

CNR NO. MHPU100001812023



IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.
R.C.S. No. 70/2023
Mubarak Abbasbhai Shaikh
Vs.
P.C.M.C. & Ors.

ORDER BELOW EXH. 05.

(Passed on 27/08/2026)

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 property bearing Survey No. 239/8A, Shaikh Wasti, Bhausahab Kalate Nagar, admeasuring about 21 Meters X 15 Meters ground floor, total 315 Sq. meters constructed by bricks soil, cement, roof, tin sheet shed,. Constructed over the landed property admeasuring about 8500 Sq. ft. i.e. 8.5R. and same is bounded as follows:-

On or toward East- Maunt Vrat Tropez Society,

On or toward West- Pristine Grandwar Society,

On or toward North- Road,

On or toward South-Property of Mr. Shaikh.

Together with facilities of water, drainage, electricity, car and two wheeler parking, open space, being used for residential as well as commercial purpose.

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

3. The plaintiff submitted that, he have filed suit for declaration and permanent injunction. He is owner of suit property holding legal rights, interest and title together with legal and valid possession, over it. Plaintiff has born in suit property and it is ancestral, which is received by plaintiff from his father in the partition deed. The construction was made about 150 years old. Therefore, provision of section 53 of Maharashtra Regional & Town Planning Act, 1966 (Hereinafter it will be referred as MRTP Act) is not applicable. He have no any other alternate accommodation other than suit property.

4. The plaintiff further submitted that, suit property have already been under development, with the help of builder and plaintiff is going to put plan for building construction in accordance-with-law. His father Mr. Abbas Kasambhai Shaikh, and Hafiz Nizamuddin Tasar Khan has entered into agreement for development, joint venture, with M/s. Vardhaman Amonitium

through its proprietor Mr. Prakash Chhajed on dated 14/07/2017 and suit property has been given for development and sale. The original development agreement and power of attorney is in power and possession of Prakash Chhajed.

5. The plaintiff further submitted that, defendant have send impugned notice on dated 29/09/2023 bearing outward no. 47/2023, which is illegal and taking law in hand. On the basis of notice, defendant no. 1 want to demolish or remove the structure upon suit property by using criminal force. Therefore, for restrained this action, plaintiff have filed this suit along-with this application and prayed for to restrain the defendant no.1 for taking any action, restrained further for removing or demolishing the structure.

6. On the other hand, after service of summons and notice, defendant no. 1 to 4 appeared through their advocate and filed written statement cum reply at Exh. 40 and denied all contentions of plaintiff and additionally replied that, description of suit property is not legal and proper. The name of revenue village is not mentioned and notice issued under section 53 of MRTP Act by competent authority and there is specific bar under the MRTP Act because notice issued under section 53 of MRTP Act cannot be challenged through any civil suit. He have not produced any document regarding ownership. He have made case against his father and other family members regarding the status of the

property, but they have not joined. Therefore, suit is bad for non-joinder of necessary parties. He have suppressed some material facts. Moreover, he have no prima-facie case, balance of convenience also not in favour of plaintiff. Lastly, he prayed for reject the application with heavy costs.

7. Defendant no. 5 appeared and strongly opposed the application by way of filing W. S. cum reply at Exh. 48. He additionally submitted that, suit property is owned exclusively by him. Plaintiff has no concern to the suit property. The plaintiff illegally grab money from the third person. He have constructed 08 shops upon the suit property without any permission and they have given on rent and took benefits from earning. Moreover, suit is bad for non-joinder of necessary parties because he have not joined Vardhaman Developers and its partners in the array of suit. Therefore, the application is liable to be reject with costs.

8. Heard learned counsel Shri. A. A. Khan for plaintiff, learned counsel Shri. Bhapkar for defendant no. 1 to 4 and learned counsel Shri. Gaiakwad for defendant no. 5 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. The plaintiff have filed and relied on following documents:

- 1) Notice dtd. 29/09/2013.
- 2) Statutory notice dtd 09/10/2023.
- 3) Partition deed
- 4) Index-II of development agreement.
- 5) Ration card.
- 6) Adhar card.
- 7) Pan card.
- 8) Electricity bill etc.

12. Defendant no. 5 have relied on following documents which is at list of document Exh. 26

- 1) 7/12 Extract of Bhumapan No. 239/8A
- 2) Ferfar
- 3) Notice dated 06/11/2020
- 4) Tax receipt
- 5) Application given to Commissioner, PCMC

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 not filed any single documents. The defendant no. 5 is a father of plaintiff. After

perusing the 7/12 extract, which is tagged along with list of documents Exh. 26. Then, it shown that, in the ownership column the area 00 H. 04.95R is in the name of defendant no. 5 Abbas Kasambhai Shaikh. Therefore, there is a question on ownership of plaintiff.

16. The plaintiff came before the Court and claimed relief that, notice dated 29/09/2023 Outward no. 47/2023 is illegal, null, void and they restrained to act as per the basis of notice and they also restrained for taking action to remove or demolishing the structure upon the suit property. The plaintiff came with the theory that, he is the owner of the suit property and it is used and occupation since birth of plaintiff. For support of this contention plaintiff have filed partition deed, Index-II of Development Agreement along-with list of document Exh. 03, document No. C and D. When I perused partition deed minutely, then it shows that, it was unregistered. While a moment I relied that, it have been executed but, for support of it, there is no any 7/12 extract or any document in respect of ownership which clear that, at the time of preparing partition deed such property was in the name of their father/forefather and afterwards it have been partitioned and then as per the partition deed it had been came in the share of plaintiff.

17. Moreover, the defendant no. 5 have filed 7/12 extract along-with list of document Exh. 26/1, on which name of defendant

no. 5 have been mentioned and area 0.04.95R have been enumerated. But, there is no name of plaintiff endorsed upon it. Then, the agreement (Exh.3/D), which have been executed between the Abbas Shaikh (Defendant No. 5), Mubarak Shaikh (Plaintiff), Nizamuddin Tasabbar Khan and Vardhman Associate, Ratna Reality, which is made for 0.04.95R but, I have earlier discussed that, the said area is owned by the defendant no. 5 as per 7/12 extract. Then, the defence which have raised by defendant no. 5 that, plaintiff is trying to take disadvantage of development agreement, prima-facie the version of defendant no. 5 is looking near the truth.

18. For a while moment I relied that, the plaintiff is in a possession of suit property. But, what attempts he have been taken for retention or regularization the structure upon the suit property, which have been unauthorized as per the notice. Because, while deciding this application firstly, as a owner/possessor, what bonafide actions have been taken it would be show for support of their claim. But, such attempt have not been shown on the part of plaintiff. The another objection have been raised by the plaintiff that, defendant have no right to issue notice under Section 53 of MRTP Act, because the construction was erected upon the suit property is about 150 years old. But, not a single document have been filed by the plaintiff for support of the above contention.

19. When I perused the notice dated 29/09/2023 then the

unauthorized construction area is mentioned approximately 21 X 15= 315 Sq. mtrs. Unauthorized construction of bricks and patra shade. As per MRTP Act, when the notice sent under section 53 of MRTP Act then, the relief of retention under section 44 of MRTP Act is available. But 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. 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.

20. As per the contentions of plaintiff, on the suit property they have obtained electricity connection and also paid property taxes. But they 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.

21. For proving the partition deed, ownership, share, development agreement, Hibanama etc. there needs detailed evidence. At this stage, prima-facie it shows that, plaintiff having no any document which shows that, the structure upon the suit property is legal and constructed with permission.

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 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 advertent 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 it 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 Orissa, (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.

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 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.
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 blind 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 bricks, 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. In the large

public interest, every concern local body/competent 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.

Dated: 27/08/2026.

Sd/XXX
(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	:-	Gaurav A. Bobade (Grade III)
Court Name	:-	Shri. V. S. Damare, Civil Judge Junior Division, (P.C.M.C.), Court, Akurdi, Pune.
Date	:-	27/08/2026.
Order signed by presiding officer on	:-	27/08/2026.
Order uploaded on	:-	27/08/2026.