

**Order in respect of preliminary issue framed as per Order below
exh. 21 in R.C.S. No. 290/2012**

1- In this suit, as per Order below exh. 21 following preliminary issue is framed :-

" Whether suit is maintainable for want of notice to defendant under section 180 of Bombay Village Panchayat Act ?"

2- In this respect, perused Exh. 21 and say on it. Also perused record of the case. Heard Adv. T. D. Ghadage for defendant and Adv. S.S. Shinde for plaintiff. Also perused written arguments of defendant filed at exh. 28.

3- As per the contentions of defendant, notice is not given as per Section 180 of the Bombay Village Panchayat Act and therefore, suit is liable to be rejected. On the contrary, it is averred by plaintiff that suit is filed after getting notice waived by Court as per Section 80 of C.P.C., Therefore, suit is maintainable.

4- During argument Adv., for defendant filed on record the case laws namely--

a) Poona City Municipal Corporation V/s Dattatray Nagesh Devdhar (AIR 1965 Supreme Court 555)

b) Bharat Kala Bhandar Ltd. V/s Municipal committee Dhamangaon (AIR 1966 Supreme Court 249)

These both case laws are in respect of Municipal Act and therefore, they are not applicable here. Advocate for plaintiff relied on observations made in ***Grampanchayat Kohi V/s Vijaykumar***

Radheshyam Bhalotiya (1986 B.C.I 94) In this case law, Hon'ble High Court has held that notice under section 180(2) of the Bombay Village Panchayat Act is not necessary for actions to be taken in future.

5- In the light of above observations, it has to be seen whether present suit is in respect of the actions to be taken in future. The perusal of prayer clause makes it clear that plaintiff has asked for perpetual injunction against defendant by restraining later from constructing road from suit property and causing obstruction to it. From above relief, it is clear that present suit is in respect of future actions to be taken by defendant. In such circumstances, above observations made in *Grampanchayat Kuhi Case* are clearly applicable. In such circumstances, it is not necessary to give notice to defendant under section 180 of Bombay Village Panchayat Act. Further more, it appears that plaintiff has taken due care while filing suit by putting application to waive notice under section 80 of CPC and the said application is allowed, though it was not required. Considering this, the preliminary issue is required to be recorded in negative. Hence Order :-

ORDER

1. Preliminary issue is recorded in negative.
2. It is hereby made clear that suit is not hit for want of notice to defendant under section 180 of Bombay Village Panchayat Act.

Patan
Date. 12/02/2013

(Shashikant R. Mokashi)
Jt. Civil Judge, Jr.Div. Patan.