

CNR No. **MHKO070003212021**

Shripal Vs. State of Maharashtra

**Order Below Exhibit 5**

Plaintiffs have filed this application against defendants for temporary injunction as per Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Material facts of the application are as following. Block No.677 situated at village Abdullat is the suit property. It is ancestral property of plaintiffs. Plaintiffs' sole occupation is agriculture and there is no other means of livelihood to them. There is a road from north-west corner of said property for the farmers at west side, also there is a road from east side for the farmers at east side. However said road has never passed through suit property. It is clearly seen in the Government map as well as map of *Gavchavadi* that no such road is passed through suit property. Recently defendant No.1 is planning to construct a road through suit property and for that purpose stones, gravel and mud have been brought. Plaintiffs told employees of defendants not to construct a road upon suit property as there is no road passing through it, thereupon they did not listen. Plaintiffs come to the Divisional office of PWD and they requested not to construct a road through suit property, but they sent a false letter to plaintiffs informing that they would construct a road through suit property. Thus it is clear that

defendants are going to construct a road through suit property in illegal manner. Defendants have not acquired property for construction of the road or they have never issued notice to the plaintiffs in connection with it, likewise they have not paid compensation to plaintiffs. Therefore such a road cannot be constructed upon suit property without acquiring it and without paying compensation to plaintiffs. Defendants are trying to encroach upon suit property. The suit will take a long time to be decided and defendants are preparing to complete the road during that time. Therefore injunction shall be issued against defendants that, they or their agent shall not interfere with peaceful possession of plaintiffs over the suit property, defendants shall not enter upon it and shall not make any road through it.

2. There is no say filed by defendant No.3. Suit is proceeding ex-parte against defendant No.1. Defendant Nos.2 and 4 have filed say at Exh.30 about this application. Material contents of the say are as following. Contents of the application are denied by these defendants. The private lands of farmers for public purposes in the State of Maharashtra were acquired in the drought situation in the year 1972 to provide employment to the people or to construct rural roads through the Zilha Parishad and in other situations, the Government was forced to acquire the lands of the farmers concerned. Suit property is also the property acquired by the Maharashtra Government in the year 1972 from the previous rightful owners of it with their prior consent for construction of road during the drought of 1972. With consent of previous

rightful owners of the suit property the Maharashtra Government has constructed a road in the disputed property during the drought of 1972. This road was also with the Maharashtra Government for the years 1980 to 2000. During the 20 years from 2000 to 2020 said road was acquired by defendant Nos.2 to 4 and it is mentioned in the list of other district roads at Sr. No.41. The concerned farmers have not demanded compensation while taking possession of the lands but over the time many farmers had filed complaints in the Court demanding compensation for the lands taken for the work of Employment Guarantee Scheme. In this regard Maharashtra State Government had filed appeal in the Hon'ble Supreme Court under Appeal No.6066/1995 against the decision of the Hon'ble Bombay High Court in the Writ Petition No.10723/1993. While deciding said appeal the Hon'ble Supreme Court has recorded that the landlord has no right to demand compensation for land acquired 20 years ago after a delay of 20 years. During the drought in Maharashtra in the year 1971-72 the Maharashtra Government had obtained consent from the former right holders of the plaintiffs' block No.677, Annappa Gavarai, Ballappa Gavarai, Kallappa Gavarai and Dhulappa Gavarai for the construction of road through block No.677 and they had voluntarily given permission to the Maharashtra Government to construct a road through block No.677 in the year 1972. Thereafter a rural road was constructed through block No.677 in the year 1972 and it was under maintenance of Public Works Department under the road development scheme of the Maharashtra State during the period 1960 to 1980. From 1981 to

2020 said rural road was recorded as other district road in the road list. For the period of 20 years running from 2021 to 2040 other district roads have been upgraded in Kolhapur district. As per Government decision of the rural department government of Maharashtra No. Z. P. R.- 2022 file No.166/E.R.8 25 Marzean post Mumbai 400032 dated 07.02.2013 other district road No.41 has been transferred to the Public Works Department, Government of Maharashtra as major district road No.105 as per road list 2021-2040. Major district road No.105 is previous other district road No.41. Its entire ownership, occupancy, maintenance and repair rights have been transferred to the Public Works Department of Government of Maharashtra as per the new road list 2021-2040. As per Government decision March 2020 issued by Public Works Department No.2020 file No.30/planning – 2, Ministry Mumbai 400032 the main district road No.105 has been transferred to the Public Works Department of the State of Maharashtra. Therefore defendant Nos.2 and 4 be excluded from the suit as they are not necessary parties.

3. Following points arose for determination. Points and their findings recorded next to them along with reasons are as following.

Sr. No.	Points	Findings
1	Whether prima facie case is in favour of plaintiffs ?	No.

2	Whether balance of convenience is in favour of plaintiffs ?	No.
3	Whether irreparable loss will be caused to plaintiffs if temporary injunction will not be issued as prayed for ?	No.
4	What order ?	Application is rejected.

REASONS

As to point Nos. 1 to 3 :

4. Heard arguments. Considered relevant provision. Order XXXIX Rule 1 of Civil Procedure Code is as following.

“1. Cases in which temporary injunction may be granted :-

(1)Wherein any suit it is proved by affidavit or otherwise :

(a) that any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit, or wrongfully, sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property

in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further order.

2. Injunction to restrain repetition or continuance of breach : (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.”

Section 20A of the Specific Relief Act, 1963 is as following :

20A. Special provisions for contract relating to infrastructure project.

(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation : For the purposes of this section, section 20B and clause (ha) of section 41, the expression “infrastructure project” means the category of projects and infrastructure Sub-Sectors specified in the Schedule. (2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors. (3) Every notification issued under this Act by the

Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.”

5. Plaintiffs have produced documents alongwith list Exh.3. Plaintiffs have produced affidavit of certain persons wherein material facts of this application are reproduced. It is material to note that plaintiffs have not produced photographs of suit property to show that there is no road in existence and defendants have brought stones, gravel and mud with intention to pave the road through suit property. It is also material to note that maps produced by plaintiffs alongwith list Exh.3 also established that there is a road passing through block No.677 i.e. suit property.

6. Defendant Nos.2 to 4 have mentioned in the say with necessary details the facts about construction of the road in the suit property in the year 1972, and also the facts about its maintenance, repairing and upgradation time to time by the Government. Defendant Nos. 2 to 4 have mentioned in detail in

the say as to when and how the road was constructed by the Government of Maharashtra in the suit property in the year 1972 with consent of plaintiffs' predecessors. Defendant Nos. 2 and 4 have produced documents alongwith list Exh.29. They have produced copy of Government resolution dated 07.02.2013 regarding upgradation of other district roads. Defendants have produced list of other district roads. They have also produced Government resolution dated 02.03.2020. They have also produced Government resolution dated 26.10.2010 and photocopy of alleged judgment of the Hon'ble Supreme Court in case of State of Maharashtra Vs. Digambar. Said documents prima facie establish that other district road No.41 is passed through the suit property. It also establish that said road is in existence since 1972. It also establish that defendants have time to time repaired and maintained said road. It also establish that said other district road No.41 was labelled as major district road No.105 after upgradation. It also establish that in spite of knowledge of all these facts plaintiffs have deliberately concealed it. It is also material to note that as per legal provision i.e. section 20A of Specific Relief Act and Schedule of said Act injunction cannot be granted in case of any infrastructure project. As per preponderance of probability facts put-forth by defendant Nos.2 to 4 inspire confidence. All the defendants are public servant. Plaintiffs have not established that they are acting without following due procedure. Plaintiffs have raised point of consideration in the suit, however no relief is claimed about it. Present application is barred by principles of acquiesce and

latches. Plaintiffs have not proved prima facie case, balance of convenience does not lie in their favour. Hence if injunction will be refused then there will be no loss caused to plaintiffs. For all these reasons application deserves to be rejected. Hence point Nos. 1 to 3 are answered as 'negative'.

As to point No. 4 :

7. Accordingly following order is passed.

ORDER

Application is rejected with cost.

Date : 01.08.2026.

(A. B. Kurane.)
Civil Judge Senior Division,
Jaysingpur