

Order Below Exh. 05 in R.C.S. No. 219/2023
(Dilip Kshirsagar Vs. Agriculture Product Market Committee & Ors)
[Passed On 01.12.2023].

This is a suit for perpetual injunction thereby restraining the defendants from dispossessing the plaintiff and not to interfering or obstructing into peaceful possession of plaintiff over the tin shed erected on open plot in APMC Market, Pathri admeasuring 15 X 30, surrounded by

East : Road of APMC,

West : APMC open Space (Animal Bazar),

South : Tin shed

North : Tin shed

(here in after referred as a “suit property”).

A-Thumb nail sketch of the facts as under -

2- It is the case of the plaintiff that, the plaintiff is tenant of the defendants and doing the business of sale and purchase of cotton under the license granted by the defendants and also doing trading business. The defendants are office bearer of Agriculture Product Market Committee (in short “APMC”) established, in year 1991. The defendant No.1 is the President and defendant No.2 is Secretary of the APMC, Pathri. The suit property is owned by the defendants and allotted to the plaintiff for doing trading of cotton. The plaintiff is doing the business since long ago and was need of the place for extension of his business. The plaintiff requested the defendants and on 29.10.2020, the defendants passed resolution No.4 and allotted the vacant open space in the market yard on the lease of 11 months to the licenses cotton

traders. The plaintiff after getting the possession of the suit property has erected the tin shed adm. 15 X 30 feet over suit property for protection of his cotton from the rain, wind and fire. The plaintiff has also obtained necessary license from the defendants and it was also renewed time to time by depositing prescribed fees. Till year 2023, there was no dispute in between plaintiff and defendants. In year 2023, a person namely Uddhav Naik politically motivated filed an application before Office of DDR Co-Op, at Parbhani by contending that, the defendants illegally allotted the suit property to the plaintiff. The DDR office, Parbhani passed the order and directed the defendants to remove the unauthorized structure erected by the plaintiff. Under the pressure, the defendants have issued the notice to the plaintiff dated 05.06.2023 for removing of tin shed. The plaintiff is the doing business with the permission of defendants. The defendants have also renewed the licenses upto year 2023 but despite of which under the political influence the defendants are trying to dispossess the plaintiff without following due procedure, which constrained him to file the present application.

3- Furthermore, it is the contention of plaintiff that, the balance of convenience lies in his favour, he is the person who will suffer irreparable loss if the injunction is not granted in his favour. All the three pillars of granting of discretionary relief lies in the favour of plaintiff. Hence, prayed to allow the application.

4- The defendants contested the application by filing their say vide Exh.12. Each and every material allegation affirmed by the plaintiff

are denied by the defendants in to to. The defendants further contended that, on 29-10-2020, the suit property was leased to the plaintiff by taking resolution only for the 11 months. They further contended that, the plaintiff has not challenged any order passed by the DDR Office, Parbhani. The plaintiff also failed to comply provision of Section 55 of the APMC Act 1963. The plaintiff does not arrive with the clean hands, as he has suppressed the material facts. Hence, there is no *prima-facie* case in his favour, balance of convenience lies in favour of defendants and only the defendants going to suffer irreparable loss if temporary injunction is granted. Hence, they prayed for the rejection of this application.

5- After hearing the learned counsels and after going through the documents available on record following points emerged for my consideration and I have given my findings for the reasons that below:

<u>Points</u>	<u>Findings</u>
1. Does the plaintiff prove that the <i>prima-facie</i> case lies in his favour ?	... In the Negative.
2. Does the balance of convenience lies in favour of plaintiff ?	... In the Negative.
3. Whether the greater hardship would be caused to plaintiff if injunction as prayed is not granted ?	... In the Negative.
4. What order ?	... As per final order.

REASONS

6- In order to blouster up the claim the plaintiff has relied on

following documents.

1. Copy of Resolution of APMC Pathri
2. Copy of Judgment of DDR 3135/2023
3. Copy of notice issued by APMC Pathri
4. Copy of tax receipts of APMC Pathri
5. Copy of Aadhar Card of plaintiff

As to Point Nos. 1 to 4 :

7- Under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 (here in after referred as 'Code' as short), temporary injunction can be granted it is shown that the suit property is in danger being alienated or damaged. *Prima-facie* case does not mean proving a case at hilt. What is to be seen is that, whether a bona fide and reasonable issue has been raised for the adjudication on merit. At this stage, Court is not required to conduct the mini trial of the suit. Keeping in mind these principles, it has to be seen that, whether the *prima-facie* case is made out by the plaintiff.

8- Learned advocate for the plaintiff Shri. K.B.Chavan, during his course of argument submitted that, the suit property is leased to the plaintiff by the defendants. The plaintiff have erected the tin shed over the suit property for protecting their cotton. By the order of DDR, Parbhani the defendants are trying to remove the tin shed. If the defendants are succeeded in their attempt to disturb the peaceful possession of the plaintiff over the suit property, the plaintiff's right would be violated. Hence, prayed to restrain the defendants from disturbing his peaceful possession over the suit property.

9- Per contra, learned Advocate Shri S.S.Siddiqui, for the defendants, who vehemently resisted that, the open space was allotted to the plaintiff. The plaintiff without permission has constructed over the suit property. Furthermore, the said construction is held to be illegal by the office of DDR, Co-op. Societies, Parbhani. Hence, he prayed to reject the application.

10- On the minute perusal of the document filed on the record, it depicts that, on 29-10-2020, the defendants APMC, Pathri has passed the resolution and leased the open space to the plaintiff for 11 months. Later-on, one Uttamrao Naik, has filed the complaint before office of DDR, Co-op. Society, Parbhani by alleging that, the said allotment of open space is illegal. The office of DDR, Co-Op. Society, Parbhani after inquiring the matter dated 06-10-2013, in the Judgment held that, the construction of tin shed over the plots of the APMC was illegal and directed the present defendants to removed the said construction within 30 days from the date of order. In the pursuance of which dated 19-10-2023, the defendant No.1 issued notice to the plaintiff to remove the unauthorized construction.

11- The Id. Advocate for the plaintiff placed his reliance on the following authorities 1- **Savita Dilip Kanojiya V/s Sarangdhar Namdeo Waghmare DLD (Civil)-2023-2106** 2- **Shakuntalbai @ Seema SureshSingh Gaur V/s Premsing S/o Gangaram Singh DLD (Civil)-2023-1999**. *In the case of Savita Kanojiya both the parties have filed the application for temporary injunction, in the present case only the plaintiff has filed the application for temporary injunction. Hence, said*

authority is not applicable to the plaintiff. In case of second authority of Shakuntalabai @ seema, it has been observed by the Hon'ble Bombay High Court that, when the plaintiff are possession in the suit land and having benefit of injunction since long, injunction granted to them it to be continued. In the case at the hands the plaintiff have erected unauthorized construction hence, the authorities supra is not applicable to the plaintiff case.

12- On perusal of documents available on record there is a nothing to show that, the plaintiff has obtained the permission for construction of tin shed over the open space allotted to him. Furthermore, on perusal of resolution No.4 dated 29-10-2020 the said open plot was leased for 11 months. There is no any lease deed available on record. As per the Section 105 of Transfer of Property Act the lease from month to month registered. Furthermore, the Office of DDR, Co-Op. Society, Parbhani held that, the construction is unauthorized. The DDR is not made party to the suit. Furthermore, the plaintiff has not challenged the order passed by the DDR, Parbhani dated 06-10-2023. The plaintiff has constructed without permission of APMC, Pathri over the open space. The plaintiff has not come with the clean hand. Hence, it can not be said that, the plaintiff is having the *prima-facie* case and balance of convenience lies in his favour. Hence, I answer to point Nos. 1 to 3 in the negative and accordingly, in regards to point No.4 and considering all the above facts and documents available on records, I proceed to pass following order.

ORDER

- 1- The application Exh.5 is rejected.
- 2- Costs in cause.

Sd/-

(Mayur E. Pawar)
Civil Judge Junior Division,
Pathri Dist. Parbhani.

Date: 01.12.2023