

MHAK060034572018



Presented on .. 11.12.2013

Registered on .. 17.12.2018

Decided on .. 13.03.2026

Duration Y M D
 12 03 02

IN THE COURT OF CIVIL JUDGE (SR.DN.), AKOT, DIST. AKOLA.

(Presided over by Shivnath M. Kale)

Regular Civil Suit No.132/2018.
(Old R.C.S. No.544/2013)

Exh.No.164.

Brajesh Ashokrao Chikte,

Age : 37 Yrs., Occ. : Medical Practitioner,

r/o. Malegaon Bazar, Tq. Telhara,

Dist. Akola.

...

Plaintiff.

- Versus -

1. **Dy. Engineer, Public Work Department,**
Sub Division, Akot, Tq. Akot,
Dist. Akola.
2. **Executive Engineer,**
Public Work Department,
Near Collector Office, Akola,
Tq. & Dist. Akola.
3. **State of Maharashtra through**
Collector, Akola,
As representative of State.

Dall Mill of one Chapadiya of Akot. As per plaint map filed along-with the plaint, the entire plot is shown by letters "A,B,C, D" prayed as existing building is shown by letters "A,E,F,G".

The case of the plaintiff in brief :-

03] The suit property was vested in Zilla Parishad (Z.P), Akola formerly known as District Council (Janpad). It was recorded in the name of Z.P. The Government of Maharashtra has given the said land to Z.P for the purpose of Veterinary Dispensary. It was being used for the said purpose for some particular period. However, the State Government has undertaken the scheme of providing Veterinary Hospital. Therefore, it was laying vacant for some years. The plaintiff was interested to occupy the suit property for the purpose of running an Ayurvedic Hospital since he is a B.A.M.S. doctor. He applied to Z.P for getting the suit property on rent for the purpose of opening hospital for treatment of poor and needy persons. The Z.P accepted his proposal as per General Meeting of its members on 19.2.2001. Accordingly, an agreement was executed. The plaintiff was asked to fix the rent in consultation with Public Works Department. Accordingly, he did so. The rent was agreed to be paid on the basis of monthly tenancy. The plaintiff made persuasion and got the said resolution dated 19.12.2001 passed by Z.P to be implemented on 22.11.2007. He was asked to deposit amount of Rs.20,000/- with Z.P. He tried to pay the said

amount however, Z.P officials were not sure as to under what head the amount is to be accepted. He, therefore, could not pay the said amount including rent. However, he is in exclusive possession of the suit property from 22.11.2007. He is paying electricity charges and Municipal Council charges regularly.

04] The plaintiff further contended that, he has started an Ayurvedic Hospital in the suit property after renovating the structure standing on it. The open space of the suit property was being used for the purpose of Seminars like public health awareness. In the first week of September, 2013, he came to know that, defendant Nos.1 and 2 are likely going to start construction over the suit property. He, therefore, met with Block Development Officer and on his request, the Block Development Officer issued notice to defendant No.1 asking him not to carry out any construction. In November, 2013 he observed that, the defendants started digging work and construction over the suit property. He requested them to stop the work. It was went in-vain. Hence, this suit for the reliefs mentioned above.

The case of defendant Nos.1 and 2 as per written statement (Exh.20) :-

05] The said defendants opposed the suit and contentions raised therein for want of knowledge. It is their contention that, the suit property was originally owned by the Government. It was given on lease to the District Council, Akola

i.e. Z.P, Akola for Taluka Mini Polyclinic Veterinary Dispensary for Akot. The Chief Secretary of Chief Commissioner, Central Province, Nagpur passed final order in the year 1932 – 1933 and up to this order only the Z.P was tenant. Thereafter the suit property was vested with Assistant Commissioner, Animal Husbandry. Thus, Z.P was never the owner and was never in possession of the suit property. Being Government Departments, these defendants work as a agency as directed and ordered by the Government. They received Government order for the construction of many Polyclinic Husbandry Department, Akot along-with funds of Rs.6,00,000/-. Accordingly, they have received administrative order from the District Collector along-with approval of around 171 Lakhs. They flouted E-tender for construction of the clinic. The work was allotted to one Chandak Builders. They were authorized to start construction as per Rules and regulations of Government of Maharashtra. According to them, they never did any wrong act. Hence, the suit is prayed to be dismissed.

06] Defendant Nos.3 and 4 did not file their written statement. Even otherwise no relief is claimed by the plaintiff against them and according to the plaintiff himself they are formal parties. Even no relief is claimed against defendant No.5 but, it has filed its written statement opposing the suit.

The case of defendant No.5 as per written statement

(Exh.53) :-

07] All the allegations made in the plaint are denied in *toto* with submission that, defendant No.5 was running Animal Clinic Class-I on the suit property since beginning. The said clinic was in old building. Defendant No.5, therefore, found it necessary to construct new premises in the suit property. It has been emphatically denied that, the suit property was ever vested in favour of Z.P. It is submitted that, the suit property was even though recorded in the name of District Council, Akola i.e. Z.P, Z.P. was never in possession of the suit property. Municipal Council, Akot till 25.05.2004 was running Veterinary Dispensary over the suit property. On the basis of Government Resolution dated 25.05.2004, the said dispensary was undertaken by defendant No.5. The alleged Resolution passed by Z.P. on the basis of which the plaintiff is claiming tenancy right in the suit property is claimed to be void ab-initio. It is further submitted that, as per above mentioned Resolution of Government, Taluka Veterinary Mini Polyclinic run by Municipal Council, Akot was directed to be run by defendant No.5.

08] It is also submitted that, the Municipal Council, Akot on 05.07.2010 gave no objection for transfer of said suit property to defendant No.5. Assistant Commissioner of Animal Husbandry submitted an application dated 28.10.2010 with the

office of Land Record, Akot for mutation of the suit property in the name of Commissioner, Animal Husbandry Maharashtra State, Pune.

09] Defendant No.5 submitted application dated 15.03.2011 to the District Collector for mutation of name of Commissioner of Animal Husbandry. The Deputy Superintendent of Land Record, Akot submitted its spot Inspection Report to the District Collector in which, it has been mentioned that the suit property is in possession of Animal Husbandry Department. Vide Order dated 23.01.2014, the District Collector, Akola has passed the order and mutated the name of Commissioner of Animal Husbandry in the record of suit property. It is further submitted that, defendant No.5 is paying Municipal taxes since 2006-2007 till the year of filing of suit. It is also alleged that, the plaintiff with the help of some officials of Z.P succeeded to get pass the Resolution and he is trying to misuse to establish his tenancy rights.

10] The issues framed by my Learned Predecessor are recasted by me. The recasted issues at Exh.48 are reproduced below along-with my findings thereon with reasons to follow :-

<u>SR.</u> <u>NOS.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does the plaintiff prove that, he is lawful tenant of the suit property ?	No

- | | |
|---|----------------------------|
| 2. Does he further prove that, he is in lawful possession of the suit property ? | No |
| 3. Does he further prove that, defendant No.1 without following due process of law is trying to dispossess him from the suit property ? | No |
| 4. Does he further prove that, defendant Nos.1 and 2 are trying to make forceful and unauthorized/ or illegal construction over the suit property ? | No |
| 5. Is the suit bad for non-joinder of necessary parties ? | No |
| 6. What Order and Decree ? | As per final order. |

REASONS

The evidence, oral and documentary, adduced by the plaintiff :-

11] The plaintiff examined himself at (Exh.71). He also examined Retired Civil Engineer Wasudeo as PW-2 vide (Exh.131) and Retired Deputy Superintendent of Land Record Dilip as PW-3 at (Exh.136). Besides this oral evidence, plaintiff has relied on rent agreement (Exh.79), Z.P Resolution dated 19.12.2001 (Exh.80), Malmatta Patrak (Exh.81), GR of State of Maharashtra dated 25.03.2013 (Exh.82) and various undisputed public documents are filed along-with written notes of argument (Exh.157) (Total 13 documents are filed. Though they are not

exhibited, they are undisputed public documents and I have gone through them with minute details.).

The Evidence, oral and documentary, adduced by defendant Nos.1 and 2 :-

12] Defendant No.1 Raju examined himself vide Exh.112. Besides it, the reliance is placed upon documents viz work order issued by Executive Engineer (Exh.116) and Government Resolution dated 25.05.2004 (Exh.117), copy of First Information Report dated 10.06.2024 (Exh.118) and copy of Malmatta Patrak (Exh.119).

13] Defendant No.4 has filed pursis (Exh.155) and adopted the evidence adduced by defendant Nos.1 and 2.

REASONS FOR FINDINGS

AS TO ISSUE NOS. 1 & 2 :-

14] Instead of reproducing the oral evidence of the parties, in my opinion the suit is based upon documentary evidence. Even the documents which are filed along-with written notes of argument by the plaintiff are undisputed and as I have already mentioned, I carefully gone thorough the entire documents. The suit needs decision on documentary evidence instead of oral contentions of the parties.

15] The plaintiff claims interest in the suit property on the basis of Z.P. Resolution (Exh.80). However, the contention of defendant No.4 is supported by notification passed by Secretary to the Chief Commissioner Central Province dated 26.03.1915 in which it has been mentioned the suit property which was earlier Survey number of village Purnapur, Tq. Akot was acquired for the purpose of construction of Veterinary Dispensary Building. The Akhiv Patrik filed by the plaintiff himself clearly shows that, the award passed for said acquisition proceeding. This document itself shows that, the suit property was acquired for the purpose of Animal Dispensary.

16] I have carefully gone through the Government Resolution dated 25.05.2004 (Exh.82) which is undisputed by both the parties. The recitals of said Resolution particularly of para 4 and 5 clearly show that, the Government of Maharashtra, Village Development Department has transferred about 140 Animal Hospitals and Dispensaries including Akot Dispensary to the Commissioner of State Animal Husbandry. There is nothing on record to show that, the said notification issued by Secretary to the Chief Commissioner is anywhere interrupted or the contents mentioned in said notification are set-aside by the Government by any other notification or Government Resolution.

17] In written notes of argument, the plaintiff submits that, the suit property was standing in the name of Z.P. at the time of Resolution passed by the Z.P. However, this notification clearly shows that, the suit property was acquired primarily for the purpose of Animal Dispensary. There is no document on record on behalf of the plaintiff that, the suit property was acquired by Z.P. Even if it is assumed that, it was acquired by Z.P., undisputedly, it was acquired for the primary purpose of construction of Animal Dispensary. There is no dispute that, there was Animal Dispensary on the suit property. According to the plaintiff, the Z.P. was not able to continue with Animal Dispensary and therefore, he was interested to take the suit property on rent. However, there is no document showing that, the Government of Maharashtra authorized Z.P. to let such properties for any other purpose that too to any private person who is not any registered society doing social service. I, therefore, unable to hold that, the Z.P. was authorized to let the suit property in favour of the plaintiff for any reason whatsoever.

18] There is no doubt that the name of Z.P. was on the property card of the suit property. However, it is settled law that, such entries do not confer any right of ownership in favour of person or entity whose name is recorded in such record of rights.

If the Z.P. was not authorized by the Government, who is admittedly real owner of the suit property, to create any third party interest in the suit property by giving it to private person like plaintiff, the tenancy agreement on the basis of which the plaintiff is claiming his interest is *void ab-initio*.

19] Certain photographs are filed by both parties. However, the Court cannot rely upon such photographs to exactly infer the possession of any particular party over the suit property. However, since year 1932-1933, there is Animal Dispensary over the suit property is most probable than the correctness and legality of alleged Resolution passed by Z.P. in the year 2001 and it was sought to be implemented in the year 2007.

20] Under such circumstances, I hold that, the plaintiff failed to establish that, he is lawful tenant of the suit property. His contention that, he is in possession of the suit property is not at all probable and acceptable. I, therefore, answer Issue Nos.1 and 2 in the Negative.

AS TO ISSUE NOS.3 & 4 :-

21] The plaintiff is also relied upon the fact that, the defendants and particularly defendant No.5 got his name mutated in the property card of the suit property during the pendency of this suit and when the order passed on Exh.5 in

favour of the plaintiff was in existence and therefore, the entire acts done by defendant No.5 are illegal and void. I am unable to agree upon this contention. The temporary injunction order was passed on 17.09.2014 and defendant No.5 is made party as per order dated 10.08.2016 passed below (Exh.14). It shows clearly that, the injunction order was not at all binding upon defendant No.5.

22] Now the situation is the plaintiff is not claiming any relief from defendant Nos.3 to 5 whereas as a matter of fact, defendant Nos.1 and 2 are acting upon the lawful orders passed by defendant No.5. Every legal step is taken by all the defendant while discharging their duties. There is no irregularity of any nature in any act of any of the defendants. The possession of plaintiff is not establish nor he has any title to the suit property. The acts done by all the defendants are lawful and as per Rules laid down in that regard. Hence, there is no unlawful dispossession of the plaintiff. I, therefor, answer Issues Nos.3 and 4 in the Negative.

AS TO ISSUE NOS.5 :-

23] In view of the fact that, the plaintiff has made party to Assistant Commissioner Animal Husbandry, Akot, no question arise about absence of necessary party. Even though, the plaintiff did not claim any relief against defendant Nos.3 to 5, the suit

does not suffer from non-joinder of necessary party. I, therefore, answer Issue No.5 in the Negative.

AS TO ISSUE NO.6 :-

24] In view of my findings as to Issue Nos.1 to 5 and under the above mentioned circumstance, in my opinion the suit fails and it has to be dismissed. Hence, I pass the following order.

ORDER

The suit is dismissed with costs.

Date: 13/03/2026.

(Shivnath M. Kale)
**Civil Judge Senior Division,
Akot.**

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word for word as per original Judgment.

Name of Steno	:	S. G. Jaiswal
Court Name	:	Civil Judge, S.D., Akot.
Date	:	13/03/2026.
Order Signed by PO on	:	13/03/2026.
Order Uploaded on	:	13/03/2026.