

MHAU130000902025



R.C.S.No.65/2025

Shaikh Saleem Shaikh Badeshab 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 plaintiff. Read the application and reply of defendant corporation. Heard Ld. Advocates for the rival parties.

02. Ld. Advocate for plaintiff argued that, the plaintiff is owner and possessor of the suit property. On 20.02.2015 the defendant corporation has granted construction permission in respect of suit property. Thereafter, he has constructed the basement, ground floor, first floor, second floor and third floor column and slab on suit property. However, his neighbour has made false complaint with defendant corporation against him on 23.07.2025 with a view to extract money. Thereafter, on 01.08.2025 the defendant corporation issued notice to plaintiff alleging that, he has obtained construction permission by showing suit property in congested area and thus misleded it. This notice is replied by him on 04.08.2025. His neighbour has instituted a suit bearing RCS No.47/2025 against him and also made false application to defendant corporation on 28.08.2025. The defendant corporation has thereupon issued notice to

plaintiff on 28.08.2025 and threatened to cancel construction permission. Thereafter, the plaintiff pointed out to defendant corporation that in the property card of suit property it is shown as occupancy Class-A and, therefore, the construction permission is legal. However, on 29.10.2025 a defendant corporation has issued notice to him and communicated that the construction permission in respect of suit property is cancelled. Therefore, present suit for declaration in respect a notice dated 29.10.2025 to be illegal and for perpetual injunction restraining defendant corporation from taking further action on the basis of said notice is instituted by him. He argued that, there is a *prima facie* case in favour of plaintiff for grant of temporary injunction and he will suffer irreparable loss if the defendant corporation is not restrained from taking further action of demolition of construction over suit property till the disposal of suit. Lastly, he argued that, the balance of convenience lies in favour of plaintiff.

03. Ld. Advocate for defendant corporation argued that, the plaintiff has obtained construction permission in respect of suit property by misleading defendant corporation. The defendant corporation has powers to cancel such construction permission as per section 258 of Maharashtra Municipal Corporation Act, 1949 (for short "The Act"). Therefore, a notice dated 29.10.2025 issued by defendant corporation to him is legal. The neighbour of plaintiff has already instituted a suit bearing RCS No.47/2025 against the plaintiff and an order of temporary injunction is already passed against him in that proceeding. However, the plaintiff has suppressed this fact. Therefore, there is no *prima facie* case in favour of plaintiff for grant of temporary injunction.

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 plaintiff has made out a <i>prima facie</i> case ?	Yes.
2.	In whose favour balance of convenience lies?	Plaintiff
3.	Whether the plaintiff will suffer irreparable loss, if the temporary is not granted?	Yes.
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. In the present case, it is not in dispute that defendant corporation has issued notice dated 29.10.2025 to the plaintiff communicating that a construction permission granted by it on 20.02.2025 is cancelled in exercise of its powers under section 258 of the Act. Thus, the construction over suit property carried out by plaintiff in accordance with a construction permission dated 20.02.2025 is, according to defendant corporation, unauthorized. The defendant corporation has powers to demolish such construction. Therefore, it is apparent that the construction carried out plaintiff on the suit property is in danger of being wasted or damaged by defendant corporation by giving effect to its notice dated 20.10.2025.

06. The documents produced by the parties show that, the construction carried out by plaintiff on the suit property till issuance of notice dated 29.10.2025 by defendant corporation is as per the construction permission dated 20.02.2025. The defendant corporation has powers to cancel such construction permission if it is satisfied that, such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under section 253 or 254, or of further information, if any, furnished to it. It is a defence of defendant corporation that the plaintiff has shown the suit property to be in non-congested area and used excess FSI. The required marginal space is also not yet by him inviting cancellation of the construction permission. It is seen that, by issuing notices dated 01.08.2025 and 28.08.2025 were issued by defendant corporation to plaintiff giving him an opportunity of hearing before cancellation of construction permission. However, the plaintiff is still contending in this suit that the suit property nowhere comes in the category of “congested” area and it falls in “non-congested” area which is a basis of seeking declaration of notice dated 29.10.2025 by him to be illegal. For this purpose he invited attention of this court towards property card in which the suit property is shown to be occupancy Class-A. It is seen that, after ten months of granting construction permission dated 20.02.2025 the defendant corporation has cancelled it. It is not in dispute that the plaintiff has completed major part of said construction during this period.

07. On the other hand, the apprehension of demolition of said construction by defendant corporation in view of its notice dated 29.10.2025 is apparent. If these circumstances are considered, it appears that the plaintiff has raised a *bona fide* question requiring investigation. When a *bona fide* question

requiring investigation is raised, it is said that *prima facie* case is made out. Hence, I hold that, the plaintiff has made out a prima facie case for grant of temporary injunction and answer point No.1 in the affirmative.

AS TO POINT NO.2 :-

08. Admittedly, the plaintiff has completed major part of construction over suit property in accordance with permission of defendant corporation which is cancelled by it subsequently. The property card of suit property shows the name of plaintiff as its occupant. If the construction of suit property is found to be unauthorized by the defendant corporation it has powers to either regularize or to demolish it by following due process of law. However, any action of demolition of said construction by defendant corporation on the basis of its notice dated 29.10.2025 without giving an opportunity of proving that the suit property is in non-congested area to the plaintiff may deprive plaintiff of his right to property. Thus, the comparative mischief, hardship or inconvenience which is likely to be caused to the plaintiff by refusing temporary injunction will be greater than that which is likely to be caused to the defendant corporation by granting it. Hence, I answer point No.2 accordingly.

AS TO POINT NO.3 :-

09. The suit is for declaration and 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 is seen that, the plaintiff has spent huge amount on the partial construction over suit property after grant of construction permission by defendant corporation till its cancellation. It is also seen that, the plaintiff has demolished old structure on the suit property for construction of this new building. In such circumstances,

refusal to grant temporary injunction will be followed by demolition of the construction on the suit property by defendant corporation as per its notice dated 29.10.2025. It is to be noted that, the defendant corporation only alleged use of excess FSI by plaintiff and not leaving marginal space by him while carrying out said construction. Therefore, the refusal to grant temporary injunction will result in irreparable loss to the plaintiff and answer point No.3 in the Affirmative.

AS TO POINT NO.4 :-

10. The plaintiff has made out a *prima facie* case for grant of temporary injunction. The balance of convenience lies in favour of plaintiff and he will suffer irreparable loss if the temporary injunction is refused. In such circumstances, it is necessary to allow the application. Therefore, in answer to point No.4, I pass the following order.

ORDER

1. Application stands allowed.
2. The defendant Nos.1 to 3, their officers, servants, agents or anybody claiming under them are temporarily restrained from demolishing structure on the suit property described in claim clause of the plaint on the basis of its notice dated 29.10.2025 till the disposal of the suit.

Date :-02.02.2025.

(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	: C.J.S.D. (Corporation Court), Aurangabad
Date	: 02.02.2026
Order signed by the presiding officer on	: 02.02.2026
Order uploaded on	: 02.02.2026