

MHAU130001032021



ORDER BELOW EXH.5 IN REGULAR CIVIL SUIT NO. 27 OF 2021
(Muktanand Vs. Umesh)

1. Plaintiff has filed this application for grant of temporary injunction to restrain defendant No.1 to 4 from obstructing their possession over suit property and from creating third party interest in respect of suit property till disposal of this suit.

2. Case of plaintiff in short is that, it is the registered society under Maharashtra co-operative Society Act. Plaintiff has submitted that portion in land survey No.19/1 was owned and possessed by Shaikh Osman Shaikh Raheman and the portion of land survey No.52/1 was owned and possessed by Shaikh Hamid Shaikh Bhikan. Both these persons were uncle and nephew. Hence they have jointly laid down plots over portion of land in survey no.52/1 and 19/1. They had prepared combined layout in which these 62 plots were shown, two portions were shown as open space to be used by 62 plot holders under layout.

3. Plaintiff has submitted that Shaikh Osman Shaikh Raheman and Shaikh Hamid Shaikh Bhikan, at that time represented that layout prepared by them was duly sanctioned by Town Planning authority of

Municipal Council, Aurangabad by order dated 26.07.1978. Shaikh Osman Shaikh Raheman and Shaikh Hamid Shaikh Bhikan parted with all the 62 plots to different persons. Those persons had further transferred 62 plots to different persons.

4. Plaintiff has submitted that many plots holders have made construction over their plots after obtaining permission from Municipal Corporation. In the year 2005, all the plot holders have formed plaintiff society for the maintenance of entire 62 plots. Municipal Corporation has carried out development of plaintiff society by laying drainage lane, construction of internal roads, laying water pipeline and installation of electric poles etc.

5. Plaintiff has submitted that as per town planning rules, original owners were bound to transfer open spaces in favour of Municipal Council at the time of sanctioning of layout. Original owners have failed to transfer open spaces in favour of Municipal Council, hence defendant No.5 had called upon plaintiff society to relinquish open spaces under the layout and internal roads in their favour. Accordingly plaintiff society relinquished open spaces in the layout in favour of defendant No.5 by registered relinquishment deed dated 04.10.2018 and correction deed dated 07.08.2009. Plaintiff society transferred rights over open spaces and internal roads in favour of defendant No.5.

6. Plaintiff has submitted that defendant No.5 has carried out construction of Community Hall over the portion of suit property and

also erected compound wall surrounding to both the open spaces. The members of plaintiff society were the celebrating Ganpati, Navratri and other festivals in said community hall as well as in the open spaces since last more than 35 years.

7. Plaintiff has submitted that due to passing of time, Compound walls surrounding open spaces under the layout got dilapidated. Therefore defendant No.5 has called upon tenders for repairing/construction of wall of open spaces and for preparation of jogging/walking tracks and other amenities. Compound walls are newly constructed but remaining work is not yet carried out.

8. Plaintiff has submitted that in the year 2012, they come to know that father of defendant No.1 to 3 by name Bhagwan Pawar had filed certain proceeding before city survey office, Aurangabad in respect of mutation. Said proceedings were carried in appeal before Superintendent of Land Records, Aurangabad. Superintendent of Land Records ordered to carry out measurement of land survey No.52/1. Plaintiff society was not party to said proceeding.

9. Plaintiff has submitted that when it came to know this fact, it has challenged the order passed by Superintendent of Land Records before Hon'ble High Court in Writ Petition No.10169/2012. Hon'ble High Court has modified the said order with direction to give an opportunity of hearing to plaintiff society. As per order of Hon'ble High Court, measuring authority has carried out joint measurement of land survey No.52/1 and 19/1 on 24.07.2015. Officials of plaintiff

society, Bhagwan Pawar alongwith defendant No.1 to 3 and other person were present at the time of measurement.

10. Plaintiff has submitted that in said measurement of 62 plots belonging to members of plaintiff society, two open spaces and internal roads were specifically demarcated and shown in said measurement map. Defendant No.1 to 3 alongwith their father Bhagwan Pawar though personally present at the time of measurement could not point out location of their property for which mutation proceedings were initiated.

11. Plaintiff has submitted that since second week of April 2019 every day defendant No.1 and 2 were visiting suit property at late evening time and used to assault residents of plaintiff society as well as ladies of said society. On 04.05.2019 defendant No.1 and 2 alongwith 25-30 unknown persons had come to suit property and caused forcefully demolition of community hall erected over portion of suit property and taken away tins, iron pillars and other materials of demolished portion and thereby caused damage of Rs.7 Lakhs approximately.

12. Plaintiff has submitted that defendant No.1 and 2 have also made attempt to take forceful possession of suit land. Members of plaintiff society immediately gathered and turned down the attempt of defendant No.1 and 2 to take forceful possession of suit property. Members of plaintiff society rushed to police station and narrated said incident to police. Officers of defendant No.5 had also lodged

complaint against defendant No.1 and 2. Police officials have initiated preventive action against defendant No.1 and 2.

13. Plaintiff has submitted that after incident dated 04.05.2019, members of plaintiff society had made necessary inquiry and came to know that father of defendant No.1 to 3 by name Bhagwan Pawar was pretending that he had purchased portion of 25 Gunthas forming part of land survey No.52/1 from one Shaikh Mukhtar Shaikh Ahemad under sale deed dated 14.04.1991. Said Shaikh Mukhtar is son of one Jahurabee.

14. Plaintiff has submitted that when it has made inquiry, it came to know that no such lady Jahurabee and her son Shaikh Mukhtar were in existence at all nor they were resident of Garkheda area. Even the so called vendor of sale deed dated 14.04.1991 had no title nor had any competency to convey title. Therefore sale deed executed in favour of father of defendant No.1 to 3 is void-ab-initio and not binding on plaintiff.

15. Plaintiff has submitted that on further enquiry, they came to know that father of defendant No.1 to 3 had instituted suit bearing No.R.C.S.No.70/1993 against defendant No.5 for injunction. Said suit was decreed in favour of father of defendant No.1 to 3, as officials of defendant No.5 have not taken pains to defend said proceeding properly and ultimately the same was confirmed up to Hon'ble High Court. Defendant No.1 and 2 at the instigation of their father have made attempt to take forcible possession of suit property

by demolishing community hall and other structure over open space i.e. suit property under the garb of above mentioned decree.

16. Plaintiff has submitted that plaintiff society and its members are having an apprehension that in future also defendant No.1 and 2 are likely to make forceful attempt to take possession of suit property. If they succeeds to do so, it will cause prejudice to the interest of members of society. The decision in R.C.S.No.70/1993 is not binding on plaintiff society and its members as they were not party to said suit. Said suit was for injunction simplicitor. Hence decree passed in said suit is in personem.

17. Plaintiff has submitted that open space is available to members of society. Suit property operate as "lung space" to the residents of plaintiff society. If injunction is not passed in favour of plaintiff, it will suffer irreparable injury. Hence plaintiff has prayed that temporary injunction be granted in their favour restraining defendants from obstructing their possession over suit property and creating third party interest in respect of suit property till disposal of this suit.

18. Defendant No.1 to 4 have filed say to this application at Exh.22. They denied all adverse allegations. They submitted that Bhagwan Pawar had filed R.C.S.No.70/1993 against Municipal Corporation in respect of present suit property. Trial court has decreed said suit. Trial court has granted permanent injunction in favour of Bhagwan Pawar restraining Municipal Corporation from

obstructing his possession over present suit property. Said order is confirmed up to Hon'ble High Court.

19. Defendant No.1 to 4 have submitted that Municipal Corporation has not filed any appeal against the order passed by Hon'ble High Court before Hon'ble Supreme Court. Hence judgment passed by Hon'ble High Court has attained finality. Till date injunction order passed in that suit in respect of present suit property is in force against Municipal Corporation.

20. Defendant No.1 to 4 has submitted that one member of Meher Nagar Society by name Nivrutti Kharat had filed R.C.S.No.183/2010 against father of respondent No.1 to 3 in respect of same suit property and claiming the same relief. In said suit, his application for temporary injunction was rejected by this court by order dated 30.07.2011. Thereafter plaintiff of R.C.S.No.183/2010 Mr. Nivrutti Kharat had withdrawn said suit.

21. Defendant No.1 to 4 have submitted that contempt petition No.05/2020 and 06/2020 are pending before this court as employees of Municipal Corporation had tried to make construction over suit property contrary to the order of Hon'ble High Court. Hon'ble High Court had directed Municipal Corporation that if they have got independent right over said property, they can file proper proceeding before the competent court. Therefore Municipal Corporation has filed Spl.C.S.No.26/2010 against Shaikh Hamid and others. Said proceeding is pending before this court.

22. Defendant No.1 to 4 have submitted that Municipal Corporation and members of Meher Nagar Society are filing various proceedings. Meher Nagar Society has executed registered relinquishment deed in the name of Municipal Corporation in respect of suit property even though Meher Nagar Society have no title or possession over suit property. Said relinquishment deed does not bear sign of officer of Municipal Corporation as acceptor of relinquishment deed. Defendant No.1 to 4 have submitted that this application is liable to be rejected with costs.

23. Defendant No.5 Municipal Corporation has given its say at Exh.26. Defendant No.5 has admitted the case of plaintiff.

24. The following points arise for my consideration and findings are recorded by me with reasons :

Sr.No.	POINTS	FINDINGS
1.	Do plaintiffs prove that prima-facie case is in their favour?	In the negative.
2.	Do plaintiffs prove that balance of convenience is in their favour ?	In the negative.
3.	Do plaintiffs prove that they will suffer irreparable injury in case injunction is not granted in her favour ?	In the negative.
4.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 TO 3 :-

25. I heard Ld. counsel for the parties. I perused this application and say submitted. I perused record of this case. In the present case plaintiff has pleaded that they have executed relinquishment deed in respect of open space in favour of defendant No.5 Municipal Corporation.

26. In the present case defendant No.1 to 4 have pleaded that their predecessor Bhagwan Pawar had filed suit having R.C.S.No.70/1993 against Municipal Corporation for perpetual injunction in respect of present suit property. Said suit was decreed. In said case, trial court has granted permanent injunction in favour of plaintiff Bhagwan Pawar restraining Municipal Corporation from obstructing his possession over suit property. Said order was confirmed up to Hon'ble High Court. Hon'ble High Court has restrained Municipal Corporation from obstructing possession of plaintiff over present suit property.

27. Admittedly in the present case, present plaintiff has no locus standi to file this suit as it has pleaded that it has executed relinquishment deed in respect of suit property in favour of Municipal Corporation and has also handed over possession of suit property in favour of Municipal Corporation. As per case of defendant No.1 to 4, they are owner and possessor of present suit property. Their possession is protected by Hon'ble High court by

passing order in second appeal No.160/1999.

28. When plaintiff is not owner and possessor of suit property, it has no prima facie case to claim injunction against defendant No.1 to 4. When plaintiff has failed to prove prima facie case, balance of convenience and irreparable injury can not be taken into consideration. Therefore I decide point No.1 to 3 against plaintiff.

AS TO POINT NO.4:-

29. In view of findings given above, it is clear that plaintiff is not entitled to get temporary injunction to restrain defendant No.1 to 4 from obstructing their possession over suit property and from creating third party interest in respect of the suit property till disposal of this suit. Hence I pass this order.

ORDER

This application is hereby rejected with costs.

Date : 01.04.2022.

(Smt. S. N. Morwale)
Civil Judge (Senior Division)
(MCA 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	: Varsha Ajit Andurkar.
Court	: C.J.S.D. (Corporation Court), Aurangabad
Date	: 01.04.2022.
Order signed by the presiding officer on	: 01.04.2022.
Order uploaded on	: 01.04.2022.