

ORDER BELOW EXHIBIT NO.6

This order shall dispose off the application filed by the plaintiff Under Order XXXIX Rule 1 and 2 read with the Section 151 of the C.P.C, 1908 for granting of interim injunction restraining the defendants or its agents from interfering or creating any hindrance in peaceful use of suit property and to stop the construction on the way of passage in the Property of the Defendant so that approach land which was prior there be restored and also stop the construction at the south of his property and defendants don't enter/trespass in its suit property illegally .

A) Before deciding this application it is appropriate to give a brief resume of the facts as averred in the plaint, which are as follows:

- I. Plaintiff no 1 is the farmer and Retired Police Official and Plaintiff No 2 is small brother and they have the land bearing the Khata No 185 in which they have the 8 farm land and are in the name of their jointly at the village Khamblav admeasuring Hectare. Are 11-27-29 and there in with the Survey No 755; Old Survey no 507/1 which is known as the kitte khari vadi admeasuring Hec. 0-81-85 are which is their possession as it was the their ancestral property of the old condition at balol village, taluka Limbdi, Surendranagar & similarly the defendant no 1 is the owner of the land bearing Khata no 767, having 2 survey no land; survey no 753 which adjoins his land in the south direction which has been recently converted into the Non-Agriculture land (hereinafter referred as NA Land) while developing 26 plots in it on 30/062021(herein after referred to as "the suit land/Property along with the Plaintiff & Defendant land") is involved in present dispute.
- II. Plaintiff has given out that recently the near by plot were sold to the defendant no 2,3,4 bearing the plot no 13,14,15,16,17. He then gave out that as per the NA of the Survey no 753 land defendant was supposed to leave the 3 meter land and he should also do the same and then gave out that the land which was adjoining to his land & to the defendant and to the hardevsingh Kayubha piyat dhoriyo was there from long

time and from there is to supply the water to his farm and after the sale of the plots it has been destroyed and they have started doing the construction by destroying the sedho, dhoriyo and are raising the pillars for their house and have dug up 12-12 holes for the beam pillars and upon getting knowing about it he went there and seeing the map of the Defendant no 1 defendant no 2,3,4 have started digging up holes and raising the beam pillars & RCC work is going on and they are trying to cover the common passage land between the Plot no 13,14,15,16 & 17 and now since they are hotminded and non law abiding citizens they have started breaching the order of the NA land conditions and threatened him that do whatever you want and go to any court of your choice and they are breaching the public law.

- III. He then gave out that since the way is blocked in the land of the defendants and hence when in the future if he gets his land NA then he will have no way as he is liable to get the approach land if they are not stopped and the construction work would be of the permanent nature and wont bring back the same position and they are not stopping on his say and thus they need to be stopped.
- IV. He then gave out that since the land has been converted into the NA land and thus he has the way from their land to his farm house and earlier he used to had in it from where he used to take the agriculture farming machines, anything related to farming for which earlier Defendant no 1 had made the way of 12.13 meters' and he was informed by the Government authority when the land was done NA.
- V. He then gave out that since now he cant have the passage of the land he is having the trouble bringing & taking the agriculture produce and moreover if he gets to decide in the future that he wants to get the land converted into the NA and then he will get trouble as to the approach land that has been converted but blocked.
- VI. He then gave out that defendants are doing the construction without getting any permission from the Talati cum mantri and thus when they are doing the illegal construction and digging up the holes and filling RCC construction and they have encroached upon the land which they have purchased and thus they would suffer the loss which couldn't be compensated in the monetary terms as they have decided

to breach the order of the NA land conversion and they are doing the illegal construction.

- VII. Thereafter they gave that since They have the balance of convenience. As the construction is illegal, which is done by the defendants on their land and thereby curtailing their rights of movement. Also. if the defendants are. Allowed to go ahead with the construction, then they will suffer the irreparable loss, which cannot be compensated in the terms of the monetary benefits and the way of passage as Way passage be permanently closed, which is also coming in the court commissioner reports also and is not as per the lay out plan also and thus which proves his case And thus he will suffer the loss and his family will be deprived of the way of passage permanently and Irreparable loss would be done to them as the evidence affidavit of the Parmar khumansingh & Jhala brijrajsingh also shows that he was doing the passage from there and thus giving out his prima-facie case.
- VIII. Therefore, the plaintiff was constrained to file this suit. In the said suit, permanent injunction was prayed for restraining the defendants or its agents from interfering or creating any hindrance in peaceful use of suit property and to stop the construction on the way of passage in the Property of the Defendant so that approach land which was prior there be restored and also stop the construction at the south of his property and defendants don't enter/trespass in its suit property illegally and they have the prima-facie case to get the Injunction in the case.
- IX. He then gave out that he has filled the documents relating to the ownership of the land of him and his defendants & the map of the defendants land which shows the property details which belongs to them vide Exb 3 list of documents and relevant revenue entries which prove that how they got the land from their ancestors and thus their name came on to the revenue record and till today they are having the possession of the same and paying the relevant revenue tax on it and the copy of the illegal sale done by the Defendant no 1 with the Defendant no 2
- X. Along with this suit plaintiff also filed an application under order 39 rule 1& 2 of CPC seeking injunction pending the suit for restraining the defendants, their

servants, agents from restraining the defendants or its agents from interfering or creating any hindrance in peaceful use of suit property and to stop the construction on the way of passage in the Property of the Defendant so that approach land which was prior there be restored and also stop the construction at the south of his property and defendants don't enter/trespass in its suit property illegally .

- XI. Plaintiff have filled the Suit under the Exb 1 and then filled the Rejoinder to the WS and reply to the interim injunction vide Exb 22 while denying the allegations of the Defendant laid down in the WS of theirs.
- XII. Plaintiff have done the arguments of this application under order 39 rule 1&2.

B) Defendant's version

- I. All the defendants have appeared through their advocate vide Exb 9 and initially produced the Exb 11 documentary list and then filled the WS vide Exb 19 and . While giving out that the plenty have not come to the court with the clean hand. And denied the facts and the allegations Alleged by the plaintiff and gave out that the plant is plant is not tenable and liable to be dismissed as it false, frivolous and vexatious in the nature of a there is a misjoinder of the parties.
- II. He then gave out that Defendant no 2 Bharvad ogahdbhai bhalabhai has been wrongly added in the suit proceeding's and he is neither the owner of the any property nor he is in possession of any suit property alleged in the suit property and he being the 65 years of age has been added to be harassed in the suit proceeding's and thus there is prima-facie misjoinder of the parties on the record.
- III. He then gave out that the land bearing the survey no 753 was done NA land by the collector Surendranagar, in the year 2021 and there in 26 plots for the residential purpose and one common plot layout was approved and he had produced the copy of the order and the approved layout plan.
- IV. He then denied that as per the say of the Plaintiff and the direction given by the plaintiff to his property as wrong and then gave out that in the East direction of the

Survey no 752 land prakaram sikh doesn't own the land but then it is the survey no 760 (old survey no 514/2) which was also known as the Matriyu admeasuring Hectare 0-83-62 sq meter and is in the name of the plaintiff with the Khata no 185 and thus he has its own farm there which has been hidden by him and there after it is survey no 758, 759 NA land and in the west of it survey no 761 land of the prakaram sikh is there and then pointed out that Survey no 752 west there is plot doesn't belong to the Jashubha but to the Jashubhai.

- V. He then gave out that plaintiff is alleging that there no land which have the passage way in their and thus he will starve to death if not allowed to pass in the from their property is false and baseless as on the North side of the farm of the plaintiff there is one old way going towards the Limbdi which is on the working condition and is also shown in the Court Commissioner report and thus his say of no way or access land towards the Limbdi is purely false and fake and shows his ill-will towards them.
- VI. He then gave out that plaintiff have internally hidden the fact that there is one old well in the North-west direction of his property and in Survey no 751 & other is in 749 and thus have not come with the clean hands in the court.
- VII. He then gave out that defendant no 1 have sold plot no 16,17 to Defendant no 4 vide registered sale deed no 980/24 & 981/24, plot no 14,15 & 14 o to Defendant no 3 vide registered sale deed no 986/24 & 2731/24 and thus in the sale deed he has no ever sold the corner land as per their own wish but as per the approved land map and as per the conditions of the NA land nor there is any law which says that he has to leave 3 meter land between 2 farm land when getting converted nor they have destroyed anyone land or dhoriyo. He then gave out that they are doing the construction as per the lay out plan and doing the construction of the wall land for their security as its now residential purpose also as per the conditions of the NA land they have to do the construction in the 3 years and thus not done who suffer irreparable loss as the NA status would be lost and they would huge and irreparable loss which is already delayed due to the covid at that time and now they have limited time which was known to the plaintiff who is the retired police official and thus now

he is doing harassment to them and to extract the money from them and after the NA land only society members can claim the road and its access and there is no right of the plaintiff over it and since he had other access also but still he wants to go from his land shows his malafide intention and if there is any order from the government about the approach land they would follow it but as of now plaintiff have no right over it nor he can seek the injunction looking over the future which is not permissible nor there was any prior right of him anytime in the past also thus here they have the prima-facie case to do the construction.

VIII. He laid allegations on the plaintiff that it is the plaintiff who had done the wiring boundary wall in the south side and all other side of his farm land and in the east direction he has put Iron gate of which they have putted the pictures also and there is the old Gada marg on that road also and from which he was doing the passage but still choose to lie in the court and the gate also shows the same and the boundary wall of wiring also proves the same and thus shows plaintiff's blatant lie. Also the very fact that he had put the gate in the east direction of the farm which adjoins the survey no 760 of which ownership lies with him and thus this shows his intention of not giving out the clean facts. He then gave out that witness evidence affidavit of paramar khumanshingh & Jhala brijrajsingh also shows that they have seen him passing through their land only after the Conversion & plotting done which prima-facie shows that after conversion he started moving from there and not prior which shows the mentality of the plaintiff for harassing them and their construction work doing on.

IX. He then gave out that plaintiff are not liable to get any relief and their suit is prima-facie liable to be dismissed as he has the right to do construction in his property as per the rules and plaintiff can't dictate the terms of his as he is bound by gvt NA land conversion conditions and not his and since he has not complained to any gvt authority shows his malafide intention to harass him and thus when the NA land conversion didn't show any open area or way of passage then he is not bound to get it and he has many alternative ways for passage and can't choose to pass through

the private property nor any new right can be enabled for him. Court commissioner report also proves the same which shows that he has the way from many other sides and no new right should be given and thus plaintiff doesn't have the prima-facie case nor balance of convenience is there and he is the one who would suffer irreparable loss if Interim injunction is granted and hence Exb 6 application be rejected.

C.) It would be worthy to mention that Plaintiff has Initially filed the application vide Exb 7 for the Appointment of the court Commissioner, and thereafter, the court while allowing its application and had ordered the appointment of the court commissioner who would go on the Suit property and prepare its own report while giving out what the factual situation is on the ground which is there and thus thereafter, the court commissioner has submitted its own report in the court vide exhibit 18.

FINDINGS

- 1) It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests:-
 1. Whether the plaintiff has a prima facie case;
 2. Whether the balance of convenience is in favor of the plaintiff; and
 3. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

- 2) The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect

the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies.

- 3) In the present case court proceeds to see if all these three ingredients are fulfilled. The existence of a prima facie case and infraction of such right is a condition precedent for grant of temporary injunction. The prima facie case doesn't mean a case proved to the hilt. The only requirement is that on the face of it there should be a case in favor of the plaintiff. While determining whether a prima-facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.
- 4) Existence of the prima facie case alone does not entitled the applicant for a temporary injunction, but the applicant must satisfied the court that he will suffer *irreparable injury* if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.
- 5) Other essential condition for granting interim injunction is that the ***balance of convenience*** must be in favor of the applicant. In other words, court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.
- 6) Therefore the principal question which requires consideration/ is; whether the plaintiff is in a position to establish his prima facie case and is entitled to get interim injunction during the pendency of the suit.

- 7) To settle this controversy it is necessary to peruse the documents produced and record of the case in hand. On perusal it is found that plaintiff has averred in his pleading that he got the possession of the suit and since then he is possession of the suit land and similarly defendants are owner of the land and the plots except the Defendant no 2 as there is nothing on the record to prove the same he is the owner or any type of shareholder of the property of which the NA was done and nor there is any thing in the Rejoinder of the plaintiff about he was added as the party and thus prima-facie shows there is misjoinder of the party pertaining to the Defendant no 2. Land revenue records shows that property is no his name of which certified copy has been produced by him vide Exb 3 documents & Exb 20 documents lists.
- 8) Also it is crystal clear that the land bearing survey no 753 was converted for the NA purpose vide Collector Surendranagar order No 231/08/10/045/2021 dated 26/03/2021 and there are several conditions attached to it but no where there is condition which shows that defendant no 1 have to leave the 3 meter land and plaintiff also have to leave 3 meter land in the boundary lines of the both farm's land in between and thus say of the plaintiff fails badly.
- 9) Also the said conditions on the page 2 NA land owner had to do the construction as per the lay out plan surendnagar city niyajak office order and it should be done in within 3 years of the order and thus it is the Defendant no 1 and other owners who are bound to follow the timeline and thus if they are doing the construction and fast than they are duty bound towards it and if they are stopped in between then the defendant's would suffer badly, however it is to be seen that whether the construction is legal or illegal or not. Prima-facie when the farm land was converted to the NA land then it doesn't cease to be Farm land and thus rules of the farm land would not be applicable and thus the society which is gone into the residential terms have the right to get the Boundary wall construction for the safety of their residents as the persons along with the family would be living there and safety is the paramount feature of it and thus construction of the wall is necessary and the plaintiff cant have the say of the way of the passage as the matter of right from it as

the way of passage and way is for the society members who are the owners of the plots and not all have access it permanently as per their choice in it until unless there is some order of the any government agency on it which is none here on the record and thus the say of the right of passage cant be adhere too or stopping the construction of the wall in it as the map produced by both Defendant & plaintiff shows the boundary wall in it and there is no way/gate shown from the plaintiff's farm in it. And the very fact that Conditions no 5 also gives against the plaintiff as it clearly mentions that common plot land and area and way of passage would be of the society owners or the plot holders and even the original owner of the land who have no right in it and thus even the Defendant no 1 cant have the say in it let forget the Plaintiff no 1 and thus prima-facie plaintiff cant claim the right over the passage nor even towards the claim of the Future NA land getting converted; if any done by him as that time it would be for the government agency to see and if they allow as per the BY-laws then for the passage wall can be demolished and as of now wall cant be stopped.

- 10)** Even if the say of the plaintiff is accepted than also condition no 6 of the collector order clearly gives out that if there is any illegal construction done by the party to the order then it would for the agency which looks after the illegal construction in the mahanagarpalika/city limit area or gvt agency would have the right over the taking of the cognizance towards the illegal construction and there is nothing on the record if he had approached any such agency or even the Gram panchayat or brought into the their notice or wrote complaint to the talati cum mantri of the village or the village head or panchayat and thus upon which quantum of the legal construction and illegal construction can be determined and which is not the case here and thus court decide as of now. Also the very fact the none of the plot holders have said that there is illegal construction going on and it is who they are the affected parties and not the plaintiff who should have the say in it and if its allowed then court would be sending the wrong message and entering into the wrong territory of the other govt department's without any proof or any report .

- 11)** Even if the court commissioner report is to be believed than it shows that there is way of passage for the plaintiff in the Exb 18 report for the plaintiff where in it clearly mentioned that there is way of passage in the north direction of the farm land ; JUNO GADA MARG towards the LIMBDI which clearly shows there is way of passage which leads towards the Limbdi town and and which is getting matched with the claim of the Defendant when he put on the pictures of the gate vide Mark 11/1 & mark 11/2 and when the plaintiff say it cant be relied that to what extent it goes to Limbdi cant be determined from it then it is the Plaintiff plaint where in the para 5 page 2 he himself have given the 4 direction of his farm land and himself have shown and written as “ લીબડી જૂનો માર્ગ આવેલ છે” thus which clearly establishes that there is way and plaintiff wouldn't suffer any irreparable loss if the boundary construction wall is allowed and the very fact that hardev signh Kayubha on whose behalf plaintiff have laid the conditions and spoke about that there was dhoriyo and from where he is used to the water is not the party to the suit nor there is any evidence affidavit of him while giving out that there existed any such and he had ever given the right or he had the right of such ever and thus cant be assumed at this stage and cant be appreciated at the stage of the evidence only.
- 12)** Infact the court commissioner report is to be believed than it shows that there is way of another way of passage for the plaintiff in the Exb 18 report for the plaintiff where in it clearly mentioned that there is way of passage in the east direction of the Farm land; and gives out that there is plotting done for the Survey no 760 and there is one gate made by the plaintiff and there is way of approx. 10 meters in it and thus clearly shows that he can move from there and which is getting matched with the claim of the Defendant when he put on the pictures of the gate vide Mark 11/3 and thus can be implied that there is another way for him.
- 13)** Now coming to the other point that that there are 2 khuntas; wall of 5 feet which clearly shows that as per the map shown vide Mark 4/15 by plaintiff and mark 20/2 by the defendant are same and shows the Plot no 15 & 16 having the boundary wall

attached to the plaintiff's land and thus they have the right to do the construction of the boundary wall in order to protect their plot and there is common passage way in between to them and thus there would be safety issue if they are not allowed to do have the wall over there and which no court would allow to do so and also comes in the mark 18 /1/& 18/2 report of the court commissioner.

- 14)** Per contra defendant no 1 have and thus there exists no Prima facie case in her favour and while giving out that witness evidence affidavit of paramar khumanshingh vide Mark 15/1 & Jhala brijrajsingh vide Mark 15/2 also shows that they have seen Plaintiff passing through their land only after the Conversion & plotting done which prima-facie shows that after conversion and plotting was done plaintiff had started moving from there and not prior. Also the very fact they have given that they know 2 plots were cutted down but they have not given that if they had seen the plaintiff moving prior to it or if there was any way of passage earlier from the defendants land or not. Also the very fact when they give out the construction was going on and it is on the legal part or illegal part or constructions is illegal to any extent is the matter of evidence and can be dealt by the proper government agency only who can decide it and it is not court which can decide at this moment as it all about taking the evidence which cant be done now.
- 15)** It is Also crystal clear that from the Exb 18 report of the Court commissioner that plaintiff is also doing the construction in the middle of the way of the passage of the plot no 13 and the common plot and thus there by dug up holes and there in the RCC construction is going on and put the beam of the iron rods and of which he had not brought anything on record that is legal or illegal or how is putting the iron rods in the mid way of the passage and he chose to remain silent over it and none of the Defendant no 3 & 4 also spoke about it however the beams and iron rods casting in the hole are shown from boundary wall to the left side of the property and adjoining to the Survey. no 754 land to the plot no 13,14,15 & 17 and going from there via mid passage way which prima-facie appears to be illegal and thus to which if the construction is allowed than it would be closing the eye toward the illegality however it is made clear that it is not on

the say of the plaintiff that is done as he doesn't have the right but court cant illegal construction which had been brought on the record vide Exb 18 report and to that effect any construction on the way of passage land should be stopped as the way needs to be remained open and the RCC beams would stop them permanently.

- 16) Also the Plaintiff have sought that defendant shouldn't enter into his land nor if his agent be allowed to do so or any trespassing be allowed nor do the construction in his survey no 752 land in the southern side till the suit is finally decided and thus to that extent only Plaintiff have prima-facie case and balance of convenience and thus giving out partial case only. However the way of passage through the property of the Defendant no 1,3,4 if he is not allowed or any construction is allowed in their and then to his farm on the suit property or enter into her property then the plaintiff would suffer irreparable loss which cant be compensated by any means is not proved.
- 17) Also the very fact that if the construction is not allowed in the survey no 753 property then there would be breach of the time line conditions of the NA land conversion order and if the boundary wall construction is not allowed as it would pose the safety risk to the defendant no 3 & 4 who have bought it as the residential purpose after the NA order and they to that extent they have the prima-facie case and balance of convenience is there in their favor and if stopped they would suffer irreparable loss and not the plaintiff as he needs to understand after the NA conversion rights changes of the farmer or the commercial holder to the extent and to that effect Collector Surendranagar must have determined those factors and after that only he would have allowed the conversion over it.
- 18) Also the very fact that Plaintiff's case is based purely on the circumstances and there is nothing on records about the say of the plaintiff like the ownership, share in the property of the defendant and there is nothing on the record relating to those facts of the way of passage earlier and even there is survey no 751 & 750 having access to the the old way of passage to the limbdi and all the Revenue documents are Xerox copies on the record & map vide Mark 4/15 also shows that. Also the very fact that **"equity Aids The Vigilant, Not Those Who Slumber /On Their Rights."** **And thus when their**

nothing on the records from the front of the Plaintiff's that court is forced to accept the contentions of the Defendants Ditto or on say of the Plaintiff in-toto and vice and versa and thus he cant claim towards any right of the hardevsingh kavubha .

- 19) So at this juncture after perusing the records, it seems to this court that the plaintiff has not been succeeded to prove his *prima facie* case fully and will suffer the *irreparable loss entirely* if defendant's created any interest over the suit land in the survey no 753 or allowed to move freely or trespass; therefore "*balance of convenience*" doesn't lies in the favour of the Plaintiff only towards the survey no land 753 however to the extent only that if the defendants are allowed to enter or to do any construction in their farm land then he would suffer badly .
- 20) In the light of the facts stated in the application and in the reply and the arguments advanced by learned counsels, at this juncture, I pass the following final order:

ORDER

1. The application vide exhibit 5 is hereby **Partially allowed**.
2. Defendants and its agents or their employees/contractual persons directly or indirectly; are restrained from entering into the Property of the plaintiff; ie Survey no 752 nor allowed to do any type of construction in plaintiff's land.
3. Defendants are here by restrained from doing any construction on the way of the passage which would block the way of passage which is 12 meter road which is shown in the mark 4/15 map & mark 20/2 from the plot no 13, 14, 15, 16, 17 and touching the common plot area except any type of construction which would fascilate the way of passage be it road construction or the boundary to the respective plots in such a way that way of passage should always remains open properly and there is no hinderance or any obstruction in it.
4. Also if the any of the government agency finds that the construction done by the Defendant is illegal and not as per the law then this order of the court

wont come in any their way to get the illegal construction/encroachment removed or taking any action thereon by them during the pendency of the suit proceeding's towards any of the either parties or suit property owners.

5. Looking to the facts and circumstances of the case, there shall be no order on costs.

Date: 07/02/2025

Vikas Seoul

Additional Civil Judge, Limbdi.

Unique ID No.-GJ 01357