

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

RSA.No. 330 of 2015 ()

**AGAINST THE JUDGMENT & DECREE IN AS.NO. 60/2011 OF SUB COURT, KASARAGOD
DATED 26/11/2014**

**AGAINST THE JUDGMENT & DECREE IN OS.NO. 71/2010 OF ADDL.MUNSIFF COURT,
KASARAGOD DATED 28/07/2011**

APPELLANT/APPELLANT/ PLAINTIFF :

**JOSEPH D'SOUZA,
S/O. KAITHAN D' SOUZA, KAVERIKANA HOUSE
EDANAD VILLAGE AND POST, KASARAGOD TALUK.**

**BY ADVS.SRI.V.T.MADHAVANUNNI
SRI.V.A.SATHEESH**

RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1. THOMAS D'SOUZA,
PRESIDENT, PUTHIGE GRAMA PANCHAYATH
KASARAGOD DISTRICT – 671321.**
- 2. JAYANTHA PATTALI,
VICE PRESIDENT, PUTHIGE GRAMA PANCHAYATH
KASARAGOD DISTRICT – 671321.**
- 3. THE SECRETARY,
PUTHIGE GRAMA PANCHAYATH,
KASARAGOD DISTRICT – 671321.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

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R.S.A.No.330 of 2015.

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Dated this the 17th day of September, 2015.

J U D G M E N T

The plaintiff in a suit for damages is the appellant. Defendants 1 to 3 were the President, Vice President and the Secretary of a Grama Panchayat respectively.

2. The plaintiff erected a bunk encroaching upon the margin of a road vested in the Panchayat. Since the plaintiff did not remove the encroachment when directed to do so, the encroachment was removed by the Panchayat by force. According to the plaintiff, the removal of the encroachment by the panchayat was not in accordance with law and that he has sustained loss to the tune of Rs.50,000/- on account of the illegal removal of the encroachment. The suit was filed, in the circumstances, for realisation of the said amount from the defendants by way of damages.

3. The defendants contested the suit contending *inter alia* that the encroachment made by the plaintiff was removed in accordance with the Kerala Panchayat Raj (Removal of

Encroachment and Imposition and Recovery of Penalty for Unauthorised occupation) Rules, 1996 ('the Rules' for short) and that even if it is found that the removal of the encroachment was not in accordance with the Rules, they are entitled to the protection of Section 250 of the Kerala Panchayat Raj Act ('the Act' for short) as the proceedings against the plaintiff was initiated in good faith.

4. Though the trial court found that the removal of the encroachment made by the plaintiff was not strictly in accordance with the provisions of the Rules and that the plaintiff sustained a loss of Rs.35,646/- on account of the same, dismissed the suit holding that the defendants are entitled to the protection of Section 250 of the Act. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiff has, therefore, come up in this Second Appeal challenging the concurrent decisions of the courts below.

5. Heard the learned counsel for the appellant.

6. The learned counsel for the appellant contended that since it was found that the removal of the encroachment made by the plaintiff was not in accordance with the Rules, the defendants are not entitled to the protection of Section 250 of the Act. Relying on the decision of this Court in **V.Vathsan v.**

V.U.Razack and others (2003(2) KLJ 271), it was also contended that since it is found that the removal of encroachment was not in accordance with the procedure established by law, the plaintiff is entitled to damages.

7. The fact that the plaintiff has encroached upon a road puramboke and the fact that the encroachment made by the plaintiff was removed by the Panchayat are not in dispute. Though the courts below found that the removal of the encroachment made by the plaintiff was not strictly in accordance with the Rules, the benefit of Section 250 of the Act was extended to the defendants. The view taken by the courts below is that since the proceedings has been initiated against the plaintiff in good faith, the defendants are entitled to the protection of the Section 250 of the Act. As noticed above, the contention of the plaintiff is that since the removal of the encroachment was not in accordance with the Rules, the defendants are not entitled to protection of Section 250 of the Act. Section 250 of the Act reads thus:

"Protection of acts done in good faith: No suit, prosecution or other legal proceedings shall lie against the President, Vice-President, any member, Secretary, any officer or employee of a Panchayat for anything which is in good faith done or purported or intended to be done in pursuance of this Act or any rule or bye-law made thereunder."

In the context of the similar provision contained in Section 124 of the Kerala Panchayats Act, 1960, this Court has held in **Chacko v. Joseph Devassia** (1985 KLT 277) that the protective shields under the said provision would extend and cover all acts done in good faith even if those acts are impermissible in law. It was explained in the said decision that any act which purports to have been done in exercise of a power is for all intents and purposes to be deemed to have been done within the competence of that power; notwithstanding that all the conditions for the exercise of that power are not present, provided the acts are done in good faith under the purported exercise of that power.

8. The fact that the encroachment made by the plaintiff was removed in furtherance of a proceedings initiated against him under the Rules is not in dispute. Then the only question is as to whether proceedings have been initiated against the plaintiff in good faith. The trial court took the view that merely for the reason that the Rules have not been strictly complied with, it cannot be inferred that the action was not initiated in good faith and the said view of the trial court has been confirmed in appeal. The appellate court also noticed that the panchayat was duty bound to remove all encroachments upon the properties vested in it and that action was initiated against the plaintiff pursuant to

Ext B2 decision taken by the grama panchayat. The appellate court found that there is absolutely no materials on record to infer that the action of the defendants against the plaintiff was tainted with mala fides. On a careful scrutiny of the materials on record, I also do not find any materials to infer that the action taken against the plaintiff was tainted with mala fides.

9. The argument advanced by the learned counsel for the plaintiff relying on the decision of this court has held in **V.Vathsan v. V.U.Razack and others** (2003(2) KLJ 271), is also liable to be rejected. It is true that it was held in the said case by this Court, in the context of non compliance of the provisions of the Land Conservancy Act that if the removal of encroachment is illegal and arbitrary, the persons who are evicted are entitled to compensation. The said judgment may not have any relevance at all in this case, for, the only question which this Court is called upon to decide in this second appeal is as to whether the defendants are entitled to the protection of Section 250 of the Act and the said question was not dealt with in the case referred to by the learned counsel. In the said view of the matter, I do not find any reason to interfere with the decisions of the courts below. The second appeal is devoid of merits and the same is accordingly dismissed *in limine*. All the interlocutory applications

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in the appeal are closed.

**P.B.SURESH KUMAR,
(JUDGE)**

kvs/-