

MHAU130000722016



Presented on : 26-04-2016  
Registered on : 27-04-2016  
Decided on : 27-03-2026  
Duration : 09Y.11M.00D.

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION**  
**(CORPORATION COURT), AURANGABAD**  
( Presided over by N.H.Tikhe )

**RCS No.41/2016**

**Exh.No.53**

1. Sandu Ganpat Kayastha  
Age: 60 year, Occupation : Business  
Address: R/o. Kailas Nagar, Aurangabad.
2. Mahesh Sandu Kayastha  
Age: 30 years, Occupation : Business  
R/o. Kailas Nagar, Aurangabad.
3. Suresh Sandu Kayastha  
Age: 32 years, Occupation : Business  
R/o. Kailas Nagar, Aurangabad.
4. Bharati Sandu Kayastha  
Age: 28 years, Occupation : Business  
R/o. Kailas Nagar, Aurangabad

**... Plaintiffs**

**VERSUS**

1. The Commissioner,  
Municipal Corporation Aurangabad
2. The Administrative Officer,  
Municipal Corporation, Aurangabad

**...Defendants**

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**Claim** – Suit for perpetual injunction.  
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Advocate for plaintiffs : Shri. K.B. Dantal  
Advocate for defendant Nos.1 & 2 : Shri. A.S. Pathak  
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**JUDGMENT**

(Delivered on: 27<sup>th</sup> March, 2026)

This is a suit for perpetual injunction in respect of immovable property.

2. Narrated concisely, the plaintiffs' case is that the plaintiff No.1 has acquired the property bearing Plot No.29, admeasuring 918 sq. feet i.e. 85.31 sq. mtr. in CTS No.12627, situated at Kailash Nagar, Aurangabad by the document titled as *Bhade Patta* on 23.01.1995. The defendant Corporation has assigned Property No.4-18-21/2 to this property and its four boundaries as under:

East :- 15 feet Road

West :- Open Plot

South :- 20 Feet Road

North :- Open Plot

(hereinafter referred to as “ Suit Property”.)

3. The plaintiffs further asserted that, the name of plaintiff No.1 is recorded in City Survey Record of suit property on the basis of a document dated 23.01.1995. Plaintiff No.1 has carried out construction of shop and house on the suit property.

Thereafter, the suit property is partitioned amongst plaintiff Nos.2 to 4 i.e. sons and daughters of plaintiff No.1. Therefore, all plaintiffs are residing separately on the suit property and they are having separate status in the eyes of law. They are paying taxes imposed by defendant Corporation on the property tax. However, the defendant corporation has undertaken development work of road i.e. Laxman Chawadi to M.G.M. and has given assurance of alternate land, FSI, compensation etc. to them against the acquisition of 61.80 sq. mtr. land out of suit property. Accordingly, the name of plaintiff No.1 was shown at serial Nos.64 and 65 in a list of the persons affected in said development work by defendant Corporation. However, no alternate land, FSI, compensation etc. is awarded by defendant corporation to plaintiff No.1. Therefore, entire suit property is in possession of plaintiffs. The defendant Corporation has intentionally deleted name of plaintiff No.1 from the list of the persons affected in said development work and also demolished the construction over suit property inspite of supply necessary documents by him. Therefore, present suit is instituted by them for perpetual injunction restraining from defendant corporation from carrying out construction of road on suit property by taking its possession without following due procedure of law.

4. The defendant Corporation has resisted claim of plaintiffs by filing written statement Exh.15. According to it, the plaintiffs are not legitimate owners of suit property. It has

granted compensation to all persons affected by said project who are entitled to receive compensation as per law. According to it, this court has no jurisdiction to try and entertain present suit and the suit is bad for non-issuance of notice under section 487 of the Maharashtra Municipal Corporations Act, 1949 (“The Act” for short).

5. My Ld. predecessor has framed issues at Exh.17 and they are reproduced below alongwith my findings thereon for the reasons as follows:-

Sr. No.	ISSUES	FINDINGS
1.	Whether plaintiffs prove that, they are lawful owner and possessor of the suit property ?	No.
2.	Whether plaintiffs prove that, defendants illegally constructing the road over the suit property ?	No.
3.	Whether plaintiffs prove that, defendants illegally trying to take the possession of the suit property ?	No.
4.	Whether the suit is maintainable ?	No.
5.	Whether the plaintiffs are entitled to injunction as prayed for ?	No.
6.	What order ?	As per final order.

**REASONS****AS TO ISSUE NOS.1 TO 3:-**

6. The plaintiffs have examined plaintiff No.1 Sandu (PW-1) at Exh.20, plaintiff No.3 Suresh (PW-2) at Exh.34 and plaintiff No.4 Bharati (PW-3) at Exh.37. They have produced Tax Receipts Exh.23, 24 and 44, certified copy of Rent Agreement Exh.25, Notices Exh.26, 46, 47, 49, 50 and 51, copies of applications Exh.27 and 48 and demand bill Exh.45. The defendant Corporation did not enter into witness box. However, it has relied upon a possession receipt Exh.33.

7. The documentary evidence produced by plaintiffs show that, the plaintiff No.1 was in possession of suit property. Moreover, this fact is not in dispute. It is admitted position that, the defendant Corporation has started construction work of road and a portion of suit property admeasuring 61.80 sq. mtr. is affected by said work. It is also admitted position that, the defendant Corporation has demolished the construction standing on suit property to facilitate construction of road upon it.

8. The plaintiffs have relied upon a certified copy of rent agreement Exh.25 as a proof of their ownership over suit property. However, this document by its very nature does not transfer title of suit property on plaintiffs. Moreover, Sandu

(PW-1) admitted during his cross-examination that, his transferrer namely Shri. M.D. Pathak was also tenant in the suit property who had no authority to alienate it. He also admitted that, the owner of suit property is Dargah Shaha Daud Saheb through Administrator as per the public record. The oral evidence of Suresh (PW-2) is not helpful to plaintiffs for proving their ownership over suit property. The evidence of Bharati (PW-3) needs to be excluded from consideration as she did not offer herself for cross-examination.

9. Sandu (PW-1) has admitted the contents of possession Receipt Exh.33 to be correct and signed by him. It shows that, the possession of portion of suit property admeasuring 61.80 sq. mtr. was handed over by him to defendant Corporation on 31.01.2012 reserving a right to claim compensation/ TDR/ FSI against it as per law. It shows that, the defendant corporation has obtained possession of suit property to the extent of 61.80 sq. mtr. area by following due procedure of law and, for this reason, the plaintiffs cannot be said to be in possession of suit property. In such circumstances, they can only raise an issue of entitlement to receive compensation/ TDR/ FSI against the acquisition of suit property by defendant Corporation and cannot brand the construction of road by defendant Corporation on suit property as illegal simply because it has not granted such compensation etc. to them.

10. The evidence adduced by plaintiffs show that, the defendant Corporation has taken possession of a portion of suit property admeasuring 61.80 sq. mtr. as per possession receipt Exh.33. Thereafter, it has demolished the construction on the suit property, which was unauthorized as per evidence on record, to facilitate construction of road. It is also seen that, one Dargah Shaha Daud Saheb through Administrator is owner of suit property as per public record to which defendant Corporation considered to be entitled to receive all benefits against the acquisition of suit property. In such circumstances, it is not probable to believe that, the defendant Corporation is illegally trying to take possession of the suit property. Hence, I answer issues Nos.1 to 3 in the negative.

**AS TO ISSUE NO.4:-**

11. The removal of unauthorized construction and the construction of roads by defendant corporation is an act done in pursuance of execution of the Act. The plaintiffs have sought perpetual injunction against the defendant corporation to restrain it from performing its duty under the Act. Therefore, issuance of notice under Section 487 of this Act was mandatory to be given by plaintiffs to the defendant corporation. However, no such notice was given by plaintiffs to the defendant corporation before institution of suit. Therefore, the suit is not maintainable. Hence, I answer issue No. 4 in the negative.

**AS TO ISSUE NOS.5 AND 6:-**

12. The evidence adduced by plaintiffs show that, equally efficacious relief can certainly be obtained by them by raising a dispute as to the apportionment of amount of compensation in a land acquisition proceeding in respect of the portion of suit property affected by construction of road. Therefore, no injunction can be granted in this suit as prayed by them. Hence, I answer issue Nos.5 in the negative. In view of aforesaid finding the suit needs to be dismissed. Therefore, in answer to issue No.6, I pass the following order:-

**ORDER**

1. The suit stands dismissed with costs.
2. The decree be drawn up accordingly.

Date :- 27.03.2026

**(N.H.Tikhe)**  
Civil Judge Senior Division  
(Corporation Court), Aurangabad.

**CERTIFICATE**

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

Name of the Stenographer : V.K. Chavan,  
Stenographer Grade-II  
Court : C.J.S.D. (Corporation Court),  
Aurangabad  
Date of Decision : 27.03.2026  
Judgment signed by the  
presiding officer on : 27.03.2026  
Judgment uploaded on : 27.03.2026