

(1975) 12 OHC CK 0008

In the Orissa High Court

Case No : Civil Revision No. 432 of 1974

Collector and Others

APPELLANT

Vs

Guruprasad Mahakud and Others

RESPONDENT

Date of Decision : 08-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, Order 39 Rule 1, 26 , 80

Citation : (1976) 42 CLT 174

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : G.B. Patnaik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Ray, J.—The Plaintiffs as many as 9 number instituted a suit in the Court of the Munsif. Dhenkanal for a permanent injunction to restrain the three Defendants, viz., the Collector, Tahsildar, Sadar and Additional Tahsildar, Sadar of Dhenkanal from evicting them (Plaintiffs) from the suit land. Along with the plaint a petition was filed under Order 39, Rule 1, CPC Code for a temporary injunction against the aforesaid Defendants praying that Defendant Nos. 1 to 3 may be restrained from evicting the Plaintiffs from the suit land, from breaking their shops and cabins and from interfering with their possession over the suit land during the pendency of the suit. The case of the Plaintiffs was that the suit land originally belonged to the State of Orissa. The same was transferred to the Dhenkanal Municipality by the Collector, Dhenkanal, and so, the land vested in the municipality. On this land the Plaintiffs contracted their shops and cabins on the portions allotted to them by the concerned authorities. After construction of the shops and cabins they are in occupation of the same. All on a sudden several encroachment cases under the Orissa Prevention of Land Encroachment Act, 1972 were started against them by the Tahsildar, Sadar, Dhenkanal for their eviction from the suit land. In spite of the Plaintiff's objection to those cases the Tahsildar, Sadar ordered eviction. In pursuance to the orders passed for eviction

of the Plaintiffs the Tahsildar with the help of police was threatening to evict them from the suit land, to throwaway all their belongings kept in the shops and cabins and to break down the same. They would suffer irreparable loss and damage unless the Defendants were temporarily restrained from taking forcible possession of the "suit land by breaking down the shops and houses thereon and by removing the articles therefrom.

2. The Defendants opposed the application for temporary injunction mainly on the ground that the land in question had not been transferred to the Municipality of Dhenkanal and still belonged to the Government of Orissa; that the act of occupation by the Plaintiffs of the land in question and their construction of shops and houses on the said land were unauthorised ones that the cases under the Orissa Prevention of Land Encroachment Act, 1972 instituted against the Plaintiffs for their eviction were maintainable and the orders passed in those cases for eviction of the Plaintiffs were valid in law and that there being no notice u/s 80, CPC prior to the institution of the suit, the suit itself was not maintainable and hence no order of temporary injunction could be passed in such a suit.

3. The learned Munsif relied upon Ex.1, letter dated 24-6-1971 written by the Tahsildar, Sadar, Dhenkanal to the Executive Officer, Dhenkanal Municipality which showed that the land in question had been transferred by the Collector, Dhenkanal in favour of the Dhenkanal Municipality in anticipation of approval of the authority concerned. Reliance was placed by the trial Court on a resolution of the Dhenkanal Municipality dated 29-5-1972 showing that the land in question which was to be transferred to them would be leased out to persons who had already" paid salami. On the basis of these documents the learned Munsif held that the Plaintiffs" case that the land had been transferred to the Dhenkanal Municipality and therefore the eviction proceedings under the Orissa Prevention of Land Encroachment Act, 1972 against them were not valid was prima facie Established. On the question of notice u/s 80, CPC Code, the learned Munsif relying upon a decision Mohanta Raghabananda Das Vs. D.V.A. Naidu and Another, held that the Defendants threatened act could not come within any official act by a public office, and therefore, no notice was necessary for a suit to prevent such an act. On these findings the petition for temporary injunction was allowed. The Defendants against the order of the trial Court granting a temporary injunction against them carried "an appeal before the Additional District Judge, Dhenkanal which was also dismissed on identically the very self-same grounds on which the trial Court had allowed the Plaintiffs" prayer for temporary injunction. Hence the present revision by the Petitioners.

4. The learned Additional Government Advocate raises only one contention. According to him, no notice u/s 80, CPC having been served on the Defendants prior to the institution of the suit, the same was not maintainable, and so, an order of temporary injunction should not have been passed in such a suit. It is argued that the provisions of Section 80, CPC are mandatory and law does not allow any exception. Reliance is placed for this contention on the following

decisions, viz Sawai Singhai Nirmal Chand Vs. Union of India, , Union of India v. Baijnath AIR 1966 Cal. 56, Certificate Officer and Another Vs. Kasturi Chand Malu and Another, and The State of Bihar and Another Vs. Jiwan Das Arya, . The case of Sawai Singhai Nirmal Chand Vs. Union of India, , is a suit under Order 21, Rule 63, CPC instituted against Government. The Plaintiff had instituted the suit to set aside an order passed against him in a proceeding in execution. It was contended that Government being a party to the execution proceeding and the suit under Order 21, Rule 63, CPC being only a continuation of the said proceeding no notice u/s 80, CPC was necessary. Even in such a case. Gajendragadkar, C.J. held as follows:

It would be noticed that the material words used in Section 80 are wide and unambiguous they are express, explicit and mandatory and it would be difficult to except from their operation any proceeding which can be regarded as a suit against the Government. While dealing with the applicability of Section 80 the question to ask is; is it a suit against the Govt. or not? If it is, then Section 80 by the very force of its words must apply. We have already referred to the provisions of Order 21, Rule 63. In terms the said rule provides that the order passed in the investigation

proceedings shall be conclusive, subject to the result of a suit which the aggrieved party may institute. So there can be no doubt that the proceedings which the aggrieved party commences by virtue of the provisions of Order 21 Rule 63 are intended to be a suit. In fact, the present proceedings have commenced with the presentation of a plaint as required by Section 26 of the Code; and the very article under which the plea of limitation is raised against the Appellant shows that it is a plea in respect of the institution of a suit beyond the period of limitation. It is thus plain that what we are dealing with is a suit and that it is a suit against the Union of India. Therefore, on a fair and reasonable construction of Section 80, we do not see how it is possible to hold that a suit filed under Order 21, Rule 63 can be taken out of the provisions of Section 80 of the Code. If we were to accede to the argument urged before us by Mr. Karkhanis for the Respondent, we would, in substance have to add certain words of exception in Section 80 itself and that plainly is not permissible.

The reasoning applied by his lordship in the aforesaid d.ecision would equally apply to a case instituted against a public officer. In the decision in Certificate Officer and Another Vs. Kasturi Chand Malu and Another, it has been laid down that notice u/s 80, CPC is a condition precedent for maintainability of a suit even for injunction. In the decision in Union of India v. Baijnath AIR 1966 Cal. 56, it has been held that the words in respect of any act purporting to be done cover not only past act but also future act. According to this decision, a suit in which the act of Government in issuing notice is challenged and which seeks injunction against giving effect to that notice is not maintainable when no notice as contemplated u/s 80 is given. In the decision in The State of Bihar and Another Vs. Jiwan Das Arya, , it has been held as follows:

A notice u/s 80 is mandatory and no suit can, be filed before expiration of two months of service of such notice against the Government or the State even if the only relief claimed in the suit is in the nature of an injunction. It matters little whether the suit relates to the past action of the Government or is in relation to threatened action or injury and the suit is in the nature of a bill quia timet.... If the suit is against the public officer in respect of the threatened or the future action only, notice u/s 80 will not be necessary, but if in order to get relief against the threatened or the future action the past act or the order has to be challenged in the suit, without challenging which the relief of injunction as against the future action cannot be asked notice will have to be given. But this consideration is immaterial when the suit is against the Government or the State or the Union as the case may be.

(The Italics is mine)

The law therefore is absolutely dear that even in a suit against Government for permanent injunction which is in respect of a threatened or future act, notice u/s 80 is mandatory. In the case of public officers, if the suit is in respect of some future or threatened act by them a notice u/s 80 is not necessary provided in granting the relief no past act or order of the public officers has to be challenged. The decision relied upon by the trial Court in Mohanta Raghavananda Das Vs. D.V.A. Naidu and Another, , in consonance with the law as indicated above. In the case before me, the records reveal that proceedings for eviction of the Plaintiff opp. parties have been taken under the Orissa Prevention of Land Encroachment Act by Petitioner No. 2, the Tahsildar, Sadar, Dhenkanal and that orders of eviction have been passed against the opp. parties in the said case. The public officers who have been arrayed as Defendants in the suit instituted by the opp. parties are only acting to give effect to the orders of eviction passed against the opp. parties. Therefore, in order to enable the opp. parties to get relief in the suit the validity or otherwise of the orders passed against them for their eviction has to be determined. In a case, as held by Justice Untwalia (as he then was) of the Patna High Court, where a relief of injunction cannot be granted in respect of a threatened or future act without challenging a past act or the order passed by the public officer concerned notice u/s 80 is mandatory. This aspect of the case has been completely lost sight of by the Courts below. It may also be mentioned here that Exts. 1 and 2 relied on behalf of the opp. parties in the Courts below do not show that the land in question has actually been transferred by Government in favour of the municipality. The said two documents only go to show that there was a proposal for transfer. Therefore, unless there is actual transfer, the land in question cannot cease to be Government land and cannot become the land of the Dhenkanal Municipality. These being the state of things, this revision is bound to succeed.

5. In the result, therefore, I allow the revision set aside the impugned order of the Court below and dismiss the Plaintiffs' application" for temporary injunction. As there is no appearance, there will be no order for costs.