


MHWS100012452018 	ORDER BELOW EXH.13 In R.C.S. NO.63/2018 (Dilip Trimbakrao Ghuge Vs. Block Development Officer) <u>(Dated 13th June, 2023)</u>
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1. This an application filed by defendant under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908.

2. It is the contention of defendant that he is the Government Servant. Therefore, this Court is not having any jurisdiction to entertain the present suit. Further more, prior to filing the suit, notice under Section 280 of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 is mandatory. Prior to filling of suit, notice is not given by the plaintiff. Thus, plaint deserves to be rejected under Order VII Rule 11 (d) of C.P.C.

3. The plaintiff filed say to this application submitted that the suit has been filed with the permission of the Court. The suit is for the permanent injunction. Hence, prayed to reject the application.

4. Heard, the Ld. Advocate for the plaintiff and defendant. They have submitted as per application and say.

5. Considering the rival submissions of the parties, the following points arise for my determination and I record my finding thereon for the reasons given below :-

Sr.No.	POINTS	FINDINGS
1.	Whether the application deserves to be allowed ?	No.
2.	What order ?	Application is rejected.

REASONS

AS TO POINT NO.1 :-

6. Perused the application and say. This is the suit for permanent injunction. The contentions of the defendant is regarding the prior notice under Section 280 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. The **Section 280** reads as under :-

(1) No suit shall be commenced against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.

(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

7. The defendant filed this application under Order VII Rule 11 read as under :-

Order-VII Rule-11

The plaint shall be rejected in the following cases :-

(a) -----

(b) -----

(c) -----

(d) Where the suit appears from the statement in the plaint to be barred any law:

(e) -----

(f) -----

8. It is settled law that in order to consider the application under Order VII Rule 11 (d), the contentions in the plaint needs to be looked. On perusal of plaint it appears that, the plaintiff has filed this suit for restraining the defendant from demolishing his canteen situated in the premises of Panchayat Samiti, Malegaon. It is his contention that he regularly paid the rent of the suit property and also deposited Rs.30,000/- (Thirty Thousand Rupees only) as an advance. Since last 22 years, his canteen is erected. The Panchayat Samiti, Malegaon has issued two notices to him. He filed separate application to dispense with the prior notice. On perusal of record it reveals that, the same has been allowed by this Court.

9. On perusal of the documents on record it appears that, second notice has been issued on 05.09.2018. In the said notice time to remove the canteen has been given till 06.09.2018. On 07.09.2018, the suit has been registered. It shows at that time the urgent relief is needed. Therefore, in such situation the mandatory compliance of the notice can be dispensed with. The Hon'ble Bombay High Court in the case of Noor Mohd. Shami Shaikh Vs. Maharashtra Housing Development Board and Others 2014 Vol. (1) Maharashtra Law Tribunal. In this case lordship held that :-

“The notice cannot be waived except in cases of urgency it may be excusable in a rare case, when plaintiff is required to be protected against written action of demolition of his house or shop as the case may be.”

10. In the present case also the facts averred in the plaint it shows that, the plaintiff was in extreme urgency therefore he instituted the suit without the compliance of Section 280 of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. The burden to plead and proof that the fact

of issuing notice was the consequence of act that was done or purported to have been done in pursuance of the of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. It requires evidence that the fact of the defendant is the act which he intended to be done under the act. Hence, in such situation, the grounds mentioned in the application regarding mandatory notice does not come under Order VII Rule 11 (d) of C.P.C. The application is devoid of merits. In view of the above discussion, the application is liable to be rejected and answered issue No.1 in affirmative. Hence, in view of point No.2, I pass the following order :-

ORDER

1. Application stands rejected.
2. No order as to cost.
(Dictated and pronounced in open Court)

Place : Malegaon
Date : 13.06.2023

(Pravin U.Kulkarni)
Jt. Civil Judge (J.D.) Malegaon
Dist. Washim.

CERTIFICATE

I affirm that the contents of this P.D.F file Order is same word to word, as per the original Order.

Name of Stenographer : **Shivam B. Patange (L.G.)**

Name of Court : P.U.Kulkarni
Jt. C.J.J.D. and J.M.F.C., Malegaon.

Date of Order : 13.06.2023

Order Signed by : 15.06.2023

Presiding Officer on

Order Uploaded on : 15.06.2023