



**R.C.S.No. 07/2023**

**Shri. Vikesh Aakaram Killedar Vs. Shri. Dadu Vitthal  
Barkale etc. 03**

**CNR - MHKO130000132023**

**ORDER PASSED BELOW EXH. 05**  
**(Dt. 16/02/2024)**

**01.** This is the interim application of the plaintiff filed under Order 39, Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with request to restrain defendant no. 4 from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property & furthermore not to oust him from the suit property till final disposal of the suit.

**Brief facts of the plaintiff case is as under:-**

**02.** The following property will hereinafter be referred as the suit property:-

**(A)**

<b>Sr. No.</b>	<b>Village &amp; Property no.</b>	<b>Admeasuring Area Sq.feet.</b>
1.	Mouje Murgud, Tal. Kagal, Dist. Kolhapur, Property No. MB000145	20x20=400 sqf. In which the shoppe run by the plaintiff under the name “Morya gift galary”

**03.** As per the plaintiff, the suit property is belonging to the Government. The said property was in the form of open land. Possession of the said land was demanded by plaintiff to defendant no. 4 through application dtd. 22/12/2011. In view of the application, defendant no. 4 has permitted the plaintiff to carry on his business over the suit property. Since 2011 same kind of permission was given to the other persons who have demanded the other properties. The properties were given to the plaintiff as well as other persons through auction method. The plaintiff by expending

Rs. 10,00,000/- to 15,00,000/- has constructed his shoppe. This plaintiff has obtained several permission from this defendant, those were necessary for opening bank account & for obtaining elctricity connection. Those permission was given by this defendant.

**04.** As per the plaintiff, the plaintiff is in possession of the suit property since 2011. Name of this plaintiff is entered to the assessment extract of the suit property. To the eastern side of the said property. C.S. no. 647 is situated which is belonging to the defendants no. 1 to 3. The suit property is neither way concerned with these defendants no. 1 to 3. However, defendants no. 1 to 3 on 01/03/2021 have made complaint towards defendant no. 4 for removal of construction carried out in the suit property by the plaintiff. Therefore, defendant no. 4 on the say of defendants no. 1 to 3 have issued notice to the plaintiff on 26/12/2022 & 04/01/2023 with intent to oust him from the suit property.

**05.** The plaintiff has specifically submitted that, he is regularly paying taxes towards defendant no. 4 as demanded by them. In such a circumstances, defendant no. 4 is causing obstruction to his possession over the suit property. In fact, construction over the suit property is carried out with prior consent of this defendant. Therefore, as this defendant is causing obstruction, to claim relief against them, the current application is filed.

**Brief facts of defendant no. 4 is as under:-**

**06.** Defendant no. 4 has submitted written statement & say to this application vide Exh. no. 19.

**07.** The defendant has specifically contended that, suit property no. MB000145 is only computer generated number for

assessment of the property. Entry of said property is not there to the city survey office. In fact, suit property is standing on the public road. The said road is belonging to this defendant. The defendant is entrusted with the maintenance of this public road.

**08.** The defendant has specifically submitted that, suit property was given to the plaintiff on one year basis from 01/04/2012 to 31/03/2013. In the agreement, it was mentioned that, the plaintiff is permitted to set up temporary shed for carrying out his business. However the plaintiff has constructed a firm construction in the suit property. Thus, the plaintiff has violated the provisions of section 52, 53, 54 of the Maharashtra Regional Town Planning Act. As the plaintiff is carrying out business over the property belonging to defendant no. 4, this defendant has right to obtain assessment taxes from the plaintiff.

**09.** It is further submitted by this defendant that, the plaintiff was intimated on dtd. 25/05/2017, 21/06/2017, 04/11/2022, 29/12/2022 & 04/01/2023 for removing his construction over the suit property. However, the plaintiff has not acted as per the instructions. To the eastern side of the suit property city survey no. 647 is situated which is belonging to defendants no. 1 to 3. These persons have started construction in their property. These persons have requested to this defendant to remove the construction that was standing in front of their property. The defendants further submitted that, no pre-suit notice u/s. 304 of the Maharashtra Regional Town Planning Act was given by the plaintiff while instituting the suit. Therefore, the suit is not tenable against them. The plaintiff has not come to the Court with clean hands. Therefore, the defendant has prayed to reject the application.

**Brief facts of defendants no. 1 to 3 are as under:-**

10. The defendants have submitted their say vide Exh. no. 30 and have contested the application.

11. The defendants have specifically contended that, they are owners of city survey no. 647. The said property is in the possession of this defendants. The defendants by obtaining prior permission from defendant no. 4 have started construction in their property. Except the road situated towards western side of their property, these defendants have no alternative road available. The shoppe run by the plaintiff in the suit property is causing obstruction to the defendants in using their property. Thus, the defendants have prayed to reject the application.

12. Heard Advocate Shri. S.M.Sawardekar for the plaintiff, Advocate Shri. V.M. Hanchnale for defendants no. 1 to 3 & Advocate Shri. S.M. Patil for defendant no. 4.

13. On the basis of rival pleadings of both the parties, following points are arises for my determination and my findings with respect to the same with reasoning is as under:-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether the plaintiff has made out <i>prima-facie</i> case?	In the Affirmative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the Affirmative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the Affirmative.
4.	What order?	As per final order.

## REASONS

### As to points No. 1 to 3:-

14. All the points are interlinked with each other. Thus, to avoid repetition of facts, they are discussed together.

15. Perusal of the rival pleading of both the parties, one thing is clear that the plaintiff is carrying on his business over the suit property since 2011. It is not in dispute that the plaintiff was initially permitted through written agreement by defendant no. 4 to carry out his business in the suit property. It is also not in dispute that, property of defendants no. 1 to 3 is situated to the eastern side of the suit property & they have made complaint to defendant no. 4 against the plaintiffs construction in suit property. It is also not in dispute that, in view of that notice, defendant no. 4 has issued several notices to the plaintiff for removing his construction. However, till today construction is standing in the suit property.

16. The plaintiff has come with the specific case that, since 2011 by obtaining legal permission from defendant no. 4 he is carrying out his business. The documents filed on record by the plaintiff specifically denotes that on 22/12/2011 he has preferred an application towards the Murgud Municipal Council i.e. defendant no. 4 for obtaining possession of the suit property. It appears that, agreement in that respect was executed in between the plaintiff & defendant no. 4. Copy of that agreement is also on record which is filed by defendant no. 4.

17. It further appears that, till the year 2022 the plaintiff has paid assessment taxes towards defendant no. 4 and accordingly they have issued receipts of payment to the plaintiff. The defendant has

come with specific case that, agreement between them was terminated in the year 2013 and auction of the said property was cancelled in the year 2017. Even then inspite of such a factual aspects, it appears that, defendant no. 4 has accepted the assessment taxes paid by the plaintiff.

**18.** There is no doubt that, defendant no. 4 have issued several notices to the plaintiff for removing his construction, more specifically dtd. 24/05/2017, 21/06/2017, 15/03/2021, 26/12/2022 & 04/01/2023. Copies of these notices are on record. I have gone through notices carefully. It appears from notices that, in the notice dtd. 24/05/2017 only 04 days time was given to the plaintiff. In the notice dtd. 21/06/2017 only 07 days time was given to the plaintiff. In the notice dtd. 15/03/2021 only 07 days time was given to the plaintiff. In the notice dtd. 26/12/2022 no time limit was prescribed for removing construction of the plaintiff.

**19.** In the case in hand, defendant no. 4 has specifically taken base of provisions under section 52, 53 & 54 of the Maharashtra Regional Town Planning Act (hereinafter be referred as the 'Town Planning Act'). The provisions u/s. 52 & 55 of the said act contemplates issuance of notices to the person for removing construction. Notice of one month has to be given u/s. 53 of the Town Planning Act, as well as u/s. 55 prior notice of 15 days has to be served on the person for removing his construction. However, nowhere from the notices issued, it appears that defendant no. 4 has issued statutory notices under these sections to the plaintiff by giving him the specific time as contemplated under the above sections. Thus, what it appears is that, defendant no. 4 has not followed statutory mandates while issuing notices to the plaintiff.

**20.** At this juncture, the learned advocate of defendant no. 4 has taken base of one citation delivered in Babar Sher Khan & Ors. Vs. Municipal Corporation of Brihanmumbai & Anr, reported in 2008 (2) Bom. CR 335 in which Hon'ble Bombay High Court has discussed about the provisions of sections 53 & 55. However, in the cited case the construction itself was illegal. That construction was carried out without obtaining permission of Municipal Corporation. But no such case is here. Because in the present case, Murgud Municipal Council i.e. defendant no. 4 itself has granted permission to this plaintiff for carrying out his business. Thus, the factual aspects being different, the current citation will not be helpful to the case of this defendant.

**21.** The plaintiff in support of their case has filed on record supporting affidavits of Vishal Jadhav (Exh. no. 22), Pradeep Varane (Exh. no. 24), Vijay More (Exh. no. 25) and of the plaintiff himself (Exh. no. 23). These witnesses have stated about the illegal action of defendant no. 4 on the instigation of defendants no. 1 to 3. Furthermore, it appears that, witnesses Vishal, Pradeep & Vijay are having their shoppes over the public road belonging to defendant no. 4. To counter the same, defendants no. 1 to 3 have submitted on record supporting affidavit of Prashant Barkale (Exh. no. 31) who has stated that since year 2020 the shoppe run by the plaintiff is closed and shoppe of the plaintiff is causing obstruction & interference to these defendants & to other persons. I have considered the statements in these affidavits.

**22.** In such a factual aspects, one thing is clear that, defendant no. 4 has not followed statutory requirements as contemplated under Maharashtra Regional & Town Planning Act. Defendant no. 4 have accepted assessment taxes of the plaintiff till 2022. Resultantly, the plaintiff is having prima-facie case, balance of

convenience lies in his favour and remedy of injunction if refused, the plaintiff may suffer loss. Thus, I answered points No. 1 to 3 in the affirmatives. In answer to point No. 4, following order is passed:-

**ORDER**

1. The application (Exh. 5) is allowed.
2. Defendant no. 4 or any person on behalf of them is hereby temporarily restrained from causing obstruction & interference in the peaceful possession of the plaintiff over the suit property & not to oust the plaintiff from the suit property till final disposal of the suit.
3. In the peculiar facts & circumstances, there is no order as to costs.

Kagal.  
Date: 16/02/2024.

Sd/-.  
**(A. B. Jawale)**  
Jt. Civil Judge Junior Division,  
Kagal.