

**RCS No.60/2018  
Madho @ Mahadeo .vrs.  
Gram Panchayat Virli**

**ORDER BELOW EXH.5**

(passed on 4<sup>th</sup> September, 2018)

Applicant filed Suit for declaration and permanent injunction along with this application u/o 39 Rule 1 and 2 of C.P.C.

2] He submitted that he is resident of Virli village and agriculturist by profession. He erected cow shed for his cattle since 20 to 22 years at Virli. Measurement of cattle shed is 25x28 =764 sq.ft. He further submitted that no objection was taken by villager to his cowshed. Non-applicant on 25.2.2018 issued Notice about encroachment. That Notice was given to son of applicant namely, Purushottam. Thereafter applicant informed Non-applicant that he has wrongly sent Notice to his son. Thereafter Non-applicant satisfied with information of applicant and hence, did not take action against applicant.

3] Thereafter in April, Non-applicant issued one Notice to his son. Again applicant meet with Non-applicant and informed him that he himself erected cow-shed on suit land. Applicant issued notice to Non-applicant through his counsel Mr. B.K. Pongde on 30.5.2018. In that Notice he informed that he made encroachment on Government land. He submitted that he made encroachment on government land

and not on Gram Panchayat land. Government has not taken action against applicant till today. Because of notice of Non-applicant grave threat is caused to applicant. Hence, he filed this application along with Suit.

4] Non-applicant issued Notice vengefully to applicant. Applicant has prima facie case and balance of convenience lies in his favour. If application is not allowed he will suffer irreparable injury.

5] Non-applicant filed reply on Exh.20 and opposed the application. He submitted that suit of applicant is illegal. He has not issued Notice as per section 180 of the Gram Panchayat Act. Hence, suit is liable to be rejected. He submitted that as per the Gram Panchayat Act, all properties releases places, ways, paths comes under the jurisdiction of Gram Panchayat. Grampanchayat has duty to manage public places and implement development scheme.

6] Applicant did not comply Order 7 Rule 3 of C.P.C. Hence, suit is liable to be rejected. Applicant encroached on Grampanchayat land since 3 months. Because of encroachment of applicant, villagers are facing trouble and hardship. Villagers used to worship at festival of Dipawali. Durga Mahil Saving Group, Virli filed application for removing encroachment of the applicant. Thereafter Non-applicant issued Notice to applicant and other encroacher. Grampanchayat Virli before Notice took resolution on 23.01.2018. Thereafter

Tahsildar Umrer granted permission on 7.7.2018. Applicant has no prima facie case and balance of convenience does not lie in his favour.

7] Heard Ld. Advocate Shri. B.K. Pongde for the plaintiff and Adv. S.M. Pimpalkar for defendant.

8] Considering nature of controversy, the following points arise for my consideration and record my findings against them as under :

<u>SR.NO</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether plaintiff has proved a prima-facie case ?	<b>Affirmative</b>
2	Whether plaintiff would suffer irreparable loss if injunction is granted ?	<b>Affirmative</b>
3	Balance of convenience lies in favour of applicant ?	<b>Affirmative</b>
4	What order?	<b>..As per final order.</b>

### REASONS

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

9] All points are interconnected, Hence I took them for discussion under common heading.

Learned Counsel for plaintiff argued that no objection was taken by any villagers. Grampanchayat wrongly issued Notice to Purushottam on 25.02.2018. In April, defendant issued again Notice to applicant. Because of political rivalry, Non-applicant want to demolish his cow-shed. He pointed out Exh.4 Photograph and argued that there is no encroachment on road of the Grampanchayat. He has made encroachment o Government land. He argued that as per Grampanchayat Rule, the Collector has not given written order and authority to remove the construction. For filing this suit, Notice is not necessary.

10] On the other hand, learned counsel for Non-applicant Mr. Pimpalkar submitted that there is no affidavit which show that cow-shed is old one. Plaintiff in this year constructed his cow-shed. Plaintiff has not assessed his property for Tax since 22 years. Story of 20 years possession is false. Encroachment is admitted by plaintiff. He argued that as per section 57 of Grampanchayat Act, land are vested to Grampanchayat. He also filed copy of G.R. on record.

He further argued that as per section 41 of Specific Reliefs Act, applicant had efficacious relief available to challenge the Notice u/s.53 but applicant did not avail the remedy. In support of his argument, he relied on Judgment of Hon'ble Bombay High Court reported in 2014 Mh.LJ Vol.5 page No.189, Village Panchayat Antora. vrs. Wasudeo Ramchandra Mohod. I have gone through the

Judgment of Hon'ble High Court. With due respect Law laid down is not applicable to the present facts of the case.

11] In this case, this is not disputed that the applicant erected his cow-shed on land which is within the jurisdiction of Grampanchayat Virli. As per Section 53 (2) of the Act, Grampanchayat has power to remove the encroachment. As per the document No.7 filed on Exh.27 by defendant, encroachment is shown to be 10 years before. Therefore, as per the rules of Grampanchayat, Non-applicant has not vested with the power to remove the encroachment. This is not disputed that suit property is vested in Grampanchayat as per Notification dt.01.11.1976.

12] From the document on record and affidavit, action of Non-applicant prima facie illegal. It is settled rule that if Law mandate that particular action required to be done in particular manner and if that action is not done in that manner, then action is illegal. In such cases, court has jurisdiction to try lis, though civil suit is expressly bar. Therefore, illegal action of the Non-applicant cannot be protected in eye of law. Applicant prima facie prove his case, this is clear that if the Grampanchayat demolish his cow-shed he will suffer irreparable injury. Balance of convenience lies in favour of applicant. From discussion above, I answer points No. 1 to 3 in affirmative.

**AS TO POINT NO.4 :-**

13] In view of the answer given to point No.1 to 3 in Affirmative, applicant proved his prima facie case, balance of convenience and irreparable loss to him. Hence, I pass following order :-

**ORDER**

- 1) Application is allowed.
- 2) No order as to costs.
- 3) Non-applicant, his agent, servant or any person acting on his behalf are directed not to disturb his possession till decision of the suit.

Umrer,  
Date: 04.09.2018

(A.V. Pandit)  
Jt. Civil Judge (Jr.Dn.)  
Umrer.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of Order are word to word, as per original Order.

<i>Case argued on</i>	:	23.07.2018
<i>Order dictated on</i>	:	04.09.2018
<i>Transcription ready on</i>	:	04.09.2018
<i>Order checked and signed on</i>	:	04.09.2018

**Name of Stenographer : Mrs. S.D. Karemore**

/home/ubuntu/Deshmukh, Pandit Saheb/Jt.Civil Court /Civil Matters/Misc. Orders/English Orders/September,18/