

ORDER BELOW EXH. 5 IN R.C.S. NO.20/2025

(Ramdas Narayan Tale Vs. District Collector, Washim & Ors.)
CNR No.MHWS020001122025

Present application has been filed by plaintiff/applicant under Order XXXIX Rules 1 & 2 r/w. Section 151 of the C.P.C.,1908 for the relief of temporary injunction against defendants/non applicants thereby restraining them from creating third party interest in suit property as described in detail in para No.1 of the plaint and also restraining them from causing obstruction to plaintiff's peaceful cultivating possession over the suit property till final disposal of suit.

2) Perused application and documents filed on record by plaintiff. Also heard learned Advocate for plaintiff at length. However, despite service of suit summons and notice upon the defendants, they did not appear and therefore, suit and present application for temporary injunction came to be proceeded *ex-parte* against them.

3) Ld. Advocate for plaintiff has submitted that the plaintiff is a permanent resident of Nagartas, Tq. Malegaon and he is serving as a soldier in Army. It is further submitted that the plaintiff had applied on 01.10.2009 through his Army unit to the defendant No. 1 under the scheme of welfare of serving soldier for allotment of Government barren land (पडीत जमीन) i.e. suit land admeasuring 2 H. 0 R. out of Survey No. 60 situated at mouje Bhera, Post Shirpur, Tq. Malegaon, Dist. Washim which was available unallotted. The plaintiff is the only earning member of his family consisting of his mother, elder brother, two school going children and wife, who are wholly dependent upon him and there is no any other source of income to the plaintiff.

4) It is further submitted that as per the request of the plaintiff, the Chief Record Officer for OIC Record, had issued a letter to the defendant No. 1 and copy of the same was also sent to the defendant No. 3 and the Sarpanch Gram Panchayat, Bhera for allotment of Government land and to take necessary

action and intimate to the office for satisfaction of the individual. It is further submitted that as per the said letter dated 01.10.2009, the defendant No. 3 started the proceeding bearing Revenue Case No. LND-12/Bhera/1/2011-12 and called the report from the concerned Talathi as well as the Revenue Inspector regarding the said suit barren land.

5) It is further submitted that as per the proceeding initiated by the defendant No. 3 in said Revenue Case, the Resolution of Gram Panchayat, Bhera was called. As such the Gram Panchayat, Bhera had passed a Resolution No. 5 on 12.04.2011 and thereafter, on 01.05.2011, Resolution No. 6 also came to be passed for giving no objection for the allotment of the said suit land to the plaintiff, which is bounded as -

- To the East - Lands of Vasant Wankhade and Digamber Wankhade field Survey No. 54,
- To the West - Land of Mohammad Hakim Mohammad Asad field Survey No. 61,
- To the North - Remaining E-class land, and
- To the South - Shirpur to Amani road.

6) It is further submitted that the defendant No. 3 had given letter to the circle officer, Karanji on 15.10.2011 and thereby called the report of spot inspection of Survey No.60 and as per the said letter, the circle officer as well as Talathi have submitted their spot inspection report to the defendant No. 3. It is further submitted that the defendant No. 3 as per the Resolution passed by Gram Panchayat, Bhera had issued the proclamation on 02.08.2011 and called the objections of villagers for the allotment of the said suit land i.e. E-class land for agricultural purpose to the plaintiff.

7) It is further submitted that, after the said proclamation, no objection or any complaint is received from the public at large within the stipulated period and therefore, the defendant No. 3 has sent the proceeding for the measurement to the Dy.SLR, Malegaon. It is further submitted that after receiving the case

papers from defendant No. 3 by the Dy.SLR, Malegaon regarding the allotment of the barren land to the plaintiff, the Dy.SLR, Malegaon had issued letter dated 18.11.2011 to the plaintiff thereby calling him to pay the fee for measurement as per the order of defendant No. 3 in aforesaid Revenue Case. As per the letter dated 18.11.2011 received from the office of Dy.SLR, Malegaon, the plaintiff had paid the entire fees of Rs.12,000/- towards measurement by way of challan through State Bank of India, Branch Malegaon.

8) It is further submitted that after the payment of the measurement fees concerned TILR, Malegaon, issued notice dated 13.02.2012 to the plaintiff for measurement of the E-class suit land out of Survey No.60. And the copy of said notice is also given to the concerned Talathi. It is further submitted that as per the order passed by defendant No.3, the E-class land out of Survey No. 60 is measured by the concerned measurer and after the measurement of the said allotted land, the measurement sheet/map is issued to the plaintiff and since then the plaintiff is cultivating the said suit land and he is in peaceful possession and occupation of the said E-class suit land.

9) It is further submitted that this fact was well within the knowledge of the defendant No. 3. However, thereafter the plaintiff came to know that the Gram Panchayat, Bhera, Tq. Malegaon, Dist. Washim issued a notice and passed a Resolution dated 28.04.2023 in Gram Sabha of Village Panchayat and gave no objection for allotment of land out of the Survey Nos. 38, 39, 40, 59 and 60 for the scheme of Solar Energy Project i.e. Chief Minister Saur Krushi Yojana. However, the plaintiff is in peaceful possession of the suit land admeasuring 2 H. out of Survey No. 60 as per the resolution passed by Gram Panchayat, Bhera. Thus, the plaintiff is legally in possession of the above mentioned suit land.

10) It is further submitted that as per the Resolution passed by Gram Panchayat, Bhera on 28.04.2023, regarding the allotment of the land out of Survey Nos. 38, 39, 59 including Survey No. 60, there is a great apprehension in the mind of the plaintiff that at any time on the basis of the said resolution the

concerend company i.e. working for the said Solar Energy Project under the scheme i.e. Chief Minister Saur Krishi Yojana will illegally dispossess to the plaintiff which can be caused great loss, damages and hardship to the plaintiff, therefore, it is necessary to restrain the defendants from creating third party interest in suit land and also from taking forceful possession of the suit property from the plaintiff thereby causing obstruction to the plaintiff's possession over the suit property.

11) It is further submitted that as such, plaintiff has constrained to file instant suit for mandatory and perpetual injunction along with present application for temporary injunction. Thus, it is necessary to issue temporary injunction against defendants in order to protect plaintiff's peaceful possession over the suit property. Plaintiff has prima facie case and balance of convenience also lies in favour of plaintiff. Irreparable loss will be caused to plaintiff if application is rejected as compared to defendants. Hence, learned Advocate for plaintiff has prayed for grant of this application.

12) In view of above submissions of learned Advocate for plaintiff, following points arise for my determination and I have recorded my findings thereon for the reasons discussed below.

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

REASONS**As to point Nos. 1 to 3 :**

13) It is pertinent to note here that plaintiff has come with the case that on 01.10.2009 he had applied to the defendant No. 1 i.e. District Collector, Washim for allotment of suit land which is Government E-class barren land. On completion of necessary procedure, suit land came to be measured as per the direction of defendant No. 3 i.e Tahsildar, Malegaon and suit land came to be allotted to the plaintiff after measurement. Since then, plaintiff has been cultivating suit land peacefully and without any interruption. However, defendants are now about to create third party interest in suit property by giving suit land for the Solar Energy Project under the scheme of Chief Minister Saur Krushi Yogana and defendants are also trying to disturb the peaceful possession of the plaintiff over the suit property.

14) It is to be noted here that there is nothing on record to show that the suit land came to be allotted to the plaintiff by the competent authority i.e. District Collector, Washim and the plaintiff was put into possession of suit property. It is further pertinent to note here that on perusal of copy of Registered notice dated 08.11.2024 which was sent by the plaintiff himself to the defendants through his learned advocate, it prima facie appears that in the para No. 4 of the said notice, it is clearly mentioned that the plaintiff is using and cultivating the said suit land from the date of allotment and sanction i.e. 01.10.2009. However, it is pertinent to note here that when the plaintiff himself had applied for allotment of suit land on 01.10.2009 then how it can be said that the plaintiff is using and cultivating the suit land from 01.10.2009.

15) It is also to be noted here that no substantial documentary proof came to be produced by the plaintiff on record from which it can be prima facie seen that the plaintiff is in cultivating possession of suit property as alleged by him in the plaint. Moreover, the plaintiff has also not filed on record the affidavits of adjoining farmers in support of his claim that he is cultivating the suit property since the year 2009. Apart from this, the plaintiff has also not filed

any document on record to show that he has taken any crops in the suit property since the year 2009 as averred by him. When the plaintiff has not shown his prima facie possession over the suit property then the question of causing obstruction to his peaceful possession over the suit property at the hands of defendants does not arise at all.

16) Thus, considering the peculiar facts and circumstances of the present case and material on record, I hold that plaintiff has not made out prima facie case. Plaintiff has also not shown that balance of convenience lies in his favour. Moreover, irreparable loss will be caused to plaintiff if temporary injunction is not granted as compared to defendants. Therefore, I think it just and proper to reject this application. Thus, I answer point Nos. 1 to 3 in the negative.

As to point No. 4 :

17) Considering all these aspects, I am of the opinion that, the application deserves to be rejected. Therefore, I pass following order.

ORDER

- 1) Application is hereby rejected.
- 2) No order as to costs.

Date :- 07.05.2025
Washim

(S.W.Thombre)
3rd Jt. Civil Judge Senior Division,
Washim.

CERTIFICATE

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

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| 1) Name of Stenographer | N.F.Syed (Stenographer G-III) |
| 2) Name of Court | 3 rd Jt.Civil Judge (S.D.), Washim. |
| 3) Date | 07/05/2025 |
| 4) Order signed by the
presiding officer on | 07/05/2025 |
| 5) Order uploaded on | 07/05/2025 |