

(1961) 09 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 1399 of 1960

Srimathi Cheriathoppilakath Kunhibi

APPELLANT

Vs

The Land Acquisition Officer, Kozhikode

RESPONDENT

Date of Decision : 19-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2, Order 3 Rule 6(1), Order 3 Rule 6(2)

Land Acquisition Act, 1894 — Section 12(2), 45(3)

Citation : AIR 1962 Ker 266

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer, for the Appellant; Government Pleader, for the Respondent

Judgement

S. Velu Pillai, J.—This is a petition for a writ of certiorari to quash. Ext. A, an order passed by the respondent, the Land Acquisition Officer, Kozhikode, by which he held, that the petition before him u/s 18 of the Land Acquisition Act, 1894, to make a reference, was barred by limitation, and for a writ of mandamus to compel him to make, such reference. In A. S. No. 836 of 1959, when this matter came up on a prior occasion before a Division Bench of this Court, the respondent was directed ""to decide afresh the request for a reference of the award to the Court, after giving the appellant (petitioner) a fair opportunity of showing that the notice was not served on her". It was common ground that if the service of notice u/s 12(2) was valid and true, then the petition for reference was out of time. It has now been found in Ext. A, that

"the notice was served on the senior adult male, member in the family and that too in the presence and at the request of the petitioner, who is a Ghosha lady".

Counsel for the petitioner attempted to canvass the correctness of this finding of fact on the ground that in the prior proceedings in this Court it had been stated in the counter-affidavit on behalf of the respondent, that the notice, had been

served on the petitioner personally, as distinguished, from service on the senior adult male member of the family, as now found, who is none other than the petitioner's husband. I do not think that in a proceeding under Article 226 the above, finding of fact can be interfered with on this ground.

2. But the question now arises whether such service is valid and legal. It may at once be stated that though the petitioner is referred to in the above finding as a Ghosha lady, the respondent has also found that notice was served. On the husband in the presence of the petitioner. This was the testimony of the process server; which the respondent has accepted for entering the above finding. The above reference to the petitioner as a Ghosha lady, does not import, that it was not practicable to serve the notice on the petitioner when she was herself present at the time of Service. In fact, the process server's evidence does not lead to any such inference. The respondent has summarised the evident in these terms :

""Peon P. Alikoya, who served the notice states that he delivered the copies of the 12 (2) notice intended to Smt. Kunhibi (petitioner) and Pathumabi (petitioner's sister) to M. V. Alikoya Haji (husband of the petitioner) in the presence of the two addressees at their house and obtained his signatures against both the names in Ext. E as requested and agreed to by them and as he was the senior adult male member in the family the two ladies being Ghoshas not accustomed to sign papers themselves."

Section 45 of the Land Acquisition Act contains the provisions for the service of notices under the Act. Section 45(1) provides that service of any notice shall be made by delivering or tendering a copy thereof signed. Sub-section (2) reads :

"Whenever it may be practicable, the service of the notice shall be made on the person therein named."

and Sub-section (3) provides that,

"When such person cannot be, found, this service may be made on any adult male member of his family residing with him"

The service of the notice on the husband, when the petitioner was present, was not warranted by Sub-section, (3) of Section 45. The respondent has not found in Ext. A that it was not practicable to serve the notice on the petitioner. The Government Pleader contended that the husband of the petitioner may be deemed to be an agent of the petitioner and that notice to the agent under the definition in the Transfer of Property Act must be deemed to be notice to the principal. That definition has nothing to do with 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 could not be deemed to be a recognised agent within the meaning of Order III, Rule 2, nor can he be regarded as an agent appointed to accept service of notice under Order III, Rule 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 u/s 12(2) cannot there-fore be considered to be valid.

3. As a result, Ext. A has to be quashed and mandamus has to issue to the respondent to make a reference u/s 18 of the Land Acquisition Act. This petition is ordered accordingly, but without costs.