CNR NO.MHPU100001652023

ORDER BELOW EXH.5.
(Passed on 02/03/2024)

The present application is filed for seeking relief of interim injunction against the defendant. The suit is filed for seeking declaration and perpetual injunction against the defendants. In the present application, it is prayed that the defendants be directed to demolish the wall which was constructed by the defendant no. 1 and the defendants no. 2 and 3 be restrained from disturbing the plaintiffs.

Brief facts of the plaintiff's case are as under -

2. The open space within the duct/parking no. 62A+63A situated at the ground floor of BHUVI (A) Wing of Bhuvi A Wing Co-operative Society Ltd., Shankar Kalate Nagar, Wakad, Pune – 411021 is the suit property. The flats in this project was constructed as per the Building Permission granted by the Pimpri Chinchwad Municipal Corporation *(henceforth would be regarded as the PCMC for the sake of brevity.)* The plaintiff is the society and this suit is filed through its chairpersons. There are total 14 members of the plaintiff

society. There are total 4 defendants. Out of it, the defendants no. 1 is PCMC. The defendant no. 4 is the developer. All members are using parking lots as per the sanction plan. Parking lots are allotted by the defendant no. 4 to the members. The parking lot allotted to the defendant no. 2 is in front of the Entry Gate situated at West. The parking lot allotted to the defendant no. 3 is in front of the Entry Gate situated at East. The defendant no. 2 and 3 have conspired to utilize common way for themselves and thereby they are disturbing other members of the society. They are parking their vehicles as per their own wishes and whims and it is causing nuisance to the other members of the society. They informed the plaintiffs and other members of the society that they are going to close the parking lot. The plaintiffs opposed it. So, the defendant no. 2 and 3 approached the defendant no.1 an filed one complaint stating that the suit property is being illegally used as the parking by the plaintiffs. The plaintiffs furnished appropriate reply to the defendant no. 1 in this regard.

3. The defendant no. 2 and 3 sent notice to the plaintiffs by levelling false allegations regarding this issue of parking lot. The plaintiff sent reply to it stating that they are using parking lots as per sanction plan. Suddenly, on 3/03/2023, the defendant no. 1 along with one Bit Marshal entered into the suit property and constructed wall in the parking lot without any prior notice to the plaintiffs. This

wall is causing hurdle in the use of parking lots by the plaintiffs and remaining members of the society. Hence, the plaintiffs were constrained to institute the present suit alongwith the present application.

4. The defendant no. 1 filed say and written statement at Exh. 29. Their defence is of total denial. It is contended therein that the suit property is not described properly. In paragraph No. 7 of the plaint, it is mentioned that the plaintiff has failed to show how the action of the defendant corporation is illegal/ without following the due process of law. The area of the duct is used for essential services for the safety of the residents of the society and also for carrying out the essential repairs in the building. The area allotted cannot be used as parking. The letter dtd. 9/05/2023 was issued by the Building Permission and Unauthorized Construction Department D ward it has been clarified that a duct can never be allotted for parking and in the sanction plan parking has been mentioned due to oversight. Hence, it is prayed that this application has to be rejected and balance of convenience is not in favour of the plaintiff and the plaintiff will not suffer any loss if the application is rejected.

5. The defendant no. 2 and 3 filed say at Exh. 22. It is therein contended that the plaintiffs have filed the present suit with the intention that the defendant no. 2 and 3 should leave the Society.

Alleged open space i.e. the suit property is not a parking but a duct. Society is suffering due to use of the service duct as parking. This usage is illegal and without permission. M.N.G.L. Pipe Line and drainage line passes through said duct. Hence, it is not proper to use it for parking. Hence, ultimately they prayed for rejection of this application.

6. Perused application, say and documents on record. Heard detailed argument of both sides. From the above peculiar facts and circumstances of the case, following points arise for my determination and my findings thereon with reasons are as under:

Sr. No.	Points for Determination	Findings
1.	Whether plaintiffs have proved *prima facie* case?	**Yes.**
2.	Whether balance of convenience lies in favor of plaintiffs?	**Yes.**
3.	Whether irreparable loss will be caused to the plaintiffs, if temporary injunction is refused ?	**Yes.**
4.	What order ?	**Application is partly allowed.**

R E A S O N S

AS TO POINTS NO.1 TO 4 :

7. Perused application, say and documents on record. Heard both sides at length. It *prima facie* transpired that the main allegation of the plaintiffs is that due to the construction of the wall by the defendant no. 1, the society members are suffering and cannot use the suit property for the parking purpose. Very first thing to note is that the defendant no. 1 claims that a duct can never be allotted for parking and in the sanction plan parking has been mentioned due to oversight. One question remains unanswered that till the date of institution of the present suit, how come this thing was not noticed and corrected by the concern authority as well as the developer i.e. the defendant no. 4. This question could be answered during trial with the help of cogent evidence that could be led. Whether issuance of letter by the defendant no.1 could be able to annul the sanction plan is also another issue. Wall has been constructed without giving any notice to the plaintiffs. This averment can be believed at this stage because no document on record supports that the wall was constructed by following necessary legal procedure and under particular provision of any law for time being in force. This also renders it doubtful whether the act of entering in the suit property for construction of said wall on behalf of the defendant no. 1 was

legal and proper. Entire this course of business of the defendant no. 1 *prima facie* appears arbitrary. Hence, I am of the opinion that this is the kind of case where plaintiffs have *prima facie* case, balance of convenience lies in their favour and they will suffer irreparable loss if temporary injunction is not granted as prayed. Therefore, I answer the points number 1 to 3 in affirmative and in answer to the point no. 4, I proceed to pass the following order:

O R D E R

(i) The application is partly allowed.

(ii) The defendants are temporarily restrained from obstructing the use of the suit property as parking by the plaintiffs either by themselves or any person acting on their behalf till the final disposal of this suit.

Sd/-xxx

Dated: 02/03/2024.

(S. P. Kulkarni)
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 :- Shri. P. B. Jadhav

Court Name :- Smt. S. P. Kulkarni
(J.M.F.C.) Civil and Criminal Court
(P.C.M.C.), Akurdi, Pune.

Date :- 02/03/2024

Order signed by
presiding officer on :- 02/03/2024

Order uploaded on :- 02/03/2024