

(1912) 08 CAL CK 0054

Calcutta High Court

Case No: None

Bhola Nath Roy and Others

APPELLANT

Vs

The Secretary of State for India
in Council and OthersRESPONDENT

Date of Decision: Aug. 26, 1912**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: 16 Ind. Cas. 849**Hon'ble Judges:** Beachcroft, J; Ashutosh Mookerjee, J**Bench:** Division Bench

Judgement

1. This is an appeal on be-half of the plaintiffs in a suit for declaration of title to land and for recovery of possession and mesne profits. There were three defendants in the action; the first was the Secretary of State for India in Council; the second was the Maharaja of Cossimbazar and the third was Joyti Prosad Singh. The suit was commenced on the 17th December 1909. The written statement on behalf of the Secretary of State, was filed on the 12th April 1910. In the first paragraph of this written statement, it was urged that notice, u/s 80 of the CPC of 1908, was not sufficient, proper and in accordance with law. "The written statement of the second defendant, filed on the same date, dealt with the merits of the case. The third defendant filed his written statement a week later and supported the claim of the plaintiffs. On the 2nd May 1910, the Court framed seven issues, which did not include an issue upon the question of the legality, validity and sufficiency of the notice u/s 80. On the 25th June 1910, the plaintiffs prayed for a local investigation. This application was granted and a Commission was appointed. The Commissioner submitted his report on the 8th December 1910. The Court thereupon directed that the parties should file their objections, if any, within one week from that date. The suit came on for trial on the 13th January 1911. On that data, the second defendant filed a supplementary, written statement with the leave of the I Court. He also

prayed that three new issues might be raised. One of these proposed new issues related to the validity of the notice served u/s 80 upon the Secretary of State for India in Council. The Court held that of the three new issues proposed, two were covered by the issues previously raised: but that an additional issue must be raised upon the question of the legality, validity and sufficiency of the notice u/s 80. An additional issue to that effect was accordingly raised. The suit was then tried out on the merits and decreed in favour of the plaintiffs. The defendants appealed to the District Judge and urged that the suit ought to fail, as there was no proper service of the notice u/s 80 of the Code of Civil Procedure. The District Judge held that as there were 63 plaintiffs and notice had been given by only two of them, the notice could not be deemed valid. In this view, the District Judge reversed the decree of the Court of first instance and returned the plaint to the plaintiffs. The plaintiffs have now-appealed to this Court and contended; first, that the notice was proper and sufficient: and secondly, that a notice u/s 80 had been waived by the Secretary of State for India in Council.

2. In support of the first ground, it has been urged, upon the authority of the decision in *Secretary of State for India in Council v. Perumal Pillai* 24 M. 279 : 11 M.L.J. 117 that a notice by two out of several persons who institute a suit is sufficient for the purpose of section 80 of the Code of 1908. In our opinion, this contention is not well founded. Section 80 provides as follows: 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." The language used by the Legislature is perfectly plain. No doubt, Section 80 does not require that a notice thereunder shall be signed by all the plaintiffs; but it is essential that the notice should state the names, descriptions and places of residence of all the plaintiffs. In the case before us, the names, descriptions and places of residence of two out of sixty-three plaintiffs were given: this was obviously insufficient. It has been urged that, as stated in *Secretary of State v. Pirumal Pillai* 24 M. 279 : 11 M.L.J. 117 the object of Section 80 is to give the defendant an opportunity of settling the claim, if so advised, without litigation; or, as observed by this Court in the case of *Manindra Chandra Nandi v. Secretary of State for India in Council* 5 C.L.J. 148 at p. 168 : 34 C. 257 the object of the notice is to enable the Secretary of State to have an opportunity to investigate the alleged cause of complaint and to make amends, if he thought fit, before he was impleaded in the suit. This object would be completely frustrated if it was maintained that a notice which contained the names, descriptions and places of residence of some only of the plaintiffs in the suit was

sufficient, The Secretary of State cannot very well be expected to speculate or ascertain by inquiry, who the possible plaintiffs might be. We cannot hold, in view of the express provisions of Section 80, that the notice in this case, which gave the names of two out of sixty-three plaintiffs, fulfilled the requirements of the statute. The first ground, therefore, fails.

3. In so far as the second ground is concerned, it is clearly well founded and must succeed. As we have already observed, although in the first paragraph of the written statement of the Secretary of State for India in Council, an objection was taken to the validity of the notice, no issue was raised upon the point. We must assume that the issues were framed in the presence of the parties or their representatives. At any rate, they had notice of the date when the issues would be settled by the Court, and it was incumbent upon them to be represented on the occasion. But even if it be assumed that the issues were framed in the absences of the Government Pleader, it is plain that he might have taken exception to the issues as framed and asked the Court to frame an additional issue. No objection, however, was taken by him at any stage of the trial in the Court of first instance. It was the second defendant who prayed, just before the trial began, that an additional issue might be raised upon the question of the validity of the notice. But it was clearly incompetent to the second defendant to raise the question. As was pointed out by this Court in *Manindra Chandra Nandi v. The Secretary of State for India in Council* 5 C.L.J. 148 at p. 168 : 34 C. 257 it is competent to the Secretary of State to waive the notice and he may be estopped by his conduct from pleading the want of notice at a late stage of the trial. In the events which have happened, we are clearly of opinion that in this case notice was waived on behalf of the Secretary of State and that the question could not have been raised by the second defendant. The second ground, therefore, must prevail.

4. The result is that this appeal is allowed, the decree of the District Judge set aside and the case remanded to him in order that the appeal may be heard on the merits. The appellants are entitled to their costs in this Court. u/s 13 of the Court Fees Act, we direct that the amount of Court-fees paid on the memorandum of appeal be returned to the appellants. The plaint, which was returned by order of the District Judge to the plaintiffs, will be received and sent down to the Courts below.