

**R.C.S. No. 62/2021**  
Kesarbai Vs. Sarpanch + 1

**ORDER BELOW EXH.05**  
**(Dated 11/07/2022)**

- 1) The suit is filed for declaration and permanent injunction. The plaintiff filed application for claiming temporary injunction praying that, the defendants shall be restrained from causing obstruction in her possession. Perused the application. Heard, learned advocate for applicant Mr. S.V. Bhagde.
  
- 2) According to the applicant, he is in possession of land in Gut No.67 Survey No.50 admeasuring 2H at village Sulibhanjan Tq. Khultabad. Hereinafter, it is referred as suit land. Gut No.67 admeasuring 46H 26R out of that applicant is the possessor and cultivator of 2H land. The total Gut No.67 including suit land is Gairan land. According to the applicant she is entitle to get the suit land legally. Applicant is in possession of suit land before 1980 but from last few months non-applicants trying to evict applicant from suit land. Non-applicants threatening to disposes the applicant illegally. On 30/06/2021 defendants illegally issued notice to the plaintiffs/applicants and asked to remove encroachment. Defendants deliberately issuing notices and the said notice is illegal and false. The applicant is legally in possession of suit land. So, here, Grampanchayat is not empowered to remove applicants from the suit land. Hence, this application is moved. It is submitted by the applicants that she has prima-facie case, balance of convenience is lies in her favour and she will sustain irreparable loss in case injunction as claimed, if not granted.

3) Notice duly served to Non-applicants but they did not appeared and filed their say. Hence, matter was proceeded exparte. Following are the points arise for my determination and I have recorded my findings thereon, for the reason as follows;

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1)	Whether applicant has made out a prima-facie case in his favour ?	...No
2)	Whether balance of convenience lies in favour of applicant ?	...No
3)	Whether applicant will sustain irreparable loss if in case injunction is not granted in his favour?	...No
4)	What order ?	.. As per final order.

### **REASONS**

#### **Point No.1 to 4**

4) After I have gone through the record, documents filed by the applicant and heard learned advocate of applicant. It is needless to mention that unless and until applicant establishes that prima-facie case in his favour temporary injunction can not be granted. Advocate for applicant Mr. S.V. Bhagde submitted that the Gram Panchayat is illegally dispossessing the applicant and here, Gram Panchayat is not empowered to remove encroachment. Advocate for applicant further argued that, the applicant is in possession of suit land before 1980. She is encroacher and she is holding the suit land from 1980. the encroachment is more than 6 months, Hence, it is submitted that, applicant has prima-facie case, balance of convenience is lies in his favour and he will sustain irreparable loss in case injunction as claimed, if not granted.

5) Here, the applicant did not file even a single document to show that the applicant's source of possession over the suit land is from 1980. Applicant filed the copy of 7/12 extract of survey No.50 but that does not show applicant's possession. The applicant does not have any document to show his legal possession over the suit land. The advocate for applicant argued that if the encroachment is more than six months over the Grampanchayat property then the Grampanchayat is not entitled to recover the possession and therefore, the notice issued under Section 53 (2) itself is illegal. For a while even if we consider that the applicants are in possession of suit land for more than 6 months by the way of encroachment even then according to amendment made in 2006 in Section 53(2) of Maharashtra Village Panchayat Act, it is the duty of the Grampanchayat to remove encroachment immediately after it is noticed or brought in to its notice by following procedure.

6) Admittedly the applicant is holding suit land which is a Gairan land. Gairan land is the property of the Government and here the State/ Government is not made party to the suit. Its very shocking to see that the suit land appears to be the Government's property and the Government was not made a party to the suit. Even if we see prima-facie case without touching merits of the suit then also the case is not in favour of applicant. By giving injunction court can protect the rights of the parties and legal possession of the party but not the illegal possession. Here the applicant failed to show his legal possession over the suit land.

7) The applicant further submitted that the non applicants are trying to evict him by giving illegal notice. But prima-facie documents does not shows that non applicants were illegally evicting

the applicant. Rather the non-applicant was following the due procedure established by law. It was clearly admitted by the applicant as the suit land was encroached by her and the land is belonging to the Government. Prima-facie the applicant has failed to establish her legal possession over the suit land. There is no balance of convenience in applicant's favour. Consequently the applicant failed to establish the irreparable loss which would cause to her if the interim relief is not granted. Therefore, if the injunction is granted to the applicant then it will operate as protection to illegal possession, which is not permitted in law. Therefore, point No.1 to 3 are answered in negative and for point No.4 I pass following order;

**-:: O R D E R ::-**

- 1) The application is rejected.
- 2) Cost shall follow the event.

Dt.11/07/2022

(S.V.Rajkuntwar)  
Civil Judge (Jr.Dn.)  
Khulatabad.

**CERTIFICATE**

I affirm that, the contents of this PDF file Judgment / order are same word for word, as per original Judgment / order.		
Name of the Stenographer	:-	<b><i>Akash S. Chavan</i></b>
Name of the Court	:-	C.J.J.D. and J.M.F.C. Court, Khultabad.
Dated	:-	11/07/2022
Order signed by the Presiding officer on	:-	11/07/2022
Order uploaded on	:-	13/07/2022