



ORDER BELOW EXH.05

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908 for grant of temporary injunction. Perused the application and reply (Exh.21) filed by the defendant. Heard the learned counsel Shri. R. B. Bomewar for the plaintiff and the learned counsel Shri. T. N. Dhande for the defendant at length. The learned counsel for the plaintiff has also placed on record written notes of arguments (Exh.43).

The case of the plaintiff in nutshell is as under :

2. The plaintiff is the possessor of Old Gram Panchayat Malmatta no.2753, Old Ward no.06, Prabhad no.17 situated at Mouza Bhisi, Tah. Chimur, Dist. Chandrapur admeasuring 500 Sq. feets (Hereinafter referred as “the suit property” for the sake of brevity). The said property was earlier within the jurisdiction of Gram Panchayat, Bhisi. Now, the said Gram Panchayat is merged with Nagar Panchyat, Bhisi.

3. The plaintiff has acquired the suit property by virtue of the registered agreement of sale dtd.26.11.2019 executed by Mangesh Raju Gedam and his wife. On the basis of the said agreement, the name of the plaintiff was mutated in the record of earlier Gram Panchayat and now in the record of the defendant. The plaintiff is regularly paying taxes of the suit property to the defendant.

4. When the plaintiff has purchased the suit property, at that time there was an old construction which was in the dilapidated

condition. Therefore, the plaintiff demolished the same and in the year 2000 made construction of three storied building with the prior permission of the earlier Gram Panchayat and as per sanctioned map of construction. The plaintiff has incurred a total cost of Rs.50,00,000/- for the said construction.

5. The plaintiff has made the construction within a land possessed by her. As such, the plaintiff has not made any kind of encroachment on the road. She has left sufficient space for the road. No one has taken any objection on the construction of the plaintiff. Yet, without making any spot inspection, without verifying records and without considering the existing road of 60 feet, the defendant has abruptly issued a notice dtd.05.02.2025 to the plaintiff alleging that she has made an encroachment on the public road and because of that there is a hurdle to the traffic and there is a possibility of mis-happening.

6. Thereafter on 21.02.2025, the defendant again abruptly issued another notice alleging that the process of removal of encroachment on public road is about to start and the house of the plaintiff is adjacent to the main road and called upon the plaintiff to produce the document of the suit property. Accordingly, on 04.03.2025, the plaintiff has submitted the document of her property and made aware the defendant about her title and also made it clear in her letter that she has not made any kind of encroachment on a public road.

7. The defendant again issued a third notice dtd.28.02.2025

which was received by the plaintiff on 04.03.2025. In the said notice, the defendant had called upon the plaintiff to submit the documents of the suit property within three days from the receipt of the notice otherwise the entire suit property will be deemed to be a government property and the same will be demolished entirely and for the same the plaintiff will be responsible.

8. The plaintiff is in the peaceful possession of the suit property as per her registered agreement to sale dtd.26.11.2019. The seller of the plaintiff was in the possession of the suit property since 1953. Thus, the possession of the plaintiff is more than 70 years. There are several houses adjacent to the suit property and all are within the same piece of land and their construction is also adjacent to the construction of the plaintiff. But, the defendant has not issued any notice to the other adjacent owners. The defendant has deliberately and intentionally has issued false notices to the plaintiff even though she has not made any encroachment as alleged by the defendant.

9. The plaintiff has made out the prima-facie case in her favour as she is in possession over the suit property on the basis of registered agreement to sale and has been regularly paying all taxes to the defendant. Therefore, the balance of convenience lies in her favour. If the defendant is not restrained from demolishing the suit property, or interfering and disturbing the peaceful possession of the plaintiff over the suit property in that event, it is the plaintiff and her family who will suffer irreparable loss. Hence, the plaintiff prayed for

grant of temporary injunction against the defendant.

The case of the defendant in nutshell is as under:-

10. Vide reply (Exh.21), the defendant has resisted the claim of the plaintiff and denied each and every adverse allegations made against it.

11. According to the defendant, the suit property is the government land. Neither the plaintiff nor her seller are having any ownership rights or possessory rights over the suit property. The survey no.1432 admeasuring 85.20 Sq. meters is the government land. At no point of time, the said land was given to the seller of the plaintiff namely Mangesh Raju Gedam and others. As Mangesh Gedam and others are not having any ownership rights in the suit property hence, they are not having any legal rights to transfer the suit property in favour of the plaintiff. The registered agreement to sale dtd.26.11.2019 is not the ownership document.

12. In the month of February 2025, the defendant under took a drive to remove the encroachments made within its jurisdiction. Accordingly, on 05.02.2025 a notice was issued to the husband of the plaintiff. As the defendant found the encroachment of the plaintiff hence, by issuing a notice dtd.21.02.2025, the defendant called upon the plaintiff to submit her ownership documents within seven days. But, the plaintiff has not furnished those documents. Hence, on 28.02.2025, the defendant again issued a notice to the plaintiff and her husband to submit the ownership documents. Accordingly, on 04.03.2025, the plaintiff submitted her reply along with an

agreement to sale dtd.26.11.2019.

13. It is clearly mentioned in the said agreement that the suit property is the Gavthan land. It is further mentioned that as the property is received from the government hence, within one month of receiving the permission from the competent authority, the sale deed will be executed. But, the plaintiff has not produced any documents to show that Mangesh Raju Gedam or others had received the suit property from the government. It is clearly mentioned in the agreement that the suit property is owned by government. Hence, the plaintiff or Mangesh Raju Gedam do not get any ownership rights in the suit property.

14. In the tax assessment also the name of the plaintiff is mentioned as the possessor and the government is shown as the owner of the suit property. The defendant never admitted the ownership of the plaintiff. The defendant has accepted the tax from the plaintiff as the possessor of the suit property. As the plaintiff is not the owner of the suit property hence, she does not get any right to make construction over the suit property. The plaintiff has produced on record a false construction permission certificate dtd.15.12.2020 along with a false map. The defendant has not given any permission for the construction over the suit property. The defendant is going to initiate administrative and criminal action against the concern. As such, the construction over the suit property is illegal one.

15. The plaintiff and Gedam are having encroachment over

the suit property. The construction over the suit property is made without the prior permission of the Old Gram Panchayat, Bhis or the defendant. The survey nos.1432, 1433, 1434 and 1435 of sheet no.09 are the government lands. Hence, the defendant wants to utilize the said land for the road tax vendors. Hence, it is necessary to remove the illegal encroachments. The plaintiff is not having any prima facie case. As such, the balance of convenience is also not in her favour. If the temporary injunction is granted then it is the defendant who will suffer irreparable loss. Hence, the defendant prayed for rejection of the instant application with compensatory costs of Rs.50,000/-.

16. In view of rival contentions of both parties, following points arise for my consideration and I have recorded my findings against each of them with reasons to follow :

<u>Sr. No:</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has prima facie case?	YES
2.	Whether the plaintiff is having balance of convenience in her favour?	YES
3.	Whether the plaintiff would suffer irreparable loss in case injunction as prayed is not granted?	YES
4.	What order?	As per final order

REASONS

AS TO POINT NOS.1 TO 3 :

17. As these points are interlinked with each other hence,

they are taken up for consideration under one common caption.

18. The learned counsel Shri. R. B. Bomewar for the plaintiff has vehemently submitted that the plaintiff has acquired the suit property by virtue of the registered agreement to sale dtd. 26.11.2019. On the basis of the said document, the name of the plaintiff was reflected in the assessment list of the suit property. The plaintiff has taken a prior permission from the erstwhile Gram Panchayat. There is already 80 feet wide road in front of the suit property. The defendant has not mentioned the extent of the alleged encroachment in the notices.

19. He further submitted that the name of the father of the predecessor of the plaintiff is mentioned in the Kachha Adhikar Abhilekh. On the basis of the said document, the city survey record was created in the name of the predecessor of the plaintiff. In the Kachha Adhikar Abhilekh, the ownership of the predecessor of the plaintiff is shown as Bhumiswami. But, the said Bhumiswami right was illegally changed as Right Class – G.

20. He further submitted that the defendant has not taken any action against the adjoining land holders of the suit property. It has only taken action against the plaintiff with an ill motive. During the pendency of the instant suit, the defendant has issued fourth notice dtd.17.04.2025. The said notice was served on the plaintiff on 19.04.2025. On 19.04.2025 and 20.04.2025 there were holidays. The defendant has served the said notice on the plaintiff during holidays only to deprive the plaintiff from accessing his legal rights.

As such, the intention of the defendant is to demolish the suit property any how. The superintendent of land record, Chimur has issued a letter to the defendant and confirmed that the plaintiff is the owner of the suit property. The plaintiff is having prima facie case. As such, the balance of convenience lies in favour of the plaintiff. If the suit property is allowed to be demolished at the hands of the defendant then the plaintiff and her family members will suffer irreparable loss.

21. The learned counsel for the plaintiff has placed reliance on the ruling of the Hon'ble Supreme Court of India reported in **2024 Legal Eagle (SC) 998 in Re: Directions in the matter of demolition of structures**. In the supra case, it is held that all state actions including demolitions must adhere to the rule of law and due process. He further relied upon the ruling of the Hon'ble Supreme Court reported in **2024 Legal Eagle (SC) 1143 in Re Manoj Tibrewal Aakash**. In the supra case it is held that due process of law must be fulfilled before taking action to remove illegal encroachments or unlawfully constructed structures.

22. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **1994 (1) Mh.L.J. 806** between **Mansharam Sangtani Vs. Dhule Nagar Palika**. In the supra ruling, it is held that *an interlocutory injunction should normally be granted to restrain an apprehended threatened injury where the injury is certain and imminent or where the mischief likely to be done is of an overwhelming nature such as demolition and destruction of property.*

23. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **2006 (5) Mh.L.J. 75** between **Kalyan Dombiwali Municipal Corporation Vs. Tukaram Muttappa Pai**. In the supra ruling, it is held that where construction is not falling within the scope of section 478 of Bombay Provincial Municipal Corporation Act, 1949 then it is necessary to issue notice under section 260 of the said act to the occupier/owner before carrying out the demolition activity.

24. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **2025 Legal Eagle 609** between **Pukharaji Choudhari Vs. CEO, Nagar Panchayat, Mangaon**. However, I find that the facts of the supra ruling are altogether different from the facts of the instant case. Hence, the supra ruling is not at all helpful to the case of the plaintiff.

25. He further relied upon the ruling of the Hon'ble Bombay High Court in **Writ Petition no.2207/2025** between **Raghavendra Vs. Municipal Commissioner**. In the supra ruling, it is held that opportunity of hearing needs to be given to the owner or occupier before the demolition.

26. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **2008 (2) Mh.L.J. 819** between **Shamrao Chintamani Vs. Kakasaheb Gorde**. In the supra ruling, it is held that at the stage of temporary injunction, court can refer to documents which are produced on record without formal proof.

27. Per contra, the learned counsel Shri. T. N. Dhande for the

defendant has strenuously submitted that there is no mention above Bhumiswami rights in the agreement to sale dtd.26.11.2019. The agreement to sale is not a deed of sale as per section 54 of the Transfer of Property Act. By supplying the said agreement with a letter dtd.04.03.2025, the plaintiff tried to mislead the defendant by citing that there was a sale of the suit property. An agreement does not confer any right, title or interest to the plaintiff in the suit property.

28. He further submitted that the Gram Panchayat had no power to give permission for construction. The building of the plaintiff consist of three stories. There is no building map for third floor. The defendant has given sufficient time to the plaintiff to comply with its notices. However, the plaintiff utterly failed to comply the said notices. The plaintiff is the encroacher of the government land. Thus, the plaintiff is not having prima facie case. Therefore, the question of balance of convenience in favour of the plaintiff does not survive. If the temporary injunction is granted against the defendant then the defendant will be unable to utilize the suit property for the common people. Hence, in the event of granting temporary injunction, it is the defendant who will suffer irreparable loss. Hence, he prayed for rejection of the instant application.

29. The learned counsel for the defendant has placed reliance on the ruling of the Hon'ble Supreme Court in **Civil Appeal No.14604/2024** between **Rajendra Barjatya Vs. U.P. Avas**. In the supra ruling it is held that the construction put up in violation of or

deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building plan approval cannot be encouraged.

30. He further relied upon the ruling of the Hon'ble Bombay High Court in **Writ Petition No.17105/2025** between **Aryan World School Vs. Pune Metropolitan Regional Development Authority**. In the supra ruling, it is held that the Gram Panchayat's permission or NOC has no relevance for the purpose of construction.

31. He further relied upon the ruling of the Hon'ble Supreme Court in Petition for **Special Leave to appeal no.12199/2025** between **Kaniz Ahmed Vs. Sabuddin**. In the supra ruling, it is held that the courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularization of buildings erected without requisite permissions of the competent authority.

32. He further relied upon the ruling of the Hon'ble Supreme Court in **Civil Appeal No.1598/2023** between **Shakeel Ahmed Vs. Syed Akhlaq Hussain**. In the supra case, it is held that the registered agreement to sale or the power of attorney cannot confer a title on a party. He further relied upon the ruling of the Hon'ble Supreme Court in **Civil Appeal no.7109/2025** between **Vinod Infra Developer Ltd. Vs. Mahaveer Lunia**. In the supra case, it is held that an agreement of sale is not a conveyance. He further relied upon the ruling of the Hon'ble Supreme Court reported in **AIR 2012 SC 206** between **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana**. In

the supra ruling, it is held that sales agreement, general power of attorney or will does not convey any title nor create any interest in an immovable property. There is absolutely no doubt regarding the proposition of law laid down in the supra rulings.

33. He further relied upon the ruling of the Hon'ble Bombay High Court in **Writ Petition no.11276/2014** between **Manoj Prajapati Vs. State of Maharashtra**. In the supra case it is held that there should be no judicial tolerance of illegal and unauthorized constructions.

34. He further relied upon the ruling of the Hon'ble Bombay High Court in **Appeal From Order no.2662/2023** between **Mujibur Chaudhary Vs. M.C. Greater Mumbai**. In the supra ruling it is held that illegal and unauthorized constructions of buildings and other structures not only violate in the municipal laws but also affect various fundamental and constitutional rights of other persons.

35. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **(2017) 5 AIR BomR 768** between **Jaliwali Masjid Vs. M.C. Greater Mumbai**. The said ruling is concerning with Wakf Property hence, it is not helpful to the case of the defendant.

36. He further relied upon the ruling of the Hon'ble Bombay High Court reported in **(2016) 6 All MR 171** between **Michael Mascarenhas Vs. M.C. Brihan Mumbai**. However, the facts of the supra ruling are altogether different from the facts of the case in hand hence, it is not at all helpful to the case of the defendant.

37. He further relied upon the ruling of the Hon'ble Bombay

High Court reported in **2007 (3) Mh.LJ 155** between **Municipal Council Vs. Kundanlal Mohanlal Jaiswal**. In the supra ruling it is held that procuring of some trading licence or no objection from Municipal Council, paying some charges to it towards such occupation of land does not create any legal relationship between Municipal Council and such person.

38. I have carefully gone through the record of the case and also gave thoughtful consideration to the submissions made by both learned counsels. At the outset, it needs to be noted that the plaintiff has instituted the instant suit for declaration and permanent injunction. Perusal of the contentions of the plaintiff reveals that she is claiming to be the owner of the suit property on the basis of a registered agreement to sale dtd.26.11.2019.

39. It is pertinent to note that it is settled principle of law that an agreement to sale is not a deed of title and as such it does not confer any right, title or interest on a party. Thus, there is absolutely no quarrel in my mind regarding a fact that a plaintiff is not at all a owner of the suit property.

40. However, the fact remains that it is admitted position on record that the plaintiff is in the possession of the suit property. Moreover, payment of the taxes by the plaintiff pertaining to the suit property is also not disputed by the defendant. Similarly, the execution of an agreement to sale dtd.26.11.2019 by Mangesh Raju Gedam and Ratnmala Raju Gedam in favour of the plaintiff is also not disputed by the defendant. Likewise, the defendant has not

disputed the possession of the predecessor of the plaintiff over the suit property and 85.20 Sq. meters land of survey no.1432 of sheet no.09.

41. Perusal of the Kachha Adhikar Abhilekh produced by the plaintiff at Exh.15/1 reveals the name of Kashiram Mansaram Gedam as the owner of survey no.1432. It is clearly mentioned in the said document that the said Kashiram Mansaram Gedam is holding the survey no.1432 admeasuring 85.2 Sq. meters as a Bhumiswami. It is further mentioned that the said land is an ancestral land of Kashiram and it is in his possession since the year 1954.

42. It is pertinent to note that the plaintiff has contended that his sellers/predecessors are the legal heirs of the said Kashiram Mansaram Gedam. The said fact is not at all disputed by the defendant. As such, it becomes clear that the plaintiff and her predecessor were having long and peaceful possession over the suit property.

43. The Kachha Adhikar Abhilekh produced at Exh.15/1 reveals the occupancy right as Bhumiswami of Kashiram Mansaram Gedam. However, perusal of a property card produced at Exh.15/2 pertaining to survey no.1432 shows the occupancy Right – G and the government is shown to be the owner. Moreover, it is clearly mentioned in it that there is house of Kashiram Mansaram Gedam since 1954. The said property card is of the year 1975. As such, these documents prima facie show that the occupancy right was changed. There is absolutely no reason forthcoming as to why the occupancy

right was changed. There is every possibility that the change of occupancy right is not in a legal manner. Because, the defendant though a town planning authority has not brought on record any thing to vanish the said suspense. Thus, I find merit in the arguments canvassed by the learned counsel for the plaintiff regarding the ownership of predecessor of the plaintiff over the suit property.

44. Now, coming to the four notices issued by the defendant to the plaintiff. The first notice dtd.05.02.2025 is produced by the plaintiff at Exh.04/1. Perusal of the same reveals that it is issued by the defendant to the husband of the plaintiff. It is mentioned in the said notice that the plaintiff has made encroachment on the road. Thus, the plaintiff was called upon to remove the encroachment on the road by 11.02.2025 or else the defendant will remove the encroachment by 12.02.2025. Thus, the said notice speaks volume that the defendant was asking the plaintiff to remove her encroachment from the road. It is not at all mentioned that the construction of the house of the plaintiff is illegal one.

45. Now comes the second notice dtd.21.02.2025 issued by the defendant which is produced by the plaintiff at Exh.04/2. Perusal of the same reveals that it is addressed to the plaintiff herself. It is mentioned that the defendant has started the removal of the encroachment from the main road and as the house of the plaintiff is adjacent to the main road hence, the plaintiff was called upon to furnish the original documents of her property within seven days. It was also mentioned that if the plaintiff fails to furnish documents

then further action will follow. Thus, it becomes clear that by virtue of this notice, the defendant demanded the documents of the suit property from the plaintiff.

46. Thereafter comes the third notice dtd.28.02.2025 in which the defendant threatened the plaintiff that if the documents of the suit property is not furnished within three days then the whole building of the plaintiff will be considered as government property and will be demolished. The said notice is produced by the plaintiff at Exh.04/3.

47. Thereafter, the defendant issued a fourth notice dtd.17.04.2025 which is produced by the plaintiff at Exh.15/7. The said notice appeared to have been issued during the pendency of the instant suit. By virtue of the said notice, the defendant communicated to the plaintiff that her building is on the government land and also asked her to vacant the building or else it will be demolished through a government machinery.

48. It is pertinent to note that combine perusal of all four notices issued by the defendant reveals that it has initiated the action against the plaintiff on the pretext of encroachment on the government road. But, the defendant has not mentioned the extent of the alleged encroachment on the road by the plaintiff. It appears that under the garb of removal of encroachment from the road, the defendant wants to demolish the entire building of the plaintiff on the suit property without following due procedure of law. Moreover, prima facie the possession of the plaintiff appears to be settled one. If

at all the defendant seeks to recover the suit property considering it as a government land then it is always open for it to recover the same by following due procedure of law. The action of the defendant to demolish the building of the plaintiff over the suit property under the garb of removal of encroachment from the road prima facie appears to be high handed one.

49. It is imperative to note that the plaintiff has obtained the prior permission from the erstwhile Gram Panchayat, Bhis for the purpose of construction of the building over the suit property. The said document is produced by the plaintiff at Exh.04/7. Now, whether the Gram Panchayat can give such permission or not is a matter of trial. But, it appears that before making the construction, the plaintiff has followed the necessary legal course.

50. The upshot of the above elaborated discussion leads me to the conclusion that prima facie the possession of the plaintiff over the suit property appears to be long and settled possession. Moreover, prima facie it appears that the plaintiff has made construction of a building over the suit property with the prior permission of the erstwhile Gram Panchayat, Bhis. Likewise, prima facie it appears that the predecessor of the plaintiff is the owner of the suit property. Thus, prima facie it does not appear that the suit property belongs to the government. Similarly, prima facie it appears that under the garb of removal of encroachment over the road, the defendant wants to demolish the suit property. Resultantly, the notices issued by the defendant prima facie appears to be illegal one.

Thus, I hold that the plaintiff is having a prima facie case in her favour.

51. As the plaintiff is in the long and settled possession of the suit property hence, balance of convenience is also lies in her favour. There is no doubt that there is an imminent danger to the building of the plaintiff over the suit property at the hands of the defendant. The said fact can be readily inferred by the haste shown by the defendant during the pendency of the instant suit by issuing fourth notice dtd.17.04.2025 to the plaintiff. Thus, if the defendant is not restrained from demolishing the building of the plaintiff over the suit property then, it is the plaintiff and her family who will suffer irreparable loss.

52. In the light of above discussion, I hold that all the three golden principles of the temporary injunction have been satisfied by the plaintiff. Resultantly, I am inclined to grant temporary injunction in favour of the plaintiff and against the defendant. Needless to say that if at all the defendant is of the opinion that the suit property belongs to the government, then being a town planning authority, it can avail the legal remedies available to it as per law. Consequently, I answer point nos.01 to 03 in the affirmative.

AS TO POINT NO. 4 :

53. In the light of above discussion and my findings, the instant application deserves to be allowed. Consequently, I proceed to pass following order.

ORDER

1. The application stands allowed.
2. The defendant or its officials are hereby temporarily restrained from demolishing the suit property or interfering and disturbing the peaceful possession of the plaintiff over the suit property till disposal of the instant suit.
3. Costs in cause.

Place : Chimur
Date : 09.10.2025

(Shri. R. D. Bhuyarkar)
Civil Judge Junior Division,
Chimur.

-: CERTIFICATE :-

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

Name of the Stenographer	:	Miss. M. S. Pardeshi.
Name of the Court	:	Civil Judge (J.D.) & J.M.F.C., Chimur, Tal. Chimur, Dist. Chandrapur.
Date	:	09/10/2025.
		Sd/- Signature of Stenographer