



**ORDER BELOW EXH.5 IN R.C.S. NO. 21/2020**

This is an application made by the plaintiff for seeking relief of temporary injunction restraining the defendants from causing disturbance to his peaceful possession and from demolishing or causing damage to construction erected over Grampanchayat Property No.185 admeasuring length 63 feet and width 36 feet consisting house and open space, situated at village Tandulwadi, Taluka Panhala, more particularly described in para 1 of this application. (for brief 'the suit property').

**02.** It is contended that the suit property is situated within precinct of Tandulwadi village-hood (gaathan) and city survey of the suit property is not carried out yet. The suit property was in possession of ancestors of the plaintiff since last 70 years. Thereafter, the suit property came into possession of the plaintiff. The defendant Grampanchayat established in the year 1965. At that time office of Grampanchayat was functioning in Gram-Devalaya for near about 10 years. At that time also the suit property was in possession of the plaintiff.

**03.** After that the defendants constructed separate office of Grampanchayat at northern side of the suit property and now it is functioning in the said building. At the time of said construction, the defendants by putting pressure on the plaintiff made encroachment admeasuring length 3 feet and width 20 feet area belonging to the plaintiff. As the said construction was for

benefit of villagers, the plaintiff did not raise any objection. As such, after said construction, the entire area from southern side wall of Grampanchayat building, is in occupancy of the plaintiff.

**04.** Prior to 10 to 12 years, the plaintiff has constructed shed in the said area for keeping firewoods, agricultural equipments, fodder, domestic animals etc. The suit property G.P.No.185 admeasuring length 63 feet and width 36 feet is entered in the name of plaintiff with defendant Grampanchayat office for the year 2011 to 2014. The plaintiff has obtained water connection in the suit property. He is paying yearly water and property taxes to the defendants. Before every rainy season, the plaintiff has to repair his shed erected in the suit property. Accordingly, in March 2020, by removing old shed, the plaintiff has completed construction of new shed with bricks and mud with cement sheets thereon. The plaintiff has incurred Rs. 1,00,000/- for the same.

**05.** In such circumstances, the defendants issued notices to the plaintiff time to time for removal of encroachment made over the suit property. In fact, the plaintiff has not made encroachment over any area of the defendants by making construction. Rather, out of political enmity, the defendants issued illegal notices to the plaintiff on 25-04-2020, 02-05-2020 and 06-05-2020 asking to stop the construction otherwise it will be demolished by the defendants. Thus, the defendants are causing obstruction to the possession of the plaintiff. The plaintiff has replied to notice of the defendants through his advocate and informed that he has not made any encroachment over any area. Even then, taking disadvantage of their position, the defendants

are causing obstruction to possession of the plaintiff over the suit property and threatening to demolish construction of the plaintiff. Hence, the plaintiff constrained to approach the Court for seeking relief in his favour. If the defendants demolished the construction in the suit property illegally and without any authority, the plaintiff would put to irreparable loss. As such, the plaintiff sought relief of temporary injunction against the defendants till final disposal of the suit.

**06.** The defendants filed their say at Exh.18 and resisted contentions made in the present application. They specifically averred that description of the suit property is vague and no such property is in existence. The plaintiff has not filed any document showing that the suit property was in possession of his ancestors before 70 years and thereafter it comes into his possession. The function of Grampanchayat regularized under provisions of Maharashtra Village Panchayats Act. In the year 2011-2012, building of Grampanchayat office erected over area length 35 feet and width 20 feet out of 840 sq.feet in G.P.No.183. At southern side of said building, area of length 7 feet and width 20 feet is kept open by Grampanchayat. The plaintiff has no concerned with said open space. The entry in the name of Grampanchayat in respect of title and possession of said property is entered to assessment list. The plaintiff has never challenged it till today.

**07.** The plaintiff has illegally started construction over open space of the defendants admeasuring length 7 feet and width 20 feet situated adjacent to southern side wall of Grampanchayat office. The said construction is not completed yet. The plaintiff is trying to mislead that he has made construction in the suit

property G.P.No.185. In fact, he made encroachment and started construction over open space belonging to the defendants. The plaintiff without any permission of competent authority or prior intimation to Grampanchayat, started illegal construction by putting cement pipes, cement sheets and rough floor. The said fact revealed to member of Grampanchayat namely, Sagar Balwant Patil and he brought it to the notice of the defendants. Hence, the defendants issued notices to the plaintiff asking him to stop construction. However, he did not stop the construction. Ultimately, the defendants issued legal notice on 06-05-2020 to the plaintiff asking him to remove encroached portion of construction. However, the plaintiff still not removed the same. Hence, the defendants started legal action against the plaintiff. Therefore, in order to obstruct legal action and taking disadvantage of legal process, the plaintiff has instituted present suit.

**08.** The Grampanchayat is functioning as per provisions and rules laid down under the Maharashtra Village Panchayats Act and the defendants did not obstruct possession of the plaintiff. If injunction as sought is granted, it amounts to protect illegal act of the plaintiff. The plaintiff would not put to any loss if injunction is not granted. On the above grounds, the defendants urged for rejection of application with costs.

**09.** Heard both the learned advocates for the parties. From the pleadings and documents on record, following points arise for consideration. I have given finding to each point for the reasons to follow:

| <b>Sr.No.</b> | <b><u>POINTS</u></b>  | <b><u>FINDINGS</u></b>      |
|---------------|---|-----------------------------|
| 1.            | Do prima facie case exists in favour of the plaintiff ?                       | Yes.                        |
| 2.            | In whose favour balance of convenience lies?                                  | In favour of the plaintiff. |
| 3.            | To whom irreparable loss would be caused if temporary injunction is refused ? | To the plaintiff            |
| 4.            | What order ?  | Application is allowed.     |

### **REASONS**

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

**10.** All the above points are interlinked with each other. Hence, to avoid repetition, those are taken together for discussion.

**11.** To ascertain as to whether the plaintiff has made out prima facie case in his favour, it is necessary to have regard to relevant documents on record and to see as to whether there is prima facie evidence on record which could sufficient to grant relief in favour of the plaintiff. Simultaneously, it is also necessary to see rebuttal evidence of the defendants if any, to adjudicate the present application on merit. Both parties have filed certain documents on record. Those are referred during next discussion.

**12.** As per contentions and arguments of the plaintiff, the suit property was in possession of his ancestors since last 70 years and thereafter, it comes into his possession. The plaintiff has obtained water connection in the suit property and paying yearly water and property taxes to the defendants. In order to support his contentions, the plaintiff along with list Exh.3 filed in all three assessment lists for different years. On perusal of the same it appears that name of plaintiff is entered to the suit property

G.P.No.185 (old 177 and 254) admeasuring length 63 feet and width 36 feet (total 2268 sq.ft.). The plaintiff along with list Exh.20 also filed tax receipts from the year 1993-1994 to 2019-2020 which demonstrates that the plaintiff has paid property and water taxes to Grampanchayat Tandulwadi in respect of the suit property. The defendants have not produced any rebuttal or contrary evidence which could discard occupancy of the plaintiff over the suit property as above. Thus, on the basis of aforesaid documents, the plaintiff prima facie proved his possession over the suit property.

13. It is alleged by the plaintiff that out of political enmity, the defendants issued him illegal notices on 25-04-2020, 02-05-2020 and 06-05-2020 for removal of encroachment made over the suit property. However, the plaintiff has not encroached upon any area of the defendants. Thus, the defendants are causing obstruction to the possession of the plaintiff and threatening to demolish construction made by him.

14. As against this, counter contention and argument of the defendants that the plaintiff has illegally started construction over open space of the defendants admeasuring length 7 feet and width 20 feet situated adjacent to southern side wall of Grampanchayat office. Hence, the defendants issued notices to the plaintiff asking him to remove encroached portion of construction.

15. Considering allegations and counter allegations as above and to resolve the controversy, it is necessary to have regard to the documents on record. The plaintiff along with list Exh.3 has filed notices issued to him by the defendants. On perusal of notice dt.25-04-2020, it appears that defendant No.1

Sarpanch, Grampanchayat issued notice to the plaintiff stating that the plaintiff has started construction without permission near Grampanchayat building and certain space belongs to Grampanchayat office over which construction is going on. However, in the said notice, description or particulars of properties of both parties like property numbers, area, boundaries etc. are not mentioned. Likewise, in the said notice, it is not mentioned that at which side of defendants' property, the plaintiff has made encroachment. It is also not made clear in the said notice that exactly how much area is owned and possessed by the defendants and out of which how much area is encroached upon by the plaintiff. Further, the second notice dt.02-05-2020 is nothing but continuation of first notice. Thus, above both notices issued by defendants to the plaintiff are vague.

**16.** The third notice dt.06-05-2020, issued by advocate of the defendants to the plaintiff shows that description of property owned by the defendants is given in the said notice and further stated that the plaintiff has made encroachment over open space of defendants' property at southern side admeasuring 7 feet x 20 feet. Though description and measurement of defendants' property is given in the said notice, it is not clarified by the defendants that on what basis the defendants reached to the conclusion that the plaintiff has made encroachment over their property at southern side near about 7 feet x 20 feet. The defendants have not filed any authenticate record like joint measurement of both properties showing encroachment made by the plaintiff over property of the defendants. It is significant to note that in notice dt.06-05-2020, the defendants given description of their property and at southern

side of their property, they have shown the suit property owned by the plaintiff and not shown open space as claimed by them.

17. Thus, the defendants have not established that they have 7 feet x 20 feet open space towards southern side of their constructed portion. In this regard on perusal of assessment lists filed by the defendants on record (along with list Exh.22) it demonstrates that the Grampanchayat office has occupancy over 42 feet (length) X 20 feet (width) (total 840 Sq.ft.). However, in the said assessments, the area of constructed portion and area of open space are not mentioned separately. Moreover, it is not clarified and proved by the defendants that at southern side of their constructed portion, remaining open space is situated. No such documentary proof is filed on record. Thus, the defendants failed to prima facie prove that they have 7 feet x 20 feet open space towards southern side of their constructed portion and the plaintiff has made encroachment over the said area. Therefore, question of invoking provisions under Section 53 of the Maharashtra Village Panchayats Act, 1959 by the defendants, does not arise.

18. On the basis of aforesaid discussion, it is prima facie proved that the defendants without any authenticate document in respect of measurement, issued notices to the plaintiff for removal of encroachment which itself amount to threat of demolishing construction of the plaintiff and obstruction to his peaceful possession over the suit property. Thus, prima facie disturbance by the defendants to peaceful possession of the plaintiff over the suit property is proved.

19. Cumulative effect of above discussion is that prima

facie the plaintiff succeeded in establishing his possession over the suit property. He also proved obstruction to his possession at the hands of the defendants. Certainly, the plaintiff has every right to protect his possession over the suit property. Definitely, if peaceful possession of the plaintiff is disturbed by the defendants, comparative hardship and irreparable loss would be caused to the plaintiff. In such circumstances, balance of convenience lies in favour of the plaintiff. Therefore, it is just and proper to allow the application made by the plaintiff. Hence, following order.

**ORDER**

1. Application is allowed.
2. The defendants or anybody claiming through them are hereby restrained temporarily from causing obstruction to the peaceful possession of the plaintiff and from demolishing or causing damage to construction erected over the suit property, till final disposal of the suit.
3. Costs in cause.

Date : 30/11/2020.

(V. V. Khulape)  
Civil Judge Junior Division,  
Kale-Kheriwade.