

Order Below Exh. 5

1. This is an application filed by the disputant for temporary injunction. Heard learned advocates for both sides at length. Perused the record.
2. It is argued by the learned advocate Shri Ingale for the disputant that, the disputant has file dispute for restraining the respondent perpetually from making encroachment over the open space of the society. There is merit in the dispute but it will take time decide finally therefore the present application is filed for granting temporary injunction against respondent. The disputant is the president of Shri Saraswati Housing Society Ltd. The society is registered under the Maharashtra Co-operative act 1960 as per the registration certificate issued by Assistant Registrar co-operative society.
3. It is further argued by the learned advocate that, there are 37 members of the society. All the 36 members by constructing their houses are residing their societies. The respondent is also member of the said society and she has been allotted plot No. 5B. The area of all the members of the society are same. The original member of the society was Nana Laxman Shelar and Plot No. 5-B was allotted to him. The respondent has purchased the said plot from Nana Laxman Shelar and she became the member of the society. The said house has been transfer in the name of respondent as per order dated 13.3.2023 issued by MIDC Waluj. The respondent by demolishing the old house started construction over the plot No. 5-B and she has made encroachment over the open space of the society to the extent of admeasuring 5 meter by 6.67 meter.
4. It is further argued by the learned advocate that, as per the rule of the MIDC while constructing the building open space for ventilation is to

be left but the respondent has made encroachment on north side of her plot illegally. Therefore all the members of the society has called meeting on 13.5.2024 and there was discussion in the meeting in respect of encroachment made by the respondent on open space of the society towards north side of her plot. All the members of the society have made request the respondent for not to encroach on open space of the society because the said open space is left for getting ventilation to all the members of the society and if open space is not left open then it would affect on health of the member of the society.

5. It is further argued by the learned advocate that, in spite of several request made by the members of the society to the respondent for not to make encroachment on open space of the society The respondent is arrogant and she is threatening the president of the society and all the members for involving in false case if they took objection in respect of the encroachment. The disputant has also made complaint to the MIDC Waluj in respect of encroachment made by the respondent over the open space of the society.

6. It is further submitted by the learned advocate that, as per the rule of the MIDC while constructing open space admeasuring 5 meter by 6.67 meter has been left open for the purpose of ventilation and other emergency purpose but the respondent is making encroachment temporary over the said open space and thereby violating the rule of MIDC therefore it is just an necessary to restrain the respondent from making encroachment over the open space. if the respondent is not restrained form making encroachment all the members of the society would suffer form getting ventilation and other emergency.

7. It is further submitted by the learned advocate that, on 30.5.2024 the disputant made request to the respondent for not to encroach on the open space of the society but the respondent abuse the disputant in filthy language and told to the disputant that the construction would not stop and therefore cause of action arose on 30.5.2024 to file the present dispute. The disputant has made out prima facie case and balance of convenience lies in favor of disputant. If respondent is not restrain and he is succeed to complete the construction by encroaching over the open space of the society then, irreparable loss which would not be compensated in terms of money therefore it is just an necessary to restrain the respondent from making encroachment over the open space of the society. Hence application may kindly be allowed.

8. On the contrary, it is argued by the learned advocate Shri Shinde for the opponent that, the disputant has filed present dispute on the false and incorrect statement. The disputant has no authority to file present dispute. Nothing is placed on record about his authority for filing the present dispute. The defendant has not encroach upon the open space of the society. The defendant has not made extra construction. The society has not called any meeting and no discussion was taken place about encroachment on the open space of the society. The defendant has not threatened to the President of the society and all other members for involving in false case. The disputant has not made any complaint about the encroachment to the MIDC, Waluj. It is denied that, open space adm. 5 Mtrs. X 6.67 Mtrs. has been left open for the purpose of ventilation and other emergency purpose.

9. It is further submitted by learned advocate that, it is denied that, the defendant is making encroachment upon the open space and violating

the rule of MIDC. The disputant has not given anything about the rule in respect of his statement. It is false and incorrect to say that, defendant is need to be restrained. The defendant is not making or made any encroachment, therefore, there was no question to request the defendet for not encraching upon open space by the disputant on 30.05.2024. The disputant by preparing false record has filed the present dispute. The documents filed with the dispute are false and prepared only to show that, there is open space without there being any legal and authentic documents, nothing is placed on record to show that, there is open space of society. By preparing false and bogus documents, few office bearers are trying to extract the illegal amount from the defendant.

10. It is further submitted by learned advocate that, initially agreement to sale was entered by the defendant with the vendor i.e. original member of society, the president and secretary of the society has demanded gratification saying that, transfer charges of the society. Though the regular charges of Rs. 10000/- was paid by the earlier owner, the office bearer has not issued the necessary No Objection to the MIDC. When the husband of the defendant had paid amount of Rs.1 Lac to the office bearer i.e. Haribhau Jadhav in cash in presence of one member of the society namely Mr. Ramchandra Kulkarni and complied the condition which was imposed upon the Vendor of the defendant for removal of the construction of the toilet, bathroom constructed at the back side of the house which is demolished in front of the Mr. Jadhav and Mr. Gawali, then only the No Objection Certificate dated 10.02.2023 has been issued and accordingly after getting the necessary permission from the MIDC, the Deed of Assignment has been allowed to be registered and same is registered on 18.03.2023.

11. It is further submitted by learned advocate that, after that again the office bearers of the society by pressurizing the defendant is trying to extract the further amount from the defendant. The constructed house is only renovated by the defendant without disturbing its foundation. Also no new construction is added on the ground floor as alleged by the disputant. It was construction made by earlier owner. All other houses are having same constructing area and similar type of construction. The defendant is the owner of the plot area share i.e. 79.43 sq.mtr. Mentiond the the deed of Assignment. The disputant has filed the dispute for otherwise purpose and to harass the defendant and to extract the gratification. The disputant has failed to made out the prima facie case. Also balance of convenience is not lies in the favour of the disputant. Therefore if the application is allowed, the defendent will suffer irreparable loss. Therefore, it is just and necessary to reject the application with costs.

12. From rival pleadings of both the parties, following points arise for my determination. I recorded my findings thereon for the reasons mentioned thereunder.

S.No.	POINTS	FINDINGS
1.	Whether the Disputant has made out a prima facie case?	No
2.	Whether the balance of convenience lies in favour of the Disputant?	No
3.	Whether the Disputant will suffer irreparable loss if the injuntion is refused?	No
4.	What order?	As per final order

REASONS

As to point no. 1 to 3 :

13. It is well settled that for grant of temporary injunction, the disputant must establish a prima facie case. In the present case, the Disputant alleges encroachment upon the open space of the society. However, upon careful examination of the material placed on record, it is evident that the Disputant has not produced any authenticated layout plan, sanctioned plan, measurement report or technical document clearly identifying the alleged open space and demonstrating the extent of encroachment.

14. The Opponent, on the other hand, has specifically pleaded that no new construction has been undertaken and that the structure existed prior to her purchase. The Opponent has also relied upon documents such as the registered Deed of Assignment and permissions from MIDC, which prima facie indicate lawful possession and construction. Further, the Disputant claims to have filed the dispute in the capacity of President of the society; however, no resolution of the General Body or Managing Committee authorizing the Disputant to institute the present proceedings is placed on record. At this interlocutory stage, the authority of the Disputant itself appears to be doubtful.

15. The dispute regarding whether the construction is unauthorized or amounts to encroachment involves disputed questions of fact, which can be decided only after leading evidence at the trial. At this stage, the material on record is insufficient to hold that the Disputant has established a strong prima facie case. Hence it seems that the disputant has failed to make out the prima facie case.

16. The balance of convenience requires the Court to weigh the comparative hardship likely to be caused to the parties by granting or refusing the injunction. If temporary injunction is granted, the Opponent would be restrained from using or dealing with her property, despite having prima facie documents showing lawful ownership and possession. Such restraint would cause serious prejudice and hardship to the Opponent. On the other hand, the Disputant has failed to demonstrate that any immediate or irreversible harm would be caused if the injunction is refused. The alleged encroachment, if ultimately proved, can be addressed by appropriate final relief at the conclusion of the trial. Moreover, granting injunction at this stage would virtually amount to granting the final relief sought in the dispute, which is impermissible in law. Therefore, the balance of convenience does not tilt in favour of the Disputant but rather lies in favour of the Opponent.

17. Moreover, irreparable loss means a loss which cannot be adequately compensated in terms of money or remedied by final relief. In the present case, the Disputant has not established that refusal of temporary injunction would result in such irreparable loss. No material is placed on record to show that the Opponent is carrying out ongoing construction which would alter the situation irreversibly. On the contrary, the Opponent has categorically stated that no new construction is being undertaken. In such circumstances, the apprehension expressed by the Disputant appears to be speculative in nature. If the Disputant ultimately succeeds in the main dispute, appropriate reliefs including removal of construction, if any, can always be granted. Hence, no irreparable injury is shown to be caused at this stage.

18. From the above discussion, it is clear that the Disputant has failed to satisfy all the three essential requirements for grant of temporary injunction, namely prima facie case, balance of convenience and irreparable loss. Granting temporary injunction in the present matter would amount to granting final relief at an interlocutory stage, which is legally impermissible. Therefore the point no. 1 to 3 are answered in the negative.

As to point no. 4 :

19. From above discussion, it seems that application deserves to be rejected. Hence in view of point no. 4 the following order is passed.

ORDER

1. The application Exh. 5 is hereby rejected.
2. No order as to costs.
(Order pronounced in open Court.)

Sd/-

(Manisha N. Thorat)

Judge, Co operative Court,
Aurangabad.

Date : 22.01.2026

CERTIFICATE

I affirm that the contents of this PDF file are word to word same as per original Judgment/Order.

Name of the Stenographer : Smt. S.S. Shingade

Court : Co operative Court, Aurangabad

Judgment/Order Signed by P.O. On : 22.01.2026

Judgment/Order uploaded on : 22.01.2026