

**(2010) 09 AHC CK 0582**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No"s. 102 and 133 of 2010

Mahendra Kumar and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

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**Date of Decision :** 30-09-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(2), 80, 80(1)

**Citation :** (2011) 2 ADJ 803 : (2011) 2 AWC 1430 : (2011) 8 RCR(Civil) 2763 : (2011) 112 RD 193

**Hon'ble Judges :** Krishna Murari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Krishna Murari, J.—These are two connected writ petitions based on same set of facts raising common question of law, hence, are being disposed of by this common judgment.

Heard Shri Manish Goyal, learned Counsel for the Petitioners and learned Standing Counsel.

2. The Petitioners claim to be licensee of shops situate within the judgship of Meerut, paying licence fee to the office of the District Judge, Meerut. The Petitioners further alleged that in the year 1996, Respondent Nos. 2 and 3, namely, the Incharge, Nazarat and the Central Nazir, Civil Court, Meerut decided to shift the shops in the premises of judgship on account of the extension of building and a decision was taken that till any permanent arrangement is made, the shopkeepers will be permitted to run the shop on the western side of the Meerut judgship, outside the premises. O/C, Nazarat submitted a proposal dated 29.1.1998 to the District Judge that the licencees accommodated in the temporary shops constructed on the main road connecting the civil Court and Collectorate compound has resulted in great congestion on the main road and, thus, it is desirable to cut down the number of shops drastically to improve the

traffic situation. It was further mentioned in the report that in the year 1989, when the shops were put to auction, the association of shopkeepers filed Writ Petition No. 6517 of 1989, which was finally disposed of on 15.2.1990 with the observation that Article 226 cannot be invoked in such a cases and the Petitioners should be relegated to the remedy of civil suit in a competent Civil Court. The report further mentions that if general auction of shops is not found to be feasible then the license of those shopkeepers, who have not paid their licence fee or are doing business in benami names, be cancelled.

What transpired after the decision of this Court dated 15.2.1990 and till 2009 is not clear from the record. However, the Respondents again made an advertisement for auction of shops for the year 2009-10 which was challenged by the Petitioners before this Court by means of Writ Petition No. 16024 of 2009.

3. On the information furnished by the learned Counsel appearing for the District Judge that out of 10 Petitioners, who had participated in the auction, 9 were successful being the highest bidder and 17 persons had transferred their rights in favour of other persons, who also participated in the auction and were highest bidder, were allotted shops, this Court dismissed the writ petition with the following observation.

We, however, record that there is no illegality in the process held for allotment of the shops, which may warrant any interference by this Court. The District Judge is entitled to settle the shops situate in the Civil Court premises by auction, which is a fair process. There is no infeasible right in favour of the Petitioners which may call for the auction notice being interfered with. If any of the Petitioners is still aggrieved, he is at liberty to institute a civil suit before the competent Court for the relief prayed.

With the aforesaid observations, writ petition is dismissed.

4. On 5.2.2010, the Respondents again issued an advertisement for auction of the shop for the year 2010-11. The Petitioners filed a civil suit before the Civil Judge (Senior Division) praying for a decree of mandatory injunction to direct the Respondents that they comply with their order of 1996 and provide permanent shop to the Plaintiffs and in case the Defendants failed to do so, the shops be constructed through Court amon on the expenses of the Defendants. Alongwith the suit, an application under Order XXXIX Rule 1 and 2 CPC claiming temporary injunction to restrain the Defendants from auction of shops, was also moved. A miscellaneous application u/s 80(2) CPC seeking to dispense with the notice mandatorily required u/s 80(1) CPC was also filed. Trial Court finding that in view of the relief claimed by the Petitioners in the suit, the matter was not so urgent so as to dispense with the notice required u/s 80(1) CPC dismissed the application. The Petitioners went up in revision which has also been dismissed.

5. It is contended by learned Counsel for the Petitioners that since auction was scheduled to be held on 6.3.2010, as such, the matter was extremely urgent and the Courts below have wrongly and illegally refused to dispense with the notice

on the ground that the matter was not urgent.

6. The sum and substance of the argument advanced on behalf of the Petitioners is that since there was extreme urgency for grant of temporary injunction, as such, even if there was no urgency in respect of relief prayed for in the plaint, the Courts below ought to have exercised powers conferred by Section 80(2) CPC and dispense with the requirement of giving notice u/s 80(1) Code of Civil Procedure

It may be relevant to quote the provisions of Section 80 at this stage.

80. Notice.--(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 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;

(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.

A perusal of Sub-section (2) of Section 80 CPC goes to show that grant of leave is left to the judicial discretion of the trial Court. The proviso to Sub-section (2) clearly states that Court after hearing the parties, if satisfied 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).

7. Admittedly, the temporary injunction being claimed by the Petitioners in the suit was in respect of auction being conducted by the Respondents. Clause (f) to proviso to Order XXXIX Rule 2 (2) CPC as applicable in State of U.P. provides that no temporary injunction can be granted to restrain any auction intended to be made or, the effect of any auction made, by the Government unless adequate security is furnished. The relevant part of proviso to sub Rule (2) of Rule 2 of Order 39 as applicable in State of U.P. reads as under.

Provided that no such injunction shall be granted-

(a)-----

(b)-----

(c)-----

(d)-----

(e)-----

(f) to restrain, any auction intended to be made or, the effect of any auction made, by the Government unless adequate security is furnished, or

(g)-----

(h)-----

Therefore, since the temporary injunction asked for was to restrain the holding of the auction, the same was not liable to be granted in view of clause (f) to proviso to Order XXXIX Rule 2(2) Code of Civil Procedure. Since the temporary injunction was not liable to be granted, there cannot be any urgency in the matter and the trial Court was perfectly within its competence in declining to dispense with the notice required u/s 80(1) Code of Civil Procedure.

8. In view of the above facts and discussions, since the temporary injunction

claimed by the Petitioners was not liable to be granted in view of clause (f) to proviso to Order XXXIX Rule 2(2) CPC as applicable in State of U.P. and there was no urgency in respect of main relief claimed in the plaint, the Courts below appear to have committed no illegality in refusing to dispense with the notice required u/s 80(1) CPC and the impugned orders do not suffer from any infirmity which may require any interference.

Both the writ petitions, accordingly, fail and stand dismissed.