
(2019) 01 OHC CK 0058
In the Orissa High Court
Case No : CMP No.1570 Of 2018

Premalata Samal @ Mahapatra And Others	APPELLANT
Vs	
State Of Odisha	RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 80(1)

Citation : (2019) 01 OHC CK 0058

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

Bench : Single Bench

Advocate : S.S.K.Nayak 2, Samapika Mishra

Final Decision : Allowed

Judgement

DR.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:

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-

xxx xxx xxx

(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 and another, 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 and another, 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 and another v. State of Jammu and Kashmir and another, 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

plaintiffsâ?? 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 Stateâ??s agency of interference with the plaintiffsâ?? 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 â??a Secretaryâ? 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 â??a bankâ? and â??the bankâ? 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 â??The

Secretaryâ? appearing in Sec.80 (1)(c) CPC takes within its sweep â??Secretaryâ? 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.

