


MHKO070003342025 	<u>ORDER BELOW EXH.5 IN</u> <u>R.C.S.No.55/2025</u> Kisan Shinde and another Vs. Chief Officer Jaysingpur Nagarparishad, Jaysingpur
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This application is filed by plaintiffs for temporary injunction vide Order 39 Rule 1 and 2 and Section 151 of Code of Civil Procedure.

The plaintiffs case are as under -

2] The suit property bearing City Survey No.2830, admeasuring area of 288 c.m., situated at Jaysingpur, Taluka-Shirol, District-Kolhapur. ' Kind D ' is type of suit property. Defendant is owner of the suit property. Plaintiffs are residing alongwith their family members over the suit property since 5 years. Plaintiffs have constructed house on the suit property for residential purpose. Documents i.e. Ration card, Adhar card, of the plaintiffs are on same address of the suit property. Collector, Kolhapur has given suit property to defendant for allotment to people (बेघर वसाहत) for their residential purpose. Plaintiffs do not have alternative accommodation except suit property. Plaintiffs are residing over suit property since 5 years with peaceful possession without any interruption. Plaintiffs are ready to purchased suit property according to Government rules. Plaintiffs have given an application to the defendant for regularized encroachment over the suit property after paying penalty. Defendant is trying to dispossess to the plaintiffs over the suit property without following

due procedure of law. Therefore, it is necessary to restrain the defendant from demolishing the suit property and evicting them without following due procedure of law.

3] Defendant has filed his say at Exh.10. The defendant denied all the adverse contentions of the plaintiffs. Defendant has denied the possession of the plaintiffs over the suit property. Defendant has contended that, the suit property possessed by defendant for the public purpose. As per Maharashtra Regional Town Planning Act, defendant has right of demolished illegal construction for protection of suit property.

4] Defendant has further contended that, plaintiffs have not obtained any permission of the defendant for construction over the suit property. Defendant has pleaded that, he is having prima facie case and balance of convenience lies in his favour and also contended that if the injunction is granted then he will suffer irreparable loss. Defendant has constructed compound over the suit property after spending huge amount. On these grounds he prayed to reject the application with costs.

5] Considering the application, say of defendant and documents on record, following points arise for my determination for which I have discussed them and given my findings for reasons to follow as under.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs prove prima Facie case ?	...No

2.	Whether balance of convenience lies in Favour of plaintiffs ?	...No.
3.	Whether plaintiffs will suffer Irreparable loss, if application is rejected ?	...No.
4.	What order ?	Application is rejected.

REASONS

Plaintiffs have filed following documents in their support -

- 1) Property card of C.S.No-2830 situated at Jaysingpur.
- 2) Application of plaintiff no.1 given to the defendant for permission to purchased suit property.
- 3) Application of plaintiff no.2 given to the defendant for permission to purchased suit property.
- 4) Photograph of suit property
- 5) Adhar card of plaintiff no.2.
- 6) Photographs of encroached land by other persons.
- 7) Copy of N.C.R filed by Plaintiff no.2 against unknown person.
- 8) Affidavit of witness Akashay Gadivadar.
- 9) Affidavit of witness Kiran Pawar.
- 10) Affidavit of witness Priyanka Lokare.
- 11) Affidavit of witness Akash Sonavane.

Defendant has filed following document in his support -

- 1) List of approved tenures in Jaysingpur City Survey.

Admitted facts -

Defendant is owner of the suit property.

As to points Nos. 1 to 3 -

6] Points No.1 to 3 are interlinked, so to avoid repetition points no.1 to 3 are discussed together.

7] To prove three golden principles i.e.prima facie case, balance of convenience and irreparable loss, if application is rejected. By this application plaintiffs have claimed for prohibitory injunction against defendant shall not obstruct to peaceful possession over the suit property.

Order XXXIX Rule 1, 2 Of Code of Civil Procedure -**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 ¹[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 orders.

8] It is not disputed fact defendant is owner of the suit property. Plaintiffs admitted that they encroached over the suit property since 5 years. On 28/02/2025 plaintiffs have given applications to the defendant for regularizing the encroachment. In this applications they mentioned that they are residing over the suit property since many days. After perused photographs at Exh.3/4, there is no sign to show that, plaintiffs are residing over the suit property. It is shown that one iron shed in plot. Plaintiff No.2 has filed xerox copy of his Aadhar card. On this Aadhar card address are not matched to the suit property address. Plaintiffs have not filed documents i.e.electricity bills, water taxes, municipale taxes etc. they are residing over the suit property since 5 years. Plaintiffs have not obtained permission of defendant to construction on suit property. Plaintiffs admitted that, they are encroached suit property since 5 years.

9] Plaintiffs have filed affidavits of witnesses to show that, plaintiffs are residing in the suit property since 5 years and witnessess are acquainted this fact. It is oral evidence and those witnesses are interested witnessess. Copy of N.C.R. filed by the

plaintiffs against unknown person for theft. Perused photograph at Exh.3/4 there is no any sign (material) for construction over the suit property.

10] Defendant has filed list of approved tenures in Jaysingpur city survey number at Exh.20/1. Perused list at Exh.20/1 suit property hold by municipality for public and non public purpose. Ld. advocate of defendant submitted that, defendant has spending huge amount for compound over suit property. Defendant has submitted that, the suit property for the purpose of entertainment of public i.e.play ground, library etc. Facility of light, water are not available on the suit property. Plaintiffs have not filed any documentary evidence to show that they are residing over suit property as per their pleading i.e.ration card. Plaintiffs have not come with clean hands before the court. They are suppressed material facts.

11] Ld. advocate for the plaintiffs placed reliance on the judgment of the Hon'ble Supreme Court in the matter ***Writ Petition (Civil) No.295 of 2022*** Hon'ble Supreme Court has observed that, " No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days time from the date of service of such notice, whichever is later. The notice shall be served upon the owner/occupier by the registered post A.D. Additionally the notice shall also be affixed conspicuously on the outer portion of the structure in question."

12] Ld. advocate for the defendant has relied upon the following case laws :

1) 2006 (5) AIR Bom R 328 (Nagpur Bench) Vinayak S. Bapat & Ors. Vs. The Superintendent of Police, Chandrapur & Ors. Hon'ble Bombay High Court has observed that, “ Encroachment of unauthorised structure. Interim injunction granted protecting alleged unauthorised structures. Court fix an outer limit beyond which it will not operate. Court granting such temporary injunction cannot forget its role as custodian and guardian of public interest and it has to safeguard such larger interest independently. Heavy costs can also be imposed on local authority acting in collusion with encroacher and not co-operating or if found prima facie guilty in matter.”

2) 2000(3) Mh.L.J. Ganesh D. Daivajna Vs. Prakash Salkar Hon'ble Bombay Court has observed that, “ Civil Procedure Code, O.39, R. 1 and 2 S.115 – Injunction possession ought to be lawful to enable party to seek protection from court by way of equitable relief.”

13] After perusal of case laws and facts of the present case are different. Ld. advocate of plaintiffs submitted that, defendant has given other property to the other person. He also submitted that, other person are also encroachment over the property of defendant. So, they prayed for regularized encroachment over the suit property of the plaintiffs. They are not rightfully in possession of disputed suit property. Defendant has not admitted possession of plaintiffs over the suit property.

14] As observed above that, plaintiffs failed to prove prima facie case, balance of convenience does not lie in favour of plaintiff and no irreparable loss or prejudice will be caused to plaintiffs if application is rejected. Accordingly, I answer points Nos. 1 to 3 in negative.

As to points No.4

15] As points no.1 to 3 are answered in the negative, I have no hesitation to hold that the application is liable for rejection. Hence, for points No. 4 following order is passed.

ORDER

- 1) Application is rejected.
- 2) Costs in cause.

Sd./-

Date :29/03/2025

(V. M. Kolekar)

3rd Jt. C.J.J.D. Jaysingpur.