

(1989) 1 LW 361 : (1989) 2 MLJ 54

Madras High Court

Case No: None

The Executive Officer,
Arulmigu
Ranganathaswami
Devasthanam

APPELLANT

Vs

His Holiness Srivan
Satagopa Sri Vedantha
Desika Yathindra
Mahadesigan 44th Jeer
of Sri Ahobila Math,
Hereditary Trustee of
Vedantha Desikar
Sannadhi within the
precincts of Sri
Ranganatha Swamy
Temple and Others

RESPONDENT

Date of Decision: Jan. 6, 1989

Citation: (1989) 1 LW 361 : (1989) 2 MLJ 54

Hon'ble Judges: Bellie, J

Bench: Division Bench

Judgement

Bellie, J.

The controversy in these two Letters Patent Appeals is as to the requirement of issue of notice u/s 80 of the Code of Civil Procedure. The two appeals arise out of one suit. To state a few facts of the case, according to the plaintiff -His Holiness Srivan Satagopa Sri Vedantha De-sika Yathindra Mahadesigan, 44th Jeer of Sri Abhobila Math - Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganathaswamy Temple at Srirangam, there is a shrine for Sri Vedantha Desikar inside the temple. It was an established usage to bring the idol of Sri Vedantha Desikar along with other Achariafs and Alwars to the Sanctum Sanctorum of Lord Rahganatha in the temple on the days of

Yugathi, Deepavali and Kanu, etc. with Vadakalai Paraphernalia, Patram, Vazhithirunamam, etc. Unfortunately disputes arose between Thenkalai and Vadakalai vaishnavites and in this regard there were criminal proceedings also and the Thenkalais obstructed taking the idol of Sri Vedantha Desikar to the said Sanctum Sanctorum of Sri Ranganathaswami. The Plaintiff made an application to trustees of Sri Ranganathaswamy Devasthanam to take the idol of Sri Vedantha Desikar on the said dates, i.e., Yugathi, Deepavali and Kanu days as per the usage and to that the trustees said that if the idol were to be taken to the Sanctum Sanctorum it should bear only Thenkalai mark on its forehead and not Vadakalai mark. The plaintiff filed an application in this regard before the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, but he accepted the case of the trustees that the idol should bear Thenkalai mark. An appeal by the plaintiff to the Commissioner, Hindu Religious and Charitable Endowments, failed and therefore the present suit u/s 70 of the H.R. & C.E. Act.

2. The suit having been filed against, among other defendants, the Commissioner, Hindu Religious and Charitable Endowments Department and the executive Officer, Sri Ranganathaswami Devasthanam, Srirangam, an objection was raised that the suit is not maintainable for want of notice u/s 80 of the Code of Civil Procedure.

3. The trial Court held that the first defendant Commissioner, Hindu Religious and Charitable Endowments, Department, and the second defendant Executive Officer, Sri Ranganathaswami Devasthanam, are public Officers, and therefore notice u/s 80, C.P.C. to them is necessary and such notice having not been sent the suit is not maintainable. On these findings, without deciding the other issues in the suit, the trial Court dismissed the suit.

4. The plaintiff appealed to the High Court. Venugopal, J. in A.S. No. 942 of 1978 found that the order passed by the Deputy Commissioner u/s 63 of the Act and the order passed by the Commissioner u/s 69 are quasi-judicial orders and to pass these orders the Deputy Commissioner and the Commissioner have exercised quasi judicial powers and therefore they cannot be termed as Public Officers purporting to act in their official capacity within the meaning of Section 80, C.P.C. and hence when a statutory suit is filed u/s 70 of the Act no notice u/s 80, C.P.C. is necessary. On these findings the learned Judge held that the suit is maintainable and he allowed the appeal and remitted the matter to the trial Court for trial on other issues on merits and disposal of the suit afresh.

5. As against this judgment the Executive Officer, Sri Ranganathaswami Devasthanam (second defendant) has filed L.P.A. N6.8 of 1985 and the trustees of Sri Ranganathaswamy temple (defendants 8 to 10, 12 to 15, 17, 22, 24 and 25) have filed L.P.A. Not 18 of 1985. It is contended on behalf of the appellants in both the L.P. As that the finding of the learned Judge holding that notice u/s 80, C.P.C. is not necessary is erroneous and therefore the remittal order has to be set aside. It must be specially noted here that the Commissioner, Hindu Religious and Charitable Endowments, (first

defendant) has not filed any L.P.A. It is argued by the Counsel Mr. S.A. Rajan and Mr. P.S. Srisailam respectively appearing for the appellants in the two L.P.As supported by Mr. C.Chinnaswamy, Special Government Pleader appearing for the Commissioner impleaded as a respondent in both the L.P.As, that notice u/s 80, C.P.C. should have been taken to the Commissioner (first defendant) and the Executive Officer (second defendant) and the finding of the learned judge to the contrary is erroneous. As against this Mr B.T.Seshadri, learned Counsel for the plaintiff (first respondent in both the L.P As.) contends, that the learned Judge is correct in holding that notice u/s 80, C.P.C. need not be taken to the Commissioner and also the Executive Officer.He further contends that as regards the Executive Officer, the suit is not filed against him but it is against only the Devasthanam and he has been only impleaded to represent the Devasthanam and therefore the suit is not in respect of any act done by him in his official capacity and therefore no notice u/s 80, C.P.C. to him is warranted. The counsel next contends that even if notice is necessary to the Commissioner, the Commissioner having not filed any L.P.A. he has waived notice and therefore now it cannot be argued that notice has not been sent to him and therefore the suit against him is not sustainable. The counsel then charges that the appellants in L.P.A No. 18 of 1985 being third parties and being themselves not entitled to any notice u/s 80, C.P.C., they cannot argue that notice has not been taken to the Commissioner or the Executive Officer.

6. We will first see whether for want of notice u/s 80, C.P.C. to the first defendant Commissioner the suit is bad. It is better to extract here the relevant portion of the Section. It is:

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...

(b)...

(bb)...

(c)...

and in the case of a public office ...

The first question arising is whether the Commissioner, Hindu Religious and Charitable Endowments Department, is a Public Officer. The learned single Judge after referring to certain authorities has held that the Commissioner, Hindu Religious and Charitable Endowments is a Public Officer, and this finding is not questioned, and in fact, the counsel for both sides would submit that the Commissioner is a Public Officer and there is

no dispute about it. Section 12 of the Act clearly states that the Commissioner is a Government servant. Therefore we agree with the learned single Judge that the Commissioner is a Public Officer.

7. Now, the suit is filed u/s 70 of the Hindu Religious and Charitable Endowments Act for cancellation or modification of the order passed by the Commissioner in the appeal preferred to him u/s 69 of the Act. The question that arises is whether the suit against the Commissioner can be said to be in respect of any "act purporting to be done by the Commissioner. This question can be immediately answered in the [affirmative on the authority of Supreme Court decision in [Satyanarain Prasad Vs. Gadadhar Ram and Others](#), . In that Judgment the suit was filed against an order passed by the Registrar u/s 5 of the Public Trusts Act (Madhya Pradesh Public Trusts Act, 1951). In that Act the Registrar of the Public Trusts, on application by any person for registration of a trust as a public trust, shall make an enquiry u/s 5 of the Act and record his finding with reasons. Any person aggrieved by that finding can u/s 8 of the Act file a suit for cancellation or modification of the order of the Registrar. The question arose whether in such a suit notice u/s 80 to the Registrar was necessary. It was held that the Registrar is a Public Officer, and his order is an act purporting to be done in discharge of his official duties and therefore notice u/s 80, C.P.C. is necessary. The facts in that case are quite analogous to the facts in our case. In this case also the suit is to cancel or modify an order passed by the Commissioner u/s 69 of the H.R. & C.E. Act. Therefore, there is no doubt that the order in question has been made by the Commissioner in discharge of his official duties and therefore, it is an act purporting to be done in his official capacity and hence a notice u/s 80, C.P.C. is necessary for institution of the suit against him.

8. One of the arguments advanced was that the order against which the suit is filed has been passed by the Commissioner himself and he knew that a suit might be filed against him and no useful purpose would be served by giving him notice u/s 80, C.P.C. and therefore in a case like this the Legislature would not have intended notice u/s 80, C.P.C. In view of the above-said Supreme Court decision we think that this question need not be considered. However there is another decision of the Supreme Court in [Sawai Singhai Nirmal Chand Vs. Union of India](#), directly covering this point. In that case the question was whether in a suit under Order 21, Rules 63 of the CPC against the Government a notice u/s 80, C.P.C. was necessary. It was argued that the suit is only a continuation of the attachment proceedings and therefore the Government already knew that a suit might be filed against it and therefore the purpose of giving a notice u/s 80, C.P.C. viz., giving an opportunity to the Government to consider whether the claims against it could be settled or not does not arise and therefore notice u/s 80, C.P.C. is unnecessary. This contention was negated by the Supreme Court stating that the contention is inconsistent with the plain, categorical and unambiguous words used in Section 80, C.P.C. Therefore we hold that the first defendant-Commissioner shall be given notice u/s 80, C.P.C.

9. Then the next question is whether in as much as the Commissioner has not filed any Letters Patent Appeal, does it amount to his waiver of the notice and therefore can it now

be argued that no notice was sent to him. Mr B.T.Seshadri argues that the notice is meant for the benefit of the Officer, i.e., the Commissioner and that benefit he can always waive. But is there any waiver as such? The Commissioner did raise this plea in the written statement that notice u/s 80, C.P.C. was not sent to him and therefore the suit is bad and this has been argued before the trial Court as well as before the learned single Judge, and the only thing is that he has not filed any L.P A. against the Judgment of the appellate Court i.e., the learned single Judge. Therefore there is no waiver of the plea. At the most it may be a sort of estoppel. In fact on behalf of the Commissioner as a respondent in these L.P.As., the Government Pleader forcibly argued this point. Then under Order 41, Rule 33, C.P.C. the appellate Court can always, considering the circumstances and in the interest of justice, exercise power to pass any order in favour of any of the respondents although such respondent has not filed any appeal or cross objection. In a Full Bench decision of this Court in S.M.S. Subramaniam Chettiar and Anr. v. Sinnammal and Ors. 32 L.W. 395 : AIR 1930 Mad. 801 (FB) it has been laid down that.

Where a plaintiff, being dissatisfied with a decree passed in his favour, prefers an appeal, the appellate Court, in a proper case has jurisdiction to exercise its powers in favour of the respondent by dismissing the plaintiff's case in toto, though the respondent did not prefer a cross-appeal or memorandum of objections challenging the decree passed by the first Court (underlining ours).

Therefore clearly no question of waiver arises. The learned Counsel Mr B.T.Seshadri in support of his argument relied on a Privy Council decision in Vellayan Chettiar and Ors. v. The Government of the Province of Madras and Anr. 40 L.W. 630:1947 P.C. 197 wherein it has been held that:

The notice required to be given u/s 80 is for the protection of the authority concerned. If in a particular case he (authority) does not require that protection and says so, he can lawfully waive his right to the notice

But a reading of the full Judgment would clearly show that in that case no objection for want of notice u/s 80, C.P.C. has been taken in the trial Court and it must be carefully noted that their Lordships have stated to the effect that the authority can lawfully waive his right to notice if he does not require that protection and says so. This is not the case in the present matter. Therefore the said Privy Council decision will not apply to the facts and circumstances of this case. Further that decision of the Privy Council does not appear to " be good law still. Our Supreme Court had an occasion to deal with the importance of nptice u/s 80, C.P.C. in Bihari Chobhary and Anr. v. State of Bihar and Ors. 97 L.W. 103: (S.N.) 1984 S.C. 1043 After stating that there is clearly a public purpose underlying the mandatory provision contained in the Section and the object of the Section is advancement of justice and securing of public good by avoidance of unnecessary litigation in paragraph 6 of the Judgment it has been laid down:

It must now be regarded as settled law that a suit against the Government or a Public Officer, to which the requirement of a prior notice u/s 80, C.P.C. is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the Section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable,

(emphasis supplied).

The emphasized words, viz., "cannot be validly instituted" and "the suit has to be dismissed as not maintainable" are clear to show that no suit can be filed against the Government or Public Officer without the notice u/s 80, C.P.C. and if any such suit is filed it is liable to be dismissed as not maintainable. This means, to file a suit against Government or Public Officer a notice is mandatory and is a condition precedent. Without such notice the suit is bad at its inception and therefore no question of waiver by any party whether the Government or Public Officer arises at all. In this decision of the Supreme Court the above-said decision of the Privy Council in *Vellayan Chettiar and Ors. v. The Government of the Province of Madras and Anr.* 40 L.W. 630 : AIR 1947 P.C. 197 has also been referred to The Patna High Court in [Secy. of State Vs. Amarnath and Others](#), has categorically laid down that a notice u/s 80,CP.C. to the Secretary of State against whom no claim has been made but impleaded, is a condition precedent for the institution of the suit. Hence we find absolutely no merit in the contention of the learned Counsel for the plaintiff that the Commissioner has, by not filing any L.P A., waived his right to notice u/s 80, C.P.C.

10. It is also argued that u/s 110(3) of the Hindu Religious and Charitable Endowments Act the Deputy Commissioner and the Commissioner, while holding an enquiry u/s 63 or 69, shall be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act and therefore passing an order by the Commissioner and the Deputy Commissioner is a judicial act and not an official act within the meaning of Section 80, C.P.C. We find there is no merit in this submission. From the words "the Commissioner or a Deputy Commissioner ... acting judicially within the meaning of the Judicial Officers Protection Act, 1850", it could be seen that to cover the Commissioner and the Deputy Commissioner also with protection given under the Judicial Officers Protection Act they must be deemed to be a person acting judicially. Thus it is for the limited purpose they are deemed to be persons acting judicially and not for any other purpose. While holding the enquiry they are doing the work of judicial nature but essentially in their official capacity. Therefore this contention has to be rejected as without force. And there is no merit in the reasoning given by the learned single Judge that the orders passed by the Commissioner and the Deputy Commissioner are quasi-judicial orders and therefore while passing these orders they did not act in the official capacity.

11. In respect of the second defendant-Executive Officer- we do not agree with Mr B.T.Seshadri that the suit is only against the Devasthanam and not against the Executive

Officer. A look at the cause title makes it plain that the suit is against the Executive Officer himself. There is no point in saying that he is only representing the Devasthanam and the suit is not against him, there is no doubt that the Executive Officer is also a Public Officer like the Commissioner. According to the plain words of Section 80, C.P.C. the Executive Officer, a Public Officer, must also be given notice u/s 80, C.P.C. The learned Counsel would however contend that the Executive Officer has been impleaded not with regard to any official act of his and therefore no notice u/s 80 need be sent to him. The relevant words in the Section with regard to the act of a public officer are:

... any act purporting to be done by such public officer in his official capacity....

From these words, "the act" of the Public Officer could be a past act and also a future act. The very purpose in impleading the Executive Officer as a defendant is to bind him, under the decree that would be passed, in his future acts as an officer of the Devasthanam. Therefore it cannot be accepted that the suit against the Executive Officer is not in respect of any act in his official capacity. In the above-said Patna decision i.e., [Secy. of State Vs. Amarnath and Others](#), the Secretary of State was impleaded as a defendant but no claim has been made against him. It was held, as seen above, that still a notice u/s 80, C.P.C. to him is necessary and it is a condition precedent for the institution of the suit.

12. It is then argued that the Executive Officer has not raised any point with regard to issue of notice u/s 80, C.P.C. in his written statement. But, as we have held above, notice u/s 80, C.P.C. is mandatory and a condition precedent and therefore this point can be raised now even though the defendant has not raised the plea in the written statement. Therefore we hold that the suit is bad against the Executive Officer (second defendant) also for want of notice u/s 80, C.P.C.

13. Coming to the next point raised by Mr Seshadri that the third parties, i.e., the appellants in L.P.A. No. 18 of 1985 cannot argue that no notice u/s 80, C.P.C. has been given either to the Commissioner or to the Executive Officer, this point appears to be well founded. u/s 80 C.P.C. the notice is required to be sent to the Government or Public Officer as the case may be and the purpose is to, as foreseen, give them notice to avoid unnecessary litigation. Therefore, no third party will be prejudiced when no notice is sent u/s 80, C.P.C. For want of notice the suit may be bad as against the Government or Public Officer but not against others in the suit. It has been so held in *Mitrachand Himatlal Marwadi v. Kashinath Thakurji Jadhav* (1942)544 Bom.L.R. 727; [Gaja and Others Vs. Dasa Koeri and Others](#), and [Ishtiyag Husain Abbas Husain Vs. Zafrul Islam Afzal Husain and Others](#), . therefore the appellants in L.P.A. No. 18 of 1985 cannot raise the point for want of notice u/s 80, C.P.C. The result is the suit is bad against defendants 1 and 2 for want of notice u/s 80, C.P.C. The relief claimed being to cancel or modify the order passed by the Commissioner, the suit having not been properly filed against him, no relief can be granted as against other defendants also. Hence the suit has to fail.

14. Accordingly therefore the L.P.A. No. 8 of 1985 is allowed, and the remand order of the Learned single Judge is set aside and the judgment of the trial court dismissing the suit is restored. But there will be no order as to costs L.P.A. No. 18 of 1985 is dismissed. No cost.