

**Regular Civil Suit No. 62/2021.****Gajanana Mahadev Chougule****Vs.****Grampanchyat Kotoli Through Sarpanch and Gramsevak****ORDER BELOW EXH. 5**

The present application is filed by the plaintiff for grant of interim injunction under provisions of Order 39 Rule 1 & 2 of Code of Civil Procedure (herein after referred as 'CPC').

2. Plaintiffs suit is for perpetual injunction. Suit property is house property ad-measuring 1212 Sq.Mtr. bearing C.S.No.297 situated at village Kotoli Tal. Panhala, Dist. Kolhapur; specifically mention in paragraph No. 1 of the plaint. Suit property is ancestral property of plaintiff. At the eastern side of the suit property there is raw shade of 20 x 20 ft. constructed by plaintiff. Plaintiff having possession of the suit property since 1980. Plaintiff using this shed as a cattle shade. The said shed is constructed by plaintiff in suit property. At the eastern side of suit property the property of defendant Grampanchayat bearing C.S.No.298 is situated.

3. Plaintiff's father initially has constructed raw shed on the suit property in the year 1980 and two years before plaintiff has reconstructed the said shed. The said shed is situated in the plaintiff's land. Plaintiff reconstructed the shed after due measurement and fixation of boundaries of suit property through T.I.L.R. Panhala. Though the defendant has knowledge about said measurement it again measured the suit property in collusion with measurement officers and falsely contended that plaintiff has erected shade by encroaching over defendants land at about 0.072

Sq.Mtr. Defendant Grampanchayat has no any concern with the plaintiff's shed. Defendant Grampanchayat without following due process of law issued notices dated 20.04.2021 and 17.05.2021 to the plaintiff for removal of shed. Therefore, plaintiff filed this suit against defendant for issuance perpetual injunction to restrain defendant from dispossessing plaintiff without following due process of law. Plaintiff is under apprehension that defendant will dispossess him pending suit which will cause great hardship to him. Therefore, plaintiff prayed for interim injunction.

4. Defendant Grampanchayat filed its written statement-cum-say to this application at Exh.25 and resisted the application. At the outset defendants denied all the submissions of plaintiff. It is sum and substance of defendant's say that the plaintiff has mentioned wrong and incomplete description of the suit property. That the property ad-measuring 41.3 Sq.Mtr. bearing C.S No.298 is owned and possessed by defendant. Long back the defendant has constructed eight shops in the said property. The said shops are now in dilapidated condition therefore, defendant intended to construct new shops in the said property. The Grampanchayat resolved to construct the new shops by utilizing funds from Zilla Parishad. Plaintiff has no concern with the property from C.S.No. 298. Plaintiff has no any shed in property from C.S.No. 29 but he has constructed shed encroaching over defendant's land during lock-down period without any consent from defendant and taking advantage that defendant is public body. Defendant Grampanchayat applied to T.I.L.R. Panhala for measurement of property from C.S.No. 298. The T.I.L.R. Panhala on 18.01.2021 measured the said property by issuing necessary notices to the adjacent property holders.

After measurement it is seen that plaintiff has constructed shed by encroaching over about 0.072 sq.mtr. land from C.S.No. 298. The said encroachment can also be seen in the measurement map. That the defendant being Grampranchayat has right to remove the encroachment. So also the Government of Maharashtra directed all the Grampanchayat of State to remove the encroachment over the Grampanchayat properties. That the suit is not maintainable. The notices dated 20.04.2021 and 17.05.2021 are legal. Plaintiff falsely answered the said notices. Therefore, plaintiff is not entitled for equitable relief of injunction. Thus defendants prayed to reject the application.

5. Heard learned advocate Shri.U.B.Patil for plaintiff and Shri. P. A. Mahajan for defendants. It is vehemently argued by advocate for plaintiff that the plaintiff has constructed shade in suit property only. There is no encroachment in defendants property. That the notices of defendant Grampanchayat are illegal. The plaintiff is in possession of the suit property. Therefore prayed to allow the application. Advocate for defendant vehemently argued that the Grampanchayat has right to remove encroachment. Defendant has encroached upon the public property. Equal and efficacious remedy available to plaintiff if he has any grievance against defendants action. This court has no jurisdiction to try the suit as special act rides over general act. Therefore the plaintiff has no prima facie case.

6. The advocate for defendant relied on judgement of **Hon'ble Bombay High Court** in case of **Village Panchayat Antora** versus **Wasudeo Hohod** reported in **2014 (5) Mh. L J 189** wherein it is held by Hon'ble High Court that; *"Gram Panchayat is duty bound to remove*

*encroachment. Jurisdiction of civil court is barred.”* He further relied on judgement of **Hon’ble Bombay High Court** in case of **Baburao Naikwadi versus Sarpanch/Gramsevak Grampanchayat Ter** reported in **2012 (5) Mh. L J 408**. In this case plaintiff running his business by constructing shade over the Grampanchayat land from last two and half years. That the plaintiff has made an encroachment over the Grampanchayat property. Plaintiff contended that the Grampanchayat will dispossess him without following due process of law and allot the premises to influential persons. The trial court rejected the temporary injunction application. The district court also dismissed the miscellaneous appeal of the plaintiff. The Hon'ble High Court observed that Bombay Village Panchayat Act being special act civil court has no jurisdiction to try the suit for perpetual injunction and Hon'ble High Court confirmed the orders of trial court. Perused the above said case laws carefully.

7. Perused the material on record. Following points are emerged for determination and I have recorded the findings against each of them as follows-

| <u>Sr.No.</u> | <u>Points</u>                                                                                                  | <u>findings</u> |
|---------------|----------------------------------------------------------------------------------------------------------------|-----------------|
| 1.            | Whether there is a prima facie case in favour plaintiff?                                                       | No              |
| 2.            | Whether balance of convenience is in favour of plaintiff?                                                      | No              |
| 3.            | Whether irreparable loss would be caused to the plaintiff if application for temporary injunction is rejected? | No              |

**REASONS**

8. Plaintiff has mainly relied on certified copy of property card of C.S.No.297, copy of application to T.I.L.R. Panhala, Copy of notice dated 20.04.2021 and 18.05.2021, reply notice dated 27/04/2021, photographs commission report of T.I.L.R. at Panhala, letter issued by Development Officer Kotoli, Grampanahcyat resolution date 28.09.2020 and 26.12.2020. Defendant Grampanchayat mainly relied on property card of C.S.No.298, Copies of entire measurement proceedings before TILR Panhala with measurement Map dated 10.12.2020.

**AS TO POINT NO. 1 :-**

9. It is undisputed fact that property bearing City Survey No.297 is owned and possessed by the plaintiff while the property bearing City Survey No.298 is owned by defendant Gram Panchayat. It is also undisputed that plaintiff has constructed shed in the suit property. It is also not disputed fact that property of plaintiff and defendant are adjacent to each others. It is the crux of matter that defendant Gram Panchayat claiming that plaintiff has constructed shed by encroaching over the land of C.S.No. 298 to the extent of 0.0 74 m<sup>2</sup>. From the careful perusal of notices dated 20.04.2021 and 18.05.2021 it is prima facie seen that defendant Gram Panchayat issued notices to the plaintiff and call upon him to remove the said encroachment. From the perusal of joint measurement map dated 10<sup>th</sup> of December 2020 it is prima facie seen that plaintiff constructed shed by encroaching over the land of defendant to the extent of 0.0 74 m<sup>2</sup>.

10. It is needless to say that under the provision of section 53 of Bombay Village Panchayat Act, specific procedure for removal of

encroachment over the public property is incorporated. Under provisions of subsection 2 of section 53 of Bombay Village Panchayat Act; Panchayats have power to remove encroachment if the property is vested with the Panchayat. In the present case Grampanchayat issued notices to the plaintiff and call upon to remove encroachment. The said notices and resolutions come under purview of section 53 (2) of the Act. The action of defendant Grampanchayat certainly come under duties, functions and powers of Gram Panchayat provided under special Act. If plaintiff have any grievance against such notices he has equal and efficacious remedy of appeal before appropriate authority incorporated under the provisions of Bombay Village Panchayat Act. It is not the case of plaintiff that defendant Gram Panchayat not acting in accordance with the provisions of special act. Therefore prima facie there is no occasion to plaintiff to move civil court and the civil court has no jurisdiction to restrain defendant Gram Panchayat from acting in accordance with provisions of special act. Any act in accordance with provisions of any particular law can not be termed as obstruction or interference to the possession of plaintiff. Considering these facts and circumstances plaintiff has no plausible case required to be tried. Thus prima facie plaintiff has no case in his favour. Hence point No.1 answered in negative.

**AS TO POINTS NO. 2 & 3 :-**

11. As above discussed it is prima facie seen that the plaintiff constructed shed by encroaching over the land of public at large. A Grampanchayat being public entity re-coursing to remove encroachment as per provisions of special law. More over prima facie plaintiff not having plausible case. In such circumstances great hardship will cause to

defendant as well as public at large. On the contrary appropriate equal and efficacious remedy available to plaintiff to satisfy his grievances. Therefore no hardship will be caused to the plaintiff if temporary injunction application is rejected. Further grant of temporary injunction will lead to complex multiplicity of proceedings. Therefore the balance of convenience is also not tilts in favour of plaintiff. Hence, points No.2 and 3 answered in negative. In result, the following order is passed:

**ORDER**

- a) Application for temporary injunction is rejected.
- b) Ad-interim status quo orders if any stands vacated.
- c) Costs in cause.

(Dictated and pronounced in open Court).

Place :- Panhala.

Date :- 20.12.2022.

Atul A. Kore,  
Jt. Civil Judge Jr. Dn.,Panhala.