

Order below Exh. 5 in RCS No.63/2022

Perused application, documents filed by the plaintiff and the record. Heard Adv. Shri. A.S. Sulkar and Adv. P. S. Pohare for the plaintiff. They argued vehemently that the plaintiff is owner in possession over the suit property and defendants do not have any right, title or interest whatsoever in it. The suit property is a private property and the defendants have no right nor authority to issue notice u/s 53 of the *Grampanchayat* Act. But, according to them, the defendants have issued notice on 12.09.2022 which is *void ab initio* and illegal. They apprehend that the defendants will dispossess the plaintiff on the basis of said illegal notice.

2. The documents such as notice dt. 12.09.2022 and agreement to sell dt. 23.07.1965 support, to some extent, the contentions of plaintiff. However, the agreement to sell is in respect of area of one and half acre out of more than 15 acres of S. No. 53. The extract of Mutation Register also leaves ambiguity as regards exact survey number as it shows 53/3 as survey number in Column (5) whereas 52/3 as survey number in column (9). According to the 7/12 extract and extract 8A, the plaintiff owns property bearing G. no. 244 and 334. Nothing is filed to show or suggest, even *prima facie*, that the portion in S. No. 53 purchased by the plaintiff's father was later on renumbered as G. no. 244 or 334.

3. The notice in question is in respect of different property i.e. S. no. 53/2 of village Lohara. Defendants are representatives of a local body and the notice in question is purportedly issued as per provisions of s. 53(a)(b)(c) and Government Circulars dt. 07.09.2010 and 10.10.2013. Thus, it cannot be branded as *void ab initio* or illegal without affording an opportunity to the defendants to explain its legality. The notice was issued on 12.09.2022. Yet, no coercive action is taken by the defendants. Thus, there does not appear imminent danger to the suit property. Similarly, plaintiff's contentions as regards

his approaching the police for lodging complaint and approaching the defendants to show his documents of title are completely vague as regards dates or days after the notice in question. He has not filed copy of sale deed by virtue of which, according to him, he has acquired title in S. No. 53. Thus, it seems, the plaintiff is suppressing some material fact. In the circumstances, this does not appear to be a fit case for exercising power to issue *ad interim exparte injunction* as per provisions of Order XXXIX Rule 3 of the CPC. Hence, the order :

O R D E R

1. Issue show cause notices to the defendant no. 1 to 3 as to why temporary injunction as prayed by the plaintiff shall not be granted.
2. Notices are r/o. 17.10.2022.
3. Emergent Process and Special Bailiff, if prayed, is allowed.

(Typed and Pronounced in Open Court)

Date : 10/10/2022.

(Nitin C. Pawar)
Civil Judge Junior Division,
Balapur.