

ORDER BELOW EXH.5 IN R.C.S. NO.32/2025**Gajanan Shete & Ors. Vs. Bhor Nagar Parishad**
(Passed on 03rd of May 2025)

This is an application filed by the plaintiffs under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (C.P.C. in short) for temporary injunction restraining the defendant from continuing the construction of drain in land admeasuring 1.37 HR of Gat No. 79/2 and land admeasuring 75.80 HR of Gat No. 79/1. Both lands situated at Bhor, Tal. Bhor, Dist. Pune. (Herein after as 'suit property') The defendant filed its say vide Exh. 26.

Plaintiff's case in short as under -

2. The plaintiffs have filed the present suit seeking a declaration and a permanent injunction. The plaintiffs submit that the original property bearing Gat No. 79 has been divided into six sub-portions. Plaintiff No. 1 is the legal heir of Shankar Tukaram Shete, who passed away on 24/09/2024. Although the mutation entry reflecting the legal heirs of Shankar Tukaram Shete has not yet been recorded in the 7/12 extract, Plaintiff No. 1, being a legal heir, has filed the present suit jointly with the other plaintiffs.

3. The plaintiffs further submit that suit property 1A is jointly owned and possessed by the plaintiffs. Suit property 1B is under the ownership and possession of Shri Waghjai Mandir, Bhor, and others. The plaintiffs further submit that suit property 1A is situated to the east of suit property 1B, which is evident both from the situation on the ground and the revenue records. The plaintiffs further stated that suit property 1A comprises agricultural land, and

all the plaintiffs are jointly in possession thereof. Adjacent to suit property 1A, within suit property 1B, stands Shri Waghjai Temple. In front of the temple lies an open space, and beyond it, geographically situated on a slope, is suit Property 1A.

4. The plaintiffs further submit that, according to the development plan of Bhore City, there is no natural stream or watercourse passing through Gat No. 79 or the adjoining properties. The plaintiffs' property bearing Gat No. 79/2 is situated adjacent to Gat No. 79/1 and is under their ownership and possession. The plaintiffs further state that the entire property bearing Gat No. 79 contains no natural stream or watercourse, neither in reality nor as per the official development plan.

5. Despite this, on 01/02/2024, the Bhore Municipal Council corresponded with the District Project Officer, Municipal Administration Branch, Collector's Office, Pune, seeking approval based on incorrect information for the construction of an RCC drain near Shri Waghjai Temple. Approval for the said construction was obtained. Pursuant to this, the contractor appointed by the Bhore Municipal Council illegally commenced the construction of a drain within suit Property 1A approximately a week prior to the filing of the suit. Upon perusing the defendants' work order, the plaintiffs observed that no specific location for the work was mentioned, leading to arbitrary and unauthorized work by the defendant. The plaintiffs assert that the defendant commenced the construction of a drain from the eastern side of suit Property 1B, intruding into the plaintiffs' ownership area, i.e., suit Property 1A, where a trench was

excavated and PCC (Plain Cement Concrete) work was initiated. Upon becoming aware of this unauthorized construction, Plaintiff No. 1 filed an application with the defendant on 06/02/2025, requesting them to halt the illegal work. Despite this application, the defendant continued with the unauthorized work, compelling the plaintiffs to submit another request on 11/02/2025.

6. Even after filing the aforesaid two applications, the defendant did not cease the illegal activities. Consequently, on 28/02/2025, Plaintiff No. 1 once again submitted an application requesting the defendants to stop the ongoing construction work and further filed an application requesting all documents related to the said work. However, the defendants have not provided the requested documents to date. On 01/03/2025, the plaintiffs learned that the defendants' contractor was carrying out work at around 9:00 PM. The plaintiffs immediately visited the site and requested the contractor to stop the illegal activities. However, the contractor arrogantly replied that they were carrying out the Municipal Council's work and that the plaintiffs could take any action they deemed appropriate. Despite this, the illegal work resumed on 06/03/2025 and continues daily.

7. The plaintiffs further assert that the work initiated by the defendants is fundamentally illegal and is causing substantial and irreparable damage to the plaintiffs' property. As no natural drain exists at the site, the ongoing work would result in the unlawful construction of a drain within suit Property 1A, leading to severe and irreparable loss to the plaintiffs. The plaintiffs further state that the

defendant, without obtaining any prior consent from the plaintiffs, commenced the said work through their contractors in a high-handed manner. Hence, it is imperative to immediately halt the said illegal work, and a prohibitory injunction should be issued against the defendants. Hence, they prayed that, the defendant, its contractors, or anyone acting through them be restrained by a temporary injunction from carrying out any construction activities of the drain or any related work in suit Property 1A, and from altering the nature of suit Property 1A in any manner till final adjudication of the suit.

8. The defendant appeared and filed their say below Exh.26. After perusal of say at Exh. 26 it is contended that, defendants are denying the application of the plaintiff.

9. The defendant denies the entire contents of interim application terming them as false, fabricated, and imaginary, and does not admit any allegations made therein. It is specifically denied that the plaintiffs are owners of Gat No. 79/1 as alleged. The property description and boundary details in paragraph 1 of the application are incorrect. Furthermore, the necessary owners of Gat No. 79/1 have not been impleaded, resulting in non-joinder of necessary parties. The suit, therefore, deserves dismissal on this ground alone. The plaintiffs have failed to produce the death certificate of Shankar Tukaram Shete or establish their exclusive legal heirship. Hence, the application lacks maintainability and merits rejection at the threshold.

10. It is further submitted that, a natural watercourse has existed for over five decades adjacent to Gat No. 79, as recorded in

the Gunakar Book and Bhor City Development Plan. There is no drain constructed through the plaintiffs' property. The natural water stream lies adjacent to Gat No. 79 and falls within the jurisdiction and control of Defendant No.1. The construction of an RCC drain is being carried out strictly following sanctioned tenders and public administrative procedures. Plaintiffs have no legal standing to obstruct or challenge the said work. No new excavation has been carried out within plaintiffs' property. Over 50% of the RCC drain construction has been completed.

11. It is further submitted that, plaintiffs were fully aware of the ongoing construction since 01/02/2024 but failed to initiate proceedings promptly. The suit and interim application are, therefore, barred by limitation under Section 304(1)(a) of the Maharashtra Municipal Councils Act, 1965. Plaintiffs have failed to comply with the mandatory requirement under Section 304(1)(b) of the Maharashtra Municipal Councils Act, namely, the issuance of a one-month prior statutory notice before instituting the suit against the Municipal Council. Thus, both the suit and interim application are legally untenable and not maintainable. Under Sections 200 to 214 of the said Act, the Municipal Council has exclusive authority over drains and nallas. Civil courts are barred from interfering in such matters. The plaintiffs' proper remedy, if any, lies before the Collector under the relevant provisions.

12. It is further submitted by the defendant that, the cause of action alleged by the plaintiffs arose on 01/02/2024. The suit filed on 18/03/2025 is clearly beyond the six-month limitation period

prescribed under the Act, and accordingly, the present proceedings are barred by law. Public funds amounting to ₹50,92,169/- have been duly sanctioned for the construction. Halting the construction at this advanced stage would cause grave public inconvenience, potential flooding, and loss to human life and property. No irreparable harm would be caused to the plaintiffs, who have no right, title, or interest in the subject drain. The ex-parte injunction order dated 19/03/2024 was obtained without full disclosure of facts. The defendant has moved an application for vacating the same, and after hearing both parties, the matter is reserved for orders. The plaintiffs have failed to demonstrate any prima facie case. The balance of convenience lies decisively in favor of defendant. Public interest far outweighs any alleged private inconvenience. The plaintiffs' interim application is devoid of merits, suffers from fatal legal defects, and deserves to be dismissed with exemplary costs.

13. Heard both parties. Considering rival pleading and documents available on record, following points arise for my determination and I have given my findings thereon with the reasons as follows :

S.No.	POINTS	FINDINGS
1	Whether the Plaintiff has made out prima facie case ?	In the negative.
2	Whether the balance of convenience lies in favour of plaintiff ?	In the negative.
3	Would plaintiff suffer irreparable loss in case injunction, as prayed, is not granted ?	In the negative.
4	What order ?	As per final order.

14. In support of pleading plaintiff relied following documents vide List Exh. 3 and 37

- i) Copies of 7/12 extracts of Gat No. 79/1 and 79/2.
- ii) Copy of plot report of Gat No. 79/1 and 79/2.
- iii) Copy of map of properties from the village mouje Bhor, Tal. Dist. Pune.
- iv) Copies of applications given to the defendant on 06/02/2025, 11/02/2025, 28/02/2025, 28/02/2025.
- v) Duplicate copy of sketch of gat No. 79.
- vi) Copy of Development Plan of village Bhor, Tal. Bhor, Dist. Pune.
- Vii) Photocopies of ongoing work by defendant.
- Viii) Copy of letter of from Bhor Nagar Parishad to Joint Commissioner, Pune.
- ix) Photographs of the work commenced by the defendants on the suit property on 18/04/2025.

15. On the other hand defendant filed documents vide list Exh. 29 and 39 -

- a. Xerox copy of the letter of technical approval dated 31/01/2024 issued by the Maharashtra Jeevan Pradhikaran.
- b. Xerox copy of the work order dated 06/08/2024 issued by the Bhor Municipal Council Office — Total 2 pages.
- c. Xerox copy of the administrative approval order dated 20/02/2024 issued by the District Planning Committee, District Collector's Office.
- d. Xerox copy of the e-tender floated by the Bhor Municipal Council for the year 2023–2024.

- e. Xerox copy of the *Gunakar Book* relating to Survey No. 79 of Mouje Bhor, Taluka Bhor, District Pune.
- f. Xerox copy of the group map (*Gat Nakasha*) of Mouje Bhor, Taluka Bhor, District Pune.
- g. Photographs of the construction of the drain — Total 2 photographs.
- h. Xerox copy of the Sale Deed (Document No. 306/1976) registered on 01/07/1976 at the Sub-Registrar's Office, Bhor.
- i. Xerox copy of the extract from the measurement map relating to Survey No. 265 of Mouje Bhor, Taluka Bhor, District Pune.
- j. Photographs of the boards/hoardings installed by the defendants regarding the commencement ceremony (Bhoomi Pujan) of the work — Total 2 photographs.

REASONS

As to Point No. 1 :

16. To succeed in obtaining a temporary injunction, the plaintiff must first establish a strong prima-facie case in support of the relief claimed. It is the case of the applicant that he is owner and in possession of the suit property of Gat No.79/2, which is four-bonded as to east-field of Gat No.79/2, to west-field of Gat No.79/1, to south-field of no number mentioned in village map and to north-field of Gat No.78. The plaintiffs have alleged that the defendant is illegally constructing RCC drain over their land situated in Gat No. 79/2, which they claim to own exclusively. However, upon examination of the 7/12 land records produced on record, the ownership is shown in the name of one Shankar Tukaram Shete, who is now deceased. The plaintiffs have not furnished any legal heirship certificate, mutation entries, or conclusive documentary evidence to

demonstrate that they have legally inherited and are in exclusive possession of the said property. In the absence of such proof, their suit of ownership remains unsubstantiated and cannot be accepted as sufficient for a prima facie finding.

17. Moreover, the plaintiffs allege that the defendant is constructing the drain on their private property without authority. However, they have failed to produce any site inspection report, certified land measurement map, or any demarcation by a competent government authority like the Taluka Inspector of Land Records. There is no credible material to show actual encroachment upon Gat No. 79/2.

18. On the plain reading of present matter, it seems to be of perpetual injunction in respect of suit property of Gat No.79/2, which is adjacent to their suit property of Gat No.79/1 but in pleading it is seen that main allegation of plaintiff is that defendant are trying to construct the drain over the suit property of 79/2 comprises of their agricultural land within suit property of 79/1 stands Shri. Whaghjai Temple. Same is defence that a natural watercourse has existed for over five decades adjacent to Gat No.79. In support of defence, defendants filed Gunakar Book and Bhor city Development plan which shows the natural watercourse adjacent to Gat No.79. Thus plaintiff failed to brought on record that the said construction of RCC drain is exclusively in their private property having their possession. The construction is pursuant to a sanctioned government project by the Municipal Council, carried out with public funds and administrative approval. In view of these facts, it cannot

be said that the plaintiffs have made out a prima facie case of unauthorized and illegal construction on their land.

19. It is the further defence of defendant that there is no construction of drain through the property of plaintiffs and the construction of RCC drain is being carried out strictly following sanctioned tenders and public administrative procedures. It is submitted that over 50% of the RCC drain construction has been completed. In support of submission the defendant filed the documents of copy of technical approval of construction dated 31/01/2024, work order of construction dated 06/08/2024, administrative approval of District Committee dated 20/02/2024, copy of e-tender of 2023-2024, which shows that the defendant strictly followed the sanctioned tenders and orders of competent authority.

20. Apart from this, it is also clear that the plaintiffs are aware of ongoing construction since from 01/02/2024, they have filed the present suit on 18/03/2025 without complying the mandatory requirement under section 304 (1)(b), of issuance of one month prior statutory notice to the defendant. It is seen that the work order of construction of said RCC drain is approved by the District committee i.e District collector office. So, the first, plaintiff have to approach the competent authority but they have failed to initiate proceedings promptly. I do not find any substance in the argument on behalf of plaintiff.

21. After above discussion, I reach conclusion that, plaintiffs failed to prove prima-facie case in their favour. Accordingly, I answer

point No.1 in negative.

As to Points No. 2 & 3 -

22. Even assuming that some factual disputes exist regarding the location of the drain, the plaintiffs have not shown that the balance of convenience tilts in their favour. On the contrary, the documents on record clearly indicate that the RCC drainage work is part of a public infrastructure project, undertaken by the local Municipal Council in exercise of its statutory functions under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The construction was sanctioned in August 2024 and Bhoomi Pujan was completed well in advance of the filing of the suit. Public funds have already been committed and work has commenced. An injunction at this stage would halt a civic project of importance to the surrounding locality and may jeopardize effective water and sanitation management.

23. On the other hand, the plaintiffs have neither shown nor substantiated any concrete inconvenience or injury to themselves. They have not filed any technical report or survey showing that their land is being adversely affected. The lack of urgency in filing the suit, despite prior knowledge of the construction, further weakens their suit. It is well settled that '*where public interest is involved, greater caution must be exercised in granting injunctions*'. In this case, the balance of inconvenience clearly lies against the plaintiffs.

24. To warrant the grant of a temporary injunction, the plaintiffs must demonstrate that they would suffer irreparable harm that cannot be compensated in monetary terms. In the present case,

the plaintiffs have not produced any material to show that the alleged construction would result in permanent loss, damage to immovable property, or loss of livelihood. No structural impact, damage to agricultural land, or deprivation of access has been established by any technical evidence. Even assuming some portion of the land is ultimately found to be affected, such loss, if any, can be adequately addressed by way of compensation under law. In contrast, an injunction would stall a larger public work, causing significant administrative and financial loss to the authorities and the general public. Therefore, the plaintiffs have failed to demonstrate any irreparable loss that would justify restraining the work through interim relief. Hence, in above circumstances, I answered point No. 2 and point No.3 in the negative.

As to Point No. 4 -

25. In view of the above findings, the plaintiffs have failed to satisfy the essential criteria for grant of temporary injunction. No prima facie case has been made out; the balance of convenience does not lie in their favour; and no irreparable injury is shown. Hence, in view of the above circumstances, I pass following order.

O R D E R

- 1] Application is hereby rejected.
- 2] Parties to bear their own cost.

Pune.
Date : 03/05/2025.

(Smt. M. W. Jadhav)
Jt. Civil Judge, J.D.,Pune

CERTIFICATE

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

Name of the Court :- Hon'ble Smt. Meena W. Jadhav
C.J.J.D. & J.M.F.C., Bhor, Pune

Name of the Steno :- M. S. Kondhare L.G.

Date of Order :- 03-05-2025

Signed by P.O. :- 05-05-2025

Order uploaded on :- 05-05-2025