

ORDER BELOW Exh.5
(Passed on dated:-24/03/2021)

1. Nature of application:-

The plaintiff has filed present application under order XXXIX Rule 1 of Civil Procedure Code.

2. Grounds of application:-

The present suit is instituted for declaration and perpetual injunction in respect of suit properties mentioned in para 1 of the plaint. It is the contention of the plaintiff's that suit property is their ancestral property. Plaintiff's have not made any construction over the suit property and they are in possession over the suit property. On 11/01/2020 Shri. Gajanan Kaluram Phuge and other 26 persons have unauthorisedly and without permission of the corporation constructed the tin shed and buildings over the suit property. Thereafter on 12/01/2020 plaintiff's have given complaint of unauthorised construction against them to the Bhosari police station. On 14/01/2020 Police Inspector of Bhosari police station had given warning to both the parties about not to create anything on the suit property. But on 23/01/2020 Shri. Phuge and others were started work on the suit property. Thereafter, on 28/01/2020 plaintiff's have given complaint to the defendant corporation for demolishing the unauthorised construction. But the defendant corporation neither issued notice nor taken any legal action against them.

3. Thereafter, plaintiffs have made survey of suit property they find out that the unauthorised construction of buildings and tin shed has carried out over the suit property. They further submits that if defendant corporation had taken action against the unauthorised construction within time then such type of concrete construction had not constructed over the suit property. Hence they have prayed that their application be allowed and defendant be directed not to give written or oral permission for unauthorised construction and to take action as per Section 52 and 53 of the Maharashtra Regional and Town Planing Act (hereinafter referred as M.R.T.P. Act).

Say of the defendants:-

4. Defendant no.1 and 2 are the office bearers of the Pimpri Chinchwad Municipal Corporation and they have filed their say at Exh.16 and denied all the adverse contention made against them. It is the contention of defendant corporation that they have not violated any rules and regulation. They have issued notices dated 03/01/2020 and dated 14/01/2020 to Shri. Gajanan Phuge and others for removal of unauthorised construction as per section 478, 433(1) of Maharashtra Municipal Corporation Act (hereinafter referred as M.M.C. Act). They further contends that plaintiffs does not have prima facie case. The balance of convenience is not in favor of the plaintiffs and the irreparable loss will not be caused to plaintiffs if the injunction is not granted. Hence they prayed for

reject the application with cost.

5. Considering the pleadings, documents and written notes of arguments filed on record and rival submission of the parties, following points arise for determination. The points are as mentioned below with reasons to follows.

<u>Sr. No.</u>	<u>Points for Determination</u>	<u>Findings</u>
1.	Whether plaintiff's have proved prima facie case?.....	In the Negative.
2.	Whether balance of convenience lies in favour of plaintiff's?.....	In the Negative.
3.	Whether irreparable loss will be caused to the plaintiff's, if temporary injunction is refused ?.....	In the Negative.
4.	What order ?.....	Application is rejected.

6. In respect of above said contentions, both parties have filed ample documents on record and I have dealt with the same in my discussion below at proper places. Now let us turn to discuss the reasons for above findings.

REASONS

AS TO POINT NO.1 TO 3:-

7. All the points are interconnected, hence these points are

discussed together in order to avoid repetition.

8. While deciding the temporary injunction application court must follow the basic principles of temporary injunction and the guidelines given by the Apex Court in landmark judgment in **Gujarat Bottling Co.Ltd.** some of which are briefly stated here under:

i)The applicant seeking relief of temporary injunction shall have to establish a prima facie case in his favour. Applicant has to establish that the allegations/averment made in the application on which the temporary injunction is sought are plausible.

ii)The court has to examine the balance of comparative loss caused to the applicant and the respondent in the case of not passing an order.

iii)What is the extent of loss that would be caused to the applicant if the order is not passed and also whether it is reparable by monetary compensation. Then it will examine the loss suffered by respondent if the order is passed and thereupon it has to see which loss will be greater and irreparable. The party who would suffer greater loss would be said to be having balance of convenience in his favour.

9. It is contention of the plaintiff's that they have owner and possessor of the suit property and Shri. Gajanan Phuge and other have unauthorisedly constructed in the suit property and whole Survey no.138 is declared as no development land due to defence.

So they have seeking claim for directing to the defendant corporation not to give written and oral permission to Shri. Gajanan Phuge and others for unauthorised construction. As per the plaintiff contention and 7/12 extract of the suit property it appears that suit property is on the name of plaintiff's and as per the zone certificate of Survey no.138 it appears that it is declared as non-development zone due to defence. Therefore, how can defendant corporation give the permission for construction if once it is declared as non-development zone.

10. After perusal of photographs it appears that construction is going on. Admittedly, said construction is unauthorised. Perusal of record it appears that plaintiff's have filed various police complaints since 2018 in respect of suit property. From these complaints on record prima facie it also appears that Phuge family have share in Survey no.138 and said Phuge family had filed Civil Suit No.42/2009 against the said plaintiff in Pimpri Court and which is pending. But all these material facts are not mentioned in the plaint and temporary injunction application by the plaintiff. Moreover, defendant corporation themselves issued notices for removal of unauthorised construction. Therefore there is no possibility for defendant corporation to give written as well as oral permission for unauthorised construction. During this situation it is not just and proper to grant injunction in favour of plaintiff's against defendants in respect of unauthorised construction. Which is

constructed by Phuge family and who are not party to the suit. It is against the principle of natural justice.

11. Apart from that, considering the plaint, written statement and document on record it appears that defendant corporation issued notice to the Phuge family and others for removal of unauthorised construction. Thus prima facie it clears that defendant corporation started to take action against unauthorised construction over the suit property. Therefore, at this stage it is not just and proper to direct the defendant corporation to take action as per Section 52 and 53 of M.R.T.P. Act against the Shri. Gajanan Phuge and others who have not party to the suit. Therefore I do not see any prima facie case in favor of plaintiff's.

12. Existence of prima facie case is the primary requirement for grant of temporary injunction. However from the above discussion, it is ample clear that plaintiff's have failed to prove existence of prima facie case in their favor. The grant of injunction is equitable relief, person who seeks equity must do equity. But plaintiff's have not made party to the person against whom they have claimed relief and whose interest are directly affected by the outcome of the case. Thus the wrongdoer is not entitled to equitable relief. Hence, I have answered point no.1 to 3 in negative.

AS TO POINT NO.4:-

13. As I answer point no.1 to 3 in negative, proceed to pass following order.

Order Below Exh.5
CNR NO.MHPU10-000121-2020

7/7 R.C.S. No. 19/2020
Yuvraj Balu Landage and others -Vs-
Pimpri Chinchwad Municipal Corporation and others

ORDER

1. Plaintiff's application stands rejected.
2. Cost in cause.

Dated: 24/03/2021.

(V. R. Mane)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

Order Below Exh.5
CNR NO.MHPU10-000121-2020

8/7 R.C.S. No. 19/2020
Yuvraj Balu Landage and others -Vs-
Pimpri Chinchwad Municipal Corporation and others

CERTIFICATE

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

Name of Stenographer	:-	Smt. S. S. Gupte
Court Name	:-	Smt. V. R. Mane Civil and Criminal Court (P.C.M.C.), Akurdi, Pune.
Date	:-	24/03/2021
Order signed by presiding officer on	:-	24/03/2021
Order uploaded on	:-	24/03/2021