

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 132 of 2018**

Shri Balram Krishi (Utpad Avam Vipnan) Co-operative Society SBACO, Jila Sahakari Kendriya Bank Maryadit, in front of District Hospital, P.O. Durg, Tahsil & District Durg (C.G.)

----Applicant/Defendant No. 4

Versus

1. Sarvarakar Mahant Yagayanand Bramhachari Gurupita late Shri Sarvarakar Mahant Gautmanand Bramhachari, aged about 65 years, R/o Killa Mandir, Tamerpara, Durg, P.O. Durg, Tahsil & District Durg (C.G.)
Plaintiff
2. Registrar, Public Trust & Sub Divisional Officer (Revenue) Durg, District Durg (C.G.)
3. Shankar Lal Tamrakar, S/o late Shri Manglu Tamrakar, R/o Tamerpara, Durg, P.O. Durg, Tahsil & District Durg (C.G.)
4. Laxmi Nath Tamrakar, S/o late Shri Panna Lal Tamrakar, R/o Maithil para, P.O. Durg, Tahsil & District Durg (C.G.)
5. State of Chhattisgarh, through Collector, Durg, District Durg (C.G.)

----Respondents/defendants

For Applicant	: Mr. Manish Upadhyaya, Advocate.
For Respondent No. 1	: Mr. Prasoon Agrawal, Advocate.
For Respondent No. 3	: Mr. Ajay Thakre, Advocate.
For Respondent No. 5/State	: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/04/2019

(1) The Registrar, Public Trust -cum- Sub Divisional Officer (Revenue), Durg passed an order on 27.08.2018 under Section 6 of the Madhya Pradesh Public Trusts Act, 1951 (henceforth, "Act of 1951") making certain direction as contained in paragraph

12 of the impugned order and also directed for publication of that order on the notice board of his office against which, the respondent No.1 filed civil Suit for setting aside the order dated 27.08.2018 under Section 8(1) of the Act of 1951. In that civil suit, learned 3rd Additional District Judge by order dated 08.10.2018 granted an application under Section 80(2) of the Code of Civil Procedure (for short "CPC") seeking leave to institute a suit without serving any notice as required by sub-section (1) of Section 80 of the CPC and, thereafter, on 2.11.2018 application filed by defendant No. 4 under Order 7 Rule 11 of the CPC was rejected. Questioning both these two order, instant civil revision has been preferred.

(2) Shri Manish Upadhyaya, learned counsel appearing for the petitioner/defendant No. 4 would submit that learned 3rd Additional District Judge is absolutely unjustified in rejecting both the applications as the suit is hit by Sections 7(1) & 8(1) of the Act, 1951.

(3) Per contra, counsel for the respondents while supporting the impugned order would submit that learned 3rd Additional District Judge is absolutely justified in rejecting the aforesaid two applications.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove, and gone through the record with utmost circumspection.

(5) The two questions arise for consideration in this civil revision: (i) Whether learned Additional District Judge is justified in granting application under Section 80(2) of the CPC filed by the plaintiff / respondent No. 1 and (ii) whether the suit is barred by provisions contained in Section 8(1)(2) of the Act, 1951.

(6) In order to decide the question No. 1, it would be appropriate to notice Section 80 (1) & (2) of the CPC which reads as under:-

“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—

(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 that 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).”

(7) Section 80 (2) of the CPC is in the nature of an exception to Section 80 (1). It has been introduced with a view to entertain suits where urgent or immediate relief is required to be obtained. Sub-section (2) of Section 80 of the CPC is mandatory in nature and it cannot be bypassed. It is a condition precedent even in the suit for injunction.

(8) In the matter of **State of A.P. Vs. Pioneer Builders, A.P.**¹ the Supreme Court while considering the provisions contained in Section 80(2) of the CPC has held that leave of

¹ (2006) 12 SCC 119

the Court is condition precedent. It was observed as under:-

“14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well-settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The Section imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with Section 80, the suit is not maintainable. (See: Bhagchand Dagdusa Gujrathi & Ors. Vs. Secretary of State for India in Council² ; Sawai Singhai Nirmal Chand Vs. Union of India³ and Bihari Chowdhary Vs. State of Bihar⁴). The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the Section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in Bihari Chowdhary (supra), the object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

17. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80 (2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit."

(9) Thereafter, in the matter of **Bajaj Hindustan Sugar & Industries Ltd. Vs. Balrampur Chini Mills Ltd. and others**⁵ the Supreme Court has again considered and held as under:-

² AIR 1927 PC 176

³ (1966) 1 SCR 986

⁴ (1984) 2 SCC 627

⁵ (2007) 9 SCC 43

“31. From the above, it would be evident that a suit may be filed against the Government or a public officer without serving notice as required by sub-section (1) with the leave of the court. When such leave is refused, the question of institution of the suit does not arise and accordingly, no interim relief could also be granted at this stage.

34. The law, in our view, has been succinctly expressed in the aforesaid judgment. The language of Section 80(2) of the Code leads us to hold that if leave is refused by the original court, it is open to the superior courts to grant such leave as otherwise in an emergent situation a litigant may be left without remedy once such leave is refused and he is required to wait out the statutory period of two months after giving notice.”

(10) In the matter of **State of Kerala Vs. Sudhir Kumar Sharma & others**⁶ the

Supreme Court has delineated the manner in which application under Section 80(2) has to be dealt with and held as under:-

“19.....In our opinion, a suit filed without compliance with Section 80(1) cannot be regularised simply by filing an application under Section 80(2) CPC. Upon filing an application under Section 80(2) CPC, the court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice under Section 80(1) to the government authorities concerned. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an application, by no stretch of imagination can it be presumed that the application is granted. If such presumption is accepted, it would mean that the court has not to take action in pursuance of such an application and if the court has not to take any action, then we failed to understand as to why such an application should be filed.

20. It is an admitted fact that no order had been passed on the application filed under Section 80(2) CPC. Till a final order is passed granting the said application, in our opinion, the irregularity in filing of the suit continues. If ultimately the application is rejected, the plaint is to be returned and in that event the application filed on behalf of the appellants under Order 7 Rule 11 CPC is to be granted. If the application filed under Section 80(2) is ultimately granted, the objection with regard to non-issuance of notice under Section 80(1) CPC cannot be raised and in that event the suit would not fail on account of non-issuance of notice under Section 80(1) CPC.

21. We reiterate that till the application filed under Section 80(2) CPC is

finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section 80(1) CPC was justifiable. According to the provisions of Section 80(2) CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) CPC would not mean that the said application was granted by the trial Court.”

(11) The Madhya Pradesh High Court in the matter of **M.P. Oil Extraction Pvt. L Ltd. Vs. State of Madhya Pradesh & Ors.**⁷ while dealing with Section 80(2) CPC held as under:-

“8.....In this context a bare reading of proviso to sub-section (2) of section 80, Civil Procedure Code makes the whole position clear. Permission to file a suit as contemplated under sub-section (2) of section 80, Civil Procedure Code is subject to the proviso. The intention of the Legislature while making this sub-section (2) of section 80, Civil Procedure Code is that only in urgent and immediate matters where relief in favour of the plaintiff becomes expedient, permission can be granted without complying the terms of 60 days' notice, but the Court is to be satisfied for the 'urgent or immediate' relief showing as to what was that urgency which required the plaintiff to take leave of the Court without complying the 60 days' statutory period of notice and if ultimately after hearing the opposite party as contemplated under sub-section (2) of section 80, Civil Procedure Code, the Court reaches the conclusion that there was no urgency in filing such a suit after taking leave of the Court, then in such circumstances proviso to sub-section (2) of section 80, Civil Procedure Code has to be acted upon, thereby returning the plaint for presentation to it after complying with the requirements of sub-section (1) of section 80, Civil Procedure Code by giving statutory notice of 60 days.

Granting leave to file the suit without complying with the requirement of giving 60 days' notice depends upon the satisfaction of the Court as to the urgency of the relief sought and therefore, in the instant case, while considering the injunction application, the Court below reached the conclusion

that no case for grant of injunction was made out as there was no urgency in the matter requiring immediate relief in favour of the plaintiff, hence, it has rightly passed the order impugned under the proviso to sub-section (2) of section 80, Civil Procedure Code.

9. Further by reading section 80, Civil Procedure Code as a whole particularly sub-section (2), it can safely be inferred that this sub-section (2) is subordinate to its proviso which contemplates that in the event of failure to establish a prima facie case in an interlocutory application, the plaint is to be returned for its presentation after complying the requirement of sub-section (1) of section 80, Civil Procedure Code and this harmonises the provisions of sub-section (2) and its proviso. This being so, sub-section (2) of section 80, Civil Procedure Code does not contemplate two orders i.e., first, to grant leave to file suit without complying with the provisions of section 80(1) and secondly, to hear the interlocutory application. Thus, to grant leave depends upon allowing the prayer claimed in interlocutory application after hearing the opposite party.”

(12) Thus, in order to obtain 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 as required by sub-section (1) of Section 80 of the CPC.

(13) Reverting to the facts of the case in light of principle of law laid down by their Lordships of the Supreme Court in the afore-cited cases, it is quite vivid that Registrar, Public Trust has passed certain imperative direction declaring Shri Killa Mandir, Tamerpara, Durg as a public trust and directed convening of the meeting of the Trust; and further directed to report after holding of meeting, so that public trust be registered, the manner, in which, directions have been issued and particularly giving time of 15 days from the date of order to plaintiff, it appears that it is a case of grave urgency and the plaintiff, in that case, is justified in invoking Section 80 (2) of the CPC, which cannot be said to be the case where there is no grave urgency under Section 80 (2) of the CPC as held in the afore-cited case (supra). Submission of Mr. Manish Upadhyaya, learned

counsel appearing for the petitioner that since the plaintiff's application under Order 39, Rule 3 of the Code of Civil Procedure has already been rejected by said Court is no ground to hold that there is no immediate or grave urgency and grant of application under Section 80(2) of the CPC is contrary to law. In my considered opinion, the learned District Judge is absolutely justified in granting the application under Section 80(2) of the CPC, which does not call for any interference in jurisdiction under Article 227 of the Constitution of India.

(14) The next question is whether civil suit is barred by provisions contained in Section 8(1) of the CPC ? : According to petitioner/defendant No. 4, finding recorded by Registrar, Public Trust under 6 of the Act of 1951 was published for the first time on 19-09-2018 and the civil suit was filed on 11.09.2018 and, therefore, civil suit is hit by Sections 7(1) & 8(1) of the Act, 1951 as suit has to be filed within six months from the date of publication of notice under Section 7(1) of the Act of 1951.

(15) Section 7(1) and 8(1) of the Act, 1951 state as under:-

“7(1) Registrar to make entries in the register.- (1) The Registrar shall cause entries to be made in the register in accordance with the findings recorded under Section 6 and shall publish on the notice board of his office the entries made in the register.

8(1) Civil suit against the finding of the Registrar.-(1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.”

(16) According to Section 7(1) of the Act, 1951, finding of the Registrar, Public Trust under Section 6 of the Act, shall be published in the notice Board of office of Registrar and within six months from the date of the publication of the notice, the suit can be instituted for setting aside that finding. In the instant case, according to petitioner/defendant No. 4, the notice is said to have been published on 19.09.2018 and the suit is filed on 11.09.2018 but on a careful perusal of document (Annexure A-3) would show that Registrar, Public Trust has directed to publish the findings of the Registrar, Public Trust to Nazul Adhikari, Durg, Sub Divisional Officer (Revenue), Dhamdha and Tahsildar, Durg / Dhamdha whereas findings recorded by the Registrar, Public Trust has to be published, according to Section 7(1) of the Act, 1951, in the office of Registrar, Public Trust. There is no evidence on record at present to hold and decide on what date the actual notice under Section 7(1) of the Act, 1951 was published in the office/Court to Registrar, Public Trust, Durg, therefore, it cannot be held that the suit filed by the respondents/plaintiff was barred by Section 8(1) of the Act, 1951 being premature and even otherwise the question of limitation is a mixed question of law and fact, and that has to be decided after recording evidence at the time of final disposal of the suit, as such the application to that extent has rightly been rejected by the learned District Magistrate. The question of limitation is kept open to be considered at appropriate stage by the trial Court.

(17) At this stage, learned counsel appearing for the petitioner would submit that suit is also barred by Section 8(2) of the Act, 1951 as the provisions contained in Section 8(2) of the Act is mandatory in nature.

(18) The Madhya Pradesh High Court in the matter of **Beesa Porwal Jain**

Shwetamber Teerth Sagodhia and others Vs. Poonamchand Mishrimal and others⁸

relying upon its earlier decision in **Swami Vidyanand Saraswati v. Hazarilal Choubey**⁹

has held as under:-

“11. Now, by its very nature the stage at which section 8(2) has to operate is the stage of institution of the suit. The question of impleadment of party is essentially a matter prior to trial of the suit on merits. Accordingly, it is implicit in the section 8(2) that the notice should be issued at the initial stage of the suit so that if the State Government elects to be added as a party, it may be added and the suit may thereafter to its trial stage. I am fortified in this view by the ratio of Swami Vidyanand Saraswati (supra), where Tare J. (as he then was), expressed himself on the point thus:

“ The decision on the preliminary issues without following the procedure laid down by section 8(2) of the M.P. Public Trusts Act, 1951 was not only improper but also illegal. Sub-section (2) of Section 8 lays down that in every such suit, the civil Court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit. But the provision in respect of the notice to the State Government through the Registrar is mandatory, and no question either preliminary or on merits ought to be decided without complying with the said mandatory provision. The decision of preliminary issues was, therefore, premature and liable to be set aside.”

(19) Thus, it has clearly been held by Madhya Pradesh High Court in above-quoted judgment that provisions contained in Section 8(2) of the Act, 1951 is mandatory in nature. In the instant case, the applicant appears to have raised the plea based on

8 1982 MPLJ. 436

9 1966 MPJLNote 106

Section 8 (2) of the Act, 1951 in the application under Order 7 Rule 11 of the CPC but learned Additional District Judge has not recorded finding in this respect either it is not pressed / not argued by the applicant or otherwise.

(20) Be that as it may, the trial Court is directed to consider the aforesaid plea at the appropriate stage, if raised, after hearing learned counsel appearing for the parties.

(21) With the aforesaid observations, the civil revision stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

