

RCS No. 21/2022
Abdul Salam--vs-- Chief Officer, Nagar
Panchyat, Bhiwapur.

ORDER BELOW EXH.5
(Passed on 5th May, 2022)

The plaintiff filed the present application for seeking the temporary injunction as per Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908.

2] In short, the case of plaintiff is that he has Shop as Property No.1655 (Hereinafter be referred as 'suit property'). The suit property is situated on Gat No. 320/1 Area,0.69 H.R and Gat No.320/2 Area 0.10 H.R. which is a government land. The plaintiff is carrying his business on the suit property for livelihood of his family. He is in the peaceful possession of the suit property since long year and till the date no one has obstructed his possession over the suit property. The plaintiff has the concrete construction of shop on the suit property.

3] It has further stated that plaintiff is paying regular tax with defendant Nagar Panchayat, Bhiwapur. Prior to that, he has paid tax to the Gram Panchayat and also paid fine as imposed by Tahsildar in respect of the suit property. However, on dt. 30/3/2022, the defendant Nagar Panchayat, Bhiwapur issued Notice to him to remove his encroachment on the suit property for the purpose of the construction of Bus stand and public facility center. The plaintiff is in peaceful and settled possession of the suit property since long. If he is evicted from the suit property, he will suffer

irreparable loss as his livelihood is depending on the business which he carries in the suit property. Hence prayed to grant the temporary injunction against the defendant till the final disposal of the suit.

4] On the other hand, defendant Nagar Panchyat , Bhiwapur appeared and filed it's reply below Exh.15. It has stated that defendant Nagar Panchyat, Bhiwapur, has decided to construct the Bus drop off shed and shops at Bhiwapur for providing the facilities to the travellers of the locality as there is huge problem of traffic and accident in the said vicinity. Accordingly, said proposal was put up before the District Panning Committee, Nagpur and for that purpose the site selection was made on Survey No. 320/1 and 320/2 out of which they require land admeasuring 0.315 H.R. The said land is owned by the Forest Department of State Government and there was required the permission for obtaining the said land. Accordingly, for seeking the permission the resolution dt.3.11.2021 was passed and Forest Department permitted the use of said land.

5] The Collector allotted said land to the defendant and mutation entry was also recorded. In view of said allotment, the defendant is owner of the said land. Further, the Collector also granted permission and sanction in favour of defendant to construct the bus stand and public facility center by granting the approval for Rs.98.43 Lakhs. The Technical Sanction is also granted by the Public Work Department by approving the said estimate. The State

Transport Department also issued no objection certificate for the construction of bus stop and shop centers. Accordingly, E-tender notice was published for the construction of bus stop and shop centers and it has received offers from the concerned bidders which is to be finalized.

6] However, defendant Nagar Panchayat, Bhiwapur found an encroachment of the plaintiff over the said land by making the unauthorized construction. Therefore, it has issued the notice to the plaintiff for removing his encroachment for purpose of construction of public project. It has further stated that the defendant Nagar Panchayat has passed the resolution for the construction of the bus stop and shop centers for protecting the interest of the public at large and said public project is much ahead and E-Tender process also is undertaken by it. There is interest of the public at large in the said project and it can not be stalled at the behest of plaintiff who is an encroacher upon it's land. If the said project is stopped the defendant will suffer huge loss as huge amount is involved in the said project and which is for the benefits of the public at large. Hence, prayed to reject the relief of the plaintiff.

7] Points for consideration along with my findings thereon, are as follows:

Sr. No.	<u>POINTS</u>	...	<u>FINDINGS</u>
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1]	Whether plaintiff has prima facie case in his favour?	...	Negative
2]	Whether the balance of convenience lies in favour of plaintiff.	...	Negative
3]	Whether the plaintiff will suffer irreparable loss, if the application is rejected?	...	Negative
4]	What order ?	...	As per final order.

REASONS

8] Heard the learned counsel for the plaintiff and defendant. The parties relied on certain documents and they will be referred hereinafter if required.

As to the point no. 1 to 3 :-

9] As these points are interlinked with each other, hence to avoid the repetition, I have taken these points together for discussion.

10] The learned counsel for plaintiff has argued that plaintiff is carrying the business on the suit property since long and he has peaceful possession on the said property. The defendant Nagar Panchyat issued illegal notice to the plaintiff for removal his encroachment of the suit property. It has further argued that livelihood of the plaintiff and his family is depending upon the earning from the business which is carried out by the plaintiff in the suit property. The plaintiff is paying taxes to the defendant Nagar Panchyat,

Bhiwapur. Further, the plaintiff has the electricity connection to the suit property. It has further argued that prior to the present resolution in respect of construction of the Bus stop, the defendant Nagar Panchayat, Bhiwapur had passed the resolution dated 30-10-2017 wherein it was decided to construct the Bus stop on government land beside Tahsil Office, Bhiwapur. Despite of said resolution is in existence, the defendant Nagar Panchayat passed present resolution for construction of Bus stop on the suit property. Furthermore, while issuing the notice to the plaintiff, no provision has been mentioned by the defendant that under which provision the notice is issued. Furthermore, while taking the approval from the Collector, Forest Department and Transport Department, the defendant Nagar Panchayat has not disclosed the facts of the construction of the plaintiffs over the suit property. The plaintiff has only the earning source from the business which he is carrying in the suit property and the livelihood of his and his family depending on the business. If the plaintiff is evicted, he will suffer more loss which cannot be compensated in the terms of money.

11] The learned counsel for plaintiff relied upon the judgment **reported in 2022(1) All MR 672 Qutubddin Shaikh and Ors—vs--Nandanvan Co-operative Housing Society Ltd and others**. He has argued that as per the view taken in the said judgment, having allowed the encroachment for long time, one cannot removed the others without following due procedure of law.

12] The learned counsel for plaintiff also relied upon the following judgments :-

- 1] *Baban Anantrao Nike -vs-- Sau. Pramila Uttamrao Yenare and others.***
- 2] *The State of Orissa -vs-- Madan Gopal Rungta, (decided on 25th October, 1951).***
- 3] *Mansharam Mirchumal Sangtani and ----vs--- Dhule Nagar Palika (decided on 14 January, 1994).***

It has argued on behalf of plaintiff that as per the view taken in above cited judgments, the possession of the plaintiff is lawful and settled and needs to be protected as plaintiff has the prima facie case in respect of his possession over the suit property.

13] On the other hand, the learned counsel for defendant has argued that defendant Nagar Panchayat, Bhiwapur is allotted the Survey No. 320/1 and 320/2, Area 0.315 H.R. by the Forest Department for the construction of Bus drop off shed and shops. Further, the Collector also granted the permission and the approval for the said public project for Rs.98.43 lakhs. Furthermore, the technical sanction is also granted from the Public Work Department and State Transport Department also issued no objection certificate for the said project. The defendant Nagar Panchayat has published E-Tender notice calling upon the offers from the respective bidders in respect of construction of the aforesaid project. Thus, there is involved the interest of public at large and the plaintiff has unauthorized

construction which is necessary to remove for the purpose of construction of the Bus stop and shop centers. The plaintiff has no any legal right upon the suit property.

14] He has further argued that mere paying the taxes with defendant can not be stated that the plaintiff has the legal right upon the suit property. The defendant being the owner of the suit property has established its prima facie case and also balance of convenience tilts in favour of defendant as the defendant is protecting the interest of public at large and for that huge amount is involved. In this respect, he has relied upon following Judgments :

1] *Raunaq International Limited -vs- I.V.R Construction Limited and others (1999)1 Supreme Court Cases 492.*

2] *Municipal Counsel Pusad -v-s- Kundanlal Mohanlal Jaiswal and others.*

15] He has argued that as per the view taken in the aforesaid judgment while deciding the injunction application, the public interest should be weighed against the individual interest. Furthermore, the person who has no any legal right can not be allowed to continue into the possession of the property. Ultimately, prayed to reject the prayer of temporary injunction of the plaintiff.

16] Now, in view of above argument of both the sides, it has to see whether plaintiff establishes his prima facie case. Upon perusal of the contention of this application, it

appears that the plaintiff has not disputed that the suit property is situated upon the government land. The defendant Nagar Panchayat has produced on record, document no. 5 which is the copy of order of Forest Department, Forest Division, Nagpur dtd. 01-02-2022 and document no. 6 in respect of 7/12 extract of the survey no. 320/1 and 320/2 and document no.7, which is 'C' copy of measurement of aforesaid Survey number. Thus, the said documents produced on record shows that the survey no. 320/1 and 320/2, Area 0.315 H.R is allotted to the defendant Nagar Panchayat, Bhiwapur for the purpose of public work. The said documents shows the title of the defendant Nagar Panchayat upon which there is construction of the suit property of the plaintiff. Now, it is the case of plaintiff that though the said property is situated in the government land, the plaintiff has continuous and settled possession over the same and he is paying taxes to the defendant of the suit property.

17] From the said facts, it appears that upon the suit property there is legal ownership of the defendant Nagar Panchayat, Bhiwapur. No doubt, that the plaintiff has the possession over the suit property upon the government land and he appears to be an encroacher upon the government land. In the light of said facts, now it has to consider whether the possession of the plaintiff can be protected as an encroacher. In view of the judgment cited above ***Municipal Counsel Pusad—vs- Kundanlal***, wherein the facts are that the respondents were having an

encroachment upon the land of petitioner and petitioner issued the notice under Maharashtra Municipalities, Nagar Panchyat and Industrial Township Act 1965,(Hereinafter referred as Municipal Act) to the respondents for removal their encroachment as the petitioner has passed the resolution for the construction of road widening and erection of shopping center. Though the respondents paid the charges towards the occupation of the land to the petitioner, it has held that the said fact does not create any legal relationship between Municipal council and such person. It has also observed that paying charges to the petitioner does not confer any legal right upon the respondents. The respondents has illegal and unauthorized possession over the land of petitioner and not removing the said unauthorized construction of the respondents, causes the prejudice to the interest of public at large. It has held that the respondents are being in unauthorized and illegal possession of the property of petitioner cannot be stated that they have the prima facie case and accordingly, upheld the order of Trial Court in which the temporary injunction of the respondents was rejected. Here, it is also necessary to mention that in the above cited judgment, there is reference of the judgment **Mansaram Mirchumal Sangtani -vs- Dhule Nagar Palika** and after considering the said judgment, it has held that the respondents have no any legal right as they are the encroacher upon the land of petitioner.

18] In the case in hand, the facts of above cited judgment **Municipal Counsel Pusad—vs- Kundanlal** are

squarely applicable as in the case in hand also the defendant Nagar Panchayat, Bhiwapur is the owner of the land upon which there is the construction of the suit property of plaintiff and defendant Nagar Panchayat has passed the resolution for carrying out the earmarked development work of constructing the Bus stop and public shop centers and therefore, the notice issued by the defendant Nagar Panchayat Bhiwapur under the Municipal Act appears to be legal for removal of encroachment of the plaintiff.

19] So far as the judgment cited by the plaintiff above that **Qutubddin Shaikh -v-s- Nandanvan Co-operative** is concerned, in that judgment the dispute is between the co-operative society and the petitioner which are the private parties and there does not involved the interest of public at large as in the case in hand. The facts and circumstance of the said judgment are not applicable to the case in hand and therefore, the said judgment is not helpful to the case of plaintiff.

20] The plaintiff also relied upon the judgment of **Baban Anantrao Nike—vs- Sau. Pramila Yenare & Ors.** In the said judgment the dispute is in respect of specific performs of contract and declaration and therefore, the facts of the said judgment are different from the case in hand and hence with the due respect the said judgment is not applicable to the case in hand.

21] The plaintiff further relied upon the judgment of **State of Orrisa—vs- Mandan Gopal Rungta**. In the said judgment the specific issue was in respect of to determine whether the direction in the nature of interim relief only could be granted under Article 226. Further, it has observed that an interim relief can be granted only in the aid of and ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. Definitely, while granting the interim relief it should be seen that whether the main relief sought by the parties can be granted. Now, in the case in hand as per the plea of plaintiff, he appears to be an encroacher upon the government land which is the name of defendant Nagar Panchayat, Bhiwapur and I do not see the possession of plaintiff is legal one over the said land and his final relief does not appear to be sustainable and therefore, in my view, the interim relief also can not be granted. Thus, in view of the above discussion, I do not see that the plaintiff has established his prima facie case.

22] The plaintiff has stated that he is carrying the business in the suit property and his livelihood depends upon the earning from the business in the suit property. He has further stated that he has no any other source of earning than the business in the suit property. From the case of defendant, it appears that they have passed the resolution for the purpose of carrying the construction of the Bus stand and public facility center. From the documents produced on record, it appears that the

defendant has obtained the approval from the Collector, State Transport Department, Public Works Department and also issued E-Tender notice for the construction of bus drop of shed and shops. The said project appears to be a public project and involved the interest of public at large. In the above cited judgment **Raunaq International Ltd-vs- I.V.R construction**, The Hon'ble Apex Court has observed what are the elements of public interest and held that the interim order should not be granted without considering the balance of convenience, public interest involved and the financial impact of an interim order. It has also observed that while granting injunction or stay, the Court should arrive at the proper balancing of competing interest and should see the overwhelming public interest.

23] In the light of the observation of said judgment, now in the case in hand, it has to see in whose favour balance of convenience tilts. The plaintiff is seeking the relief of temporary injunction against the defendant Nagar Panchayat, Bhiwapur. The defendant Nagar Panchayat Bhiwapur has issued the notice under Municipal Act to the plaintiff for removal his encroachment for the purpose of carrying the development work construction of Bus drop of shed and shops. The said work appears to be the public project and there involves the interest of public at large. Furthermore, for the said project, there is the grant of 98.43 lacs. Thus, the said public project has the impact of the public at large than of individual present plaintiff. Therefore, the balance of convenience tilts in favour of

defendant. Furthermore, in the said project, there involves the larger amount for the construction of aforesaid development work of bus drop off shed and shops, therefore, the defendant will suffer the more loss than the plaintiff if the present application is allowed.

24] The learned counsel for defendant drew my attention to the provision of Section 41(ha) of the Specific Relief Act. He has argued that as per the said provision, the defendant is carrying out the public project for the interest of public at large and as per the said provision injunction can not be issued in the said circumstance. Obviously, the said provision talks about when the injunction can be refused. Considering the facts of the case that the defendant has decided to carry out the public project and therefore, in my opinion the said project can not be stalled at the behest of present plaintiff in view of the aforesaid provision.

25] Thus, in view of the above discussion, the plaintiff has failed to establish the prima facie case and therefore, I answer to point no.1 in negative and the point no. 2 and 3 are also answered in negative.

As to the point No.4 :-

26] As my answer to the point no. 1 to 3 in negative, the present application is liable to be rejected. The cost of application will be decided in the final decision of the case. In answer to the point no. 4, I proceed to pass the following

order.

ORDER

- 1] Application (Exh.5) is rejected.
- 2] Cost in cause.

Bhiwapur,
Dated:05.05.2022

(Smt. T. S. Wakdikar)
Civil Judge (Jr.Dn.)
BHIWAPUR

CERTIFICATE

I affirm that the contents of this P.D.F. File of judgment/order are word to word as per original judgment/order.

Name of Stenographer : Manoj T. Burbure

to C.J.J.D. & J.M.F.C., Bhiwapur.