



(CNR No. MHNS290002382024)

Subhash Bhagaji Ambavne & Ors.
v/s.
Parsaram Yashvant Dhande & Ors.

ORDER BELOW APPLICATION (EXH. 5)
IN REGULAR CIVIL SUIT NO. 83 OF 2024

1) This is an application filed by plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short 'CPC'). So also, defendant Nos. 1 to 11 and 13 to 15 have filed their written statement and say (Exh. 54) to the application.

2) Plaintiffs have filed the present suit seeking a decree of permanent injunction against defendants, restraining them from entering their agricultural land bearing Gat No. 77, admeasuring 1H 98R, situated at Deshmukh Shivar, Village Padali, Taluka Igatpuri, District Nashik, (*hereinafter referred to as 'the suit property'*) and from constructing any road over the said property. They alleged that defendants, without any authority of law, commenced road construction through the suit property using JCB machinery, thereby violating their possessory and ownership rights. The present application (Exh. 5) has been filed seeking temporary injunction to restrain the ongoing road work during the pendency of the suit. Plaintiffs asserted that, the construction is being carried out without notice, acquisition, or compensation, and if allowed to continue, will cause irreparable injury and permanent loss to their only source of livelihood.

3) They further stated that, they are resident of village Padali, Taluka Igatpuri, District Nashik, have filed the present suit for permanent injunction restraining defendants from interfering with their peaceful possession and enjoyment of their agricultural land i.e. suit property and from constructing a road through it. They further stated that, the suit property is their ancestral agricultural property, inherited from their forefathers namely Bhaga Panu Ambavane and Bandu Madhukar Ambavane, and that they are personally cultivating it. They claimed that their names are recorded in the 7/12 extract and other revenue records, and that the suit property is in their exclusive possession. They specifically asserted that the suit property has not been acquired by any government agency, nor is it reserved for any public project, nor has any acquisition process been initiated in respect of it.

4) They further alleged that after the decision of Vahivat (Road) Case No. 20/2023, dated 30/04/2024, defendants nos. 2 to 15, including the Sarpanch, Gramsevak, members of the Gram Panchayat, and other persons, entered the suit property with a JCB machine and commenced digging and leveling operations with the intention of constructing a road through the suit property. They further alleged that this action was taken without any notice, permission, or legal authority and without following due process of law. They claimed that no notice was issued under the Land Acquisition Act or the Maharashtra Land Revenue Code, and that the entire construction activity is unauthorized. They further submitted that when they objected to defendants' action, they refused to provide any documentation or justification and continued

the construction work forcibly.

5) They further pleaded that the construction of the road through the suit property will divide it, damage its fertility, and render it unfit for cultivation. They asserted that agriculture is their only means of livelihood, and that the loss caused by the road construction is permanent and irreparable. They further stated that, the suit property would lose its character as cultivable land, and no monetary compensation can remedy such harm. They further contended that, if defendants are not restrained by way of temporary injunction, they will complete the road work, and the purpose of the suit will be defeated. They claimed that, the harm caused to them cannot be undone and that urgent interim relief is necessary to prevent further injury. If injunction is not granted, plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. The present application (Exh. 5) has been filed seeking temporary injunction to restrain the ongoing road work during the pendency of the suit and to pass any other or further orders as may deem fit and proper in the interest of justice.

6) Defendants Nos. 1 to 11 and 13 to 15 filed their Written Statement and Say (Exh. 54) and denied all allegations of plaintiffs in their application and resisted the same. It is contended by defendants Nos. 1 to 11 and 13 to 15 that, while plaintiff's name may appear in the revenue records, a public road has long existed over a portion of Gat No. 77 i.e. suit property. This road has been in continuous and uninterrupted use by the villagers for many years and forms part of the local public pathway network. The road work

presently being undertaken is not a new construction but a strengthening and improvement of the existing village road, sanctioned and executed under a government-funded rural development scheme. Therefore, defendants submitted that, no acquisition process or notice is legally required. The road is a pre-existing public utility, and the work is being carried out under valid administrative authority as part of ongoing village infrastructure development.

7) They further clarify that government funds have already been spent and the road work is almost complete, except for a small stretch passing through the suit property. Plaintiffs objections have been raised at a belated stage, despite their awareness of the road's historic usage. They suggested that plaintiffs are attempting to obstruct a nearly completed public project for personal motives, at the cost of hardship to the entire village community. It is also submitted that any alleged loss to plaintiffs is neither irreparable nor beyond monetary compensation. The portion of the suit property affected is minimal, and public interest outweighs private inconvenience. They further stated that, the balance of convenience lies in favour of allowing completion of the road, which benefits many villagers. Conversely, halting the work now would waste public money and adversely affect the village at large. They denied all claims of wrongful conduct and strongly oppose the present application. They submitted that there is no prima-facie case, that irreparable injury is not made out, and that the balance of convenience clearly favours defendants. Accordingly, they prayed for dismissal of the application (Exh. 5).

8) Heard rival parties at length. Advocate for plaintiffs submitted that, temporary injunction may be granted in favour of plaintiffs till the disposal of case. *Per contra*, defendants prayed for rejection of the said application.

9) Following points arises for the consideration and my findings on them are as follows for the reasons stated below :-

<u>POINTS</u>	<u>FINDINGS</u>
(1) Whether plaintiffs prove <i>prima-facie</i> case to show their entitlement to relief of temporary injunction during pendency of the suit ?	... No.
(2) Whether plaintiffs prove that balance of convenience lies in their favour ?	... No.
(3) Whether plaintiffs prove that they would suffer an irreparable loss which cannot be compensated in terms of money if the relief of temporary injunction is not granted in their favour ?	... No.
(4) What order ?	... As per final order.

REASONS

AS TO POINT NOS. 1 TO 4 :-

10) Perused the plaint, application (Exh.5), written statement and say (Exh. 54). Perused documents filed by plaintiffs below list (Exh. 3 & 70, 79) i. e. 7/12 extracts, copy of order of Tahasildar (Igatpuri) dated 30.04.2024 in Vahivat Case No.

20/2023, notice issued by plaintiffs to Tahasildar, Igatpuri dated 06.05.2024, village map, mutation entry No. 1326, photo copy of Aadhar Card of plaintiff no. 1, copy of Vahivat case No. 8/2016 dated 27.02.2017, notice dated 21.06.2024 issued by Circle officer, Wadhivare, Igatpuri, Notice issued by Circle officer, Wadhivare, Igatpuri dated 11.07.2025, 17.07.2025, 03 photographs of the suit property, letter issued by Circle Officer, Wadhivare dated 18.02.2025, Notice issued by Talathi, Igatpuri dtd. 17.07.2025 etc.

Per contra, defendants nos. 2 to 15 have filed documents below Exh. 61 i.e. Resolution dated 22.04.2020 by Grampanchayat Padali Deshmukh, letter dated 24.11.2022 issued by Tahasildar to Circle Officer, Wadhivare, Igatpuri, complaint application dated 24.12.2022 by villagers, Copy of order dated 30.04.2024 in Vahivat Case No. 20/2023, 07 photographs of the suit property, affidavits filed by adjacent land owners i.e. Balu Walu Lohakare and Parashram Kisan Shinde dated 17.01.2025, 7/12 extract of Gut No. 79 and 97/1.

11) Requirements for granting temporary injunction has been settled in catena of Judgments of the Hon'ble Supreme Court, they are -

a) **Prima-facie Case** :-

A suit consists of a seriously disputed question. The fact in those questions encourage the probability of entitlement to relief for the plaintiff or the defendant. A prima-facie case does not mean that the plaintiff or the defendant come-up with an irrebuttable arguments that will in all probabilities succeed in a trial. It only means that the case they build for their injunction must be meritorious enough, not to be rejected instantly.

b) **Irreparable Loss** :

If an irreparable loss were to be incurred by an individual with regards to the suit before his legal right is established in the trial, it would be a cause of grave injustice. However, it must be noted that illustrations like frustration over a loss of something with sentimental value will not be regarded as irreparable damage. On the other hand, things that by nature can be remedied will be considered to be irreparable damage if the Court were to have no fair or reasonable address. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Something, the term irreparable damage refers to be difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

c) **Balance of Convenience** :-

The Court needs to compare the case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

Essentials to Avail Temporary Injunction :-

- i) The plaintiff must establish a prima-facie case in their favor.
- ii) The plaintiff must demonstrate that they will suffer **irreparable injury or harm** if the injunction is not granted.
 - * The court will weigh the **balance of convenience**.
 - * This means considering whether it is more just and convenient to grant the injunction or to deny it.

* The court takes into account the **interests of both parties** and the public interest in making this determination.

iii) The plaintiff must show that there is **no other adequate remedy** available. If monetary damages can adequately compensate the plaintiff, the court may be less inclined to grant an injunction.

12) In Proceeding No. Vahivat/Road/Case No. 20 of 2023, Tahsildar of Igatpuri passed an order dated 30.04.2024 on an application concerning declaration of a public road. The matter involved a dispute about the existence and public usage of a road passing through the suit property i.e. Gut No. 77, Village Padali, Taluka Igatpuri. On perusal of documents filed by the parties it prima-facie reveals that, a local inspection and panchanama were conducted, and oral and documentary evidence was recorded. After considering the evidence, Tahsildar, Igatpuri held that a public road had existed over the said suit property and had been used by the villagers for many years. The Tahsildar, Igatpuri accordingly directed that the said route be considered a public road.

13) In Usage (Vahivat) Case No. 8/2016, Tahsildar, Igatpuri passed an order dated 27/02/2017 in a dispute regarding possession and usage of a strip of land claimed as a public path. The applicants in said case contended that the land was in continuous public use. The Tahsildar, Igatpuri recorded statements of witnesses, conducted a site visit, and reviewed past records. Based on this inquiry, it was held that there is no used to village road, or no public right of way was established.

14) The Gram Panchayat of Padli Deshmukh, by resolution dated 22/05/2020, letter issued by Tahasilar, Igatpuri dated 24/11/2022 to the Circle Officer, Wadhiware, Igatpuri acknowledged the existence of a public road passing through Gut No. 77 i.e. suit property, which is part of the local access network. It affirms that the road is regularly used by villagers and is part of the recognized public infrastructure. The resolution supports the view that the road is not newly created but part of a long-existing public facility maintained by the Panchayat.

15) Plaintiffs asserted that the suit property bearing Gut No.77 is their exclusive ancestral agricultural property and that defendants are unlawfully constructing a new road through it without acquisition, notice, or compensation. However, to determine whether a *prima-facie* case is made out, the Court must assess whether there is credible material to suggest the non-existence of a public road over the land.

16) Defendants have produced substantial documentary evidence to the contrary. In particular, Usage Case No. 8/2016, dated 27.02.2017, Tahsildar, Igatpuri conducted an independent inquiry and held that a right of way existed based on customary usage. These findings are supported by the Gram Panchayat resolution dated 22/05/2020, which affirms the existence of a public road and details the government-sanctioned improvement work being carried out. While these findings are not conclusive for final adjudication of rights and title, they do carry weight at the interim stage to assess *prima-facie* credibility. Plaintiffs have not

been able to dislodge this evidence or show any contrary official record denying the existence of a public road. On the contrary, the Tahsildar's judicial determination, following due process, strongly supports the existence of *perpetual public usage* over the disputed land. In this backdrop, plaintiffs have failed to establish a *prima-facie* case that no road of general public usage exists through the suit property i.e. Gut No. 77.

17) Plaintiffs alleged that the construction of a road will bifurcate their land and render it unfit for cultivation, thereby causing permanent loss of income. However, defendants contend that only a narrow portion of the land is being used, that the work involves strengthening a pre-existing road, and that the agricultural usability is not entirely obstructed. The alleged harm is thus compensable in monetary terms. There is no material to show that the entire landholding will become useless or destroyed. Hence, plaintiffs have not demonstrated that the injury is irreparable in nature.

18) In contrast, the harm claimed by plaintiffs is personal and, even if true, is quantifiable and compensable in monetary terms. Moreover, plaintiff's objection has been raised at a belated stage, despite the long standing public usage of the road. Therefore, the balance of convenience clearly lies in favour of defendants and in permitting the road work to proceed.

19) In view of the above findings, plaintiffs have failed to satisfy the three essential criteria for grant of temporary injunction:

prima-facie case, irreparable loss, and balance of convenience. The records and earlier orders relied upon by defendants indicate the existence of a public road, and plaintiff's claim does not outweigh the larger public interest. This Court has also taken into consideration the larger public cause versus the private grievance of plaintiffs. If plaintiffs ultimately succeeds in their suit, the government authorities concerned may be directed either to initiate acquisition proceedings under law or to restore the suit property to its original status by removing the road from the disputed land. Therefore, the prayer for temporary injunction does not merit acceptance at this stage. So, in my opinion, plaintiffs have failed to prove their *prima-facie* case to show their entitlement to the relief of temporary injunction during pendency of the suit. The balance of convenience does not lie in their favour and they would suffer an irreparable loss which cannot be compensated in terms of money if the relief of temporary injunction is not granted in their favour. Hence, I answer my findings on Point Nos. 1 to 3 in the negative and in reply to Point No. 4, I pass the following order -

ORDER

- (1) The application stands rejected.
- (2) Costs in consequences of the suit.

Date : 31/07/2025.

(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri.