

MHAU130000722016

**ORDER BELOW EXH. 5 IN R.C.S. 41 OF 2016**

(Sandu Vs. The Commissioner, Municipal Corporation, Aurangabad)

1. By this application the plaintiff has sought for temporary injunction restraining the defendant from constructing the road over the acquired and non acquired portion of the suit property plot no. 29 having area 918 sq.ft. having municipal No. 4-18-21/2 situated at Kailas Nagar, Aurangabad.
2. The plaintiff's case is that, he is the owner and possessor of CTS no. 12627 and plaintiff no.1 has purchased the said property by way of lease deed and it bears plot no. 21 having area 918 sq.ft. Name of plaintiff no.1 is recorded in the PR card on the basis of Bhadepatta No. 235 dated 23-01-1995 and the record as well as the entry is neither challenged or opposed by any person. Plaintiff no. 1 has constructed the entire portion of the said plot and residing there prior to operation of the scheme by the corporation for the development. Prior to operation of development of road the property constructed was divided by partition the portion 243 sq.ft., 261 sq.ft. And 207 sq.ft. along with a shop and residence was allotted to plaintiff no. 3, plaintiff no. 2 and plaintiff no.4 respectively. Prior implementation of scheme of development of road the corporation has prepare the list and in that list name of plaintiff no.1 is recorded being a portion of C.T.S. No. 12627 to the extent of 61.80 mtr. was acquired from the plot no. 29 and 23.50 sq.mtr. is remaining portion of the said plot. Plaintiff was demanding for alternate land and also approached to the corporation and demanded

the documents prepared at that time of preparation of road. The portion acquired to the extent of 61.80 sq.mtr. is still in possession of plaintiffs and there is no development by the corporation defendant have neither provided alternate land nor given F.S.I.

3. Defendant has filed his say vide Exh.15 to contest the application Exh.5 for temporary injunction. Defendant has contended that, DP plan road is sanctioned by the Government of Maharashtra and it is a necessary party to the suit. He further contended that, the present suit is not maintainable and no injunction can be granted unless the sanctioned development plan is challenged. Plaintiffs are not having legitimate title over the suit property and the predecessor had not title to the suit property. He further contended that, construction over the suit property is without obtaining any sort of permission from the defendant and the construction is illegal. He further submitted that, implementation of DP plan is in progress. On these amongst other grounds, the defendant has sought for rejection of the application Ex.5 for the relief of temporary injunction.
4. The following points arise for determination and my findings are against each for the reasons stated below:-

S.NO.	POINTS	FINDINGS
1.	Whether the plaintiff has prima-facie case?	No.
2.	Whether the plaintiff would suffer irreparable loss if injunction is not granted as sought for ?	No.
3.	Whether the balance of convenience lies in favour of the plaintiff ?	No.
4.	What order ?	Application is rejected.

REASONS**AS TO POINT NO.1 :-**

6. Plaintiffs have relied on document included copy of notice dated 02-12-2015, copy of Bhadepatta, copy of PR Card, copy of tax receipts 2013-2014, 2014-2015, 2015-2016, copy of letter from corporation, copy of panchanama, copy of partition deeds, copy of map, copy of application dated 05-01-2008, copy of letter dated 10-10-2014, copy of registration certificates, copy of registration certificates from corporation, copy of applications dated 12-08-2014 to the corporation, copy of letters of the corporation on the record.
7. Ld. counsel for the plaintiffs submitted that, prior to operation of development of road the property constructed was divided by partition the portion 243 sq.ft., 261 sq.ft. And 207 sq.ft. along with a shop and residence was allotted to plaintiff no.3, plaintiff no. 2 and plaintiff no.4. He further submitted that, plaintiff was demanding for alternate land and also approached to the corporation and demanded the documents prepared at that time of preparation of road. He further submitted that, the portion acquired to the extent of 61.80 sq.mtr. is still in possession of plaintiffs and there is no development by the corporation defendant have neither provided alternate land nor given F.S.I. Hence, injunction be granted against the defendant.
8. Ld. counsel for the defendant submitted that, DP plan road is sanctioned by the Government of Maharashtra and the present suit is not maintainable and no injunction can be granted unless the sanctioned development plan is challenged. He further contended that, plaintiffs are not having legitimate title over the suit property and the predecessor had not title to the suit property. He further contended that, lessor is not a party to the suit. He further contended that, construction over the suit

property is without obtaining any sort of permission from the defendant and the construction is illegal. Hence, application be rejected.

9. As per settled legal position at the stage of deciding the application for temporary injunction the court is not required to go into the merits of the case in detail. The court is required to examine:

- a. The plaintiff has a prima facie case to go for trial.
- b. The protection is necessary from that species of injuries known as irreparable before his legal right can be established and
- c. The mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.

10. Now first question arises whether there is a prima facie case. As per the version of the plaintiffs, he is the owner and possessor of the suit property on the basis of Bhadepatta no.235 dated 23-01-1995. Portion of 243 sq.ft., 261 sq.ft., 207 sq.ft. along with shop and residence allotted to plaintiff no.3, 2 and 4 respectively. As per the contention of the defendant, plaintiffs and lessor are not having legitimate title over the suit property and lessor is not a party to the suit.

11. Plaintiffs have filed partition deeds dated 17-10-2006 and tax receipts on record. Plaintiffs have filed copy of Bhadepatta on record which is in name of plaintiff no.1. On perusal of copy of property card name of plaintiff no.1 appears as lessee from 11-07-2000. This fact of long standing entry in the name of plaintiff no.1 is prima facie sufficient to reaching to the finding that, plaintiff no.1 is in lawful possession of the suit property. This for the simple reason that, the entry and revenue record though are prepared only for fiscal purpose to enable the government to collect the land revenue. But, there is legal presumption envisaged under Section 157 of the Maharashtra Land Revenue Code

that an entry in the record of rights and a certified entry in the register of the mutation shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. According to said section an entry in record of rights should be presumed in effect to be true statement of its contents and in absence of any other evidence the court would obliged to be guided by the facts so entered this presumption continues until contrary is proved or a new entry is lawfully substituted for existing entry. In present case there is nothing on the record to rebut the afore stated presumption in respect of entry therefor there is nothing to brush aside the good peace of evidence of CTS Record.

12. That apart, the entries in record of rights recording the mutation of the suit property in the name of the plaintiff no.1 is relevant peace of documentary evidence. The entry in the revenue record are maintained in the official course of business and as such are relevant peace of evidence under Section 35 of the Indian Evidence Act. More so when the correctness of these entries was never question. For the legal reason adverted above it can not be said that, plaintiff and lessor are not having legitimate title over the suit property. Thus, I found no substance in the argument advanced by Ld. counsel for the defendant.
13. It is the contention of the plaintiffs that, plaintiff no.1 has constructed the entire portion of plot no.29. Ld. counsel for the defendant submitted that, construction over the suit property is without obtaining any sort of permission from the defendant and the construction is illegal. He further contended that, the present suit is not maintainable and no injunction can be granted unless the sanctioned development plan is challenged and implementation of DP plan is in progress.

14. Plaintiffs have not filed any construction permission or any certificate in respect of construction on record. Plaintiffs have not filed any document showing that, the construction is legal. For aforesaid reason construction of plaintiffs is prima facie unauthorised. Plaintiffs have filed the present application for temporarily restraining the defendant from constructing the road over the acquired and non acquired portion of the suit property having area 918 sq.ft. having municipal number 4-18-21/2 situated at Kailasnagar, Aurangabad. The defendant municipal corporation is entitled to acquire the land for development of the city for the betterment of society by following due process of law. For the legal reason adverted above it can be said that, the plaintiffs does not have prima facie case. Hence, I answer point no.1 in the negative.

AS TO POINT NOS.2 TO 4 :-

15. As discussed above plaintiffs have no prima facie case so, balance of convenience does not lie in favour of the plaintiffs. Plaintiffs have no prima facie case hence it cannot be said that the plaintiffs would suffer irreparable loss. Hence, I answer point nos.2 and 3 in the negative. The result of this discussion is that this application has become devoid of merits. In result following order is made.

ORDER

1. The application stands rejected.
2. Cost in main cause.

Date :- 09-01-2019
Place :- Aurangabad.

Sd/-
(Smt. A. S. Badgujar),
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	: Miss Manjushri S. Salve.
Court	: C.J.S.D.(Corporation Court), Aurangabad
Date	: 09.01.2019
Order signed by the presiding officer on	: 10.01.2019
Order uploaded on	: 11.01.2019