

<b>IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.</b>	
<b>R.C.S. No. 47/2023</b>	<b>CNR No. MHPU100001652023</b>
M/s. Bhuvi A Wing Sahakari Society & Ors.	
Vs.	
P.C.M.C. & Ors.	

**ORDER BELOW EXH. 42.**

(Passed on 05.09.2024)

This is an application filed by defendant no.2 and 3 in respect of to restrained the plaintiff from demolishing the parking wall.

2. Called say of plaintiff and other defendants. Defendant no. 2 and 3 have filed say below Exh. 43.

3. Heard learned counsel Shri. Raut for defendant no. 2 and 3 and counsel for plaintiff at length.

4. By way of this application defendant no. 2 and 3 submitted and argued that, Exh. 5 was decided on 02/03/2024 but, plaintiff have gone behind the order and demolished wall constructed in the parking area, which leads to duct area and plaintiff have already demolished part wall. It will be caused irreparable loss to the defendant no.2 and 3. Hence, by way of this application to restrain the plaintiff from demolishing the remain part wall.

5. On the other hand plaintiff have strongly opposed the application and argued that, this application is not legal and

bonafide Plaintiff's act was not illegal and was done in good faith and for the convenience of the society. Therefore, they prayed for to reject the application with heavy cost.

6. Perused whole record. It seems that, suit is filed for declaration and permanent injunction against defendants. The plaintiff is the society and suit is filed through its chairpersons. The defendant no. 2 and 3 have also members of Society. The suit property is upon construction within the duct/parking area no. 62A+63A and 51A+52A from the Northern and Southern side respectively. My learned predecessor have decided Exh. 5 after hearing of all parties on dated 02/03/2024. The operative order is as follows :

- 1) *The application is partly allowed.*
- 2) *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.*

7. After going into the facts, it shows that as per the submission of P.C.M.C., the duct can be never be allotted for parking and in the sanction plan parking has been mentioned due to over sight. After any development plan sanctioned, construction be going on and thereafter completion certificate be issued and the residents have purchased the flats and no one can approach for whether the parking area and duct have been situated and allotted? till filing of the suit.

8. On perusal of the application Exh. 5 and order upon it, then it

clarifies that, plaintiff have demanded two prayers – firstly in respect of the wall which was erected upon suit property be removed/demolished and obstructed for parking area and second prayer is to restrain defendant no.2 and 3 from obstructing the use of suit property as parking. When the Exh. 5 decided then it was partly allowed. It means the prayer in respect of demolishing/ removing the wall was rejected.

9. Therefore, we can gather from the interpretation of Exh. 5 that, the plaintiff have not any right to demolish partly wall area. Therefore, this act done by the plaintiff which, have been admitted in his reply by him then, one thing is clear that partly wall have been demolished. Therefore, this act is done against order of this court. Moreover, now if any order have been passed in respect of the suit property in regard of duct/ parking area, then it will be confusion because, what has been arbitrary action taken by P.C.M.C. while passing development plan, the all members of society will suffer. Hence, I proceed to pass the following order with directions.

#### **ORDER**

- 1) The application is allowed.
- 2) The plaintiffs are directed to construct the partly wall which was demolished by them.
- 3) The plaintiffs society, defendant no. 4 have directed to approach before the defendant no. 1 along with all necessary documents and cure defect in respect of duct and parking area.

- 4) The defendant no.1 is also directed to take necessary action upon it within 30 days from today.

Dated: 05/09/2024.

(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	:-	05/09/2024
Order signed by presiding officer on	:-	05/09/2024
Order uploaded on	:-	05/09/2024