

(1986) 03 BOM CK 0007
In the Bombay High Court
Case No : C.R.A. No. 47 of 1986

Gram Panchayat, Kuhi and another	Vs	APPELLANT
Vijaykumar Radheshyam Bhalotiya		RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) MhLj 618

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : M.B. Deshmukh, for the Appellant; D.K. Dube, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—In this revision notice before admission returnable on 6-2-1986 was issued on 17-1-1986. However, since the matter could be disposed of conveniently by issuing rule this revision was placed for hearing and disposal. I, therefore, issue Rule in this revision which is heard forthwith as both parties are represented by their counsel.

2. The only question in the instant revision is whether a notice u/s 180 of the Bombay Village Panchayats Act. 1958 (for short, "the Act") was necessary to be given before filing the suit for permanent injunction. The non-applicant/plaintiff filed the instant suit claiming permanent injunction that the defendants should be permanently restrained from leasing out the part of the road which is on the northern portion of the line A B which is a frontage of the Chalta No. 103 of Mouza Kuhi. Tahsil Kuhi, District Nagpur. A perusal of the plaint would show that the plaintiff is having a plot nearby on which he intends to construct a house and a shop and its frontage would be affected if the suit portion is leased out to any other person. Since the defendants were intending to lease out the part of the road he filed the instant suit claiming permanent injunction against them to restrain them from doing so.

3. The defendants i.e. the Gram Panchayat and its Sarpanch raised a preliminary objection that in the absence of a notice u/s 180 of the Act the instant suit was not maintainable. The said objection was tried as a preliminary issue by the learned trial Court which rejected the same by its impugned order. Being aggrieved, the defendants have preferred the instant revision in this Court.

A careful perusal of section 180(2) of the Act would show that the notice to the Gram Panchayat or any of its member, officer, servant or agent is necessary when anything is done or is purported to have done by or under the Act. The question, therefore, is whether the said provision is applicable to only past actions or whether it is applicable to the future actions also as in the case of a suit for permanent injunction. The learned counsel for the defendants has relied upon the following decisions in support of his contention : Union of India vs. Baijnath (AIR 1971 Cal. 57); AIR 1927 176 (Privy Council); Vithoba Babaji Narote Vs. Sholapur Municipality, ; and AIR 1949 25 (Nagpur) . All the above cases are upon the language used in section 80 of the Code of Civil Procedure, 1908 where the expression used and construed is "Purporting to be done". Apart from that in all these cases the action taken viz. the notice given or the orders issued were challenged and as a consequential relief permanent injunction was claimed. The above cases are, therefore, distinguishable and are not applicable in the facts of the instant case where no action as such is challenged.

4. The relief claimed in the instant case is of permanent injunction in regard to future actions which are apprehended by the plaintiff. In this regard the decision relied upon on behalf of the plaintiff is a decision of this Court in the case of The Municipality of Parola vs. Laxmandas and another (1900) 2 B.L.R. 857. This case has arisen out of the provisions relating to notice under the District Municipal Act, 1873, in which the language used is in material particulars analogous to the language used in section 180(2) of the Act. The facts in the case showed that the future action was challenged which was held to be not within the relevant provisions of the said Act relating to notice. The decision in the said case is aptly applicable to the facts of this case. The Full Bench of the Madras High Court has also taken a similar view in the case of Govinda Pillai vs. Taluk Board Kumbakonam (1909 MLR 333) in which the Court was concerned with the provisions relating to notice under the Local Boards Act. It is, therefore, clear that the provision relating to notice u/s 180(2) of the Act is not applicable to the future actions.

5. The view is supported as held in the Bombay case cited supra by the provision relating to the contents of the notice in section 180(2) itself viz. that the notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action, which would show that the action contemplated therein is about damages for past wrongful actions.

6. Be that as it may, it is clear from the phraseology "anything done or purporting to have done" used in section 180(2) of the Act that the action

contemplated is an action which has taken place unlike the expression "purporting to be done" used in section 80 CPC which is indicative of future actions also. There is, therefore, no merit in the contention raised on behalf of the applicants that the notice u/s 180(2) of the Act was necessary.

7. In the result, the instant revision fails and is dismissed. However, in the circumstances, there would be no order as to costs.