



RCS No. 48/2020

Dilip -v/s- Latadevi and Othrs.

COMMON ORDER BELOW EXH. NO. 5 AND 17

An application below Exh. 5 is filed by the plaintiffs under Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908 for grant of temporary injunction restraining defendants from raising construction over land Gat No. 189/4/2 situated at Ward No. 5 Arjuni/Morgaon which is shown in plaint map in red colour and in 'A, B, C and D' letter. On the other hand, an application below Exh. 17 is filed by original defendants under Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908 for grant of temporary injunction restraining original plaintiffs for causing any sort of obstruction to their construction over land Gat No. 189/4/2 admeasuring 30x80=2400 sq.ft. situated at Ward No. 5 Arjuni/Morgaon.

2. The factual matrix of application below Exh. 5 as under :-

Plaintiffs contended that, they are having building on plot no. 6 at Gat No. 189/1/a situated at Ward no. 5 Arjuni/Morgaon. Besides their building there is open plot of defendants at Gat No. 189/4/2. Prior to eight to nine years defendants started construction of basement on their plot. However, due to some technical reason they stopped their construction. Thereafter, on 13.11.2019 defendants demolished old basement with the help of JCB. The construction of

basement is in violation of setback area in terms of the building. At that time adjacent plot owner Ramanlal Chandak filed complaint before Nagarpanchayat Arjuni/Morgaon and at the same time informed said fact to the plaintiffs. They further averred that they are living at Nagpur. Thereafter, officer of Nagarpanchayat stopped illegal construction. On 29.02.2020 again on saturday at about 5.00 defendants started digging with the help of JCB. On 01.03.2020 defendants dig out near about 10 to 12 foot. At the time of digging defendants damaged iron stairs, pipelines etc. Plaintiffs have apprehension that their building will collapse due to the illegal construction. On 02.03.2020 plaintiffs had given report to the Nagarpanchayat office, Arjuni/Morgaon and police station. Police registered NC as well as Nagarpanchayat issued notice, despite construction is going on. After receiving notice from Nagarpanchayat on 03.03.2020 defendants stopped construction.

3. Plaintiff further contended that, defendants on 17.06.2020 again without taking permission from Nagarpanchayat started construction without leaving any space in violation of bye-laws. On 24.07.2020 employees of Nagarpanchayat went on spot for giving summons. However, defendants were absent. At that time, notice was affixed on electric board situated at alleged plot. Despite defendants failed to appear before Chief Officer, Nagarpanchayat. Their construction is going on in violation of bye-laws.

4. Hence, the plaintiffs constrained to file the present suit

and make this application against defendants.

Say Below Exh. 15:-

5. Defendants by filing written statement below Exh. 15 denied all the contentions of the plaintiffs. They contended that defendant no. 1 purchased land Gat No. 189/4/2 admeasuring 30x80=2400 sq.ft. from Narayan Sillewar on 01.12.1998. Since then they have been in possession of said land. Prior 30 years deceased plaintiff without leaving any space constructed house on land purchased by them. As well, Ramanlal Chandak also built his house prior to 15 years to the southern side of the plaintiffs house. Ramanlal Chandak also encroached upon one feet land of the defendants. Despite without having any measurement plaintiffs filed present suit against them. Defendants further averred that they started their construction on 01.03.2020. They took permission from Grampanchayat office Arjuni/Morgaon on 19.10.2009. After grampanchayat converted into nagarpanchayat they applied on 15.12.2019 to nagarpanchayat for construction permission. According to them if within two month permission is not granted by concern competent authority then it can be said that it is a deemed sanction. Nagarpanchayat did not convey whether permission rejected or not. They further averred that they had given house tax to the Nagarpanchayat. Since 01.03.2020 they started digging in their own plot. They completed basement. After completion of slab of the basement plaintiffs filed false case against them. On 11.05.2020 sub-

divisional officer Arjuni/Morgaon permitted to built protection wall. They had given reply to the notice of chief officer of Nagarpanchayat. On 06.05.2020 nagarpanchayat also had given permission to built protection wall. No single document of encroachment is filed by the plaintiffs. They further averred that plaintiffs did not apply to the land record office. Defendants further averred that plaintiffs by encroaching half foot land built their building. Hence, prayed to reject application and suit.

Application under section 17:-

6. They reiterated contention of written statement filed below Exh. 15. For avoiding repeatation it is not necessary to mention said fact. By filing application defendants prayed for grant of temporary injunction restraining original plaintiffs for causing any sort of obstruction to the construction over land Gat No. 189/4/2 admeasuring 30x80=2400 sq.ft. situated at Ward No. 5 Arjuni/Morgaon.

7. Heard both the sides. Perused applications, affidavit, say and documents on record. Considering rival contention of both the sides following points arise for my determination and I have record my findings to them for the reasons to follow:-

Sr. No.	<u>Points</u>	<u>Findings</u>
1)	Who have a prima-facie case?	Defendants
2)	Who would suffer irreparable injury if	Defendants

prayer for temporary injunction is not granted?

- 3) In whose favour balance of convenience ? Defendants
- 4) What order? As per final order

-:: REASONS ::-

As to point Nos. 1 to 4 :-

8. As points no.1 to 3 are inter linked with each other I prefer to discuss it under one common caption.

9. It was alleged that, plaintiffs are having building on plot no. 6 at Gat No. 189/1/a situated at Ward no. 5 Arjuni/Morgaon. Defendants are their neighbours. Defendant's construction is going on without leaving any space in violation of bye-laws. Plaintiffs have apprehension that their building will collapse due to the construction of defendant's house. For proving their contention plaintiffs filed on record copy of 7/12 extract of the land gat no. 189/ 1/a situated at Arjuni/Morgaon, Talathi Map, copy of sale deed, copy of notice given by Nagarpanchayat dated 19.03.2020 to the defendants for stopping illegal construction, notice given by Nagarpanchayat to the defendants dated 03.03.2020, copy of letter given by plaintiff to the Nagarpanchayat, copy of report given by plaintiff to the police station, copy of NC report, notice of hearing given by Nagarpanchayat, copy of letter given to the Nagarpanchayat by

plaintiffs dated 06.03.2020, copy of notice given by Nagarpanchayat to the defendants and lastly filed on record three photo copies of suit sites.

10. Perusal of the 7/12 extract of the gat no. 189/1/a reveals that name of deceased plaintiff Dilip Lichade appears to the extent of 1.11 HR. Perusal of the sale deed appears that deceased plaintiff Dilip Lichade purchased plot no. 6 admeasuring 30x40=1200 sq.ft. from Namdev Pandurang Kapgate in the year 1991. Perused mutation entry reveals that name of deceased plaintiff mutated on plot no. 6. Perused notice dated 19.03.2020 given by chief officer of Nagarpanchayat Arjuni/Morgaon to the defendant no. 1. By way of said notice Nagarpanchayat warned to the defendants that due to the 8 foot excavation of defendants other buildings are in danger. They further told defendants that they will not further construct without taking amended permission. Perused notice dated 03.03.2020 given by nagarpanchayat to the defendant no. 3. Nagarpanchayat informed after constructing protection wall they will allow further construction. Perused application given by plaintiff to the chief officer of Nagarpanchayat and PSO Arjuni/Morgaon. Perusal of the same reveals that plaintiffs have apprehension that due to the illegal construction of defendants their building will damage. As per the report to the police station police officer registered NC. Perused notice given by Nagarpanchayat to the defendant no. 1 and 3 for stopping

construction immediately. Perused photo copies filed on record by the plaintiffs.

11. On the other hand defendants alleged that they started their construction on 01.03.2020 in their own land. They took permission from Grampanchayat office Arjuni/Morgaon on 19.10.2009. After grampanchayat converted into nagarpanchayat they applied on 15.12.2019 to nagarpanchayat for construction permission. According to them if within two month permission is not granted by concern competent authority then it can be said that it is a deemed sanction. They further contended that Nagarpanchayat did not convey whether permission rejected or not. As well, they contended that sub-divisional officer had given permission for construction.

12. In support of their contention defendants filed copy of sale deed, development fee receipt, certificate of the land record office Arjiuni/Morgaon, copy of 7/12 extract of land Gat No. 189/4/2, copy of Gao Namuna 8-A, copy of notice of Nagarpanchayat, copy of letter given to the Nagarpanchayat by defendants, copy of explanation to the Nagarpanchayat by defendants, copy of house tax receipt , copy of permission letter, copy of order of sub-divisional office Arjuni/Morgaon regarding protection wall, copy of NA, copy of NOC given by Sarpanch, copy of Namuna No. 8, copy of photo bills and photo copies of suit sites. Perusal of the sale deed no. 702/98 reveals that defendant no. 1 purchased land gat no. 189/4/2 admeasuring

2400 sq. ft. from the Narayan Silewar dated 01.12.1998. Perusal of the certificate given by the land record office Arjuni/Morgaon dated 17.12.2019 it appears that measurement of the land gat no. 189/4 is not carried out by the land record officer Arjuni/Morgaon. Perused the 7/12 extract and village namuna 8-A of the land gat no. 189/4/2 reveals name of the defendant no. 1 and 2 to the extent of 1.11 HR respectively. Perusal of the letter given by chief officer Nagarpanchayat to the SDO Arjuni/Morgaon reveals that Nagarpanchayat had given permission to defendants to construct protection wall. Perused explanation given by the defendant no. 3 to the Nagarpanchayat. According to him construction of deceased plaintiff on land gat no. 189/4/1 and 189/4/3 was illegal. Deceased plaintiff built their building without leaving any space. Perused application for construction permission reveals that on 15.12.2019 defendant no. 1 sought permission from nagarpanchayat for construction of the building. Defendants further filed on record order of the SDO office dated 11.05.2020. Perusal of the same reveals that SDO office Arjuni/Morgaon had given permission to the defendant no. 1 to construct protection wall. Perused NOC certificate given by Sarpanch. On 29.10.2009 sarpanch of Arjuni/Morgaon had given NOC to the defendants. Perused photo copies filed on the record.

13. Ld. Advocate of the plaintiff in support of his contention placed his reliance on following judgment :-

1. **GTL INFRASTRUCTURE LTD., PUNE vs. DHULE MUNICIPAL**

CORPORATION AND OTHERS, 2011(6) Mh.L.J. wherein the Hon'ble Bombay High Court held that for seeking permission of the planning authority by making application in the prescribed form is mandatory. Unless the application made is in the prescribed form as contemplated by section 44, one cannot take benefit of the deeming provision contained by in section 45(5) and carry out any development.

2. **SHIRDI NAGAR PANCHAYAT, SHIRDI vs. GORDIA BUDGET HOTET and others, 2009(2) Mh.L.J.** wherein the Hon'ble Bombay High Court held that permission for development (building construction) under the Town planning Act is required to the separately obtained. Any building construction carried without such permission would be illegal.

3. **COURT ON ITS OWN MOTION vs. STATE OF MAHARASHTRA and others, 2012(1) Mh.L.J.** wherein the Hon'ble Bombay High Court held that deemed permission to an application under section 44 of the Maharashtra Regional and Town Planning Act can apply only to cases where the permission is otherwise capable of the sanctioned in law.

4. **SEEMA ARSHAD ZAHEER and others vs. MUNICIPAL CORPORATION OF GR. MUMBAI and others, 2006(5) Mh.L.J.** wherein the Hon'ble Bombay High Court held that when there was no material to make out prima facie case then temporary injunction can not be granted.

5. Nanded Municipal Council vs. Mohd. Yusuf s/o Mohd. Ramzan on 13 April, 2004, 2004(4)Mh.L.J. 1061. wherein the Hon'ble Bombay High Court held that the construction made under the deemed provision is required to be in accordance with the provisions of Maharashtra Municipal Councils, Nagarpanchayat and Industrial Township Act.

14. Ld. Advocate of the defendant placed his reliance on following judgment :-

1. **THERAKAN D. JOSEPH vs. DOLPHIN DEVELOPERS, 2014(4)Mh.L.J.** wherein the Hon'ble Bombay High Court held that injunction to be granted only in exceptional and compelling cases covering extreme hardship and injustice would be caused if injunction is not granted.

2. **Mandali Ranganna & Ors. Etc. Vs. T. Ramachandra & Ors., 2008(4) ALL MR 932(S.C.)** the Hon'ble Apex Court held that while considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz, existance of a prima facie case, balance of convenience and irreperable injury, it must also take into consideration the conduct of the parties.

Thus, It is important to appreciate facts of the present applications in view of above mentioned case laws.

15. I have given careful consideration to the submission

made by the counsels of the parties and ratio of cases cited above. I have perused entire materials available on record including the plaint, applications for temporary injunction, affidavit, written objections of the Opposite Party and documents filed on record.

16. Having regard to the entirety of the facts and circumstances of the case and upon careful scrutiny of documents on record it is clear that construction of protection wall is going on. Permission granted by the chief officer of the Nagarpanchayat and SDO Arjuni/Morgaon to defendants is on record. Plaintiff had given letter to the chief officer Nagarpanchayat and PSO Arjuni/Morgaon regarding illegal construction of defendant. Despite Nagar Panchayat and police officer did not take any action. However, plaintiff did not approached to any appropriate forum against Nagar Panchayat and police. Defendants already invested huge amount for construction. It can be safely said that an interlocutory injunction should normally be granted to restrain apprehended or threatened injury, where the injury is certain and imminent or where the mischief likely to be done is of an overwhelming nature for instance demolition or destruction of property. In the instant case, already construction of protection wall is started. No such certain and imminent circumstances occurred which warrant granting of temporary injunction. With rapid Urbanization taking place, hardly there is any scope for

restraining construction of multi-storied building on the plea that same will prevent from air and light unless there is clear proof of health hazard and environmental pollution. It is the case of plaintiffs that their building will be collapse. There is no record to show that plaintiff's building caused any damage. The Nagarpanchayat is bound to consider objection raised by neighbour in the matter of violation of municipal laws. If as a matter of fact if there is any violation by the defendants the Nagarpanchayat is at liberty to proceed against them in accordance with laws.

17. Sum and substance of the above discussion plaintiffs have not made out prima facie case and also balance of convenience is in their favour. If the relief sought by plaintiff is granted, then there is a possibility of multiplicity of proceedings and defendant may suffer irreparable loss.

18. Hence, I am answering points no. 1 to 3 in affirmative in favour of defendants. For the above said reasons application below Exh. 5 deserves to be rejected and application below Exh. 17 deserves to be allowed. Considering the facts and circumstances of the case, parties to bear their respective costs. Hence, I proceed to pass following order:-

ORDER

- 1) The application Exh. No. 5 is hereby rejected.
- 2) Application below Exh. 17 is hereby allowed.
- 3) Plaintiffs are hereby restrained from causing any sort of obstruction to the construction over land Gat No. 189/4/2 admeasuring 30x80=2400 sq.ft. situated at Ward No. 5 Arjuni/Morgaon till final disposal of this suit.
- 4) Parties to bear their own costs.

Sd/-

(P. S. Sonkamble)
Civil Judge Junior Division,
Arjuni/Morgaon.

Date:- 30/06/2021

CERTIFICATE

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

Name of Stenographer :- Sau. Pratibha D. Bawankar

Court :- Judicial Magistrate, First Class,
Arjuni/ Mor, Dist. Gondia

Order signed by
Presiding Officer on :- 30.06.2021

Order uploaded on :- 30.06.2021

Order uploaded by :- Sau. Pratibha D. Bawankar
Stenographer (Grade-3)