

(1962) 04 AP CK 0001
In the Andhra Pradesh High Court
Case No : C.C.C. Appeal No. 28 of 1959

Hussain Ali Mirza

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-04-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Hyderabad Government Demands Act, 1308 — Section 5, 6

Citation : AIR 1963 AP 164

Hon'ble Judges : Jaganmohan Reddy, J; Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : Jaleel Ahmad, for the Appellant; K.V. Ramasarma, for N.V.B. Sankara Rao, 2nd Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The question that arises for determination in this appeal is whether a suit u/s 6 of the Government Demands Act (No. IV of 1308 F.) is maintainable though the notice prescribed by Section 80 CPC is not given by the plaintiff to the Government. The question arises under the following circumstances.

2. The appellant was the plaintiff in this suit which was dismissed by the lower Court as not maintainable for the reason that the notice u/s 80 CPC was not given to the State of Andhra Pradesh who is the defendant in the case. The allegations in the plaint are that one Ahmad Abdul Hakim was awarded an Indian Scholarship for studying medicine in Bombay for a period of 31/2 years and that he entered into an agreement with the then Government of Hyderabad on 22-9-1925. The plaintiff stood surety for him and executed a surety bond dated 23-9-1955 in favour of then Government of Hyderabad. The scholarship holder completed his course of study in Bombay and returned to Hyderabad; but the State Government would not entertain him in any suitable job, and, therefore, the scholarship-holder had to remove himself to the United Kingdom for further studies. On that, the Government of Hyderabad declared the scholarship-holder

as a defaulter" and called upon the plaintiff to make good The sum of Rs. 5,250/- alleged to be due to the Government from the scholarship-holder. The Collector, by his order dated 22-10-1950, directed the plaintiff to pay to the Government a sum of Rs. 5,250/- within two months from the date thereof and that in default of compliance with his order for payment as aforesaid, coercive process would be employed for the recovery of that amount. Therefore, the present suit was filed as provided by Section 6 of the Government Demands Act (No. IV of 1308 F). Several grounds are urged in the plaint claiming that the order of the Collector demanding the plaintiff for payment (sic) of the money due to the Government cannot be sustained. But the suit was dismissed on a preliminary ground that notice u/s 80 CPC was not given.

3. Therefore, the question that arises for determination is whether the suit has to fail for the reason that the plaintiff has not given notice as required by Section 80 Civil Procedure Code. Section 80 CPC 13 as follows:-

"No suit shall be 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, 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 a Railway, the General Manager of that railway;

(c) in the case of a suit against a 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."

The language of this section is very general and mandatory, in that, it states that no suit shall be, instituted against the Government until the expiration of two months next after the notice in writing prescribed therein had been served on the Government. This appears to apply to any suit that might be filed against the Government. On behalf of the learned Government Pleader, Mr. Sarma relied upon the decision of the Privy Council in AIR 1927 176 (Privy Council) wherein Their Lordships of the Privy Council pointed out that:

"The Act, albeit a procedure Code, must be read in accordance with the natural meaning of its words. Section So is express, explicit and mandatory, and it admits of no implications or exceptions."

This decision has been referred to by the Supreme Court in the recent decision reported in S.N. Dutt Vs. Union of India (UOI), . But Mr. Jalil Ahmed, the learned counsel for the appellant contended that this suit is a proceeding which is merely

a continuation of the proceeding before the Talukdar and is in the nature of the appeal and that, if that be so notice u/s 80 CPC is not necessary. He drew our attention to Order 21, Rule 63 Civil Procedure Code, which, according to him, is analogous to Section 6 of the Government Demands Act.

In S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others, , the question arose whether a suit should fail for the reason that notice u/s 49 (i) of the Madras Court of Wards Act was not given by the plaintiff therein before instituting a suit under Order 21, Rule 63, Civil Procedure Code. At p. 183 (of ILR Mad) : "(at p. 1207 of AIR), Phillips, J., after referring to Section 49 (1) of the Court of Wards Act, held that a suit under Order 21, Rule 63 CPC to set aside the order of the Court dismissing the claim petition must be deemed to be a continuation of those claim proceedings and that, therefore, no fresh notice required by Section 40 (i) of the Court of Wards Act is necessary. The learned judge referred to the observations of the Privy Council in Phulkumari v. Ghanshyam Misra ILR Cal 202. This decision was referred to and the same principle was applied by another Division Bench of the Madras High Court in Chittoori Venkataraju and Others Vs. Chekka Suryanarayana Receiver to the estate of the late Rao Bahadur Pydah Venkatachalapathi Garu, The question there was whether a claim suit filed under Order 31, Rule 63 was in the nature of an appeal against the order passed in the claim petition. In considering that question, the learned judges also referred to the decision of the Privy Council in ILR Cal 202. (PC) and held that a suit brought under Order 21, Rule 63 cannot be dissociated from the claim petition which gives rise to it and is in fact an action in the nature of an appeal from the order passed on the claim petition.

These two decisions were referred to by Somayya, J., in Muhammad Yusuf Sahib Vs. The Province of Madras, . The question that arose for decision in that case was whether notice u/s 80 CPC was necessary before instituting a suit under Order 21, Rule 63 CPC to set aside an order passed on a claim petition. The decision in S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others, was referred to by the learned judge, who pointed out that Section 49 (1) of the Court of Wards Act is quite similar to Section 80 C.P.C. and held, that on a parity of reasoning, a notice u/s 80 C.P.C. need not be given before a suit under Order 21, Rule 63 could be filed.

It is, therefore necessary to see whether this suit u/s 6 of the Government Demands Act is a continuation of the proceedings instituted by the Taluqdar under that Act. Section 2 specified the demands recoverable under the Act. Section 3 prescribes that the Taluqdar of the District in which a person resides or in which any sum is recoverable from such person shall prepare a memorandum in the form set forth in the 1st schedule specifying the reasons therefore and shall sign it and affix the office seal to it. Section 3 further states that such memorandum shall be deemed to be a decree by a Court against that person in favour of the Government and that the Taluqdar may recover the demand mentioned in the Memorandum in accordance with the procedure relating to the

execution of decrees and shall be deemed to be a Court for the purposes of the recovery proceeding and that all provisions relating to the proceedings in the passing of decrees shall apply to such proceeding. Section 4 prescribes that a copy of the memorandum shall be served on the defaulter and that within two months from the date of such service, it will be open to that person to make any objection, he thinks fit, to the memorandum and to the recovery of any amount from him.

If any such objection was raised before or after notice, the Taluqdar shall hear his objections, take such evidence as may be produced by such person and make necessary enquiry and pass an order for the memorandum to stand or to be modified or set aside and for the costs of the inquiry. This is prescribed by Section 5 of the Act which further states that the Taluqdar shall for the summoning of the witnesses and for making inquiry have all the powers which a Civil Court has in civil suits in respect of such matters. Then Section 6 is the Section under which the present suit is filed and is as follows: -

"If such person is aggrieved by such order, he may institute a suit against the Government in this Court of the District Judge for setting aside the order or for the refund of the sum realised in execution of the memorandum within one year from the date of the order or of the memorandum or of the realisation of the sum, as the case may be, if no order is passed within one year from the date of the objection. But if such District Judge is the Taluqdar himself, such suit shall be instituted in the Court of the Divisional Judge, and it may also be heard by the Assistant Divisional Judge. The Court may pass such order as it may seem proper and may, at any time before the execution of the memorandum or order, make an order for the stay of execution subject to the same conditions as would apply to an appellate Court in appeal regarding staying of execution of judgment under appeal."

The suit prescribed by this Section is one to set aside the order of the Taluqdar passed u/s 5 of the Act or for refund of the sum realised in execution of the memorandum. The period of limitation for such a suit is one year from the date of the order of memorandum or of the realisation of the sum as the case may be. The suit had to be filed in the Court of the District Judge; but if such District Judge himself was the Taluqdar whose order was sought to be set aside, such suit shall be instituted in the Court of the Divisional Judge and it may also be heard by the Assistant Divisional Judge. Section 6 further states that the Court may pass an order at any time staying the execution of the memorandum subject to the same conditions as would apply to an Appellate Court in appeal regarding staying of execution of judgment under appeal.

From these sections, it is quite clear that the Taluqdar, when preparing the memorandum or when hearing the objections or when making necessary enquiries u/s 5 of the Act, has to be deemed to be a Civil Court. There is a provision for the appointment of District Judges as Taluqdars functioning under the provisions of this Act. The District Judge, before whom the suit u/s 6 of the

Act is filed, is vested with all the powers of an appellate Court so that any order passed by the Taluqdar u/s 5 or any memorandum prepared by the Taluqdar u/s 3 are virtually under appeal in the suit before the District Judge or the Divisional Judge or the Assistant Divisional Judge, where the District Judge is a Taluqdar. In the face of these provisions, there cannot be any doubt that the suit filed u/s 6 of the Act is really a continuation of the proceeding initiated by the Taluqdar under the Act. If that be the real position and if the view taken in the decisions of the High Court of Madras above referred to are to be followed, then no notice u/s 80 CPC would be necessary before the present suit is filed under this Act.

4. But Mr. Sarma appearing for the learned Government Pleader very strongly relied upon the language of Section 80 CPC and submitted that it applies to all suits filed in a Civil Court whether as prescribed by any other Act or under the general law u/s 9 Civil Procedure Code. He urged that the view taken by the High Court of Madras in the cases above referred to is wrong and that they require reconsideration. In the alternative, he contended that even assuming that the principle laid down in those decisions is correct, they do not apply to the present case, because in the present case, the proceedings initiated by the Taluqdar are not by a Civil Court but by a revenue officer and that, therefore, the suit which is filed in the Civil Court cannot be held to be a continuation of the proceeding initiated by the Revenue Department of the Government.

In support of this argument, he relied upon the decision of Varadachariar, J., in *Doraisingham v. Muthayya Chettiar* AIR 1036 Mad 583. There the question arose u/s 49 of the Madras Court of Wards Act. That suit was filed under the Survey and Boundaries Act and it was filed without giving notice prescribed by Section 49 of Madras Court of Wards Act. The learned Judge no doubt distinguished the decision in *S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others*, . He held that a suit filed u/s 14 of the Survey and Boundaries Act stands on a different footing from a claim suit, at least for one reason, viz., whereas in a claim suit the prior proceedings will ordinarily be in a Civil Court, the survey proceedings cannot reasonably be regarded as proceedings in a Civil Court. Similar is the view taken by Happell, J., in *The Province of Madras Vs. Sri Sri Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole*, In that case also suits were filed u/s 14 of the Madras Survey and Boundaries Act without giving notice as required by Section 80 Civil Procedure Code. The learned judge held that the suits were not maintainable for want of notice u/s 80 Civil Procedure Code. He referred to the decision of Varadachariar, J., in AIR 1936 Mad 583 as well as the decision in *S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others*,

But as we have pointed out, the proceedings under the Government Demands Act are very similar to the proceedings in a Civil Court under Order 21 Rule 63 Civil Procedure Code. No distinction on principle could be made between the present case and the cases in *S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others*, ; *Chittoori Venkataraju and Others Vs. Chekka Suryanarayana*

Receiver to the estate of the late Rao Bahadur Pydah Venkatachalapathi Garu, and Muhammad Yusuf Sahib Vs. The Province of Madras, The principle laid down in S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others, and the other cases referred above is applicable on a parity of reasoning, having regard to the fact that the proceedings instituted by the Taluqdar and the enquiry made by him and the order passed by him u/s 5 are really in the nature of proceedings in a Civil Court. This principle was first laid down in the decision in ILR Mad 465 : (AIR 1928 MLJ 201) and it does not appear to have been challenged in any subsequent case. Therefore, we would follow it. Though prima facie off the language of Section 80 CPC it appears that that section applies to all suits without any exception, still in view of the principle laid down in the decisions referred to above, we hold that notice u/s 80 CPC is not necessary in the present case, as the suit in the present case is only a continuation of the proceedings initiated by the Taluqdar and is in the nature of an appeal against the memorandum issued by the Taluqdar or the order made by him.

5. The appeal is allowed find the judgment and decree of the lower Court are set aside and the suit is remanded to the lower Court for trial and disposal in accordance, with law. Costs will abide the result. A certificate for refund of the Court-fee paid on the memorandum of appeal shall be issued to the appellant.