

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 4940 of 2012 (N)

PETITIONERS:

PATTAMTHODI VASUDEVAN, AGED 55 YEARS,
SON OF RAMAN, PATTAMTHODI HOUSE,
ELAMKULAM KUNNAKKAVU.P.O., PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS:

1. THE SPECIAL TAHSILDAR(LA) ,
ALIGARH MUSLIM UNIVERSITY, MINI CIVIL STATION,
PERINTHALMANNA, MALAPPURAM DISTRICT-679 322.

2. THE DISTRICT COLLECTOR,
MALAPPURAM, CIVIL STATION, CIVIL STATION.P.O.,
MALAPPURAM DISTRICT-676 505.

3. THE DIRECTOR OF COLLEGIATE EDUCATION,
DEPARTMENT OF COLLEGIATE EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1-R3 BY GOVERNMENT PLEADER SRI.V.K. RAFAEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 09-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P. (C) NO.4940 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXTP1 - TRUE COPY OF THE AWARD NO.2/2011 DATED 1/6/2011
PASSED BY THE FIRST RESPONDENT - LAND ACQUISITION
OFFICER.

EXT.P2 - TRUE COPY OF THE APPLICATION DATED 1/8/2011
PREFERRED BY THE PETITINER UNDER SEC.18 OF THE LAND
ACQUISITION ACT.

EXT.P3 - TRUE COPY OF THE COMMUNICATION DATED 17/8/2011
ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No.4940 of 2012-N

Dated this the 9th day of November, 2015

JUDGMENT

The petitioner is the claimant whose property having an extent of 59.55 cents in Sy.Nos.74/7, 74/6 and 74/5 in Elamkulam Village in Malappuram District has been acquired under the Land Acquisition Act, 1894 (for short 'the Act'). According to the petitioner, Ext.P2 application preferred by the petitioner under Sec.18 of the Act seeking enhancement of the compensation with respect to a part of the land having an extent of 36.55 cents stands rejected by Ext.P3 communication issued by the 1st respondent on the ground that Ext.P2 application is filed after a period of 'six weeks' from the date of Ext.P1 award and is, therefore, barred by limitation. According to the

petitioner, no notice as contemplated under Sec.12(2) the Act was received by the petitioner with respect to the passing of the award. So also, the petitioner was not present at the time of passing the award. The sum and substance of the contentions raised in this writ petition is that the period of limitation of 'six weeks' as contemplated under sub-section (2)(b) of Sec.18 of the Act is not applicable to the petitioner and the petitioner is entitled to get 'six months' time from the date of knowledge of the Collector's award.

2. Per contra, in the counter affidavit filed by the 1st and 2nd respondents, it is contended that notice under Sec.12(2) of the Act is an information to the interested parties in an award to receive the compensation awarded within a specified date shown in the notice. In this case, the compensation is awarded as deposit in court under Sec.30 of the Act, and hence it is not necessary to give notice under Sec.12(2) of the Act. So, a copy of the award was served on the petitioner under Clause (b) of sub-

section (2) of Sec.18 of the Act. Reference application shall be made within 'six weeks' from the date of receipt of the notice under Sec.12(2) of the Act or within 'six months' from the date of award whichever first expires. In a case where notice under Sec.12(2) of the Act is not necessary, reference application for enhanced compensation shall be made within the time limit specified as per Clause (a) of sub-section (2) of Sec.18 of the Act i.e., within 'six weeks' from the date of award.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. The learned counsel for the petitioner advanced arguments challenging the findings of the Land Acquisition Officer that the petitioner ought to have filed the application within 'six weeks' from the date of award. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that in a case where the claimant was not present when the award was passed and no notice

under sub-section (2) of Sec.12 of the Act was issued to the claimant, the period of limitation provided under Sec.18(2) of the Act is 'six months' and not 'six weeks' as contended by the Land Acquisition Officer.

5. To substantiate the said contention, the learned counsel for the petitioner cited the decision reported in Reena George v. Special Tahsildar [2005 (1) KLT 79].

6. Per contra, the learned Government Pleader advanced arguments to justify the findings of the Land Acquisition Officer that the period of limitation prescribed to the petitioner, even though no notice under Sec.(12)(2) of the Act was issued, is six weeks.

7. The question that arises for consideration in this writ petition is whether the Land Acquisition Officer is justified in finding that in the instant case the period of limitation provided to file an application is 'six weeks' only.

8. Going by the counter affidavit filed by the 1st and 2nd respondents, it is seen that indisputably, no

notice under Sec.12(2) was issued to the petitioner. Similarly, even though the petitioner has specifically contended that the petitioner was not present or represented before the District Collector at the time when the Collector passed the award. The said contention has not been denied in the counter affidavit filed by the respondents. Therefore, it stands admitted that no notice under Sec.12(2) of the Act had been issued to the petitioner and either the petitioner or his representative was present before the District Collector at the time when he made the award. So also, it stands admitted that the award was passed on 1/6/2011 and reference application was filed on 1/8/2011. Thus, the petitioner had taken hardly two months to file the reference application, after the receipt of the award.

9. Going by the period of limitation, provided under Sec.18(2) of the Act, it is seen that 'six weeks' time is provided to the cases, where a notice under Sec.12(2) had been issued to the claimant or either

the claimant or his representative was present before the District Collector when he made the award. Admittedly, the above situation is not attracted to the instant case. In *Reena George v. Special Tahsildar* [2005 (1) KLT 79], this Court observed that it is by now trite that when the claimant has not been served under Sec.12(2) and when the award is not passed in the presence of the claimant, for the purpose of Sec.18(2)(b), the expression 'six months from the date of the award' means 'six months from the date of knowledge of the award by the party'. Here, indisputably, reference application was filed hardly after two months after the date of the award only. Here, the date of knowledge is also irrelevant because the application seeking reference was filed within six months from the date of award.

10. In the above analysis, I find that the period of limitation available to the petitioner in the instant case is 'six months from the date of award' and not 'six weeks from the date of award' and the petitioner

has filed Ext.P2 application for reference within that period.

9. Consequently, Ext.P3 notice issued by the 1st respondent to the petitioner will stand quashed and the 1st respondent is directed to forward Ext.P2 application to the Reference Court within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge