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income or remuneration in a lump sum, and, therefore, it must be held to be a revenue receipt. The learned counsel then argued that in this view of the matter the cases in which persons receive lump sums in commutation of their pensions would become liable to income-tax on these amounts. It is, however, not necessary to deal with pension cases in this judgment, nor is it necessary to discuss the nature of pension and the effect of its commutation on the liability of the recipient to pay income-tax on it. This matter will no doubt be decided when it is properly raised.

For all these reasons I am of the opinion that in substance the payment in the present case was made in commutation of "income", and, therefore, it must be held to have been received by the assessee as revenue receipt. Accordingly, I would answer the question referred to us by the Appellate Tribunal under section 66 (1) of the Income-tax Act for decision in the affirmative.

The assessee will pay the costs of the respondent which are assessed at Rs. 250.

Falshaw, J.

FALSHAW, J.—I agree.

APPELLATE CIVIL

Before Tek Chand, J.

PT. JANDHU LAL AND OTHERS,—*Plaintiffs-Appellants.*

versus

THE THAPAR INDUSTRIES CO-OPERATIVE HOUSING SOCIETY, LTD.,—*Defendant-Respondent.*

Regular Second Appeal No. 1007 of 1956.

1957

Feb. 6th

Co-operative Societies Act (XIV of 1955) Section 59—Suit against a Co-operative Society—Suit whether can be instituted without complying with the provisions of Section 59 as to notice—Illegal act of society, whether can be challenged without necessity of notice under section 59.

Land Acquisition Act (L of 1894) as amended by the Land Acquisition (Punjab Amendment) Act II of 1954—Section 17—Suit challenging acquisition—Punjab Government whether necessary party.

Held, that section 59 of the Co-operative Societies Act as it reads clearly indicates that notice is required in respect of all cases where the suits are instituted in respect of any act whether already done or apprehended to be done in future or whether the act in question is of the society or of its officers or of anybody else so long as such an act touches the business of the society.

Held further, that the act challenged being illegal will not make any difference. The giving of statutory notice in accordance with law is a condition precedent to the institution of the suit. No suit will be entertained and the merits and demerits of the respective contentions raised by the parties cannot be examined unless the provisions as to the giving of the notice have been complied with. The question of the alleged illegality of the acts of the defendant can only be gone into after proper notice has been given. The language of section 59 is clear and unqualified and whenever a suit is instituted "in respect of any act touching the business of the society" notice as provided must be given. In order to accept the contention of the learned counsel for the appellants one has to substitute the words "in respect of any *lawful* act". It is not open to me to change the *ipsissima verba* of the statute.

Held also, that in view of the provision of section 17 of the Land Acquisition Act (L of 1894) as amended by Land Acquisition Act (Punjab Amendment) Act II of 1954 the Government was not merely a proper but a necessary party and the suit could not proceed without impleading it.

Case law discussed.

Second appeal from the decree of Shri D. P. Sodhi, Senior Sub-Judge, Ambala (with Enhanced Appellate Powers), dated 12th November, 1956, affirming that of Shri Om Parkash, Subordinate Judge, 1st Class, Jagadhri, dated 25th June, 1956, dismissing the suit of the plaintiffs appellants.

K. L. GOSAIN, for Appellants.

F. C. MITAL and P. C. PANDIT, for Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—This is a regular second appeal from the judgment and decree in appeal of the Senior Subordinate Judge, Ambala, confirming the decree of the Subordinate Judge First Class, Jagadhri, dismissing the suit of the plaintiffs.

The facts of the case leading to the institution of this suit are that land measuring 86 *bighas*, 6 *biswas*, as detailed in the plaint, had been acquired by the State of Punjab, under the provisions of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Punjab Amendment) Act, 1953, (Punjab Act No. II of 1954) for the construction of a Labour Colony under a Housing Scheme sponsored by the Government for the Industrial Workers, who are members of the defendant-society. The defendant in this case moved the Punjab Government with a view to acquire possession of the land for the purpose mentioned above. The land in suit was requisitioned in the first instance and the plaintiffs in order to get the requisition proceedings set aside instituted a civil suit against the defendant-society which was decreed in their favour on 21st of June, 1955. On 27th of May, 1955, the Government of Punjab issued notification No. 4850-S-LP-55/14144, indicating that the land in suit was likely to be needed by the Government for a public purpose, namely, for the construction of a Labour Colony under the Government-sponsored Housing Scheme for the Industrial Workers of the Thapar Industrial Workers Co-operative Housing Society, Limited, Jamna Nagar (District Ambala). This notification was made under the provisions of section 4 read with section 17 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Punjab Amendment) Act, 1953. This notification further provided that the President of the above-said Society with its members and servants could enter upon

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and survey the land. The Governor of Punjab further directed that, on the ground of urgency, the provisions of section 5-A, of the said Act would not apply in regard to this acquisition, which meant that the objections of the plaintiffs would not be heard and disposed of. A second notification No. 4850-S-LP-55/14146, was issued on the same day notifying that the land in suit which was specified was required for the afore-mentioned public purpose. This declaration was made under the provisions of section 6 of the Land Acquisition Act, 1894, and under the provisions of section 7 of the said Act, the Collector, Ambala, was directed to take order for the acquisition of the said land. The possession was delivered on 21st of August, 1955, to Shri Brahm Sarup Kaushal, President of the Society.

The plaintiffs pray for a decree for the issue of a perpetual injunction restraining the defendant-society from entering into possession of the land measuring 86 *bighas* and 6 *biswas,* as described in the plaint and carrying on any construction work there. The defendant-society *inter alia* pleaded that the Punjab State was a necessary party and should have been impleaded. It also contended that it was necessary to serve a notice under section 59 of the Punjab Co-operative Societies Act, No. 14 of 1955, and no suit could be instituted till the expiration of three months next after notice in writing had been delivered to the Registrar in accordance with law. Admittedly, no such notice had been given by the plaintiffs. The defendant-society also maintained that the land in dispute having been acquired by the Punjab Government its decision was final and could not be questioned. The plaintiffs could only claim compensation and the civil court had no jurisdiction to give a decision about the adequacy of the amount of compensation. The following issues were framed by the trial Court:—

(1) Whether the Punjab State is a necessary or proper party in this suit?

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(2) Whether the civil court has no jurisdiction to entertain the present suit?

(3) Whether any notice was required to be served upon the Registrar Co-operative Societies, Punjab, as laid down in section 59 of the Punjab Co-operative Societies Act, 1954, if so what is the effect of non-giving of the notice?

(4) Whether the suit is premature?

On the first issue it was held that the Punjab State was not a necessary party but was at the most a proper party. The second issue was decided in favour of the plaintiffs and it was held that the civil Courts had jurisdiction to entertain the suit. The third issue was decided against the plaintiffs and it was held that a notice was required to be served upon the defendant as laid down in section 59 of the Punjab Co-operative Societies Act, 1954. On issue No. 4, it was held that the suit was premature as it had been brought without serving any notice upon the Registrar. In view of the finding on issue No. 3, the plaintiffs' suit was dismissed but the parties were left to bear their own costs. The plaintiffs instituted an appeal in the Court of Senior Subordinate Judge, Ambala, who affirmed the judgment and the decree of the trial Court holding that the suit was liable to be dismissed for failure to comply with the mandatory provisions of law requiring service of notice under section 59 of the Act. The parties were left to bear their own costs in the lower Appellate Courts as well. The plaintiffs have come to this Court in second appeal.

Mr. K.L. Gosain, learned counsel for the plaintiffs-appellants has challenged the decision of the Courts below on issue No. 3, and contends that no notice was necessary. For the sake of convenience section 59

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of the Punjab Co-operative Societies Act (No. 14 of 1955), is reproduced below:—

> "No suit shall be instituted against a registered society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar 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."

Mr. Gosain, in support of his contention had advanced three arguments. Firstly, he contends that the words "in respect of any act touching the business of the society.........." refer to past acts or acts already done. Any relief sought in respect of apprehended or future acts was outside the scope of section 59. His second argument was that the act referred to in section 59 must be an act of the society or of its officers. The act of acquisition was not an act of society but that of the Punjab Government. His third argument was that in view of the finding of the Courts below that the act of acquisition on the part of the Government was an illegal act, no notice was necessary for establishing the illegality of such an act and to commit illegal acts could not be deemed to be the business of the society.

As I read section 59 of the Act I do not find any force in the contention of the learned counsel for the plaintiffs-appellants. The words "in respect of any act touching the business of the society........" are of wide amplitude. Mr. Gosain wants me to read as if the words were "in respect of any act *of the society or any of its officers purporting to be done* touching

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the business of the society..........". When the language of the statute is intelligible it is not open to read into it words that are not there. The word 'act' cannot be read to mean previous acts which had been done. Again, it cannot be read by necessary implication that the act in question must necessarily be that of the society or of any of its officers, which is to be the subject-matter of the suit. The section as it reads clearly indicates that notice is required in respect of all cases where the suits are instituted in respect of any act whether already done or apprehended to be done in future or whether the act in question is of the society or of its officers or of anybody else so long as such an act touches the business of the society. Mr. Gosain has drawn my attention to *Damodar Jagjiwan* v. *Govindji Jivabhai* (1), *K.R.M.A.R. Arunachelam Chetty* v. *J.A. David, Official Receiver, and others* (2), and *Naginlal-Chunilal* v. *The Official Assignee, Bombay, and others* (3). The judgments in these cases refer to the provisions of section 80 of the Code of Civil Procedure, which are not in *pari materia.* Section 80 of the Code of Civil Procedure is as under:—

> "No suit shall be instituted against the Government, 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;

(1) A.I.R. 1923 Bombay 392.
(2) I.L.R. 50 Madras 239.
(3) I.L.R. 37 Bombay 243.

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(b) in the case of a suit against the Central Government where it relates to a railway, the General-Manager of that railway;

(c) in the case of a suit against a 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."

This section forbids the institution of suits against the Government or against the public officer in respect of any act *purporting to be done* by such public officer in his official capacity. The words "*purporting to be done*" after the word "act" cannot be inserted in section 59 of the Punjab Co-operative Societies Act (No. 14 of 1955). The above authorities, therefore, are not helpful in interpreting section 59. Mr. Gosain has also drawn my attention to *Ishar* v. *The Municipal Committee of Lahore* (1), *Kashinath Keshav Joshi* v. *Gangabai and others* (2), and *Manohar Ganesh Tambekar* v. *The Dakor Municipality* (3). The two Bombay rulings considered section 48 of the Bombay District Municipal Act (II of 1884) the language of which is restricted and not analogous to that of section 59 of the Punjab Co-operative Societies Act (No. 14 of 1955). Section 48 of the Bombay District Municipal Act (II of 1884) runs as under:—

"48. No action shall be commenced against any Municipality, or against any officer or servant of a Municipality or any person

(1) 32 P.R. 1914.
(2) I.L.R. 22 Bom. 283.
(3) I.L.R. 22 Bom. 289.

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acting under the orders of a Municipality *for anything done, or purporting to have been done,* in pursuance of this Act, or of the principal Act, without giving to such Municipality, Officer, servant or person one month's previous notice in writing of the intended action and of the cause thereof, nor after three months from the date of the act complained of—

and in the case of any such action for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender."

The words of section 80 of the Code of Civil Procedure may be analogous to that of section 48 reproduced above but by no stretch of language can the words "for anything done or purporting to have been done" be imported into section 59 of the Punjab Co-operative Societies Act, 1954. My attention has also been drawn to *Ishar* v. *The Municipal Committee of Lahore* (1), where the plaintiff had filed a suit for a declaration that the plaintiff-appellant was the owner of a certain plot of land and the Lahore Municipal Committee, who had refused the appellant to build on it had no right to that property. On behalf of the Municipal Committee of Lahore, it was contended that the suit was barred by section 38 of the Punjab Municipal Act, No. 20 of 1891, for want of notice. The terms of section 38 of the Punjab Municipal Act, 1891, and of the corresponding section of the Bombay District Municipal Act, 1894, were similar and following the Bombay rulings cited above the contention of the Municipal Committee of Lahore was repelled. For

(1) 32 P.R. 1914.

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reasons already mentioned this authority is distinguishable and does not help the plaintiffs-appellants. Again Mr. Gosain has drawn my attention to section 49 of the Punjab Municipal Act (Punjab Act No. 3 of 1911) which runs as under:—

> "No suit shall be instituted against a committee, or against any officer or servant of a committee, *in respect of any act purporting to be done* in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at his office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left:
>
> "Provided that nothing in the section shall apply to any suit instituted under section 54 of the Specific Relief Act, 1877".

Thus the provisions of section 80 of the Code of Civil Procedure, section 49 of the Punjab Municipal Act, 1911, Section 38, of the Punjab Municipal Act, 1891, and of section 48 of the Bombay District Municipal Act, 1884, are substantially different from the wide language of section 59 of the Punjab Co-operative Societies Act (No. 14 of 1955). But apart from this dissimilarity of the language indicated above, the authorities relied upon by Mr. Gosain have ceased to be good law in view of the decision in *Bhagchand Dagadasu and others* v. *Secretary of State for India in Council and others*, (1). Their Lordships of the Privy Council held that section 80 of the Code of Civil Procedure applied to all forms of suit

(1) I.L.R. 51 Bom. 725.

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and whatever the relief sought, including a suit for an injunction. In the above case the plaintiffs had instituted a suit against the Secretary of State for India in Council, and the Collector and District Magistrate of Nasik claiming declaration that a notification of the Bombay Government directing that certain sums by way of compensation for damage done should be recovered by the Collector from the plaintiffs was invalid, and sought an injunction restraining executive action under it. The suit was instituted less than two months after notice delivered under section 80 of the Code of Civil Procedure. The plaintiffs justified non-compliance with the provisions of section 80 on the ground that their suit was for an injunction, and as the defendants were about to recover the amount demanded in the notification soon, the suit was filed before the completion of the period of two months. Their Lordships agreed with the decisions of the High Courts of Calcutta, Madras and Allahabad that the provisions of section 80, Civil Procedure Code, were to be strictly complied with and they were applicable to all forms of action and to all kinds of relief. The Bombay view which was to the contrary was rejected as unsound. At page 747 of the Report, it was observed—

> "The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which *inter alia* an injunction is prayed is still 'a suit' within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonable to suppose that the

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section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. 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. So too, the contention that the "act purporting to be done by the Collector in his official capacity, in respect of which" the suit was begun, was his threatened enforcement of payment is fallacious also, since the illegality, if any, is in the order for recovery of the tax. If that was valid, there was nothing to be restrained. Hence, though the act to be restrained is something apprehended in the future, the act alone 'in respect of which' the suit lies, if at all, is the order already completed and issued."

This matter was again considered in *Shingara Singh and another* v. *O'Callaghan and others* (1), by a Full Bench of the Lahore High Court. That was a suit in which the plaintiffs *inter alia* prayed for a declaration that they were not subject to the Indian Army Act within the meaning of sections 41 and 67 of that Act and also had prayed for a permanent injunction restraining the defendants from exercising any authority over the plaintiffs. The plaintiffs had not served any notice under section 80 of the Code of Civil Procedure upon the defendants nor was the Central Government impleaded as a party to the suit. On behalf of the plaintiffs it was argued that a notice under section 80 of the Code of Civil

(1) I.L.R. 28 Lah. 22.

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Procedure was not essential, if the suit was in respect of future acts. Following the decision of the Privy *Council in Bhagchand's case* (1), the contention of the plaintiffs was repelled and it was held that even where the plaintiffs' sue for an injunction against certain threatened and future acts the provisions requiring service of notice must be complied with.

Lastly, in support of this third point, namely, that the act of acquisition was illegal and such an illegal act could be challenged without the necessity of giving notice under section 59 of the Punjab Co-operative Societies Act (No. 14 of 1955) to the Co-operative Society, Mr. Gosain has referred to *Murarilal and others* v. *Municipal Committee, Lashkar* (2). This argument of Mr. Gosain is without merit. The giving of statutory notice in accordance with law is a condition precedent to the institution of the suit. No suit will be entertained and the merits and demerits of the respective contentions raised by the parties can not be examined unless the provisions as to the giving of the notice have been complied with. The question of the alleged illegality of the acts of the defendant will only be gone into after proper notice has been given. *In Bhagchand's case* (1), referred to above their Lordships of the Privy Council were of the opinion that the demand made by the Collector for payments in recovery of the costs of the additional police from the plaintiffs was premature and not in accordance with the Act. After having come to that conclusion they thought it necessary to consider the applicability of section 80 to the suit. If the contention of Mr. Gosain was well-founded then after having come to the conclusion that the impugned act of the Collector was not in accordance with law, their Lordships would not have dismissed the suit and would have overlooked non-compliance with the provisions of section

(1) I.L.R. 51 Bom. 725.
(2) A I.R. 1952 M.B. 21.

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80 of the Code of Civil Procedure. The Privy Council observed —

> "The consequence is that the appellants' present position in regard to the taxes imposed on them is as if their action had never been brought. It was unsustainable *in limine*. They commenced their suit before the law allowed them to sue, and can get no relief in it either by declaration or otherwise. Whatever may be the case between other parties, as against the respondents they must fail."

I may, further, add that the language of section 59 of the Punjab Co-operative Societies Act does not either expressly or by necessary implication restrict the necessity of giving notice to cases of lawful acts of the defendant. As a matter of fact if the acts of the defendant were lawful then there was nothing to be restrained. The language of section 59 is clear and unqualified and whenever a suit is instituted "in respect of any act touching the business of the society" notice as provided must be given. In order to accept the contention of the learned counsel for the appellants one has to substitute the words "in respect of any *lawful* act". It is not open to me to change the *ipsissima verba* of the statute. Mr. Gosain referred to *Murarilal and others* v. *Municipal Committee Lashkar* (1). This authority does not support the proposition contended for by Mr. Gosain. Moreover, it dealt with the provisions of section 48(1) of the Gwalior Municipal Act which were similar to section 49 of the Punjab Municipal Act, 1911, but these provisions are distinct from those of section 59 of the Punjab Co-operative Societies Act.

Mr. Faqir Chand Mital, learned counsel for the respondent, apart from refuting the arguments ad-

(1) A.I.R. 1952 M.B. 21.

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vanced by Mr. Gosain, has also argued that the Punjab Government was a necessary party and, therefore, failure to implead it as a defendant entailed the dismissal of the suit. The plaintiffs claimed themselves to be the owners of the land with respect to which relief by way of perpetual injunction was sought. They impugned the act of Punjab Government in acquiring their land under the Land Acquisition Act, 1894, as amended by the Land Acquisition (Punjab Amendment) Act No. II of 1954. The relevant provisions of section 17 are as follows:—

"17(2) In the following cases, that is to say,—

(a) * * * * * * *

(b) Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or far the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (Act II of 1912), or any dwelling-house for the poor, or the construction of labour colonies under a Government-sponsored Housing Scheme, or any irrigation tank, irrigation or drainage channel, well or any public road, the Collector may, immediately after the publication of the notice mentioned in subsection (1), and with the previous sanction of the appropriate Government enter upon and take possession of such

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land, *which shall thereupon vest absolutely in the Government free* from all encumbrances;

* * * * * *"

Mr. Faqir Chand Mital rightly contends that the property having vested absolutely in the Government no effective decree could be passed in favour of the plaintiffs without impleading Punjab Government. Essentially this suit requires determination of the title in the land. The plaintiffs in order to succeed have to establish that the property does not vest in the Punjab Government but title to it is in them. The lower Appellate Court did not notice the provisions of section 17 of the said Act and of the notification No. 4850-S-LP-550/14144, dated 27th of May, 1955, which expressly provided that in exercise of the powers conferred by section 4, read with section 17 of the Land Acquisition Act, 1894, as amended, the Governor of Punjab was pleased to direct that on the ground of urgency, the provisions of section 5-A of the said Act shall not apply in regard to this acquisition.

I am, therefore, of the view that the Government was not merely a proper but a necessary party and the suit could not proceed without impleading it.

In view of what has been said above, the plaintiffs' appeal fails and is dismissed with costs.

APPELLATE CIVIL

Before Bishan Narain, J.

UNION OF INDIA,—*Defendant-Appellant.*

versus

BAKSHI RAM,—*Plaintiff-Respondent.*

First Appeal from Order 68-D of 1955.

1957

Feb. 7th

Arbitration Act (X of 1940)—Section 14—Award by Abritrator—Pleadings of the parties in the arbitration proceedings—Whether can be considered for holding that