

(1)

SPCS NO.- 25/2024
ORDER BELOW EXH.05

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ORDER BELOW EXH.05 IN
SPECIAL CIVIL SUIT NO.25/2024.

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Heard learned Advocate for the parties, read the application and gone through the record etc...

(1) Plaintiff has instituted present suit against the defendants for permanent injunction. Along with the suit, the plaintiff has filed interim injunction application vide Exh.05, the brief facts of which are as under :-

(1/1) It is the say of the plaintiff that opposite the Borsad S. T. Bus Stand, in the property bearing City Survey No.2/1224, out of the total admeasuring 270 Sq. Ft., a shop situated on the western side is existing and is being run under the name of "Aamrpali Bake Shop" and that the said land is owned by defendant no.1 Municipality (Hereinafter referred as suit / disputed land / property). The plaintiff further submit that his forefather Imamodin Faizdin Malek has taken the said property on rent from defendant no.1 since the year 1998 and thereafter, with the knowledge and consent of defendant no.1, constructed two permanent shops thereon at his own cost and carried on business therein. Upon the demise of the plaintiff's forefather, the plaintiff has continued to carry on business on the suit property and has been regularly paying the rent, taxes and other dues in respect thereof. However, despite the same, defendant no.1 has issued a false and illegal notice dated 06/12/2024 directing removal of the said construction.

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(1/2)

Further submit that if defendant no.1 succeeds in dispossessing the plaintiff, who is in lawful possession of the suit property as a lawful tenant, without following due process of law and on the basis of the notice dated 06/12/2024 directing removal of the construction within 7 days, the same would cause grave and irreparable loss and injury to the plaintiff's fundamental tenancy and possessory rights in the suit property, which cannot be adequately compensated in terms of money or by any other means. Further submit that he has a prima facie case and the balance of convenience lies in his favour. Therefore, in such circumstances, plaintiff has preferred the present application against the defendants seeking an interim injunction restraining defendant no.1, its servants, agents or any person acting on its behalf, from dispossessing the plaintiff from the shop in question, of which the plaintiff is in lawful tenancy and lawful possession, without following due process of law and from causing any interference or obstruction in the plaintiff's peaceful possession and enjoyment of the suit shop, pending final disposal of the suit.

(2)

After that, learned Advocate for the defendant no.1 appear before this Court and filed his written statement vide Exh.12, in which he has stated that the present application of the plaintiff is liable to be dismissed as particulars mentioned in the present application is false and frivolous and the plaintiff's suit is barred by misjoinder of parties. It is further submitted that the true fact is that the

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plaintiff is an unauthorized occupant of the suit property and is not a lawful tenant. Despite the same, the plaintiff has, in complete violation of law, carried out construction over the disputed property without obtaining any permission or sanction from the Municipality as required under the provisions of the Gujarat Municipal Act, and thereby committed breach of Section 155 of the said Act, and is in unlawful possession of the property. It is further submitted that under Section 4 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, defendant no.1 has the lawful right and authority to initiate proceedings and take appropriate action for eviction of unauthorized occupants. Further submit that the suit property is situated near the Bus Stand and Nutan School in a high-traffic area, causing obstruction and inconvenience to the general public in their ingress and egress, and that the said construction falls within the margin of the public road. Therefore, in view of public interest and the statutory provisions applicable, the plaintiff's suit is not maintainable in law and is liable to be dismissed and consequently, the application for interim injunction also deserved to be rejected.

(2/1)

It is further submitted that if the interim injunction as prayed for by the plaintiff is granted, the same would seriously prejudice and jeopardize the interests of defendant no.1, which is a public body and would adversely affect public interest. The loss and injury likely to be caused to defendant no.1 and the public at large cannot be

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adequately compensated in terms of money. Hence, the plaintiff's application for interim injunction is liable to be dismissed with costs.

(3)

The plaintiff has filed an application under Order 26 Rule 09 of the C.P.C. for drawing of Panchnama and map of the suit property. The application was allowed and the Court Commissioner duly appointed by this Court to carry out Panchnama and map. Thereafter, the Court Commissioner has produced Panchnama and map of the suit property vide Mark 8/2 and 8/3 respectively.

(4)

Against the written statement of the defendant, the plaintiff has filed re-joinder vide Exh.14.

(5)

Following documentary evidences produced by the plaintiff to prove his application.

Sr. No.	Mark	Particulars
1	3/1	Copy of notice bearing no.931/2024-25 dated 06/12/2024 issued by Borsad Nagarpalika
2	3/2	Copy of Borsad Nagarpalika O.W.No.1014/1987-88 dated 09/07/87
3	3/3	Copy of Borsad Nagarpalika O.W.No.2099/1999 dated 29/11/82
4	3/4	Copy of Borsad Nagarpalika Resolution No. 91/20 dated 31/07/2006
5	3/5	Copy of Borsad Nagarpalika Proceeding Book Page No.72 dated 18/03/1999
6	3/6	Copy of Borsad Nagarpalika O.W.No.2381/1998 dated 21/11/98
7	3/7	Copy of Payment Receipt issued by Borsad Nagarpalika bearing Receipt No.2681 dated 09/01/2007
8	3/8	Copy of certificate regarding the tenant

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		recorded in the register issued by the Borsad Nagarpalika dated 06/12/2008
9	3/9	Copy of Registration Certificate Form No.4 issued by the Professional Tax Officer, Borsad Nagarpalika dated 21/04/2012
10	3/10	Copy of Tax Receipt issued by Borsad Nagarpalika for the tax recovered in respect of the suit property bearing Receipt No.7069
11	3/11	Copy of receipt no.1494 issued by the Borsad Nagarpalika upon collecting the rent amount
12	3/12	Copy of Tax Receipt issued by the Borsad Nagarpalika for the tax recovered in respect of the suit property bearing Receipt No.4356
13	3/13	Copy of tax demand bill in respect of the suit property for the year 2013-14
14	3/14	Copy of tax demand bill in respect of the suit property for the year 2014-15
15	3/15	Copy of tax demand bill in respect of the suit property for the year 2015-16
16	3/16	Copy of Tax Receipt issued by Borsad Nagarpalika for the tax recovered in respect of the suit property bearing Receipt No.4776
17	3/17	Copy of Misc. Demand Bill of suit property dated 27/08/2020
18	3/18	Copy of demand notice dated 04/03/2021 for recovery of rent in respect of the suit property
19	3/19	Copy of Form No.E Certificate issued in respect of the registration of the shop situated in the suit property
20	3/20	Copy of tax demand bill issued by Nagarpalika for the year 2024-25
21	3/21	Copy of money receipt issued by Nagarpalika dated 20/09/2024
22	3/22	Copy of money receipt issued by Nagarpalika dated 20/09/2024
23	3/23	Copy of electricity bill relating to the electricity connection installed in the suit

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		property, bearing Consumer No.04509/02509/2 Meter No.MGVCL 268786
24	18/1	Copy of Notice - 1 issued by defendant no.1 dated 30/01/2026
25	18/2	Copy of Notice - 2 issued by defendant no.1 dated 04/02/2026
26	18/3	Copy of Notice - 3 issued by defendant no.1 dated 06/02/2026
27	18/4	Copy of Notice - 4 issued by defendant no.1 dated 13/02/2026

(6) Following documentary evidences produced
by the defendants to prove his application.

Sr. No.	Mark	Particulars
1	13/1	Copy of the written letter issued by Borsad Police Station to defendant no.1 regarding the traffic obstruction caused in respect of the suit property
2	13/2	Copy of the letter issued by the Officer of the Muni. Commissioner, Gandhinagar, to defendant no.1 regarding the traffic problem and removal of encroachments

(7) Considering the arguments made by the
parties, documentary evidences, written objection etc.,
following issues are framed for the fair determination of the
application.

1. Whether the plaintiff proves that he has prima facie
case ?
2. Whether the plaintiff proves that balance of
convenience is in his favour ?
3. Whether the plaintiff proves that if the interim relief
is rejected, he is going to suffer irreparable loss

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which cannot be compensated in terms of money ?

4. What Order ?

(8)

My reply to above issues are as under :-

1. In Negative.
2. In Negative.
3. In Negative.
4. As per Final Order.

(9)

Contentions were made by learned Advocate for the plaintiff and the defendants, which is heard. The plaintiff has submitted written argument vide Exh.15. Written argument submitted by the plaintiff is carefully taken into consideration.

(10)

As the present matter is also the same and on the same ground and cause of action etc. Learned Advocate for the parties have stated at bar that the argument and judgments produced in SPCS NO.23/2024 may be considered in this case also as it is.

:-: R E A S O N S :-:

Since the above issues are inter-connected and incorporated with eachother, for the sake of brevity they are discussed together as under :-

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Here, in this case, first of all, we go through the documentary evidence produced by the plaintiff. It appears vide Mark - 3/2 that defendant no.1 has given only open land of City Survey No.2/1224 Paiky 270 Sq. Ft. of Western side at the early rent of Rs.300/-. Then after, the rent was increased. But, it is not worthy that the defendant no.1 has given open land to the plaintiff. The plaintiff has

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not produced any permission of construction of shop or shop license. Further he has submitted that the defendant no.1 has never restrained the plaintiff to carry out business. It is within knowledge of the defendant no.1 that he has obtained all necessary permission etc. but at this juncture, it is important to note that the plaintiff has obtained any permission to construct the shop over the land that was given on rent by the defendant no.1. Another aspect is that the plaintiff has not produced any document to show that he has not made construction over the land which was given to him on rent. Burden is upon the plaintiff to prove that he has constructed his shop after obtaining permission of defendant no.1 and made construction only on the premises which was given to him by defendant no.1. As per the defense, learned Advocate for the defendant no.1 has argued that the plaintiff has not obtained any permission and made illegal construction over the land than the land given to him. Thus, this criteria should be taken into consideration that the plaintiff has made construction of shop only on the land which measurement is given in Mark - 3/2.

(12) If we look at the criteria of obtaining interim relief is as under :-

Interim relief is granted based on establishing a strong *prima-facie* case, proving that the balance of convenience favors the applicant, and demonstrating that irreparable harm or injury will occur if the relief is not granted. It is an equitable remedy intended to preserve the status-quo and protect the subject matter

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of the dispute until the final adjudication.

Key Criteria for Obtaining Interim Relief

Prima Facie Case: The applicant must demonstrate that they have a strong, arguable case that is likely to succeed on its merits.

Balance of Convenience: The court assesses whether the hardship or inconvenience to the applicant if the relief is denied outweighs the hardship to the respondent if it is granted.

Irreparable Injury/Loss: The applicant must show that they will suffer significant damage that cannot be adequately compensated by money or repaired by a final judgment later.

Bona Fide Conduct: The party seeking the injunction must demonstrate honest, good-faith intentions.

(13) Prima-facie case means there is a chances of wining the plaintiff. First of all, the plaintiff has to prove that there is a chance to get relief as prayed for. Here, in this case, to show prima-facie case, the plaintiff has to prove that he has strong case. But, as stated above, the plaintiff has not produced very important document of construction permission. Another, the plaintiff has to show that he has not made any construction over the land than that of given to him by defendant no.1. At the cost of repetation, it says that any construction without permission of authority or without sanctioning the plan is not legal in eye of law and it cannot be protected by law. It also appears from Mark - 3/1 that the defendant no.1 has also issued a notice on 06/12/2024. In

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this notice, defendant no.1 has mentioned that "if you have obtain any permission from defendant no.1 then it should be produced with other documents within seven days". Not before the defendant no.1, the plaintiff has produced any permission of construction. Not only that but here, in this suit also, he has not produced any permission of construction. Thus, it appears that defendant no.1 has given ample opportunity to the defendant but the plaintiff failed to produced construction permission etc. Therefore, the plaintiff has no prima-facie case.

(14)

So far as, balance of convenience is concern, the court has to see who has to suffer hardship. The defendant no.1 need to demolish the unauthorized construction for the purpose of public at large. Defendant no.1 has submitted in his written argument that it has right under Section 4 of Gujarat Public Premises Act, 1972 (Eviction of Unauthorized Occupation). The defendant no.1 has given notice and sufficient time to the plaintiff. Further he has submitted that disputed premises is in bus stand area and in the same area, there is a school namely "Nutan School" and this area is main road of the Borsad town. The incident like accident happens time and again. As the area is very congested. Moreover, he has stated that during time of festival people of nereby village also use this road and for this reason, this authorized construction is require to be removed for the benefit of public at large. In support of his submission, learned Advocate for the defendant no.1 has drawn attention towards Section 4 of Gujarat Public

Premises Act, 1972 (Eviction of Unauthorized Occupation) and vehemently argued that according to provision made in this law, the defendant no.1 has right to remove unauthorized construction.

Moreover, learned Advocate for the defendant no.1 has drawn attention of this court towards judgment of The Hon'ble Supreme Court in case of Assistant Collector of Central Excise Vs. Dunlop India Ltd. and Ors. on 31/09/1984 and argued out that The Hon'ble Supreme Court has held that "Where matters of public revenue are concerned, it is of at most importance that interim orders are not to be passed merely because prima-facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be slightest indication of likelihood of prejudice to the public interest". Learned Advocate for the defendant no.1 has produce above noted judgment and vehemently argued that while granting interim relief, public interest must be bear in mind. Learned Advocate for the defendant no.1 has drawn attention towards Mark - 13/1 and 13/2 and argued that Municipality Administration Office, Gandhinagar, Gujarat State has passed notification in which he has referred Misc. Civil Application No.979/19 in Writ Petition (PIL) No.170/2017 and argued that local authority should follow the guideline scrupulously mentioned in this notification. According to this notification, defendant no.1 need to remove the unauthorized construction, which are dangerous for public and smooth transportation. If we

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consider the argument and the judgments of The Hon'ble Supreme Court, for public purpose and public benefit must bear in mind while granting interim relief. Looking to the facts and circumstances of the case and the judgments of The Hon'ble Supreme Court and present scenario of the public road where the plaintiff has constructed his shop. Thus, in view of this, balance of convenience is also in the favour of the defendant no.1. Because, if interim injunction is granted then hardship shall be suffered by public.

(15)

So far as, third aspect, irreparable loss is concern, the plaintiff is failed to prove that if interim injunction is not granted, he has to suffer a loss which cannot be compensated in terms of money. The applicant must show that they will suffer significant damage that cannot be adequately compensated by money or repaired by a final judgment later. Looking to the facts and circumstances of the case that if injunction is refused, the plaintiff is not going to suffer any loss which cannot adequately compensated in terms of money.

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The plaintiff has also relied upon the judgments of The Hon'ble Supreme Court but it is under the Maharashtra Rent Control Act, 1999. Another judgment 2025 LiveLaws (SC) 400, this judgment is also given by The Hon'ble Supreme Court is case of Maharashtra Rent Control Act, 1999. Whereas, another judgment produced by the learned Advocate for the plaintiff of The Hon'ble Supreme Court. The Hon'ble Supreme Court has passed this verdict against dismissal of the suit, in which full trial took

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place. Another judgment produced learned Advocate for the defendant passed in Civil Appeal No.1509/2019, in also full trial took place. I have carefully gone through the judgments produced by learned Advocate for the plaintiff. This Court is bound to scrupulously follow the ratio laid down by The Hon'ble Supreme Court. But, the facts and circumstances are altogether different in this case than that of before The Hon'ble Supreme Court. Every state has its own Rent Act and judgment is delivered according to it. Therefore, to my humble opinion, the judgments produced by the plaintiff is not support his case. Thus, to humble opinion of this court, the plaintiff has failed to prove this third issue of irreparable loss.

(17) In catena of judgment, The Hon'ble Supreme Court has ruled out that to obtain interim relief, this three issues must be met with and proved. The plaintiff has failed to proved prima-facie case, balance of convenience and irreparable loss. Therefore, I reply to issue no.1 to 3 in Negative and following order is passed in the interest of justice.

-:: O R D E R ::-

1. The present application is hereby Rejected.
2. Cost shall follows the suit.

Signed and Pronounced in open Court today
on 07th March of 2026.

Date: 07/03/2026
Place: Borsad

(Manish Dilipbhai Nandani)
Principal Sr. Civil Judge, Borsad
Code-GJ00847