

**Order Below Exh.5 in R.C.S.No.67/2015**

In a suit for perpetual injunction, plaintiff is seeking interim injunction restraining the defendant from carrying out construction and restraining them from obstructing the plaintiff from restoring the the drainage line.

2) Brief facts of the plaintiff's case are as under.

Plaintiff is owner of C.S.No.294 which is more particularly described in plaint Para 1 (hereinafter referred to as the suit property). In the year 1991 he raised construction in the suit property by obtaining valid building permission from the municipal council. Drainage line was proposed from 'eastern' side of the suit property. But in a natural course and to avoid inconvenience to others, he had fixed drainage line from 'western' side of the suit property. In the year 1993, municipal council has issued occupancy certificate. Defendants are owners of C.S.No.292 and 293. These properties are adjacent to the suit property. Defendants have started construction, thereby they have demolished the plaintiff's drainage line. Defendants are also trying to encroach by way of illegal construction. Defendants in collusion with city corporator has caused the municipal council to issue notice to the plaintiff for restoring the drainage line. Plaintiff is ready to restore the same but the defendants are obstructing. So also due to construction of the defendants, plaintiff's right will be affected. Hence the suit, vis-a-vis this application.

3) Defendants have resisted the application by filing say and written statement at Exh.19. Contentions in brief are as under.

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Act of the plaintiff in fixing the drainage line at 'western' side is illegal. Defendants have started construction by obtaining valid sanction. As per plaint allegations, drainage line was demolished in the month of January-2015. Hence, the application suffers from delays and latches. Act of the plaintiff will be legalized if injunction is granted. With this it is prayed to reject the application with costs.

4) Plaintiff has filed certificate of property extract, building permission, photographs, notices issued by the municipal council. Defendants have filed copies of building permission, notice etc.

5) Heard Mr.R.R.Yadav and Mr.U.H.Sanas, learned Advocates appearing on behalf of the plaintiff and defendants respectively.

**Gist of Arguments :**

6) Learned Advocate for the plaintiff, Mr.Yadav relied upon the judgments in case of,

- (i) *“Mandali Ranganna & Ors. Vs. T. Ramachandra & Ors, (AIR 2008 Supreme Court 2291)”*
- (ii) *“Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, (2008(2) Mh.L.J. 819)”*
- (iii) *“Pralhad Jaganath Jawale & Ors. Vs. Sitabai Chander Nikam & Ors., (20011(4) Mh.L.J. 137)”*
- (iv) *“Loreal India Pvt. Ltd., Mumbai Vs. Global Earth Properties & Developers, (2009(5) Mh.L.J. 215)”*

He submitted that existence of drainage line at

'western' side is admitted by the defendants. On the basis of preponderance of probabilities, it is prima-facie proved that the same is cut by the defendants. According to him, by virtue of occupancy certificate, Municipal Council has regularized the act of the plaintiff fixing the drainage line at 'western' side. He further submitted that plaintiff's right to air and light will be infringed. He according submitted to allow the application.

7) Per contra Mr.U.H.Sanas, learned Advocate for the defendants, submitted that Municipal Council has directed the plaintiff to fix drainage line from western side. Plaintiff's act in fixing the drainage line at western side is illegal. This cannot be regularized due to passage of time. He also submitted that suit is bad for want of compliance under Order 7 Rule 3 of C.P.C. He, accordingly, submitted to reject the application.

8) Following points arose for my determination to which I record my findings alongwith the reasons to follow.

<b>POINTS</b>	<b>FINDINGS</b>
1) Whether plaintiff has prima facie case ?	No
2) Whether plaintiff will suffer irreparable loss if injunction is refused ?	No
3) Whether balance of convenience tilts in favour of plaintiff ?	No
4) What order ?	As per final order.

**REASONS**

- 9) Undisputed facts are as under.
- (1) Plaintiff is owner of the suit property i.e. City Survey No.294.
  - (2) Defendants are owners of adjacent properties C.S.No.292, 293.
  - (3) Plaintiff was granted building permission in the year 1991 in which drainage line was shown from 'eastern' side.
  - (4) Defendants have started construction in view of building plan granted to them.
  - (5) Municipal Council has issued notices to the plaintiff dated 23/02/2015, 15/07/2015, 14/10/2015.
  - (6) These notices are replied by the plaintiff respectively on 18/03/2015, 30/07/2015, 20/10/2015.

10) **As to Point No.1 :-**

Two reliefs are sought by the plaintiffs. First is about restoring the drainage line. Second one is in a manner that defendants should not carry out construction affecting the rights of the plaintiff. Firstly, I will deal with the first relief.

11) As far as restoration of drainage line is concerned, prima-facie case is required to be seen whether plaintiff has right to restore the drainage line on 'western' side. If it is so, then he is entitled to injunction.

12) It is not in dispute that very permission has provided for drainage line at 'eastern' side (Exh.4/2). Hence, it is clear that basically drainage line from western side is not permitted. According to the plaintiff, in view of occupancy certificate, Municipal Council has given deemed sanction. This submission, prima-facie, appears doubtful for the reasons that there is no such provision by which such sanction to the change in construction can be presumed. Moreover, plaintiff has obtained revised sanction (Exh.4/3), but it is silent in respect of any change in drainage line. Moreover, this contention appears doubtful for the second reason as appearing in notice dated 15/07/2015 issued by Municipal Council (Exh.4/7).

13) Notice dated 15/07/2015 speaks that originally drainage line was shown at 'eastern' side. But it was taken from 'western' side. Plaintiff is directed to restore drainage line as per the sanctioned map. This position clarifies that no deemed sanction was granted to the plaintiff by virtue of occupancy certificate as contended by him. Otherwise there was no reason to specify the same in this notice. Hence, prima-facie for this reason also plaintiff's contention appears doubtful.

14) Learned Advocate Mr.Yadav for the plaintiff vehemently submitted that, this notice is issued at the behest of defendants and it is illegal. I have considered the submissions. But the plaintiff has not sought any relief against this notice. No doubt he has replied the same through Advocate. But mere denial to the notice is not

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sufficient to say that notice is illegal. Hence this submission is not acceptable.

15) Learned Advocate Mr.Yadav further submitted that since 1993, drainage line is in existence and no prejudice will be caused if it is restored at the same place. I have given all considerations to his submissions. But it cannot be ignored that granting permission now, will amount to an act against the notice issued by the municipal council, which is an appropriate authority to supervise and control the constructions. Moreover, this notice is not the subject matter of the suit. Hence, permitting the plaintiff to restore the same at 'western' side will be against the principles of law. Hence, for these reasons, I do not find any prima-facie case in respect of this issue.

16) As far as relief in respect of construction is concerned, according to Mr.Yadav, learned Advocate for the plaintiff, defendant is trying to construct beyond the sanctioned plan. But for that purpose plaintiff should approach the municipal council as the 'Municipality Act' is a self contained code itself. This authority is not party to the suit. It is not shown that plaintiff has approached the council by following due procedure of law about construction. Hence, prima-facie this submission cannot be acceptable.

17) Mr.Yadav, learned Advocate for the plaintiff further submitted that by this construction, plaintiff's right to air and light will be affected. May it be. But, the pleading and relief to that effect is vague. It is well settled that easement of

necessity needs to be pleaded. Declaration to that effect needs to be sought. Without this, granting injunction on the backdrop of building permission will be a blanket injunction which is against the principles of law.

18) In all, on the basis of notice and documents on record, plaintiff has no prima-facie case in the context of relief sought. Hence, I answer point No.1 in the negative.

19) **As to Point No.2 & 3 :-**

Admittedly, disputed drainage line is open since January-2015, but the plaintiff has approached this Court on 21/10/2015 i.e. after about 10 months. Hence, on the principle of delay and laches, irreparable loss to the plaintiff is unbelievable.

20) It is submitted during the course of argument that plaintiff's four rooms of lodging are remained unused due to disputed drainage line. On this background, it cannot be said that he will suffer irreparable loss if injunction is refused. On the backdrop of notice of the municipal council, balance of convenience does not tilt in his favour. Moreover, in the context of building permission granted to the defendants, granting injunction will cause them loss more than the plaintiff. Hence, I answer point No.2 and 3 in the negative.

21) **As to Point No.4 :-**

I have considered the authorities cited at the bar on behalf of the plaintiff. Accordingly, I have considered the basic elements required to determine the injunction

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application. So also I have considered all the documents which are produced on record without formal proof.

22) Today morning plaintiff has filed application at Exh.30 submitting that the defendants have demolished the 'western' wall of the suit property. Plaintiff can avail appropriate remedy for the same. The suit is not in respect of encroachment. But plaintiff has apprehended the same, as per pleading.

23) In view of the above position, the application is liable to be rejected. Hence, I pass following order.

**ORDER**

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

Date : 06/11/2015.  
Mahabaleshwar.

(P.A.Kumbhojkar)  
Civil Judge, Junior Division,  
Mahabaleshwar