

MHLA170003222025



ORDER BELOW EXH.NO.05 IN R. C. S. NO.26/2025

(Sujata Pethkar and others Vs. National Highways

Authority of India and another.)

(Passed on this **16th Day of February, 2026**)

CNRNO.MHLA170003222025

The plaintiff has filed the application as per provisions under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1973 for grant of interim injunction against defendants No. 1 and 2 on the grounds that plaintiffs are running business of Hotel in land Sy. No.191/B adm. 00 H 67 R. They are owners and possessors of the said land. Ancestor of plaintiff namely Anurath @ Aniruddh Shripati Pethkar got the share of the ancestral land in Sy.No.191/B adm. 00 H 97 R and he was the owner and possessor of the said land. There is Ausa – Tuljapur road passing from the said land. Therefore, the said land is divided in two parts. The Ujani – Bembali - Osmanabad (Dharashiv) road was passing from East – South part of the said land in the ‘U’ form. The Government of India in the year 2018-2019 acquired 30 R land which was in the name of Anurath @ Aniruddh Shripati Pethkar.

2. The compensation amount is received by plaintiffs after the death of Anurath @ Aniruddh Shripati Pethkar from the Government. The remaining land of 00 H 67 R is in

possession of plaintiffs. Defendant No. 1 and 2 have fixed the boundaries of the National Highway and the suit land by placing stones between the area of suit land and National Highway. The Hotel and its parking area is away from the said stone. There is 08 R land situated towards North - East side of the land of plaintiffs. The four boundaries of said 08 R land are as follows :-

Towards Eastern and – Ujani – Bembali – Osmanabad
Northern Side (Dharashiv Road)
Towards Westers Side – Land of Dharmaraj Sagat
Towards Southern Side – National Highway.

The said 08 R land is the disputed land. There is no dispute regarding remaining 00 H 59 R land.

3. Plaintiffs have erected Hotel business in the said 08 R land. Thereafter, Talathi of Ujani objected for the business of said Hotel on the ground that the said land is not converted to N.A. land. Therefore, they cannot continue the hotel business. He further told plaintiffs to pay N.A. tax. Therefore, till today plaintiffs are paying N.A. tax to Government of Maharathstra every year. The Hotel of plaintiffs is the T point. Therefore, buses of M.S.R.T.C. are stopping there. It is the authorized stop of M.S.R.T.C. Defendants No. 1 and 2 in collusion with other businessman issued notice to plaintiffs on 14-09-2024 that, they have encroached upon the land of National Highway. The reference of Collector of Osmanabad (Dharashiv) and police was given

in the said notice. However, the land of plaintiff and disputed land comes under the jurisdiction of District Collector, Latur. Therefore, defendant No. 1 and 2 have no authority to issue such notice. It is the contention of plaintiffs that no encroachment is caused by them on the land of National Highway. Hence, it is prayed by plaintiffs that interim injunction be granted in favour of plaintiffs by restraining the defendant No. 1 and 2 from obstructing their possession over the disputed suit property.

4. Perused the say of defendant No.1. Defendant No.1 has objected the application on the grounds that it is the public functionary. It has undertaken the work of widening the National Highway No. 361. Defendant has acquired the land by exercising its powers under the various provisions of the National Highways Act 1956. It is a compulsory acquisition. The expression 'irreparable injury' does not mean that there should be no possibility of repairing the injury; it only means that the injury must be a material one which cannot be adequately remedied or compensated by damages. It does not mean an injury which is not physically capable of being remedied but one which cannot be adequately remedied by damages. Action taken by the defendant under section 26 of the Control of National Highways (Land and Traffic) Act, 2002, cannot be questioned by way of any original suit before any Court of law. Furthermore, no injunction can be granted against actions

undertaken by the Highway Administration under the various provisions of the said Act of 2002. In view of these statutory provisions, the application of the plaintiff is liable to be rejected. Hence, it is prayed by defendant No.1 to reject the application.

5. In view of facts asserted by the plaintiff in the application and denied by defendant No.1 in its say following points arose for my determination and I have recorded my findings thereon as under :-

Sr. No.	POINTS	FINDINGS
1.	Does the plaintiff prove his <i>prima-facie</i> case?	No.
2.	Does the plaintiff prove that balance of convenience lies in his favour?	No.
3.	Does the plaintiff prove that he will suffer irreparable loss if the application is not allowed?	No.
4.	What order?	The application is rejected.

REASONS

6. Plaintiffs have produced 7/12 extract of disputed suit property at Sr. No.1, notice issued by defendant no.1 at Sr. No.2, tax receipts at Sr. No.3, photos along-with google location at Sr. No.4 with list Exh.4.

7. Defendant No. 1 has filed copies of JMR and map at Sr. No.1, photographs of disputed suit property at Sr. No. 2 with list Exh. 26.

AS TO POINT NOS. 1 TO 3:-

8. Heard learned counsel for both the parties at length. The learned counsel for the plaintiff argued that, already defendants have acquired land for National Highway 361. However, defendants are trying to dispossess the plaintiff from the suit property which is owned and possessed by the plaintiff. The plaintiff is running the business of Hotel in the suit property. It is the authorized stop of M.S.R.T.C. buses. The road to Ujani was from the northern side of the suit property. The suit property situated towards the northern corner of the National Highway. The north west land is acquired by the National Highway to turn towards Ujani- Bimbli- Dharashiv road from National Highway 361. Therefore, the remaining land is owned and possessed by the plaintiff. Therefore, there is no question of encroachment by the plaintiff over the acquired land. The plaintiff is not obstructing the infrastructure project. On the contrary, defendants are trying to encroach upon the suit land. Therefore, the learned counsel for plaintiff prayed that, defendants be temporarily restrained from causing interference and obstruction in the suit property till the decision of the suit.

9. The learned counsel for defendant No.1 argued that, already the portion of land is acquired by defendants for the purpose of Highway, wherein the plaintiff is doing her business of

Hotel illegally. The Hotel is situated in the acquired land. Thereby, the plaintiff has encroached upon the land acquired by defendants causing obstruction in development of the road under infrastructure projects. Therefore, in view of directions issued by the Honourable Supreme Court, interim injunction cannot be granted to the plaintiff against development of infrastructure project. The photos produced along with the map by defendant No. 1 itself shows that, the suit property is situated in the acquired land by defendants. The plaintiff has failed to prove how irreparable loss will be caused to her, if the application is rejected. The plaintiff failed to prove her *prima-facie* Case. The balance of convenience does not go in favour of plaintiff. Hence, learned counsel for defendant No. 1 prayed that, the application be rejected.

The learned counsel for defendant No. 1 has also filed written argument (Exh. 29) on record.

10. The learned counsel for defendant No. 1 relied on the case of ***The Project Director National Highways No. 45 E and 22 National Highways Authority of India Vs. M. Hakeem and another AIR 2021 Supreme Court 3471***. It is held by the Honourable Supreme Court that,

Para No. 51- Also, injunctions against Highway projects have now become impossible to obtain in view of Section 20A of the Specific Relief Act which has been introduced with effect from 1/10/2018

Further, after reproducing the provisions of Section 20A

of the Specific Relief Act the Honourable Supreme Court held that,

para No. 52- Under the scheduled, category No. 1 deals with 'Transport' and under 'Infrastructure Sub-Sectors' listed in this category clause – (a) reads 'Road and Bridges'.

According to the Section 20A of the Specific Relief Act, inserted by way of amendment in the Act on 01/10/2018, injunctions cannot be obtained against Infrastructures Projects.

11. The learned counsel for defendant No. 1 further relied on the case of *M/S. N.G. Projects Ltd. Vs. M/S. Vinod Kumar Jain and others in Civil Appeal No.1846/2022 arising out of S.L.P (Civil) No. 2103/2022*. It is held by the Honourable High Court that,

Since the construction of road is an Infrastructure Project and keeping in view the intent of the legislature that, Infrastructure Project should not be stayed. The High Court would have been well advised to hold its hand to stay the construction of the Infrastructure Projects. Such provision is kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.

In the present suit the land is acquired by the Highway Authorities for Highway No. 361 which is an Infrastructure Project. However, it is the admitted fact by the plaintiff that the land is acquired from her land by defendants for the Highway No. 361. Therefore, this case is applicable to the present application to the extent of acquisition of land by defendants.

12. Perused the record. It is admitted fact that, there is existing business of Hotel in the suit property. It is the dispute whether the land where the business of Hotel is carried out by the plaintiff is acquired by defendant No.1. Photos produced on record by the plaintiff and defendant is secondary evidence which is required to be proved during the course of trial. Though plaintiff has produced goggle photos and map on record, it is not clear from these photos and map produced on record that, the suit property is situated away from the acquired land. The burden lies upon the plaintiff to prove the same alongwith the additional documents during the course of trial. On the other hand, it is the contention of defendant No. 1 that, the suit property is acquired by defendant No. 1 wherein the plaintiff is running the business of hotel illegally and unauthorizedly. Merely relying on the photos and goggle photos produced on record without verifying its authenticity it cannot be concluded that, defendant Nos. 1 and 2 are trying to dispossess plaintiff from the suit property.

13. In furtherance of his argument the learned counsel for defendant No. 1 has relied on the case of ***Hari Ram Nagar and Ors. Vs. Delhi Development Authority and Ors. decided on 22 August 2019***. It is held by the Honourable High Court that,

Para No.14- Though section 20 A makes provision for a suit involving a contract but does not require the relationship between plaintiffs and defendant to be contractual. The words “involving a contract relating to an Infrastructure Project” are of wide magnitude and would also, in my opinion cover a suit under the Specific Relief Act, to stall and Infrastructure Project, but by a plaintiff who has no contractual relationship

with defendants. Such stalling of an Infrastructure Project would also involve a contract. Judicial notice can be taken of, invariably all Infrastructure Projects being executed by entertain into contracts, either on a turnkey basis or of other nature. Any stalling of Infrastructure Projects at the behest of any one would certainly affect the contract under which the said Infrastructure Project being and would thus involve a contract. Had the legislature intended otherwise, Section 20 A would have provided for, "Suits by a party to a contract, to execute an Infrastructure Project" and which the legislature chose not to do so.

The Honourable High Court further observed that, Para 20-Ones plaintiffs have approach this Court for an urgent relief, it is for the plaintiffs to make out a *prima-facie* case and to show the acquire land which is available for the Infrastructure Project, as distinct from the land with respect to which interim relief is claimed. The infrastructure Project cannot be stalled in such a casual manner, without even establishing where the acquired land is, special even acquisition is admitted.

In the present suit the plaintiff has admitted the acquisition done by the defendants. However, the plaintiff failed to *prima-facily* prove the land acquired is distinct from the suit property. Therefore, the above case is applicable to the present application.

14. Thus, plaintiff failed to prove *prima-facily* that, she has not caused any encroachment upon the land acquired by defendant No. 1, suit property is distinct from the land acquired by defendants and plaintiff is owner and possessor of suit property situated away from the boundary of land acquired by defendants.

Therefore, balance of convenience does not go in favour of plaintiff. No irreparable loss will be caused to the plaintiff if the application is rejected. Hence, I answer point Nos. 1 to 3 in the negative.

AS TO POINT NO. 4:-

15. It is proved in the discussion of point Nos. 1 to 3 that, the plaintiff failed to prove her *prima-facie* case, balance of convenience does not lie in favour of the plaintiff. No irreparable loss will be caused to the plaintiff if the application is rejected. Therefore, the application is liable to be rejected. Hence, in answer to point No. 4, I pass following order :-

ORDER

1. The application is rejected.
2. Ad-interim injunction granted in favour of plaintiffs in view of order passed below Exh.10 is vacated.

Date:-16.02.2026.
Place:- AUSA.

(P I. Mokashi)
Civil Judge, Senior Division,
AUSA.