



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No.186 Of 2024

1. Zilla Parishad, Ahmednagar
Through Chief Executive Officer,
Zilla Parishad, Ahmednagar,
District Ahmednagar.
2. Block Development Officer,
Panchayat Samittee, Ahmednagar,
District Ahmednagar.
3. Grampanchayat Hamidpur,
Through Village Development Officer,
Grampanchayat Hamidpur,
District Ahmednagar.

.. Applicants

Versus

1. Sandip Madhav Khase
Age : 45 years, Occ: Business,
R/o : At Hamidpur, Post Higangaon,
Tal. Nagar, District Ahmednagar.
2. Sarpanch, Grampanchayat Hamidpur,
Grampanchayat Hamidpur,
Tal: Nagar, District Ahmednagar.
3. Upsarpanch, Grampanchayat Hamidpur,
Grampanchayat Hamidpur,
Tal: Nagar, District Ahmednagar.

.. Respondents

- * Advocate for the Applicants :
Mr. Pratik P. Kothari
- * Advocate for the Respondent No.1 :
Mr. M. G. Kolse Patil

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 21st JULY 2025
PRONOUNCED ON : 28th JULY 2025

J U D G M E N T :

1. Heard both sides finally.
2. Revision Applicants who are original Defendant Nos. 1 and 3 have invoked jurisdiction of this Court under Section 115 of the Civil Procedure Code, taking exception to order dated 01.10.2024 below Exhibit-25 passed by 2nd Joint Civil Judge, Senior Division, Ahmednagar, Ahmednagar in RCS No.652/2024. Their application to reject plaint under Order VII Rule 11 of CPC has been turned down. Respondent No.1 is the Plaintiff in RCS No.652/2024 filed for the relief of declaration and injunction.
3. Respondent No.1 was allotted shop no.3 by Applicant No.1/Zilla Parishad on deposit of Rs.5000/- with effect from 27.12.1999. He accordingly runs a grocery business. It is pleaded that he is punctual in paying rent and taxes. The shop in question is in good condition. Due to political rivalry, he has been targeted and the Respondents decided to evict him from the shop. Without giving him any opportunity, order was passed on 01.03.2024. In pursuance of that he was issued eviction notice of 15.07.2024, directing him to vacate the shop within fifteen days. He has thus challenged report, order dated 01.03.2024 and the notice dated 15.07.2024 by filing above referred suit on 30.07.2024.

4. Applicants submitted application Exhibit-25 under Order VII Rule 11 on the ground that no notice under Section 280 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Zilla Parishads Act) was issued to the Applicant Nos. 1 and 2. No notice under Section 80 of Civil Procedure Code (hereinafter referred as CPC) was issued by the Respondent No.1. It is further contended that it was mandatory to issue notice under Section 180 of Maharashtra Village Panchayats Act, 1959, as Defendant Nos. 3 to 5 are the authorities under the concerned Act. Respondent No.1 contested the application by filing his Say. By impugned order, application was rejected holding that issue regarding waiver of notice period would be dealt with on merits during the course of proceeding and there is sufficient compliance of notices as contemplated under various Act.

5. Applicants have placed on record plaint, notice dated 15.07.2024 by which Respondent No.1 is called upon to vacate the premises and a notice dated 24.07.2024 which was issued by Respondents before filing of the suit.

6. Learned Counsel for the Applicants Mr. Kothari submits that there is no compliance of Section 80 of the CPC, Section 280 of the Zilla Parishads Act and Section 180 of the Maharashtra Village Panchayats Act and the suit is not entertainable. He would advert my attention to the dates of issuing notice and filing of the suit to demonstrate non-compliance of the mandatory provisions. He would submit that plaint is silent regarding any waiver of notice period or the immense urgency for which

Plaintiff could not have waited for the notice period. He would submit that observations of learned Judge in paragraph no.8 are patently illegal. He would submit that no leave was secured under Section 80(2) of CPC. Hence the suit is not maintainable. It is further submitted that filing of separate application at Exhibit-48 soliciting waiver of notice period is inconsequential and afterthought.

7. Mr. Kolse Patil learned Counsel for the Respondent No.1 supports impugned order. He would submit that Applicants have resorted to eviction arbitrarily and highhandedly without extending opportunity of hearing. He would submit that notice dated 24.07.2024 is the sufficient compliance of Section 80 and for the purpose of waiver, application Exhibit-48 has been filed which is under consideration. It is further submitted that impliedly the notice period has been waived considering urgency in the matter. My attention is adverted to the paragraph no.5 of the plaint. It is further submitted that present Revision is premature as application Exhibit-48 is still pending.

8. Respondent No.1 has filed RCS No.652/2024 for declaration and injunction by which action of eviction is under challenge. For the purpose of inquiry under Order VII Rule 11, I need not deal with the submissions of Respondent No.1 regarding validity of impugned action of eviction. Undisputedly Respondent Nos. 1 and 2 are the authorities under the Zilla Parishads Act. Respondent Nos. 3 to 5 are authorities under the Village Panchayats Act. Respondents discharged public function and they

are public Officers. There is no dispute that on 24.07.2024, Respondent No.1 issued a notice and suit was filed on 30.07.2024. Suit has been filed within period of nine days after issuance of notice.

9. Section 80 of CPC contemplates notice period of two months and sub-section (2) pertains to leave of the Court for waiver of the notice period. It is mandatory to issue such notice. The provisions of Section 280 of the Zilla Parishads Act and Section 180 of the Village Panchayats Act are not analogues to Section 80 of CPC. Under Zilla Parishads Act or Village Panchayats Act, there is no provisions for waiver of the notice period. Both the acts contemplate notice period of three months.

10. I have gone through plaint which does not spell out any pleadings regarding waiver of notice period under Section 80 of CPC or under Section 280 of the Zilla Parishads Act or under Section 180 of the Village Panchayats Act. There is no pleading for the urgency to file civil suit by dispensing the notice period. When the suit was filed, there was nothing before trial Court to grant any waiver for notice period. Application Exhibit-25 was decided on 01.10.2024 and thereafter application Exhibit-48 was filed on 19.03.2025 soliciting waiver of notice period.

11. The notices referred above are mandatory considering the status of the Defendants. Impugned order does not reflect that learned Judge has perceived the difference between Section 80 of CPC and Section 280 of Zilla Parishads Act or Section 180 of

the Village Panchayats Act. The Sections are quoted for ready reference :

Section 180 in The Maharashtra Village Panchayats Act, 1959 :

180. Bar of action against Panchayats etc. and previous notice before institution.

(1) No action shall lie against any member, officer, servant or agent of Panchayat [* * * *] [The words 'or Nyaya Panchayat' were deleted by Maharashtra 13 of 1975, Section 33.] acting under its direction, in respect of anything in good faith done under this Act or any rule or bye-law.

(2) no action shall be brought against any Panchayat [* * * *] [The words 'or Nyaya Panchayat' were deleted by Maharashtra 13 of 1975, Section 33.] or any member, officer, servant or agent or such Panchayat [* * * *] [The words 'or Nyaya Panchayat' were deleted by Maharashtra 13 of 1975, Section 33.] acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office or the Panchayat [* *] [The words 'or Nyaya Panchayat' were deleted by Maharashtra 13 of 1975, Section 33.] and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature or the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any Panchayat [* * * *] [The words 'or Nyaya Panchayat' were deleted by Maharashtra 13 of 1975, Section 33.] or person to whom a notice under sub-section (2) is given shall, before action is brought, tender sufficient amends to the plaintiff and pay into Court, the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all cost, incurred by the defendant after such tender.

Section 280 in The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 :

280. Limitation of suits, etc.

(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.

12. Unlike Section 80(2) of CPC, there is no descretion with the trial Court to dispense with period of notice, while entertaining challenge to the action of authorities under Zilla Parishads Act or Village Panchayats Act. In other words, trial Court has no jurisdiction to entertain suit by dispensing with the notice period. Hence the findings recorded under impugned order are perverse. The purport of the notice under three enactments referred above is to provide opportunity to rectify the mistake or to do the needful. Those are mandatory requirements and in the absence of the compliance, the suit is not entertainable.

13. Learned Judge only cursorily referred to two months notice period which is to be dealt with during the course of trial. There is no provision of waiver of notice period when action of authorities under Section of Zilla Parishads Act or action of authorities under Village Panchayats Act, is challenged. Learned Judge has committed error of jurisdiction in considering the provisions of Section 80(2) of CPC only.

14. Respondent No.1 filed application Exhibit-48 after passing of the impugned order. When plaint was silent and application Exhibit-25 was already decided, remedial measure taken by the Respondent No.1 is inconsequential. Otherwise also I have already observed that granting waiver of the notice period is not

within jurisdiction of the trial Court so far as notice under Section 280 of the Zilla Parishads Act and notice under Section 180 of the Village Panchayats Act are concerned. I find that Applicants have made out a case for invoking powers under Order VII Rule 11.

15. Applicants have relied on the judgment in the matter of **State of A.P. and Ors. Vs. Pioneer Builders, A.P.**, AIR 2007 SC 113. In that case, Contractor had filed suit against action of expulsion from contract. The maintainability of the suit was objected by the Defendant. Three applications were filed by the Contractor/Plaintiff. Out of that, one was for dispensing with notice period under Section 80 of CPC. Those applications were allowed. Thereafter suit was decreed. The Defendant unsuccessfully challenged decree before High Court and ultimately they were before Supreme Court. The maintainability of the suit for want of notice under Section 80 was one of the challenges. My attention is adverted to Paragraph Nos. 12, 15 and 16. The purport laid down by the Apex Court in those paragraphs cannot be disputed. However facts of that case are distinguishable. Those cannot be made applicable to the case at hand which involve question of rejection of plaint.

16. Further reliance is placed on the judgment of **Govt. of Kerala and Ors. Vs. Sudhir Kumar Sharma and Ors.**, MANU/SC/0892/2013. My attention is adverted to Paragraph Nos. 26 to 28 of the judgment. In that case application under Order VII Rule 11 was rejected before application seeking waiver

of notice period under Section 80(2) of CPC was decided. In that context, it was held that unless application under Section 80(2) is decided, application under Order VII Rule 11 should not have been decided. In the case at hand, application Exhibit-48 u/s 80(2) of CPC not filed and pending before rejection of application Exhibit-25. Additionally case at hand involves mandatory notice under Section 280 of Zilla Parishads Act and Section 180 of Village Panchayats Act. This judgment will not help the Applicants.

17. Further reliance is placed on the judgment of **Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited**, AIR 2022 SC 3848. The facts of the case are distinguishable. Those would not help Applicants.

18. Learned Counsel Mr. Kolse Patil relied on the judgments of **State of A.P. and Ors. Vs. Pioneer Builders, A.P.**, AIR 2007 SC 113 and **Ghulam Rasool and Another Vs. State of Jammu and Kashmir and Another**, (1983) AIR (SC) 1188. Both the judgments are in respect of statutory notice under Section 80 of CPC. I have already distinguished judgment of Supreme Court in case of **State of A.P. and Ors.** (supra) which is also cited by the Applicants. In the matter of **Ghulam Rasool and Another** (supra), issues germane in the case at hand, were not before the Apex Court and the same cannot be made applicable.

19. Further reliance is placed on the judgment in the matter of **Chandrashekhar Purushottam Rathi Vs. State of Maharashtra and**

Another, (2002) 2 MhLJ 181. It was a case involving a notice under Section 80 of CPC only and unlike the case at hand, the notices under other enactments were not under consideration. Therefore no reliance can be placed on the judgment.

20. Further reliance is placed on the judgment of full bench in the matter of **Vasant Ambadas Pandit Vs. Bombay Municipal Corporation and Others**, (1981) AIR (Bombay) 394. It was also in respect of notice under Section 80 of CPC only. It was in respect of the suit instituted on 01.07.1970 when unamended provision of Section 80 was in force. Hence it would not enure to the benefit.

21. Lastly, reliance is placed on the judgment of **K.K. Sharma Vs. Punjab State and Others**, (1989) AIR (Punjab) 7. Only notice under Section 80 was under consideration and not the mandatory notices under other enactment which did not provide for waiver of the notice period. Hence this judgment will not help the Respondent No.1.

22. Considering the above referred reasons, I find that Applicants are entitled to succeed and the plaint is liable to be rejected. I, therefore, pass following order :

ORDER

(i) Impugned order dated 01.10.2024 below Exhibit-25 passed by 2nd Joint Civil Judge, Senior Division, Ahmednagar in

RCS No.652/2024 is quashed and set aside and plaint in RCS No.652/2024 shall stand rejected.

(ii) Civil Revision Application is allowed in above terms.

**SHAILESH P. BRAHME
JUDGE**

Nejesh