IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.	
R.C.S. No. 20/2025	**CNR No. MHPU10 000020 2025**
Bharatram Ramsamuji Prajapati.	
Vs.	
P.C.M.C. & Ors	

ORDER BELOW EXH. 05.
(Passed on 18.02.2025)

This is an application filed by plaintiff under Order XXXIX Rule 1 & 2 of Code of Civil Procedure for granting of temporary injunction against defendants.

2. **The plaintiff case in short is as under** :-

Description of property :

All piece and parcel of the land bearing Gat no. 46, village Chikhali, Tal. Haveli, Dist. Pune having land area admeasuring 00 H 68 Aar total area out of which the plaintiff land is of 12000 Sq feet along with tin shed and having PCMC property no. 13/1/1130111195.00 and bounded as follows :

On or towards East : Gat no. 46 DP Road,
On or towards West : Gat no. 46 and Bhairavnath Temple
On or towards North : Gat no. 47 and property,
On or towards South : Gat no. 46 and Bhairavnath Temple.

(For the sake of brevity the above mentioned property will be called as '**suit property**'.)

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3. The plaintiff submitted that, the 'suit property' is owned and purchased by way of registered sale deed no. 9879/2022 on dated 14/09/2022 and mutated in the 7/12 record since then the

suit property is in possession.

4. The plaintiff further submitted that, he is having tin shed on the suit property and carried out business of industrial scrap. He have paid property tax. The plaintiff further submitted that, defendants have already provided light, water and access road and all other infrastructures, which are necessary for the business.

5. The plaintiff further submitted that, the defendants corporation development plan is of dated 27/10/2009. The corporation had not put any such map, plan in public domain for the inspection of, sight of public at large. Hence the corporation can not take advantage. But defendants have sent notice u/s. 55 of Maharashtra Regional and Town Planning Act, 1966 (Hereinafter the said Act will be called as 'MRTP Act') which is illegal and bad in law. Plaintiff is having apprehension of illegal demolition of suit property by defendants. Therefore, he have filed the suit along with this application for restraining the defendants from demolition the suit property.

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6. After service of summons and notices, defendants appeared and filed their written statement cum reply at Exh. 23 and denied all contentions. In additional reply, they stated that, description of suit property is not proper. Moreover there is specific bar u/s.149 of MRTP Act to file the present suit. There is vague statement regarding the mode of title. The plaintiff have

unauthorized tin shed /godowns in Chikhali, Kudalwadi area and some have been used of doing scrap business. There have been cases of fire in the said area and due to haphazard development, the fire brigades could not reach the spot due to narrow approach road. The village Chikhali merged in the PCMC area in 1997. The plan of said area was sanctioned and made final. The construction is unauthorized and there is no prima facie case to plaintiff and lastly they prayed for to reject the application.

7. Heard learned counsel Shri. R. A. Singh for plaintiff and learned counsel Shri. M. G. Bhapkar for defendants at length. The following points arise for my determination, I have recorded my findings thereon with reasons as follows. :

Sr. No.	Points	Findings
1	Whether the plaintiff have made out the prima facie case ?	.. Negative.
2	Whether balance of convenience lies in favour of plaintiff ?	.. Negative.
3	Whether irreparable loss would cause to plaintiff if injunction is not granted?	.. Negative.
4	What order ?	As per final order.

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R E A S O N S

As to Point No. 1 to 3 -

8. All these points are interlinked to each other, therefore, they are taken together for discussion and decision.

9. It is well settled that, for grant of temporary injunction, three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss.

I) Prima facie case –

Prima facie case does not mean that, the plaintiff should have cent percent case which will in all probability succeed in trial. Prima facie case means that, the contentions which the plaintiff is raising, requires consideration in merit and or not liable to be rejected summarily.

II) Balance of convenience –

It is necessary to compare case of parties, comparative mis-chief or inconvenience which is likely to sue from with holding the injunction will be greater than which is likely to arrive from granting it.

III) Irreparable loss –

The applicant must further satisfy to the Court about the second condition by showing that, he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy available or open to him by which he can protect himself from the consequences of apprehended injury.

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10. Argument of plaintiff:

The counsel for plaintiff have putforth their argument. Main points are as follows :

1. The notice sent by defendant is not according to law and due process of law.
2. Their structure upon suit property is standing before merging the Village Chikhali into PCMC.
3. He have regularly paid property tax and doing the business.
4. he have also obtained no objection certificate from Gram Panchayat officer for electricity connection .
5. He have also continuing pay taxes to defendants.
6. The temporary structure of suit property is not encroachment on the public road, street, footpath, railway line etc.

11. Argument of defendants:

The counsel for defendants have putforth their argument. Main points are as follows :

1. Description of suit property is not given properly.
2. Merely assessing the property tax does not make it authorized construction
3. Merely getting the electricity connection does not make the suit structure legal.
4. The reason of unauthorized tin shed, godown constructed in Chikhali Kudalwadi area and narrow approach road, when the incident of fire have been happened, the fire brigades could not reach the spot.
5. The unauthorized tin shed construction could not be protected.

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12. Perused whole record. Suit is filed for declaration and permanent injunction. The plaintiff came before court with theory that, the defendants have sent notice no. कक्षेका/प्र.क.02/525/2025 dated 10/01/2025 is null, void and not according to the law. As per the contention of plaintiffs, 'suit property' is owned by him and in his possession. For supporting, he have filed the copy of Index II, sale deed and 7/12 extract. After perusing, then it shows that, prima facie the plaintiff is an owner of suit property.

13. It is admitted fact that, village Chikhali is merged in PCMC area in 1997. That plan of that area was sanctioned and made final dated 18/08/2009. As per the contentions of plaintiff, the suit property was temporarily constructed and obtained water connection and electricity connection. But he have not filed any single document in respect of authorized permission taken from the defendants. Therefore, the electric connection, water connection, MSME certificate, property tax, etc these documents does not made the construction as legal.

14. On this point counsel for defendants argued that, when any changed of use of land then the concern persons/ local body/ authority permission is necessary. When any area is merged in the Municipal Corporation and development plan prepared or approved then, there are some restrictions on change of used of land. Section 18 of MRTP Act is very important. For ready reference it is a follows:

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Section 18 of MRTP Act

Restriction on change of user of land or development thereof

1) No person shall, on or after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved, institute or change the use of any land for any purpose other than agriculture or carry out any development in respect of any land without the previous permission:

i) in case the land is situated in the limits of a Municipal Corporation or a Municipal Council, or Nagar Panchayat or a special Planning Authority or any other planning authority, of such Municipal Corporation or Municipal Council, or Nagar Panchayat or a special Planning Authority or any other planning authority, as the case may be, or

ii) in case the land is situated in the gaothan, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code of the Village panchayat concerned, of

iii) in case the land is situated in areas other than those mentioned in clauses (I) and (ii) above, or the Collector of the District.

Provided that, the Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.

15. After perusing 7/12 extract of suit property then, it shows that, it is not fell under clauses (i) or (ii) or sub section 1 of section 18 of MRTP Act. But suit property is situated in areas other those mentioned in clauses (i) or (ii) and above, then the previous permission is necessary to an officer not below rank of Tahasildar. As per the argument of defendants the suit property is not fell in Gaothan or Nagar Panchayat. Therefore, the sanction of Collector or

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any delegated officer not below the rank of Tahasildar is necessary and whatever permissions they have obtained are nullify in the eyes of law. Considering the facts and law I am agree with this argument.

16. The counsel for plaintiff have vehemently argued that, the notice sent by the defendants in regard of demolition of suit property is void and illegal. They further argued that, the construction upon suit property is permitted or not permitted is immaterial. Firstly, the notice itself is void ab initio. But such argument is not accepted because, when the plaintiff emphasis upon the action taken by defendants i.e. notice sent by them. Have questioned then, section 149 of MRTP Act is a hurdle to plaintiff, because there is an express bar to question any action, every order, direction passed by other, the State Government or by any development authority under the MRTP Act in any suit or other legal proceedings.

17. It is important to enumerate sections 53 and 55 of MRTP Act which is as follows :

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Section 53 of MRTP Act

Power to require removal of unauthorized development

(1)(a)Where any development of land has been carried out as indicated in clause (a) or (c) of Sub section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place.
(b) if the owner, developer or occupier fails to restore the land accordingly, the planning Authority shall immediately take

steps to demolish such development and seal the machinery and material used to being used therefor.
(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub section 52, the planning Authority may, subject to the provisions of this section serve one months' notice on the owner, developer or occupier requiring him to take necessary steps as specified in this notice.
(2) ……..
(3) *Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 of retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.*

Section 55 of MRTP Act

Removal or discontinuance of unauthorized temporary development summarily

1) *Notwithstanding anything hereinbefore contained in this Chapter where any person has carried out any development of a temporary nature unauthorizedly as indicated in Sub section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made unauthorizedly as aforesaid, within fifteen days of the receipt of the order and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, or authorise any of its officers or servants to have such work summarily removed or such use summarily discontinued without any notice as directed in the order, and any development unauthorizedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.*

2) *The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.*

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18. After perusing the above sections, then it reveals that, section 53 of MRTP Act is relating to removal of unauthorized development and as per section 53 (3) the aggrieved person can be applied for permission under section 44 of MRTP Act for retention. In the case of my hand, there is notice issued by defendants, under section 55 of MRTP Act. Therefore there is no question arise of retention. Moreover the plaintiff have not produced any documents which shows that, the construction upon suit property is with permission and authorized, therefore there is no any prima facie case to the plaintiff.

19. In **Sandeep Vilas Ranade Vs. Pune MC in WP No. 5816/2023 decided on 26/06/2024**. The Hon'ble Bombay High Court have detailed discussed. When any construction is unauthorized and parties came for regularization then, they strictly observed that, the benefit of regularization is never to be extended to the parties who violate the building regulation or environmental regulations brazenly and with impunity.

20. Moreover, there are various precedents on this points which are very important while deciding the application in my hand.

A. **In Esha Ekta Apartments Co operative Housing Society Limited and Ors. Vs. Municipal Corporation of Mumbai and Ors. (2013) 5 SCC 357**

The Hon'ble Supreme Court observed that in the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are

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applicable have been violated with impunity in all the cities, big or small. Those entrusted with the task of ensuring the implementation of the master plan, etc, have miserably failed to perform their duties. *It is highly regrettable that this is so despite the fact that this court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularization of illegal constructions by way of compounding and otherwise.*

B. **In Royal Paradies Hotel (P) Ltd Vs. Sate of Haryana, (2006) 7 SCC 597**

*T*he Hon'ble Supreme Court rejected the plea of regularization of construction made in violation of the provisions of the planning and municipal legislation by observing that no authorities administrating municipal laws and other laws like the Act involved in the matter, can encourage such violations. *Even otherwise, compounding is not to be done when violations are deliberate, designed, reckless, or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the law requirements can alone qualify for regularization, which is not the rule but a rare exception.*

C. **In Dipak Kumar Mukharjee Vs. Kolkatata Municipal Corporation and Ors. (2013) 5 SCC 336**

The Hon'ble Supreme Court has held that what needs to be emphasized is that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. *The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty preparing and executing the master plan/ development plan/ zonal plan. The reports of the demolition of hutments and jhuggi shops belonging to the poor and disadvantaged*

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section of society frequently appear in the print media. Still, one seldom gets read about the demolition of illegally/ unauthorized constructed multi storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against the poor and all compromises are made by the State machinery when it is required to deal with those who have money and power or unholy nexus with the power corridors.

D. **In Shanti Sports Club Vs. Union of India, (2009) 15 SCC 705**

The Hon'ble Supreme Court has, after adverting to its several earlier judgments on the subject, taken cognizance of buildings constructed that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent a substantial amount on the construction of the buildings. *The Hon'ble Supreme Court remarked that, unfortunately, despite repeated judgments of the Supreme Court and High Courts, illegal constructions continue to mushroom, and thereafter, pleas are made for regularization on the grounds of compassion and hardship. Therefore, the Hon'ble Supreme Court has observed that is is high time that the executive and political apparatus of the State take a serious view of the menace of illegal and unauthorized constructions.*

E. In **Friends Colony Development Committee Vs. State of Orrisa, (2004) 8 SCC 733.**

The Hon'ble Supreme Court further observed that municipal laws permit deviations from sanctioned constructions being regularized by compounding, but that is by exception. Unfortunately, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, the exception has become the Rule. Only such deviations deserve to be condoned as are bona fide or are

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attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other then these, deliberate deviations do not deserve to be condoned and compounded. Therefore, compounding of deviations ought to be kept at a bare minimum.

21. In a recent a judgment In **Re: Directions in the matter of demolition of structures, 2024 SCC online SC 3291.** Hon'ble Apex court have given directions in regard of demolition of structure. Prima facie in the present case the defendants have given 15 days prior notice, which is according to law. Moreover, it is expected from the defendants also to follow the directions which have been given by Hon'ble Apex Court.

22. In the larger public interest, in addition to the directives issued by the Apex Court, have also given in a land mark judgment **Rajendra Kumar Barjatya & Ors. Vs. U.P. Avas Evam Vikas Parishad in Civil Appeal no. 14604 of 2024 decided on 17/12/2024** in para no. 20 held that,

In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal / unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of

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regularization by condoning/ ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compound to the long term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources proximity to water bodies/river and larger public interest. Unauthorized constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the Zonal development cannot be just individual centric but also must be devised keeping in mind the large interest of the public and the environment. Unless the administration in streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot free, they will be emboldened and would continue to turn a nelson;s eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.

23. At last, but not least, the plaintiff have not shown any single document which reflects that, the structure/ construction of tin shed which was erected upon the suit property is authorized and with permission. Therefore, there is no any prima facie case to the plaintiff. It is settled legal position that, unauthorized construction should not be protected. It is also admitted fact that, fire incident have been occurred in recent years and in the large public interest, every concern local body/ competent authority have authorized to

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remove unauthorized construction as per law. Balance of convenience is also not lies in favour of plaintiff. Ultimately, if unauthorized construction would be demolished then, it not affect or irreparable loss would be caused to plaintiff. Hence, I answer point no. 1 to 3 is in negative.

As to point no. 4:-

24. As per the above discussion, I answer point no. 1 to 3 in the negative, in the result as to point no.4, I proceed to pass following order.

O R D E R

1) The application (Exh. 5) is hereby rejected.

2) Costs in cause.

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Dated: 18/02/2025.

(V. S. Damare)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

CERTIFICATE

"I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Stenographer	:-	P. B. Jadhav.
Court Name	:-	Shri. V. S. Damare, (J.M.F.C.) Civil and Criminal Court (P.C.M.C.), Akurdi, Pune.
Date	:-	18/02/2025
Order signed by presiding officer on	:-	18/02/2025
Order uploaded on	:-	18/02/2025