

MHYA020024152023



Presented on : 19/12/2023.
Registered on : 19/12/2023.
Decided on : 12/08/2026.
Duration : YY MM DD
02 07 24

IN THE COURT OF 5th JOINT CIVIL JUDGE
SENIOR DIVISION YAVATMAL.
(Presided over by : Z. Z. Khan)

REGULAR CIVIL SUIT NO.147/2023.

CNR No : MHYA020024152023

Exhibit No. 66/A.

- 01. Sau. Shyamlata Gautam Tayade**
Age : 49 years, Occ : Household,
- 02. Anand Topaji Bageshwar**
Age : 63 years, Occ : Tailor,
- 03. Vinod Uttamrao Lambe**
Age : 50 years, Occ : Labourer,
- 04. Punaji Mahadevrao Devasthale**
Age : 54 years, Occ : Labourer,
All R/o. Sahastrabuddhe Lay-out, Umarsara,
Yavatmal, Tq. & Dist. Yavatmal.
- 05. Domaji Somaji Mankar (Dead),
Through their Legal Heir-**
 - a) Smt.Radhabai Domaji Mankar
(Widow)**
Age : 71 years, Occ : Household,
 - b) Sanjay Domaji Mankar (Son)**
Age : 49 years, Occ : Service,
Both R/o. Sawaimul Lay-out, Umarsara,
Tq. & Dist. Yavatmal

**c) Sau.Sangita Rajesh Narwade (Dead daughter)
through her legal heirs-**

**1. Rajesh Rangrao Narwade
(Husband of Daughter)**

Age : 51 years, Occ : Labourer,

**2. Nilaksh Rajesh Narwade
(Son of Daughter)**

Age : 21 years, Occ : Education,
No.1 & 2 R/o. Dubey Lay-out, Near buddhavihar,
Umarsara, Yavatmal, Tq. & Dist. Yavatmal.

.....Plaintiffs

Versus

01. State of Maharashtra through its,

a) The District Collector, Yavatmal.

b) The Sub-Divisional officer, Yavatmal

Tq. & Dist. Yavatmal.

**02. The Chief Officer
Municipal Council, Yavatmal,**

Tq. & Dist. Yavatmal.

..... Defendants

Claim : Suit for declaration, perpetual and mandatory
injunction.

Appearances :

Mr. N.B.Meshram - Ld. Advocate for the Plaintiffs.

Mr. P.B. Bibekar & Mr. R. P. Sable for defendants

:: J U D G M E N T ::

(Delivered on this day of 12th August, 2026)

This is the suit for declaration, perpetual and mandatory injunction. The subject matter of the suit is the respective plots of plaintiffs situated at mouza old Grampanchayat, Umarsara, in Old Ward no.1 bearing Survey no.13/3 which is sanctioned Layout thereon property/house no.870, 869, 868, 867 and 875 respectively, thereon constructed by RCC construction under the Scheme of Ramai Awas Yojana. The suit properties are more particularly described in para No.2-A of the plaint. (hereinafter referred as 'suit plots' in short).

The shorn of superfluities giving rise the present suit can be capitulated as under:

02. It is the claim of plaintiffs that the old survey No.13/3 was converted into non-agricultural land and the Lay-out was sanctioned in it prior to 30 to 35 years back. That the original owner of the Layout has had permitted the plaintiffs to settle and occupy their respective plots in the open spare land of the layout which was not in used and situated on the bank of storm. Therefore, since then plaintiffs are under occupation and settled possession of their respective plots.

03. It is the grievance of plaintiffs that despite their settled possession over their respective plots and despite there being permission to plaintiffs to construct their houses under the Ramabai Awas Yojana and no objection to obtain electricity connections over the respective plots. The defendant no.2 instead of regularizing their encroachment has issued notices on 28/09/2023 and 11/12/2023 threatening therein to the plaintiffs to dispossess them from their respective plots. Resultantly, plaintiffs were propelled and constrained to file this suit.

04. Per contra, the suit against defendant no.1 proceeded exparte. Defendant no.2 strongly retaliated and denied all the adverse contention set forth in the plaint. It is the reprisal of defendant that the plaintiffs have encroached upon the open space of Sahastrabuddhe Layout and Sawaimul Layout which were left open for public utility that the action of defendants is lawful under the obedience of Municipal Council, Nagar Panchayat and Industrial Township Act 1965. Resultantly, the plaintiffs under the garb of this suit are attempting to legalize their illegal act. Thus, defendant no.2 has prayed to dismiss the suit with cost.

05. Having been infiltrated with rival claims, I have settled the issues at Exh.57 to which I record my findings for the reasons enumerated below.

<u>Sr. No</u>	<u>Issues</u>	<u>Findings</u>
01.	Do plaintiffs prove that they are in settled possession of suit properties respectively ?	Yes
02.	Do plaintiffs prove that defendants have issued illegal notices dated 28/11/2023 to them and invade or threatened to invade their possessory rights over suit property ?	No
03.	Do plaintiff prove that they are entitled for regularization of encroachment over suit properties respectively ?	No.

04. Whether plaintiffs are entitled for relief as prayed for ?No.
05. Are plaintiffs entitled for injunction as prayed ?No.
06. What order and decree?As per final order

:: REASONS ::

06. In order to substantiate their plaint plaintiffs have examined Smt.Shamlata Gautam Tayade at Exh.59 as P.W.1 and Anand Topaji Bageshwar as P.W.2 at Exh.60. Besides their ocular version the plaintiffs have relied upon tax receipts, electric bills and other documents to demonstrate their occupation over their respective plots. On the other hand defendants did not opt to lead any evidence. The defendant also relied upon the notices filed on record by the plaintiffs.

AS TO ISSUE NO. 01 :

07. Under the head of issue no.1 the plaintiffs are burdened to prove their settled possession over the suit plots. It is worth to note that the possession and occupation of plaintiffs over their respective plots is not seriously disputed even by the defendants. Further the documents filed by the plaintiffs i.e. the tax receipts and electricity bills are palpable enough to demonstrate that plaintiffs are under occupation of their respective plots since long and paying the property taxes to the Government. Indeed the settled possession of plaintiffs over their respective plots itself peeping through the tax receipts, electricity bills and abstract of assessment register of Grampanchayat, Umarsara. Indeed I do not have even a faintest doubt over the fact that the

plaintiffs are in settled possession over the suit plots. Nevertheless the plaintiffs though having the settled possession but it doesn't mean that they are in adverse possession of the suit plots in the sense of *nec-vi*, *nec-calm* and *nec-pickario*. However, the plaintiffs can be safely said to be in settled possession of their respective plots. Concomitantly I answer issue no.1 in affirmative.

AS TO ISSUE NO. 02 TO 04 :

08. As issue no.2 to 4 are hinge upon the same pivotal and revolving around the legality of the notices issue by the defendant no.2 and claim of plaintiffs to regularize their encroachment. Thus in order to avoid blending of facts all these issues are club together for discussion.

09. As stated supra that the plaintiffs are claiming adverse possession over the suit plots and fairly admitted that they have encroached upon the open space left in the layout. The plaint of the plaintiffs is not only repleted but also it is brimful with the palpable pleadings that they are under permissive possession of the suit plots with the permission of the owner of survey no.13/3. Once the layout has been sanctioned the ownership of the open space transferred to the Government and thus the defendant no.2 is duty bound to manage said open land for public utility. The plaintiffs though have proved their settled possession over the suit plots but they cannot be allowed to ride two horses together by pleading permissive possession and plea of adverse possession simultaneously. Resultantly, the plea of plaintiffs not only failed but has lost its breath before its birth.

10. Coming to the legality of notices issued by defendant no.2 it is worth to note that defendant no.2 being Nagar Parishad derives its authority from section 179 and 181 r/w 189 and 195 of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act 1965 and also under section 50 and 53 of the Maharashtra Regional and Town planning Act 1966. Therefore, the action of defendant no.2 cannot be termed as illegal or unauthorized.

11. The declaration against the lawful act of defendant no.2 that the notices for removal of encroachments issued by it is illegal cannot be granted by this Civil court. Further the injunction is the equitable remedy against the lawful duty of the defendant no.2 this court is not supposed to grant perpetual injunction to protect the illegal encroachment of the plaintiffs over the land kept for public utility.

12. A profitable reference can be imported from the land mark authority of **Municipal Council, Pusad Vs. Kundanlal Mohanlal Jaiswal 2007(3)Mh.L.J.155** wherein the Hon'ble Parent High Court was pleased to rule that apparently unauthorized possession over the land kept reserved for public utility cannot be protected. That mere long possession of the encroachers, payment of the Municipal Taxes, obtaining the electricity connections or water connections does not establish any prima facie case in favour of the encroachers or does not make any nexus with the alleged title.

13. Indeed having been infiltrated with the case set up by the plaintiffs and the action taken by the defendants I unhesitatingly to attribute my findings that the lawful action of the defendant Municipal Corporation cannot be termed and declared as illegal. Indeed in my

humble view the plaintiffs neither entitled for declaration nor entitled for perpetual injunction. So far as to the mandatory injunction to regularize the encroachment is not the domain and forte of this Civil Court. Hence, I answer issue no.2 to 4 in negative and in answer to issue no.5, I reckon to pass following order-

:: ORDER ::

1. Suit is dismissed with costs.
2. Bill of costs be prepared accordingly.

(Dictated and pronounced in open court.)

Place : Yavatmal.
Date : 12/08/2026.

(Z. Z. Khan)
5th Jt. Civil Judge (Senior Division),
Yavatmal (MHBI06-2196)