

**(2000) 10 GUJ CK 0068**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 6213 and 6214 of 1986

Union of India and Another

APPELLANT

Vs

Natwerlal M. Badiani

RESPONDENT

**Date of Decision :** 20-10-2000

**Acts Referred:**

Civil Procedure Code Amendment Act, 1976 — Section 80  
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, 151, 80, 80(1), 80(2)  
Constitution of India, 1950 — Article 227  
Gujarat Panchayats (Amendment) Act, 1993 — Section 270(2)  
Income Tax Act, 1961 — Section 132, 132(3), 132(5), 293  
Income Tax Rules, 1962 — Rule 112(1)  
Representation of the People Act, 1951 — Section 9A

**Citation :** (2001) 2 GLR 1378 : (2001) 250 ITR 641 : (2001) 3 RCR(Civil) 513 : (2001) 2 RCR(Rent) 39

**Hon'ble Judges :** S.K. Keshote, J;M.R. Calla, J;D.C. Srivastava, J

**Bench :** Full Bench

**Advocate :** Mihir Thakore, for R.P. Bhatt, for the Appellant; N.K. Majmudar, for the Respondent

## **Judgement**

M.R. Calla, J.—Special Civil Application No. 6213 of 1986 was filed on 28-1-1986 challenging the proceedings in the Civil Suit No. 1196 of 1986 and the Misc. Application No. 234 of 1986 filed therein in the Court of Civil Judge (S.D.), Jamnagar including an ex parte injunction order dated 25-11-1986 passed in the aforesaid proceedings. In Special Civil Application No. 6214 of 1986 while challenging the proceedings in Misc. Application No. 236 of 1986 (in Civil Suit No. 1197 of 1986) in the Court of Civil Judge (S.D.), Jamnagar including an ex parte injunction order dated 25-11-1986 passed in these proceedings a further declaration was sought that Civil proceedings cannot be instituted in any civil Court in respect of search and seizure proceedings u/s 132 of the Income Tax Act, 1961 and the jurisdiction of the civil Court is barred; a further declaration was sought that the civil Court is not even otherwise competent to entertain any such suit and grant any relief in respect of any proceedings under the Income

Tax Act, 1961, coupled with the prayer that the proceedings in Misc. Application No. 236 of 1986 in the Court of Civil Judge (S.D.), Jamnagar including the order dated 25-11-1986 passed therein may be set aside. On 2-12-1986 Rule was issued and while issuing Rule further proceedings in the respective pending suits were stayed.

2. Briefly stated the facts giving rise to the Special Civil Application No. 6213 of 1986 are that :-

(i) A warrant of authorisation u/s 132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules, 1962 was issued by the Director of Income Tax, Ahmedabad on 19-11-1986 authorising Shri K. M. Varma and others to enter into the premises of the respondent, namely, Natwerlal M. Badiani, Advocate, Jamnagar and carrying on a search. Two separate warrants of authorisation were issued; one for the search of the office premises and another in respect of residential premises.

(ii) Concerned Officers approached the premises mentioned in the warrants of authorisation on 25-11-1986 at 10.00 A.M. The respondent was found at his office premises and the respondent challenged the authorisation and entered into an argument with the concerned Officers to prevent them from carrying out the search. The search party contacted Deputy Director of Inspection (Investigation), who was camping at Jamnagar. The Deputy Director of Inspection (Investigation) personally went to the premises where the respondent was present, but the respondent prevented the Officers from discharging their duties until 12.50 P.M. (Noon) when the order in question passed by the civil Judge (S.D.), Jamnagar was produced. Simultaneously, another raiding party, which went to the residential premises, was also prevented by the women of the respondent's family from carrying out its duties until 12.50 P.M. when they were informed that the Court had passed an order restraining the Income Tax Officers from entering into the premises and carrying out a search.

(iii) The search proceedings were stopped and the raiding party withdrew from both the premises.

3. With regard to the facts relating to Special Civil Application No. 6214 of 1986, it may be stated that a warrant of authorisation under Sec.132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules, 1962 was issued by Deputy Director of Inspection, Ahmedabad on 25-11-1986 authorising Shri K. M. Varma and others to enter into the premises of Shri Bhikhabhai Damodar Barai at Jamnagar and carry out necessary search and seizure proceedings. In pursuance of such authorisation, concerned Officers approached the premises mentioned in authorisation warrants on 25-11-1986 in the morning at 10.00 A.M. The respondent-Manjulaben (a relative of Shri Bhikhabhai) was found at the premises, she and other persons found at this premises were non co-operative. However, the search proceedings were started and some cash, jewellery, ornaments, etc. were found. During the course of search the summons was

received at 7.50 P.M. by Shri K. M. Varma, A.D.I.(Inv.) on 25-11-1986 and in view of the service of Court's order dated 25-11-1986 passed by Civil Judge (S.D.), Jamnagar search proceedings were concluded and the raiding party withdrew from the premises, nothing was seized but the valuables found were sealed there itself and prohibitory order u/s 132(3) was issued.

4. The proceedings in the respective Civil Suits Nos. 1196 of 1986 and 1197 of 1986 and in the Misc. Applications Nos. 234 of 1986 and 236 of 1986 filed therein respectively and the ex parte interim orders dated 25-11-1986 passed therein in both the matters are under challenge in these two petitions as above.

5. In Special Civil Application No. 6213 of 1986 a Caveat dated 26-11-1986 had been entered by Natwerlal M. Badiani and after the issue of the Rule, an affidavit-in-reply dated 10-12-1986 had been filed to which an affidavit-in-rejoinder dated 19-12-1986 was filed.

6. In Special Civil Application No. 6214 of 1986 an affidavit-in-reply dated 10-12-1986 was filed to which an affidavit-in-rejoinder dated 19-12-1986 was filed.

7. When these two Special Civil Applications came up before the Division Bench for hearing on 21-2-1994 a question was raised that in view of the provisions of sub-section (2) of Section 80 of the CPC no relief interim or otherwise could have been granted by the learned Civil Judge without giving the petitioners a reasonable opportunity of showing cause. For the purpose of interpretation of provisions of Section 80, reliance was placed on the decision of the Privy Council in the case of Bhagchand Dagdusa Gujarathi v. Secretary of State for India, reported in AIR 1927 Privy Council 176 and in the case of Ghanshyam Dass v. Dominion of India, reported in AIR 1984 SC 1004.

8. Whereas there was divergence of opinion between the Judges in the Division Bench, the Court therefore framed the following question to be referred to a Larger Bench :-

"Question : In suits to which the provisions of Section 80 of CPC are applicable, can the Court grant ex parte interim or ad interim relief without giving reasonable opportunity of showing cause to the Government or a Public Officer, as the case may be?"

The Division Bench further opined that if the aforesaid question is replied in the negative, the entire petition may stand disposed of. Moreover, while deciding the aforesaid question, facts of each case will have to be examined, and therefore, it will become necessary to examine other related aspects. Accordingly, it was thought proper to refer the entire petitions to Larger Bench and the Office was directed to place the matters before the Hon"ble Chief Justice. This is how these petitions have come up before us as ordered by Hon"ble Chief Justice on 24-4-2000.

9. In both these matters, the facts, which have not been denied and which are

rather undeniable are as under :-

(i) That both the Suits were filed in the year 1986 without giving any notice u/s 80 C.P.C.

(ii) That in both the cases ex parte injunction orders were passed by the learned Civil Judge (S.D.), Jamnagar without issuing any notice or opportunity to the original defendants i.e. Union of India and D.D.I. (Investigation) i.e. the Public Officer in the Income Tax Department of the Government of India.

In view of this factual position, we have to examine as to whether the Suit to which the provisions of Section 80 of the C.P.C. are applicable, could the Court grant ex parte interim order or ad interim relief without giving reasonable opportunity of showing cause to the Government or a Public Officer.

10. If we trace to the history of Section 80 of the C.P.C., Section 80 as it stood before its adaptation in 1937 by the Government of India Adaptation of Indian Laws Order 1937 was as under :-

"80. No suit shall be instituted against the Secretary of State for India in Council, 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, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local 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."

By the Civil Procedure (Amending) Act, 1963, (1) the words "including the Government of the State of Jammu and Kashmir", (2) Clause (bb) were inserted and (3) in clause (c) the words "any other" were substituted for "a". By the Amendment Act, 1976, Section 80 C.P.C. was re-structured and the original Section was renumbered as sub-section (1) and two new sub-sees. (2) and (3) were inserted and in consequence the words "save as otherwise provided in sub-section (2)" in sub-section (1) were added and accordingly Section 80 of the C.P.C. reads as under :-

"80.(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 the 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 has 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."

11. From the very language of the Section, it is clear that the provisions of Section 80 are mandatory and the giving of a notice u/s 80 C.P.C. for institution of a suit against the Government or the Public Officer or in respect of any act purporting to be done by such Public Officer in his official capacity is a condition precedent or pre-requisite u/s 80(1). However, u/s 80(2) for obtaining an urgent or immediate relief against the Government or any Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity a Suit may be instituted with the leave of the Court without serving any notice required by sub-section (1), yet the requirement is that 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. The provisions, as aforesaid, were in force in the year 1986 when the present Suits were filed and the orders granting ex parte injunction were passed.

12. While making reference vide its order dated 21-2-1994 the Division Bench has referred to the decision of the Privy Council in the case of Bhagchand Dagdusa Gujarathi v. Secretary of State for India (supra). In the case before the Privy Council, it was a common ground that the Suit was the one to which Section 80 of the C.P.C. applied. But in the plaint it was averred that, "as the suit is for an injunction and as the defendants are about to recover the amount demanded in the notices soon, the Suit is filed before the completion of the period of two months". Thus, it was a case in which notice u/s 80 C.P.C. had been given but the Suit was instituted before the expiration of the period of two months. The Privy Council noticed that for many years there had been a marked difference of opinion between High Court of Bombay on the one hand and all other High Courts in India; on the other, as to the true application of Section 80 of C.P.C. (Act 5) of 1908 and Section 424 of the Code (Act 10) of 1877, which it superseded in the case of suits against officials for acts purporting to be done in discharge of their duties, when part or the whole of the relief claimed is a perpetual injunction. The Privy Council also noticed that after some differences of opinion among their subordinate Courts, the High Courts of Calcutta, Madras and Allahabad had agreed in deciding that these Sections are to be strictly complied with and are applicable to all forms of action and all kinds of relief. Certain cases were also referred in which the Suits were to restrain by injunction the commission of some official act prejudicial to the plaintiff, wherein it was held that if the immediate result of the Act would be to inflict irremediable harm, Section 80 does not compel the plaintiff to wait for two months before bringing his suit, though, if nothing is to be apprehended beyond what payment of damages would compensate, the rule is otherwise and the Section applies. After considering various cases and the discussion on the point at the end of page 184 in column 2 and column 1 at page 185 the Privy Council held as under :-

"The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which inter alia an injunction is prayed is still "a suit" within the words of the Section, and to read any qualification into it, is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonable to suppose that the Section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court."

13. The other case, which has been referred to by the Division Bench in the order

dated 21-2-1994 is *Ghanshyam Dass v. Dominion of India* (supra). The Supreme Court in this case was considering Appeal on certificate brought from the judgment and decree of the Allahabad High Court dated February 26, 1965 reversing the judgment and decree of the Civil Judge, Agra dated August 25, 1952 and dismissing the plaintiffs suit for recovery of Rs. 26,000/- raising a question of some importance u/s 80 of C.P.C., 1908. The plaintiffs father was a contractor, who had supplied charcoal to the Military. He claimed additional amount in terms of escalation clause in the Agreement and issued notice u/s 80 of the C.P.C. to the Government but the claim was denied. He died before the institution of the Suit and his sons then filed the Suit without issuing another fresh notice u/s 80 C.P.C. The trial Court had held that no further notice u/s 80 was necessary and the notice issued by the plaintiffs father enured to the benefits of the plaintiffs. This decision was reversed by the High Court. The Supreme Court held that no fresh notice was necessary and the notice already served enured to their benefits. In this decision, the Supreme Court has observed that the Privy Council and the Supreme Court have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the suit. The Supreme Court has adopted the rule of substantial compliance in dealing with the requirement that there must be identity between the cause of action and the reliefs claimed in the notice as well as in the plaint. It has been held that notice under this Section should be held to be sufficient if it substantially fulfils its object of informing the parties concerned of the nature of the suit to be filed. On this principle, it has been held that though the terms of the Section have to be strictly complied with, that does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation. The decision of the Privy Council in the case of *Bhagchand v. Secretary of State* (supra) has been considered in para 5 and in Para 22 of this Judgment, after noticing the amendments made in Section 80 of the C.P.C. by the amending Act of 1976, which came into force from 1-2-1977 that such a change has a Legislative acceptance of the rule of substantial compliance laid down by the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , and *Raghunath Das Vs. Union of India (UOI) and Another*, , it has been observed that as observed in *Dhian Singh Sobha Singh's* case (supra), one must construe Section 80 with some regard to common sense and to the object with which it appears to have been enacted. The decision in *S.N. Dutt Vs. Union of India (UOI)*, , was not found to be in accordance with the view expressed in this Judgment, and was therefore, overruled. In para 23 of the judgment the Supreme Court has further observed as under :-

"It has frequently come to our notice that the strict construction placed by the Privy Council in AIR 1927 176 (Privy Council) , which was repeatedly reiterated in subsequent cases, has led to a peculiar practice in some Courts. Where urgent

relief is necessary, the practice adopted is to file a Suit without notice u/s 80 and obtain interim relief, and thereafter, to serve a notice, withdraw the Suit and institute a second Suit after expiry of the period of the notice. We have to express our strong condemnation of this highly objectionable practice. We expect that the High Courts will take necessary steps to put a stop to such practice."

14. Mr. Mihir Thakore has submitted that apart from the provisions of Section 80 C.P.C. even under Order 39, Rule 3 of the C.P.C., it is necessary to give notice of the Application to the opposite party before granting any injunction. Exception has been made only when it appears to the Court that the object of granting injunction would be defeated by the delay. However, we find that this exception, as has been made in Order 39, Rule 3 in the First Schedule of the Code cannot undo the effect of the special provisions made u/s 80 of the C.P.C. i.e. Part IV "Suits in particular cases, Suits by or against the Government or Public Officers in their official capacity", and therefore, even the exception, as may be made in Suits other than the Suits by or against the Government or Public Officers in their official capacity, cannot be made available in cases where Section 80 C.P.C. is applicable and it admits of no controversy that in cases of the Suits where Section 80 is applicable, even if the suit is instituted with the leave of the Court without notice u/s 80(1) of C.P.C., the obligation of giving notice to the Government or Public Officers, as the case may be, and a reasonable opportunity of showing cause in respect of the relief prayed for in the Suit before granting any relief, interim or otherwise, cannot be done away and the notice or opportunity has to be given to the other side before granting any sort of relief, interim or otherwise, in cases of Suits where Section 80 C.P.C. is applicable.

15. In the case of N.V. Ashar Vs. State of Gujarat and Others, , a decision rendered by single Bench of this Court, it was held that the only consideration at the time of granting leave without serving statutory notice u/s 80(1) of C.P.C. is whether the suit for obtaining urgent and immediate relief against the Government. It is the urgency or immediate nature of the relief which would be relevant for deciding whether leave should be granted or not and not whether the plaintiff has good case for obtaining such immediate and urgent relief by way of interim order. Merely because the interim relief is refused on merits, it cannot be said that there was no urgent or immediate need for interim relief in the suit. When the leave is granted, there is no question of the Court reviewing the grant of leave or returning the plaint and the Court having once satisfied about the urgency, the requirement of statutory notice fades into total insignificance and the Suit has to be tried as any other Suit and merely because the interim relief is refused, the leave granted and the suit instituted will not become incompetent. However, we find that in the facts of the case before us, no such leave was granted by the Court and without granting the leave ex parte ad interim injunction order was granted and that too without giving any notice or affording any opportunity to the other side. According to us, this case has no relevance for the purpose of the consideration of the question, as has been referred to us, and we also find that the view taken by the learned single Judge in this case does not

appear to be the correct view in face of the proviso to Section 80(2) of the C.P.C. Even if the leave is granted for institution of the Suit without notice u/s 80(1) of the C.P.C. on the question of urgent and immediate relief, if the Court is satisfied after hearing the parties, which would include both the sides, that no urgent or immediate relief may be granted in the Suit, it has to return the plaint for presentation to it after complying with the requirements of sub-section (1). The question of returning the plaint arises only when the Court is satisfied after hearing both the sides that there is no need for any urgent or immediate relief and this stage cannot be reached unless the leave is granted for institution of the Suit, and therefore, the mere grant of leave for institution of Suit for the purpose of considering the question as to whether the urgent or immediate relief is needed or not, does not become a *fait accompli* for the purpose of dispensing with the requirement of notice u/s 80(1) of the C.P.C. and it is very clear from the plain reading of the language of the proviso to Section 80(2) of C.P.C. that after Hearing both the sides if the Court is satisfied that no urgent or immediate relief need be granted in the Suit, the plaint has to be returned for presentation after complying with the requirements of sub-section (1) of Section 80 C.P.C. The words used in the proviso are that "the Court shall" and thus the proviso is mandatory in nature, and therefore, in our opinion, even if the Court grants leave on being satisfied about the urgency, but after hearing both the sides, it comes to the conclusion that no urgent or immediate relief is required to be granted, it has to return the plaint and it is not open for the Court to try the suit as any other Suit once the interim relief is refused and the leave granted automatically comes to an end, if the Court is satisfied that no urgent or immediate relief is needed. It will be pertinent to mention that at the time when the leave is granted to institute a Suit and the urgency is determined, the Court only hears the plaintiff and not the other side. But after the grant of leave, whether urgent and immediate relief is to be granted or not, is a question which is decided after hearing both the sides. The proviso also speaks of the satisfaction of the Court for not granting urgent and immediate relief after hearing both the sides, and therefore, only after the grant of the leave the stage is there for returning of the plaint and Court shall return the plaint if it is satisfied after hearing the parties that no urgent or immediate relief may be granted. On this aspect of the mater, the view in the case of *N. V. Ashar* (supra) is not found to be correct view in face of the proviso to Section 80(2) of C.P.C. and the same is hereby overruled.

16. In the case of *State of Tripura v. Sajal Kami Sengupta*, reported in AIR 1982 Gauh. 76, the Court considered the question of granting *ex pane* temporary injunction as an interim relief in a Suit against a Public Officer by invoking inherent powers u/s 151 of the C.P.C. The Court found that where there are provisions for dealing with certain matters in the Code, resort to the inherent powers of the Court overriding those provisions is prohibited. It was further held that in view of Section 80(2) of the C.P.C. if an urgent or immediate relief has to be given to the plaintiff in a suit against the Government or Public Officer, the

provisions of sub-section (1) of Section 80 C.P.C. can be dispensed with; but if after hearing both the parties the Court comes to the finding that no urgent or immediate relief need be granted in this suit, the plaint will be returned for compliance with the requirements of sub-section (1), and therefore, even in the matter of urgent or immediate relief, interim or otherwise, the Court cannot dispense with the requirement of giving an opportunity of showing cause in respect of the relief prayed for in the Suit to other party. It was held that the provision was mandatory and it cannot be bypassed inasmuch as the urgency/immediacy of the relief, interim or otherwise, are sufficiently dealt with under the provisions and thus, the Court had no reason to travel beyond these provisions and invoke the provisions of Section 151 C.P.C. in order to defeat the provisions and their purpose under sub-section (2) of Section 80 of C.P.C. We find ourselves to be in respectful agreement with the view taken by the High Court of Gauhati in this case.

17. In the case of State of Orissa and Another Vs. Ganeshjew Mahaprabu and Others, , it was held by the Court in no uncertain terms that while making a relaxation for entertaining a Suit for injunction without a notice u/s 80(1) C.P.C., Legislature has made it amply clear that no relief by interim order or otherwise can be granted in such a Suit without hearing the other side.

18. On consideration of the various cases, as aforesaid, and in face of the plain and clear language of Section 80(2) of the C.P.C. and for the reasons, as above, the conclusion is irresistible, and we have no hesitation in holding that in case of Suits, to which the provisions of Section 80 C.P.C. are applicable, even if the Suit is instituted with the leave of the Court, the Court cannot grant ex parte interim or ad interim relief without giving reasonable opportunity of showing cause to the Government or Public Officer, as the case may be, and the question, which has been referred by the Division Bench, is answered accordingly.

19. Mr. N. K. Majmudar appearing on behalf of the respondents while citing a decision of the single Bench of this Court in the case of Amtrax Appliances Ltd. and Another Vs. The Sarpanch, Karannagar Gram Panchayat and Others, , submitted that the grounds on which the order granting ex pane injunction by the Civil Court had been challenged by way of filing these Petitions before this Court could be very well agitated before the same Court by the present petitioners, and therefore, these Special Civil Applications should not be entertained. We find that the facts in the case of Amtrax Appliances Ltd. (supra) are entirely different. The petitions had been filed seeking a direction against the Panchayat to consider the Application for fixing lumpsum amount in lieu of all or any of the taxes and in particular the octroi to be paid by the petitioner to the Panchayat and to desist from collecting any octroi until the decision is taken on that application. The contract had been given under Resolution passed by the Gram Panchayat to collect the octroi, such Resolution was temporarily stayed by the D.D.O., who directed that the Octroi should not be collected until further orders. It was, thereafter, that the regular Civil Suit was filed by the Contractor

in the Mehsana Court of Civil Judge (S.D.) against the order of the D.D.O. The petition was, therefore, sought to be amended by challenging the order made by the Civil Judge (S.D.), Mehsana on Application Exh. 5 for interim relief whereby an ad interim relief was granted staying the operation of the order of the D.D.O. In the backdrop of these facts, the contention was raised that the Suit had been filed without serving the requisite notice u/s 270(2) of the Gujarat Panchayats Act, 1993, and therefore, the Civil Court could not have entertained the Suit and granted ad interim relief in the matter. In this context, the Court considered the case of *Bihari Chowdhary and Another Vs. State of Bihar and Others*, in the context of the provisions of Sec.80 of C.P.C. and also considered yet another case of *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, and while referring to Para 6 of the decision of the Supreme Court in the case of *Mohd. Yunus v. Mohd. Mustaqim* (supra) it was noticed that while dealing with the question as to the exercise of jurisdiction of the High Court under Art. 227 of the Constitution of India against an order of the Civil Court, which could have been challenged by way of Appeal from Order before the District Court, it was held that the High Court had no jurisdiction to interfere with such orders passed by the subordinate Judge under Art. 227 of the Constitution of India and the petition under Art. 227 of the Constitution in such cases was wholly misconceived. The single Bench thus held that when it was open to the petitioner to go before the concerned Court and raise all the contentions, which they were now seeking to raise, to enable that Court to take appropriate decision and it will not be appropriate for this Court to entertain the challenge against an ad interim relief order passed by the Civil Court in exercise of its jurisdiction under Art. 227 of the Constitution. This case is clearly distinguishable not only on facts, but also in law because in the present case it is not only a question of challenge to the ex parte ad interim order passed by the Civil Court. In the instant case, the proceedings in the Civil Suit as a whole are in question and it was not a case of simple challenge to the order of the Civil Court, which could have been challenged by way of Appeal. The challenge is to the proceedings and the very institution of the Suit and in any case, we find that even if the petitioners herein could agitate such grounds before the Civil Court, there is no bar against entertaining such petitions challenging any order passed by the Civil Court when it is passed without jurisdiction or in invalid exercise of jurisdiction and defeats the mandatory provisions in the Code. This decision, therefore, in our opinion, does not help the respondents so as to through away the petitions, which have been pending in this Court since 1986 on the said ground.

20. Mr. N. K. Majmudar also cited the decision of the Supreme Court in the case of *Loknath Padhan Vs. Birendra Kumar Sahu*, and submitted that the matter is of 1986 and that the issue is purely academic and that unless there is an effective and living issue between the parties, the Court should not decide the same. In the case of *Loknath Padhan* (supra) pending Appeal against the decision in an election petition the Assembly itself had been dissolved and it was in this context that the Supreme Court took the view that the Assembly having been dissolved

during the pendency of the Appeal and there being no allegation of corrupt practice in the election petition, it was wholly academic to consider whether the respondent i.e. elected candidate was disqualified u/s 9A of the Representation of the People Act on the date of the nomination and that since that was the only ground on which the election of the respondent was challenged, the Court found that it will be futile to decide the Appeal on merits. In the case at hand, it is not the case of the respondents before us that the Suit which had been filed by them had been withdrawn or that it has already been decided and, therefore, it cannot be said that the question is only of academic importance or that it will be a case of exercise in futility or that there is no effective or living issue between the parties. Even otherwise, we find that the question is a question of law of great importance, as the question with regard to the grant of interim relief in the Suits filed against Government or Public Officers without notice u/s 80(1) of C.P.C. is often raised before the trial Court in large number of cases, and therefore, the question, as has been referred to the Larger Bench by the Division Bench, as a question of law has to be answered and orders have to be passed accordingly and in no way it can be said that it is a case of futile exercise and only of academic importance.

21. Besides this, on behalf of the petitioners, it was also submitted that there was a total ban of the Suits in Civil Court u/s 293 of the Income Tax Act, 1961 which is reproduced as under :-

"293. Bar of suits in Civil Courts - No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution. Suit or other proceeding shall lie against the Government or any Officer of the Government for anything in good faith done or intended to be done under this Act."

22. In the case at hand. Civil Suits have been filed and entertained against the Public Officers while they were acting under the warrant of authorisation u/s 132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules and ex parte ad interim order was passed. Section 293 of the Income Tax Act in terms creates a bar of Suits in Civil Court in such matters against action of the Public Officer under warrant of authorisation u/s 132 of the Income Tax Act, and it is certainly a proceeding taken or order made under the Income Tax Act and Section 293 in terms says that no prosecution, Suit or other proceeding shall lie against the Government or any Officer of the Government for anything in good faith done or intended to be done under this Act. In the case of Commissioner of Income Tax, Bhubaneswar and Another Vs. Parmeshwari Devi Sultania and Others, the Supreme Court held that substance and not the form of the Suit is to be seen and where a certain asset was seized during search and rejecting the assessee's plea that the same included the shares of his brothers and sisters, the I.T.O. passed an order u/s 132(5) determining the tax liabilities and directing the asset to be retained by the department and the Suit filed at the instance of the assessee for partition of that very asset was held not to be maintainable. It

is, therefore, clear that in the facts of the present case also the Suits were clearly barred by the provisions of Section 293 of the Income Tax Act and the Civil Court had no jurisdiction to entertain the suit against the proceedings for search and seizure, which were being taken u/s 132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules, 1962.

23. The upshot of the aforesaid discussion is that the question referred by the Division Bench vide its order dated 21-2-1994 stands answered as in Para 18. Whereas the entire petitions have been referred as per the last part of the Order dated 21-2-1994 making reference, we find that both these petitions deserve to be allowed and accordingly we allow both these Special Civil Applications and the entire proceedings in both the Civil Suits i.e. Civil Suit No. 1196 of 1986 and Civil Suit No. 1197 of 1986 including the proceedings and the Misc. Application No. 234 of 1986 and Misc. Application No. 236 of 1986 therein respectively in the Court of Civil Judge (S.D.), Jamnagar are declared to be illegal and without jurisdiction; both the Suits are hereby dismissed, both the Misc. Applications, as above, are hereby rejected and the ex parte injunction Orders dated 25-11-1986 passed in each of these two matters are also set aside. Rule is made absolute accordingly in each of these two petitions. No order as to costs.

24. Questions answered.