

SUPREME COURT OF INDIA

Ram Kumar

Vs.

State of Rajasthan

C.A.Nos.115-116 of 2001

(Tarun Chatterjee and Dalveer Bhandari JJ.)

29.09.2008

JUDGMENT

Tarun Chatterjee, J.

1. These appeals by special leave are directed against the judgment and order dated 26th of March, 1998 passed by a learned Judge of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Revision Petition No.480 of 1994 and order dated 23rd of March, 1999 passed in S.B. Civil Defect Case No.1788 of 1998 which arose out of an application for review of the order dated 26th of March, 1998. By the order dated 26th of March, 1998, the learned Judge had set aside the order passed by the learned Munsif, Ist Class, Tibbi by which the learned Munsif held that the defendant No.3/respondent No.3 (in short `respondent No.3') was not needed to be served with a notice under Section 80 of the Code of Civil Procedure (in short the `CPC'), as the respondent No.3, being a District Education Officer, had not done any act in his official capacity.

2. The facts leading to the filing of these appeals may be summarized as follows:

“The proceedings for acquisition of the land belonging to one Shri Daulat Ram, father of the appellants situated at Chak No.12 M.K.S. Tehsil Tibbi, Mu. No.180/242, Kila No.5-8 (presently Chak NO.3 D.P.M. 14 to 16 and 24-25) ad-measuring 9 bighas and Mu.No.180/242, Kila No.4-5 ad-measuring 2 bighas and Mu.No.181/242 Kila No.1-2, ad-measuring 2 bighas, totaling all 13 bighas in ABADI Mauza Daulatpura, were initiated by the Bhakhra Colonization Department and the Deputy Colonization Commissioner, Bhakhra Hanumangarh, while acquiring this land along with other lands by orders dated 3.1.1962, ordered his subordinates to put up proposal expeditiously to transfer in lieu of the land to be acquired for ABADI any other land, in favour of the Khatedar (Mauroosi-holder). The said Bhakhra Colonization Department was wound up and all the powers thereof were vested in the officers of the Revenue Department. Hence, the father of the appellants filed an application dated 22.11.1969 before the Tehsildar (Revenue) Tibbi for transfer in terms of the order passed by the Deputy Colonization Commissioner in lieu of his acquired land, the

vacant land situated in Chak No.M.K.S. (presently Chak No.D.P.M.), bearing Mu.No.180/240, Kila No.9 (1 bigha), 11 to 13 (3 bighas), 18 to 23 (6 bighas) ad-measuring in all 10 bighas and Mu.No.181/246, Kila No.3, 8 (2 bighas) ad-measuring in all 12 bighas, whereupon after conducting an inquiry the Tehsildar (Revenue) Tibbi submitted his proposal before Deputy Collector, Hanumangarh and Deputy Collector submitted on 13th of November, 1968, Sriganaganar, the defendant No. 2 accorded transfer of the said land in lieu of the acquired land. The District Collector, Sriganaganar, by his order dated 20th of November, 1968 accorded his approval to this transfer and the file concerned was returned to the Deputy Collector, Hanumangarh. In compliance with the order dated 20th of November, 1968 passed by the District Collector, Sriganaganar, the transfer entry of the land to be carried out in lieu of the acquired land was made in the revenue record and the same was approved by the Tehsildar (Revenue) Tibbi on 3rd of October, 1970 and the names relating to the lands were mutated in the revenue records and the possession of the land concerned too was exchanged. Accordingly, the father of the appellants gave up possession of the acquired land measuring 13 Bighas as detailed in para 1 of the plaint, in favour of the State and in lieu thereof, possession of the land, detailed in para 2 of the plaint, was delivered to the father of the appellants who came into possession thereof in the capacity of Khatedar. The said land, which was transferred in exchange along with other lands in their entirety whereby out of the land acquired in exchange, the land bearing No. 180/240, Kila No. 9 (1 Bigha), 11 to 13 (3 Bighas), 18 to 23 (6 Bighas) ad-measuring 10 Bighas fell into the share of appellant No. 1 Ram Kumar and Mu. No. 181/246, Kila No. 3 and 8 (2 Bighas) ad-measuring 2 Bighas fell into the share of appellant No. 2 Rajendra Kumar and the transfer entry of this portion was made against S. No. 33 in the Khata No. 11/27 dated 13th January, 1971 and was certified on 20th of February, 1971 and this land was thus mutated on 13th of January, 1971 in the names of the appellants in revenue records Jamabandi.”

3. The District Collector (Defendant No. 2) however invoked the earlier order dated 20th of November, 1968 by passing a fresh order on 20th of April, 1974. The appellants approached various authorities praying for an order restraining the defendant No. 2 (hereinafter referred to as "Respondent No.2) from delivering possession of the said land to the respondent No. 3 to District Education Officer, being Respondent No. 3. After being unsuccessful before different authorities, the appellant served a notice under Section 80 of the CPC read with Section 52 of the Rajasthan State Land Acquisition Act No.24 of 1953 on the respondent No.2 in his official capacity on 13th of December, 1985. Having failed to receive any reply, the appellants thereafter filed the suit on 25th of March, 1987 seeking declaration that the order dated 20th of April, 1974 passed by the respondent No.2 was null and void and ineffective and the appellants shall be delivered back possession of the said land, particulars of which has been described in paragraph 12 of the plaint, (herein after referred to as the `suit land') from respondent No.3.

4. A joint written statement was filed on behalf of the State Government, Rajasthan and respondent No.2 who was arrayed as defendant No. 2 and a separate written statement was filed on behalf of respondent No.3. It is by way of an additional plea in the said written

statement filed by respondent No.3, a question was raised as to the maintainability of the suit for non-service of notice under Section 80 of the CPC on respondent No.3.

5. By an order dated 7th of July, 1992 the trial court framed several issues for trial in the suit and one of such issues, namely, issue No.4 was decided by the trial court as a preliminary issue which reads as follows:

Issue No.4 - "Whether the suit of the plaintiff deserves to be dismissed for not serving of notice under Section 80 of the CPC on defendant No.3 by the plaintiffs."

6. By an order dated 24th of March, 1994, Issue No.4 was decided by the learned Munsif, Ist Class Tibbi in favour of the appellants and against the respondent No.3, inter alia, holding that respondent No.3, although a public officer being the District Education Officer, was not required to be served notice under Section 80 of the CPC as he had not done any act in his official capacity. Feeling aggrieved by this order, respondent No.3 filed a revision petition before the High Court and the High Court by the impugned order held that since respondent No.3 being a District Education Officer must be served with a notice under section 80 of the CPC as he was acting in the official capacity. Accordingly the High Court had set aside the order of the trial court and dismissed the suit in its entirety on the ground of non-service of notice upon the respondent No. 3. It is this order, which is now under challenge before us in appeal.

7. Before we proceed with the merits of the appeals against the aforesaid order of the High Court passed in revision, we may keep it on record that it was brought to our notice that by a final judgment and decree dated 24th of March, 1994, the suit itself was dismissed on merit by the trial court and a regular first appeal was filed by the appellants in the Court of the District Judge, Hanumangarh which was still pending at the time of decision of the revision case before the High Court. It is not known now whether the said appeal has yet been decided by the High Court or that in view of the order passed by the High Court in the aforesaid revision case which is under challenge before us, the appeal has also been dismissed not only on merit but also on the ground that the suit was not maintainable in law in view of non service of notice upon the respondent No.3. Be that as it may, it would now be appropriate for us to decide the question as to whether the non-service of notice upon the respondent No.3 under Section 80 of the CPC before filing the suit would be fatal and the court would have no other alternative but to dismiss the suit for such non service. In order to decide this question, it would be appropriate to refer to Section 80 of the CPC which reads as under:

"Section 80 - NOTICE -

(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of State of Jammu & 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 case of a suit against the Central Government, where it relates to Railway, the General Manager of that Railway;

(bb) in case of a suit against the Government of State of Jammu & Kashmir the Chief Secretary to that Government or any other officer authorized by that officer on this behalf;

(c) in case of a suit against any other State Government, a Secretary to that Government or the Collector of the District; and in 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) 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."

8. Before we go into the scope and effect of Section 80 of the CPC, we may look at the allegations and reliefs claimed in the suit. As noted herein earlier, the trial court decided the issue, namely, issue No.4 on the ground that the respondent No.3 had not acted in his official capacity in the present case and, therefore, service of notice under Section 80 of the CPC on respondent No.3 was not necessary, whereas the High Court reversed the order of the trial Court and held that the respondent No.3 had acted in his official capacity and, therefore, non service of the notice on Respondent No. 3 would invite the court to dismiss the suit in its entirety. Let us now look into the allegations made in the plaint as well as the reliefs claimed in the same. The land of the appellants was acquired by respondent Nos. 1 and 2 and in lieu thereof, possession, as described in para 2 of the plaint, was delivered to the appellants by the order of respondent No.2 in his official capacity, but respondent No.2 revoked the said order and out of the said lands, as described in para 2 of the plaint, possession of 7 bighas of land was delivered by respondent Nos.1 and 2 to respondent No.3 in respect whereof the appellants prayed that possession of the said 7 bighas of land be delivered back to the appellants by respondent No.3 by way of consequential relief.

9. From the aforesaid facts alleged in the plaint, it would be evident that it was the respondent No.2 who had passed two orders dated 20th of November, 1968 and 20th of April, 1974 in his official capacity and that the notice under Section 80 of the CPC was duly served upon him before filing the suit. As noted herein earlier, since the possession of the suit land was taken over from the appellants by respondent Nos. 1 and 2 and delivered to respondent No.3, a prayer was made in the plaint to pass a decree directing the respondent No.3 to deliver the possession to the appellants, which was consequential in nature. It is, therefore, clear that the respondent No.3 had not done any act in his official capacity and, therefore, in our view, as rightly held by the trial court that service of notice under Section 80 of the CPC, in the facts and circumstances of the case, was not at all necessary, as only a decree for possession was prayed for which was delivered by the respondent Nos. 1 & 2 to Respondent No. 3 on the basis of recall of the order dated 20th of November, 1968.

10. Before we proceed further, we may keep it on record that the respondent No. 3 is a public officer within the meaning of Section 2 (17) and Section 80 of the CPC. Therefore, let us consider whether the respondent No. 3 had acted, in the facts and circumstances of this case, in his official capacity or not. In our view, High Court had committed an error in holding that the respondent No. 3 in the facts as alleged in the plaint could be said to have acted as a public officer in his official capacity. It was respondent No. 2 who had passed the aforesaid two orders dated 20th of November, 1968 and 20th of April, 1974 and in fact, who had passed the order of exchange of lands and also the order recalling the earlier order of 1968 in his official capacity. In that view of the matter, in our view, notice served on the District Collector, Sriganaganagar was sufficient and complete notice to the Government Middle School, Daulatpura which was represented through the Education Officer (Students Institutions), Hanumangarh. Therefore, in our view, the High Court had misdirected itself in deciding the issue regarding requirement of separate service of notice under Section 80 of the CPC. Looking into the allegations made in the plaint and the reliefs claimed, we do not find any reason to disagree with the view expressed by the trial Court when it had held that no act was performed by the respondent No. 3 in his official capacity. If we look at the plaint in the present case, it would be clear that in the plaint, no act of respondent No.3 is being challenged. The appellants do not seek to set aside any order of the respondent No.3 or to declare illegal any of the acts of respondent No.3, it merely seeks a decree for recovery of possession in the suit to hand over possession of the suit land to the appellants. The suit which is not in respect of any act done by the respondent No.3, as a public officer, and in which no act of respondent No.3 is either challenged or sought to be set aside is not a suit to which Section 80 of the CPC can very well apply. Therefore, in the facts and circumstances of the present case, the respondent No.3 had not acted in his official capacity for which service of notice under Section 80 of the CPC was necessary. That apart, it is not in dispute that the respondent No. 2 was Administrator and overall in-charge including the Government Middle Schools (Students Institutions) in the District and the notice served on the State Government through District Collector of the District was sufficient compliance with the requirements of Section 80 of the CPC. In view of the aforesaid fact, it was not necessary to separately serve a notice to respondent No.3 as we find that no order was passed by the District Education Officer, which was under challenge in the suit itself.

11. In view of our discussions made hereinabove, we are therefore of the view that the High Court had fallen in error in reversing the order of the trial Court holding that service of notice on respondent NO. 3 under Section 80 of the CPC was not necessary to be served to maintain the suit. In *State of Maharashtra and Anr. Vs. Shri Chander Kant*¹, this Court laid down the principle as to when service of notice on the State/defendants under Section 80 of the CPC was necessary. In the said decision, this Court observed as follows :-

"The language of Section 80 of the Code of Civil Procedure is that a notice is to be given against not only the Government but also against the Public Office in respect of any act purporting to be done in his official capacity. The Registrar is a Public Officer. The order is an act purporting to be done in his official capacity.

In the present case, the suit is to be set aside the order made by a Public Officer in respect of an act done in the discharge of his official duties. Therefore, notice under Section 80 of the Code of Civil Procedure was required."

12. From the aforesaid, it would be evident that this Court held that service under Section 80 of the CPC was necessary as in that case, the suit was filed for setting aside an order passed by a public officer in respect of an act done in the discharge of his official duties. In that view of the matter, in that decision, it was held that service of notice under Section 80 of the CPC was necessary and in the absence of that service, the suit must be dismissed. This is not the factual position in this case. We have already held that Respondent No. 3 had not passed any order as a public officer nor the appellants had asked for setting aside any order passed by the respondent No. 3 as a public officer in respect of any act done in the discharge of his official duties. As noted herein earlier, the appellants have made the respondent No. 3 as a party although he was a public officer only on the ground that possession was delivered to him by the respondent No. 2 in the exercise of his official capacity. For the purpose of possession to be delivered back to the appellants, the respondent No. 3 was made a party by which, in our view, he had not at all acted in discharge of his official capacity. A look at the reliefs claimed in the plaint would clearly show that only a consequential relief was claimed in the suit to the extent that possession of the suit land should be restored in favour of the appellants by the respondent No. 3. Therefore, in view of the aforesaid discussion made hereinabove, we hold that even in the absence of service of notice on the respondent No.3 under Section 80 of the CPC, the suit was maintainable in law.

13. Before concluding, we may also keep it on record, as noted herein earlier, that from the record it appears to us that the suit itself was dismissed on merits after the issue No. 4 as to the maintainability of the suit for non-service of notice upon the respondent No. 3 was decided in favour of the appellants. It is/was now pending in appeal before the appellate court. Therefore, by any stretch of imagination, it cannot be said that at the time the revision was decided, it was open to the High Court to deal with Issue No.4 passed by the trial court when the suit itself was dismissed on merits. That is to say, the revision became infructuous in view of the disposal of the suit on merits. For this reason also, the impugned order of the High Court is liable to be set aside. Accordingly, if the appeal is still pending for decision,

we direct the appellate court to decide all the issues in the suit excepting Issue No.4 which is being decided by us in favour of the appellants by this judgment on merit within a period of six months from the date of supply of a copy of this judgment.

14. For the reasons aforesaid, the impugned order is set aside and the order of the trial court holding that the suit was maintainable for non-service of notice under Section 80 of the CPC on the respondent No.3 is hereby restored. The appeals are allowed to the extent indicated above. There will be no order as to costs.

¹*AIR 1977 SC 148*