

MHAU130000182026



R.C.S.No. 4/2026
Narendra So Pundlikrao Sapkal Vs. Municipal Corporation,
Aurangabad

ORDER BELOW EXH.5

This is an application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (“C.P.C.” for short) made by the plaintiffs. Read the application and reply of defendant corporation at Exh.14. Heard Ld. Advocates for the rival parties.

02. Learned advocate for plaintiffs argued that, the plaintiffs are lessee in possession of the property specifically described in para no.1 of the plaint. They had obtained permission for construction on the suit property from defendant Corporation on 16.12.2022 and have constructed new building on it by demolishing old structure. Thereafter, they have moved an application for revised construction permission to defendant Corporation on 26.11.2025. However, the defendant Corporation has neither granted such permission nor rejected their application within the period of 60 days from the date of the application. Therefore, there is deemed grant of construction permission to plaintiffs as per Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). However, the defendant Corporation has arbitrarily issued a

notice dated 24.11.2025 calling upon them to remove construction over the suit property and has also threatened to demolish it. Therefore, present suit is instituted by plaintiffs for declaration of notice dated 24.11.2025 and for perpetual injunction restraining defendant Corporation from demolishing the structure over suit property as per said notice. He argued that, if the defendant corporation is not restrained from demolition of structure over suit property, the plaintiffs will suffer irreparable loss. Therefore, they prayed for temporary injunction to that effect.

03. Ld. Advocate for defendant corporation argued that, the defendant Corporation had granted construction permission on 16.12.2022 to plaintiffs for construction of G+1 storied building. However, they have completed construction of G+2 storied building on it. Therefore, on 29.09.2025 the officers of defendant Corporation visited suit property for its inspection and on 24.11.2025 the defendant Corporation has issued notice to plaintiffs calling upon them to remove unauthorized structure on the suit property. Thereafter, on 02.02.2026 the Chief Encroachment Officer of defendant Corporation has passed an order for demolition of the extra floor constructed by plaintiffs on the suit property. The plaintiffs have come with a false plea of deemed construction permission. Therefore, there is no *prima facie* case in their favour.

04. Hence, the following points arise for determination and I have recorded my findings to each of them for the reason as follows:-

Sr.No.	POINTS	FINDINGS
1.	Whether the plaintiffs have made out a	No...

	<i>prima facie</i> case ?	
2.	In whose favour balance of convenience lies?	Defendant Corporation.
3.	Whether the plaintiffs will suffer irreparable loss, if the temporary is not granted?	No...
4.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 :-

05. The claim of temporary injunction is governed by the provisions of Order 39 Rule 1 and 2 of C.P.C. Order 39 Rule 1 of C.P.C. opens with the words “where in any suit it is proved by affidavit or otherwise-”. It means that, for the purpose of deciding an application for temporary injunction the court is required to consider the affidavits filed by the parties for this purpose or the other material like documents produced. It is not in dispute that, the defendant Corporation has issued notice dated 24.11.2025 to plaintiffs calling upon them to remove construction of the extra floor carried out by them on the suit property. Moreover, the defendant Corporation pleaded that, its encroachment officer has already passed an order of its demolition on 02.02.2026. Thus, the construction over suit property is apparently in danger of being wasted or damaged by defendant Corporation.

06. To deal with the plea of deemed construction permission taken by plaintiffs, date of the notice issued by defendant corporation and the date of an application for revised construction permission by plaintiffs are material. The plaintiffs have come with a plea that defendant Corporation has not communicated its order of grant or

refusal to grant construction permission to them within 60 days from the date of making application and, therefore, there is deemed grant of permission to them as per Section 45 of MRTP Act. An application for revised construction permission is made by them on 26.11.2025 i.e. two days after issuance of notice dated 24.11.2025 to them by defendant Corporation. It follows that, the defendant corporation has believed before making application for revised construction permission by plaintiffs to it that the construction of G+2 storied building on the suit property is unauthorized. Therefore, Section 45 of MRTP Act is of no avail to plaintiffs. It is not the case of the plaintiffs that, defendant Corporation had granted construction permission for G+2 storied building on the suit property at any point of time before its notice dated 24.11.2025 or there was deemed construction permission as such. In this background, if the case of plaintiffs is considered, it does not appear that they have raised a *bona fide* question requiring investigation. When a *bona fide* question requiring investigation is not raised, it is said that no *prima facie* case is made out. Hence, I hold that, the plaintiffs have not made out a *prima facie* case for grant of temporary injunction and answer point No.1 in the negative.

AS TO POINT NO.2 :-

07. There is no material on the record to show that, the defendant corporation has threatened to demolish suit property without following due procedure of law. Even a notice dated 24.11.2025 issued by defendant corporation gives them an opportunity of hearing. The grant of temporary injunction in such situation may prevent defendant corporation from exercise of its powers under the Maharashtra Municipal Corporation Act, 1949. Thus, the comparative mischief, hardship or

inconvenience which is likely to be caused to the defendant corporation by granting temporary injunction will be greater than that which is likely to be caused to the plaintiffs by refusing it. Hence, I answer point No.2 accordingly.

AS TO POINT NO.3 :-

08. The suit is for perpetual injunction in respect of immovable property. The defendant corporation has statutory powers to remove unauthorized structure by following due procedure of law. The plaintiffs have an option to apply for regularization of the extra construction carried out by them on the suit property and the defendant corporation may consider it in the light of the provisions of law. Therefore, I hold that the refusal to grant temporary injunction will not result in irreparable loss to the plaintiffs and answer point No.3 in the Negative.

AS TO POINT NO.4 :-

09. The plaintiffs have not made out a *prima facie* case for grant of temporary injunction. The balance of convenience does not lie in favour of plaintiffs and they will not suffer irreparable loss if the temporary injunction is refused. In such circumstances, it is necessary to reject the application. Therefore, in answer to point No.4, I pass the following order.

ORDER

Application stands rejected.

(Shri. N.H. Tikhe)

Date :-12.03.2026.

Civil Judge Senior Division
(Corporation Court), Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	: V.K.Chavan, Stenographer Grade-II,
Court Aurangabad	: C.J.S.D. (Corporation Court),
Date	: 12.03.2026
Order signed by the presiding officer on	: 12.03.2026
Order uploaded on	: 12.03.2026