

**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,  
NANJANAGUD**

**Present** : **Sri. Shrinath A. B.A.L., LL.B.**  
I Addl. Civil Judge & JMFC., Nanjangud

Dated 06<sup>th</sup> day of September, 2021

**O. S. No.477/2015**

**Plaintiff** : Kumar and others

V/s

**Defendants** : The Chief Secretary, State of Karnataka  
and others

**ORDERS ON I.A No.2 UNDER SECTION 289 OF  
PANCHAYAT RAJ ACT R/W SECTION 80(2) R/W SECTION  
151 OF C.P.C AND ANOTHER APPLICATION UNDER  
ORDER 12 RULE 1 OF CPC**

1. The application under Sec.289 of Panchayat Raj Act has been filed by the plaintiffs praying this court to permit the plaintiffs to institute the above suit by dispensing the issuance of notices to defendants No.5 to 7 and to the defendants No.1 to 3 and the another application under Order 12 Rule 1 of CPC has been filed by the defendants No.5 to 7 praying this court by filing the interrogatories to direct the plaintiffs to answer on the interrogatory as to whether the suit property falls within the limits of grama panchayat or under revenue.

2. In the affidavit to the accompanying applications, the plaintiff has contended that the suit schedule properties

belonged to the plaintiff herein and that they are the owners and that the defendants No.5 to 7 are trying to form layout in the suit property illegally. The suit bearing O.S No.28/1999 by the plaintiffs seeking for the relief of permanent injunction against the defendants No.1, 2 and 4 in this suit and the Hon'ble Court was pleased to pass the decree and there was an appointment of court commissioner and that the court commissioner had given a finding that the plaintiffs are in absolute possession and enjoyment of the suit schedule 'A' and 'B' properties. There has been filing of police complaint before the Badanavalu Police Station only the defendants No.5 to 7 being the government bodies are influencing the police and therefore it is difficult for the plaintiffs to protect the possession in the suit properties. There has been no acquisition of the suit properties by the Government and that the earlier notification that was issued has also been lapsed and there has been no acquisition as per under notification and therefore the plaintiffs have filed this suit praying this court to pass a relief of declaration to declare that the notification of acquisition has been lapsed and further has prayed for consequential relief of permanent injunction to restrain the defendants from interfering in forming the layout.

3. The advocate for defendants No.5 to 7 have filed objections to these applications under Sec.280 of Karnataka Panchayat Raj Act and it is specific contention that there was particular pleadings in the plaint as to whether the suit properties falls within the jurisdiction of the grama panchayat

and therefore they are not the necessary parties to be arrayed and filing of this suit without issuance of the prior notice as contemplated under Sec.289 of Karnataka Panchayat Raj Act the institution of the suit itself is bad in law and therefore the suit is not maintainable. Further the defendants No.5 to 7 contend that the suit properties have already been converted into sites and have allotted to the needy people under grama panchayat. Further the objections has not been shown by the plaintiffs for non-issuance of the statutory notice as required under law even they instituted against the government and prayer sought falls under the purview under Sec.289 of Karnataka Panchayat Raj Act and also the suit is barred under Sec.295 of Karnataka Panchayat Raj Act and the grama panchayat officials do not have personal interest in the suit properties and they are public bodies and hence there being no compliance under Sec.289 and 295 of Karnataka Panchayat Raj Act the institution of the suit cannot be permitted and therefore prays to reject the application.

4. The advocate for plaintiffs has also filed objections to the application under Order 12 Rule 1 of CPC that is sought interrogatories by the defendants No.5 to 7. The advocate for plaintiffs contend that there is no requirement to answer the interrogatories in the plaint as to whether the suit properties falls with the revenue or in the grama panchayat and therefore there is no necessity for the plaintiffs to answer of such interrogatories for adjudication of the application under

Sec.289 of Karnataka Panchayat Raj Act and hence prays to dismiss the application under Order 12 Rule 1 of CPC.

5. The learned AGP representing the defendants No.1 to 4 also contends that there is no compliance by the plaintiffs as required under Sec.80(2) of CPC and also supports the contention of the defendants No.5 to 7 in respect of the institution of the suit and its maintainability and hence has prayed to dismiss the application under Sec.289 of Karnataka Panchayat Raj Act and under Sec.80(2) of CPC.

6. Heard the advocate for plaintiffs, the learned AGP and advocate for defendants No.5 to 7.

7. Having perused the pleadings and the arguments of the learned counsel, the following points arise for this Court's consideration:

### **POINTS**

1. Whether the plaintiffs prove that there are necessary averments in the plaint and that there is no requirement of any compliance as required under Karnataka Panchayat Raj Act?
2. Whether the defendants No.5 to 7 prove that the plaintiffs are required to answer the interrogatories for adjudication of the application under Sec.289 of Karnataka Panchayat Raj Act?
3. What order?

8. Having heard the above points are answered as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : As per final order for the following:

### **REASONS**

9. **POINTS No.1 AND 2:-** The plaintiff has filed this suit for relief of declaration to declare that the notification issued by the defendant No.2 in respect of 'A' and 'B' suit schedule properties in respect of land acquisition has been lapsed and for further consequential relief of permanent injunction to restrain the defendants No.1 to 7 from interfering and the defendant No.7 in forming the layout and for direction to direct the defendant No.4 to carryout the necessary changes in the revenue records in respect of suit properties depicting the actual physical possession and extent of the suit property by relief of mandatory injunction. As this application has been objected by the defendants No.5 to 7 questioning the maintainability of this suit, it is necessary to refer to the averments made in the plaint. As contended above this suit is for declaration and for consequential relief of permanent injunction. From perusing the averments the allegations made against the defendants No.5 to 7 is that these defendants are interfering with the peaceful possession and enjoyment of the land situated within the boundaries as described in schedule 'A' and 'B' of

the plaint on 18.08.2015 these defendants brought the earthmover for formation of layout and that they have got the supports of the politicians with the policemen. The second contention is that there is already a finding by the court in an earlier suit filed by the plaintiff regarding their possession and enjoyment and therefore they are in possession and enjoyment of the property, the defendants No.5 to 7 are illegally interfering in their suit schedule property in order to grab the land. Further it is the contention of the plaintiffs in the plaint that the notification that was issued by the defendant No.2 with regard to land acquisition has not been acted upon and therefore the said notification has been lapsed and hence the plaintiffs continued to be as the owners of the suit properties and therefore has filed this suit, which is the sum and substance of the entire plaint.

10. The arguments of advocate for defendants No.5 to 7 was as contended in their objections under Sec.289 of Karnataka Panchayat Raj Act. It was further submitted by the said advocate that there is no clear averment in the plaint as to whether the suit property falls within the jurisdictional limits of the grama panchayat for them to be arrayed as parties to this suit. It is further contended that under Sec.289 of Karnataka Panchayat Raj Act there is a clear restriction to file a suit against any grama panchayat or its members without prior two months notice and further contends that this is a suit for declaration and no such

declaration suit are maintainable against the defendants No.5 to 7 being the grama panchayat. It is further submitted that under Sec.295 Karnataka Panchayat Raj Act there is a complete bar for the plaintiff to file such a suit.

11. The defendants No.5 to 7 having so contended it is necessary to cull out the Sec.289 and 295 of Karnataka Panchayat Raj Act.

289. Restrictions with respect to institution of suits against Panchayats.- (1) No suit for damage or compensation shall be instituted against any Grama Panchayat, Taluk Panchayat or Zilla Panchayat or any of its officers, or any person acting under its direction, for anything done or purporting to be done under this Act or any rule, bye-law regulation or order made thereunder until the expiration of two months next after notice in writing shall have been delivered or left at the office of the Grama Panchayat or Taluk Panchayat or Zilla Panchayat concerned or at the place of abode of such officer or person, such notice shall state the cause of action, the relief sought, the amount of compensation, if

any, claimed and the name and the place of abode of the intending plaintiff.

(2) If any person to whom any notice is given under sub-section (1) tenders the amount to the plaintiff before the suit is instituted and if the plaintiff does not recover in any such action more than the amount so tendered, he shall not recover any costs incurred after such tender and the defendant shall be entitled to costs as from the date of tender.

(3) When the defendant in any suit is a member, officer or servant of such Grama Panchayat, Taluk Panchayat or Zilla Panchayat or any person acting under its direction, the Secretary, Executive Officer, or Chief Executive Officer as the case may be, shall determine whether defense should be undertaken by such Grama Panchayat, Taluk Panchayat or Zilla Panchayat and be paid for out of its fund.

(4) Nothing in this section shall be deemed to apply to any suit instituted

under section 38 of the Specific Relief Act, 1963 (Central Act 47 of 1963).

295. Bar of suits etc.- (1) No civil court shall entertain a suit objecting to an assessment demand or charge made or imposed under this Act, or for the recovery of any sum of money collected under the authority of this Act, or for damages on account of any assessment or collection of money under the said authority, if the provision of this Act have been in substance and effect complied with. (2) No, suit or other legal proceeding shall lie against a Chief Executive Officer or Executive Officer or Secretary or any other officer of the Government or a Grama Panchayat or Taluk Panchayat or Zilla Panchayat or any member, officer, servant or agent of such Grama Panchayat, Taluk Panchayat or Zilla Panchayat acting under its direction in respect of anything done or purporting to have been lawfully done and in good faith under this Act or any rule, regulation, bye-law or order made

thereunder except with the previous sanction of the Zilla Panchayat or such officer as the Zilla panchayat may specify. (3) No suit or other legal proceeding shall lie against the Government in respect of anything done under this Act, or any rule, regulation or bye-law made thereunder.

12. Having perused the above provisions it is clear that the restriction imposed under Sec.289 of Karnataka Panchayat Raj Act is only with respect to filing of suit for damages and for compensation against the grama panchayat or its members and there is no complete bar in filing the suit. Further under Sec.289(4) for the said enactment there is a clear provision that this Sec.289 is not applicable pertaining to injunction suit. Therefore, Sec.289 (1) to (3) is not applicable to this facts of the present suit for the reason that this suit is not for either damages or for compensation therefore the Sec.289 has no application to the present facts of the case and there is no requirement for the plaintiff to seek for dispensation of issuance of statutory notice as contemplated under Sec.289 of Karnataka Panchayat Raj Act.

13. From perusal of Sec.295 of the Karnataka Panchayat Raj Act it is with respect to bar of suits there is a clear specification as to when such bar is applicable. From

perusal it is clear that only when the officials of the grama panchayat have acted in official capacity then such actions has to be redressed before the appropriate redressal forum as contemplated under Karnataka Panchayat Raj Act. From perusing the present facts of the case as averred in the plaint there is no such specific pleadings by the plaintiff as to the defendants No.5 to 7 have acted in an official capacity and has passed any order. Further there is no such contention also taken by the defendants No.5 to 7 of having acted under the official capacity in forming the layout as alleged by the plaintiffs. It is specific allegations against these defendants No.5 to 7 that they are formed layout illegally in the suit 'A' and 'B' schedule property and such case under Sec.295 is not applicable to the present facts of the case. Therefore there was no requirement to plaintiff to file such application under Sec.289 or under Sec.295 of Karnataka Panchayat Raj Act for seeking for dispensing from issuing notice before filing the suit at the first instance. Coming to the provision under Sec.80(2) of CPC which is applicable to the defendants No.1 to 4 being the government bodies, from perusing the object of the said enactment under Sec.80(2) there is a requirement of issuance of such statutory notice of 60 days before the institution of any suit for the reason that any contention taken by the plaintiff has to be brought to the knowledge of the such government bodies being the defendants No.1 to 4 herein for them to give appropriate evidence before the court and there would

be any interim order passed against the government parties without hearing them and therefore there is requirement under Sec.80(2) of CPC to be issued by the plaintiffs as required under law. Here in this case the suit has been filed in the year 2015 and defendants No.1 to 7 have been brought to the notice about the facts of the case as to why the plaintiffs are before the court and from 2015 these defendants are contesting the suit therefore already there is a clear knowledge with defendants as to the nature of the suit and that there are proper defence to be taken and that these defendants have already come on record after lapse of 06 years the present application under Sec.80(2) of CPC do not require for adjudication.

14. Coming with regard to the Order 12 Rule 1 of CPC filed by the advocate for defendants No.1 to 5 the interrogatories that have been raised is answered by the very same defendants in their objections to the application under Sec.289 of Karnataka Panchayat Raj Act. These defendants themselves contended that they have formed the sites and have been allotted to the beneficiaries and that the suit properties fallen under grama panchayat. Having contended so there arises no question for the plaintiff to answer such interrogatories for asking the present application and therefore the application filed by the defendants No.5 to 7 needs to be dismissed. Hence for all the above submissions this Court answers Point No.1 in the Affirmative and Point No.2 in the Negative.

15. **POINT No.3:-** In view of my findings on Points No.1 and 2, this Court proceeds to pass the following:

**ORDER**

The applications under Sec.289 of Karnataka Panchayat Raj Act r/w Sec.80(2) of CPC r/w Sec.151 of CPC is hereby allowed and plaintiffs are permitted to prosecute the suit.

The application filed under Order 12 Rule 1 of CPC is hereby dismissed.

No order as to cost.

*(Dictated to the Stenographer, transcribed by him, revised, and then pronounced by me in the open court on this the 06<sup>th</sup> day of September 2021).*

**(Shrinath A.)**

I Addl. Civil Judge & JMFC.,  
Nanjanagud.