

MHAU130001022025



R.C.S.No.76/2025

**Mohammad Zakiyoddin s/o Sirajoddin Siddiqui 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 at Exh.12. Heard Ld. Advocates for the rival parties.

02. Learned advocate for plaintiff argued that, the plaintiff is owner and in possession of the property specifically described in claim clause of the plaint. It was purchased by his grand-father, grand-mother and father on 05.02.1981. However, on 01.12.2025 the defendant Corporation has issued notice to him in respect of road widening and have also stated in its notice that there is a Nala in the suit property. According to him, said Nala is not legal and the plaintiff has already submitted documents to defendant Corporation about it on 05.12.2025. Therefore, defendant Corporation has no right, title or interest in the suit property. However, without carrying out proper measurement of road and the area affected by its widening, the defendant corporation wants the portion of suit property illegally for road widening. Therefore, it is necessary to restrain

defendant Corporation from obstructing or interfering with his possession over suit property. He argued that, if the defendant corporation is not restrained from obstructing or interfering with the possession of plaintiff over suit property, he will suffer irreparable loss.

03. Ld. Advocate for defendant Corporation argued that, the 7/12 extract of suit property shows that a Nala exists in the suit property. It is the duty of Municipal Corporation to maintain and keep said Nala in repairs and to construct new drains as shall from time to time be necessary for effectually draining the Nala. Therefore, there is no *prima facie* case in favour of plaintiff for grant of temporary injunction. Therefore, there is no *prima facie* case in their favour.

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 ?	No...
2.	In whose favour balance of convenience lies?	Defendant Corporation.
3.	Whether the plaintiff 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 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. It is not in dispute that, the defendant Corporation has undertaken a work of construction of road and for that purpose it has also started laying pipe culvert on the Nala which appears to be in existence on the suit property from its 7/12 extract relied upon by both the parties. However, by this act of defendant Corporation it does not appear that the suit property is in danger of being wasted or damaged by it.

06. Moreover, a Notice dated 01.12.2025 which is admittedly issued by defendant Corporation to plaintiff speaks that, the plaintiff has obstructed in laying pipe culvert for draining water flowing from said Nala and also called upon him to produce documents in respect of suit property. In its notice the defendant Corporation has reminded him that the existence of said Nala is shown in 7/12 extract of suit property. The plaintiff could not show as to how a Nala can be illegal. It is a duty of defendant Corporation to maintain and keep in repairs all Municipal Drains. However, the plaintiff has instituted a suit for perpetual injunction restraining defendant Corporation from interfering with his possession over eastern portion of suit property. If these circumstances are considered, it does not appear that plaintiff has 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, the plaintiff has not made out a *prima facie* case for grant of temporary injunction and answer point No.1 in the negative.

**AS TO POINT NO.2 :-**

07. There is no material on the record to show that, the defendant Corporation has obstructed or threatened to obstruct possession of plaintiff over suit property by its act of laying culvert on the Nala in question. On the other hand, its notice dated 01.12.2025 speaks that, the plaintiff has obstructed it in its work. Despite the defendant Corporation has given him an opportunity to justify his action by issuance of said notice and the plaintiff has taken a bald plea that said Nala is illegal. The grant of temporary injunction in such situation may prevent defendant Corporation from exercise of its powers under the Maharashtra Municipal Corporation Act, 1949. 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 plaintiff by refusing it. Hence, I answer point No.2 accordingly.

**AS TO POINT NO.3 :-**

08. The suit is for perpetual injunction in respect of immovable property. The defendant Corporation has statutory powers to maintain and keep in repairs all Municipal Drains and to construct new drains as shall from time to time be necessary for effectually draining Nala. On the other hand, if any portion of suit property is acquired by defendant Corporation even without following due procedure of law for the purpose of road widening, as alleged, the plaintiff can be compensated in terms of money. Therefore, I hold that the refusal to grant temporary injunction will not result in irreparable loss to the plaintiff and answer point No.3 in the Negative.

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

09. The plaintiff has not made out a *prima facie* case for grant of temporary injunction. The balance of convenience does not lie in favour of plaintiff and he will not suffer irreparable loss if the temporary injunction is refused. In such circumstances, it is necessary to reject the application. Therefore, in answer to point No.4, I pass the following order.

**ORDER**

Application stands rejected.

Date :-13.03.2026.

**(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 : C.J.S.D. (Corporation Court),  
Aurangabad  
Date : 13.03.2026  
Order signed by the  
presiding officer on : 13.03.2026  
Order uploaded on : 13.03.2026