

(2012) 09 RAJ CK 0179
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13537 of 2012

Ladu Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80(2)
Constitution of India, 1950 — Article 14

Citation : AIR 2013 Raj 5 : (2013) 3 RLW 2750 : (2012) 4 WLN 331

Hon'ble Judges : Narendra Kumar Jain, J; Arun Mishra, J

Bench : Division Bench

Advocate : Dharmendra Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, CJ.

1. Writ petition has been preferred questioning vires of Section 109 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as "the Act of 1994"), requiring notice to be given to concerned Panchayat before institution of a suit with respect to matter enumerated in the Section. Suit was proposed to be filed with respect to matter enumerated in the Section. Counsel appearing on behalf of petitioner has submitted that under Sec. 80(2) of the CPC in urgent cases at present suit can be instituted in the Civil Court without notice, but no such provision has been made under Sec. 109 of the Act of 1994. Hence, provisions are arbitrary and ultra vires.

2. Counsel has also submitted that petitioner is left remedy less as this Court in Gram Panchayat Gangwa vs. Bankatlal S/o Hanumanprasad & Ors., 2004(2) DNJ [Raj.] 723, opined that suit is not maintainable without complying the requirement of Section 109 of the Act of 1994 and suit was ordered to be dismissed.

3. After hearing learned counsel for petitioner, we are of the considered opinion

that provisions contained in Section 109 of the Act of 1994 cannot be said to be ultra vires, it is rule of procedure only. Section 109 intends no suit or other civil proceeding against a Panchayati Raj Institution or against any member, officer or servant thereof or against any person acting under the direction of a Panchayati Raj Institution or any member, officer or servant thereof for anything done or purporting to be done under the Act in its or his official capacity shall be instituted until the expiration of two months after notice in writing, has been given. Notice containing such facts is intended to take appropriate action after duly considering grievance mentioned in the notice and to make amends, or settle the claim, if so advised, as held by the Hon'ble Supreme Court in the context of Section 80 CPC in Raghunath Das Vs. Union of India (UOI) and Another, wherein the Apex Court has laid down thus:-

8. 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 Section 80, CPC are not intended to be used as booby traps 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.

4. In State of Punjab Vs. Geeta Iron and Brass Works Ltd., Apex Court has laid down thus:-

4. We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Sec. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its Law Officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in Courts for which there is public criticism. We hope that a more

responsive spirit will be brought to bear upon Governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to. Dismissed.

5. It has been held in *State of Seraikella Vs. Union of India (UOI) and Another*, that Section 80 CPC is only rule of procedure. Similar view has been taken in *Sawai Singhai Nirmalchand Vs. Union of India*, and *Union of India and Another Vs. Landra Engineering and Foundry Works and Another*, in *P.R. Narayanaswami Iyer and Others Vs. Union of India*, it has been held that Section 80 CPC does not affect the right to sue Government. It is a technical rule relating to procedure.

6. It has been held in *State of Madras (now Andhra) Vs. Chitturi Venkata Durga Prasad Rao and Others* that Section 80 CPC is not ultra vires as it postpone filing of suit for injunction but does not debar it. It does not offend Article 14 of Constitution of India. In our opinion, it does not take away any substantive right.

7. The provision of Section 109 of the Act of 1994 is akin to unamended Section 80 CPC before Section 80(2) was not inserted. The provisions contained in Section 109 of the Act of 1994, cannot be said to be illegal or arbitrary depriving of any substantive right to have judicial review. Petitioner is not remedy less. The prescribing of procedure of service of notice before institution of suit is permissible under the law.

8. As prayed by Counsel, the petitioner is at liberty to question the legality of the order not registering the plaint, in appropriate proceedings. We find no merit in the petition. The same is hereby dismissed. Stay application is also dismissed.