


MHAH010062962019 	<b>Regular Civil Appeal No.370 / 2019, Shriram Co-operative Housing Society Ltd. Vs. The Collector &amp; Ors. Exhibit 5</b>
---	---

**Order below Exhibit 5 :-**  
(Delivered On 12.09.2022)

- 1) This is an application of appellant to temporarily restrain respondent no. 3 to 8 from transferring, alienating or creating third party interest in respect of plot No. 3-A and 4-A out of Survey No. 107/1 situated at Kedgaon, Tal. Dist. Ahmednagar.
- 2) My Learned Predecessor had passed an order restraining the respondent no. 3 to 8 temporarily on 09.10.2019 by issuing notice to respondents.
- 3) It appears that thereafter respondent no.3 to 7 appeared as per Exhibit 16 and submitted their reply ( Exhibit 20) opposing this application.
- 4) The notice was issued to respondent no.8 as per Exhibit 12, but it could not be served. Therefore as per Exhibit 24, RPAD was issued to her and the acknowledgment shows that it was served upon her. Thereafter from time to time appellant went on extending the order against respondents, but did not argue the matter.
- 5) Lastly the adjournment was granted vide Exhibit 44, and the said application of extension( Exhibit 45) was rejected.
- 6) Appellant argued that there is a dispute about open space owned by society. According to Maharashtra Co-operative Society Act, the owner of open space is society. Respondent had encroached upon open space. The defendants alleged that they got ownership from Mahanagar Palika. The suggestions given in cross were

neglected by the Trial Court. Therefore till the decision of this appeal, the respondents needs to be restrained from creating any third party interest. Hence the application may be allowed.

7) I have gone through the reply of respondent no.3 to 7 as mentioned above at Exhibit 20. According to them, the layout was temporarily sanctioned but Mahanagarपालिका made changes in the layout at the time of sanction. They include the internal road going to Kedgaondevi in the society plot increasing the area of plot. The society issued lottery for distribution of plot and since then ,respondents are using the said plot by way of ownership. The appellant has no merit in his case. The respondent is not intending to dispose off the property. Therefore they cannot be restrained.

8) The appellant argued that, if during the pendency of appeal respondent no. 3 to 8 alienated the said property, it will create complications and therefore if the respondents are not restrained, the same will be detrimental to the interest of the society.

9) As respondents have mentioned that they are not intending to alienate the property, they will not suffer from any prejudice or irreparable loss, if they are restrained, till the disposal of appeal. The society is said to be owner of the land and without NOC of said society, the plots cannot be transferred. The balance of convenience is in favour of society. If the respondent no.3 to 8 are not restrained, the society will suffer from irreparable loss, which cannot be compensated in terms of money. The respondents will not suffer any irreparable loss, if restraint order is passed against them, as they are not intending to alienate it. Hence the application is allowed as follows.

**ORDER**

- 1) Exhibit 5 is allowed.
- 2) Respondent no.3 to 8 by themselves or anybody claiming through them, are temporarily restrained from alienating, selling or transferring or creating any third party interest in the suit property, until final decision of this appeal.
- 3) No order as to costs.
- 4) Call for record and proceeding.
- 5) Appellant to pay paper book charges as per rules.

Date : 12/09/2022

**( N.R. Naikwade)**  
**District Judge-3,**  
**Ahmednagar**