

(2003) 12 KL CK 0023

High Court Of Kerala

Case No: Writ Petition (C) No. 40287 of 2003

Mammadhan Kutty

APPELLANT

Vs

Pallivasal Grama Panchayat

RESPONDENT

Date of Decision: Dec. 19, 2003

Acts Referred:

- Kerala Panchayat Raj Act, 1944 - Section 249

Citation: (2004) 1 KLT 751

Hon'ble Judges: K. Balakrishnan Nair, J

Bench: Single Bench

Advocate: P.S. Krishna Pillai, for the Appellant;

Final Decision: Dismissed

Judgement

K. Balakrishnan Nair, J.

The petitioner has approached this Court, feeling aggrieved by the steps taken by respondents 1 to 3 to encroach into his property, which is covered by Ext.P1 decree, for erecting a fish and meat stall. Because of the provisions contained in Section 249 of the Kerala Panchayat Raj Act, the Civil Courts do not entertain suits of any nature against the Panchayat, unless one month's notice is given and the period of notice is over. If the allegations of the petitioner are correct, the said bar will not affect the power of the Civil Court to entertain a suit, if any, filed by the petitioner against the encroachment by the respondents into his property. None of the provisions of the Act enables the Panchayat or its Officers to encroach into the property of third parties. So, the alleged actions of the respondents in this regard are plainly ultra vires. Ultra vires actions are not protected by any exclusionary clause. See the decision of the Apex Court in [Dhulabhai and Others Vs. The State of Madhya Pradesh and Another](#), and also the decision in [Mafatlal Industries Ltd. and Others Vs. Union of India \(UOI\) and Others](#), . In view of the above position, the petitioner is entitled to move the Civil Court for appropriate reliefs. Accordingly, the Original Petition is dismissed without prejudice to the contentions of the petitioner.