
(1982) 08 DEL CK 0021
In the Delhi High Court
Case No : Suit No. 1127 of 1981

Girdhari Lal Chadha and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Citation : (1983) ILR Delhi 630

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : O.N. Vohra and R.K. Anand, for the Appellant;

Judgement

S.S. Chadha, J.

(1) The plaintiffs have instituted the present suit for a declaration that the plaintiffs are owners in possession of the property comprised in field No. 116, measuring 3 bighas and 2 bids was situate in the revenue estate of village Naraina, Delhi, and for a perpetual injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession thereof.

(2) The allegations made in the plaint are these. The land in field No. 116, measuring 3 bighas and 2 biswas, situate in the revenue estate of village Naraina (for short called the property) was owned by one Bharta, son of Niadar, resident of village Naraina who sold it in favor of plaintiff No. 1 and husband of plaintiff No. 2, vide registered deed of sale dated January 4, 1958 and put the plaintiffs in actual physical possession thereof. The plaintiffs have been in continuous and uninterrupted possession of the property. In the month of February 1981, some employees of the Delhi Development Authority (for short called DDA), defendant No. 4 came to the site and asked the Chowkidai of the plaintiffs and others to vacate and hand over possession of the property to the DDA. On enquiry, it was discovered that the Lt. Governor of Delhi, defendant No, 2 had issued a Notification dated September 3, 1957, u/s 4 of the Land Acquisition Act, 1894 intimating his intention to acquire the property and the purpose of acquisition

was mentioned as "Execution of Interim General Plan". Subsequently, the declaration dated December 24, 1962, u/s 6 of the said Act was issued mentioning the same very purpose and award No. 1713 was made and published on October 30, 1963. According to the allegations made in the plaint, the entire acquisition proceedings are illegal, ineffective and void ab initio on the ground that the Interim General Plan came to an end and the public purpose for which the declaration was issued was no longer in existence as the Master Plan of Delhi came into force on September 1, 1962. The basis of the suit is that the public purpose mentioned in the declaration u/s 6 was non-existent rendering the whole acquisition proceedings futile. Certain owners of the adjoining land challenged the declaration u/s 6 and the award by invoking writ jurisdiction of this Court and this Court quashed the proceedings in those cases and the Letters Patent Appeals filed by the defendants were also dismissed. The plaintiffs were advised to approach the Court and they filed C.W.P. No. 444-D of 1981 in March, 1981 and obtained interim relief at the stage of show cause notice of restraining the defendants from taking possession. After the defendants had shown cause, this Court declined to admit the writ petition on October 14, 1981 on the ground that the petition is highly belated and so the Court declined to interfere under Article 226 of the Constitution. The plaintiff then filed the present suit on October 19, 1981 claiming the aforesaid relief.

(3) The suit along with the application for interim relief including ex parte relief came up for admission before the Court on October 20, 1981 when summons of the suit were ordered to be issued to the defendants in the ordinary manner as well as by registered post for November 3, 1981 and still then the respondents\ defendants were restrained from taking possession of the property in dispute.

(4) Defendant No. 1 is the Union of India, defendant No. 2 is the Lt. Governor of Delhi, defendant No. 3 is the Land Acquisition Collector and defendant No. 4 is the Delhi Development Authority. Defendants 1 to 3 have filed a joint written statement and defendant No. 4 has filed a separate written statement. The plea of defendants 1 to 3 is that no notice u/s 80 of the CPC had been given and consequently, the suit of the plaintiffs is not maintainable and is liable to be rejected. Various other preliminary objections have been raised by the defendants. The suit is alleged as not maintainable as the plaintiffs have failed to claim the consequential relief of possession. It is averred that the plaintiffs are not in possession of the property since in pursuance of the acquisition proceedings and the award, the possession of the property was taken over by the Administrator on June 26, 1964. There is a complete denial of the illegality of the acquisition proceedings and it is pleaded that the defendants are in possession. The rest of the facts mentioned in the plaint are not disputed.

(5) On the pleadings of the parties, the Court framed the issues on May 4, 1982 and issue No. 6 was directed to be treated as a preliminary issue. Issue NO. 6 :

" WHETHER the suit is not maintainable for want of notice u/s 80 of CPC ?"

Para 21 of the plaint reads as under :

" THAT no notice u/s 80 of the CPC Code has given as relief sought is urgent and immediate. Moreover, in view of the proceedings in C.W. No. 444 of 1981 defendant, have in fact, sufficient notice of the claim of the plaintiffs. However, leave of Court us 80(2) CPC is hereby sought."

The argument off Shri O. N. Vohra, the learned counsel for the plaintiffs is that the order of the Court dated October 20. 1981 directing the issue of the summons of the suit to the defendants and the restraint order restraining them. from taking possession of the property in dispute must be construed as an order impliedly granting leave u/s 80(2) of the Code of Civil Procedure. In my opinion, the agreement runs counter to the statutory provisions contained in Section 80 of the CPC reading as follows: "80. (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government including the Government of the State of Jammu and Kashmir or against a public officer of the appropriate authority specified in done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of (a) in the case of a suit against the Central" Government. except where it relates to a railway. a Secretary to that Government ; (b) in the case of a suit against the Central Government where it relates to railways, the the General Manager of that railway ; (bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf; (c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district : and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left. (2) A suit to obtain an urgent or immediate relief against the Government including the Government of the State of Jammu and Kashmir or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave Of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise; except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit : Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1). (3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice (a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and . such notice had been delivered or left at the

office of the appropriate authority specified in sub-section (1), and (b) the cause of action and the relief claimed by the plaintiff had been substantially indicated." Before the amendment of Section 80 by the CPC (Amendment) Act, 1976, the provisions of unamended Section 80 admitted of no exception whatsoever and are express, explicit and mandatory. The object of the section is to give the Government sufficient notice of the suit which is proposed to be brought against it so that it may reconsider the position and decide for itself whether the claim made would be accepted or not. The purpose is to give an opportunity to the Government to reappraise the factual and legal position and to settle the claim made without litigation in a court of law. The legislative intent is to avoid unnecessary litigation with the Government. The provisions of Section 80 have been construed as mandatory and it is for the plaintiffs to allege and prove that the requirements of this section as to notice have been satisfied. The plaint is further required to show that a notice u/s 80 claiming the reliefs was served in terms of Section 80. If these requirements are not complied with, then the Court is debarred from entertaining the suit. The service of the notice u/s 80 is a condition precedent for the institution of the suit against the Government. If the suit is instituted without the notice then the plaint must be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

(6) By the CPC (Amendment) Act. 1976, a provision is made in sub-section (2) of Section 80 which is in the nature of an exception. The relaxation of the provisions of Section 80 was felt necessary so that a person may not be deprived of the opportunity of obtaining an urgent or immediate relief, where such relief is essential. Section 80 was amended and an exception was carved out to sub-section (1) of Section 80. "Save as otherwise provided in sub-section (2)", only means that Section 80(1) must be strictly complied with except to the extent provided in sub-section (2). Two conditions have been laid down for a suit to obtain an urgent or immediate relief. The first. is that such a suit may be instituted with the leave of the Court, without serving any notice as required by sub-section (1). The second condition is a restriction on the exercise of power by the Court in such a suit. The Court cannot grant relief in such a suit, whether interim or otherwise, except after giving the Government or public officer, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

(7) In a suit against the Government notice u/s 80(1) must be given in all cases except in a suit to obtain an urgent or immediate relief, it may be instituted with the leave of the Court. The proviso to sub-section (2) of Section 80 says that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirement of sub-section (1). The legislative intent is clear that the service of notice u/s 80(1) is imperative, except where urgent or immediate relief is to be granted by the Court. In the event of refusal, the plaint has to be returned for presentation after compliance. Therefore, the question of grant of leave has to be considered at the time of the institution of the suit or

before the grant of any relief in the suit and not at any later stage. The legislature has used the word "may be instituted with the leave of the Court" with a purpose. A suit instituted means one that is commenced. The commencement of the suit is the act of filing of the plaint of the suit. Proceedings before the courts are instituted when the plaints are filed or information is laid or complaint is made. There are provisions contained in the CPC laying down condition for suit by aliens and by or against foreign rulers, ambassadors and envoys. There can be no institution of the suit except under permission. Sanction for prosecution is also prior to the institution of the complaints. Leave to sue without notice is, Therefore, to be considered at the time of the institution of the suit or in any case before the grant of any relief in the suit.

(8) A bare assertion is made in para 21 of the plaint that "leave of Court u/s. 80(2) CPC is hereby sought". There are no orders of the Court granting leave to institute the suit without notice. A preliminary objection is taken by defendants I to 3 that no application u/s 80(2) C.P.C. has been filed and the plaint is liable to be taken off the record. In the replication the plea is that "reference is made to para 21 of the plaint" wherein leave to sue without notice was specifically proved for". It is riot pleaded that the Court impliedly granted the leave to institute the suit. Subsection (2) of Section 80 is an exception to the mandatory rule contained in sub-section (1). The leave of the Court is a condition precedent to the suit proceeding for an order The special procedure laid down by the legislature is to be strictly complied with. Unless the Court has exercised its power and granted the leave, it is without any legal authority to grant any relief in the suit. The court does not get jurisdiction to proceed to grant any relief in the suit including interim relief unless the leave is granted. The Court cannot grant any interim relief except after giving a reasonable opportunity of showing cause. When the parties have appeared and heard, the Court may still come to the conclusion that no urgent or immediate relief is called for, and in that case, the Court has to return the plaint for presentation after compliance of the service of the requisite notice. Therefore, the mere issue of the summons in the suit or grant of ex parte interim relief cannot be construed as implied grant of leave to institute the suit without notice under sub-section (1) of Section 80. The grant of the leave to institute the suit without notice has to be distinctly sought and obtained, The grant of leave cannot be inferred merely from. the interim relief granted in the suit . In exercising its power to grant leave, the fundamental question to be considered by the Court is whether it is a suit to obtain an urgent or immediate relief. The court has to be satisfied after hearing. In this case, Therefore, the leave has not been granted by the Court. The suit instituted without the leave of the Court, in my opinion, has to be regarded as ineffective.

(9) Mr. Vohra sought a support from the provisions of Section 20(b) of the CPC and the leave contemplated being granted later on during the pendency of the suit. Section 20(b) does not lay down any inhibition to the institution of the suit without the leave of the court. All it provides is the territorial jurisdiction of the Court where the suits may be instituted. Ordinarily the suit is to be instituted

where the defendants reside, or carry on business or personally work for gain. But in cases where there are more than one defendants and any one or more of the defendants do not actually or voluntarily reside, or carry on business or personally work for gain within the jurisdiction of the Court, then either the leave of the Court has to be given or the defendants who do not reside or carry on business or personally work for gain, acquiesce in such institution. The acquiescence can only be after the institution of the suit without the leave of the Court. There can be no acquiescence at the time of the institution of the suit. If the suit can be continued by subsequent acquiescence then the defect in the institution of the suit is subsequently durable. It is for this reason that the Courts have construed Section 20(b) that it cannot be read in a way that may limit the power of the Court to grant leave only prior to the institution of the suit and not after it. Ordinarily, the leave of the Court u/s 20(b) must also be sought before or at the time of the institution of the suit. "

(10) The suit against the Union of India is not maintainable without a notice u/s 80(1) of the Code of Civil Procedure. The leave of the Court has not been obtained in this case for instituting the suit without serving the notice as required by sub-section (1). I am not persuaded to consider the oral request made at the Bar that the question of the grant of leave may be considered now. The question of the grant of leave has to be considered at the time of the institution of the suit or before the grant of any relief in the suit and not at any later stage. No. 6 is held against the plaintiffs. The plaint of the suit is, hereby, rejected under Order 7 Rule 11 of the Code of Civil Procedure. There is no order as to costs.