

ORDER PASSED BELOW EXH.5 IN REG.C.S.No.101/2018..

Nandlal Sharma V/s. The Chief Officer + 1..

1. This is an application for grant of temporary injunction as provided under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908.

2. Perused the application along with affidavit, Reply Exh.24 and 26, Plaint and documents annexed with the plaint. Heard Learned Advocate Shri A.S. Kale for the plaintiff and Learned Advocate Shri M.P. Gaware for defendant No.1 and Shri B.C. Satav for defendant No.2 at length.

The plaintiff's case..

3. The property in dispute is bearing Re-Survey No. 49, CST No. 1971/A-1, Municipal House No. 3281, area 2 R, (202 Sq.Mtr.)(20 x 20), in the area of Municipal Council, Shrirampur, Tal. Shrirampur, Dist. Ahmednagar (Hereinafter be referred as "Suit Property").

4. The plaintiff submitted that his father namely Shivsagar Dallu Sharma purchased the suit property from Gangubai Eknath Pujari through registered sale-deed in the year 1992. His predecessor owner Gangubai obtained permission from defendant No.1 for construction. It was sanctioned. The father Shivsagar died on 20/04/2011. Being the Manager of the family, the plaintiff managing the affairs of the family. His father allotted some rooms out of the suit property to defendant No.2 by oral partition for residence. However, the differences arose of defendant No.2 and the plaintiff. Defendant No.2, along with his family, was residing separately, since 2006.

5. Defendant No.2 without having any right and interest in the suit property started to make false complaints to defendant No.1. As he suffering from inconvenience, he made renovation in the suit property. On the complaints, defendant No.1 under the political pressure, initiated action of demolition of his construction. Defendant No.1 levied tax assessment for such unauthorized construction and regularised his construction. He time to time paid the taxes. He submitted explanation to defendant No.1 against their notice. However, on the complaint of defendant No.2, on 31/05/2018, defendant No.1 came with police for demolition. He amicably settled the said dispute and avoided the action. However, again defendant No.1 illegally started to demolish his construction. Defendant No.1 without declaring unauthorized construction from competent Court, under the political influence, are in attempt of demolishing his construction. In case of demolition, he will sustain irreparable loss. Hence, this application.

Defence Exh.24 and 26..

6. In view of defence, defendant No.2 is the real brother of plaintiff. Defendant No.2 instituted suit for partition against the plaintiff and other heirs of deceased Shivsagar. The same is pending. During the pendency of the suit, the plaintiff demolish two rooms belonging to defendant No.2, illegally. The criminal complaints were initiated against the plaintiff and others against such unauthorized construction.

7. The predecessor owner Gangubai obtained permission for construction. However, she failed to complete the construction within stipulated period, therefore, the permission was lapsed. The plaintiff

started construction over the suit property, without prior permission of defendant No.1. In spite of repeated notices, the plaintiff completed the construction. That amounts to unauthorized construction. When it comes in the knowledge of defendant No.1, they initiated action against the plaintiff and other occupants. Defendant No.1 issued notices on 03/06/2013, 23/11/2015 and 09/12/2015. As the plaintiff failed to comply the notice, defendant No.1 started to demolish the unauthorized construction of the plaintiff.

REASONS..

8. The suit property was originally owned and purchased by Gangubai Eknath Pujari. She applied for permission for construction. It was sanctioned by defendant No.1. According to the plaintiff, Gangubai completed the construction as per the sanctioned plan. The defendants contended that Gangubai failed to complete construction, within stipulated period and hence, the sanction was lapsed. The sale-deed executed in favour of father of plaintiff shows the description of property, as a old tin shed house. It shows that no such construction was completed, till the date of sale-deed dated 27/02/1992.

9. Section 48 of the Maharashtra Regional and Town Planning Act, 1966 (In short "MRTP Act") provides the enforcement of sanctioned order for the period of one year, thereafter, it shall lapse. There is no material on record, which infers the completion of construction within a year by predecessor Gangubai. Hence, the order of sanction is seems to be lapsed, as per Section 48 of the MRTP Act.

10. The plaintiff described defendant No.2 as a person. On the

contrary, as per defence, defendant No.2 is the real brother of plaintiff. The plaintiff has willfully suppressed the fact as to the relation.

11. The plaintiff alleged that after the demise of his father he became the Manager of the family. They were suffering inconvenience by the previous construction of the house, they made renovation therein. The plaintiff has not shown or pleaded that he obtained requisite permission, as provided under Section 44 of the MRTP Act. Therefore, the construction made by the plaintiff is prima-facie against the provision of law.

12. Defendant No.2, is the real brother of plaintiff. He has right and interest in the suit property along with the plaintiff and other heirs of deceased Shivsagar. He instituted suit against the plaintiff and other heirs vide R.C.S. No. 127/2013 and same is pending. No injunction against the co-owner can be granted. Defendant No.1, is one of the co-owner. The plaintiff is not absolute owner of the suit property. Therefore, granting the interim relief, would cause irreparable loss of right and interest of defendant No.2.

13. The plaintiff has alleged that on the complaints of defendant No.2, defendant No.1 started to take action against him. He has paid the levied taxes for unauthorized construction to defendant No.1. Thereby, defendant No.1 regularized his unauthorized construction. Hence, he contended that defendant No.1 has no right to demolish his construction. Section 189(A)(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (In short "MMCNPIT Act") provides the penalty for unauthorized construction by levying property tax on such unauthorized buildings.

The proviso clear the doubts that though such penalty is imposed, the unauthorized construction remains as it is i.e. unauthorized construction. The said unauthorized construction, shall not construed as regularized. Therefore, the contention of the plaintiff that his construction is regularized by defendant No.2, is not within the four corner of law.

14. Defendant No.1 contended that the plaintiff has not complied the mandatory provision as to issuance of prior notice prior to institution of the suit, as contemplated under Section 304(1)(b) of the MMCNPIT Act. Sub Section 4 of Section 304 provides that the mandate of prior notice does not applicable to the suit under Section 38 of the Specific Relief Act, 1963. The present suit is for mandatory injunction vide under Section 38 of the Specific Relief Act, 1963. Hence, the mandate of the notice, is not applicable to the present suit.

15. Defendant No.1 issued notices on 03/06/2013, 23/11/2015 and 09/12/2015 against the plaintiff. In view of Section 149 of the MRTP Act, the order passed or notice issued by Regional Board, Planning Authority or Development Authority, is final and not subjected to be questioned in any suit or other legal proceeding. In the present suit, the plaintiff has challenged the validity of the notice issued by defendant No.1. In view of definition Section 219 of the MRTP Act, defendant No.1 is the Planning Authority. Therefore, the notice issued by defendant No.1 is final. The plaintiff has no locus-standi to challenge the said notice in the suit. If he is aggrieved, he has to prefer an appeal against the said notice to the State Government. Hence, the plaintiff has no locus-standi for the institution of the suit.

16. The plaintiff has raised construction without requisite permission. His construction is unauthorized construction. The payment of penalty by way of taxes cannot be legalized or regularized the act of unauthorized construction of the plaintiff. The plaintiff has no locus-standi for the present suit. Granting the relief in favour of the plaintiff, would amount to extending hands to a wrong doer. The plaintiff has suppressed the material fact from the Court. The relief which is in nature of equitable relief, cannot be given to a such mischievous person. Considering the above legal aspects and unauthorized construction, in my opinion, the plaintiff has no prima-facie case in his favour. Restraining the defendant No.1 from demolishing the construction, would amount to refrain the defendants from taking legal action against illegal act. Hence, the balance of convenience lies in favour of the defendants. The application deserves to be rejected. Hence, I pass the following order.

ORDER..

- 1. The application at Exh.5, is hereby rejected.**
- 2. Cost in cause.**

(Sudhir M. Bomidwar)
Jt. Civil Judge (J.D.),
Shrirampur.

Date : 9th July, 2018.