

MHAU130000532025



R.C.S. No.38/2025
Sultana Begum Sk Ismail Vs. Municipal Corporation, Aurangabad

ORDER BELOW EXH.5

This is an application for temporary injunction under Order XXXIX 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. Heard Ld. Advocates for the rival parties.

02. Ld. Advocate for plaintiffs argued that, the plaintiffs are lawful owner and possessor of the suit property. The suit property is purchased by them from its original owner Smt. Hausabai Bhagaji Salave by executing a registered sale deed. The husband of plaintiff No.1 and plaintiff No.2 personally are running business in the suit property. The defendant corporation has decided to widen the 20 feet wide road to 40 feet towards its western side. For this purpose the defendant corporation has fixed the marks of road. Thereafter, on 17.04.2025 the defendant corporation issued notice to them calling upon to remove construction standing over suit property. Thus, the defendant corporation can demolish suit property at any time. Therefore, there is apprehension in the mind of plaintiffs that,

the suit property will be demolished at any time. In such circumstances, it is necessary to grant an order of temporary injunction restraining defendant corporation from demolishing suit property till the disposal of the suit.

03. Learned advocate for defendant corporation argued that, the plaintiffs have not produced the documents to show that the construction on the suit property is authorized. The construction is carried out by them by encroaching upon road. Therefore, there is no question of acquisition of suit property by defendant corporation. The plaintiffs have suppressed material facts and did not approach the court with clean hands. Therefore, he prayed to reject the application.

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 prima-facie case ?	No.
2.	In whose favour balance of convenience lies?	Defendant.
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 XXXIX Rule 1 and 2 of C.P.C. Order XXXIX 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 other material like documents produced by the parties. In the present case neither plaintiffs nor defendant Corporation have filed affidavits for this purpose. In such circumstance it is necessary to consider the documents produced by the parties.

06. It is seen that, the defendant corporation has issued notice to plaintiffs on 17.04.2025 under Section 478 of the Maharashtra Municipal Corporation Act, 1949 calling upon them to remove construction standing over suit property as it believed it to have carried out by encroaching upon road. The plaintiffs have sought perpetual injunction to restrain defendant corporation from demolishing suit property. Thus, it is apparent that the suit property is in danger of being wasted or damaged.

07. It is seen that, the plaintiffs have not given details of the construction standing on the suit property. Likewise, they have not produced any document to show that, said construction is carried out after obtaining construction permission. A copy of judgment in RCS No.677/2006 is produced by plaintiff in which the defendant corporation was restrained from demolishing suit property without following due procedure of law. However, the defendant corporation appears to have followed due procedure of law in issuing said notice to the plaintiffs. Therefore, the plaintiffs cannot be permitted to occupy unauthorized construction by taking shelter of this judgment. Based upon such

material, the plaintiffs are seeking injunction against defendant Corporation restraining it from demolishing construction on the suit property. However, it does not appear that the plaintiffs 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 plaintiffs have not made out *prima-facie* case for grant of temporary injunction and answer point No. 1 in negative.

AS TO POINT NO.2 :-

08. There is no document on record to show that the construction on the suit property is authorized. Therefore, no inconvenience will cause to the plaintiffs in the event of refusal to grant temporary injunction. On the other hand, the defendant Corporation has powers to demolish or pull down such structure by following due procedure of law. 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 :-

09. The suit is for perpetual injunction in respect of immovable property. It follows that, the grant or refusal to grant temporary injunction will cause irreparable loss to the either party. It appears the defendant Corporation has given an opportunity of hearing to the plaintiffs before issuing notice to them and they had occasion to produce all relevant documents before it. It also appears that they failed to

produce such documents and defendant Corporation has issued notice to them in exercise of its powers under the Maharashtra Municipal Corporation Act, 1949. In such circumstances, grant of temporary injunction may cause interference in exercise of the statutory powers of the defendant Corporation without any valid reason. Moreover, if plaintiffs succeed in the suit, they can be compensated in terms of money. Therefore, I hold that no irreparable loss will cause to plaintiffs if the temporary injunction is refused. Hence, I answer point no.3 in the negative.

AS TO POINT NO.4 :-

10. The plaintiffs have not shown that there is a *prima-facie* case in their favour. The balance of convenience also does not lie in their favour and they will not suffer irreparable loss if the temporary injunction is refused. The plaintiffs have sought protection of the construction standing on suit property without production of document to show that said construction is authorized. Therefore, their conduct is not free from blame. Hence, it is necessary to reject the application. Therefore, in answer to point no.4, I pass the following order.

ORDER

Application stands rejected.

Date :-09.02.2026.

(Shri. N.H. Tikhe)
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	: 09.02.2026
Order signed by the presiding officer on	: 09.02.2026
Order uploaded on	: 09.02.2026