

MHRT070008152026



R.C.S.No. 43 / 2026
Aaradhna Rakesh Mourya

Versus
Chief Officer Chiplun Municipal Council
Chiplun

Order below Exh.5

This application has been filed by the plaintiff against the defendant for temporary injunction.

2) The brief statements of this application are as follows; Gat No.22 Sub-Division No.4A/2 area admeasuring H.0.90.8R assessed at Rs.1.87 Paise is situated within the limits of Chiplun Municipal Council Tal.Chiplun Dist.Ratnagiri. The boundaries of this property based on compass are as follows, towards East - the river, West - Road and Survey No.24, North - Survey No.24 and South - Survey No.289 and Survey No.22 Hissa No.4B and the boundaries of this property as per measurement map - towards East - Survey No.24, West - Survey No.289 and Survey No.22 Hissa No.4B, North - Road and Survey No.24 and in the South - the river.

3) The plaintiff is the legal owner and occupant of the above mentioned property since the purchase deed dated 26/03/2014 till date. No other person other than the plaintiff has any right to the said property or the ownership or occupancy of the suit property. The plaintiff has taken the proper construction permission from the Chiplun Municipal Council and has

constructed a compound wall to some extent on the said land and the remaining work is in progress. While there is no natural water flow/channel/drain in the said land from the past to the present, the Chiplun Municipal Council stating that the plaintiff has blocked the so-called flow/channel/drain by constructing a compound wall. Also, stating that the so-called planned 12-meter wide road has been constructed, and the so-called riverbed and green belt which is a risk of monsoon flooding and therefore the plaintiff has illegally constructed their compound wall, the plaintiff should demolish the compound wall at her own expense and the so-called drain should be cleared for the flow of rainwater as per the map attached to the suit, otherwise the defendant will demolish the compound wall at the government expense with police protection and open the so-called nala for the flow of rainwater and the so-called road for public and the expenses incurred for that will be borne by the plaintiff as land revenue. The defendant has given illegal notices to the plaintiff on 27/05/2026, 12/06/2026 and 16/06/2026 regarding the cancellation of the construction permission. The illegal notices sent by the defendant are the subject of the present suit. Therefore, the plaintiff prays that the defendant himself or through anyone else temporarily restraint from taking any action to remove the compound wall construction in accordance with the notice dated 16/06/2026, until the final decision of the present suit.

4) The defendant has filed his say at Exh.18 and the brief statements of it are as follows, the plaintiff's suit, this application and all the contents therein are completely false, fraudulent and are not accepted by the defendant. The application made by the plaintiff for permission to construct a compound wall has been made in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966. Also, the compound wall permission granted to the plaintiff by the defendant dated 27/05/2026 has been granted in accordance with section 45 of the Maharashtra Regional and Town Planning Act, 1966. The defendant has the right and authority to cancel the said permission after giving an opportunity to the concerned person to present his views as per section 51. The compound wall permission granted by the defendant to the plaintiff on 27/05/2026 has been cancelled on 12/06/2026 as per the provisions of the Maharashtra Regional Town Planning Act, 1966. The order to cancel the construction permission issued by the defendant is final and the plaintiff has no right or authority under law to question the said order in the Civil Court. This Court has no authority to pass any order against the defendant. Therefore, this suit and present application liable to be dismissed and rejected with costs.

5) On perusal of rival pleadings of both the parties and material available on the record following points are relevant while considering the merits of this application and the findings

are recorded with reasons as follows.

NO.	POINTS	FINDINGS
1.	Whether there is a prima facie case in favor of the plaintiff?	In the negative
2.	Whether irreparable injury is likely to be caused to the plaintiff which cannot be compensated for in terms of money?	In the negative
3.	Whether the balance of convenience lies in favor of the plaintiff?	In the negative
4.	What order?	This application is rejected

R E A S O N S

AS TO POINTS NO.1 to 4 : –

6) All above points are taken together for discussion as they are interrelated to avoid repetition of discussion. Ld. Adv.A.A.Jaygade for the plaintiff in connection with the suit and this application relied on **Seema Arshad Zaheer V/s Municipal Corporation of Greater Mumbai 2006 (5) SCC 282** and argued that the discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of plaintiffs rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favor of

plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted.

7) On the other hand, Ld. Adv.S.S.Awale for the defendant in the context of the say relied on sections 45, 51, 53, 149 and 152 of the Maharashtra Regional and Town Planning Act, 1966 and also submitted that notice issued by any planning or development authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings. This Court has no authority to pass any order against the defendant. So, the plaintiff has not come to seek justice with clean hands, she has concealed a lot of information from this court regarding suit property and the plaintiff has no prima facie case, the balance of convenience is not in plaintiff's favor, if temporary injunction as prayed by her is granted the defendant and ultimately public at large will suffer irreparable loss.

8) So, having considered the arguments of both sides and the documentary evidence available on record, as well as pleadings of both parties the plaintiff has averred in the plaint that suit property is situated within the limits of the Municipal Council in Chiplun city. Basically, Chiplun city is a monsoon flood-prone area and when there is a flood in Chiplun city during the monsoon, one to one and a half floors of many buildings and houses in the entire Chiplun city in the area of about one and a half to two kilometers from the river bank in that area are sink. In this situation, since this property is adjacent to the river, the

suit property and all the surrounding properties are flooded during the monsoon and flood water accumulates in all the lands near the river. At that time, all the said lands and the surrounding houses are also sink.

9) In order to control the sudden floods during the monsoon, the Irrigation Department has constructed a 12 to 15 feet wide and 23 to 25 feet high drain embankment Nalawada dam in the area shown as J-K in the accompanying map to the east of the suit property, running from south to north. Some parts of the plaintiff's property are under and beyond the said Nalawada dam. For the purpose of the said Nalawada dam the plaintiff's land has not been legally acquired by the defendant or the Government. But since the said dam is for the safety of all the people, the plaintiff has not raised or registered any objection to it till date. Since the said situation is during the monsoon, the suit property should not be eroded due to the rising tide of flood water and also to protect it from illegal encroachment and possession, the plaintiff decided to construct a compound wall around her property by obtaining proper construction permission from the Municipal Council, Chiplun. As the monsoon season was approaching, the plaintiff had made all the necessary preparations for the construction of the said compound wall.

10) The plaintiff had applied online to the Municipal Council Chiplun for proper construction permission for the construction

of the compound wall of the property and for approval of the plan of the said compound wall on 27/04/2026. Pursuant to the said application, the Municipal Council Chiplun, after inspecting the geographical condition of the said property, considering the town planning scheme, reservation and confirming it, passed an order approving the construction of the said compound wall and construction plan by its order dated 27/05/2026. The plaintiff was trying to complete the construction of the compound wall around her property in a hurry as the monsoon season is about to begin as per the approved construction permission and map.

11) The map of the suit property is attached with the suit. There is a road/street beyond the area/boundary shown by letters A-B. In that road, the rainwater beyond the road flows from under the said road, through the culvert of the said road beyond the said road, the said road and the attached map of the suit property the water enters the drain outside the boundary shown by letter A-B in the map and from that drain the water flows from outside the boundary of the suit property to the boundary B-A and to the boundary A-B-C-D-E-F-G-H-I-J and the rainwater flows back to the river bed in the direction beyond the boundary J-K in the map. The plaintiff has left an area of about 12 feet of land in the property owned by her between the said road culvert and the wall of the suit property outside the compound wall to the defendant for the construction of drains etc.

12) In response to the above pleadings, the defendant raised the defence that they granted permission for the compound wall to the plaintiff on 27/05/2026. On the same day, on behalf of the defendant, the Planning Assistant Mrs.Namrata Khairmode and senior clerk, Mr.Vijay Baban Gamre as well as the assistant clerk, Mr.Siddhesh Deepak Burte went to the place where the construction was made at around 12.30 p.m. and inspected the actual situation and also conducted a panchnama on the spot. At that time, the said officers found that the plaintiff had constructed most of the compound wall before the defendant had given permission to the plaintiff to construct the compound wall. That is, it was clear that the said construction was done without permission and therefore it was illegal.

13) It was also noticed by the concerned officers that the construction of the compound wall was not being done as per the permission and approved map. The concerned officers also found that the construction of the compound wall being done by the plaintiff was blocking the natural flow of flood water at Shankarwadi. The construction of the compound wall being carried out by the plaintiff was found to be connected to the protective wall known as the Nalawada Bandhara constructed by the defendant for protection from flood water and was of a nature that was dangerous for the structure of the Nalawada Bandhara. It was also found that the construction of the compound being carried out by the plaintiff was coming

between the green belt and the planned road as per the development plan of Chiplun Municipal Council.

14) The defendant informed the plaintiff in writing on the same day i.e. on 27/05/2026, about the immediate stoppage of the construction of the compound wall being carried out by it. However, the plaintiff, despite the notice given by the defendant continued the illegal construction of the compound wall that she was carrying out and sent a written reply to the defendant. The permission for the construction of a compound wall as per section 51 of the Maharashtra Regional and Town Planning Act, 1966 on 27/05/2026, by written notice dated 12/06/2026 has been cancelled for the reasons stated therein.

15) The defendant further states that before the construction of the compound wall by the plaintiff, after the end of the Nalawada bandhara, the flood water used to flow towards the Ramtirth Lake from the plaintiff's land and the culvert under the road adjacent to it. Due to the construction of the compound wall by the plaintiff, the flood water has entered the area of the people living in Shankarwadi and has created a threat to the said habitation. Also, while the flood water from the Ramtirth Lake was draining, the culvert under the road adjacent to the plaintiff's land used to flow into the plaintiff's land and then into the river and this helped in the drainage of the flood water as soon as possible. Due to the construction of the compound wall by the plaintiff, there has been an obstacle in the flow of flood

water from the culvert under the road adjacent to it towards the river and therefore it is necessary to remove the said compound wall as soon as possible.

16) Having considered the pleadings and say as above it would be useful to refer judgments in **Kalyan-Dombivli Municipal Corporation V/s Prakash Mutha 2008 SCC Online Bom 220** the Hon'ble Bombay High Court held that a civil suit challenging the Development Plan is barred under section 149 of the MRTP Act, as the statute provides a complete mechanism for objections and redress in various steps. In **Laxman Barkya Wadkar V/s Mumbai Municipal Corporation of India 2011 SCC OnLine Bom 2162**, **Prathamesh Tower Co-operative Housing Society Ltd. V/s Gorai Road (Borivali) Shree Ganesh Co-operative Housing Society Ltd 2013 (4) Mh.L.J. 918**, **Vandana Creations Pvt. Ltd. V/s the Municipal Corporation of Grater Mumbai 2016 SCC Online Bom 5243** the Hon'ble Bombay High Court held that in cases involving issuance of notices under section 53(1) of the MRTP Act, the only remedy available to the party is to approach the Municipal Corporation and do the needful as called upon in the said notice, or even to obtain the permission under the Act to carry out or retain the alleged unauthorized work. It was reiterated that civil suits challenging such notices are barred under section 149 unless a clear case of nullity or without jurisdiction is made out. It is further held that the only eventuality in which a notice can be challenged in the Civil

Court if prima facie showing that the said notice is a nullity or issued without jurisdiction. In **Prashant Dattatraya Wazalwar V/s Sudha Baburao Lokhande and others 2017 SCC OnLine Bom 2898** it is also held that Civil Court would have no jurisdiction to entertain and try the suit as filed by respondent no.1. However, liberty is given to approach the Municipal Corporation by making appropriate representations/applications/appeals for redressal of her grievance in respect of the notice issued under section 53(1) of the MRTP Act.

17) In view of the pleadings, say and legal provisions as mentioned above, it is undisputed that the plaintiff purchased the suit property from Vijay Raghunath Salunkhe on 26/03/2014, the plaintiff has filed 7/12 extract, copy of sale deed and mutation entry of the suit property along with Exh.7/1 to 7/3. Vide M.E.No.19956 records the plaintiff name as the occupant of the suit property for area admeasuring H.0.90.80R. The boundaries of the property are described in her sale deed as follows: Survey No.24 to the East; the river to the West and South; and a lane to the North. An urgent survey of the suit property was conducted on 19/06/2015 vide Measurement Register No.973/2015, the boundaries were demarcated by the surveyor on 14/07/2015. The corresponding map has been filed on Exh.7/6. Instead of attaching that map to the application for development permission, the defendant submitted an application for the construction of a compound wall along with

another boundary map Exh.7/7, 7/8 & 7/10. Such permission was indeed granted to the plaintiff on 27/05/2026 Exh.7/9. In other words, despite knowing that the Nalawada bandhara had been constructed in a north-south direction on the portion of the suit property marked by the letters 'J-K' on the eastern side and that a portion of the suit property measuring some gunthas lay beneath the bandhara and beyond it, the plaintiff failed to bring this fact to the notice of the Chiplun Municipal Council. However, the plaintiff has submitted a site inspection report stating that Planning Assistant Namrata Khairmode has inspected the property on 21/05/2026 between 11.30 am to 01.30 pm at Exh.25/1.

18) Planning Assistant Namrata Khairmode again on 27/05/2026 at 12.30 pm conducted site inspection Exh.7/25 & 7/26, it was found to her that a compound wall was constructed on the site even before the construction permission was granted. Which was done without taking the permission of Chiplun Municipal Council. Also, the said construction is not as per the documents submitted to the office i.e.as per the survey map and it has been observed that excessive construction has been done. While constructing the said construction, the natural flow of flood water at Shankarwadi passes and the compound wall has been constructed on that flow. The Chiplun Municipal Council has constructed a Nalawada bandhara to protect it from flood waters. A compound wall has been constructed by connecting

the bandhara to that bandhara. Which is dangerous for the structure of Nalawada bandhara.

19) On perusal of the notice dated 27/05/2026 Exh.7/12 the defendant informed to the plaintiff that she is constructing a compound wall in the property bearing Survey No.22/4A/2 within the Chiplun Municipal Council limits. The said construction is seen to be connected to the Nalawada bandhara. Also, it has been seen during the site inspection that the said construction is being done between the riverbed and the green belt, which is excessive construction. Also, due to this construction, there is a possibility of structural risk to the Nalawada dam. Also, while constructing the said construction, the natural flow/inflow of rainwater has been blocked. However, in the present situation, there is a possibility of flood due to the said construction. However, although the permission for the said construction was granted to her on 27/05/2026, she has constructed on the said site before getting the said permission, which makes such construction unauthorized. It does not appear that the plaintiff has averred in her pleadings the date on which she commenced the construction of the compound wall.

20) The defendant further informed that the matter is very serious and complaints from citizens are coming to his office frequently. Therefore, the construction work that the plaintiff is doing should be stopped immediately and it is necessary to remove the completed construction within 48 hours and inform

his office accordingly. Also, the plaintiff is being given an opportunity to present her views before cancelling her construction permission under section 51 of the Maharashtra Regional and Town Planning Act, 1966.

21) The defendant conducted this correspondence via the plaintiff's e-mail and the plaintiff replied via e-mail Exh.7/13 that she has neither intentionally nor otherwise encroached upon any Government land, river area, public road, drainage line or property belonging to Chiplun Nagar Parishad or any other authority. The river protection wall constructed by the Nagar Parishad itself appears to have been erected partly within her private land without acquisition proceedings, lawful authority, consent of the owner, or payment of compensation as mandated under law. Before issuing the impugned notice and making allegations against her, Chiplun Nagar Parishad has neither conducted any lawful joint measurement nor carried out any proper demarcation or survey through the competent revenue/survey authority in her presence. So, she requested to provide certified copies of all relevant maps, village maps, sanctioned plans, survey records, measurement sheets, acquisition records and documents pertaining to the alleged Government land, river protection wall and adjoining property. Accordingly, a clarification was also sent through Ld. Adv.A.A.Jaygade on 29/05/2026 Exh.7/14.

22) In map Exh.7/6, a certain area in the south is marked as 'vahavat' (वहावट) and additionally, areas indicated by the applicant during the measurement marked by dashed lines running east-west and in some sections north-south are also designated as 'vahivat' (वहीवाट). During the arguments, Ld. Advocate for the defendant demonstrated the existence of a natural flow along the western side of the said 'vahivat' (वहीवाट). The plaintiff filed an affidavit Exh.30 outlining her key points and denied the defendant's above mentioned statement. Nevertheless, the question remains as to why the plaintiff did not submit this map along with her application for permission. Furthermore, why was there no need to construct a compound wall around the suit property between 26/03/2014 to May 2026.

23) Apart from the single photograph submitted along with Exh.12/4 the plaintiff has not produced a single document or piece of evidence or photograph to substantiate her pleadings that there is a road/street beyond the area/boundary shown by letters A-B. In that road, the rainwater beyond the road flows from under the said road, through the culvert of the said road beyond the said road, the said road and the attached map of the suit property the water enters the drain outside the boundary shown by letter A-B in the map and from that drain the water flows from outside the boundary of the suit property to the boundary B-A and to the boundary A-B-C-D-E-F-G-H-I-J and the

rainwater flows back to the river bed in the direction beyond the boundary J-K in the map.

24) Similarly, although the defendant has also filed the draft development plan (Revision) for the Chiplun along with Exh.21/2. Not a single piece of documentary evidence or any photographs corroborating the statements that before the construction of the compound wall by the plaintiff, after the completion of the Nalawada bandhara, the flood water used to flow towards the Ramtirth Lake from the plaintiff's land and the culvert under the road adjacent to it, due to the construction of the compound wall by the plaintiff, the flood water has entered the habitation of the people living in Shankarwadi and has created a threat to them, also, while the flood water from the Ramtirth Lake was draining, the culvert under the road adjacent to the plaintiff's land used to flow into the plaintiff's land and then into the river and this helped in the drainage of the flood water as soon as possible, due to the construction of the compound wall by the plaintiff, there has been an obstacle in the flow of flood water from the culvert under the road adjacent to it towards the river and therefore it is necessary to remove the said compound wall as soon as possible, have been placed on record.

25) In **Seema Arshad Zaheer V/s Municipal Corporation of Greater Mumbai 2006 (5) SCC 282** the Hon'ble Supreme Court held that where the plaintiffs do not make out a prima facie case

for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. In **M.I. Builders Pvt. Ltd. V/s Radhey Shyam Sahu (1999) 6 SCC 464** it was held that no consideration should be shown to the builder or any other person where construction is unauthorized. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles.

26) Hence, the plaintiff is failed to prima facie made out that the notices issued to her by the defendant on 12/06/2026 and 16/06/2026 were nullities or issued without jurisdiction. There is no materiel to make out a prima facie case and therefore there is no irreparable injury is likely to be caused to the plaintiff. As per section 41(h) of the Specific Relief Act, 1963 equally efficacious relief is available to the plaintiff under section 51(2) of the Maharashtra Regional and Town Planning Act, 1966

where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit. Therefore, the balance of convenience does not lie in favor of the plaintiff. If the temporary injunction prayed by the plaintiff is granted irreparable injury is likely to be caused to the villagers which cannot be compensated for in terms of money. Hence, the findings of point no.1 to 3 are recorded in the negative and as per above findings following order is passed for point no.4...

ORDER

This application is rejected with costs.

(Typed, Printed and Pronounced in open court.)

Date : 04/08/2026.

Place: Chiplun

(Yuvraj Chandrakant Patil)

Jt. Civil Judge Junior Division, Chiplun

:-Certificate :-

I affirm that the contents of this order and the P.D.F. file are word to word same, as per the original order.

Name of stenographer	Shri.M.E.Arekar
Name of Court	Jt. C.J.J.D.& J.M.F.C.,Chiplun
Date of decision	04/08/2026
Order signed by the P.O. on	04/08/2026
Order uploaded on	05/08/2026