

(2015) 07 KL CK 0124

In the High Court Of Kerala

Case No : I.A. No. 10360 of 2015 and W.P. (C) No. 10125 of 2008

Sali Mohan

APPELLANT

Vs

Kolazhi Grama Panchayath, Thrissur and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 228
Evidence Act, 1872 — Section 114, 16
General Clauses Act, 1897 — Section 26, 27

Citation : (2015) 4 KHC 261 : (2015) 3 KLT 799

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : G. Sreekumar, for the Appellant; Shoby K. Francis, Advocate and Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil K. Narendran, J—This is an application filed by the petitioner seeking an order to correct the address of the 2nd respondent shown in the cause title of the Writ Petition. The Writ Petition was filed on 25/03/2008 seeking an order to quash Ext. P7 proceedings of the 1st respondent Grama Panchayat by which the petitioner was directed to stop certain constructions carried out by her. In the cause title of the Writ Petition, the address of the 2nd respondent is shown as follows:

"Sukumaran, S/o. Ayathuparambil Sankaran, Poomkunnam Village, Thrissur."

2. The notice issued to the 2nd respondent returned with an endorsement "insufficient address", Though notice was again issued to the 2nd respondent with hearing date 16/11/2009, it again returned with an endorsement "insufficient address". When no steps were taken to cure the defects, the Writ Petition was listed before the Registrar (Judicial) on 18/03/2011 and the petitioner was granted two weeks time to take fresh steps to issue notice to the 2nd respondent in his correct address. But the petitioner neither furnished the

correct address nor paid process for issuing fresh notice to the 2nd respondent. Thereafter, the Writ Petition was listed before the Bench on 10/07/2015 in the "defect list".

3. By order dated 10/07/2015, the petitioner was directed to take fresh steps to issue urgent notice by speed post to the 2nd respondent in his correct address, within one week and the Registry was directed to list the matter on 17/07/2015, if no steps are taken. Since no steps were taken, the Writ Petition was again listed before the Bench on 17/07/2015 and as requested by the learned counsel for the petitioner, the case was adjourned to 20/07/2015. On that day, the present interlocutory application was filed seeking an order to correct the cause title of the Writ Petition incorporating the correct address of the 2nd respondent. In the said interlocutory application, the correct address of the 2nd respondent is shown as follows;

"Sukumaran A.S., BSNLDGM, 10 A, Harisree Nagar, Kovilakom Road, Thrissur."

4. I heard arguments of the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent Grama Panchayat and also the learned Government Pleader appearing for respondents 3 to 5.

5. The fact that, the Writ Petition was filed in the year 2008 with an insufficient or rather incorrect address of the 2nd respondent in the cause title is not in dispute. The address shown in the case title does not even contain the house name or house number or even the locality in which the 2nd respondent resides. Instead, it only shows that the 2nd respondent is a resident of Poomkunnam Village in Thrissur District. The only reason stated in the affidavit accompanying this interlocutory application is that, at the time of filing of the Writ Petition the correct address of the 2nd respondent was not known to the petitioner and that she came to know about it only subsequently.

6. Rule 145 of the Rules of the High Court of Kerala, 1971 deals with form and presentation of an application under Article 226 or under Article 227 or under Article 228 of the Constitution of India and Rule 146 deals with contents of the application. As per Rule 146, every application shall set out the provision of law under which it is made, name and description of the petitioner and the respondent, a clear and concise statement of facts, the grounds on which the relief is sought and shall be signed by the petitioner and by his advocate, if he has appointed one, as in Form No. 10. As per Rule 148, all persons directly affected shall be made parties to the petition. Where such persons are numerous, with the permission of the Court on application made for the purpose, one or more of them may be impleaded on behalf of or for the benefit of all persons so affected; but notice of the Writ Petition shall, on admission, be given to all such persons either by personal service or by public advertisement as the Court in each case may direct.

7. The first proviso to Rule 148 provides that, in cases where the State Government is a party, the Secretary to Government Department concerned shall

be arrayed as party representing the Government. The second proviso to Rule 148 provides further that, if the subject-matter of the petition relates to two or more Government Departments or if the petition is of such a nature, the disposal of which warrants information from two or more Government Departments, the Chief Secretary to Government and the Secretaries to those Government Departments shall be made as party representing the Government. Further, going by Form No. 10, the cause title of the Writ Petition should contain the description and also the address of the parties, intended for service of notice on them.

8. Chapter IV of the Rules of the High Court of Kerala deals with service of notices. As per sub-rule (1) of Rule 51, unless otherwise ordered, every notice shall be sent, in the first instance, to the address of the respondent given in the memorandum of appeal or petition, as the case may be, by means of registered post, acknowledgment, prepaid. An acknowledgment purporting to be signed by the respondent shall be deemed to be sufficient proof of service of such notice. As per sub-rule (2) of Rule 51, where the postal article containing the notice is received back by the Court with an endorsement purported to have been made by a postal employee to the effect that the respondent or his agent had refused to take the delivery of postal article containing the notice when tendered to him, the Court shall declare that the notice had been duly served on the respondent. Going by the proviso to sub-rule (2) of Rule 51, where the notice was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in sub-rule (2) shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid or for any other reason, has not been received by the Court within thirty days from the date of issue of the notice.

9. Section 27 of the General Clauses Act, 1897 gives raise to a presumption as to service of any document by post. As per Section 27, where any Central Act or Regulation made after the commencement of the General Clauses Act authorises or requires any document to be served by post whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

10. Similarly, going by Section 26 of the Interpretation and General Clauses Act, 1925, where any Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post or an a/c, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the

letter would be delivered in the ordinary course of post or anchal.

11. A reading of Section 27 of the Central Act and Section 26 of the State Act originally enacted by the State Legislature of Travancore-Cochin, make it explicitly clear that, the said provisions do not lay down an inflexible or conclusive presumption as to service of notice by registered post. It only states that, a presumption as to service of document by post can be drawn if the circumstances enumerated in Section 27 of the Central Act or Section 26 of the State Act are present, unless the contrary is proved.

12. As per Section 16 of the Evidence Act, 1872 when there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact. Illustration (a) of Section 16 provides that, if the question is, whether a particular letter was despatched, the fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant. Similarly, Illustration (b) of Section 16 provides that, if the question is, whether a particular letter reached A, the fact that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

13. As per Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Going by Illustration (e) of Section 114, the Court may presume that judicial and official acts have been regularly performed. Similarly, going by Illustration (f) of Section 114, the Court may presume that the common course of business has been followed in particular cases. But, the Court is not expected to draw the presumption mentioned in Illustration (e) or (f) as a matter of course, which is made clear by the Legislature itself in the rider attached to Illustrations (e) and (f), which reads thus;

"But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:--

xxxx xxxx xxxx

as to illustration (e)-a judicial act, the regularity of which is in question, was performed under exceptional circumstances:

as to illustration (f)-the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:"

The adversative conjunction "but" makes it explicitly clear that, the rider is set in contrast or as an exception to what is mentioned in Illustrations (e) and (f) of Section 114 of the Evidence Act. The counter illustrations (e) and (f) indicate the

cases in which the Court would not draw the presumption mentioned in Illustration (e) or (f), namely, a judicial act, the regularity of which is in question, was performed under exceptional circumstances; or when the question is whether a letter was received, which is shown to have been posted, but the usual course of the post was interrupted by disturbances.

14. The Privy Council in *Harihar Banerjee v. Ramshashi Roy* AIR 1918 PC 102 has held that, there can be a presumption of receipt of a letter sent under postal certificate in view of the provisions of Section 114, Illustration (f) of the Indian Evidence Act, 1872. The Apex Court in *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, AIR 1981 SC 1191 : (1983) 53 CompCas 312 : (1981) 1 SCALE 843 : (1981) 3 SCC 317 : (1981) SCC(Cri) 720 : (1981) 3 SCR 647 : (1981) 13 UJ 487 has held that, neither Section 16 nor Section 114 of the Evidence Act compel the Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the Court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. In the said judgment, the Apex Court has also taken judicial notice of the fact that, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured.

15. In *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, AIR 1989 SC 1433 : (1989) 59 FLR 474 : (1989) 3 JT 20 : (1989) 2 LLJ 470 : (1989) 1 SCALE 907 : (1989) 1 SCALE 1483 : (1989) 2 SCC 602 : (1989) 2 SCR 357 : (1989) 3 SLJ 68 : (1989) 2 UJ 222 , the Apex Court, in the context of drawing presumption of service of letter under Section 27 of the General Clauses Act, 1897 has held that, there is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party challenging the factum of service.

16. Later, in *C.C. Alavi Haji Vs. Palapetty Muhammed and Another*, (2007) 2 BC 533 : (2007) 137 CompCas 692 : (2007) CriLJ 3214 : (2007) 7 JT 498 : (2007) 147 PLR 813 : (2007) 7 SCALE 380 : (2007) 6 SCC 555 : (2007) 77 SCL 117 : (2007) 7 SCR 326 : (2007) 2 UJ 675 the Apex Court has reiterated that, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Still later, in *Subodh S. Salaskar Vs.*

Jayprakash M. Shah and Another, AIR 2008 SC 3086 : (2008) CLT 1135 : (2008) 145 CompCas 121 : (2008) 4 CompLJ 278 : (2008) CriLJ 3953 : (2008) 8 JT 637 : (2008) 11 SCALE 42 : (2008) 13 SCC 689 : (2009) AIRSCW 1148 : (2008) AIRSCW 5176 : (2008) 6 Supreme 182 the Apex Court has held that, in terms of the provisions of the General Clauses Act, a notice must be deemed to have been served in the ordinary course, subject to the fulfillment of the conditions laid down in Section 27. Presumption of service under the statute would arise not only when it is sent by registered post in terms of Section 27 of the General Clauses Act, but such a presumption may be raised also under Section 114 of the Evidence Act. The Apex Court has reiterated a similar view in Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, AIR 2010 SC 3817 : (2011) 1 CPJ 4 : (2010) 9 JT 17 : (2010) 9 SCC 157 : (2010) 10 SCR 134 : (2010) AIRSCW 6443 : (2010) 6 Supreme 714 and in Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra, (2011) CriLJ 705 : (2010) 12 JT 287 : (2011) 1 RCR(Criminal) 57 : (2010) 11 SCALE 696 : (2010) 13 SCC 657 : (2011) 2 SCC(Cri) 375 .

17. As I have already noticed, Section 27 of the General Clauses Act, 1897 as well as Section 26 of the Interpretation and General Clauses Act, 1125 do not lay down an inflexible or conclusive presumption as to service of notice by registered post. It only states that, a presumption as to service of document by post can be drawn if the circumstances enumerated in Section 27 of the Central Act or Section 26 of the State Act are present, unless the contrary is proved. One of the essential circumstances for drawing such a presumption as to service of document by post is that, the registered postal article should be "properly addressed". A postal article with incomplete or indefinite address, without specifying some definite place for delivery, such as a particular house or building, or a particular post box, or a particular number in a street, along with the name of the locality where the addressee resides or carries on business or employed, cannot be termed as one "properly addressed" in order to draw a presumption as to service of document by post, under Section 27 of the Central Act or Section 26 of the State Act, or under Section 16 or Section 114 of the Evidence Act.

18. Similarly, for drawing a presumption under the proviso to sub-rule (2) of Rule 51 of the Rules of the High Court of Kerala, that the notice had been duly served on the respondent, one of the essential circumstances is that the notice was "properly addressed". If the postal article containing the notice issued by this Court contain only an incomplete or indefinite address, without specifying some definite place for delivery, such as a particular house or building, or a particular post box, or a particular number in a street, along with the name of the locality where the respondent resides or carries on business or employed, it cannot be termed as a notice "properly addressed" to the respondent, in order to draw a presumption under the proviso to sub-rule (2) of Rule 151, that the notice had been duly served on such respondent.

19. As I have already noticed, Rule 146 of the Rules of the High Court of Kerala

provides that, an application under Article 226 or under Article 227 or under Article 228 of the Constitution of India shall be as in Form No. 10, as per which, the cause title of the Writ Petition should contain the description and also the address of the parties, intended for service of notice. Rule 148 mandates that, all persons directly affected shall be made parties to the Writ Petition, and that notice of the Writ Petition shall, on admission, be given to all such persons either by personal service or by public advertisement, as the Court in each case may direct. Going by sub-rule (1) of Rule 51, unless otherwise ordered, every notice shall be sent, in the first instance, to the address of the respondent given in the memorandum of appeal or petition, as the case may be, by means of registered post, acknowledgment, prepaid and that, an acknowledgment purporting to be signed by the respondent shall be deemed to be sufficient proof of service of such notice.

20. The provisions under the Indian Post Office Rules, 1933 and that under the Postal Manual mandate that no postal article shall be accepted for registration unless it bears the name and complete address of the sender as well as the addressee. When the address of the parties given in the memorandum of Writ Petition, Appeal, etc., are intended for sending notice or other communications by this Court, it is inevitable that, the memorandum of Writ Petition, Appeal, etc., filed before this Court should contain complete and definite address, specifying the definite place for delivery, such as a particular house or building, or a particular post box, or a particular number in a street, along with the name of the locality where the party resides or carries on business or employed.

21. It is pertinent to note that, this Court vide Notification No. A1-14065/2007 dated 09/10/2007 has instructed that, the actual postal address of the parties, with correct Pin Code, should be shown in all proceedings filed in this Court and that no proceedings shall be received without such actual postal address. The aforesaid notification was issued, when this Court noticed that, the address of the parties given in the memorandum of Writ Petition, Appeal, etc., are not the actual address, as a result of which, the notice and other articles sent by post in such address are returned by the Postal Department stating that "addressee not known".

22. In spite of the aforesaid notification dated 09/10/2007, the petitioner has filed this Writ Petition on 25/03/2008, with an incomplete address of the 2nd respondent, which does not contain even a definite place for delivery, such as a particular house or building, or a particular number in a street, along with the name of the locality where the 2nd respondent resides. Further, the correct address of the 2nd respondent furnished along with the present interlocutory application does not even contain the Pin Code.

23. Though the reasons stated in the affidavit accompanying this interlocutory application filed after a lapse of 7 years from the date of filing of this Writ Petition are not at all satisfactory, taking a lenient view, IA No. 10360 of 2015 is allowed on payment of a cost of Rs. 500/- to the Kerala State Legal Services

Authority, within a period of 2 weeks from the date of receipt of a copy of this order. The petitioner shall also file a memo before this Court, within the aforesaid period, providing the Pin Code of the locality in which the 2nd respondent resides. On the petitioner complying with the aforesaid conditions, the Registry shall carry out necessary correction in the cause title of the Writ Petition and permit him to take out urgent notice by speed post to the 2nd respondent, returnable within two weeks.

IA No. 10360 of 2015 is allowed as above.

Hand over.