of the Tribunal holding the appellant Insurance Company also liable to pay the compensation to the respondent-claimant cannot be held illegal or invalid. On the other hand, I find the Tribunal legally justified in its said finding."

When this is the position after amendment has been brought about in the policy by the Tariff Advisory Committee, risk of gratuitous passenger travelling in a private vehicle stands adequately covered. On that count also the decision of the Tribunal is not proper and it is required to be quashed and set aside. In my opinion, on facts as well as on law, the conclusion has to be against the Insurance Company. In other words, there is no breach of conditions of the policy since in the present case the vehicle was not given for hire or reward and by virtue of the recommendation of the Tariff Advisory Committee and the amendment brought in the policy, the Insurance Company is now required to recover the risk of even the passengers travelling not for hire or reward in a private car. In view of the same, the decision of the Tribunal on both these counts is required to be quashed and set aside.

In the result, the Insurance Company is directed to satisfy the entire award including the additional amount awarded by this Court together with proportionate costs and interest at the rate of 6% per annum from the date of the petition till realization. It appears that the appellant by some mistake claimed additional amount of Rs. 75,000/-. Original claim is of Rs. 99,999/-. Additional amount of Rs. 41,000/- has been awarded to the appellant, which would bring the total amount of compensation payable to the appellant to Rs. 81,000/- which is within original claim. In view of the same, the appeal is partly allowed together with costs as stated above.

In view of the above, Cross Objection is disposed of accordingly.

(SBS) *Orders accordingly.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice J. M. Panchal
and the Hon'ble Smt. Justice Abhilasha Kumari

NILKANTH SUDHIRBHAI PANDYA v. STATE OF GUJARAT & ORS.*

(A) Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (L of 1962) — Secs. 3(1), 5 & 6 — Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963 — Rules 3 & 8 — Requirement of Rule 3(3) to serve copy of notification on owner of land — Since, petitioner was not found at his known place of residence and his whereabouts were not known, notice was affixed at the land of the petitioner — This being permissible mode of service under Rule 8, held, petitioner could not have challenged the notification on this count.

*Decided on 15-12-2006. Special Civil Application Nos. 20391 and 20392 to 20400 of 2006, challenging declaration issued under Sec. 6(1) of the Petroleum and Minerals Pipelines Act acquiring right of user of land.

The only point on which the case of the petitioner rests is whether there was an effective, legal and valid service of notice under Sec. 3(1) of the Act as contemplated by the Act and the Rules upon him or not? (Para 10)

Viewing the matter in the light of the relevant provisions of the Act and Rules as noticed hereinabove, this Court is of the opinion that the service of notice under Sec. 3(1) of the Act upon the petitioner has been duly and validly effected in terms of Sec. 3(1) of the Act and Rule 3 and Rule 8(3) of the Rules. Since, the petitioner was not found at his known place of residence and address and his whereabouts were not known, the only course left open to the serving agency was to affix a copy of the notice in a conspicuous place on the land of the petitioner as contemplated by Rules 3(2)(b) and 8(3), which was done. Moreover, publication by beat of drums as provided in Rule 3(2)(a) was also resorted to. (Para 11)

The Act and the Rules provide for the service of notice at the known and ordinary place of residence or usual place of business of the person to be served and it is not contemplated that the serving agency should conduct a search for the person to be served. If service has been effected by one of the modes and in the manner provided under the Act and Rules, it cannot be said that such service is not legal and valid. In the present case, the notice was affixed upon the land of the petitioner, which is one of the modes of service prescribed under the Rules. (Para 12; *See* also Paras 14 and 15)

Even if the case of the petitioner is taken at its best, and it is assumed that there was no valid service of notice under Sec. 3(1) of the Act, the petitioner cannot succeed because once the publication of the declaration under sub-sec. (1) of Sec. 6 of the Act is made, the right of user in the land specified therein vests absolutely in the Central Government free from all encumbrances. (Para 17)

(B) Constitution of India, 1950 — Art. 226 — Civil Procedure Code, 1908 (V of 1908) — Order 1, Rule 9 — Joinder of parties — Challenge to notification issued by the Central Government — Central Government not joined as party — Petition liable to be dismissed on the ground of non-joinder of necessary party.

An inherent defect in this petition, which has been noticed by this Court is that the Central Government has not been made a party respondent although the declaration which is impugned at Annexure-G collectively, has been issued by the Central Government. Instead, the petitioner has impleaded the State Government as respondent No. 1, which has nothing to do with the proceedings or the impugned declaration. The Writ Petition is, therefore, liable to be dismissed on the ground of non-joinder of necessary party also. (Para 18)

Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. (1), H. M. Kelogirao v. Government of A. P. (2), relied on.

Jal Soli Unwala, for the Petitioner (*In all Spl.C.A.*).

K. S. Nanavati, Sr. Advocate with *Keyur D. Gandhi*, for M/s. Nanavati Associates, for Respondent Nos. 2 & 3 (*In all Spl.C.A.*).

(1) 1996 (11) SCC 501 (2) 1997 (7) SCC 722

Sunit Shah, G.P., with *Mrs. Krina P. Calla*, A.G.P., for Respondent No. 1. (*In Spl.C.A. Nos. 20391 to 20394 of 2006*).

Sunit Shah, G.P., with *Mrs. Tanuja N. Kachchhi*, A.G.P., for Respondent No. 1 (*In Spl.C.A. Nos. 20395 to 20397 of 2006*).

Sunit Shah, G.P., with *Krunal D. Pandya*, A.G.P., for Respondent No. 1 (*In Spl.C.A. Nos. 20398 to 20400 of 2006*).

SMT. ABHILASHA KUMARI, J. The present group of petitions, filed under Art. 226 of the Constitution of India, is directed against the declaration issued under Sec. 6(1) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, ("the Act" for short) whereby the right of user in the lands belonging to the petitioners has been acquired by the competent authority under the Act for the purpose of laying pipelines for transportation of natural gas by the respondent No. 3, *i.e.* Reliance Gas Transportation Infrastructure Limited.

2. As identical issues of facts and law are involved in these petitions, this Court proposes to dispose them of by this common judgment. For the sake of convenience, this Court also proposes to refer to the facts stated in Special Civil Application No. 20391 of 2006.

3. By filing Special Civil Application No. 20391 of 2006 under Art. 226 of the Constitution of India, the petitioner has prayed for the following relief :

> "A. This Honourable Court may be pleased to issue a writ of *mandamus* or any other appropriate writ, order or direction declaring that the competent authority in the instant case that the respondent No. 2 herein had no authority to issue and publish the impugned notice and notification under sub-sec. (1) of Sec. 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 without issuing and publishing the notice and the notification under sub-sec. (1) of Sec. 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and further by taking away the valuable right of the petitioner under the provisions of Sec. 5 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; and further be pleased to quash and set aside the impugned notice and notification at Annexure-G dated 25-8-2006 under Sec. 6(1) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962;"

4. The facts giving rise to the petition are that the petitioner, who is an agriculturist, is the owner in possession of land bearing Survey No. 101, Block No. 111, admeasuring about 1 Hectare, 85 Are and 51 sq.mts., situated at village Goja, Taluka : Choryasi, District : Surat. Upon this land, the petitioner has planted an orchard of different fruit-bearing trees and is earning his livelihood from the sale of the fruits being grown in the orchard. It is the case of the petitioner that all of a sudden, on August 25, 2006, he received the impugned notice dated July 22, 2006, with a copy of the declaration issued under Sec. 6(1) of the Act published in the Government of India Gazette on

June 26 - July 2, 2005. By the said notice, the petitioner was informed that the competent authority had declared that right of user in his land was acquired for laying a pipeline for the Hyderabad-Ahmedabad Pipeline Project by the respondent No. 3-Company, on payment of 10% of the market value of the land. According to the petitioner, the impugned notice is illegal whereas the declaration under Sec. 6(1) of the Act was issued and published without effecting the service of notice under Sec. 3(1) of the Act upon the petitioner. After receiving the impugned notice and copy of declaration, the petitioner sent a telegram to the competent authority on August 31, 2006, making grievance about non issuance of notice under Sec. 3(1) of the Act to him. It is averred by the petitioner that other agriculturists, in whose lands, the right of user to lay the pipeline was acquired, were served with notices under Sec. 3(1) of the Act, but he was not served with any such notice, even though his land is adjacent to lands of other agriculturists. It is further averred by the petitioner that had the notice under Sec. 3(1) of the Act been served upon him, he would have availed of the opportunity to object to the proposed acquisition of right of user in his land on the ground that there are several other open spaces of land and agricultural fields through which the pipeline could be laid without disturbing the orchard standing on the property of the petitioner and in that view of the matter, the action of the respondents in issuing the notice and declaration under Sec. 6(1) of the Act without serving any notice under Sec. 3(1) of the Act upon the petitioner is illegal. Therefore, the petitioner has filed this petition and claimed relief which is referred to earlier.

5. This Court issued notice in each petition on September 25, 2006. On service thereof, an affidavit-in-reply dated October 10, 2006, has been filed by Mr. Amulakh Kasturchand Sanghavi, who is the competent authority, appointed by the Government of India.

6. It is stated in the said affidavit-in-reply that the Act has been enacted to provide for the acquisition of right of user in land for laying pipelines for transportation of petroleum and minerals, as the Government, anticipating a substantial increase in the production of crude oil, natural gas, and petroleum products from oil fields and Refineries in India, had felt it necessary to lay a petroleum pipeline to serve as an inexpensive and efficient means of transportation and distribution of petroleum and its products. It is mentioned that since the procedure under the Land Acquisition Act, 1894, to acquire the lands is an expensive and long drawn one, and since the petroleum pipelines can be laid underground, the out-right acquisition of the land is not necessary, and therefore, the legislature has enacted the Act whereby the acquisition of mere right of user in the land for laying and maintaining the pipeline, without out-right acquisition of land is contemplated. Referring to the Statement of Objects and Reasons of the Act, it is stated in the reply-affidavit that even after the final declaration regarding acquisition of right of user under the Act is made, the owner or occupier of such land is entitled to use the land subject to certain reasonable restrictions and the person interested in the land is also entitled to compensation for any damage, loss, injury or curtailment of rights

to use the land, suffered by him by such acquisition. What is mentioned in the reply is that a wholesome reading of the provisions of the Act in the light of the Objects and Reasons would make it clear that the legislative intention in providing for the acquisition of right of user in the land for laying pipelines for transporting petroleum products and minerals from one locality to another is motivated by public interest and for this purpose, total acquisition of land is not required to be made. On the factual aspect, it has been stated in the affidavit-in-reply that the notification under Sec. 3(1) of the Act declaring the intention to acquire the right of user in land of the petitioner and others, for laying of the pipeline for transportation of natural gas through an interconnection between Jamnagar-Bhopal and Kakinada-Hyderabad-Goa pipeline by the respondent No. 3-Company was issued on February 7, 2005. It has been explained that the pipeline passes through the four States, namely, Andhra Pradesh, Karnataka, Maharashtra and Gujarat, covering 701 villages and its total length is 1506.76 Kms. It is stated in the reply that in the State of Gujarat, the pipeline is passing through approximately 171 villages. It is further stated that the competent authorities under the Act, including the deponent of the affidavit-in-reply, issued 20339 notices under Sec. 3(1) of the Act immediately upon publication of the said notification which were duly served as per the provisions of Rule 3 read with Rule 8 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, ("the Rules" for short). According to the deponent, out of this, 18601 persons (92%) were served directly, whereas 466 persons (2%) were served by Registered Post A.D. and about 1272 persons (6%) were served in terms of Rule 8(3) of the Rules by preparing a *Rojkam*. It is mentioned in the reply that the service of notice upon the petitioner was duly effected in the mode and manner prescribed by the relevant Rules. It is stated that since, at the relevant time when service was being effected, the petitioner was not found to be present at his known address, and any other address of the petitioner was not available, a copy of the notice under Sec. 3(1) of the Act was affixed at the field/land of the petitioner and at the Panchayat Office as well as a *Rojkam* to this effect was drawn in the presence of Panchas. It is averred in the reply that in addition to this, the substance of the notification issued under Sec. 3(1) of the Act was published by beat of drums in the neighbourhood of the concerned lands and also by affixing the same at the Revenue Offices of the Collector/Prant/ Mamlatdar and District/Taluka and Gram Panchayat. According to the deponent, the interested persons who had filed their objections were heard in terms of Sec. 5 of the Act, and thereafter, the competent authority had submitted his report, based upon which, the declaration under Sec. 6(1) of the Act was issued and published. It is firmly asserted in the affidavit-in-reply that the provisions of the Act and the Rules have been strictly complied with and only after following the due procedure of law, the competent authority had forwarded the report to the Central Government with its recommendation along with the entire record of the proceedings and in this view of the matter, the petitioner is not entitled to the relief prayed for in the petition. It is further claimed in the reply that the opportunity of being heard as provided by Sec. 5 of

the Act is only a summary procedure and no full-fledged inquiry is contemplated as is the case under Sec. 5A of the Land Acquisition Act, 1894. Elaborating this aspect, it is stated that immediately after the issuance of the notification under Sec. 3(1) of the Act, the authorities are empowered (a) to enter upon and survey and take levels of any land specified in the notification, (b) to dig or bore into the sub-soil, (c) to set out the intended line of work, (d) to mark such levels, boundaries and line by placing marks and cutting trenches; (e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle; and (f) to do all other acts necessary to ascertain whether pipelines can be laid under the land; as provided by Sec. 4 of the Act and as the provisions of the Act empower the authorities to take possession of the land even prior to the hearing of objections under Sec. 5 of the Act and making of declaration under Sec. 6(1) of the Act, it is clear that there is no violation of any provision of the Act and Rules made by the respondents, and therefore, it is prayed that the writ petition be rejected.

7. The petitioner has filed affidavit-in-rejoinder, largely reiterating the averments made in the petition. It has been emphasized in the rejoinder that the respondents have failed to disclose in what manner the petitioner has been served with notice under Sec. 3(1) of the Act. After stating that no *Rojkam*, indicating service of notice as required by the relevant Rules, was ever prepared, the petitioner has annexed copies of the affidavits of one Smt. Alpaben Jayeshbhai and Shri Chimanbhai Ahir at Annexures-I and II to the rejoinder wherein they have stated that they had not acted as Panch witnesses nor had signed the alleged *Rojkam*. While reiterating the denial of service of notice under Sec. 3(1) of the Act upon him, the petitioner has levelled allegation against the respondents to the effect that wrong and illegal means were adopted to "hustle up" the entire procedure of installation of pipelines without following the due procedure of law as contemplated by the Act and Rules with a view to defrauding the public at large by putting false signatures of Panchas. It is therefore claimed in the rejoinder that declaration under Sec. 6(1) of the Act is illegal and deserves to be quashed and set aside.

8. To controvert the averments of the petitioner made in the affidavit-in-rejoinder, Mr. Valamray Ishwarlal Gohil, the competent officer, Reliance Gas Transportation Infrastructure Limited, has filed an affidavit-in-sur-rejoinder on December 5, 2006, wherein, the allegations made in the rejoinder are emphatically denied and it is stated that the *Rojkam* annexed at Annexure-I to the sur-rejoinder was also duly signed by the Talati-cum-Mantri. In support of this averment, the affidavits of one Shri Bharatbhai S. Arya, who was working in the office of the competent authority and Shri Girish Valjibhai Chowdhary, have been appended as Annexure-II to the rejoinder. It is mentioned in the rejoinder that a copy of the letter dated August 31, 2006, was served upon Talati-cum-Mantri of village Goja for publication of notification under Sec. 3(1) of the Act, and since the petitioner was not residing in village Goja at the relevant point of time of serving the notice, the service could not be effected

directly upon him but was duly and validly effected as per the mode and manner prescribed in the Act and the Rules. It is mentioned in the sur-rejoinder that later on, it came to the knowledge of the respondents that the petitioner was residing at Surat and in support of this, the voters' list of Surat Lok Sabha and Vidhan Sabha constituencies, wherein the name of the petitioner appears at Sr. No. 584, is appended to the rejoinder. It is stated that since this information was not known to the respondents at the relevant point of time, and since, the petitioner was not traceable at his known address, and no other known address of the petitioner was available, the notice under Sec. 3(1) of the Act relating to the petitioner, was affixed at his field in village Goja which is evident from the *Rojkam* dated April 6, 2005. It is further stated that in the affidavit, Smt. Alpaben Jayeshbhai Ahir has admitted that the signature on the *Rojkam* was appended by her, and therefore, the affidavits of Smt. Alpaben Jayeshbhai Ahir or Shri Chimanbhai Mithabhai Ahir should not be acted upon.

9. This Court has heard Mr. Jal S. Unwala, learned Counsel for the petitioner and Mr. K. S. Nanavati, learned Senior Advocate with Mr. Keyur D. Gandhi, for the respondent Nos. 2 and 3 as well as Mr. Sunit S. Shah, learned Government Pleader, with Ms. Krina P. Calla, learned Assistant Government Pleader, for respondent No. 1, at length and in great detail. This Court has also considered the documents forming part of the petition.

10. From the pleadings and arguments advanced at the Bar, it is evident that the only point on which the case of the petitioner rests is whether there was an effective, legal and valid service of notice under Sec. 3(1) of the Act as contemplated by the Act and the Rules upon him or not? To answer this question, the relevant provisions of the Act will have to be noticed and considered, which are reproduced hereinbelow.

Sections 3 to 6 of the Act read as under :

3. *Publication of notification for acquisition.*

(1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum *(or any mineral) from one locality to another locality pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.

(2) Every notification under sub-sec. (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

4. *Power to enter, survey, etc. :-*

On the issue of a notification under sub-sec. (1) of Sec. 3, it shall be lawful for any person authorized by the Central Government or by the State Government or the Corporation which proposes to lay pipelines for transporting petroleum *(or any mineral), and his servants and workmen—

(a) to enter upon and survey and take levels of any land specified in the notification;

(b) to dig or bore into the sub-soil;

(c) to set out the intended line of work;

(d) to mark such levels, boundaries and line by placing marks and cutting trenches;

(e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle; and

(f) to do all other acts necessary to ascertain whether pipelines can be laid under the land :

Provided that while exercising any power under this Section, such person or any servant or workman of such person shall cause as little damage or injury as possible to such land.

5. *Hearing of objections :-*

(1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-sec. (1) of Sec. 3, object to the laying of the pipelines under the land.

(2) Every objection under sub-sec. (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

(3) Any order made by the competent authority under sub-sec. (2) shall be final.

6. *Declaration of acquisition of right of user :-*

(1) Where no objections under sub-sec. (1) of Sec. 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-sec. (2) of that Section, that authority shall, as soon as may be, *(either make a report in respect of the land described in the notification under sub-sec. (1) of Sec. 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government) and upon receipt of such report the Central Government shall *(if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral) declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired *(and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-sec. (1) of Sec. 3, irrespective of whether one report or different reports have been made by the competent authority under this Section).

(2) On the publication of the declaration under sub-sec. (1), the right of user *(in the land specified therein) shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been issued under sub-sec. (1) of Sec. 3, but *(no declaration in respect of any parcel of land covered by that notification has been published under this Section) within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of that period.

*[(3A) No declaration in respect of any land covered by a notification issued under sub-sec. (1) of Sec. 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977 (13 of 1977), shall be made after the expiry of three years from the date of such publication.]

(4) Notwithstanding anything contained in sub-sec. (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the Corporation proposing to lay the pipelines, and thereupon, the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State Government or corporation, as the case may be, free from all encumbrances.

Rules 3 and 8 of the Rules read as under :

"3. *Publication of Notification under Sec. 3 :*

(1) Every notification under sub-sec. (1) of Sec. 3 shall contain a description of the land sufficient to identify the same specifying, wherever possible, the numbers in a settlement of record or survey of such land.

(2) The substance of the notification referred to in sub-rule (1) shall be published -

(a) by beat of drum in the neighbourhood of the land the right of user in which is to be acquired; and

(b) by affixing a copy thereof in a conspicuous place in the locality in which such land is situated.

(3) A copy of such notification shall be served in the manner laid down in Rule 8 on every person who has been shown in the relevant revenue records as the owner of the land on the date of publication of the notification under sub-rule (1) or who, in the opinion of the competent authority, is the owner of, or interested in, such land.

… … … …

8. *Mode of service of notice, etc.* -

(1) Any notice or letter issued or any order passed may be served by delivering or tendering a copy of such notice, letter or order, as the case may be, to the person for whom it is intended or to any adult member of his family or by sending it by registered post acknowledgment due addressed to that person at his usual or last known place of residence or business.

(2) Where the serving officer delivers or tenders the copy of the notice, letter or order under sub-rule (1), he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original.

(3) Where the person or the adult member of the family of such person refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find such person and there is no adult member of the family of such person, the serving officer shall affix a copy of the notice, letter or order on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and then shall return the original to the competent authority who issued the notice, letter or order, as the case may be, with a report endorsed thereon or annexed thereto stating that he has so affixed a copy, the circumstances under which he did so and the name and address of the person, if any, by whom the usual or last known place of residence or business, as the case may be, was identified and in whose presence the copy was affixed.

(4) Where the person to be served with the notice, letter or order is a minor or a person of unsound mind, the notice, letter or order shall be served in the aforesaid manner, on the guardian of such minor or person of unsound mind, as the case may be."

11. A bare reading of Sec. 3 of the Act makes it clear that whenever it appears to the Central Government that it is necessary in the public interest and for the purpose of laying pipelines to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein and the competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

Rule 3 provides that every notification under sub-sec. (1) of Sec. 3 shall contain a description of the land and the sum and the substance of the notification referred to shall be published (a) by beat of drum in the neighbourhood of the land the right of user in which is to be acquired, and (b) by affixing a copy thereof in a conspicuous place in the locality in which such land is situated. Sub-rule (3) of Rule 3 provides that a copy of such notification shall be served in the manner laid down in Rule 8 on every person who has been shown in the relevant revenue records as the owner of the land on the date of publication of the notification under sub-rule (1) or who, in the opinion of the competent authority, is the owner of, or interested in such land. A bare reading of the provisions of Rule 8 of the Rules make it clear that the service of any notice or letter issued or any order passed can be effected by (i) tendering a copy of such notice, letter or order to the person for whom it is intended or to any adult member of his family, (ii) or by sending it by Registered Post Acknowledgment Due addressed to that person at his usual or last known place of his residence or business. Sub-rule (2) of Rule 8 provides that when service is sought to be effected by tendering a copy of the notice, letter or order under sub-rule (1), the signature of the

person to whom the copy is so delivered or tendered to an acknowledgment of service should be endorsed on the original. Sub-rule (3) of Rule 8 of the Rules provides that where the person or the adult member of the family of such person refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find such person and there is no adult member of the family of such person, the serving officer shall affix a copy of the notice, letter or order on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and then shall return the original to the competent authority who issued the notice, letter or order with an endorsement to the effect that he has so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the usual or last known place of residence or business, as the case may be, was identified and in whose presence, the copy was affixed.

Viewing the matter in the light of the relevant provisions of the Act and Rules as noticed hereinabove, this Court is of the opinion that the service of notice under Sec. 3(1) of the Act upon the petitioner has been duly and validly effected in terms of Sec. 3(1) of the Act and Rule 3 and Rule 8(3) of the Rules. Since, the petitioner was not found at his known place of residence and address and his whereabouts were not known, the only course left open to the serving agency was to affix a copy of the notice in a conspicuous place on the land of the petitioner as contemplated by Rules 3(2)(b) and 8(3), which was done. Moreover, publication by beat of drums as provided in Rule 3(2)(a) was also resorted to. In response to the categorical averments made in the reply-affidavit filed by the respondent Nos. 2 and 3 that the petitioner was not found at his residence, it is not the case of the petitioner in his rejoinder that he was ordinarily residing on his land, but was not present at the relevant point of time, and therefore, due diligence was not exercised and service of notice should have been directly effected upon him.

12. The Act and the Rules provide for the service of notice at the known and ordinary place of residence or usual place of business of the person to be served and it is not contemplated that the serving agency should conduct a search for the person to be served. If service has been effected by one of the modes and in the manner provided under the Act and Rules, it cannot be said that such service is not legal and valid. In the present case, the notice was affixed upon the land of the petitioner, which is one of the modes of service prescribed under the Rules.

13. The cause title of Special Civil Application No. 20391 of 2006 would indicate that the petitioner has given his address as being a resident of village Goja, Taluka : Choryasi, District : Surat, meaning thereby, that this is his usual and ordinary place of residence, though it has been later found that he was residing in Surat and his name was figuring in the electoral rolls at Surat. The petitioner has not stated in the petition that he was residing at Surat nor has he stated that when he had left village Goja to settle down in Surat or when he had left Surat and started residing at village Goja. Thus, the petitioner

has not been able to make out a case before this Court that at the relevant point of time, when the service of notice was effected, he was staying at Goja and not at Surat. However, these observations are confined to Special Civil Application No. 20391 of 2006 since this Court is referring only to the facts stated in that petition.

14. Resultantly, this Court is of the view that there is no violation of any provision of the Act and Rules, and the service of notice under Sec. 3(1) of the Act has been legally and validly effected upon the petitioner. After valid service of notice, since no objections were filed by the petitioner within the stipulated period of twenty-one days, as contemplated by Sec. 5(1) of the Act, the declaration under Sec. 6(1) was issued and published in the Gazette of India, which cannot be regarded as illegal. The procedure prescribed by law, as envisaged by the Act and Rules, has been scrupulously followed. Therefore, there is no illegality or infirmity in the declaration issued under Sec. 6(1) of the Act.

15. The ground taken in the petition that similarly situated persons whose lands are adjacent to the lands of the petitioner, were served with notices under Sec. 3(1) of the Act, but the petitioner was not served, and therefore, the declaration should be set aside, has no substance. If the petitioner was aware of the fact that other persons, whose lands are in the vicinity of his lands were served with notices, then it does not stand to reason and is not believable that the petitioner was unaware that such notices were served and the proceedings under the Act were commenced. It is very clear that the petitioner was in the knowledge of the initiation of the proceedings for acquisition of right of user under the Act. Seen in this light, the contention of the petitioner that no notice under Sec. 3(1) of the Act has been served upon him is thoroughly misconceived and deserves to be rejected. Further, it has been mentioned in the affidavit-in-reply that out of the total of 20339 notices under Sec. 3(1) of the Act, 1272 persons were served in terms of Rule 8(3) of the Rules by making *Rojkam* and the petitioner was also one of such persons. It is stated that 18601 persons were served directly and 466 persons were served by Registered A. D. It is relevant to notice that the persons served directly or through Registered A. D. and most of the persons served by making *Rojkam* have not raised any grievance at all. If the respondents had effected service of notice on 18601 persons, there was no reason for them for not effecting service upon the petitioner directly, if he had been available. It is not plausible that the respondents without any reason would single out the petitioner and avoid effecting service of notice upon him when notices were served to his immediate neighbours. The allegations of *mala fides* levelled by the petitioner are not only vague, but are bereft of necessary particulars.

16. In view of the above state of affairs, this Court finds that the service of notice under Sec. 3(1) of the Act has been legally and validly effected in terms of the relevant provisions of the Act and the Rules, and therefore, the relief claimed by the petitioner on the ground that there was no valid and legal service of notice under Sec. 3(1) of the Act cannot be granted.

17. Even if the case of the petitioner is taken at its best, and it is assumed that there was no valid service of notice under Sec. 3(1) of the Act, the petitioner cannot succeed because once the publication of the declaration under sub-sec. (1) of Sec. 6 of the Act is made, the right of user in the land specified therein vests absolutely in the Central Government free from all encumbrances. The law is now well settled in this regard. Section 6(2) of the Act is *pari-materia* with Sec. 16 of the Land Acquisition Act, 1894, which reads as under :

"16. *Power to take possession :-* When the Collector has made an award under Sec. 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

While interpreting the provisions of the Land Acquisition Act, 1894, the Supreme Court, in (i) *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors.,* 1996 (11) SCC 501, and (ii) *H. M. Kelogirao & Ors. v. Government of A. P. & Ors.*, 1997 (7) SCC 722, has ruled that once land is vested in the Government absolutely free from all encumbrances, it is not open for the High Court to interfere with the acquisition proceedings under Art. 226 of the Constitution of India. The same principle will have to be made applicable to the provisions of the Act which is under consideration of this Court. The declaration under sub-sec. (1) of Sec. 6 of the Act has been published in the Gazette of India on June 26 - July 2, 2005, and upon the publication of the declaration, the right of user in the lands specified therein, which includes the lands of the petitioner, has vested absolutely in the Central Government, free from all encumbrances, and therefore, right vested cannot be divested by interfering in the instant petition.

18. An inherent defect in this petition, which has been noticed by this Court is that the Central Government has not been made a party respondent although the declaration which is impugned at Annexure-G collectively, has been issued by the Central Government. Instead, the petitioner has impleaded the State Government as respondent No. 1, which has nothing to do with the proceedings or the impugned declaration. The writ petition is, therefore, liable to be dismissed on the ground of non-joinder of necessary party also. Thus, the petition is devoid of merits and liable to be dismissed.

19. For the foregoing reasons, all the Writ Petitions fail and are dismissed. Notice in each petition is discharged. There shall be no order as to costs.

(SBS) *Petitions dismissed.*

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