

**IN THE COURT OF 5th ADDITIONAL CIVIL JUDGE,
JUNAGADH**

RCS- 116/2025

Hiteshbhai Shantilal Pobari & Ors.

.....Plaintiffs

Vs.

Nayanaben Yogeshbhai Rupareliya & Ors.

.....Defendants

Order below exhibit-5

1. The present suit has been filed by the plaintiff against the defendants for declaration and permanent injunction under section 34 and 38 of Specific relief act. The plaintiff has filed an application under order 39, Rule 1 & 2 and section 151 of CPC, praying that the defendant no 2 & 3 be restrained from giving the building use permissions and other permissions to the defendant no 1 and restrain defendant no 1 from carrying out further construction, till the final disposal of the suit.
2. The brief facts of the case are that plaintiffs are the owner of plot no 34 in AdarshNagar society. The adjoining plot no 33 is owned by defendant no.1 whereby she is carrying out construction without keeping the margin and without following the rules and regulations of Mahanagarpalika. The defendant no.1 has not obtained the permission for construction and has not obtained the building plan from the office of the town planner. Therefore she is carrying out illegal construction. The defendant no 1 has not left the margin on the sides of the plot and it being the adjoining plot to that of the plaintiff, the plaintiff is harmed due to the construction. The plaintiff had sent legal notice to the defendant no.1 on 16/1/2025 to stop carrying out the illegal construction, however, it was not done by the defendant no.1. Therefore

the plaintiff no 1 had made an application to Junagadh Mahanagar palika and the defendant no.2 had ordered the defendant no.1 to stop the construction, which was not complied with by the defendant no.1. Therefore, the present suit has been filed by the plaintiffs.

3. The notice was issued to the defendants and the defendant no.2 & 3 have filed their written statement and the reply to the present application vide Ex- 13, along with the D-list vide ex-14, while defendant no. 1, though served with the notice, did not remain present in the court and therefore, the suit is ordered to be heard ex-parte against her.
4. The plaintiff has submitted the documents vide mark 4/1 to 4/13, in support of the suit and application. The defendant no.2,3 has submitted the documents vide mark 14/1 to 14/5 in support of reply.
5. Read the plaint, the application for the interim injunction vide exhibit 5, the written statement of the defendant, perused other records of the case. Heard Ld. advocate Mr.V.J.Pipalia for the Plaintiffs and Ld. Advocate Mr.J.M.Devani for the defendant no 2 & 3.
6. The Ld. Advocate Mr. V.J.Pipalia has submitted in his oral arguments that the construction being carried out by the defendant no 1 in the suit property. The corporation has also issued notice to the defendant no 2 & 3 which is on record at mark 4/3. However, the corporation has not ordered to stop the construction. As per the written statement of defendant no 2 & 3, the permission of the defendant no 1 for construction has been rejected by the corporation as the plan of the construction varied from the actual construction. The construction has been completed by the defendant no.1 and if the injunction is not granted she will apply for the impact fees and will get the construction regularized which will in turn harm the rights of the plaintiffs. Therefore, has prayed to allow the application.

7. The Id. Advocate for the defendant no 2 & 3 has argued as per his written statement and has prayed to reject the application.
8. The following issues arises for consideration before me for deciding the application filed vide exhibit 5.
 1. Whether the plaintiff proves that there is a prima facie case?
 2. Whether the plaintiff proves that the balance of convenience lies in his favour?
 3. Whether the plaintiff proves that he will suffer an irreparable loss which cannot be compensated in terms of money if his prayer for injunction is disallowed?
 4. What order?
9. Following are my decisions for the issues framed above.
 1. Partly in affirmative
 2. Partly in affirmative
 3. Partly in affirmative
 4. As per final order
10. Above issues are interconnected and interlinked with each other and findings of one issue depend upon another and to avoid frequent repetition of the facts; I have decided to discuss the above issues together by common discussion and reasoning for the sake of convenience.
11. It is a well settled law that before granting the temporary injunction the three basic principles for granting or refusing to grant a temporary injunction should be considered by the court. The three principles are prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be an irreparable loss which are likely to be caused to the party if injunction is not granted to such person. Thus an injunction being an equitable

remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to these three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken into consideration because the granting of injunction is an equitable relief and is a drastic or serious order. Also, there are two basic maxims of equity which are important to be considered at the time of deciding injunction application which are: He who seeks equity must do equity and He who comes to equity must come with clean hands.

12. Moreover, Order 39 Rule 1 of the CPC (1). provides for the grant of temporary injunction -where in any suit it is proved by affidavit or otherwise-(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (C) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. , the court may be order grant temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.
13. Looking to the facts and circumstances of the case, on perusal of the records of the case it can be seen that on 21/10/2024, the corporation has issued show cause notice to the defendant no 1 directing to produce the title deeds, city survey property card, permission of construction within 7 days of the notice and had also directed the defendant no 1 to stop the

construction. The same has been stated by the defendant no.2 & 3 in their written statement. Moreover, it is also stated by the defendant no 2 & 3 in their written statement vide ex-13 that the defendant no 1 had sought for the development permission on E Nagar Online portal vide application no 007BDP25260310. However, during the site inspection as it was seen that the construction is done in the margin space, the said application was rejected. The defendant no 1 was also directed to remove the construction in the margin and to submit the amended plan by the defendant no 2 &3 vide notice dated 7/7/2025. The same can also be perused from the letter of the municipal corporation to the defendant no 1 dated 7/7/2025, which is on record vide mark 14/2. Therefore, on perusal of the written statement of the defendant no. 2 & 3 and the documents produced vide mark 14/2 & 14/5, it can be prima facie seen that the construction is carried out in the margin of the plot by the defendant no.1 which is in knowledge of defendant no. 2 & 3. Thus, from the documents on record and the written statement of the defendant no 2 & 3 it can be prima facie seen that the construction is being carried out in the margin by the defendant no.1, which is not according to the plan and the permission for the construction.

14. Therefore, if the defendants are not restrained, the defendant no.1 might get the construction regularised which prima facie at this stage appears to be in oppose to the permission by the municipal corporation and that will affect the rights of the plaintiff. Therefore, this court believes that the prima facie case lies in favour of the plaintiff and if the construction is regularised, inconvenience will be caused to the plaintiffs. Moreover, the defendant no.1 has not appeared before the court to show as to how his rights will be affected if the interim injunction is granted. Therefore, defendants will not be prejudiced if the interim injunction is granted.

15. In ***“Dalpat Kumar v. Prahlad Singh”, (1992) 1 SCC 719***, the Hon’ble Supreme Court held that the phrases “Prima facie case,”

“balance of convenience” and “irreparable loss” are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The Courts should be circumspect before granting the injunction and look at the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused.

16. Hence, as per above discussion and keeping in mind the above principle laid down by the Hon’ble Apex court, it clearly transpires that all the three ingredients of the granting interim injunction i.e. prima-facie case, irreparable injury and balance of convenience are in favour of the plaintiff. Moreover, the Hon’ble Apex court in **Rajendra Kumar Barjatya and Another vs. U.P. Avas Evam Vikas Parishad & Others (Civil Appeal No.14604/2024)** has held that, *“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process*

of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc." In addition to this the Hon'ble Apex Court has also laid down directions in para 21 of the said judgement regarding granting of the permissions and regularizing constructions. The said directions should be followed by the Municipal Corporation. The construction on the said suit property by the defendant no.1 prima facie appears to be unauthorised and therefore, it is necessary to restrain the same. Therefore for issue no 1, 2 & 3 my answer is Partly in affirmative and the following final order is passed for issue no. 4

::ORDER::

1. The application filed by the plaintiff vide Exhibit-5, seeking interim injunction under Order 39 Rule 1 & 2 is hereby allowed.
2. The defendant no.1 is restrained from carrying out any further construction on the suit property till the final disposal of the suit.
3. The defendant no.2 & 3 are restrained from granting any building use permission and any permission regularising the unauthorised construction through payment of impact fees or in any manner till the final disposal of the suit.
4. No order as to costs.

Order pronounced in the open court on the 30th day of August, 2025.

JUNAGADH

Date:- 30/8/2025

(Prerana Rajesh Chhapia)

5th Addl. Civil Judge

Junagadh