

CNR NO. MHPU100000882025



IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.
R.C.S. No. 87/2025
Shri. Lavleskumar Rambachan Singh,
Vs.
P.C.M.C. & Ors.

ORDER BELOW EXH. 05.

(Passed on 28.01.2026)

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

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

Description of property :

All that piece and parcel of the land building properly absolutely owned and possessed by plaintiff having a construction of a ground floor admeasuring 647 Sq. Ft. and construction of first floor admeasuring 647 Sq. ft. situated at village Chikhali in Pawar Vasti Kudalwadi and having PCMC property No. 1130500606.00 bounded as under :

On or Towards East : Omkar Industries,
On or Towards South : Property of Changadev Balghare.
On or Towards West : 15 feet road,
On or Towards North : Suyog Enterprises,

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

3. The plaintiff submitted that, plaintiff is running the Industry in the name of M/s. Sokha Industry since 1999 as per the certificate of Registration issued by Inspector of the Registrar. The suit property is not coming under road acquisition or under any reservation. He have also paid property tax and water tax regularly. He is in possession and used suit property since long. The certificate of registration issued by the Industries Inspector, Director Industries Center, Pune.

4. The plaintiff further submitting that, his existing construction was erected when the suit property was not coming within the limits of PCMC but was coming under the Chikhali Village Grampanchyat. Before taking action against the plaintiff it is necessary to show him that, uses of land is planned for residential use instead of industrial use as per the development plan dated 27/10/2009 for the extended area of PCMC by taking into consideration all the concern and clearing all the objections of the plaintiff.

5. The plaintiff further submitted that, he received notice dated 20/01/2025 bearing out ward no.2/1864/2025 under section 53(1) of Maharashtra Regional and Town Planning Act, 1966 issued by defendants (hereinafter for the sake of brevity it will be called as 'MRTP Act') and calling upon to remove the structure mentioned in

the notice.

6. The plaintiff further submitted that, the notice which was given by the defendants is prima facie illegal and if action will be taken as per notice then, plaintiff suffer irreparable loss. Balance of convenience is also lies in favour of plaintiff and if the construction demolished, then it can not be compensated in terms of money. Therefore, plaintiff have filed suit along with this application for restraining the defendants.

7. After service of summons and notice, defendants appeared through their advocate and filed written statement cum reply at Exh. 16 and denied all contentions of plaintiff and additionally replied that, there is specific bar of section 149 of MRTTP Act to file such type of suit. Moreover, plaintiff have not file any documentary evidence in respect of construction is legal and authorized.

8. They further submitted that, there are unauthorized tin sheds have been constructed. There are cases of fire and due to haphazard development the fire brigades could not reach the spot due to narrow approach road. In the year 2022, there were 19 fire incidents, in the year 2023, 22 incidents and in the year 2024 there were 34 fire incidents which were reported. The unauthorized constructions are violated the concept of planned development of the particular area and affect the fundamental and constitutional rights

of other persons. As per the contention of defendants, the illegal construction and business are not in contravention of the Municipal and development but also a great threat to the environment and health of well being of the residents. Lastly, they prayed for there is no prima facie case to plaintiff. Hence, she further prayed to reject the application with cost.

9. Heard learned counsel Shri. R. P. Ladkat for plaintiff and learned counsel Smt. S. S. Yadav 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.

REASONS

As to Point No. 1 to 3 -

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

11. 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.

12. Perused records along with documents on CIS. The plaintiff have filed and relied on following documents:

- 1) Notice under section 53 of MRTP Act.
- 2) Notice under section 487 BMPC Act.

- 3) Copy of Aadhar card of plaintiff.
- 4) Old and new 7/12 Extract.
- 5) Copy of sale deed.
- 6) Permission letter issued by Chikhali Grampanchyat.
- 7) NOC issued by defendant for running industry.
- 8) Certificate.
- 9) Special notice dated 14/03/2012.
- 10) Extract of development plan.
- 11) Latest Tax bill issued by defendant.
- 12) Shop Act license.
- 13) Certificate of registration.
- 14) Fire NOC.

13. Before discussing, it is important to enumerate sections 53 and 55 of MRTP Act which is as follows :

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.*

14. 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, which is issued under section 53 of MRTP Act.

15. As per the contentions of the plaintiff, he is owner of the

suit property. For support of this contention, he have filed copy of sale deed and 7/12 extract. After scrutinizing it, then it shows that, the sale deed does not registered before the Sub Registrar Office. Therefore, as per Registration Act, the sale deed is not valid in the eyes of law. Moreover, in 7/12 extract there are two names jointly one is plaintiff's name and another is Vidya Dinesh Roy. It means plaintiff is not a sole owner of suit property. Vidya Dinesh Roy is not joined in array of any one of the parties in the suit. This thing show that, plaintiff is not came with clean hands before the Court. The plaintiff have not brought on record he have obtained the authorized construction permission in regard of suit property.

16. The plaintiff stated that, the structure upon the suit property is not being questioned because it is immaterial. The main contention of plaintiff is that, the notice issued by defendants is prima facie illegal and void. In the suit, the main prayer and main relief he also claimed in respect of declaration that, the notice be declared as illegal and void. The notice bearing outward no.2/1864/2025 is sent on 20/01/2025 as per the provisions of section 53 of MRTP Act. When I perused the above dated notice then the unauthorized construction area is mentioned approximately $4.57 \times 18.75 = 85.68$ Sq. meters. When the notice sent under section 55 of MRTP Act then, the relief of retention under section 44 of MRTP Act is not available because it is only available when notice is sent under section 53 of MRTP Act. As such, the plaintiff should have applied for retention as per sections 44, 53(3), 8 of MRTP Act along

with rule 10 of Maharashtra Development Plan Rules 1970. As per the provisions of MRTP Act, I have come to the conclusion that, i.e. efficacious remedy is available and plaintiff can proceed further before concern authority. Therefore, there is no any prima facie case to the plaintiff.

17. As per the contentions of plaintiff, on the suit property they have obtained water connection and electricity connection and also paid property taxes. But he have not filed any single document in respect of authorized permission taken from the defendants. Therefore, the electric connection, water connection, property tax, etc these documents does not made the construction as legal.

18. The plaintiff counsel argued that, he has using the suit property since 1999 for running an industry with an approval from the Chikhali Grampanchyat. The development plan dated 27/10/2009 was passed for extended area of PCMC and then suit property came within the limits and under the jurisdiction of PCMC. The plaintiff admitted that, suit property is coming and use as a residential and industrial use. But there is no any documents in respect of construction permission have been given by the Chikhali Grampanchyat. Then, how can I rely on the version of plaintiff.

19. Counsel for plaintiff argued that, plaintiff have used the ground floor area 647 Sq. ft. for the industry since 1999 and the first floor on an area 647 Sq. ft. is used for the residence and prayed that,

give a fair time of 6 month so as to rehabilitate the industrial unit and in the meantime to have the plaintiff a new plan sanctioned for the demolition of the old and erection of a new construction for residential use on the said plot. Per contra, the counsel for defendant 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:

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 gaathan, 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.

20. 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 any delegated officer not below the rank of Tahasildar is necessary and whatever permissions they have obtained are nullify in the eyes of law.

21. Counsel for plaintiff have argued that, as per section 44-A of Maharashtra Land Revenue Code, there is no permission required of bonafide of industrial use of land. But after perusing whole section 44-A then there are some conditions have imposed, when the applicant wants to take benefit. As per sub section 2 of section 44-A then it is binding on the person so using the land a bonafide industrial use shall give intimation of the date on which the change the user of land, in the prescribed form, within 30 days from such date, to the Thasildar through the village officer, and shall also endorse the copy thereof to the Collector. But it is not done in the present case.

22. 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.

23. 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 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

The 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 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.*

24. 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.
25. 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 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 is 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.

26. 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/ authority have authorized to 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:-

27. 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.

ORDER

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

Sd/xxx

Dated: 28/01/2026.

(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	:-	28/01/2026
Order signed by presiding officer on	:-	28/01/2026
Order uploaded on	:-	28/01/2026