

Order below Exh.5
(CNR No. MHLA050001622019)

The plaintiff has filed this application under Order-XXXIX, Rule-1 and 2 of the Code of Civil Procedure for temporary injunction against defendant No. 5 restraining him from taking amount of compensation and alienating suit property, restraining defendants No. 1 to 3 from disbursing compensation to defendant No. 5.

2. Defendants No. 1 to 3 have filed say at Exh. 27, and defendants No. 4 and 5 filed say at Exh.31. They have strongly opposed the application with prayer to reject it.

3. Heard advocate for both sides at the length. Advocate for the plaintiff filed written arguments at Exh. 46 and submitted that, defendant No.4 was chief promoter of Rajsarathi Co-operative Housing Society. He manipulated the lay-out plan of the society behind back of the other promoters and members and formulated the plots in the open space of the society. He sold those plots and out of that sale amount he purchased the land at village Gugdal in name of his wife defendant No.5. Now, that land has been acquired and award of compensation is passed. But in that compensation, there is share of all plot holders of the society. Hence, defendant No.5 be restrained from taking compensation. Advocate for defendant no.5 submitted that the land at village Gugdal was purchased out of own earning of defendant No.5. It is false that the land was purchased out

of sale proceeds of the plots of the society.

4. From the pleadings and arguments of both sides, following points arise for determination.

Sr. No.	POINTS	ANSWERS
1	Does the plaintiff prove that prima facie case is in his favour ?	Yes
2	Does the plaintiff prove that balance of convenience is in his favour ?	Yes
3	Does the plaintiff prove that he will suffer irreparable loss if the temporary injunction is not granted in his favour ?	Yes
4	What order ?	Application is allowed

: REASONS :

AS TO POINTS No. 1 TO 3 :-

5. As points No. 1 to 3 are interconnected with each other, I answer them together.

6. Read the application and documents filed in this proceeding. The plaintiff has produced 7/12 extract of block No.93 of village Gugdal, sale deed dated 29.7.2010 in name of defendant No.5, Award passed in भूसंपादन/एन्एच-३६१/सीआर-२४.

7. It is contention of the plaintiff that defendant No.4 was chief promoter of Rajasarathi Co-operative Housing Society. He collected money from the members and other promoters and purchased land survey No. 121/1/3 area 2H 43 R vide sale deed

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No. 1124/1989. The expenses was done by all 100 members in equal proportion. Accordingly, M.E. No. 1273 was sanctioned. Thereafter, layout of 103 plots was submitted for NA permission. Out of these plots plot No. 31 area 200 Sq.m. for Dr. Gunale, plot No. 56 area 180 Sq.m. for society office and plot No. 57 area 180 Sq.m. for society medical clinic were kept reserved. The plots were allotted to the members. The plaintiff got plot No. 19. Thereafter, defendant No. 4 changed the layout and illegally formulated more 9 plots in the open space of the society and sold them to the defendants in Spl.C.S. No. 1/2012. Then, out of this sale proceed, defendant No. 4 purchased block No. 93 area 48 land of village Gugdal in name of his wife defendant No.5. The original plots were of the society and owned by the members, so, the land purchased at village Gugdal out of sale proceeds of the plots is owned by the members of the society.

8. Certified copy of deposition of present defendant No. 4 Vinayak recorded in Spl.C.S. No. 1/2012 is produced on record at Exh. 8. In the cross-examination, he admitted that he has formulated additional plots in the open space which was remained after allotment of plots to the members. He admitted that he sold those plots. He admitted that he had not called meeting of members before creating new plots in open space and selling them.

9. Defendant No. 4 has stated that he did not accept the sale amount for his purpose. But from the admissions given by

him in the oral evidence it is clear that he had illegally formed the plots and sold them. It will come in the evidence recorded in this suit whether defendant No. 4 accepted sale proceeds of plots for himself and out of that amount he purchased the land at village Gugdal. But, at this stage the admissions given by defendant No.4 in Spl.C.S. No. 1/2012 show that he illegally formed the plots and sold them, and so, prima facie it can be said that the land at Gugdal was purchased out of that amount. Moreover, defendant No. 5 has not produced evidence to show that she had that much amount, of her own, to purchase the land. Land acquisition Award shows that land block No. 93 of village Gugdal was acquired and the compensation amount of Rs. 13,81,190/- is awarded.

10. From the above discussion it is seen that, the plaintiff has prima facie case. The balance of convenience is in favour of the plaintiff. If the temporary injunction is not granted in favour of the plaintiff then defendant No. 5 will accept the amount from defendant No.1 to 3. Similarly due to appearance of name of defendant No. 5 on the land block No. 93, she is likely to alienate the land with help of defendant No. 4. Thus, the plaintiff will suffer irreparable loss. The defendants will not suffer any loss if injunction is granted. Hence, I answer these points in the affirmative.

AS TO POINT No. 4 :-

11. In view of the answers to points No. 1 to 3, this

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application deserves to be allowed. In the result, I pass the following order.

Order

1. Defendant No.1 to 3 are hereby temporarily restrained from disbursing the compensation amount to defendant No. 5 till disposal of main suit. Defendant No. 5 is temporarily restrained from accepting compensation as well as alienating the land block No. 93 till disposal of main suit.
2. Costs in main cause.

Date : 13.11.2021

(**P. A. Savadikar**)
Civil Judge, Senior Division,
Ahmedpur.