

## APPELLATE CIVIL,

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*Before Mookerjee and Beachcroft JJ.*

BHOLA NATH ROY

v.

SECRETARY OF STATE FOR INDIA.\*

1912

Aug. 26.

*Notice—Secretary of State for India in Council, suit against—Notice by two out of sixty-three joint owners of land—Sufficiency of Notice—Waiver—Estoppel—Objection taken at a late stage, if permissible—Civil Procedure Code (Act V of 1908) s. 80.*

Under s. 80 of the Code of Civil Procedure it is essential that the notice should state the names, descriptions, and places of residence of all the plaintiffs.

Where a suit was brought by sixty-three plaintiffs against the Secretary of State for India in Council and others, and the notice of the suit contained the names, descriptions, and places of residence of two out of the sixty-three plaintiffs :

*Held*, that such a notice was insufficient and did not fulfil the requirements of the statute.

*The Secretary of State for India v. Perumal Pillai* (1) and *Manindra Chandra Nandi v. The Secretary of State for India* (2) referred to.

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 case.

*Manindra Chandra Nandi v. The Secretary of State for India* (2) referred to.

Where the written statement contained an objection as to the validity of the notice, but no objection was taken by the Secretary of State at any stage of the trial to its omission and it was the second defendant who

\* Appeal from Appellate Decree, No. 1597 of 1912, against the decree of L. Palit, District Judge of Bankura, dated April 30, 1912, reversing the decree of Saradaprasad Bakshi, Munsif of Bankura, dated March 2, 1911.

(1) (1900) I. L. R. 24 Mad. 279.

(2) (1907) 5 C. L. J. 148.

1912

BHOLA  
NATH ROY

v.

SECRETARY  
OF STATE  
FOR INDIA.

prayed, just before the trial began, that an additional issue might be raised on this question :

*Held*, that it was not competent to the second defendant to raise this question.

SECOND APPEAL by Bhola Nath Roy and others, the plaintiffs.

This was a suit brought by Bhola Nath Roy and 62 other plaintiffs against the Secretary of State for India in Council, Manindra Chandra Nandi, who was the Maharajah of Cossimbazar, and Jyoti Prasad Singh, for declaration of title to land and for recovery of possession and mesne profits. On the 23rd June, 1909, under the Government Deera Settlement, a tract of land was treated as *char* formed in the bed of the river Damodar, and settled with the Maharajah, and formal possession was made over to him soon after that date. When, however, he went to take actual possession of these lands, he was resisted by some of the plaintiffs in this suit, and proceedings were instituted under section 145 of the Code of Criminal Procedure, resulting, on the 29th November, 1909, in the possession of the Maharajah being ordered and maintained. On the 17th December, 1909, the plaintiffs filed this suit for recovery of possession, alleging that the lands in dispute appertained to certain mauzas contained in the zamindari of the defendant No. 3 and, as *maurassi mokrari jagirdars* of these mauzas under this defendant, they had a permanent right to the lands in suit, that the Secretary of State for India in Council had no right to assess the lands to revenue and to settle them with the defendant No. 2, and that they were entitled to the lands by adverse possession. Notice of this suit was given in the statutory form by only two of the plaintiffs to the Secretary of State for India in Council by filing it in the Bankura Collectorate. In the written statement filed by the Secretary

of State, on the 12th April, 1910, it was contended that the notice was insufficient and not in accordance with the law, and that the plaintiffs had no right whatsoever to the lands in dispute. The Maharajah in his written statement filed on the same date dealt with the merits of the case. The defendant No. 3, who filed his written statement a week later, supported the case for the plaintiffs and maintained that, if it were competent to Government to settle the lands in dispute, they should be settled with him, as they were within the limits of his zamindari. 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 under section 80 of the Code of Civil Procedure, 1908. On the 25th June, 1910, the plaintiffs prayed for a local investigation which was granted, and, on the 8th December, the Commissioner appointed to investigate submitted his report. The Court, thereupon, directed that the parties should file their objections, if any, within one week from that date. On the 13th January, 1911, when the suit came on for trial, the Maharajah filed a supplementary written statement with the leave of the Court and prayed that three new issues might be raised. One of these proposed new issues related to the validity of the notice served under section 80 upon the Secretary of State for India in Council, and was permitted by the Court to be raised, while the other two issues were held to be covered by the issues previously raised. The Court of first instance decreed the suit, but on appeal by the defendants Nos. 1 and 2 this decree was reversed and the suit dismissed, on the ground that the notice to the Secretary of State for India in Council was signed by two of the plaintiffs and not by the whole body of them. The plaintiffs, thereupon, appealed to the High Court.

1912

BHOLA  
NATH ROY  
v.  
SECRETARY  
OF STATE  
FOR INDIA

1912

BHOLA  
NATH ROY  
v.  
SECRETARY  
OF STATE  
FOR INDIA.

*Babu Harendra Narain Mitra* and *Babu Bankim Chandra Mookerjee*, for the appellants. The Secretary of State may be a proper party, but he is not a necessary party. The provisions of section 80 of the Code of Civil Procedure have been sufficiently complied with, inasmuch as notice was given by two of the appellants. The mere mentioning of the names of all the plaintiffs is not necessary, for the Government cannot be prejudiced by not knowing the personality of the plaintiffs. The object of the section is to inform the Government of the fact that a suit has been filed against it and of the nature of the suit, so that it may have an opportunity of settling the claim, if so advised, and it is sufficient if the notice substantially fulfils this object. The case of *The Secretary of State for India v. Perumal Pillai* (1) is in my favour. Having regard to the plain intention of the Legislature, certain restrictions have been imposed on the wording of section 80: see *Bholaram Chowdhury v. Administrator General* (2) and *Jehangir M. Cursetji v. The Secretary of State for India* (3).

The prayer against the Secretary of State is merely a subsidiary one. He was not, as I have said before, really a necessary party to this suit; but bringing him on the record was done to put a stop to all further litigation. This suit might proceed against the other defendants as a suit for ejectment.

Then again the objection as to notice was raised too late and that, by the defendant No. 2, and ought not to have received any consideration. No issue was framed on behalf of the Secretary of State at any stage of the case as to the sufficiency or legality of the notice, though it was pleaded by him in his

(1) (1900) I. L. R. 24 Mad. 279. (2) (1904) 8 C. W. N. 913.

(3) (1902) I. L. R. 27 Bom. 189.

written statement. This conduct of his amounted to a waiver of his claim to a notice, or, at any rate, he is estopped from raising it at a late stage in the case; see *Manindra Chandra Nandi v. The Secretary of State for India* (1). This appeal should, therefore, be allowed.

1912  
 BHOLA  
 NATH ROY  
 v.  
 SECRETARY  
 OF STATE  
 FOR INDIA

*Babu Ram Charan Mitra*, for the Secretary of State for India in Council.

*Babu Jogesh Chandra Dey*, for Manindra Chandra Nandi, the defendant No. 2.

MOOKERJEE AND BEACHCROFT JJ. This is an appeal on behalf 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 Maharajah of Cossimbazar and the third was Jyoti Prasad 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 under section 80 of the Code of Civil Procedure 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 under section 80. On the 25th June, 1910, the plaintiffs prayed for a local investigation. This application was granted and a Commissioner was appointed. The Commissioner

(1) (1907) 5 C. L. J. 148.

1912  
 BHOLA  
 NATH ROY  
 v.  
 SECRETARY  
 OF STATE  
 FOR INDIA.

submitted his report on the 8th December, 1910. The Court thereupon directed that the parties should file their objection, if any, within one week from that date. The suit came for trial on the 13th January, 1911. On that date, the second defendant filed a supplementary written statement with the leave of the 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 under section 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 under section 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 notice under section 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 under section 80 had been waived by the Secretary of State for India in Council.

In support of the first ground, it has been urged, upon the authority of the decision in *The Secretary of State for India v. Perumal Pillai* (1), that a notice by two out of several persons who institute a suit is sufficient for the purpose of section 80 of the Code

(1) (1900) I. L. R. 24 Mad. 279.

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 until the expiration of two months next after notice in writing has been delivered to or left at the office of a Secretary to the Local Government or the Collector of the District, 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 *The Secretary of State for India v. Perumal Pillai* (1), 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. The Secretary of State for India* (2), 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 enquiry, who the possible plaintiffs might be. We cannot

1912  
 BHOLA  
 NATH ROY  
 v.  
 SECRETARY  
 OF STATE  
 FOR INDIA

(1) (1900) I. L. R. 24 Mad. 279.

(2) (1907) 5 C. L. J. 148.

1912

BHOLA  
NATH ROY  
v.  
SECRETARY  
OF STATE  
FOR INDIA.

hold, in view of the express provision 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.

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 absence 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* (1), 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.

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. Under section 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 Court below.

O. M. *Appeal allowed ; case remanded.*

1912

BHOLA  
NATH ROY  
v.  
SECRETARY  
OF STATE  
FOR INDIA.

## CRIMINAL REVISION.

*Before Sharfuddin and Coxe JJ.*

RAM ANGUTHA SINGH

v.

EMPEROR.\*

1913

Jan. 3.

*Cumulative Sentences—Rioting—Separate sentences for rioting and causing hurt—Penal Code (Act XLV of 1860) ss. 147, 323.*

Separate sentences for the offences of rioting and hurt are legal where it is found that each person took an individual part in the assault.

*Nilmony Poddar v. Queen-Empress (1), Mohur Mir v. Queen-Empress (2), Ferasat v. Queen-Empress (3) r. ferred to.*

THE facts of the case are shortly these. The petitioners are police constables attached to the Cossipore Gun and Shell Factory and the complainant

\* Criminal Revision No. 1529 of 1912, against the order of H. P. Duval, Sessions Judge of Alipore, dated Sept. 20, 1912, confirming the order of A. K. M. Abdus Subhan, Deputy Magistrate of Scaldah, dated Aug. 31, 1912.

(1) (1889) I. L. R. 16 Calc. 442. (2) (1889) I. L. R. 16 Calc. 725.

(3) (1891) I. L. R. 19 Calc. 105.