
(2019) 01 OHC CK 0042

In the Orissa High Court

Case No : Civil Miscellaneous Petition No. 1570 Of 2018

Premalata Samal Alias Mahapatra And Others

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80(1)

Citation : AIR 2019 CC 862 : (2019) 127 CLT 420 : (2019) 2 ICC 521

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : S.S.K. Nayak, Samapika Mishra

Final Decision : Allowed

Judgement

A.K. Rath, J

1. This petition challenges the order dated 22.11.2017 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in C.S. No. 2413 of 2016,

whereby and whereunder, the learned trial court has returned the plaint to the plaintiffs-petitioners for non-compliance of notice under Section

80(1) CPC on the Collector, Khurda.

2. The dispute lies in a narrow compass. The facts need not be recounted in details. Suffice it to say that the plaintiffs-petitioners instituted the suit

for declaration of title. The plaintiffs issued notice under Section 80(1) CPC to the Chief Secretary of the State. The suit has been instituted against

the State of Odisha represented by its Chief Secretary. The learned trial court came to hold that notice will not fall within the ambit of notice

delivered to the officer himself who is being sued or at his office. Further the Collector, Khurda is a necessary party to the lis. Notice has not been

served on him. Held so, it returned the plaint.

3. Heard Mr. S.S.K. Nayak-2, learned Advocate for the petitioners and Ms. Samapika Mishra, learned A.S.C. for the opposite party.

4. Mr. Nayak-2, learned Advocate for the petitioners submits that the land has been leased out by the General Administration Department of the

Government. The property situates at Bhubaneswar. In view of the same, notice has been issued to the Chief Secretary of the State under Section

80(1) CPC. The learned trial court travelled beyond its jurisdiction in returning the plaint to the petitioners. He further submits that the Collector is

neither necessary nor proper party to the lis.

5. Ms. Mishra, learned A.S.C. submits that issuance of notice on the Secretary to the State or the Collector of the district is a sine qua non for

institution of the suit against the State. In the instant case, no notice was issued either to the Secretary of the State or the Collector, Khurda. Notice

issued to the Chief Secretary to the Government cannot be termed as sufficient compliance of Sec.80 CPC. She further submits that in the case of

a suit against the Government of the State of Jammu and Kashmir, the Code provides issuance of notice to the Chief Secretary to that Government

or any other officer authorized by that Government in this behalf. The word Chief Secretary is not there in clause (c). Secretary to the Government

means Secretary of the concerned department of the State.

6. Before adverting into the contentions raised by the counsel for both parties, it will be necessary to set out clause (c) of sub-section (1) of

Section 80 CPC, which is hub of the issue, is quoted hereunder:

â??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-

xxxxxxxxx

(c) In the case of suit against (any other State Government), a Secretary to that Government or the Collector of the district;â??

7. Sec.80(1) CPC contains a saving clause. On a bare perusal of the aforesaid provision, it is crystal clear that save as otherwise provided in sub.

sec(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 the Secretary to the Government or the Collector of the district. Sub-sec.(2) of Sec.80 CPC deals with waiver of notice.

(Emphasis laid)

8. The apex Court in the case of the State of Madras v. C.P. Agencies, AIR 1960 SC 1309 held that Sec.80 CPC is express, explicit and

mandatory and admits of no implications or exceptions. Sec.80 peremptorily requires that no suit shall be filed against the Government or a public

officer in respect of anything done in his official capacity until after the expiry of two months from the service of a notice in the manner therein

prescribed stating the cause of action, the name, description and place of residence of the plaintiff and the reliefs which he claims. The object of

Sec.80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so

that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to

enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed

to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for.

9. In Raghunath Das v. Union of India, AIR 1969 SC 674, the apex Court held that the purpose of law is advancement of justice. The

provisions in Sec.80 CPC are not intended to be used as boobytraps against ignorant and illiterate persons.

10. In Ghulam Rasool v. State of Jammu and Kashmir, (1983) 4 SCC 623 : AIR 1983 SC 1188, the plaintiffs instituted the suit for permanent

injunction against the State of Jammu and Kashmir in respect of two items of property-6 kanals appertaining to survey No. 192 on the basis of

possession from 1946 and 2.10 kanals in survey No. 626 on the basis of acquisition of title by purchase. The plaintiffs contended that they had

raised plantations over both the lands. When the Block Development Officer started interfering with their possession, the plaintiffs gave notice

under Sec.80 CPC to the State and sued for injunction. The trial court as also the appellate court came to find that plaintiffs had title over 2.10

kanals in survey no. 626. They also found that plaintiffs were in possession as claimed from 1946 in respect of 6 kanals appertaining to survey no.

192 and had raised plantations thereon. On these findings, the learned trial court decreed the suit and granted injunction against the State from

interfering with the plaintiffs' possession and enjoyment of the property and that decree was affirmed in appeal. In Second Appeal, the High Court

came to find that notice under Sec.80 CPC had not been given to the Block Development Officer and, therefore even if plaintiffs were owner of

2.10 kanals of land appertaining to survey no. 626, they could not obtain a decree against the public officer. While affirming the decree of the

appellate court in regard to this item of property against the State, the High Court reversed the decree and dismissed the suit as against the Block

Development Officer for want of notice. Thereafter the matter travelled to the apex Court. The apex Court held that the suit as framed was one

against the State and the Block Development Officer had been impleaded as the State's agency of interference with the plaintiffs' possession. Held

so, the apex Court reversed the decision of the High Court and decreed the suit in respect of the said item of the property.

11. The use of the words 'a Secretary' in the section is an indicator of the intention of the legislature. The word Secretary is prefixed by an

indefinite article. The apex Court in the case of Shri Ishar Alloy Steels Ltd .v. Jayaswals Neco Ltd., (2001) 3 SCC 609 had the occasion to

interpret the words 'a bank' and 'the bank' appearing in Sec.138 of the Negotiable Instruments Act. The apex Court held that

'The' is the word used before nouns, with a specifying of particularising effect as opposed to the indefinite or generalising force of 'a' or

'an'. It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. 'The' is always mentioned

to denote particular thing or a person. A person, who intends to institute the suit against the State, may issue notice either on any of the Secretary

of the State or the Collector. The words 'The Secretary' appearing in Sec.80(1)(c) CPC takes within its sweep 'Secretary' as well.

Thus, when a notice is issued to the Chief Secretary of the State, the same is substantial compliance of Sec.80(1) CPC.

12. Admittedly, notice has been issued to the Chief Secretary of the State. The suit has been instituted against the State of Odisha. Even if the

Collector is a necessary party and not arrayed as a party, the same is not per se a ground to return the plaint.

13. Way back in 1954, the Chief Justice Chagla in *Firm Kaluram Sitaram v. The Dominion of India*, AIR 1954 BOMBAY 50

(Vol.41.C.N.8) proclaimed:

“Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is

satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as

an honest person.”

14. The same view was echoed in the case of *Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (dead) by*

L.Rs., (1979) 4 SCC 176 : AIR 1979 SC 1144. The apex Court held:

“It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating

legitimate claims of citizens and do what is fair and just to the citizens.”

15. In the wake of aforesaid, the impugned order is quashed. The petition is allowed. The learned trial court shall accept the plaint and proceed

with the matter.