

CNR NO. MHSO060014542021

R.C.S. No. 91/2021



Vasant Bhimrao Ghule

V/s.

Maharashtra State & oth.

Order below Exh. 5
(Delivered on 31st July, 2023)

This is an application u/o XXXIX Rule 1 & 2 of the Code of Civil Procedure seeking temporary injunction against defendant No.1 to 5 thereby restraining them from demolishing plaintiff's construction and causing obstruction to his peaceful possession over the suit property, till disposal of the suit. Land Gat No.1/1/b/1 admeasuring 45R. alongwith the house standing therein bearing Grampanchayat property No.968 admeasuring 12mt x 30mt situated at village Patvardhankuroli, Tal. Pandharpur, District Solapur bounded as towards East- Patvardhankuroli to Pehe road, towards West- Land Gat No.2, towards North and South- remaining land of Gat No.1 is the subject matter of the suit. Here-in-after it will be referred as “*suit property*” for the sake of convenience.

02) **Plaintiff's case in brief is as follows:-**

Plaintiff is the owner and possessor of the suit property having his residence since last 15 – 20 years therein. The road running from Patvardhankuroli to Pehe (Narsinghwadi) (Rural Road no. 34) is the root cause of the suit. The road is having width of 3 mt. (10 feet) and there is space of 3 ft. each on both sides of the road for drainage. Plaintiff constructed his house by living 10 ft distance from the road. Defendant No. 6 to 8 are having their land Gat No. 716/2 from the eastern side of the road.

03) In the year 2018-2019 defendant nos. 2 and 3 undertook the work of repair and maintenance (खडीकरण व मुरुमीकरण) of this road. In the year 2019 under the scheme of Mukhya Mantri Gram Sadak Yojana, this road is sanctioned for the development. After the sanction, defendant no. 6 to 8 dig the road from their side using J.C.B. thereby included that portion in their own land hence the width of the road is reduced. Defendant no. 6 to 8 made encroachment over the road and this fact was brought to the notice of defendant no. 1 to 5 by the plaintiff, despite of it defendant no. 1 to 5 issued illegal notice to plaintiff thereby informing that he made encroachment over the road. Defendant no. 6 to 8 are having political support hence some persons went on hunger strike thereby pressurizing for demolition of plaintiffs house. Due to the political pressure defendant no. 1 to 5 got prepared a map from the office of Dy.S.L.R. Pandharpur thereby illegally showing plaintiff's encroachment over the road. Moreover, the notices of the measurement were not issued to the plaintiff. In order to fix the four boundaries of the road it was necessary to measure the suit property alongwith the land of defendant no. 6 to 8. Thus, the map and the measurement is illegal.

04) Under political influence defendant no 2 and 3 issued illegal notices to plaintiff on 09/11/2020 and 18/03/2021 thereby informing that plaintiff's house will be demolished being encroachment on the road. As plaintiff constructed house in his own land which is duly recorded in the office of defendant no.4, now defendant no right to demolish the same illegally. If the house is demolished then plaintiff will suffer irreparable loss hence he is constrained to file instant suit. By way of present application plaintiff seeks temporary injunction against defendant no. 1 to 5 thereby restraining them from demolishing the house illegally and causing obstruction, till disposal of the suit. Application is supported with the affidavit.

05) Defendant no.1 to 4 filed their written statement-cum-say at **Exh.22** thereby denying entire contents of the plaint specifically. It is contended that, the road is in existence since last 60 to 70 years, time and again it is being repaired and maintained by the government. As per the Government Notification Public Works Department No. BD 1081/871/road-7 dated 09/03/2001 the Government fixed the boundaries and width of the road as per their status i.e. National Highway, State Highway, District road, Rural road etc. According to that GR the boundaries of the present road is 10 mt. from it's center or 3 mt. from the end of the road. Thus, plaintiff was required to construct his house at 10 mt. distance from the center of the road or 3 mt from the end of the road, but his house is situated within the boundaries of the road. Due to it width of the road is reduced hence accidents are occurring frequently on that spot.

06) As per the Mukhya Mantri Gram Sadak Yojana 2017-2018 the repairing and maintenance work of this road is undertaken but due to the plaintiff's encroachment the work of remaining road is completed, except the disputed portion. The villagers and other passerby are causing inconvenience while traveling that portion of the road due to encroachment. The villagers went on hunger strike thereby protesting for removal of encroachment. The villagers collectively paid the fees and got measured the land situated on both side of the road through Dy.S.L.R. Pandharpur, on 26/10/2020 the measurement was conducted and on 03/11/2020, it's four boundaries are fixed. It revealed in the measurement that portion of plaintiff's house as well as agricultural land is in the form of encroachment on the road. Though plaintiff was present on both occasions, he failed to raise any objection to the measurement. Zilha Parishad informed the plaintiff about his encroachment but he not only avoided it but also caused obstruction to the repairing of the road. On 09/11/2020 and 18/03/2021, by issuing a notice plaintiff was

informed to remove his encroachment and vacate the portion but he neither replied nor acted upon the notice. Thus, it is prayed that the application may be rejected.

07) Defendant No.5 is the Grampanchayat of Patvardhankuroli. By filing written statement-cum-say below Exh.33 it is contended that, the disputed road is under the control of Zilha Parishad and on number of occasions it's work of repair and maintenance is undertaken. Due to the boundaries dispute of this road, on 26/10/2020 Dy.S.L.R. Pandharpur conducted the measurement of it in M.R.No.5640/2020 and fixed it's four boundaries on 03/11/2020. It is found in the measurement that the plaintiff constructed his house on the road. Notice was issued to plaintiff for removal of encroachment but without complying it, he filed false suit. Due to plaintiff's encroachment the work of the road is held up and his encroachment is causing obstruction to the public at large. Thus prayed for rejection of application.

08) Defendant nos. 6 to 8 contended that the suit is filed by suppressing material facts from the court. They are having their 2H. 6R. land situated on the western side of the road. Plaintiff made encroachment over the road which is proved in the measurement conducted by Dy.S.L.R. Pandharpur therefore only to protect it, false suit is filed. They have repeatedly made communications to the government offices for removal of encroachment from the road. The suit is filed only to avoid the legal action initiated by defendant no. 1 to 5. Hence prayed to reject the application.

09) Defendant No. 9 and 10 appeared and requested to add them as defendant in the suit as per Order I Rule 10 of the Code of Civil Procedure. They are the villagers who went on hunger strike and made agitations before the government officials thereby requesting for the removal of plaintiff's

encroachment and to complete the road so that the villagers can use it freely. Due to plaintiff's encroachment the width of the road is reduced. Plaintiff is politically influenced person therefore, by using all the resources he stopped the work of the road near his house. Except that portion, the work of remaining road is completed. This is the only way available for the villagers and if the construction of the road is not completed then the villagers will be deprived from enjoying this road. There is a bar under Section 41(ha) and 20(a) of the Specific Relief Act, 1963 therefore suit itself is not maintainable and no injunction can be granted against the Infrastructure Project. Defendants have legally issued notice to plaintiff for removal of encroachment. In the measurement plaintiff's encroachment is found on the road, therefore, it is prayed that the application may be rejected.

10) Heard learned advocate for both the parties at length. Record and proceeding is perused.

11) Following point arises for my determination, I have recorded my findings thereon for the reason discussed below.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether plaintiff is having prima facie case ?	No
2)	Whether balance of convenience lies in favour of plaintiff ?	No
3)	Whether irreparable loss would be caused to plaintiff if the temporary injunction, as sought for, is not granted ?	No
4)	What Order	Application is rejected.

REASONS

12) The application is filled under order XXXIX Rule 1 & 2 of the Code of Civil Procedure therefore it has to be seen whether plaintiff is having prima facie case, whether balance of convenience lies in his favour and whether irreparable loss would be caused to him if the temporary injunction, as sought for, is not granted. It is the settled principle that at this prima facie stage the pleadings, documents and affidavits, if any, filed by the parties are required to be considered only. At this prima facie stage Mini trial is not permissible in the eyes of the law.

AS TO POINT NO. 1 TO 3 :-

13) All points are interconnected and interdependent hence taken together for discussion. Plaintiff is claiming to be the owner and possessor of the suit property. It is his contention that though he constructed his house in his own land and there is no encroachment on the road running from Patvardhankuroli to Pehe at his instance, still defendant no. 1 to 5 are trying to demolish his house illegally. Plaintiff himself pleaded that defendant no. 2 and 3 issued notice dated 09/11/2020 and 18/03/2021 to him thereby asking to remove his encroachment on his own otherwise informed that the same will be demolished. The notice appears to have been issued by Zilha Parishad on the basis of measurement conducted by Dy.S.L.R. Pandharpur wherein plaintiff's encroachment is found on the road. Certainly, the disputed road is under the control of Zilha Parishad. And it is duty bound to keep the road free for access to the public at large and for doing so it is capable for the removal of encroachment, if any on the road. Thus, on the basis of statutory power vested in it, notices appears to have been issued by defendant nos. 2 and 3. It is pertinent to note that, no relief of declaration is sought by plaintiff about the notice issued by defendant nos. 2 and 3 dated 09/11/2020 and 18/03/2021.

Without seeking any declaration, plaintiff opted to file a suit simplicitor for injunction.

14) Admittedly, prior to the institution of this suit, measurement of road was conducted by Dy.S.L.R. Pandharpur on 26/10/2020 and it's four boundaries are fixed on 30/11/2020 wherein plaintiff's construction as well as agricultural land was found in the form of encroachment on the road. Despite of it plaintiff did not feel it necessary to get measured his land prior to institution of the suit. Subsequently, as per plaintiff's application under Order XXVI Rule 9 of the Civil Procedure Code (Exh.41) my predecessor pleased to appoint Dy.S.L.R., Pandharpur as court commissioner thereby directing to conduct joint measurement of the suit property, road as well as land Gat no.716. (land of defendant nos. 6 to 8). Prima facie it appears from the commission report and map that portion of plaintiffs land as well as house is situated on road in the form of encroachment. Plaintiff opposed the commission report by filling an application (Exh.65) thereby again requesting to measure the sub portion (Pot-hissa) of land Gat no.716 (land of defendant no 6 to 8). That application (Exh.65) is came to be rejected on merit. Plaintiff challenged that order before Hon'ble Bombay High Court and sought number of adjournment since 17/10/2022, but till today that writ is pending without any stay orders. Meanwhile Advocate for defendant No 1 to 5 filled pursis due to which the work of road near the spot is stopped and as per order below Exh 58 there was status quo till today (till deciding Exh 5).

15) In short, the measurement conducted prior to institution of the suit subsequent measurement reports are on record. Upon considering it prima facie it shows some encroachment at the instance of plaintiff on the road. When plaintiff himself is at fault and defendants by fallowing due process of law issued legal notices thereby requesting to remove the encroachment, then

certainly prima facie it can not be said that there is any illegality on the part of defendant nos. 1 to 5 for taking steps for the removal of encroachment. The relief of injunction is the discretionary relief and the discretion has to be used judiciously. The temporary injunction is an equitable relief and it is settled principle of law that a person who seeks equity must do equity.

16) The road runs through the suit property and land of defendant no. 6 to 8. The photographs produced on record on one hand clearly shows that the plaintiff's house as well as agricultural land is just touching to the boundary of road prima facie meaning thereby that there is no space of 3 mt as contemplated for for the drainage. Prima facie it appears that portion of suit property i.e. plaintiff's house and agricultural land is in form of encroachment on the road. Moreover, it also appears prima facie that defendant no. 6 to 8 have also made encroachment on the road by erecting tin shed during pendency of the suit, which can be gathered from the photographs obtained from Google Maps. Due to the encroachment by both land holders the width of the road is reduced on that spot. Defendant no. 1 to 5 are under legal obligation to remove the encroachment on the road and to make it free and accessible for the public at large. Though plaintiff is seeking relief that defendant shall not demolish his construction illegality, but it is necessary to mention here that for that purpose defendant no. 1 to 5 have duly issued notices to plaintiff and infact he failed to comply the same. Moreover, no declaration is sought by plaintiff in respect of these notices.

17) Defendant no. 9 and 10 are striving for the construction of road for the use of public at large and for that purpose they went on hunger strike. They continuously made representation to various authorities concerning the road for removal of the encroachment. They have no personal interest either against plaintiff or against defendant nos. 6 to 8. Certainly, the relief sought

by the plaintiff is against defendant no. 1 to 5 only but indirectly it is affecting the rights and interest of the public at large. Defendant nos. 1 to 5 started the construction of road which is covered in “Infrastructure Project”. By way of temporary injunction order the work of infrastructure project is going to be stopped and his position brings section 20(a) of the Specific Relief Act in operation. It is settled principle ‘ *Quando aliquid prohibetur ex directo, prohibetur et per obliquum* ’ meaning thereby that what cannot be done directly, should also not be done indirectly. Certainly, if the relief of injunction is sought to stop any Infrastructure Project then amended Section 20(a) of The Specific Relief Act put restriction on the court to pass such preventive orders.

18) Considering all these aspects, and taking into account the photographs alongwith the various maps and photographs obtained from Google Maps, prima facie it appears that not only plaintiff but also defendant nos. 6 to 8 have made some encroachment over the road running from Patvardhankuroli to Pehe from it's both sides near the spot. Defendant nos. 1 to 5 have issued notices only to the plaintiff for removal of encroachment still the tin shed constructed by defendant nos. 6 to 8 clearly appears on the road. Prima facie there is also some smell of political rivalry in this litigation on the Grampanchayat level. As observed above defendant no. 1 to 5 are under statutory obligation to remove the encroachment on the road for the benefit of public at large. In such circumstances, prima facie I am of the opinion that plaintiff is absolutely not having any prima facie case in his favour. As it is the encroachment, no balance of convenience lies in his favour and no question arises of causing any irreparable loss, if the temporary injunction as sought for is not granted. In view of this, I answer point No.1 to 3 in the negative.

AS TO POINT NO. 4 :-

19) Considering all these aspects I am of the opinion that the application being devoid of any merits is liable to be rejected. Therefor, following order.

ORDER

- 1) Application is rejected.
- 2) Cost-in-cause.

Date :- 31/07/2023.
Place :- Pandharpur.

(Amit A. Khandale)
Jt. Civil Judge, Senior Division
Pandharpur

CERTIFICATE

I, affirm that the contents of this PDF file Order/Judgment are same word to word, as per the original order/Judgment.

Name of Employee	:	Shirsikar V. G., Stenographer
Court	:	Jt. C.J.S.D. Pandharpur
Date	:	31.07.2023
Judgment/order signed by	:	
the Presiding Officer on	:	31.07.2023
Judgment/Order uploaded	:	
on	:	31.07.2023
