

(1966) 07 MAD CK 0001
In the Madras High Court

The State of Madras

APPELLANT

Vs

N.C. Ramalinga Reddiar and Others

RESPONDENT

Date of Decision : 26-07-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1967) ILR (Mad) 1 : (1966) 79 LW 654 : (1967) 2 MLJ 131

Hon'ble Judges : M. Anantanarayanan, C.J

Bench : Division Bench

Judgement

M. Anantanarayanan, C.J.—The issue involved in this reference by Veeraswami, J., can be simply formulated as the question whether a

notice u/s 80 of the CPC is required for a suit against the State Government, or an authority of that Government, for a mandatory injunction. The

learned Judge (Veeraswami, J.) has briefly referred to the apparent conflict of the case-law on this point, and expressed his own view that he was

unable to agree with the interpretation which Curgenvin, J., placed on the words of Section 80, CPC in Krishnaswami Sastri v. Syed Ahmed

(1931) 34 L.W. 993. In our view, the issue is practically concluded by a decision of the Judicial Committee, to which we shall later refer

approbated and explained in a recent decision of the Supreme Court in Sawai Singhai Nirmal Chand Vs. Union of India, , apparently this decision

was not before Veeraswami, J., at the time that he made this reference.

2. A very brief reference to the facts of the case may be useful, as we are now disposing of the case on the preliminary ground, in addition to

dealing with the reference on the point of law by the learned Judge. The facts here are that a suit was filed against the State of Madras represented

by the District Collector of Tiruchirappalli, by two plaintiffs, N.C. Ramalinga Reddiar and Bangaru Ammal, wife of the first plaintiff. The suit attempted to obtain a permanent injunction restraining the State of Madras, from interfering with the possession and enjoyment of the suit property by the plaintiffs, or with the wall erected thereon, on the ground that this was ancestral private property. According to the State, the property was situate in natham poramboke S.F. No. 419/5, the plaintiffs have no title to this, nor possession of it, apart from an encroachment by the first plaintiff, and the encroachment was liable to be removed by the issue of a B memorandum under the Revenue Rules. It is in this form that the injunction was prayed for and even in the plaint, the ground is taken as this is a suit simpliciter for an injunction, no notice to the Government is necessary u/s 80, Civil Procedure Code.

3. As is well known, Section 80, Civil Procedure Code, lays it down that

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,...

without the expiration of two months next after notice in writing. At the outset itself, we may devote attention to a brief verbal analysis of the

section. The section falls into two parts, viz., (i) suit against the Government or (ii) suit against a public officer in respect of any act purporting to be

done by such officer in his official capacity. Obviously, as far as suits against Government simpliciter are concerned, notice is an essential

prerequisite, and the argument is not available that notice is not required in respect of suits for such acts as require restraint by an injunction, which

will be acts in futuro and not past acts to which the section appears to refer. This distinction has been clearly brought out in a passage in the

judgment of their Lordships of the Supreme Court in *Sawai Singhai Nirmal Chand Vs. Union of India*, , which is the latest authority on the subject.

Their Lordships observed as follows at page 1070

While dealing With the applicability of Section 80, the question to ask is, is it a suit against the Government or not? If it is, then Section 80 by the

very force of its words must apply.

4. But, even apart from the present suit, which purports to be a suit against the Government simpliciter, and, therefore, which essentially requires

notice u/s 80, Civil Procedure Code, the question might arise whether a suit against a public officer, in respect of an act purporting to be done by

him in his official capacity, which is a suit for an injunction alone, does or does not require notice. It is here that there would appear to be some

conflict, as between the earlier and later phases of the case-law, as Veeraswami, J., has pointed out. We shall devote attention to a brief

conspectus of the case-law, and then refer to two authorities which, in our view, leave the matter in no further doubt.

5. In *K.R. Muthu A.R. Arunachalam Chetty Vs. David, Esq., The Official Receiver and Others*, *Ramesam and Reilly, JJ.*, had occasion to

consider this very question. The Bench generally held that the words in respect of any act purporting to be done in Section 80, Civil Procedure

Code, included only a past act and have no reference to a future or contemplated act. In that interpretation, incomplete acts or threatened acts are

not within the ambit of these words, and hence, a suit for a bare Injunction seeking to restrain a public officer from doing something which he

threatens to do, will not require notice u/s 80, Civil Procedure Code. It is this same view which was reiterated by Curgenvén, J., in the decision

referred to by the learned Judge, viz, *Krishnaswami Sastri v. Syed Ahmed* (1931) 34 L.W. 993. The learned Judge (Curgenvén, J.) felt that this

interpretation was supported by a decision of the Bombay High Court in *Kashi Bai v. Chunilal* AIR 1930 Bom. 11. He sought to distinguish the

observations of the Privy Council in *Bhagchand Dagadusa v. Secretary of State for India* 1927 53 M.L.J. 81 : L.R. 54 IndAp 338 : (1927)

I.L.R.51 Bom. 725 (P.C.), on the ground that he did not understand the Judicial Committee to lay down anything more than that Section 80, CPC

would apply to all kinds of suits, including a suit for an injunction; if the suit for an injunction was based on past acts, then the notice would be

essential, according to the learned Judge. But, if it was not based on any past act, but merely referred to an action contemplated or threatened, the

learned Judge thought that *K.R. Muthu A.R. Arunachalam Chetty Vs. David, Esq., The Official Receiver and Others*, that we have already

referred to, laid down the true position in law. Notice was not necessary in this contingency.

6. This dichotomy would not appear to be sustainable on a fair interpretation of the section, and it is opposed both to the judgment of the Judicial

Committee, and the latest judgment of the Supreme Court. In the judgment of the Judicial Committee, viz., *Bhagchand Dagadusa v. Secretary of*

State for India 53 M.L.J. 81 : 1927 L.R. 54 IndAp 338 : (1927) I.L.R.51 Bom. 725 (P.C.), Viscount Sumner explicitly stated at page 747 that

Section 80 was express and mandatory and admitted of no implications or exceptions. It imposed a statutory and unqualified obligation upon the

Court. Even a suit in which inter alia an injunction was prayed for, was still a suit, the words of the judgment that as follow, in our view, are of great

significance:

...to read any qualification into it is an encroachment on the function of legislation.

After this very clear and strong language, it is difficult to sustain any interpretation that the Judicial Committee thought that a suit which related to

future action alone, would be excepted. Again, at page 748 Viscount Sumner observed,

...though the act to be restrained is something apprehended in the future, the act alone "in respect of Which" the suit lies, if at all, is the order

already completed and issued.

7. A very brief reference will be sufficient, as regards the latest decision of the Supreme Court in *Sawai Singhai Nirmal Chand Vs. Union of India*, ,

for it is an unqualified approbation of the principle and dicta of the Privy Council decision. The case before their Lordships was a curious one. In

this case Counsel for the State contended, or seems to have contended that the suit did not require notice, because, on the particular facts, it was

advantageous for the State to raise such a plea. But this apart, the dicta of Viscount Sumner are approbated, and the Supreme Court held that the

observations applied with equal force to the proceeding before them which was under Order 21, Rule 63, Civil Procedure Code. Apart from

everything else, we are of the view that the point of view expressed by the Privy Council and approbated in the decision of the Supreme Court,

can be supported even upon a fair and verbal interpretation of the terms of Section 80, CPC with regard to the part of section which applies to the

acts of public authority. This matter has received elaborate treatment in the Full Bench decision of the Lahore High Court in *Shingara Singh v. O''*

Callaghan I.L.R.(1946) Lah. 22 , in which the entire prior case-law is discussed,

and the judgment of the Bench of Ramesam and Reilly, JJ., in

K.R. Muthu A.R. Arunachalam Chetty Vs. David, Esq., The Official Receiver and Others, , has received detailed analysis and attention. We are in

agreement with the view of the Full Bench that, as the section is worded, the words an act purporting to be done would normally be regarded as

used in the present indefinite tense or form and that this would be grammatically wider than the phrase purporting to have been done. But, even

apart from grammatical construction, we think that the logic is clear which would bring all such suits within the ambit of Section 80, Civil Procedure

Code.

8. For we are unable to conceive of a suit even for an injunction simpliciter against any public officer, which does not have reference to some

action in the past, upon which that authority has based it, may be a claim of right, or a notice, or a threat to do something, within what that authority

regards as the scope of its power. After all, there cannot be a suit for an injunction based on a future apprehension, pure and simple, and

suspended in the air, so to speak, without a foundation of something that had already occurred or had already been claimed, asserted or denied.

Once this is made evident, it will be clear that every suit, including a suit for injunction will have some reference to a past state of right, claim or

denial, as between the public authority and the concerned party and hence will come within the ambit of the phraseology of Section 80, Civil

Procedure Code. In the present case, the matter is not in doubt in any sense, since the suit is against the Government and; even apart from that, it is

with regard to a right already claimed by the concerned authority, viz., that the property is Government property, and a threat already advanced to

evict the respondents from the property on the ground that he is liable to such eviction. The reference will have to be answered accordingly, and

the revision proceeding will have to be allowed.

9. Finally and before taking leave of the reference, we desire to observe that this is a case in which the affected party (respondents) claims that the

property is his private property, and expresses his intention to file a declaratory suit based on title, also asking for a permanent injunction. In that

context, great and irreparable harm might be done, if the Executive proceed to demolish the wall in question, taking advantage of the fact that the

Executive cannot be immediately restrained by means of an interim injunction because of the notice u/s 80, CPC which is essential. This

consideration, we find, has been actually referred to in one of the judgments, in the interpretation of Section 80, Civil Procedure Code. It may be

irrelevant for the task of interpretation, but it is certainly relevant for what is to be the proper action on the part of the authority when threatened

with such a suit. In our opinion, when there is the clear undertaking to file such a suit within the time stipulated the Executive ought to stay its hands

in respect of any irreparable act, which may finally give rise to a heavy claim in damages or compensation if the suit succeeds. With these

observations the revision is allowed.

10. Parties to bear their own costs.