

<u>MHAM180001912025</u>	R.C.S. No. 4/2025
	Mahendra Harle -Vs - Subash Dhande

INTERIM ORDER BELOW EXH. 05

01. The present application filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of Code of Civil Procedure.

02. The plaintiff has contended that the plaintiff is owner and possessor of plot No.15-A and 15-B (here in after referred as suit properties) described as follows -

A) Plot No. 15-A admeasuring Ease to West 15 meter and South to North 8.40 meter bounded by toward East- plot No.16-B, towards West 9 meter road, towards South – plot No. 15B and towards North – plot No.14 B.

B) Plot No. 15-B admeasuring Ease to West 15 meter and South to North 8.40 meter bounded by toward East- plot No.16-A, towards West 9 meter road, towards South – Survey No.188 and towards North – plot No.15-A.

03. The plaintiff contended that the plaintiff has purchased the suit properties from Madhuben Kannubhai Patel

vide sale deed No.2359 and 2360 in year 2021. The plaintiff has measured the plots and erected the cement pole. The plaintiff has fixed the boundaries of the suit properties. The plot No. 15-A is shown as ABCDA and plot No.15-B is shown as DCEFD in the map annexed with the plaint.

04. It is further contended by the plaintiff that the defendant has the business of constructing and selling of the house properties. The defendant has purchased plot No. 14-B. The defendant has raised the construction over the plot No.14-B in September 2024. The defendant has encroached on 30 meter area of plot No.15 owned by plaintiff. The defendant has removed cement concrete pole erected by the plaintiff. Therefore, the plaintiff has filed complaint before Municipal Council, Warud on 05/10/2024. The officer of Municipal Council, Warud has measured and inspected the plot. From the said measurement, it reveals that the defendant has encroached on 30 meter area of plot No.15 owned by the plaintiff. The defendant has constructing the house without permission of Municipal Council, Warud. Therefore, the Municipal Council, Warud has issued notice U/sec. 53 and 54 of Maharashtra Regional Town Planning Rules 1956 R/w Section 189 of Municipal Council Rule 1965 on 11/11/2024 to defendant. The defendant has constructing the house without obtaining sanction plan from Municipal Council. The defendant has illegally constructing the house by encroaching on the land of plot No.15

owned by the plaintiff. Hence, the plaintiff has filed the present suit for injunction and recovery of possession of encroached area along with the present application for interim relief. The plaintiff prayed to restrain the defendant from raising construction over the suit properties. The plaintiff also prayed to stay the construction of defendant over the suit property till decision of the present suit.

05. The defendant has filed the Written Statement cum Say (Exh.15) and resisted the present application. The defendant has denied all the material pleadings raised by the plaintiff in the plaint and present interim application.

06. The defendant admitted that the defendant is engaged in business of house construction along with the business of selling sand and bricks.

07. The defendant has contended that the defendant has purchased plot No.14-B out of survey No.188/1A bearing property No.2670 situated within the jurisdiction of Municipal Council, Warud, Ward No.10 bounded by towards East – Plot No.17A, towards West – 9 meter road, towards North – Plot No.14A and towards South – plot No.15.

08. The defendant further contended that the defendant has purchased plot No.14-B by executing registered sale deed on 17/09/2024. The plot of the plaintiff bearing plot No.15-A is

situated on northern side of plot of defendant bearing plot No.14-B. The Civil Engineer Shri Thakare propreritor of Shrikrushna Construction has drafted the map of construction. As per the said map 1 feet 6 inch space running in east-west direction is kept open on southern and northern side of the plot No. 14-B. As per the said map 1 feet 2 inch space running in south-north direction is kept open in eastern side of the said plot No.14-B. The defendant has constructed the plinth as per the said map.

09. It is further contended by the defendant that the plaintiff is raising quarrel with the defendant on account of measurement of the plot. The plaintiff himself has removed the cement concrete rod installed on the boundary. The Municipal Council has issued notice and called upon the defendant to stop the construction. Therefore, the defendant has filed an application for permission of construction with Municipal Council, Warud on 19/12/2024. The said application is still pending with Municipal council, Warud. The defendant also filed an application for measurement of plot No. 14-B before the T.I.L.R., Warud on 19/12/2024. The defendant is trying to comply with all the legal requirements.

10. It is further contended by the defendant that the plaintiff want to purchase plot No. 14-B. The defendant refused to sell the plot to the plaintiff. The plaintiff with ill intention to harass the defendant mentally and physically filed the present

suit. The plaintiff has no prima-facie case. The plaintiff will not suffer any irreparable loss. But, if the stay as sought by the plaintiff is granted then the defendant will definitely suffer irreparable loss. Therefore, the defendant prayed for rejection of present application.

11. The plaintiff to substantiate his claim has filed on record the copy of rules of Maharashtra Regional and Town Planning Act, 1966 and relied on following case law.

Mr. Arputharaj Nadar Vs. Designated officer Assistant Engineer, (2017) 6 AIR BomR 142, in which the petitioner has not produced any permission or approval from executive engineer for building the structure. The petitioner not pleaded that the structure was constructed after obtaining requisite permission. In such fact and circumstances the Hon'ble Divisional Bench of Bombay High Court has dismissed the writ petition filed by the petitioner.

12. Heard, Perused Record. After going through rival contentions and submissions following points arise for determination and I record my findings thereon with reasons as under ;

SR. NO.	POINTS	FINDINGS
1.	Whether the plaintiff has proved the prima facie case ?	Affirmative
2.	Whether the plaintiff has proved that the balance of convenience lies in his favour ?	Affirmative
3.	Whether irreparable loss will be caused to plaintiff if the relief of injunction as sought is not granted?	Affirmative
4.	What order?	As per final order

:: REASONS ::

AS TO POINT NO. 1 TO 3 :-

13. As point No. 1 to 3 are interlinked and interconnected with each other. Hence to avoid repetition they are taken up together for discussion.

14. The plaintiff came with the pleading that the defendant raising illegal construction by encroaching on 30 meter area of plot owned by the plaintiff. The defendant came with the defence that the defendant is erecting the structure as per the map prepared by private civil engineer.

15. The plaintiff has filed on record the sale deed (Esh.4/4 and Exh.4/5). As per the said sale deed it appears that the plaintiff is owner of plot No.15-A and 15-B. The defendant

has filed on record the sale deed (Exh.17/5). It appears from the said sale deed that the defendant is owner of plot No.14-B. The plaintiff has filed on record layout plan (Exh.04/1) of survey. It appears from the said plan that on southern side of plot No.14-B the plot No.15-A is situated. On southern side of plot No.15-A the plot No. 15-B is situated. As such the plot of defendant is situated adjacent to the plot of plaintiff.

16. The plaintiff has filed on record the Complaint (Exh.4/2) made to Municipal Council, Warud. It appear from the said notice that the plaintiff has given an intimation of illegal construction made by the defendant to the Municipal Council, Warud. The plaintiff has filed on record Notice (Exh.4/3). It appears from the said notice that the Chief Executive Officer of Municipal Council, Warud has issued notice to defendant U/sec. 53, 54 of Maharashtra Regional Town Planning Act on 11/11/2024. As per the said notice the defendant has erected the construction on his own plot without obtaining building permission from the Municipal Council, Warud. The construction erected by the defendant is illegal construction.

17. The defendant has filed on record Map (Exh.17/1). It appears from the said map that the said map is prepared by Shri Thakare proprietor of Shri Kurshna Construction on 11/11/2024. It appears from the said map that the said map is not sanctioned by the Municipal Council, Warud.

18. From the Map (Exh.17/1) and Notice (Exh.4/3) it prima-facie appear that the defendant has not obtained permission and not obtained sanction plan/map from the Municipal Council, Warud. Therefore, the Municipal Council has issued notice to stop the construction of the defendant. It appear that the defendant has raised illegal construction without obtaining prior permission for construction from Municipal council. As such from the material on record it prima-facie appear that the defendant has erected illegal construction.

19. The plaintiff came with the pleading that the defendant has removed the concrete pole erected on the boundary. The defendant also came with the pleading that the plaintiff himself has removed the concrete pole erected on the boundary. From the pleading it is admittedly came on record that the concrete pole erected on the boundary was removed. Therefore, it appears that there is a triable issue between the parties relating to boundary in the present suit.

20. The plaintiff has filed on record Plaintiff Map (Exh.01). The said map is prepared by private surveyor on 01/01/2025. It appear from the said Plaintiff Map that the defendant has made an encroachment approximately 30 meter on the plot owned by the plaintiff. Hence, the plaintiff has prima-facie shows that the defendant has made an encroachment of 30 meter area on the plot owned by the plaintiff.

21. The parties can not be restrained by order from erecting the construction as per the sanction map and building permission of Municipal Council. The parties can erect the construction as per the sanction plan and building permission issued by the Municipal Council. The Court can restrain the parties only from erecting the construction beyond the ambit of sanction plan/map of Municipal Council. The plaintiff has shows that the defendant has erected the construction in contravention of rules and without getting the plan sanctioned from the Municipal Council. Therefore, the construction which falls beyond the scope of sanction plan/map and building permission needs to be stayed.

22. The plaintiff prima-facie succeeded to prove that the defendant has erected illegal construction without obtaining permission from Municipal Council and without getting plan sanctioned. Further, the defendant has encroached on the plot of plaintiff. If the illegal construction made by the defendant by encroaching on plaintiff's plot is not stayed then it will surely cause irreparable loss to the plaintiff. Hence, balance of convenience tilt in favour of plaintiff. Therefore, I answer point Nos. 1 to 3 in affirmative.

AS TO POINT NO. 4

23. As answer Point No.1 to 3 in affirmative, hence in answer to Point No.4 I pass following order.

:: ORDER ::

1. The defendant is restrained from raising the construction by encroaching on suit property owned by plaintiff till decision of the present suit.
2. The defendant is restrained from erecting the illegal construction beyond the scope of sanction plan till decision of the present suit.

Date : 25/03/2025

(A. B. Katte)
Civil Judge (Jr. Dvn.)
Warud, Tq.-Warud, Dist.-Amravati