

Nav Hind  
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(Private), Ltd.,  
Delhi  
and another  
v.  
The Chief Com-  
missioner, Delhi  
and others

Act and Rules made thereunder have been complied with. It is not the function of this court to direct the authorities under the Act to prefer one party rather than the other when all the other things are equal. In this view of the matter the application of the Crown Co-operative Transport Society, Limited, also fails.

Bishan Narain,  
J.

The result is that all the five applications fail. The applications of Nav Hind Finance and Transport (Private) Limited, the Parbhat Bus Service (Private), Limited, the Soldiers United Motor Transport Company (Private), Limited and Raja Singh Bhasin are dismissed with costs. The application of the Crown Co-operative Transport Society, Limited, is dismissed but the parties are left to bear their own costs.

B. R. T.

APPELLATE CIVIL

Before I. D. Dua, J.

RAM SUNDRI alias SHAM SUNDRI,—Appellant

*versus*

THE COLLECTOR, LUDHIANA AND OTHERS —Respondents

Regular Second Appeal No. 1339 of 1958

1957  
Apr., 7th

*Code of Civil Procedure (Act V of 1908)—Section 80—Notice under—Object of—Such notice, whether necessary before filing suit under Order 21 Rule 63 C. P. C.—Suit under Order 21 Rule 63—Nature of—Whether continuation of objection proceedings under Order 21 Rule 58.*

Held, that the object of giving a notice under section 80 of the Code of Civil Procedure is to afford to the Government or the public officer concerned an opportunity to reconsider the position with regard to the claim made and if so advised either to settle it or otherwise to make

amends without recourse to the Courts. The terms of the section are undoubtedly imperative but they only provide a mode of procedure for granting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights i.e., machinery as distinguished from its products. What has been enacted in section 80 is the first step in litigation between the parties when the cause of action is complete and it in fact provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in Court until the expiry of two months after such service. It does not define the rights of parties or confer any rights on them.

*Held*, that the proceedings under Order XXI rule 63, Code of Civil Procedure, are a continuation of the proceedings initiated under Order XXI rule 58 in which the plaintiff's claim had been dismissed and no fresh notice under section 80 of the Code for continuing those proceedings is necessary. In this case the Collector was a party to the objection proceedings under Order XXI rule 58, Civil Procedure Code, and had full notice of the plaintiff's claim and the penal consequences imposed by the omission to give notice under section 80 of the Code of Civil Procedure will not be attracted.

*Regular Second Appeal from the decree of Shri Gurdev Singh, District Judge, Ludhiana, dated 8th December, 1958, affirming that of Shri Sarup Chand Goyal, Subordinate Judge, 1st Class, Ludhiana, dated 30th June, 1958, rejecting the plaint of the plaintiff under order 7 rule 11, C. P. C.*

H. L. SARIN, for Appellant.

L. D. KAUSHAL AND J. N. KAUSHAL, for Respondents.

#### JUDGMENT

DUA, J.—The only question raised in this appeal is whether in the absence of a prior notice to the Collector under section 80, Code of Civil Procedure, the suit in question could proceed. I. D. Dua, J.

Smt. Sushila Rani, defendant-respondent No. 2 obtained an order for maintenance under section

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488 of the Code of Criminal Procedure against her husband Bipan Chander Pal. In enforcement of this order the criminal Court issued a warrant under section 386(1)(b) of the Code of Criminal Procedure to the Collector, Ludhiana, authorising him to realise the amount by execution according to civil process against the movable and immovable property of the husband. The Collector accordingly took out execution and got attached the shop in dispute situate in Saban Bazar, Ludhiana. Smt. Ram Sundri, plaintiff-appellant thereupon filed objections under Order XXI, Rule 58 of the Code of Civil Procedure but they were disallowed. Thereupon she instituted the present suit, under Order XXI, Rule 63 of the Code of Civil Procedure, seeking a declaration that she was the owner of the shop in question and the same was not liable to be attached or sold in satisfaction of Smt. Sushila Rani's claim for maintenance against Bipan Chander Pal, defendant-respondent No. 3 before me. The Collector on whose application the property in dispute was attached, was impleaded as a party along with Smt. Sushila Rani and her husband, Bipan Chander Pal. The contesting defendants raised an objection that the suit was not competent as no prior notice under section 80 had been served upon the Collector. The only issue tried by the Court is "Whether notice under section 80, Civil Procedure Code, was required to be served upon the Collector"? The trial Court gave its decision against the plaintiff-appellant.

On appeal, in the Court of the learned District Judge, it was not disputed that no suit could be instituted against the Collector in respect of anything done by him in his official capacity until a notice had been given to him under section 80 of the Code of Civil Procedure and two months after such notice had expired.

It was also admitted that no notice had been served in the present case. It was, however, contended that the suit in question was a mere continuation of the objection proceedings which had been filed by the appellant in the executing Court under Order XXI, Rule 58, and consequently no notice under section 80 was necessary. Reliance in support of this contention in the Court of first appeal was placed on *Muhammad Yusaf Sahib v. Province of Madras* (1), and *Hiraluxmi Pandit v. Income-tax Officer* (2). The learned District Judge, however, preferred the view taken in *Liquidator of Society Sangakheda Kalan Co-operative Bank, Hoshangabad v. Ayodhyaprasad Shiamlal and others* (3), which purported to follow *Bhagchand Dagadusa Gujrathi and others v. Secretary of State for India* (4). The learned District Judge also observed that *Muhammad Yusaf Sahib v. Province of Madras* (1), was based upon an earlier decision of the Madras High Court in *The Raja of Ramnad v. M. R. M. A. Subramaniam Chettiar and others* (5), the facts of which were distinguished by the learned District Judge on the ground that in *The Raja of Ramnad v. M. R. M. A. Subramaniam Chettiar and others* (5), a notice was considered to have been actually given at an earlier stage; it was also distinguished on the ground that it had been decided prior to the decision of the Privy Council in *Bhagchand Dogadusa Gujrathi's case* (4). *Subedar Shingara Singh and another v. Brigadier C. H. D. O. Challaghan and others* (6), was also referred to as upholding this view.

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- (1) A.I.R. 1943 Mad. 341  
 (2) A.I.R. 1955 Pat. 404  
 (3) A.I.R. 1939 Nag. 232  
 (4) A.I.R. 1927 P.C. 176  
 (5) I.L.R. 52 Mad. 465  
 (6) A.I.R. 1946 Lah. 247

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On second appeal, Mr. Sarin has repeated the same contention and has relied upon practically the same authorities. In *Hiraluxmi Pandit v. Income-tax Officer* (1), Sinha, J. (as he then was), while delivering the judgment of the Division Bench, observed as follows:—

“It is said that the suit is not maintainable because notice under section 80, Civil Procedure Code, has not been given as required by law. It is true that no notice has been given. It is also true that a notice under section 80 is imperative if a suit is instituted against the Union of India or against a public officer in respect of any act purporting to have been done by such a public officer in his official capacity, and it is established that suit of the nature contemplated in section 80 cannot be maintainable without such a notice. In the present case, however, a different consideration may arise, and it is this that the suit is merely a continuation of the previous proceeding under the Public Demands Recovery Act, and it is so conceded by Mr. Bahadur.

If that be so, then, in my opinion, no notice under section 80, Civil Procedure Code, was at all required in this case. If any authority were needed, I would refer to the case of— *S. A. Rajamier v. Subramaniam Chettiar* (2). At one place, their Lordships refer to the fact that ‘no fresh notice is necessary’ and it was contended that in that case some notice

(1) A.I.R. 1955 Pat. 404

(2) I.L.R. 52 Mad. 465

under section 49(1), Court of Wards Act (Madras), must have been given.

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Section 49(1), Court of Wards Act, is in terms similar to the terms of section 80, Civil Procedure Code. I do not find any warrant for that suggestion. That was a suit under Order 21, Rule 63, Civil Procedure Code, and as no notice was necessary in a claim case under Order 21, Rule 58, I cannot accept that any previous notice was given under section 49(1), Court of Wards Act, before the suit was brought. This case was followed in *Muhammad Yusaf Sahib v. Province of Madras* (1), by Somayya, J.

I would, therefore, hold that the Court below is right in finding that the suit is maintainable even without a notice under section 80, Civil Procedure Code."

It may be noticed that in this case Sinha, J., repelled the suggestion that in *S. A. Rajamier's case* (2), any notice had been given at an earlier stage. I have myself perused the passage in the judgment "*The Raja of Ramnad v. M. R. M. A. Subramaniam Chettiar and others* (2), to which reference has been made by the learned District Judge and I respectfully agree with the view expressed by Sinha, J., in the *Patna case* (3). The expression "no fresh notice to the appellant is necessary" does not necessarily imply that a notice under section 80 of the Code of Civil Procedure had already been given. It appears to me to mean that proceedings under Order XXI, Rule 63, Code of Civil Procedure, being a continuation of the proceedings in which the

(1) A.I.R. 1943 Mad, 341

(2) A.I.R. 1928 Mad, 1201=I.L.R. 52 Mad. 465

(3) A.I.R. 1955 Pat. 404

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plaintiff's claim had been dismissed, no fresh notice for continuing those proceedings was necessary. Had a notice already been given, it would have quite easily been so stated. *Subedar Shingara Singh and another v. Brigadier C. H. D. O. Callaghan and others* (1), is hardly of any help in the present case because it merely states that section 80 of the Code of Civil Procedure applies to any kind of suit, whatever relief sought, including a suit for injunction. Similarly, *Bhagchand Dagdusa Gujrathi and others v. Secretary of State for India* (2), merely lays down that section 80 of the Code of Civil Procedure is to be strictly complied with and is applicable to all forms of actin and all kinds of relief. *Liquidator of Society Sangakheda Kalan Co-operative Bank, Hoshangabad v. Ayodhyaprasad Shiamlal and others* (3), a decision by Pollock, J., undoubtedly supports the view of the learned District Judge.

The object of giving a notice under section 80 of the Code of Civil Procedure is to afford to the Government or the public officer concerned an opportunity to reconsider the position with regard to the claim made and if so advised, either to settle it or otherwise to make amends without recourse to the Courts. The terms of the section are undoubtedly imperative but at the same time it has to be borne in mind that, as observed by Mahajan, J. (as he then was), in *State of Seraikella and others v. Union of India and another* (4), this section only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e., machinery

(1) A.I.R. 1946 Lah. 247

(2) A.I.R. 1927 P.C. 176

(3) A.I.R. 1939 Nag. 232

(4) A.I.R. 1951 S.C. 253

as distinguished from its products. What has been enacted in section 80 is the first step in litigation between the parties when the cause of action is complete and it in fact provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in Court until the expiry of two months after such service. It does not define the rights of parties or confer any rights on them. The Privy Council decision in *Bhagchand Dagadusa's case* (1), was relied upon by the Attorney-General before the Supreme Court in support of his contention that section 80 imposes a statutory and unqualified obligation on the Court. It is instructive to reproduce the words of Mahajan, J., in dealing with this contention:—

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“Reference was made by the learned Attorney-General to the decision in *Bhagchand Dagadusa v. Secretary of State* (1). Their Lordships of the Privy Council examined the view that had been taken in some of the High Courts in India on the applicability of section 80 to suits for injunction and it was held that these had been decided on an erroneous assumption that a statutory provision as to procedure was subject to an exception in cases of hardship or in cases where irremediable harm might be caused, if it was strictly applied. It was pointed out that the Procedure Code must be read in accordance with the natural meaning of its words and that section 80 being explicit and mandatory, it admitted of no implications or excep-

(1) A.I.R. 1927 P.C. 176=54 I.A. 338 at p. 357



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tions. Their Lordships then made these observations:

‘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.’

The learned Attorney-General relying on those observations contended that section 80 did not lay down any rule of procedure but was a provision affecting substantive rights. I am unable to accede to this contention. Their Lordships did not decide, and it is not possible to think that they would make any such decisions. that section 80 did not lay down a rule of procedure but was a piece of legislation defining substantive rights. All that they said was that section 80 was not mere procedure but was of a mandatory character and more than this they did not say.”

It is true that the other learned Judges composing the Bench did not express any opinion on this question but this would not by itself derogate from the binding effect or at least strong persuasive force of the observations made by Mahajan, J. There is also authority for the view that it is open to a party to waive the benefit of section 80. Civil Procedure Code: See *Vellayan v. Madras Province* (1), *The District Board, Benaras v. Churhu Rai, etc.* (2). and

(1) I.L.R. 1948 Mad. 214 (P.C.)

(2) A.I.R. 1956 All. 680

*Ram Narain Prasad v. Ram Kishun Parshad* (1). Now if this be the legal position with respect to section 80 and if a suit under Order XXI, Rule 63, be merely a continuation of the proceedings initiated under Order XXI, Rule 58, Code of Civil Procedure, then the Collector who was a party to those proceedings had full notice of the plaintiff's claim and the penal consequences imposed by the omission to give notice under the above section may not be attracted. In this view of the matter, I would prefer the authority of *Hiraluxmi Pandit v. Income-tax Officer* (2), to *Liquidator of Society Sangakheda Kalan Co-operative Bank's case* (3), and respectfully agreeing with the reasoning and ratio of Sinha, J. (as he then was), in the former decision, I would allow the appeal and setting aside the judgments and decrees of the two Courts below, remand the case to the trial Court for further proceedings in accordance with law and in the light of the observations made above. The costs so far incurred will be the costs in the cause.

The parties have been directed to appear in the trial Court on 28th April, 1959.

B. R. T.

LETTER PATENT APPEAL

Before G. D. Khosla and Bishan Narain, JJ.

BHAGWAT DAYAL AND OTHERS,—Petitioners.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Letters Patent Appeal No. 41-D of 1957

*Constitution of India (1950)—Article 31 and Land Acquisition Act (I of 1894)—Section 6—"Public Purpose"—Meaning of—How to be achieved—Courts, whether can*

- (1) A.I.R. 1943 Pat. 354  
 (2) A.I.R. 1955 Pat. 404  
 (3) A.I.R. 1939 Nag. 232

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