

CNR NO. MHPU100001012023



IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.
R.C.S. No. 17/2023
Mhaling Shivaji Honrao
Vs.
P.C.M.C. & Ors

ORDER BELOW EXH. 05.

(Passed on 02.07.2025)

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 plaintiffs case in short is as under :-

Description of property :

All piece and parcel of the land bearing Gat no. 59 Hissa no.1 village Chovisawadi, Tal. Haveli, Dist. Pune having land area admeasuring 01 H. 01 R. + Pot Kharaba 31 R. Total 1 H. 32 R out of which plot no. 2 along with tin shed 464.68 Sq. meter and bounded as follows :

On or towards East : Remaining part of plot no. 2,
On or towards West : Plot no. 2,
On or towards North : 30 Ft. Road,
On or towards South : Plot no. 3.

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

3. The plaintiffs submitted that, the 'suit property' is owned and purchased from Anil Lund by way of registered sale deed no. 4945/2018 on dated 03/04/2018 and mutated in the 7/12 record since then the suit property is in his possession.

4. The plaintiff submitted that, he is running a workshop namely Shivanjali Industries which is build by patra shed. The plaintiff has been conducting engineering works. He have obtained and possess various certificates and licenses and also he paid taxes every year regularly. He have also paid property tax till date. The plaintiff further submitted that, he have received notice dated 03/01/2023 under section 53 of Maharashtra Regional and Town Planning Act, 1966 (hereinafter for the sake of brevity it will be called as 'MRTP Act') and calling upon to remove the structure mentioned in the notice.

5. The plaintiff further submitted that, the structure standing on the suit property can be regularized by the authority. He have purchased the suit property by way of registered sale deed. He is ready to pay all charges for retaining the structure. He is providing the employment particularly various semi and unskilled workers. Though the structure is unauthorized but he is ready to give all necessary documents and fee to regularized the patra Shed construction upon suit property.

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 restrain the defendants from implementation of notice dated 03/01/2023.

7. After service of summons and notice, defendants appeared through their advocate and filed written statement cum reply at Exh.20 and denied all contentions of plaintiff and additionally replied that, there is specific bar of section 149 of MRTP Act to file such type of suit. Moreover, plaintiff have not file any documentary evidence in respect of construction is legal and authorized. Lastly, they prayed for there is no prima facie case to plaintiff. Hence, he further prayed to reject the application with cost.

8. Sufficient opportunities have been given to plaintiff. But they are absent. Therefore, contention in the application have been deemed as their argument. Heard 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.

REASONS

As to Point No. 1 to 3 -

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

10. 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.

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

- 1) Sale deed.
- 2) Notice dtd. 03/01/2023 as per the provisions of Section 53 MRTP Act.
- 3) Tax receipts
- 4) Notice under section 149 Cr PC.
- 5) Notice to defendants.

12. 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 authorize 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.*

13. 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 are two notices issued by defendants, one is under section 53 and another is under section 55 of MRTP Act.

14. As per the contentions of the plaintiff, he is owner of the suit property. For support of this contention, he has filed copy of sale deed. After perusing those documents, then it shows that, the area is mentioned 464.68 sq meter. Prima facie it shows that, there is no dispute in respect of ownership of suit property. Plaintiff is shown as a owner. The area of suit property is mentioned as admeasuring about 480 sq. meter.

15. The notice bearing outward no.3/49/2023 is sent on 03/01/2023 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 30 meter x 16 meter = 480 sq. meters. It is admitted fact that, there is tin shed about 480 sq meters upon suit property and as per MRTP Act, 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, when the plaintiff sumo-to admitted that he will be trying to regularized the construction after meeting with the officers of defendants. It means

adverse inference can be drawn that, the so called patra shed construction is without permission and not authorized. As per the provisions of MRTP Act I have come to the conclusion that i.e. efficacious remedy is available to the plaintiff and he can proceed further before concern authority. But now prima facie, he can not challenge the notice which is issued under section 53 of MRTP Act. 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.

16. 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.

17. 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 administering 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 advertng 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

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

18. 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 one month 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.
19. 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 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.

20. 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. Every concern local body have authorized to remove it 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:-

21. 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: 02/07/2025.

(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	:-	02/07/2025
Order signed by presiding officer on	:-	02/07/2025
Order uploaded on	:-	02/07/2025