

Date of Institution of the Suit	03.09.2021		
Nature of the Suit (Suit on Money Suit pronote, Suit for declaration and possession, Suit for injunction etc.)	Suit for Damages/Compensation		
Date of commencement of the recording of evidence	30.05.2022		
Date on which Judgment was pronounced	23.11.2023		
Duration	Year/s 02	Month/s 02	Day/s 20

JUDGMENT

This is a suit filed by the plaintiff claiming damages to the tune of Rs. 2000 from the 1st defendant and for direction to the 2nd defendant to return Rs 1650/- and for other consequential reliefs.

2. In brief, the case of the plaintiff, is as follows:-

The plaintiff is an advocate by profession. He is the sole and absolute owner of the Avenger Street 200, Matte Black colour Bike bearing [REDACTED] which he purchased for Rs.1,01,697/-.

On 18.03.2020, at about 04.30 pm., the plaintiff visited Avenue Road at Bengaluru to purchase textbooks. After searching for parking space, he had parked his bike near parking sign board on the left side of it, after ensuring that no obstruction or no disturbance is caused to any one and had parked his bike within the available space near the parking sign board and then went to purchase books. At around 05.30 pm., after having purchased books, when he returned to the place where he had parked his bike, to his shock, the bike was missing from the place where he had parked and after anxiously making inquiries with the nearby shopkeeper, he rushed to Upparpet Traffic Police Station and astonished to find his bike kept seized near the Station and after waiting for an hour, the defendant No.1 and his towing agents finally arrived. When explanations were sought for, it was alleged that the plaintiff's was parked in a 'No-Parking Area'. Upon hearing such an allegations, being surprised, the plaintiff requested for proof of the same and a video was shown and upon its perusal, the plaintiff noticed that his bike was not parked in any 'No Parking Area' as alleged by the defendant No.1. In fact, what is evident from the said video is the fact that the

towing agents who were towing bikes under the instructions of the defendant No.1 can be seen discussing in Kannada that they require just two vehicles. This clearly indicates the fact that the plaintiff's bike was towed for the sole purpose of extracting money and for the sake of meeting a pre-determined/daily target set by the defendant No.1. The defendant No.1 seized the plaintiff's bike without following the procedure as mandated by law by forthwith reporting the seizure and also he did not produce the seized bike before the jurisdictional Magistrate.

Then, as per the directions of the defendant No.1, the plaintiff produced his driving licence, registration certificate of his bike and insurance papers etc., for inspection. As the plaintiff was stranded on the road without his bike, he pleaded the defendant No.1 to release his bike and return back the possession of his bike, since his bike was not seized in any 'No Parking Area' as alleged, however, the defendant No.1 simply ignored the plaintiff.

The defendant No.1 knew very well that the plaintiff's bike was not parked in any No Parking Area, as such, he did not

prosecute the plaintiff for the alleged offence of no parking before the jurisdictional Magistrate. Instead, the defendant No.1 with a malafide intention, without obtaining the consent of the plaintiff forcefully compounded the alleged offence of no parking by generating the receipt bearing No.W/3/1570/54749 for Rs1,650/- for towing charges for the sake of extracting money from the plaintiff and for the sake of pre-determined/daily target set by the defendant No.1. The defendant No.1 then deposited Rs.1,650/- which was unlawfully collected from the plaintiff with the defendant No.2.

The plaintiff being aggrieved by the unlawful actions of the defendant No.1, on the very next day i.e., on 19.03.2020 filed a complaint via email along with all the relevant photos and video to the Deputy Commissioner of Police (Traffic), West Division, Bengaluru, to which, he received a reply via email on 14.04.2020 and in the said reply, it is admitted that defendant No.1 towed and seized the plaintiff's bike and it was also admitted that there was a parking sign board at the spot where the plaintiff's bike was parked, however, the said reply failed to address the

plaintiff's grievance in a lawful manner and falsely justified the unlawful actions of the defendant No.1 by stating reasons that are totally contrary to law.

Since the defendant No.1 knowing very well that the plaintiff's bike was not parked in any no parking area, with a malafide intention, unlawfully towed the plaintiff's bike and then forcefully extracted money from the plaintiff by illegally keeping the plaintiff's bike seized without following the procedure and as such, the defendant No.1 is liable to compensate the plaintiff by paying damages for the trespass committed by him.

Plaintiff issued a statutory notice dated 22.06.2021 under Section 80 of CPC calling upon the defendant No.1 to compensate the plaintiff by paying damages to the tune of Rs.2,000/- and the defendant No.2 to return back the plaintiff's money to the tune of Rs.1,650/- within 2 months and the notice was duly served on both the defendants on 24.06.2021. None of the defendants reply to the said notice. Hence, the plaintiff has filed this suit.

3. In response to the suit summons, both the defendants entered appearance through their advocate and filed written statement, the gist of which is as under:

The suit filed by the plaintiff is false, frivolous and vexatious and not maintainable either in law or on facts and the same is liable to be dismissed in limine. No sanction was obtained from the government to file the suit against the police department. The defendants have made parawise denial of the plaintiff's case.

It is contended that the defendant No.1 being Asst. Sub Inspector of Police (Traffic), Upparpet Police Station, was instructed by his higher officers to check the public vehicles parked within the limits of Upparpet Police Station and accordingly, he was on duty of checking the vehicles parked in no parking area and toe the vehicles which are parked against the traffic rules. On 18.03.2020, in the evening at around 5.00 pm., when the defendant No.1 was on duty at Avenue Road, within the limits of Upparpet Police Station, he saw a two wheeler bearing [REDACTED] parked in no parking area and immediately, using the loudspeaker, its owner was notified to take away the

vehicle parked in no parking area. Loudspeaker notification was made repeatedly, but no one turned up to take the said vehicle parked against the traffic rules. As such, the said vehicle was towed and taken to Upparpet Traffic Police Station and was kept there. Thereafter, at around 5.30 pm., on the same day, the plaintiff came to Upparpet Police Station and met the defendant No.1 and at that time, the defendant No.1 briefed him the reason for towing the vehicle as it was parked in no parking area at Avenue Road and that he has to pay the penalty for the same and then get the bike released, but the plaintiff started arguing that he had not parked the vehicle in no parking area and by his act of parking bike in that place, was not hindering the traffic on the road and he started shouting in English saying that he will not pay the penalty and then the defendant No.1 displayed the photograph of the location which clearly depicts that it is no parking area and then the plaintiff agreed to pay the penalty and as such, using the PDA instrument of the department, vide CRR No.W/3/1570/54749, Rs.1650/- penalty was imposed and collected the same from the plaintiff and after verification of the plaintiff that there was no any damage to the vehicle, it was

released. All the procedures are done as per the prevailing traffic rules. Thereafter, on 19.03.2020, the plaintiff lodged a complaint via email addressed to the Dy.Commissioner of Police, Traffic West Division, Bengaluru and he has stated that even though he has not committed any fault, the Police have collected penalty of Rs.1,650/- from him and in the complaint, he has demanded return of Rs.1650/-, the penalty amount. However, in the complaint, he has not made any mention about his vehicle suffering damage and he has not claimed any compensation for that. And thereafter, the Police Inspector after having verified the said complaint, opined that the defendant No.1 has not committed any fault in imposing the penalty and confirmed that the vehicle was parked in no parking area and further confirmed that as per the circular No.125 of Addl.Commissioner of Police (Traffic), Bengaluru, the amount of penalty collected has been remitted to Treasury 2 vide Challan No.CR032000500392463 and accordingly, an endorsement was issued to the complainant and his complained was closed and on 22.06.2021, approximately after one year and 3 months of the said incident, the plaintiff has issued legal notice to the defendant No.1 alleging that this

vehicle was damaged at the time of toeing and he has claimed Rs.2,000/- towards damages which has to be paid within 60 days of the receipt of notice. In the above circumstances of the case, the defendants prayed the Court to dismiss the suit with costs.

4. Based on the above pleadings of the parties, the following issues are framed;

Issue No 1: Whether the plaintiff proves that he is the owner of bike with registration [REDACTED] and the defendant No.1 seized the said bike without following the procedure as mandated by law as pleaded in the plaint?

Issue No 2: Whether plaintiff is entitled for compensation and return of money as prayed in the plaint as pleaded in the plaint?

Issue No 3: Whether defendant proves that the suit is not maintainable as the plaintiff has not obtained prior

sanction to file suit against police department as pleaded in the plaint?

Issue No 4: Whether the plaintiff is entitled to the relief sought for?

Issue No 5: What decree or order?

5. To prove the case of the plaintiff, the plaintiff who filed this suit by party in person got himself examined as PW 1 and Ex.P 1 to Ex.P 16 got marked. On the other hand, the defendants appeared through the learned 1st ADGP Smt Shantha B Mullur and filed their written statement. She has cross examined PW 1 but neither produced any documents on behalf of defendants nor adduced evidence.

6. Heard both the sides, perused materials placed on record and this courts answers above issues as under;

Issue No 1 : In the Affirmative

Issue No 2 : In the Affirmative

Issue No 3 : In the Negative

Issue No 4 : In the Affirmative

Issue No 5 : As per final order;
For the following;

REASONS

7. Issue No 1 to 3 : These three issues are interconnected to each other, hence to avoid repeated discussion they are taken up together hereunder;

Admittedly, this suit is filed for direction to the defendant No 1 to compensate the plaintiff by paying damages to the tune of Rs 2000/-and defendant No 2 return back the plaintiff's money to the tune of Rs 1650/-and for cost and consequential reliefs.

To prove his above narrated case plaintiff himself entered in witness box as PW 1 and filed sworn affidavit in chief as PW1 and all the plaint averments are reiterated in his sworn affidavit. To substantiate his case he has produced several documents which are marked as Ex.P 1 to Ex.P 16.

The gist of the above narrated claim of the plaintiff is he has parked his bike in the parking area near to the parking sign board but defendants has towed the same with allegation that it was parked in no parking area and seized

the bike and released only after so many discussion between plaintiff and defendants as stated supra and released the same after taking amount specified above and it is alleged by the plaintiff since the defendant No.1 knowing very well that the plaintiff's bike was not parked in any no parking area, with a malafide intention, unlawfully towed the plaintiff's bike and then forcefully extracted money from the plaintiff by illegally keeping the plaintiff's bike seized without following the procedure and as such, the defendant No.1 is liable to compensate the plaintiff by paying damages for the trespass committed by him. On the other hand the defendants has taken their stand as the said vehicle was seized by due process and while filing this suit plaintiff has not taken prior sanction from the government and no statutory notice was issued. The defendant No 1 has not committed any fault in imposing the penalty and confirmed that the vehicle was parked in no parking area and further confirmed that as per the circular No.125 of Addl.Commissioner of Police (Traffic), Bengaluru, the amount of penalty collected has been remitted to Treasury

2 vide Challan No.CR032000500392463 and accordingly, an endorsement was issued to the complainant and his complaint was closed and on 22.06.2021, approximately after one year and 3 months of the said incident, the plaintiff has issued legal notice to the defendant No.1 alleging that this vehicle was damaged at the time of toeing and he has claimed Rs.2,000/- towards damages which has to be paid within 60 days of the receipt of notice.

Now this court gone through the documentary evidence of the plaintiff. Ex.P 1 is the customer's copy of payment receipt in respect of purchase of bike dated 5-8-2016 in the name of the plaintiff. Ex.P 2 is the RC of the said bike in the name of the plaintiff. It is undisputed fact that the plaintiff is owner of bike bearing [REDACTED] Ex.P 2 and 3 are the photographs of the bike and the parking area with blue board as alleged to be plaintiff parked his bike. Ex.P 5 is the copy of complaint dated 19-03-2020 lodged before Deputy Commissioner of police in respect of plaint claim. Ex.P 6 is the endorsement issued by police

inspector of Upparapete Police station. In this document it is mentioned that on the date of cause of action the defendant No 1 was placed in the said parking area to toe the vehicles parked in no parking area. It is further stated that this plaintiff has parked his bike in the left side of the parking board instead of right side as on that date right side of the Board allotted for parking. Ex.P 7 is the reply of the plaintiff to the defendant as he noticed them about filing of the case before the court has jurisdiction as still the dispute has not resolved. Ex.P 8 is the CD. Ex.P 9 is the certificate under Section 65 B of Indian Evidence Act which certifies Ex.P 3 to 8 which are electronic records. Ex.P 10 is the receipt of payment of the amount of Rs 1650/- regarding default of parking. Ex.P 11 is the legal notice dated 22-06-2011 issued by the plaintiff to the defendants in respect of suit claim. Ex.P 12 to 15 are the postal documents which acknowledges the compliance of the said notice. Ex.P 16 is the Aadhaar card of the plaintiff.

On the other hand the learned counsel for defendants cross examined PW1 but has not lead the evidence on defendants' side to defend their case. In the her argument, she has stated that there is an admission by PW 1 in paragraph 4 and 6 of his cross examination that as " ನಿ.ಪಿ.-2 ರಲ್ಲಿ ಎಲ್ಲಿಯಾದರೂ ನೋ ಪಾರ್ಕಿಂಗ್ ಬೋರ್ಡ್ ಇದೆಯಾ ಎಂದರೆ ಅದು ಪೋಲೀಸ್ ಸ್ಟೇಷನ್ ಬಳಿ ತೆಗೆದ ಫೋಟೋವಾಗಿದೆ . ಸದರಿ ಫೋಟೋವನ್ನು ನಾನೇ ತೆಗೆದಿರುತ್ತೇನೆ. ನಿ.ಪಿ.-4 ನಾನೇ ತೆಗೆದ ಫೋಟೋವಾಗಿದ್ದು ಅದನ್ನು ಅವೆನೂ ರೋಡ್ ನಲ್ಲಿ ನಾನು ಬೈಕ್ ಪಾರ್ಕ್ ಮಾಡಿದ ಸ್ಥಳದಲ್ಲಿ ತೆಗೆದಿರುತ್ತೇನೆ "and "ನಿ.ಪಿ.-4 ರಲ್ಲಿ ನೀಲಿ ಬಣ್ಣದ ಬೋರ್ಡ್ ನಲ್ಲಿ ಪಿ ಇದ್ದರೇ ಅದು ಪಾರ್ಕಿಂಗ್ ಏರಿಯಾ ಎಂದು ನಾನು ಹೇಳಿದ್ದು ಸದರಿ ಫೋಟೋದಲ್ಲಿ ನನ್ನ ಬೈಕ್ ಕಾಣುತ್ತದೆಯಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನು ಆ ಫೋಟೋವನ್ನು ಅಲ್ಲಿ ಬೈಕ್ ಮಿಸ್ ಆದ ನಂತರ ತೆಗೆದುಕೊಂಡಿದ್ದೇನೆ ಎನ್ನುತ್ತಾರೆ . ಸದರಿ ಬೋರ್ಡ್ ನಲ್ಲಿ ಇರುವ ಆರೋ ಮಾರ್ಕ್ ನ ಕಡೆಗೆ ಪಾರ್ಕಿಂಗ್ ಏರಿಯಾ ಇರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಆರೋ ಮಾರ್ಕ್ ನ ಬಲಬದಿಗೆ ಪುಸ್ತಕದ ಅಂಗಡಿಗಳೇ ತುಂಬಿದ್ದು ಅಲ್ಲಿ ಪಾರ್ಕಿಂಗ್ ಮಾಡಲು ಸಾಧ್ಯವಿಲ್ಲ . ನಿ.ಪಿ.-4 ನ್ನು ಅದೇ ದಿನ ತೆಗೆದಿರುತ್ತೇನೆ ". But it is not enough to disprove the plaintiff's case as the defendants has not taken any pain to defend their case by leading their evidence though they

have stated in their written statement that as per the circular No.125 of Addl.Commissioner of Police (Traffic), Bengaluru, the amount of penalty collected has been remitted to Treasury 2 vide Challan No.CR032000500392463 and accordingly, an endorsement was issued to the complainant and his complained was closed. But no such documents are produced by the defendants. As per Ex.P 6 the Inspector of Police of the office of defendant No 1 admitted that on that date defendant No 1 was appointed to the duty of towing in the place of suit claim.

The defendants' main contention is that plaintiff has not obtained prior sanction from the Government to file this case the defendants are officials from police department. In this regard plaintiff relied upon Section 170 of the Karnataka State Police Act, 1963 which deals with sanction for suits or prosecutions in respect of acts done under colour of duty by a police officer. Here defendant No 1 is the police officer.

The Section 170 of the Karnataka State Police Act, 1963 is reproduced hereunder;

“170. Suits or prosecutions in respect of acts done under colour of duty as foresaid not to be entertained without sanction of Government.—

(1) In any case of alleged offence by the Commissioner, a Magistrate, Police Officer or Reserve Police Officer or other person, or of a wrong alleged to have been done by such Commissioner, Magistrate, Police Officer or Reserve Police Officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained except with the previous sanction of the Government.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrongdoer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if so, what tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.”

If we apply the above provision to this case, as per section 170(2) of the above Act it provides the manner in which sanction is to be obtained for civil cases. That, from a bare reading of clause (2) of Section 170, it is very clear that the person intending to file a civil suit against a public servant must give 1 months' notice in advance to the Government. The Plaintiff in this case has issued legal notice at Ex. P 11 which is issued two months before filing this suit. This is clearly in compliance of section 170(2) of the Police Act. The Plaintiff has also complied with Section 170(3) by stating at Para No. 13 of the Plaint that he issued notice prior filing the suit and the same was duly served on 24.06.2021 and both the Defendants did not reply. The postal receipt, acknowledgment card and track consignment are all marked as Exhibits as Ex.P 12 to 15.

The section 170 of the Karnataka Police Act as far as civil suits are concerned must be read with section 80 of the Code of Civil Procedure, 1908. It is submitted that since the law mandates issuance of prior statutory notice, it equally casts a duty on the Government to reply and decide whether to grant sanction or not when a statutory notice is issued by a person intending to file a civil suit against a public servant. By reading section 170(2) of the Police Act and Section 80 of CPC together, it is clear that the Government is duty bound as per law to give a reply within a maximum time frame of 60 days.

The plaintiff has relied upon the judgement of Hon'ble Supreme Court in Salem Advocate Bar Association vs Union of India (2005) 6 SCC 344 has clearly held that whenever any law mandates issuance of prior notice before filing a case then at the same time it equally casts a duty upon the Government and its officials to issue a response to the said statutory notice. The same is mandatory by law. Further it was held that when the Government fails to reply to the statutory notice, it is necessary for courts to impose costs on Government.

Moreover, the Plaintiff has submitted that Order XX-A, Rule 1 (h) of CPC says that the court shall not impose costs less than Rs.3000/- when Government fails to give proper reply to a section 80 CPC notice. Therefore, it is clear that failure to reply to a statutory notice is a breach of law on part of the Government.

In this case, the Defendant No.1 & 2 have duly received the statutory legal notice at Ex. P11 and it is also admitted in Para No.20 of the written statement. Even after receipt of the statutory notice, the Government did not reply at all. It is submitted that that the Right to approach a court seeking remedy is not only a simple legal right but it is a very basic and fundamental right which is guaranteed by the Constitution of India. Therefore, once a statutory notice is received by the Government, then it is their duty to reply. The Government must decide whether to give sanction or not. When the Plaintiff has duly complied all the mandatory provisions of law that is, Section 80 of CPC and Section 170(2) of the Police Act by duly issuing a notice before filing the suit, he cannot be penalized because there is no fault whatsoever on part of the Plaintiff. It is the Government which has clearly violated the law. When such is the

case, the Government or the Defendant No.1 now cannot take advantage of violation of the law on their part.

The Plaintiff also relied on the principle of waiver and relied upon the judgment of Hon'ble Supreme Court in the case of Jasmant Singh Mathurasinga and Ors. Vs Ahmedabad Municipal Corporation and Ors MANU/SC/0469/1991) has interpreted the principle of waiver. The Apex Court has held at Para No. 14 of the said judgment that - "The principle of Waiver connotes issuance of notice and non-response thereto. Everyone has a right to waive an advantage or protection which law seeks to give him/ her." If we apply the principle of waiver in the instant case, since the Defendants have been duly served with the statutory notice and since they have not chosen to reply or ignore the statutory notice at Ex. P11, they have waived off the pre-requisite of prior sanction. If at all the Government wanted to deny sanction, it must have done so by replying to the notice issued by the Plaintiff. He has produced the copy of citation of the same.

Therefore, as per above discussion and facts and circumstances of the case on the hand plaintiff has conducted his documentary evidence by producing relevant documents.

Though the counsel for defendants cross examined PW 1 but nothing elicited contra to disprove the plaintiff's case. Including that they have not taken any pain to lead evidence by producing the documents to defend their side. Therefore as there is no contra to the plaintiff's case as discussed above, this court is of the considered opinion that plaintiff has made out ground to prove issue No 1 and 2 and defendants have failed to prove that suit is not maintainable as the plaintiff has not obtained prior sanction to file this suit. Hence, this court answers Issue No 1 and 2 in the AFFIRMATIVE and Issue No 3 in the NEGATIVE.

8. Issue No 4 and 5 : For the foregoing reasons and discussions and considering the findings on the above issues, suit of the plaintiff is deserved to be decreed in the above circumstances. Accordingly, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby decreed.

Consequently, the Defendant No 1 is hereby directed to compensate the plaintiff by paying damages to the tune of Rs. 2000/- and it is directed to the defendant No 2 to return back the amount of Rs 1650/-to the plaintiff.

No order as to cost.

Draw decree accordingly.

(Dictated to Stenographer directly on the computer, revised by me and after corrections, pronounced in open Court on this the 23rd day of November, 2023.)

(JYOTHSNA D.,)
XVI Addl. City Civil & Sessions Judge,
Bengaluru

ANNEXURE

1. WITNESS EXAMINED FOR THE PLAINTIFF:

P.W.1 : [REDACTED]

2. DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

- Ex.P.1 : The customer copy of Bike purchased receipt
Ex.P.2 : Original copy of R.C
Exs.P.3 & 4 : Photos
Ex.P.5 : E-mail of complaint to DCP Traffic West dated 19.03.2020
Ex.P.6 : E-mail copy of reply dated 14.04.2020 from Inspector of Upparpet Traffic Police Station
Ex.P.7 : Email Reply dated 18.04.2020 from plaintiff to Inspector
Ex.P.8 : C.D
Ex.P.9 : Digital Certificate U/S 65B
Ex.P.10 : Receipt
Ex.P.11 : Legal Notice
Ex.P.12 : Two Postal Receipt
& 12(a)
Ex.P.13 : Two Postal Acknowledgment

& 13(a)

Ex.P.14 : Track Consignment issued by postal authority

Ex.P.15 : Track consignment issued by postal authority

Ex.P.16 : Aadhar Card of R.A.Ashwin Datha

3. WITNESS/ES EXAMINED FOR THE DEFENDANT:

Nil.

4. DOCUMENT/S MARKED ON BEHALF OF DEFENDANT:

Nil.

(JYOTHSNA D.,)

XVI Addl. City Civil & Sessions Judge,
Bengaluru.

23.11.2023

**Judgment pronounced in Open
court, vide separate orders:**

ORDER

Suit of the plaintiff is hereby decreed.

Consequently, the Defendant No 1 is hereby directed to compensate the plaintiff by paying damages to the tune of Rs. 2000/- and it is directed to the defendant No 2 to return back the amount of Rs 1650/-to the plaintiff.

No order as to cost.

Draw decree accordingly.

XVI Addl. City Civil & Sessions Judge,
Bengaluru.