STATE OF UTTAR PRADESH

v.

SATYA NARAIN PRASAD

October 30, 1969

[S. M. SIKRI, G. K. MITTER AND P. JAGANMOHAN REDDY, JJ.]

Northern India Ferries Act, 1878 (17 *of* 1878), *s.* 10—*Notice under section must be given by or under authority of State Government.*

Pleadings—Validity of notice challenged in suit—Not necessary to state every legal ground in support of challenge.

The respondent was granted the lease of a public ferry by the State of Uttar Pradesh for a period of three years. Under s. 10 of the Northern India Ferries Act, 1878 the State Government was empowered to cancel such a lease on the expiry of six months notice in writing to the lessee of its intention to cancel the lease. Before the expiry of the full term of his lease the respondent's lease was ordered to be terminated, the notice under s. 10 having been given by the Executive Engineer. In a suit for permanent injunction restraining the State Government from terminating his lease and taking possession of the ferry, the respondent challenged the validity of the notice under s. 10 given by the Executive Engineer. The suit was decreed by the trial court, and the trial court's decree was affirmed in second appeal by the High Court. The State appealed by special leave to this Court. The requirements of a notice under s. 10 of the Act fell for consideration.

HELD : (i) In construing s. 10 of the Act it has to be borne in mind that it deals with the cancellation of a lease of tolls of a public ferry. In other words, once the notice is effective valuable rights of the lessee come to an end. This is recognised by the Legislature by providing a six months' notice. This period is given so that he can wind up this particular business. In this context the notice of intention to cancel the lease cannot be an empty formality. The notice must be such that the lessee can safely act upon it and regulate his affairs; he must not speculate at his peril as to what is the true position. Therefore a notice under s. 10 of the Act must on its face show that what is being conveyed is Government's intention to cancel a lease and that it is being conveyed either by the Government itself or an officer duly authorised on its behalf. [200 E-201 A]

In the present case the body of the notice did not fulfil the above requirement of s. 10. Merely because the notice was signed by the Executive Engineer and mentioned s. 10 it could not be said that the Executive Engineer was expressing the intention of the Government. An officer of the Government has no general authority to act on its behalf. Even if he holds out on behalf of the Government that he has the right to do a particular thing, the right must in fact exist. [200 G-H]

(ii) When the validity of the notice was challenged in the plaint it was not necessary that every legal ground of challenge should have been stated therein. [201 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1117 of 1966.

A Appeal by special leave from the judgment and decree dated October 11, 1965 of the Allahabad High Court in Second Appeal No. 81 of 1957.

C. B. Agarwala and *O. P. Rana*, for the appellant.

L. M. Singhvi and *U. P. Singh*, for the respondent.

B The Judgment of the Court was delivered by

Sikri, J.—This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad in Second Appeal No. 81 of 1957, whereby the High Court (S. N. Katju, J.) allowed the appeal, set aside the decree of the court below and decreed the suit in terms of the decree passed by the Trial Court.

C A very short point arises in this appeal and this is whether the notice dated July 22, 1953, which we will reproduce presently, was in compliance with the provisions of s. 10 of the Northern India Ferries Act, 1878—hereinafter referred to as the Act.

In order to appreciate the points raised before us it is necessary D to give a few facts. Satya Narain Prasad, respondent before us, was granted a lease of Qazi Tolla Ferry for three years on October 18, 1951. The agreed rent was Rs. 46,500/-. Before the date of the expiry of the lease, G. D. Mathur, Executive Engineer, Banaras Provincial Division, gave a notice to the respondent, dated July 22, 1953, in the following terms :

E > "Subject Lease of Qazitola Ferry Notice is hereby given to you under Section 10 of the Northern India Ferries Act and included as clause 14 of your lease agreement that on expiry of six months notice from today, the lease of the above mentioned ferry in your favour as lessee will be terminated."

F Section 10 of the Act, referred to in the notice, reads as follows :

> "The State Government may cancel the lease of the tolls of any public ferry on the expiry of six months notice in writing to the lessee of its intention to cancel such lease. When any lease is cancelled under this G section, the Magistrate of the District in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the State Government, award."

The notice expired on January 21, 1954, and on February 17, H 1954, the notice terminating the lease under s. 10 was given. In the meantime, the respondent had given a notice under s. 80, C.P.C., and on February 18, 1954, he filed a suit challenging the order of termination of the lease. The plaintiff had prayed for

a permanent injunction restraining the State from determining the lease and taking over possession of the Qazitolla Ferry. A

The Trial Court decreed the suit. The State appealed and the Civil Judge, Ghazipur, allowed the appeal and dismissed the suit.

The High Court held that the notice dated July 22, 1953, did not comply with the provisions of s. 10 of the Act. Katju, J., observed : B

> "There must be a notice in writing saying that the lease shall be cancelled after the expiry of six months from the date of the notice. Furthermore, the notice must show that it is the intention of the State Government that lease should be cancelled after the expiry of six C months. It is manifest that the notice on the face of it should show that the State Government intends that the lease shall be terminated after the expiry of six months from the date of the notice. In the notice given by Sri C. D. Mathur, there is nothing to indicate that the State Government had decided that the lease should be D cancelled. The notice on the face of it shows that it was given by the Executive Engineer. It was open to the appellant to interpret the notice to mean that the Executive Engineer desired to terminate the lease and it did not show that the State Government also intended that the lease should be terminated."

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In construing s. 10 of the Act it has to be borne in mind that it deals with the cancellation of a lease of tolls of a public ferry. In other words, once the notice is effective valuable rights of a lessee come to an end. This is recognised by the Legislature by providing a six months notice. This period is given so that he can wind up this particular business. In this context the notice of intention to cancel the lease cannot be an empty formality. The F notice must be such that the lessee can safely act upon it and regulate his affairs. It follows from this that the notice must on the face of it comply with all the requirements of s. 10. The first requisite of a valid notice under s. 10 is that it must express the intention of the Government. The body of the notice in this case does not do so. It is urged that the notice is signed by C. D. G Mathur, Executive Engineer, and mentions s. 10 of the Act, and these facts should have led the lessee to conclude that the Executive Engineer was expressing Government's intention. It is not disputed that Government can authorise an officer, either by a general order or a special order to give a notice of Government's intention. But in that event, the officer should say so in the H notice. An officer of a Government has no general authority to act on its behalf. Even if he holds out on behalf of the Government that he has the right to do a particular thing, the right must

A in fact exist. In cannot be that the lessee must speculate at his peril as to what is the true position. It seems to us that in view of these considerations a notice under s. 10 of the Act must on its face show that what is being conveyed is Government's intention to cancel a lease and that it is being conveyed either by Government itself or an officer duly authorised on its behalf.

B It is urged that this particular ground was not mentioned in the plaint. But the validity of the notice was challenged and it is not necessary that every legal ground of challenge should have been stated in the plaint.

In the result the appeal fails and is dismissed with costs.

C G.C. *Appeal dismissed.*