006 / 24TH PHALGUNA, 1927

WP(C).No. 1379 of 2006(L)

PETITIONER:

HARIKUMAR K.C.,
S/O.CHANDRASEKHARAN NAIR,
KOODATHINAL VEEDU, KOLANI P.O.,
THODUPUZHA VILLAGE, IDUKKII DISTRICT,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
CHANDRASEKHARAN NAIR.

BY ADV. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI

RESPONDENTS:

THE SPECIAL TAHSILDAR (L.A), AND LAND
ACQUISITION OFFICER, OFFICE OF THE LANE
ACQUISITION SPECIAL TAHSILDAR, THODUPUZHA.

BY GOVT. PLEADER SRI.ALOYSIOUS THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/03/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

K.HEMA, J.

W.P.(C).NO.1379 OF 2006

Dated this the 15th day of March, 2006

JUDGMENT

The application filed by the petitioner under section 18 of the Land Acquisition Act ('the Act', for short) was rejected by the Land Acquisition Officer, as per Exhibit P6 order. The ground stated therein is that the application was filed after expiry of six weeks from the date of receipt of notice under Section 12(2) of the Act. Exhibit P6- order shows that the notice under Section 12(2) was received by the petitioner on 24.6.2005, but the application was filed only on 7.9.2005, after the period of six weeks prescribed under the Act.

3. The petitioner herein seeks to quash the said order since the order is illegal and is not consistent with the

provision contained in Section 18 of the Act. Learned counsel for the petitioner submitted that no notice was received by the petitioner under Section 12(2) of the Act as stated in Exhibit P6 and therefore, the rejection of the application on the ground stated in Exhibit P6 is illegal. Learned Government Pleader argued that notice is deemed to have been received by the petitioner, as per Section 45 of the Act, and the acknowledgment and the notice are available in the records.

4.The records show that a notice under Section 12(2) of the Act was sent to petitioner. On overleaf of the notice, there is an endorsement showing that the notice was received on behalf of petitioner by the father, on 24.6.2005. Therefore, it is submitted that the notice has to be deemed to have been served on the petitioner on 24.6.2005, and there was proper service of notice in accordance with Section 45 of the Act.

5. But, leaned counsel for the petitioner submitted

that even going by Section 45 of the Act it cannot be said that there is service of notice as contemplated under Section 45(3) of the Act. To appreciate the rival contentions a reading of Section 45 of the Act is necessary. Section 45 reads as follows:

> "Section 45. **Service of notices.-** (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by an order of the Collector or the Judge.
>
> (2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.
>
> (3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the

> office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:
>
> Provided that if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898), and service of it may be proved by the production of, the addressee's receipt."

6. From a reading of Section 45, it is clear that service of any notice under the Act can be made either by delivering or tendering a copy of the notice to the party. Whenever it may be practicable, service of notice shall be made on the person named in the notice. However, as per sub-clause (3) of Section 45 of the Act, when such person cannot be found, the service may be made by other mode stated in the said provision. The service may be made on any adult member of the family residing with the person

whose name is shown in the notice, when such person cannot be found.

7. The two conditions for effecting alternative method of service through an adult member are: (1) that such person named in the notice cannot be found; and (2) that the adult member of the family on whom service made is residing with such person. It is only when these two conditions are satisfied and when such person cannot be found, a service can be made on the adult member of the family, who is residing with him. This mode of service of notice is only an alternative mode of service of notice on the person named in the notice, if service of notice on such person is not practicable. Whenever it may be practicable, the service of notice “shall” be made on the person named in the notice.

8. In this case it is clear from the notice issued under Section 12(2) that notice was not served personally on the petitioner who is named in the notice. From the

overleaf of the notice, it is not clear whether it was practicable or not to serve the notice on the person named in the notice. It is also not seen therein that the petitioner could not be found for effecting service of notice. It is also not evident from the materials placed before the court that the father of the petitioner on whom notice was served was residing with the petitioner at the relevant time. The petitioner has pleaded in the petition that he was residing away from the family house and the address which is shown in the notice issued under Section 12(2) of the Act is the address of his family house where he was not residing, since he was working in Coimbatore at the relevant time.

9. Learned counsel for the petitioner also cited a decision reported in ***Srimathi Cheriathoppilakath Kunhibi v. The Land Acquisition Officer, Kozhikode*** (AIR 1962 Ker. 266) to canvass the position that service of notice under Section 12(2) of the Act on the father is not a

valid notice. The relevant portion from the said decision can be extracted as hereunder:

> "Service of notice under S.12(2) of the Land Acquisition Act, 1894, on the husband of the petitioner, when she is present, is not warranted by sub-section (3) of section 45 of that Act, unless it is found that it was not practicable to serve the notice on the petitioner. The husband of the petitioner cannot be deemed to be an agent of the petitioner and hence the provision that notice to the agent under the definition in the Transfer of Property Act must be deemed to be notice to the principal, has nothing to do when the question for decision involved the manner or the legality of the service of notice, either under the Land Acquisition Act or under the Civil Procedure Code. Under the provisions of the latter, the husband cannot be deemed to be a recognised agent within the meaning of Order III, R.2, nor can he be regarded as an agent appointed to accept service of notice under Order III, R.6, sub-rule (1), because such appointment has to be made by an instrument in writing signed by the principal as provided by sub-rule (2) of the above rule. The service of notice under section 12(2) on the husband of the petitioner,

> when she is present cannot, therefore, be considered to be valid."

10. Any way, the burden to establish service of notice on the petitioner under Section 12(2) of the Act is on the respondent. If there is no personal service on the petitioner, the burden is heavier on the respondent to establish that the conditions stated in Section 45 are satisfied to effect service on adult member of the family. But the conditions are not satisfied in this case and hence it cannot be said that there was service of notice on the petitioner under Section 12(2) of the Act. The rejection of the application on the ground that notice under Section 12(2) of the Act notice was received by the petitioner is factually incorrect. The notice cannot be even deemed to be served on the petitioner as required under Section 45 of the Act. Therefore, Exhibit P6 order cannot be sustained.

11. As per the application, the petitioner has received

award on 7.8.2005 and the application was filed on 7.9.2005, which is within two weeks. The respondent has no case that the application is time barred, with reference to the date of receipt of award or notice of the award by the petitioner. Therefore, the application ought not have been rejected, on the ground that it is time barred. The petition is to be entertained and disposed of in accordance with law.

12. The order under challenge is set aside and the matter is remanded to the respondent for fresh consideration and disposal in accordance with law.

The Writ Petition is allowed.

K.HEMA, JUDGE

vgs.