Supreme Court of India
Ghanshyam Dass And Others vs Dominion Of India And Others on 20 March, 1984
Equivalent citations: 1984 AIR 1004, 1984 SCR (3) 229
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
GHANSHYAM DASS AND OTHERS

Vs.

RESPONDENT:
DOMINION OF INDIA AND OTHERS

DATE OF JUDGMENT20/03/1984

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
DESAI, D.A.
ERADI, V. BALAKRISHNA (J)

CITATION:
1984 AIR 1004 1984 SCR (3) 229
1984 SCC (3) 46 1984 SCALE (1)528

ACT:
Contract with Government and claims arising there from-Contractor issues notice to Government under section 80 C.P.C. (before the amendment in 1976) but dies before the institution of the suit-The legal representations of the contractor institutes the suit on the basis of the notice issued by the contractor-Whether a fresh notice under section 80, C.P.C. is necessary and for want of such a fresh notice the suit itself is not maintainable-Code of Civil Procedure (Act V of 1908) section 80 (as is stood before the Amendment Act of 1976) Scope of.

HEADNOTE:
The plaintiff's father Seth Lachhman Dass Gupta entered into a contract with the Governor General-in-Council for the supply of charcoal to the Military Supply Depot, Agra and received payments for the same at the contractual rate from time to time. The contract contained an escalation clause viz. cl.8 to the effect that in case the price of charcoal was increased by more than 10% of the stipulated rate during the subsistence of the contract, the contractor would be entitled to the price at the higher rate. During the period of the contract, the rate of charcoal went up continuously.

The military authorities paid at the enhanced rate for the part of supplies while for the rest they refused to pay more than the contractual rate. He accordingly served a notice to the Government under s. 80 of the Code of Civil Procedure, 1908 making a claim for payment of a sum of Rs. 20,710.50 p. in terms of clause 8 of the contract being the difference between the enhanced rate and the contractual rate for the supplies paid for. But before he could bring the suit against the Government, he died. Thereupon, the respondents brought a suit as his legal heirs and successors claiming the amount. The defendants contested the claim inter alia on the ground that the notice given by Seth Lachhman Dass could not ensure for the benefit of the plaintiff's and therefore the suit was bad for want of notice under s. 80 of the Code. The Court of first instance held that no further notice under s. 80 was necessary as the notice served by the plaintiff's father Seth Lachhman Dass must inure to their benefit.

on appeal, the High Court reversed his decision on the point and held that the notice given by the plaintiff's father was insufficient and was not a valid notice under s. 80 of the Code insofar as the plaintiff's were concerned. Against the judgment, the plaintiff's preferred an appeal by special leave.

Allowing the appeal, the Court

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HELD: 1. The question as to whether a notice under s. 80 is valid or not is a question of judicial construction. S. 80 of the Code is but a part of the . Procedure Code passed to provide the regulation and machinery, by means of which the courts may do justice between the parties. It is therefore merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. As far as possible, no proceedings in a court of law should be allowed to be defeated on mere technicalities. This is the principle on which ours laws of procedure are based. [238A, 239G-H, 240A-C]

2. The whole object of serving a notice under s. 80 is to give the Government sufficient warning of the case which is going to be instituted against it and that the Government, if it so wished can settle the claim without litigation or afford restitution without recourse to a court of law. Though the terms of s. 80 have to be strictly complied with, that does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation. If the notice substantially fulfills its work of intimating the parties 'concerned generally of the nature of the suit intended to be filed, it would be sufficient compliance of

the section. While interpreting the pre-amended section the courts must have due regard to the change in law brought about by sub-s. (3) of s. 80, which shows legislative acceptance of the rule of substantial compliance instead of strict compliance. [240D-E, 242C-E]

Sangram Singh v. Election Tribunal Kotah relied on.

3. In the present case the requirement of s. 80 that there must be identity between the cause of action and the relief claimed in the notice as well as in the plaint, 15 fulfilled. As regards the requirement of identity of the person who issues the notice with the person who brings the suit, in this case the notice contained the name of the original claimant i.e. the father of the plaintiffs. The . notice reached the concerned department of the Government where the Government had opportunity to' examine the nature of the claim and decide whether it should accept or contest the claim. The concerned Government authorities served a reply on the plaintiff's father that his claim was not acceptable. There after he died and his right to file the suit for enforcement of the claim having devolved upon his heirs i.e. the plaintiff's, the plaintiffs filed the suit for enforcement of the same claim. In the circumstances, if s. 80 is held to have not been complied with, as done by the High Court, great injustice would be done to the plaintiffs in the matter of filing suits to the Government inasmuch as in case of insistence on fresh notice, the period of limitation to file the suit would expire in the meantime. Such a situation is not intended by the Code. Thus the requirement of s. 80 was clearly fulfilled in this case but the High Court having allowed the technical plea of the defendants, the plaintiffs have - - been deprived of their legitimate claim for at least 35 years. [238D-H, 239A-C, 240G-H]

S.N. Dutt v. Union of India, [1962]1 S.C.R. 560; Mahadev Dattatraya Rajshri v. Secretary of States for India [1930] 32 Bom. L.R. 604; and Bachchu Singh v. Secretary of State for India in Council, [1902] 25 I.L.R. 187, overruled.
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Raghunath Dass v. Union of India, [1969] 1 S.C.R. 450; Union of India v. A Jeewan Ram A.I.R. 1958 S.C. 905; State of Madras v. C.P. Agencies, A.I.R. 1960 S.C. 1309 and Amar Nath Gogra v. Union of India,[1964]1 S.C.R. 651, affirmed.

Bhagchand Dagadusa v. Secretary of State of India in Council, [1927] I.A. 338; Vallayan Chettiar v. Government of the Province of Madras [1947] I.A. 74: and Government of the Province of Bombay v. Pestonji Ardeshir Wadia [1949] 76 I.A. 57; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 82 of 1971.

From Judgment and Decree dated 26.2.65 of Allahabad High Court in first appeal No. 457 of 1952.

J.P. Goyal and S.K. Jain for the appellants. V.C. Mahajan and A. Subhashini for the respondents. The Judgement of the Court was delivered by SEN, J. This appeal on certificate brought from the judgment and decree of the Allahabad High Court dated February 26, 1965 reversing the judgment and decree of the Civil Judge, Agra dated August 25, 1952 and dismissing the plaintiffs' suit for recovery of Rs. 26,000 raises a question of some importance upon s.80 of the Code of Civil Procedure, 1908.

The facts giving rise to this appeal may be shortly stated. On November 12, 1949, the plaintiffs Ghanshyam Dass and his two minor brothers Shree Ram and Mohan Lal brought the suit out of which this appeal arises, in the Court of the Civil Judge, Agra for recovery of a sum of Rs. 26,000 against the Dominion of India through the Defence Secretary, New Delhi. It was pleaded that their late father Seth Lachman Dass Gupta entered into a contract with the Governor General-in-Council for the supply of charcoal to the Military Supply Depot at Agra during the period from April 1, 1943 to March, 31, 1944. In pursuance thereof, he made necessary supplies and received payments for the same at the contractual rates from time to time. It was pleaded that tho contract contained an escalation clause viz. clause 8, to the effect that in case the price of charcoal increased by more than 10% of the stipulated rate during the subsistence of the contract, the contractor would be entitled to the price at the higher rate. It was alleged that from the date of the contract, the rate of charcoal went up continuously to 44.8% in July, August and September 1943, 93.1% in October November and December 1943 and 82.7% in January, February and March 1944. Accordingly Seth Lachman Dass made a demand for payment of price at the increased rate. The military authorities paid at the enhanced rate for part of the supplies while for the rest they refused to pay at more than the contractual rate. Seth Lachman Dass served a notice Ex. A-8 on the Dominion of India through the Defence Secretary under s.80 of the Code of Civil Procedure 1908. lt appears that before his death,. On or about September 15, 1948 he received a letter from the military authorities rejecting his claim for payments at the enhanced rate but before he could institute any suit he died on October 28, 1949. Thereafter, on November 12, 1949 the plaintiffs who ale his three sons, brought the suit as his legal heirs and successors claiming the amount. The defendants contested the claim inter alia on the ground that the notice Ex. A-8 given by Seth Lachman Dass could not inure for the benefit of the plaintiffs and therefore the suit was bad for want of a notice under s.80 of the Code. The learned Civil Judge, however, held that no further notice under s.80 was necessary as the notice Ex. A-8 served by the plaintiffs' father Seth Lachman Dass must enure for their benefit. He found that the plaintiffs were entitled in terms of clause 8 of the contract to receive a sum of Rs. 20,710.50 p. being the difference between the enhanced rate and the contractual rate for the supplies paid for and accordingly decreed the plaintiffs claim to that extent. But on appeal the High Court, his decision on the point was reversed upon the view that the notice Ex. A-8 given by the plaintiffs' father was insufficient and was nota valid notice under s.80 of the Code of Civil Procedure insofar as the plaintiffs were concerned.

The short question involved in this appeal is whether the notice Ex. A-8 given by the plaintiffs' father Seth Lachman Dass Gupta before his death under s.80 of the Code of Civil Procedure, 1908 would enure for the benefit of the plaintiffs.

Section 80 of the Code as it stood on the date of the institution of the suit, insofar as material, is reproduced below:

> "80. Notice: 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-
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> (a) in the case of suit against the Central Government ..... a Secretary to that Government:
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> ** ** ** ** 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."
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> In the celebrated case of Bhagchand Dagadusa & Ors. v.

Secretary of State for India in Council & Ors., the Judicial Committee of the Privy Council held that this section is express, explicit an mandatory and it admits of no implications or exceptions. The words of Viscount Summer delivering the judgment of the Privy Council have become classical :

> "Section 80 is express, explicit and mandatory, and it admits of implications or exceptions. A suit in which (inter alia) an injunction is prayed 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 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.

The Privy Council rejected the contention put forward before them that the section deals with mere procedure and held that the requirements of s.80 are to be strictly complied with and are applicable to all forms of action and all kinds of relief. It further held that s.80 imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with s.80, the suit was not maintainable, either as to the declaration sought or injunction prayed for.

Earlier, in some cases, a liberal construction was put upon the section and it was held that a notice is sufficient if it substantially fulfils its objection in informing the parties concerned of the nature of the suit to be filed, and that a notice is not invalid merely because it is given by two out of three plaintiffs But since the Privy Council judgment in Bhagchand's case, supra, strict compliance with the terms of s.80 has been enforced and a notice given by one of two plaintiffs has been held to be insufficient. Again, in a case where the plain tiffs' father gave notice and then plaintiffs filed a suit after the father's death, the notice given by the father in respect of the same cause of action was held insufficient : Mahadev Dattatraya Rajarshi v. Secretary of State for India following Buchan Singh v.

Secretary of State.

It is plain from the terms of s.80 that the notice must fulfil the requirements set out therein. It is essential that the notice must state the names, descriptions and places of residence of all the plaintiffs. A notice must be such as to enable the addressee or the recipient to indentify the claimant. In Vallayan Chettiar & ors. v. The Government of the Province of Madras & Anr. Lord Sumner delivering the judgment of the Privy Council referred to the observations of Lord Sumner in Bhagchand's case that s.80 is explicit and mandatory and-admits of no implications or exemptions, and observed that:

> "There should be identity of the person who issues the notice and who brings the suit. To hold otherwise would be to admit an implication or exception for which there is no justification. " .

There, the question was whether a suit brought by two plaintiffs was competent when notice under s.80 was given by only one of them. The Privy Council having regard to the mandatory requirements of s.80 of the Code held that there was no valid notice and accordingly upheld the judgment of the High Court dismissing the plaintiff's suit. So also in Government of the Province Bombay v. Pestonji Ardeshir Wadia & Ors., the Privy Council reiterated the same principles where no notice had been served under s.80 specify-

ing the names and addresses of all the trustees and therefore the provisions of the section had not been complied with and it was accordingly held that the suit was incompetent.

As to the requirement that the notice must state the cause of action and the reliefs claimed, there is a large body of decisions laying down that a notice under the section should be held to be sufficient if it substantially fulfils its object in informing the parties concerned of the nature of the suit to be filed. In consonance with this view, this Court in Dhian Singh Sobha Singh & Anr. v. Union of India, Union of India v. Jeewan Ram, State of Madras v. C.P. Agencies and Amar Nath v. Union of India has held that though the terms of the section have to be strictly complied with, that does not mean that the notice should be scrutinized in a pedantic manner or in a manner divorced from common sense. On this principle, it has been held that notice which states the cause of action and the reliefs described in the annexed copy of the plaint (which forms part of the notice) though defective in form, complies substantially with the section. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation. The relevant passage from the judgment in Dhian Singh Sobha Singh's case, supra, is set out below:

> "We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in Bhugchand Dagadusa v. Secretary of State (1927) LR 54 LA 338) that the terms of this section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C.B. in Jones v. Nicholls (1844) 153 E.R. 149

> "We must import a little common sense into notices of this kind." Beaumont C.J. also observed in Chandu Lal Vadilal v. Government of Bombay, ILR (1943) Bom. 128 "one must construe section 80 with some regard to common sense and to the object with which it appears to have been passed ----------

The question as to whether notice under s.80 was invalid for want of identity of the plaintiffs directly arose in the case of S.N. Dutt v. Union of India. There, a notice was served by the appellant who was the sole proprietor of a business styled S.N. Dutt & Co., (in the name of S.N. Dutt & Co.) and thereafter he filed a suit against the Union of India describing the plaintiff as "Surendra Nath Dutt sole proprietor of a business carried on under the name and style of S.N. Dutt & Co.". This Court upheld the decision of the Calcutta High Court dismissing the plaintiff's suit holding that the person who issued the notice was not the same as the person who filed the suit. The contention that the appellant was carrying on business under an assumed name and therefore the notice was valid as S.N. Dutt & Co. was merely the name and style of the business which he was carrying on, was rejected. The Court held that since no suit could be filed by S.N. Dutt & Co in that name as it was not a partnership firm, it could not give a valid and legal notice in that name, and a valid notice could only be given in the name of S.N. Dutt. The decision merely reiterates the rule laid down by this Court in Bhagchand that 'section 80, according to its plain meaning, requires that there should be identity of the person who gives the notice with the person who brings the suit". The Court distinguished the decisions in Dhian Singh Sobha Singh and C.P. Agencies on the ground that the Court was dealing with defect in describing the cause of action and the relief claimed and where it Concerns the relief and the cause of action, it may be necessary to use common sense to find out whether s.80 of the Code has been complied with, and stated:

> "But where it is a question o f the name of the plaintiff, there is in our opinion (little scope for the use of common sense,) for either the name of the person suing is there in the notice or it is not. No amount of common sense will put the name of the plaintiff there, if it is not there."

> In the case of Raghunath Dass. v Union of India & Anr.

the same question arose but the Court struck a discordant note there. There, the notice emanated from M/s Raghunath Dass Mulkhraj and in the body of the notice at several places the expression "we" was used. Further, the plaintiff had purported to sign for M/s Raghunath Dass Mulkhraj but at the same time he signed the notice as proprietor of M/s Raghunath Dass Mulkhraj. The Court held that was a clear indication of the fact that M/s Raghunath Dass Mulkhraj was a proprietary concern and the plaintiffs was its proprietor. In repelling the contention that there was no identity of the person who gave the notice with the person who filed the suit the Court observed:

> "Whatever doubts that might have been possibly created in the mind of the recipient of the notice, after going through the body of the notice as to the identity of the would be plaintiff, the same would have been resolved after going through the notice as a whole."

There, the plaintiff had averred in the plaint that he was carrying on his business under an assumed name and style of M/s Raghunath Dass Mulkhraj meaning thereby that the concern was a proprietary concern and that the name given to it was only a trade name. Me had also stated in the plaint that he had given a notice under s.80 of the Civil Procedure Code. In the written statement filed on behalf of the Dominion of India, the validity of the notice issued was not challenged. Regarding the notice in question there was only an averment in the written statement that suit was barred by s.80 of the Code as no notice under that section appears to have been served on the Administration. In repelling the contention That the suit was bad for want of notice under s 80 of the Code, the Court said:

> "The object of the notice contemplated by that section is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section in our opinion is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in s.80, Civil Procedure Code are not intended to be used as bootstraps against ignorant and illiterate persons. In this case we are concerned with a narrow question. Has the person mentioned in the notice as plaintiff brought the present suit or is he someone else ? This question has to be decided by reading the notice as a whole in a reasonable manner."

In the ultimate analysis, the question as to whether a notice under s.80 of the Code is valid or not is a question of judicial construction. The Privy Council and this Court have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the suit. This Court has however adopted the rule of substantial compliance in dealing with the requirement that there must be identity between the cause of action and the reliefs claimed in the notice as well as in the plaint. As already stated, the Court has held that notice under this section should be held to be sufficient if it substantially fulfils its object of informing the parties concerned-of the nature of the suit to be filed. on this principle, it has been held that though the terms of the section have to be strictly complied with, that does not mean that the notice should be scrutinized in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would the recipient to avert the litigation.

In the present case, in the notice Ex. A-8 the name, description and place of residence of the plaintiff Seth Lachman Dass, the father of the plaintiffs, was given but unfortunatory before filing the Suit he died and thereafter within the period of limitation the suit was instituted by his sons on the basis of the said notice. The notice Ex. A-8 undoubtedly fulfils the requirement of s.80 insofar as the cause of action and the relief claimed are concerned as they are absolutely the same as set out in the plaint. As stated in Dhian Singh Sobha Singh, the notice must substantially fulfil its work of intimating the parties concerned generally of the nature of the suit intended to be filed and if it does so, it would be sufficient compliance of the section as to the requirement that it should state the name, description

and place of residence of the plaintiff, there must be identity of the person who issues the notice with the person who brings the suit Now so far as the name and description of the plaintiff concerned the notice gives the name as Seth Lachman Dass Gupta. The notice Ex. A-8 duly reached the concerned department and they dealt with the notice. It is not that the Government had no opportunity to examine the nature of the claim and decide whether its should accept or contest the claim The military authorities served a reply on Seth Lachman Dass before his death that his claim was not acceptable. There was no other alternative for Seth Lachman Dass but to have brought a suit for the enforcement of his claim.

If he could not file a suit due to his death, his right to file the suit A devolved upon his heirs i.e. the plaintiffs. If the view taken by the High Court is allowed to stand, great injustice would be done to the litigants in the matter of filing suits against the Government. If fresh notice is insisted upon in such cases, the period of limitation to file a suit may expire in the meantime. Such a situation is not intended by the Code.

The authorities relied upon by the High Court in non suiting the plaintiffs are of ancient vintage. In Mahadev Dattattraya Rajarshi's case, supra, the Bombay High Court relying upon the decision of the Allahabad High Court in Buchan Singh, held that the language of s.424 of the Code of 1882, the predecessor of s.80 of the present Code which was substantially in the same terms, was imperative and absolutely debarred the Courts from entertaining a suit without complying with the provisions of the section. In Buchan Singh's case, supra it was observed by the Allahabad High Court at p.191:

> "If we acceded to this contention, it appears to us that we should be adding words to s.424 which find no place in it. It would be necessary to add after the words "name and place of abode of the intending plaintiff" some such words as "or of the party through whom such intending plaintiff claims."

The Court of first instance here tried to distinguish the decision in Buchan Singh on the ground that the word "intending" appearing in s.424 of the 1882 Code had been omitted from s.80 of the present Code, and therefore the word "plaintiff' j should be construed in a generic sense. The High Court however following the decision of the Bombay High Court in Mahadev Dattaraya Rajarshi held that the notice must contain the name of the actual plaintiff who could bring the suit adding that "the notice must be given by the person who becomes the plaintiff and by no other". We are afraid, that is taking too technical a view of the matter.

S.80 of the Code is but a part of the Procedure Code passed to provide the regulation and machinery, by means of which the Courts may do justice between the parties. It is therefore merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. In Sangram Singh v. Election Tribu-

nal, Kotah & Anr., Vivian Bose, J. in his illuminating language dealing with the Code of Civil Procedure said:

> "It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Our laws of procedure are based on the principle that "as far as possible, no proceeding in a court of law should be allowed to be defecated on mere technicalities". Here, all the requirements of s.80 of the Code were fulfilled. Before the suit was brought, the Dominion of India received a notice of claim from Seth Lachman Dass. The whole object of serving a notice under 5.80 is to give the Government sufficient warning of the case which is going to be instituted against it was that the Government, if it so wished, settle the claim without litigation or afford restitution without recourse to a court of law. That requirement of s.80 was clearly fulfilled in the facts and circumstances of the present case.

It is a matter of common experience that in a large majority of cases the Government or the public officer concerned make no use of the opportunity afforded by the section In most cases the notice given under s 80 remains unanswered till the expiration of two months provided by the section. It is also clear that in a large number of cases. as here, the Government or the public officer utilised the section merely to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of the section. It is unfortunate that the defendants came forward with a technical plea that the suit was not maintainable at the instance of the plaintiffs, the legal heirs of Seth Lachman Dass on the ground that no fresh notice had been given by them. This was obviously a technical plea calculated to defeat the just claim. Unfortunately, the technical plea so raised prevailed with the High Court with the result that the plain tiffs have been deprived of their legitimate dues for the last 35 years, The Law Commission in the Fourteenth Report, volume 1 on the Code of Civil Procedure, 1908 at p.475 made a recommendation that s.80 of the Code should be deleted. It was stated as follows:

> "The evidence disclosed that in a large majority of cases, the Government or the public officer made no use of the opportunity afforded by the section. In most cases the notice given under section 80 remained unanswered till the expiry of the period of two months provided by the section. It was also clear that in a large number of cases, Governments and public officers utilized the section merely to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of the section. These technical defences appeared to have succeeded in a number of cases defeating the just claims of the citizens."

The Law Commission in the Twenty-Seventh Report on the Code at pp.21-22 reiterated its earlier recommendation for deletion of s.80 and in the Fifty-Fourth Report at p.56 fully concurred with the recommendation made earlier. In conformity with the recommendation of the Law Commission, s.80 has undergone substantial changes. By s.27 of the Code of Civil Procedure (Amendment) Act, 1976 which was brought into effect from February 1, 1977, the existing s.80 has been re-numbered as

s.80(1) and sub-ss.(2) and (3) have been inserted. Sub-s.(2). as inserted has been designed to give an urgent and immediate relief against the Government or the public officer with the leave of the Court. 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. Proviso to sub-s.(2) enjoins 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-s.(1).

Sub-s.(3) as inserted by s.27 of the Code of Civil Procedure (Amendment) Act. 1976 reads as follows :

> "80(3). No suit 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 shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1) if in such notice-
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> (a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub section (1), and
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> (b) the cause of action and the relief claimed by the plaintiff had been substantially indicated,"

By sub.s.(3), Parliament has brought in the rule of substantial compliance. The present suit would be directly covered by sub-s.(3) of s.80 so introduced if the suit had been brought after February 1, 1977. Unfortunately for the plaintiffs, s.97 of the Amendment Act provides that the amendment shall not apply to pending suit and the suits pending on February 1, 1977 have to be dealt as if such amendment had not been made. Nevertheless the Courts must have due regard to the change in law brought about by sub- s.(3) of s.80 of the Code introduced by the Amendment Act w.e.f. February 1, 1977. Such a change has a legislative acceptance of the rule of substantial compliance laid down by this Court in Dhian Singh Sobha Singh and Raghunath Dass. As observed in Dhian Singh Sobha Singh's case, supra, one must construe s.80 with some regard to common sense and to the object with which it appears to have been enacted. The decision in S.N. Dutt v. Union of India's case, supra, does not accord with the view expressed by us and is therefore overruled .

Before parting with the case we consider it necessary to refer to one more aspect. It has frequently come to our notice that the strict construction placed by the Privy Council in Bhagchand's case, supra, which was repeatedly reiterated in subsequent cases, has led to a peculiar practice in some Courts. Where urgent relief is necessary the practice adopted is to file a suit without notice under s.80 and obtain interim relief and thereafter to serve a notice, withdraw the suit and institute a second suit after expiry of the period of the notice. We have to express our strong condemnation of this highly objectionable practice. We expect that the High Courts will take necessary steps to put a stop to such practice.

The result therefore is that the appeal succeeds and is allowed. The judgment and decree passed by the Allahabad High Court dated February 26, 1965 are set aside and those of the learned Civil Judge, Agra dated August 25, 1952 are restored with costs throughout. The plaintiffs shall be entitled to further interest on the decretal amount at 6% per annum from August 25, 1952, the date of the decree passed by the Civil Judge, Agra, till realization. S.R Appeal allowed.